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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

G. Thomas Cooper, Jr., Circuit Court Judge

WILLIAM V. LONG

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE # 2016-000013

APPENDIX

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) INDICTMENT NO. 07-GS-26-869,
3 870, 871, 873, 875
4

5 THE STATE OF SOUTH CAROLINA,)
6 PLAINTIFF,)
7 -VS-) TRANSCRIPT OF RECORD
8 WILLIAM VON LONG,)
9 DEFENDANT.)
10

Monday, Tuesday &
Wednesday
April 13-15, 2009
Conway, S. C.

13 B E F O R E:
14 HONORABLE EDWARD B. COTTINGHAM, JUDGE, AND A JURY
15

16 A P P E A R A N C E S:
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22 Attorney for the Defendant
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LINDA W. MCCALL
OFFICIAL REPORTER

24
25

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ARRAIGNMENT

1

PRE-TRIALTUESDAY, APRIL 7, 2009

ARRAIGNMENT

THE COURT: All right, sir. What's the first order of business, please?

MR. FILIBERTO: Your Honor, I'm here because I was given a message that you had ordered for William Long to be present along with Ms. West and Mr. Galmore and myself this morning.

THE COURT: Yes. Is the defendant here? Have him come into court.

(The defendant enters the courtroom and stands with his attorneys before the Court.)

THE COURT: Is Ms. West here, too?

MR. GALMORE: Yes, sir.

PROBATION AGENT ANDERSON: Good morning. Judge.

THE COURT: Good morning, Russell.

All right. Mr. Galmore, let the record reflect, first, that the defendant is in court.

You approached the Bench on yesterday while holding court at the Detention Center expressing to me the opinion, ah, expressing to me the fact that, ah, this attorney, Mr. Long, I believe, had written some letter of complaint against you.

MR. GALMORE: Yes, sir.

THE COURT: And the question naturally arises given the imminency of his trial as to whether or not you should be

ARRAIGNMENT

2

1 recused.

2 His trial, as I recall, was set before me by arraignment on
3 when, March the what?

4 MR. FILIBERTO: March, his trial starts March 13th.

5 THE COURT: Well, when - - -

6 MS. WEST: No, no, April 13th, everybody.

7 MR. GALMORE: His arraignment was March 13th, Your Honor.

8 THE COURT: I want to know the date that I advised this
9 defendant that he would be tried on April 13th.

10 MR. GALMORE: Arraignment was March 13th, Your Honor.

11 THE COURT: Sir?

12 MR. GALMORE: Arraignment was March 13th.

13 THE COURT: All right.

14 And he was advised on March 13th, and at that time you told
15 me you were ready for trial as again you did yesterday.

16 Now, what, first, is his concerns against an eminent lawyer
17 like you?

18 MR. GALMORE: He says that I haven't met with him.

19 I am having some problems communicating with Mr. Long but
20 I have met with him on several occasions.

21 THE COURT: What are your problems in communicating with
22 him?

23 MR. GALMORE: Mr. Long is expressing some mental health
24 issues, um, but he has been evaluated by the people in Columbia.
25 They said he was malingering.

ARRAIGNMENT

3

1 There are some mental health records at Waccamaw Mental
2 Health here in Conway. I - - I sent my investigator out to get
3 Mr. Long to sign a release form for those records. He refused
4 to sign. I've gone out and asked Mr. Long to sign a release
5 form. He's refused to sign it for me also.

6 And I explained to him that I can't present any type of
7 incompetency claim if I don't have those records.

8 THE COURT: Why didn't you - - if you want them, why
9 didn't you see me? I'll order them.

10 MR. GALMORE: Yes, sir. I just thought that if he wanted
11 to assist in his own defense, he might sign a form.

12 THE COURT: Well, if you really want them, you bring an
13 order before me as we speak here, and you'll get them.

14 MR. GALMORE: Yes, sir.

15 THE COURT: Now, you are - - you have told me before and
16 are saying yesterday again that you are ready for trial. Is
17 that correct?

18 MR. GALMORE: Yes, sir.

19 THE COURT: You reviewed - - you have received all of
20 the discovery?

21 MR. GALMORE: Yes, sir.

22 THE COURT: As I recall, there may or may not be some
23 videos, and you've had a chance to look at those videos?

24 MR. GALMORE: I've shown those videos to Mr. Long.

25 THE COURT: Is there any other discovery issues that you

ARRAIGNMENT

4

1 need?

2 MR. GALMORE: There were some copies of some incident
3 reports but we'll get those in a few minutes.

4 THE COURT: Okay.

5 And his only complaint against you that you haven't given
6 him in his opinion sufficient time?

7 MR. GALMORE: Yes, sir.

8 THE COURT: Well, today is Tuesday, and this trial will
9 not start until the following Monday. You've got the whole
10 week to be available to him.

11 MR. GALMORE: Yes, sir.

12 THE COURT: Mr. Long, good morning. Good morning.
13 Good morning.

14 Do you wish to say anything to me?

15 (The defendant makes no response to the Court.)

16 THE COURT: Okay.

17 Well, listen to me real good.

18 This attorney is an excellent lawyer, has had a great
19 success in the courts of Horry County. He was appointed to you
20 some time ago and has diligently represented you.

21 You got three options, Mr. Long, three.

22 One, he will be your lawyer.

23 Two, you can hire your own or

24 Three, I'm going to try you next Monday morning without a
25 lawyer.

ARRAIGNMENT

5

1 Let that be heard.

2 Now, our Supreme Court has said that you're entitled to
3 represent yourself if you want to. That is a dangerous
4 procedure. There are many evidentiary issues in your case that
5 you don't know a thing about - - -

6 (Defendant sits down in chair behind defense table)

7 THE COURT: - - - and have him - - put - - he's going to
8 stand up in my court. Now, if he can't stand, you stand him
9 up.

10 (Defendant resumes standing before the Court.)

11 THE COURT: I'm going to try you next Monday morning.
12 This gentleman will be your lawyer. If you desire later to
13 represent yourself, you may do so.

14 Now, when is a Blair hearing scheduled? I'd like to have
15 had it this week so we could start early Monday morning but I'm
16 told you've got that scheduled next Monday.

17 MR. FILIBERTO: Yes, sir. The doctor was not available
18 until next Monday.

19 THE COURT: Okay.

20 What does the report say? We'll have a full Blair
21 hearing.

22 MR. GALMORE: The report from Columbia indicates
23 malingering, Your Honor.

24 THE COURT: I understand.

25 Well, judging from what I see today as compared to his

ARRAIGNMENT

6

1 presence before me on May 30th, I suggest that he's malingering,
2 too. It's reasonably obvious to me. He doesn't even want to
3 respond to a polite inquiry of good morning, and it's obvious
4 malingering.

5 Ah, I conclude that there in his - - where - - let me read
6 - - have you got his letter?

7 MR. GALMORE: No, sir.

8 THE COURT: He does not conclude that there is a
9 conflict with you?

10 MR. GALMORE: No, sir.

11 THE COURT: His only concern is you have not given him
12 adequate time in preparing his case?

13 MR. GALMORE: Yes, sir.

14 THE COURT: All right.

15 And you deny that?

16 MR. GALMORE: Yes, sir.

17 THE COURT: And you are - - you are available the rest
18 of this week, and this morning is Tuesday morning, and you've
19 got seven days to prepare.

20 MS. GALMORE: Yes, sir.

21 THE COURT: Ms. West, as the Chief Public Defender, do
22 you have a position in this case?

23 MS. WEST: Ah, no, Your Honor. I think the Court
24 enumerated of the three - - what are the - - the three things
25 that I thought that the Court should let the client be aware of.

ARRAIGNMENT

7

1 THE COURT: I understand that, and I - - I - - I want to
2 warn him now. He wants to play games with the Court.

3 MR. LONG: I ain't playing no games with you.

4 THE COURT: Well, at least you're speaking here today.
5 Good morning to you.

6 Listen to me real carefully.

7 What are the charges here in this against him?

8 MR. FILIBERTO: Your Honor, the defendant currently has
9 five counts of armed robbery, two counts of kidnapping, use of
10 a deadly weapon during the commission of a violent crime, um,
11 assault on a corrections officer and throwing bodily fluids.

12 The trial next week is two counts of armed robbery, car
13 jacking, kidnapping and use of a deadly weapon.

14 THE COURT: All right.

15 Now, do you assert - - I was told at the arraignment in
16 March there were numerous videos?

17 MR. FILIBERTO: That's correct, sir.

18 THE COURT: Supposedly or allegedly showing this
19 defendant.

20 Have all of these videos been given to the defendant?

21 MR. FILIBERTO: Yes, sir. Well, given to defense counsel.

22 THE COURT: Defense counsel?

23 Defense counsel, have you reviewed these and have you
24 showed them to the defendant?

25 MR. GALMORE: Yes, sir, Your Honor.

ARRAIGNMENT

8

1 MR. LONG: Those, he ain't - - can I speak?

2 THE COURT: Yes, sir. Be glad to hear from you.

3 MR. LONG: If you want to know the truth, I was brought to
4 court October the, ah, ah, 5th or 6th of 2008, I believe.

5 THE COURT: Okay.

6 MR. LONG: And, Judge, it was him, her and three more
7 officer - - three more lawyers in here, and, actually, I was
8 brought with two more guys and crucified, what they did to me.
9 What I was going through in my cell.

10 I ran into a biker, you know, was March 6th, the whole
11 scene. This is what they doing to me, torturing me. I've
12 been locked up for two years and three months. They keep me in
13 lock - - in lock-up for six months with no charges playing these
14 mind games with me, him, her and the rest of them. That's
15 what's going on.

16 And far as him representing me in my case, you know, this
17 man don't know nothing about none of my paperwork. This man
18 ain't saw me but three times.

19 THE COURT: Let me ask you this.

20 I'm glad to hear from you because you're entitled to assert
21 your position, and I want it for the record in fairness to you.

22 Have you had the opportunity to review the videos that
23 allegedly - - -

24 MR. LONG: No, sir. No, sir.

25 THE COURT: You have not seen those videos?

ARRAIGNMENT

9

1 MR. LONG: That man ain't shown me or told me nothing about
2 my case.

3 THE COURT: Have you seen the videos?

4 MR. LONG: No, sir.

5 THE COURT: What do you say about that?

6 MR. GALMORE: Your Honor, it was May 15th of 2008, I took
7 the videos out and showed them to him at the Detention Center.

8 MR. LONG: He took the videos out there that did not have
9 anything on it and told me that he couldn't get the rest of them
10 in because the, ah, Solicitor haven't gave them to him.

11 THE COURT: I want you to show them to him again this
12 week.

13 MR. GALMORE: Yes, sir.

14 THE COURT: You understand?

15 And I want you to have a witness with you from the Public
16 Defender's Office to certify that he saw them.

17 MR. GALMORE: Yes, sir.

18 THE COURT: I don't want you to have to be in a position
19 to have a swearing contest with him. That's not fair to you.

20 MR. GALMORE: Yes, sir.

21 THE COURT: You understand?

22 MR. LONG: The man is not no good lawyer.

23 THE COURT: Sir?

24 MR. LONG: He's not no good lawyer.

25 THE COURT: Well - - -

ARRAIGNMENT

10

1 MR. LONG: I'm not the only that had a complaint about him.
2 Half of the jail complains about him. He's not a good lawyer.
3 I been locked up two years, three months. I saw this man
4 twice.

5 THE COURT: Well, you going to see him plenty times this
6 week. Today's Tuesday.

7 MR. LONG: Well, I don't think I spend enough time here for
8 me to be going on trial Monday morning.

9 THE COURT: Well, you going to have all week.

10 MR. LONG: All week?

11 THE COURT: All this week.

12 MR. LONG: This man ain't going to do anything. He ain't
13 been out there two years and three months. He ain't going to
14 do nothing in four days.

15 THE COURT: Well - -

16 MR. LONG: Or five days.

17 THE COURT: - - I'm telling you he will.

18 MR. LONG: Well, I wrote the Supreme Court, and they got him
19 and her under investigation. So I'm hoping to get me another
20 lawyer.

21 THE COURT: No, sir, you're not going to get another
22 lawyer. Let me tell you why.

23 MR. LONG: Somebody can talk to them about it then because
24 they got them under investigation.

25 THE COURT: Let me - - in fairness to you, let me tell

ARRAIGNMENT

11

1 you why you're not going to get another lawyer.

2 MR. LONG: Somebody can talk to them.

3 THE COURT: Let me tell you why you're not entitled to
4 another lawyer.

5 MR. LONG: This is what I'm saying, though. I'm the one
6 that's being brought to trial, not you. This man is not
7 representing me like he ought to.

8 THE COURT: You want listen to me - -

9 MR. LONG: Yes, sir, I'll listen to you.

10 THE COURT: - - or you want to keep talking.

11 MR. LONG: I'll listen to you.

12 THE COURT: Okay.

13 If you were to get another lawyer, the first thing that
14 lawyer would do, and properly so, would be to ask for a
15 continuance because he knows nothing about the case meaning he'd
16 have to take three to six months to get ready.

17 MR. LONG: If he - - if he - - if he's a pretty good lawyer
18 hopefully more than this man right here, then I'm willing to sit
19 in J. Reuben Long six more months.

20 THE COURT: All right.

21 Here's what I'm going to say to you.

22 MR. LONG: Than for him to just bring me up here and throw
23 me out here to y'all for y'all to send me to prison for most of
24 my life.

25 THE COURT: How about listen a moment for me, would you?

ARRAIGNMENT

12

1 Your case involves serious, serious allegations against
2 you.

3 MR. LONG: I understand that, sir.

4 THE COURT: All right.

5 MR. LONG: But at the same time - -

6 THE COURT: I - -

7 MR. LONG: - - but at the same time - -

8 THE COURT: I - - -

9 MR. LONG: - - I ain't been served a warrant for none of
10 those charges.

11 THE COURT: You want to listen a minute?

12 MR. LONG: Yeah, I'm going to listen to you.

13 THE COURT: If you don't want to listen, now, I'm going
14 to take - - have you run out the courtroom.

15 MR. LONG: All right, then. I'll listen to you.

16 THE COURT: I prefer that you listen to me.

17 MR. LONG: Yes, sir.

18 THE COURT: There are serious evidentiary questions in
19 burglaries, 1st, and kidnapping.

20 MR. LONG: I don't have burglaries.

21 THE COURT: Some of this evidence may or may not be
22 admissible against you. As an untrained person, you would not
23 know that. Consequently, it would be dangerous for you to
24 represent yourself.

25 MR. LONG: I rather do that than have him represent me.

ARRAIGNMENT

13

1 THE COURT: Well, I'm going have - - I'm going to leave
2 him in until such time as you tell me you want to represent
3 yourself knowing the dangers.

4 MR. LONG: I don't want him. I don't want him. I rather
5 represent myself.

6 THE COURT: Well, we'll see about that later.

7 MR. LONG: Well, you just gave me three options a few
8 minutes ago. So, I rather represent myself than have him to
9 represent me.

10 I stand up there and say it myself - - -

11 THE COURT: I'm glad we've had this colloquy. It now
12 shows that, certainly, he is competent to represent himself.

13 Our Supreme Court has said even in death penalty case you
14 can represent yourself, and if that's what you prefer to do on
15 next Monday morning, the Court's going to grant you that but
16 know this.

17 MR. LONG: Yes, sir.

18 THE COURT: You are going to trial at 9:30, April 13th.

19 MR. LONG: Yes, sir. No problem, sir. No problem.

20 THE COURT: Take him out of here.

21 Mr. Galmore, Mr. Galmore, for the record. Continue to
22 represent him throughout the week.

23 MR. GALMORE: Yes, sir.

24 THE COURT: If at the appropriate time I conclude that
25 it is appropriate to let him represent himself I will do that

ARRAIGNMENT

14

1 but I'll have you sitting behind him in order to guide him if he
2 needs any assistance.

3 MR. GALMORE: Yes, sir. Thank you.

4 THE COURT: Mrs. West?

5 (The Court addresses the Chief Public Defender off the
6 record.)

7 THE COURT: Linda, let that record reflect that after
8 stating to the defendant good morning several times, he refused
9 to speak.

10 (The Court adjourns this proceeding to address other
11 matters before the Court.)

AUTHORIZATION FOR DOCTOR TO SEE DEFENDANT

15

1 MONDAY, APRIL 13, 2009

2 AUTHORIZATION FOR DOCTOR TO SEE DEFENDANT

3 THE COURT: Good morning, ladies and gentlemen. Please
4 be seated.

5 Get me a Clerk, please.

6 (The examining doctor stands before the Court at the
7 Bench.)

8 THE COURT: Doctor, I've asked my Court Reporter to be
9 on the record.

10 May I have your name for the record?

11 DR. MORTHALA: Sudhakar Morthala.

12 THE COURT: Has he examined Mr. Long before?

13 MR. FILIBERTO: He did - - he did the original.

14 THE COURT: As I understand it, Doctor, you did the
15 original examination of the defendant Long and found him
16 competent to testify, and I believe you find him also
17 malingering.

18 I would request upon the record that you see him again this
19 morning prior to a Blair hearing so that we can go forward.
20 Would you do that?

21 DR. MORTHALA: Yes, sir.

22 THE COURT: This authorization for you is now a part of
23 the record.

24 DR. MORTHALA: Okay.

25 Thank you.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 16

1 THE COURT: Thank you so much.

2 (The Court adjourns this matter to address other matters
3 before the Court.

4 The Court thereafter reconvenes this case for the purpose
5 of conducting additional pre-trial matters.)

6 ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT

7 THE COURT: All right, sir.

8 What's before us, now?

9 MR. FILIBERTO: Your Honor, ah, Your Honor, this is The
10 State vs. William Long. We're here for a Blair hearing, Your
11 Honor, and we'd be before the Court on Indictment 07-GS-26-866,
12 875, 1682, 1683, and there are other indictments, Your Honor,
13 that did not print out, actually, on this order.

14 Um, the defendant is present in the courtroom today. His
15 attorney Mr. Galmore is present with him.

16 THE COURT: Okay. I got you.

17 Let me explain to Mr. Long so that he'll know. I want the
18 record to reflect that he - - Mr. Long, please stand for me,
19 please.

20 Good morning.

21 MR. LONG: Good morning.

22 THE COURT: Mr. Long, I want the record to reflect that
23 you have a full understanding of why we're here this morning.

24 MR. LONG: Ah, no, sir.

25 THE COURT: Ah, do you understand why we're here?

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 17

1 MR. LONG: No.

2 THE COURT: There was some question about your mental
3 capacity to stand trial to assist your attorney and to know
4 right from wrong at the time of the alleged crime, and so the
5 State of South Carolina has had you examined by a doctor
6 relevant to your capacity to stand trial.

7 I am now going to take testimony to determine whether or
8 not this Court will declare you competent to stand trial or not,
9 and I've got to take some testimony on that issue from the
10 doctor who examined you previously and who again examined you
11 today.

12 You understand that?

13 MR. LONG: Yeah.

14 THE COURT: All right, sir.

15 You are represented, now, in these proceedings by Mr.
16 Galmore, you understand?

17 MR. LONG: You said that was by my choice, right?

18 THE COURT: Sir?

19 MR. LONG: You told me last week that was by choice, right?

20 THE COURT: What did he say?

21 MR. LONG: That I had a choice as to whether I wanted him to
22 represent me or not.

23 THE COURT: No, sir. It's not by choice. The Court
24 appointed him to represent you.

25 MR. LONG: I - - I don't want him.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT

18

1 THE COURT: Sir.

2 MR. LONG: I don't want him as a lawyer.

3 THE COURT: All right.

4 Now, let me talk to you about that.

5 MR. LONG: Yeah.

6 THE COURT: And I - - the record will reflect that we
7 had a conversation on this issue last week, Mrs. McCall. I want
8 those proceedings made a part of these proceedings.

9 (The proceeding to which the Court refers is transcribed
10 herein on Pages 1 through 14 of this Transcript of Record.)

11 THE COURT: You are charged with several counts of armed
12 robbery and one count of kidnapping. You understand that?

13 MR. LONG: Ah, yeah.

14 THE COURT: Okay.

15 Of course, armed robbery alone can put you in jail for
16 thirty years.

17 MR. LONG: I'm not worried about that.

18 THE COURT: Okay.

19 And the kidnapping can put you in jail for thirty years.

20 MR. LONG: I'm not worried about that.

21 THE COURT: Okay.

22 Now, there are a lot of technical issues that you - - how
23 far - - for the record, how far did you go in school?

24 MR. LONG: Eighth grade.

25 THE COURT: You have no legal training, do you?

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 19

1 MR. LONG: Legal, no, sir.

2 THE COURT: Okay.

3 Well, there are certain issues that only a lawyer would be
4 able to address and that's the danger of you representing
5 yourself.

6 Our Supreme Court has said in a previous case even though
7 it was a death penalty case arising out of Lexington that a
8 defendant, if he is sufficiently warned, has the absolutely
9 right to represent himself. You understand - - -

10 MR. LONG: Well, he been leading me on all week. Ah, you
11 remember you gave him a week to prepare me for trial today?

12 THE COURT: No, sir. He's had months to prepare for
13 you.

14 MR. LONG: No. He only had a week. I been locked for two
15 years and three months. This man has spoke to me for a week,
16 well, actually two days.

17 THE COURT: Okay.

18 Mr. Galmore, I want to address that issue.

19 MR. LONG: It's not - - it's not - - it's not - - -

20 THE COURT: Wait a minute.

21 MR. LONG: It's not the same stuff.

22 THE COURT: You - - let him talk to you a minute. Then
23 I'm going to let you talk to me.

24 MR. LONG: And then today he told me today - - -

25 THE COURT: How about you being real quiet now so we can

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 20

1 conduct this appropriately. I want to protect your rights.

2 Mr. Galmore, I want you to put on the record when you were
3 appointed, how many times you've seen him and this, that and the
4 other.

5 MR. GALMORE: Your Honor, this case was initially
6 appointed to another attorney in our office, Mike Suggs, on
7 January 5, 2007. Mr. Long was arrested October, excuse me,
8 December 28, 2006.

9 Mr. Suggs reported that he went to the jail on January 25th,
10 twenty days after being appointed and that Mr. Long did not wish
11 to talk to him.

12 Mr. Suggs reported he went back to the jail on February 22,
13 2007. Mr. Long again refused to leave his cell and talk to
14 him.

15 Mr. Suggs left our office, and I was assigned to represent
16 him I believe it was January of 2008. I went out to the jail,
17 and I had a preliminary interview with Mr. Long February 12th of
18 2008.

19 Your Honor, on May 5th of 2008, Mr. Long called my office,
20 and I went out again to see him on May 15th of 2008.

21 At that time I showed him the videos that were in question.

22 THE COURT: That was May of 2008, nearly a year ago.

23 Remember that, Mr. Long?

24 MR. LONG: Mike Suggs?

25 THE COURT: No. Remember him going out there last year

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT - 21

1 and showing you the videos?

2 MR. LONG: Last year he went out there and showed me a video
3 with a guy on it but he had no face.

4 Yesterday - - -

5 THE COURT: Last year?

6 MR. LONG: Say that again?

7 THE COURT: He went - -

8 MR. LONG: Last year, yeah.

9 THE COURT: - - he went out last May, a year ago.

10 MR. LONG: I don't remember what year it was but I remember
11 him going out there last year, Your Honor.

12 THE COURT: And showed you some videos.

13 MR. LONG: And showed me one video with no face on it.

14 THE COURT: All right. Go ahead.

15 MR. LONG: Just a guy from the back. He said that that's
16 all that they had.

17 THE COURT: All right. I got you.

18 MR. LONG: But then, yesterday he come out - - -

19 THE COURT: Wait a minute. Let's take - - let's come
20 on. I'll get to you again in a minute.

21 MR. LONG: All right. All right. Okay.

22 THE COURT: Go ahead.

23 MR. GALMORE: I met with him on September 17th of 2008,
24 hear at the courthouse. At that time Mr. Long was exhibiting
25 some mental health issues.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 22

1 We went before the judge on October 7, 2008, here at the
2 courthouse for the purpose of an arraignment.

3 I also met with Mr. Long on January 26th of 2009, at the
4 Detention Center. At that time he explained to me that he was
5 on seroquel and that he had been seeing a doctor at Waccamaw
6 Mental Health.

7 MR. LONG: Can I comment on that history, sir?

8 THE COURT: Wait a minute.

9 MR. LONG: All right.

10 THE COURT: Let him get through.

11 MR. LONG: I don't want him to get through before I - -
12 before I forget what he's saying.

13 THE COURT: No. You going to let me run my court. Now
14 you be quiet.

15 MR. LONG: Yes, sir.

16 THE COURT: Go ahead.

17 MR. LONG: Yes, sir.

18 MR. GALMORE: On March 13th of this year he was before Your
19 Honor for the purpose of an arraignment, and we spoke at that
20 time. I made note in my file that prior to the arraignment Mr.
21 Long spoke with me and then he refused to speak with me. This
22 is all in the same conversation.

23 Then he asked for a particular plea offer, and I tried to
24 explain the plea offer to him but he refused to speak to me
25 again.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 23

1 On March, ah, 16th of this year, he - - he called my office,
2 and I told him that he would be going to trial and I - - and
3 that I would be getting his Waccamaw Mental Health records.

4 On March 17th - - on that's not it.

5 On March 24th, I asked our investigator, Jerome Randall, to
6 take a release form out the jail so that Mr. Long could sign the
7 release form so that I could get the mental health records. He
8 refused to do so.

9 On March 26th, that's two days later, I went out the jail
10 with the same release form and asked him to sign it we so could
11 get his mental health records. He refused to do so again.

12 I went to see him at the jail on March 31st of this year.
13 Ah, that was a very brief appointment, Your Honor, and, again,
14 let me see. I think the next thing would have been, um, last
15 Monday, March - - April 6th. I spoke with Mr. Long at the
16 Detention Center on last Monday, April 6th. I spoke with him on
17 last Tuesday, April 7th. I spoke with him last Friday, Good
18 Friday, and again spoke with him on Sunday.

19 Now, what he's saying about these video tapes, I've
20 explained to Mr. Long and I explained to the Solicitor that,
21 apparently, our video tape and VCR equipment, apparently, is not
22 compatible with the VCR - - with the CD's that the Solicitor
23 gave.

24 We've looked at the video tape several times, and it showed
25 two different scenes. Ah, on yesterday when we looked at the

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 24

1 video tape and it hadn't been altered by me in anyway, it
2 showed, like five different scenes. I don't know how.

3 THE COURT: Showed what?

4 MR. GALMORE: Our VCR or CD player, apparently, wasn't
5 capable of showing everything that was on the CD. I've
6 explained that to Mr. Long this morning, and I've gone and
7 reviewed the remaining CD of what - - of what the Solicitor
8 intends to use at trial, and I've explained to Mr. Long that we
9 had not seen what the Solicitor has on trial. I can only assume
10 that it was because of our CD player.

11 THE COURT: You mean to tell me that you waiting for the
12 day of trial to tell me that you haven't reviewed the CD?

13 MR. GALMORE: Your Honor, I did not know.

14 We've reviewed the CD's on many times. I did not know
15 there was extra information on the CD. It popped up yesterday
16 at the jail.

17 THE COURT: Huh.

18 MR. GALMORE: There's about fifteen minutes of extra
19 footage that we didn't know was there.

20 THE COURT: Well, I'll give you an opportunity to see
21 that today.

22 What about that? Why wasn't he given a CD that he could
23 read?

24 MR. FILIBERTO: Judge, he has the same CD that the
25 State has. We put it in the regular PC, and we were able to

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 25

1 review all the files. I can't speak to what kind of machinery
2 the Public Defender's Office was using.

3 They've had all of the files for a very long time.

4 THE COURT: Give it to him again and see - - -

5 MR. FILIBERTO: And Mr. Galtore came by my office this
6 morning, and I showed him the videos that the State would plan
7 to introduce into evidence, and he saw them but he did indicate
8 to me at that time - - -

9 THE COURT: Well, has the defendant had an opportunity
10 to look at those videos?

11 MR. LONG: No, sir.

12 MR. FILIBERTO: I mean, I don't know what else to do.

13 The fact that they were all saved in the same program. So,
14 I can't begin to understand why some of them would show up and
15 not all of them.

16 THE COURT: Well, he keeps saying - - I'm going to
17 accept what he's saying.

18 MR. FILIBERTO: And I'm not doubting that, sir. I just
19 don't know what else I could have done.

20 THE COURT: Okay.

21 Mechanically y'all work it out however you want to but I
22 want this defendant to see the same videos that were seen today.

23 MR. FILIBERTO: Absolutely, sir.

24 MR. LONG: Same as the paper. I don't have the same
25 paperwork, either.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 26

1 Same motion, my motion is different from their motion.

2 THE COURT: Well - - you just wait just a minute. I'm
3 trying to help you.

4 MR. LONG: Okay.

5 THE COURT: Okay.

6 Why hadn't you told him? You didn't realize that your
7 machinery is not working adequately?

8 MR. GALMORE: We saw it both together yesterday at the
9 jail. We've looked at this same CD several times, four or five
10 different times. This time when I played it yesterday, it had
11 fifteen minutes of additional footage on it.

12 THE COURT: How about - - where did the fifteen - - -

13 MR. FILIBERTO: It's always been there, Your Honor. It
14 just that the equipment they were using, apparently, didn't
15 reveal it.

16 THE COURT: But you've seen it - - seen it all now?

17 MR. GALMORE: Yes, sir.

18 THE COURT: And he's seen it?

19 MR. GALMORE: Well, what's at issue now is the second CD,
20 and this second CD is what they intend to use at trial which he
21 has not seen that footage at all.

22 MR. FILIBERTO: Your Honor, it's all - - all of the
23 video clips are on the same CD. Defense has had it since very
24 much in the beginning of this time.

25 THE COURT: Why hasn't he seen it? He says he's given

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT

27

1 it to you.

2 MR. FILIBERTO: It's a mechanical thing, apparently,
3 it's a software thing. I don't believe Mr. Galmore
4 intentionally didn't look at evidence that would be - - -

5 THE COURT: Well, how can you resolve it so that he can
6 see it?

7 MR. FILIBERTO: I - - I guess - - the only thing I can
8 do is give him my laptop to take in to show Mr. Long.

9 MR. LONG: And see both of them, yours and his.

10 THE COURT: Wait a minute. You be quiet just a minute.
11 Let me resolve this and then I'll listen to you. I'm trying to
12 help you if you'll be quiet.

13 How you want to resolve that, Mr. Galmore?

14 MR. GALMORE: We need to show the CD to Mr. Long.

15 THE COURT: Okay.

16 When we - - after these proceedings I want you and them to
17 get together with his laptop and show it to him.

18 MR. GALMORE: Yes, sir.

19 THE COURT: But you've had that - - you've had that
20 video, the second one?

21 MR. GALMORE: Yes, sir.

22 THE COURT: But you never looked at it or your machine
23 didn't pick it up?

24 MR. GALMORE: I looked at it. Our machine didn't pick it
25 up - - and I really don't even know what's on this second CD but

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 28

1 I - - but out of an abundance of caution, I thought I'd better
2 go and look at what they had - -

3 THE COURT: Well, sure.

4 MR. GALMORE: - - and it's still different than what they
5 had.

6 THE COURT: Okay.

7 Well, that will be done this afternoon.

8 MR. GALMORE: Yes, sir.

9 THE COURT: All right.

10 Now, what other - - so, you were told back in March to be
11 prepared for trial, and you told me that you were ready.

12 MR. GALMORE: Yes, sir.

13 THE COURT: That record will reflect that.

14 You again told me on last Friday that, ah, you would be
15 ready.

16 MR. GALMORE: Yes, sir.

17 THE COURT: Do you conclude as an officer of the law
18 upon this record that you are prepared and ready to go to trial
19 subject to seeing this CD that you may or may not have seen?

20 MR. GALMORE: Well, there is one additional problem, Your
21 Honor.

22 THE COURT: What is that?

23 MR. GALMORE: On last week, Your Honor signed an order for
24 me to receive records from Waccamaw Mental Health.

25 THE COURT: Yeah.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 29

1 MR. GALMORE: Um, I went out there and what I obtained was
2 a single page, and this page is entitled "Service Notes
3 Addendum", and because it says "Addendum" that obviously means
4 it's attached to something else but I've only received one page
5 from Waccamaw Mental Health, and I think that is, ah,
6 unacceptable on their part, sir.

7 I did not receive that until Thursday afternoon, and we did
8 not have court on Friday.

9 THE COURT: Did you get everything you needed?

10 MR. GALMORE: I don't know. It's just one page. We're
11 having a Blair hearing in a few minutes. These are mental
12 health records but it's, obviously, incomplete because it says
13 it's an addendum but they wouldn't even give me what it was
14 attached to.

15 THE COURT: Well, I'll hear your - - I'll hear your
16 doctor here this morning who is here and see if we need any
17 additional information.

18 MR. GALMORE: Yes, sir.

19 THE COURT: How you want to address that?

20 MR. FILIBERTO: Address - - with respect to?

21 THE COURT: Did they say they wasn't going to give it to
22 you, that's all they had or what did they say?

23 MR. GALMORE: No. They say that's all they had.

24 THE COURT: Well, if they say that's all they had, what
25 else can you expect?

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 30

1 MR. GALMORE: Well, it can't possibly because it's called
2 an addendum.

3 THE COURT: Well, did you call that to their attention?

4 MR. GALMORE: Your Honor, they told me that's all they
5 had.

6 THE COURT: Okay. Then we're going to go forward with
7 the Blair hearing. There will be sufficient testimony for me to
8 deal with that issue.

9 Okay.

10 Now, Mr. Long, what would you want to tell me?

11 The first thing we're going to do this morning is have a
12 what we call a Blair hearing and bring in the doctor to testify
13 about your examination. As soon as we complete that we're
14 going to have a - - are you prepared to have a lineup, the
15 hearing this morning?

16 MR. GALMORE: Yes, sir.

17 THE COURT: We're going to do that and at the
18 conclusion, Larry is going with you to take his computer and let
19 you and him view it outside of his presence.

20 You understand that? I'm talking - - you?

21 MR. GALMORE: Yes, sir. I understand.

22 THE COURT: Okay.

23 And you going to get a chance to look at this latest video
24 that they going to use for you.

25 Can you identify the second video for the record what it

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 31

1 depicts or what you allege it depicts?

2 MR. FILIBERTO: Well, there is no second video, sir.
3 These are all files that were on the original video. They're
4 just, basically, different angles from the security camera at
5 the Cash and Dash Gas Station.

6 Several of them show different scenes of the armed robbery
7 that occurred inside the store, and several show different
8 scenes, different angles of the armed robbery that took place
9 outside the store.

10 THE COURT: All on one video?

11 MR. FILIBERTO: It's all on one video.

12 THE COURT: You've given him the video.

13 MR. FILIBERTO: I gave him the video - - I gave him all
14 of it - - -

15 THE COURT: You're saying that some portion of it for
16 some reason - - -

17 MR. FILIBERTO: For some reason mechanically they were
18 not able to isolate all of the different files that were on it.

19 THE COURT: But the second video has been in his
20 possession.

21 MR. FILIBERTO: All of this time, sir.

22 THE COURT: Well, I want you to turn it over to him with
23 your equipment.

24 MR. FILIBERTO: I will do that.

25 THE COURT: All right.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 32

1 Mr. Long, now, what question do you have?

2 MR. LONG: I - - I - - ah, well, view the videos with them
3 and, ah, as far as my mental issues, I feel like I need to
4 address them to the Court myself and let the Court determine,
5 you know what I'm saying, whether, I mean, anything is wrong
6 with me or not.

7 THE COURT: Well, I'll let you talk - - -

8 MR. LONG: Because only I know what I was going through. I
9 mean, I think the majority of arises from the jail and from him
10 because I came to Court - - -

11 THE COURT: Okay.

12 Let me - - let me do this. Let me talk - - let the
13 doctor's testimony first, and then I'll hear from you.

14 MR. LONG: All right.

15 THE COURT: Okay?

16 MR. LONG: All right.

17 THE COURT: And then I'll make a decision.

18 MR. LONG: All right.

19 THE COURT: Now, do you understand the importance of
20 leaving Mr. Galmore in as your lawyer?

21 MR. LONG: No, not exactly.

22 THE COURT: Well, there are various legal issues that
23 you wouldn't possibly know about, and he may object to some
24 testimony coming in against you, and you not being a lawyer, you
25 wouldn't know to do that.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 33

1 So, I - - I want to leave him in as your lawyer.

2 You understand?

3 Now, the rule requires if you say, "I want to represent
4 myself," you entitled to do that but you can't change your mind
5 later. You understand?

6 Once you make a determination, and I advise you don't do
7 that but once you do it, you can't change your mind in the
8 middle of the trial, you understand?

9 So, I'm going to urge you to keep him on.

10 MR. LONG: All right.

11 THE COURT: And certainly through the day so that you
12 can see the video and get his advice about matters.

13 MR. LONG: All right.

14 THE COURT: Now, in the morning before we start the case
15 outside the presence of the jury I'm going to ask you again do
16 you want him to be your lawyer or not because you have a right
17 to represent yourself but I urge you not to do that, and I want
18 this record to reflect that you raised this issue last Friday,
19 and I talked to you about it. Explained the danger to you.

20 You are facing hundreds of years in jail if convicted, and
21 I want you to have the best lawyer you can get to - - to
22 represent you.

23 You understand?

24 MR. LONG: Yes, sir.

25 THE COURT: So, I'm going to leave him in.

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 34

1 Now, the moment you tell me, "I want to be my own lawyer,"
2 I'm going to grant it but I'm going - - I'm going to do it
3 reluctantly having warned you, and I tell you. I'm not going to
4 let you to change your mind once you get started. The law
5 doesn't permit you to do that.

6 You understand?

7 MR. LONG: Yes, sir.

8 THE COURT: All right.

9 Let's proceed, now, at this time.

10 MR. HUMPHRIES: May I approach on a matter, now, Your Honor?

11 THE COURT: Yes.

12 (The Assistant Solicitor approaches the Bench and speaks to
13 the Court off the record on another matter.)

14 THE COURT: Okay.

15 Mr. Long, this is what we going to do. We going to leave
16 him in as your attorney so that he can help you through this
17 process of competency, and then he has raised legally an issue
18 about a lineup. See, you wouldn't have known to raise that
19 issue but he's raised it on your behalf and properly so.

20 He says the lineup may not be sufficient. It may be unduly
21 suggestive, and we going to take some testimony about the
22 lineup. You understand?

23 MR. LONG: Yes, sir.

24 THE COURT: There may be some other things that you
25 really need a lawyer for because armed robbery and kidnapping is

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 35

1 this side of murder is as serious as it gets.

2 MR. LONG: You're right.

3 THE COURT: So, I urge you to keep him but I tell you on
4 this record that the moment you say, "I want to represent
5 myself," I'm going to let you do it because the law requires me
6 to.

7 Okay?

8 MR. LONG: All right.

9 MR. HUMPHRIES: As I understand, now, all other matters
10 before the Court, we'll have them back at 2:45 this afternoon,
11 all other matters not relating to this case?

12 THE COURT: We going to finish him and then come back at
13 2:45 for what other matters you got.

14 Right?

15 MR. HUMPHRIES: Yes, sir.

16 THE COURT: I want him back at 12 - - at 2:30 to pick
17 a jury, now.

18 MR. HUMPHRIES: Yes, sir. I understand.

19 THE COURT: All right, sir.

20 MR. HUMPHRIES: 2:45 as to all other matters. You're
21 excused until 2:45.

22 (All defendants not related to this case are released to
23 return at 2:45 p.m.)

24 THE COURT: All right, sir.

25 Now, Mr. Galmore, I want the record to reflect that upon

ATTORNEY REPRESENTATION, BLAIR HEARING, RULING OF THE COURT 36

1 the conclusion of resolving these two issues, you will take his
2 laptop, and he's going to show you how to run it, and once he
3 gets it to the part that you say you haven't seen, he's going to
4 remove himself from the presence so that you and your client can
5 talk privately.

6 MR. GALMORE: Yes, sir.

7 THE COURT: You understand that, Larry?

8 MR. FILIBERTO: Yes, sir.

9 THE COURT: All right.

10 Now, Mr. Long - - let's get back on the record.

11 Mr. Long, at 12:30 the jury panel of forty people that have
12 been drawn at random will come up here - - at 2:30, and we're
13 going to select a jury for your trial which will be twelve
14 jurors and two alternates. You and your attorney will have the
15 opportunity to strike ten as they're called and the strike will
16 strike five, and that's what we'll do at 2:30, and then we'll
17 start the trial at 9:30 in the morning.

18 You understand?

19 MR. LONG: Yes, sir.

20 THE COURT: Okay.

21 Now, I caution you particular to be careful with any type
22 of outburst in the presence of the jury. That - - that might
23 impact on their - - on their view of you. So, please be
24 respectful at all times as I anticipate you will.

25 MR. LONG: All right.

DR. MORTHALA - DIRECT EXAMINATION BY MR. FILIBERTO

37

1 THE COURT: Ah, you need to do that for - - for the jury
2 who will be present in the courtroom. You understand that?

3 MR. LONG: Uh-huh.

4 THE COURT: All right.

5 Okay. Let's go forward with the Blair hearing.

6 MR. FILIBERTO: The State would call Dr. Sudhakar
7 Morthala.

8 That's S-u - - -

9 THE COURT: Do you have a copy of his report for me?

10 MR. FILIBERTO: I do, sir. I will hand that up. It's
11 been marked as a - - it's been marked as a Court's Exhibit and
12 I also hand up an order.

13 (The witness takes the witness stand.)

14 (IN CAMERA) DR. SUDHAKAR MORTHALA, BEING DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 DEPUTY CLERK OF COURT: Your Honor, my name is Dr.
17 Sudhakar Morthala. That's S-u-d-h-a-k-a-r . Last name,
18 Morthala, M-o-r-t-h-a-l-a.

19 DIRECT EXAMINATION BY MR. FILIBERTO:

20 Q. Thank you, Doctor.

21 Doctor, what is your profession?

22 A. I'm a Psychiatrist. I'm a Board Certified Psychiatrist,
23 and I'm also a Forensic Psychiatrist.

24 Q. Now, are you licensed in your profession in this state?

25 A. Yes.

1 Q. When were you licensed?

2 A. I passed the license in South Carolina since 2005.

3 Q. And, again, is there an area of your profession that you
4 specialize in?

5 A. Yes, ah, Forensic Psychiatry.

6 Q. How long have you engaged in that specialty?

7 A. Ah, for the past three years.

8 Q. Now, is there a professional board or organization that
9 certifies that specialty?

10 A. Yes.

11 Q. Um, and are you - -

12 A. Yes, - -

13 Q. - - Board Certified?

14 A. - - I'm a Board Certified Psychiatrist.

15 Q. And how long have you enjoyed that certification?

16 A. For the past two years.

17 Q. Doctor, please tell the Court a little bit about your
18 educational background.

19 A. Well, I finished my medical school in India at Rangaraya
20 Medical College, and, subsequently, I did a four year psychiatry
21 training at Albert Einstein Medical Center in Philadelphia,
22 and after that I completed a one year forensic psychiatry
23 fellowship at The University of South Carolina here in Columbia.

24 Q. Doctor, have you ever been qualified to testify as an
25 expert in your field in this state?

DR. MORTHALA - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Yes.

2 Q. Approximately how many times?

3 A. Once.

4 Q. The State would move to have Dr. Morthala qualified as an
5 expert in the field of Forensic Psychiatry.

6 MR. GALMORE: No objection, Your Honor.

7 MR. FILIBERTO: We're moving to have the witness qualified.

8 THE COURT: I find him qualified without objection.

9 MR. FILIBERTO: Thank you, sir.

10 Q. Dr. Morthala, were you previously requested by the Court to
11 examine the defendant in this case, William Long, concerning his
12 competency to stand trial?

13 A. Yes.

14 Q. Do you see Mr. Long in the courtroom today?

15 A. Yes, I do.

16 Q. Could you point him out?

17 A. Yes. Sitting right there in the white shirt and the tie.

18 Q. Thank you.

19 What information did you obtain related to this matter
20 prior to the examination?

21 A. Ah, I actually evaluated Mr. Long on three occasions. The
22 first one was in July of 2007.

23 Q. Let me stop you, though. Did you get to review any
24 material prior to doing that?

25 A. Yes, I did.

DR. MORTHALA - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. What was that material?

2 A. I reviewed the court order requesting this evaluation. I
3 reviewed, ah, the psychiatric social worker assessment. I
4 reviewed all of the arrest warrants, the police reports, ah,
5 witness statements and some medical records, ah, pertaining to
6 this defendant, and, um, um, that's about what I reviewed.

7 Q. And when did this examination take place, this initial
8 examination?

9 A. The first evaluation was on July 6th of 2007, and was at the
10 Department of Mental Health in Columbia, and, subsequently, I
11 evaluated him in August 24, 2007. It was just a month apart,
12 and I also had the opportunity to speak with Mr. Long today,
13 this morning here in this court.

14 Q. How much time in total did you spend with the defendant?

15 A. Approximately about two hours.

16 Q. Okay.

17 And did you have occasion, again, to examine the defendant
18 today?

19 A. Yes, I did.

20 Q. Now, Doctor, are you familiar with the legal standard for
21 competency to stand trial in South Carolina?

22 A. Yes.

23 Q. Tell the Court what was done to determine if the defendant
24 met the standards.

25 A. Well, basically, I started evaluating him to see if there

DR. MORTHALA - DIRECT EXAMINATION BY MR. FILIBERTO

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1 was any presence of any mental illness, and, ah, that included,
2 obviously, asking him about his past history, his social
3 history, any medical problems and also looked at previous
4 records and asked him questions about, ah, any psychiatric
5 problems and how the court system works, you know, questions
6 like what his charges were, about courtroom personnel, courtroom
7 etiquette and, um, I came to a conclusion.

8 Q. Now, was there any evidence that the defendant is mental
9 retarded?

10 A. No, there is no evidence.

11 Q. What about was there any evidence that a defendant has a
12 mental illness?

13 A. Ah, in my examinations I did not find any evidence of a
14 mental illness?

15 THE COURT: Any prior record of mental illness?

16 MR. FILIBERTO: Nothing - - -

17 DR. MORTHALA: Your Honor, no. I have no record from
18 the past that there were any treatment history or anything.

19 Q. Doctor, what is your expert opinion to a reasonable degree
20 of medical certainty regarding the competency of this defendant?

21 A. In my opinion, Mr. Long does not have any mental illness
22 which would impact his ability to understand the charges or to
23 assist his lawyer, and the big qualifier here is if he chooses
24 to.

25 MR. FILIBERTO: Court's indulgence for a minute.

DR. MORTHALA - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Your Honor, if I could identify that report through the
2 doctor.

3 Q. I'm showing you what's been marked as Court's Exhibit #1.
4 As a result of your examination did you prepare a report of your
5 findings in this matter?

6 A. Let me just review this one second.

7 Q. Just the question is did you prepare a written report?

8 A. Yes, I did.

9 Q. And I'm just showing you what's been marked for
10 identification as Court's Exhibit #1. Do you recognize that?

11 A. Yes. It's the report that I prepared.

12 Q. Does it accurately reflect your expert opinion in this
13 matter?

14 A. Yes.

15 MR. FILIBERTO: At this time we'd move Court's #1 into
16 evidence.

17 THE COURT: All right, sir.

18 I'll let you mark it for identification and here some cross
19 examination on it before I deal with that motion.

20 Are you finished with your examination.

21 (The Court Reporter marks the report as Court's Exhibit
22 #1.)

23 MR. FILIBERTO: Yes, sir.

24 Q. Please answer any questions Mr. Galmore might have.

25 THE COURT: Mr. Galmore.

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 CROSS EXAMINATION BY MR. GALMORE:

2 Q. Dr. Morthala, when did you start practicing Forensic
3 Psychology - - Psychiatry, I'm sorry?

4 A. It's Forensic Psychiatrist.

5 Q. Yes.

6 A. And, ah, since 2005.

7 Q. And you conducted this interview in - - this initial
8 interview in January of 2007?

9 A. 2007.

10 Q. How many forensic interviews had you conducted by the time
11 you conducted this one on January 6, 2007?

12 A. Approximately about maybe a hundred.

13 Q. In those hundred prior evaluations had you previously found
14 it necessary to conduct two interviews before making a decision?

15 A. Ah, yes.

16 Q. Is that typical for the Department of Mental Health?

17 A. Ah, it's - - it's just depends on the case. Sometimes,
18 you know, we might have to meet more times. Sometimes, we need
19 some records or something else or testing in between.

20 So, it's - - it's fairly common I would say.

21 Q. It's my understanding that in this case you conducted two
22 forensic interviews and a consultation with Dr. Domino and
23 Elizabeth Hardaway. Is that correct?

24 A. That's right.

25 Q. Is that typical for the Department of Mental Health?

1 A. Again, yes, it is.

2 Again, different evaluations and the problems that were
3 presented, a psychological testing, specifically, is sometimes
4 requested either to solidify the diagnosis or confirm the
5 diagnosis or, ah, bring up more information.

6 Q. So, what you're saying is that you were not able to confirm
7 the diagnosis on July 6, 2007?

8 A. Well, the diagnosis was a suspicion, yes. I mean, you
9 know, there were certain inkling of certain questions, ah, that
10 I was concerned about but the official diagnosis actually came
11 up at the end of my evaluation.

12 Q. And you also examined Mr. Long today, this morning?

13 A. Yes, I did.

14 Q. What did he have to tell you regarding his competency
15 today?

16 A. Well, I spent about maybe twenty - twenty-five minutes with
17 him, and I asked him some questions about the charges, and he
18 seemed to evade these questions. He told me he was hearing
19 some voices, ah, and he was also seeing some things which I
20 thought were, ah, pretty, ah, atypical.

21 He seemed to have a good concentration. He was able to
22 sustain his attention. He was able to answer these questions
23 appropriately, and I asked him a few questions about question
24 his charges were and, ah, - - -

25 Q. What was his response to your inquiry about what his

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 charges were?

2 A. Well, he said he was not really sure what his charges were
3 but, ah, subsequently, he stated that one of his charges were
4 murder and another charge was rape and another charge was
5 burglary.

6 Q. Have you had it - - you - - I think you testified on direct
7 examination that you reviewed the criminal file in this case?

8 A. Yes, I did.

9 Q. Is he, in fact, charged with murder?

10 A. No, he is not.

11 Q. Is he, in fact, charged with rape?

12 A. No.

13 Q. Would those be typical responses in that case?

14 A. No, they're not typical responses.

15 Q. But I thought you said that he test - - that he answered
16 your questions appropriately?

17 A. Yes. I mean, the question was what his charges were, and
18 he answered the question.

19 Q. But he gave you the wrong answer.

20 A. Well, in this case yes.

21 Q. What other questions did you ask Mr. Long this morning?

22 A. I asked him how he was doing, and he said he was not doing
23 very well, and, ah, that he said he had some mental health
24 issues which needed to be addressed, and, ah, that's pretty much
25 where we left it at.

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Back to your July 6th interview, did you prior to
2 interviewing Mr. Long, did you review any school records?

3 A. Yes, I did.

4 Q. Did you find any suggestion of mental illness or mental
5 retardation in his school records?

6 A. No, there was no indication of any mental illness.

7 Q. Did you review any records from Waccamaw Mental Health?

8 A. Yes, I did.

9 Q. What records did you review from Waccamaw Mental Health?

10 A. I reviewed two progress notes from Waccamaw Mental Health,
11 and I believe they were from March, 2007, and probably April,
12 2007. This was just prior to my evaluation.

13 Q. Do you have those with you, sir?

14 A. I don't have them here.

15 Q. But it's your testimony to this record that you reviewed -

16 -

17 A. I did.

18 Q. - - two records from March, and what was the second date?

19 A. Ah, April.

20 Q. Of 2007 from Waccamaw Mental Health?

21 A. Yes.

22 Q. Subsequent to your August 27th - - -

23 THE COURT: Please let the record reflect and properly
24 so, the defendant has handed certain documents to his attorney.

25 Thank you.

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 MR. GALMORE: Yes, sir.

2 MR. LONG: Yes, sir.

3 Q. So - - -

4 THE COURT: Go ahead.

5 Q. Subsequent to the August 27, 2007, interview were you aware
6 that Mr. Long went to Waccamaw Mental Health on December 2,
7 2008?

8 A. No. My evaluation concluded on August 24, 2007. So, I
9 didn't have any contact with any other information after that.

10 Q. Well, you conducted an evaluation this morning?

11 A. Yes, sir. But I didn't review those records.

12 Q. But you didn't review any additional records that were
13 developed between August, 2007, and today?

14 A. That's right.

15 Q. Were you made aware that Mr. Long was prescribed seroquel
16 by Waccamaw Mental Health?

17 A. He mentioned that to me today.

18 Q. What are some of the typical reasons a person is prescribed
19 seroquel?

20 A. Well, seroquel is an anti-psychotic. The difference of
21 the dosage, a low dose, it can be used to help with insomnia.
22 Amongst other problems it can be used to treat psychotic
23 symptoms. It can be used to treat by-polar illness but, again,
24 I don't have access to those records to see what they were
25 treating him for.

1 Q. But it is an anti-psychotic medication. That's correct?

2 A. Yes.

3 Q. Let me ask you about your evaluation of him. I observed in
4 your evaluation that Axis I, you mentioned malingering of
5 psychotic systems and malingering of cognitive affects. Could
6 you explain to the Court what an Axis I diagnosis is?

7 A. Well, to clarify, it's cognitive deficits.

8 Q. Would substance related disorders be included in Axis I?

9 A. Yes.

10 Q. Did Mr. Long report to you a history of cocaine abuse?

11 A. Yes. He reported a history of using cocaine.

12 Q. What would in your opinion be necessary for a person to
13 receive a Axis I diagnosis of cocaine abuse?

14 A. It depends on the amount of usage and if there are any
15 problems interfering with personal functioning, legal problems,
16 problems affecting their occupation.

17 It's going to be quite rare we diagnosis someone with a
18 condition. I mean, there might be some people who might be
19 using cocaine but might not meet criteria for abuse or
20 dependence.

21 Q. Did you have a chance to review Mr. Long's NCIC or his rap
22 sheet?

23 A. Ah, I don't think I did.

24 Q. Did you ask Mr. Long about his history of legal troubles?

25 A. Well, actually, I did ask him but I don't have any

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 information about that.

2 Q. Did you ask him this morning about his history of legal
3 troubles?

4 A. No, I didn't.

5 Q. In the case file that you reviewed, did it indicate to you
6 that when he was arrested he had crack cocaine in his
7 possession?

8 A. Yes.

9 Q. So, even though this person had crack cocaine in his
10 possession and reports a history of cocaine abuse, you did not
11 find it necessary to make a Axis I diagnosis for substance
12 abuse?

13 A. Well, it could be argued either way. I mean, certainly, if
14 he had some Axis, ah, I issues of cocaine abuse, ah, we just
15 want to be a little bit more clear about his history of usage.

16 He didn't give me a whole lot of information about the fact
17 that, ah, you know, about the quantity of usage, about how long
18 he was using it, when he used it.

19 So, I mean, for all I know, it was found at the scene, and
20 beyond that, I didn't meet a criteria of diagnosing him with the
21 condition.

22 Q. You mentioned, ah, occupational troubles. Did you ask Mr.
23 Long about his history of - - his work history?

24 A. Yes, I did.

25 Q. And what did he relate to you about his employment?

1 A. We didn't get to that. I don't think he gave us
2 information about, ah, the work history.

3 Q. How were you able to make a determination that he didn't
4 have any occupational troubles?

5 A. Yes, I mean, that is true.

6 Q. Well, if he didn't give you any information, how were you
7 able to make that determination?

8 A. Well, you know, we asked him a lot of questions. We
9 tried to get information from, ah, some of his family members
10 and some information - - we couldn't get anything about his
11 occupational history.

12 Q. What family member did you interview?

13 A. Well, I didn't interview but my social worker, Ms. Randy
14 Pickens, I believe, interviewed, ah, Mr. Long's sister, one of
15 his sisters, might be Ms. Melissa if I recall.

16 Q. And where would that be listed on your evaluation report?

17 A. It's #3 on the first page. Case review of the social
18 worker assessment.

19 Q. Do you have the social worker assessment with you today?

20 A. No, I don't have it here.

21 Q. I've noticed in your diagnosis that Axis IV was not filled
22 out. Could you explain to the Court what Axis IV diagnosis is?

23 A. Well, Axis IV is, ah, an, ah, a subset of the diagnosis we
24 have there. We list certain stressors. You know, it could be
25 medical problems, occupational problems, any family issues but

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 it's not typical for us to put that in this report.

2 We just only put Axis I through Axis III.

3 Q. Well, if a person has possible cocaine dependence as a
4 diagnosis, would it be important to inquire about social
5 support, occupational work, legal troubles, things of that
6 nature?

7 A. Definitely.

8 Q. And those things would be covered under Axis IV?

9 A. Yes.

10 Q. But your report does not contain any Axis IV information?

11 A. Actually, none of the DMH reports include that information.

12 Q. This report does not contain any information on Axis IV?

13 A. Well, we never include Axis IV in these diagnoses. It's
14 only Axis I through Axis III.

15 MR. GALMORE: Court's indulgence, Your Honor.

16 Q. Dr. Morthala, you ultimately concluded that malingering was
17 your diagnosis?

18 A. Yes.

19 Q. Explain to the Court what malingering is.

20 A. Malingering is an intentional production of certain
21 symptoms be it physical or be it psychiatric, in this
22 psychiatric, for secondary gain.

23 Q. So, say, if Mr. Long says he's hearing voices, how were you
24 able to determine whether or not he's hearing voices or whether
25 or not he's faking it?

1 A. Ah, certainly.

2 The main thing we look at is the consistency of these
3 symptoms, and that extends also. One of the reasons why we, ah,
4 scheduled the evaluation on two separate occasions including a
5 psychiatric testing because one of the things we look at is are
6 there inconsistencies in different evaluations and, ah, we ask
7 about a lot of details about how these hallucinations are
8 presenting, and there are certain typical features of certain
9 hallucinations that, ah, I didn't see that in this presentation.

10 Q. On July 6th, did he indicate to you that he was hearing
11 voices?

12 A. Yes.

13 Q. And what did he say these voices were telling him to do?

14 A. Well, I think there were some instances I think he
15 mentioned that there were - - there were voices. Subsequently,
16 he said there were noises, and he was telling that these voices
17 were telling him to spit on the examiner, ah, both examiners,
18 ah, including me, and, ah, I think he also said he was hearing
19 some noises at that point.

20 Q. Well, on August 24th, did he report hearing any noises at
21 that time?

22 A. Yes, again, he did.

23 Q. Did he report hearing noises today?

24 A. Yes.

25 Q. Well, wouldn't that be consistent?

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 A. Well, ah, a difference, again, on how he's presenting them.
2 Anyone can say you're hearing voices but, again, there are
3 certain features to look for in testing like this.

4 Another thing that we look for genuineness of
5 hallucinations. There are also other things like his thought
6 process - - how is his thought process? Is it organized? Is
7 he able to distinguish reality? Is he able to, ah, ah, present
8 these symptoms on a consistent basis on different occasions?
9 What these hallucinations are saying?

10 Q. What particular factor did you look to to determine that he
11 was not, in fact, hearing voices?

12 A. Well, they seemed very pressed upon. They seemed very
13 exaggerated. Ah, he - - in other words, I spoke with, for
14 example, the transporting officer that brought him to Conway to
15 Columbia. It was almost a two and a half hour drive, and he did
16 not describe anything of unusual behaviors or unusual
17 presentations.

18 I spoke with the security officer at the ***
19 (unintelligible), and he was sitting there for over a half an
20 hour, and he was sitting there for over a half an hour, and he
21 was intently watching the television. There were no symptoms
22 described there.

23 In other words, if someone is hearing voices, you would
24 expect them to respond to them. That is the key thing. Anyone
25 can say, "I'm hearing voices," but it's what you're doing to

1 cope with these voices.

2 So, again, those thirty minutes at the ***
3 (unintelligible), the security officer did not describe any kind
4 of symptoms, and when we brought him in to see me, that's when
5 these symptoms kind of started to evolve or emerge, and, ah, ah,
6 and that's - -that's what, you know, we based it upon.

7 Q. Now, on the August 24th interview, he again reported that he
8 was hearing his mother and father talk to him.

9 A. Right.

10 Q. So, how were you able to determine in your opinion that
11 that was not genuine?

12 A. Well, I mean, there was no consistency. I mean, when
13 you're looking for someone to describe, ah, hallucinations, it
14 seemed to switch between auditory hallucinations.

15 "I was hearing my mother to my father."

16 And would move on to visual hallucinations like,

17 "I'm seeing my father or mother."

18 And, you know, you ask him to describe and it goes on into
19 a lot more weird and traumatic nature. For example, he would
20 say these people didn't have any knees. They didn't have any
21 feet. They didn't have any, ah, face, and these are quite
22 inconsistent. I mean, we never hear any kind of symptoms like
23 that. That is not genuine psychosis or hallucinations.

24 Q. Did he report hearing voices today?

25 A. Oh, he did.

DR. MORTHALA - CROSS EXAMINATION BY MR. GALMORE

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1 Q. And what made you determine that today he was not being
2 genuine?

3 A. Well, I mean, he was able to sustain his attention.

4 When someone is hearing voices, it's extremely difficult to
5 sustain attention. You know, you would look at them, and
6 they're not able to focus on the conversation but Mr. Long was
7 able to, and I asked him certain questions, and, you know, he
8 was quite able to be focused, and even, I guess, when he was
9 speaking to the judge here, he was experiencing good
10 concentration. He was certainly not responding to any voices or
11 seeing hallucinations.

12 So, and, again, it goes beyond just a subjective
13 experience. It's also what an examiner is looking at, how this
14 person is coping with these hallucinations.

15 Another thing, obviously, is he was also tested by Dr.
16 Domino and Dr. Hardaway, psychological testing, and they also
17 find that these symptoms were quite inconsistent, quite
18 incongruent, with any genuine psychiatric illness.

19 Q. Did Dr. Domino come to with you to court today?

20 A. No, sir, not here. I don't think she was subpoenaed.

21 Q. What about Dr. Hardaway?

22 A. I don't think she's here as well.

23 MR. GALMORE: I don't have any further questions for this
24 witness, Your Honor.

25 THE COURT: Fine.

DR. MORTHALA - EXAMINATION BY THE COURT

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1 EXAMINATION BY THE COURT:

2 Q. Doctor, at my request you examined the defendant again this
3 morning.

4 A. Yes, Your Honor.

5 Q. Does that examination in anyway change your opinion from
6 the opinion that's been entered here in the court today?

7 A. It was a brief evaluation. I saw him for about twenty
8 minutes, and, ah, I don't think it changes anything from my
9 previous evaluation. Obviously, it would be helpful to have
10 some previous, any records to look at in the middle but, again,
11 my opinion was really based on the conclusion of my evaluation
12 on August 27th.

13 So, it's not going to change my opinion.

14 THE COURT: All right.

15 With regards to the report that's been referred to, that
16 report is made a specific part of the record.

17 DOCTOR MORTHALA: Yes, sir.

18 Q. Doctor, you were in the courtroom when we had colloquy with
19 the defendant early on. I was impressed, quite frankly, with
20 the manner an individual with an eighth grade education
21 articulated his position, and I did not - - I'm not a trained
22 psychiatrist but I've been on the bench twenty-five years, and
23 I didn't see anything unusual in his response to anything to
24 what I said. He, obviously, responded knowingly to the
25 questions that I asked.

DR. MORTHALA - EXAMINATION BY THE COURT

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1 What was your observation of that?

2 A. I agree, Your Honor, and it definitely was not a face to
3 face evaluation but I was sitting in the back, and, clearly, Mr.
4 Long seemed to comprehend your questions, and, more importantly,
5 I think, he was even able to assist his lawyer and bring up some
6 important questions, and, certainly, I didn't see anything
7 overtly psychotic. This is not someone who is having
8 hallucinations, auditory hallucinations or any kind of thought
9 process problems for him to be able to engage in such kind of a
10 conversation with you.

11 Q. I see.

12 You may come down.

13 Any other witnesses for the State?

14 MR. FILIBERTO: None, sir.

15 THE COURT: Does the defense have any witnesses?

16 MR. GALMORE: I would like to call Mr. Long to the stand,
17 Your Honor.

18 THE COURT: You may do so.

19 Come down, Doctor.

20 (The witness leaves the witness stand.)

21 MR. FILIBERTO: Your Honor, may Doctor Morthala be
22 excused from his subpoena?

23 THE COURT: Well, no. I want him to here this witness'
24 testimony.

25 MR. FILIBERTO: Okay.

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 THE COURT: Would you remain with us for - - I would
2 like for you to hear his testimony.

3 Come around, Mr. Long.

4 (The witness takes the witness stand.)

5 DEPUTY CLERK OF COURT: Would you place your right hand on
6 the Bible, please?

7 MR. LONG: No, I won't.

8 (IN CAMERA) WILLIAM LONG, AFTER DULY AFFIRMING TO
9 TELL THE TRUTH, TESTIFIES AS FOLLOWS:

10 DIRECT EXAMINATION BY MR. GALMORE:

11 Q. How old are you, Mr. Long?

12 A. Thirty-seven.

13 Q. And where do you live?

14 A. Ah, J. Reuben Long right now.

15 Q. Prior to J. Reuben Long where were you residing?

16 A. Loris.

17 Q. Loris? Okay.

18 Can you tell this Court about your history of mental
19 illness?

20 A. Yeah, um, actually, it's been going on for something like
21 thirteen years old.

22 I was - - I was in a slow class also, and if he seen my
23 records, he should have found that out.

24 Q. You said you were in slow classes in school?

25 A. Yes, sir. Yeah, Ms. Cassidy, in fact, I think she came out

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 to J. Reuben Long, actually, the day that I went to the
2 evaluation. So, she might have brought some records out to
3 them or something, and, actually, they have records of my mental
4 issues, too.

5 Q. When you said thirteen years old, what do you mean? Did
6 you go to see a psychiatrist when you were thirteen?

7 A. Yes, sir.

8 Q. Tell us - - what can you tell us about that?

9 A. Ah, well, what the issues?

10 Q. Yes.

11 A. Voices, dead people and stuff like that. I be hearing them
12 speak and, um, well, not officially hearing. Actually, I filed
13 - - some other friends of mine filed a lawsuit against J. Reuben
14 Long. They beat me up on camera, and, ah, they filed warrants
15 on me, and they want that information, I guess, to be put out
16 but what I think happened. They took me to court October 6th,
17 and I read in the Bible right here where he did the same thing
18 with Jesus. They took two other guys with him and had him
19 crucified. So, spiritually, I feel like that's what they did to
20 me. They took me outside of myself.

21 I hear voices all day everyday, mainly, when I'm walking
22 under my light.

23 The CO, they come to work. They give me something to
24 drink. It would say poison. They give me a tray. It would say
25 die. These things are coming from the jail because I filed a

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 civil suit.

2 They took me outside of myself. I can't hold a thought,
3 ah, ah, probably ten - fifteen minutes.

4 Q. So you believe - - you believe the officers are - - -

5 A. No, I know that's what happened. I don't believe anything.
6 I know that's what happening. It's in the book. Everything that
7 written in this book right here has been happening to me
8 spiritually, and they're the ones doing it calling themselves
9 God.

10 Q. All right.

11 How many times have you been to Waccamaw Mental Health,
12 sir?

13 A. About four times.

14 Q. Yes, sir.

15 Q. Okay.

16 Have they prescribed you any medications out there?

17 A. Seroquel.

18 Q. Okay.

19 When did they prescribe that to you?

20 A. First time that I went there.

21 Q. Okay.

22 Ah, when you say four times, how many years have you been
23 going back and forth to Waccamaw Mental Health?

24 A. Well, actually, I been going there ever since I got in that
25 altercation at J. Reuben Long but after they prescribed me the

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1 seroquel, the lady, Kim, she said if I had any more problems to
2 write a request and they would get me back out there again but
3 all the requests I been writing to her to let her know the
4 medication wasn't strong enough, they been short-stopping. It
5 wasn't getting to her. They - - -

6 THE COURT: Was he ever treated by Waccamaw prior to the
7 time of these alleged events? Apparently now. I'm hearing that
8 he was first seen by them after he was at J. Reuben Long.

9 Is that correct?

10 Q. Mr. Long, before you got arrested for these charges, had
11 you been out to Waccamaw Mental Health?

12 A. No, sir.

13 Q. Okay.

14 So, when you say you went four times, that was since being
15 arrested on these charges?

16 A. Yeah, that was at J. Reuben Long.

17 Q. Okay.

18 Before you went to J. Reuben Long had you been seen by any
19 doctors for anything?

20 A. Yes, sir.

21 I can't remember the names and stuff. It's been so long
22 ago.

23 Actually, when I was in prison and when I was going to
24 school.

25 Q. Okay.

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1 How old do you think you were when you saw these doctors in
2 prison and when you were in school?

3 A. Well, I was about thirteen or fourteen in school, and in
4 prison I was, like twenty-three - twenty-four.

5 Q. Okay.

6 A. On up until I was, like, thirty-three.

7 Q. Okay.

8 Did they make any kind of diagnosis like schizophrenia or
9 - - -

10 A. That's what they diagnosed me with. They was giving me
11 medication for that.

12 My mamma, she, ah, had the same thing. She was, ah,
13 admitted to the crazy house herself.

14 Q. Okay.

15 A. Yes, sir.

16 THE COURT: Have you tried to find any records that he's
17 referring to?

18 MR. LONG: I, actually, don't think they're lost. I think
19 that, ah, J. Reuben Long and them just keeping them back from
20 the public. They want them to know that I have a mental issue.

21 And just like he said, he said that he went out there.
22 They gave him one sheet of paper. This psychiatrist, he say
23 they gave him two or three papers.

24 THE COURT: J. Reuben Long would never do that.

25 Mr. Galmore, did you explain to him that J. Reuben Long

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1 would not have medical records?

2 MR. GALMORE: Yes, sir, Your Honor. I have gone to
3 Waccamaw Mental Health but as far as J. Reuben long, they
4 wouldn't have anything like that.

5 THE COURT: Now, I invite you to go back out to Waccamaw
6 this afternoon and - - and see if they have any additional
7 records out there, and I will subpoena anything that you find
8 but they telling you they don't have any. So, I've got to
9 assume - - but you can check again.

10 MR. GALMORE: Yes, sir. I would like that opportunity.

11 THE COURT: Tell them the judge has asked you to go out
12 there.

13 MR. GALMORE: Yes, sir. .

14 THE COURT: But we, apparently, got a pretty complete
15 record here today with the distinguished doctor's testimony.

16 MR. GALMORE: Yes, sir.

17 Q. Mr. Long, is there anything else that you need to relate?

18 A. Yeah, yeah, yeah.

19 Mr. Galmore, this is what I'm having trouble understanding.

20 This man is saying that - - that - - ah, they don't have any
21 other records at Waccamaw Mental Health for you but this man
22 here just stood up here and stated that they had gave him two or
23 three different records than what you had.

24 Q. Yes, sir.

25 A. How these records and they give you one piece of paper that

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1 says there's nothing wrong with me when - - when he has
2 different records? In fact, J. Reuben Long has records for me.

3 I sign a requests every other day. I'm going through the
4 same thing. People know what they're doing to me. They
5 torturing me. They torturing me.

6 They put me through all this bull-crap right here in this
7 Bible right here. They did this to me.

8 My sister goes through this same thing.

9 All this because I filed that suit on the jail. They know
10 what's going on, all of them. They know what's going on. They
11 playing stupid.

12 Q. Mr. Long, please answer any questions the Solicitor has for
13 you.

14 THE COURT: You need to tell him, Mr. Galmore, that any
15 alleged incidences regarding J. Reuben Long can be dealt with at
16 a later time. The only thing we going to deal with this week is
17 the charges that he's on trial for.

18 MR. GALMORE: Yes, sir.

19 THE COURT: Now, I know that he mentioned in his
20 testimony, "When I was in prison."

21 I would ask you. Don't let him say that because that
22 would prejudice the jury of some type of prior record.

23 MR. GALMORE: Yes, sir.

24 THE COURT: And I don't want to do that, and that's why
25 it's so important you stay with him.

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1 You see, Mr. Defendant, in your testimony while ago, you
2 said, "When I was in prison."

3 I don't want the jury to know that you been in prison
4 before.

5 You understand?

6 MR. LONG: Yes, sir.

7 THE COURT: Because if they convict you at all, I want
8 them to convict you on the charges that they got, not - - not
9 the fact that you've had some prior record. So, be careful
10 about that.

11 I want to protect the record for you.

12 MR. LONG: Just, ah, can I ask you a question?

13 THE COURT: Yes, sir.

14 MR. LONG: You the judge.

15 Like I mentioned earlier, I been brought October 6th, 8:30
16 in the morning. Ain't that kind of strange for court.

17 THE COURT: No. I was here at 8:30.

18 MR. LONG: Okay.

19 Well, I was brought to court October 6th, I think it was
20 2008, 8:30 in the morning with two other guys, and both was
21 robberies, and, ah, actually, I been through this same stuff
22 right here, and I think the judge is the one that ordered it.

23 THE COURT: Well, any problems that you allegedly had -
24 - -

25 MR. LONG: This - - this is the problem right here. This

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1 what I'm going through. This is what I'm suffering from.

2 THE COURT: Well - - -

3 MR. LONG: And I think that he initiate it.

4 THE COURT: We going to deal with that on another date.

5 MR. LONG: But that's got something to do with what's going
6 on now, Your Honor.

7 THE COURT: No, sir. No, sir.

8 MR. LONG: What you mean, no, sir?

9 THE COURT: What happened at J. Reuben Long, if
10 anything, happened after these - - -

11 MR. LONG: I was brought here today - - -

12 THE COURT: Let me - - for the record, so he'll know one
13 more time, what exact charges are you preparing to try him for?

14 MR. LONG: I was brought before the court, man, October 6th
15 for the same charges. - -

16 THE COURT: Wait a minute, now.

17 MR. LONG: - - and this is what - - this is what they did to
18 me, Your Honor.

19 THE COURT: Mr. Long, let me - - let me caution you
20 again, now.

21 You need to listen. These outbursts before a jury does
22 nothing but hurt you, and I urge you not to do that. Just
23 respond when asked a question. I don't want the jury to be
24 influenced by any outbursts or remarks that you make. That's
25 not fair to you.

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1 Now, if you keep on doing it, I can't help it but if it
2 gets out of hand I can help it in that I'll do one or two
3 things. I'll send you out of the courtroom and we'll continue
4 the case or I'll bind you and gag you and leave you in the
5 courtroom but I'm not going to let you interrupt my court
6 proceedings.

7 It's not fair to you and it's not fair to the system.

8 Remember that.

9 Yes, sir.

10 MR. FILIBERTO: To answer your question, sir, the
11 defendant has, currently, has twelve indictments but we'll be
12 going forward this week on five.

13 THE COURT: For the record what five indictments are you
14 going for?

15 MR. FILIBERTO: You want the numbers, sir?

16 THE COURT: No, the charges.

17 MR. FILIBERTO: Two counts of armed robbery at,
18 specifically, at the Cash and Dash Gas Station in Loris, one
19 count of use of a deadly weapon during the commission of a
20 violent, specifically, the Cash and Dash in Loris, a count of
21 car jacking and a count of kidnapping.

22 THE COURT: Okay.

23 And your position is that all of these are interwoven.

24 Now, I don't want any reference to any spitting on a
25 correctional officer or throwing - - -

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1 MR. FILIBERTO: Right.

2 Those indictments are not before the Court this week.

3 THE COURT: The only thing you're going to go forward
4 for is the alleged interaction of the kidnapping and the armed
5 robberies.

6 MR. FILIBERTO: Yes, sir.

7 THE COURT: You understand, he's not going forward on
8 any alleged conduct at J. Reuben Long?

9 MR. GALMORE: Yes, sir.

10 And for the record there is another armed robbery at
11 another convenience store. It's my understanding the State is
12 not going forward on that, and at the appropriate time, we would
13 move to sever the kidnapping and the car jacking from the armed
14 robbery at the Cash and Dash.

15 THE COURT: Well, let's hear that right now.

16 You may come down.

17 (The witness leaves the witness stand.)

18 THE COURT: First, let me do this. Let's go forward
19 with the Blair hearing.

20 MR. FILIBERTO: Yeah, I think we need to conclude the
21 Blair hearing, sir.

22 THE COURT: Okay.

23 First, I am preparing an order adopting as the findings of
24 the Court in toto the findings of this order which is now made
25 a part of the record, and in that connection I'm executing an

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1 Order Finding of Competence to Stand Trial and Authorization to
2 Proceed with Trial.

3 In addition to this order, the record will reflect that we
4 have taken additional testimony of the examining doctor who,
5 also, examined this defendant today and, again, based on the
6 prior records and his testimony today, I conclude that his
7 findings are, in fact appropriate and are accurate.

8 The record will reflect that I make my own observations,
9 and there's nothing wrong with this defendant for him not to go
10 to trial on the issue of competency. He's clearly competent,
11 and, particularly, for an individual with an eighth grade
12 education, articulates his position very appropriately.

13 THE COURT: Mr. Galmore, what you want to tell me?

14 MR. GALMORE: Assuming we are able to find any other
15 records from Waccamaw Mental Health or any other sources, we'd
16 just ask for the opportunity to readdress this issue in the
17 morning.

18 THE COURT: Yes, sir.

19 And, of course, even under the Blair hearing, under the
20 Blair case, I'm familiar with it. It happened in my county. He
21 was convicted and later raised the competency issue, and they
22 sent him back. They didn't set aside the trial. They just
23 made a further determination as to his competency.

24 If you conclude that we need to get something else on the
25 record on that issue, I'll be glad to do that.

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1 MR. GALMORE: Yes, sir.

2 THE COURT: Yes, sir.

3 Now, you do need to tell him that any issues regarding his
4 disability, I mean, his difficulty with J. Reuben Long will not
5 be a part of this trial.

6 He understands that.

7 MR. GALMORE: Your Honor, it's his claim that that's the
8 reason why he's on trial today.

9 THE COURT: What?

10 MR. GALMORE: It's his claim that that's why he's on trial
11 today.

12 THE COURT: No, sir. No, sir.

13 Not going - - that's not going to be an issue in this case
14 because that happened, if it happened at all, after these - -
15 these alleged incidents.

16 We're going to trial on these cases that he said. Not
17 going to go into anything that occurred after these alleged
18 incidences.

19 Whatever happened at Reuben Long would have any bearing on
20 what happened on these dates, would it?

21 MR. GALMORE: In his mind it has a direct bearing, Your
22 Honor.

23 THE COURT: Well, in my mind, I'm not going to permit
24 that testimony. Has nothing to do with what occurred
25 previously.

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1 Now, he may or may not have some issue later than he can
2 bring up and we'll adjudicate it. We're not going to do it on
3 these cases.

4 What is the date that these incidences occurred? Want to
5 get it on the record.

6 MR. FILIBERTO: The dates of for the trial this week?

7 THE COURT: Yes, sir.

8 MR. FILIBERTO: December 27, 2006.

9 THE COURT: 2006.

10 Those are the - - that's - - and, then, these occurred,
11 several of these things connected together?

12 MR. FILIBERTO: All on the same day. These crimes
13 occurred on the same day, sir.

14 THE COURT: Okay.

15 So, what occurred after has nothing to do with what
16 occurred on this date, Mr. Galmore. You understand that, don't
17 you?

18 All right, Mr. Galmore, what else you want to say? We
19 need to move on here.

20 MR. GALMORE: Nothing further, Your Honor.

MOTION TO SEVER AND RULING OF THE COURT

22 THE COURT: All right.

23 Now, you have an issue as to lineup?

24 MR. FILIBERTO: No. We have a defense motion to sever,
25 sir.

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1 THE COURT: Yeah. What's your motion

2 MR. GALMORE: Yes, sir, Your Honor.

3 Going back to the facts of this case, what happened is that
4 on January, excuse me, December 27, 2006, at 7:30 in the morning
5 a person was car jacked. He claims that, ah, he claims that Mr.
6 Long was the person that although he didn't present a gun, he
7 has his hand in his pocket as though he had a pistol, ah, took
8 him of his vehicle.

9 That evening, December 27th at 10:30 at night, the Cash and
10 Dash Convenience Store in Loris was robbed. When that robbery
11 occurred, all of the eyewitnesses say that the person that
12 committed that robbery had a sawed-off shotgun.

13 Your Honor, the reason why we're asking this to be severed,
14 there is a four prong test for motion for severing, and first
15 off is whether or not these crimes arise out of a single chain
16 of circumstances. I submit to you that it does not because one
17 happened at 7:30 in the morning. No money was taken. The
18 second thing happened 10:30 at night.

19 The second prong is that these charges are proved by the
20 same evidence. They are not proved by the same evidence. You
21 have one witness as far as the car jacking is concerned. You
22 have no video tapes as far as the car jacking is concerned.

23 When you come over to the Cash and Dash, you have - - -

24 THE COURT: The Cash and Dash, is that the first robbery
25 you're talking about?

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1 MR. GALMORE: Yes, sir. They're not going forward on the
2 second one.

3 The Cash and Dash, you have a person outside the
4 convenience store who - - who alleges that Mr. Long robbed him
5 at gunpoint with a sawed-off shotgun. You have a customer
6 inside the store and a cashier inside the store that says a
7 sawed-off shotgun was used.

8 THE COURT: I got you.

9 Now, you tell me the connection between, first, you going -
10 - I want to be specific now. You tell me the time of the first
11 incident, the alleged incident.

12 MR. FILIBERTO: Your Honor, the initial kidnapping of
13 the victim, Nathan Smith, took place the morning of about
14 between 7:00 and 8:00 a.m. on January 27th, ah, ah, December 27th
15 of 2006.

16 THE COURT: All right. In the morning.

17 MR. FILIBERTO: In the morning.

18 THE COURT: What happened to the victim there from the
19 kidnapping?

20 MR. FILIBERTO: Okay.

21 That victim was forced under threat of bodily harm by the
22 defendant to drive him from where he was leaving his employment
23 down to some area in Loris where at that point the defendant
24 then threatened to shoot the victim if he did not relinquish
25 control of the car.

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1 THE COURT: Okay.

2 MR. FILIBERTO: Get out of the car.

3 The victim got out of the car. Walked down, I believe he
4 was able to get to a phone and alerted the police.

5 Later that evening approximately between 9:00 and 10:00, I
6 don't have the exact time, the defendant riding the victim's car
7 jacked vehicle arrived at the Cash and Dash.

8 THE COURT: So, that connects the first one with the
9 second - - that connects the Cash and Dash with the kidnapping?

10 MR. FILIBERTO: And there's more, sir. There's more.
11 There's plenty more.

12 THE COURT: Well, let's get it on the record.
13 You're saying that - -

14 MR. FILIBERTO: Okay. All right.

15 THE COURT: - - after the kidnapping there's going to be
16 - - -

17 MR. FILIBERTO: So, after the kidnapping, then the car
18 jacking occurred. Then the defendant later that day that
19 evening arrived at the Cash and Dash with the car-jacked
20 vehicle. He then committed an armed robbery on a man pumping
21 gas next to where he was pumping gas.

22 THE COURT: So, you've got evidence that he was driving
23 the vehicle that was kidnapped that morning - - car jacked?

24 MR. FILIBERTO: I have the - - the car jacking victim
25 will identify the vehicle in a photograph.

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1 THE COURT: All right.

2 That's ties that one up. What else?

3 MR. FILIBERTO: Then the defendant subsequently, ah,
4 performed an armed robbery of the victim pumping gas next to him
5 at which point he took that man's watch and his wallet.

6 Well, the next day when the defendant was arrested, he was
7 found to be in possession not only of the man's watch and wallet
8 but also to the car keys to the car-jacked car.

9 THE COURT: There is sufficient nexus to permit them to
10 try them together.

11 So, you are trying the kidnapping.

12 MR. FILIBERTO: Kidnapping and car jacking and two
13 armed robberies and use of a deadly weapon during the commission
14 of a violent crime.

15 THE COURT: Okay.

16 So, you're saying the two armed robberies, the victim of
17 the car jacking is going to identify that car at the two armed
18 robberies which is, one, is Cash and Dash and the other one - -
19 -

20 MR. FILIBERTO: No, they're both at the Cash and Dash,
21 sir.

22 One was outside at the gas pump. Then there was inside at
23 the cash register.

24 THE COURT: I understand.

25 I conclude that there if there was testimony that that car

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1 - - that lady was kidnapped and the car car jacked, and that
2 same car was used later that afternoon in two other car - - two
3 other armed robberies, that is a sufficient nexus, and I would
4 further conclude that testimony the next day, ah, with the car
5 key in his pocket, allegedly, is sufficient to tie it all
6 together, and I, therefore, respectfully decline to sever the
7 charges.

8 MR. GALMORE: Yes, sir, Your Honor.

9 Even if, as the Court concludes, there is a nexus, we would
10 submit to the Court that it is still extremely prejudicial to
11 this defendant.

12 The fact that the jury hears, you know, not just armed
13 robbery but they hear what - - what appears to be a spree of
14 armed robberies, they may convict him just on that instead of on
15 the facts of each particular case.

16 THE COURT: Well, no. The jury will make a
17 determination but, obviously, proof of the first incident and
18 that testimony of that victim is - - could be proof of the
19 second two incidents.

20 I conclude it's appropriate, and we will try them together.

21 MR. FILIBERTO: Thank you, sir.

22 MR. GALMORE: Thank you for your ruling.

23 THE COURT: Now, let it be known, though, that we're not
24 going to have any testimony of any further allegations against
25 him occurring at the Detention Center.

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1 MR. GALMORE: Yes, sir.

2 THE COURT: And I tell him. Don't bring that up because
3 that might bring prejudice the jury against him. You
4 understand?

5 It would not be in his interest to bring up any incidents
6 he allegedly had at the Detention Center.

7 MR. LONG: All that led to the crimes, though.

8 THE COURT: Sir?

9 MR. LONG: All that stuff led up - - led to the crimes,
10 though.

11 THE COURT: We going to deal with what - - what occurred
12 on this thing.

13 MR. LONG: All that stuff led to - - to - - to where I'm at
14 now. That's what I'm trying to tell you.

15 THE COURT: No, sir. You say that occurred after. We
16 talking about - - what's the date of the two dates?

17 MR. FILIBERTO: The crimes were committed on December
18 27, 2006. The defendant was arrested on December 27, 2006.

19 THE COURT: We going to deal with December 26th and
20 December 27, 2006 - -

21 MR. FILIBERTO: I mean 28th.

22 THE COURT: - - whatever the situation was.

23 MR. FILIBERTO: I misspoke. It's December 27th,
24 December 28th.

25 THE COURT: Of 2006.

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1 MR. FILIBERTO: Of 2006, correct, sir.

2 THE COURT: What - - what allegedly occurred at the J.
3 Reuben Long Detention Center afterwards could not possibly have
4 anything to do with that.

5 You agree - - can't you agree with that, Mr. Galmore?

6 MR. GALMORE: Your Honor, that's my client's position,
7 sir.

8 THE COURT: I understand.

9 Not going to have any testimony. Not going to permit any
10 testimony what other occurred later unless there's something
11 about an alleged confession of something.

12 Okay.

13 MR. FILIBERTO: You want to do the Biggers hearing,
14 sir?

15 THE COURT: Yes, sir.

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17 MR. FILIBERTO: Oh, Your Honor, can Dr. Morthala be
18 excused?

19 THE COURT: Yes, sir.

20 And, Doctor, thank you so much.

21 DR. MORTHALA: All right.

22 (witness leaves the courtroom.)

23 THE COURT: All right. Let's go forward.

24 MR. FILIBERTO: The State would call Detective Toby
25 Boyd.

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1 THE COURT: Is some of the defendant's family here?

2 MR. GALMORE: Yes, sir, Your Honor.

3 THE COURT: Okay.

4 Well, I want to urge them to talk -- I want your loved one
5 or family member to get a fair trial and he's going to get it
6 but what allegedly occurred at the Detention Center a year or
7 two later has absolutely nothing to do with whether or not in
8 December of 2006, he kidnapped a woman, highjacked a car and
9 committed armed robbery. That has nothing to do with it, and
10 if he attempts to bring it up, that, in my view, will prejudice
11 his rights to a fair trial.

12 MR. LONG: I have a right to bring it up, though.

13 THE COURT: So, family members ought to caution him
14 about that because I'm not going to let that come in the trial
15 of this case.

16 MR. LONG: But I have a right to bring it up, though.

17 THE COURT: Well, I'm telling you.

18 MR. LONG: I hear what you telling me but I'm telling you
19 what my rights are. I have a right to bring it up, and I will.

20 THE COURT: I think me and you ought to be on the
21 record, now, so that you will know.

22 MR. LONG: I know my rights.

23 THE COURT: You're going to get a fair trial, and you
24 going to behave yourself in this courtroom.

25 MR. LONG: Yeah, I'm going to do that. This your

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 courthouse.

2 THE COURT: All right.

3 Listen to me real carefully.

4 You commit any outburst that interferes with the proper
5 proceeding in this court, I'm going to have them bind you and
6 gag you, and I'll let you sit there unable to talk or I'll send
7 you outside, and I'll decide which one.

8 Now, you try me. If you want to sit there bound and
9 gagged, you try me and see what happens.

10 Get it ready.

11 I'm going to tape him. I'm not going to let him interrupt
12 this court.

13 Mr. Galmore, you tell him, now. If he wants to do that,
14 try me. I've done it before and the Supreme Court has approved
15 it.

16 MR. GALMORE: Yes, sir.

17 THE COURT: All right. Let's have this next hearing.

18 (The witness takes the witness stand.)

19 (IN CAMERA) DETECTIVE TOBY BOYD, BEING DULY
20 SWORN, TESTIFIES AS FOLLOWS:

21 DEPUTY CLERK OF COURT: State your full name and spell
22 your last.

23 DETECTIVE BOYD: My name is Toby Boyd, B-o-y-d.

24 DIRECT EXAMINATION BY MR. FILIBERTO:

25 Q. Mr. Boyd, where are you currently employed?

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. I work for the Horry County Police Department.

2 Q. How long have you worked there, sir?

3 A. Ten years.

4 Q. Were you assigned duties that related to this case?

5 A. Yes, sir, I was.

6 Q. And, specifically, with respect to the armed robberies at
7 the Cash and Dash, and when did that actual crime take place?

8 A. On 12/27/06 between 10:30 and 10:40 p.m.

9 Q. I'll now have these marked.

10 MR. FILIBERTO: Your Honor, Court's indulgence.

11 Court's indulgence, sir.

12 THE COURT: All right.

13 Q. Detective Boyd, I'm going to show you some items that have
14 been marked for identification as State's #1, #2, #3 and #4.
15 I'll start with #1 and #2.

16 Do you recognize that item?

17 A. #1 and #2, yes, sir, I recognize all four of these.

18 Q. Okay.

19 Tell the Court what that item is, what those items are.

20 A. The item marked Exhibit #1 is the, ah, photo lineup
21 identification form that we use throughout - - through the
22 investigation process. It is used to, ah, so that the victim or
23 the witness, who ever looks - - viewed the, ah, the lineup was
24 able to identify which number, sign and date the person they
25 picked out of that picture lineup.

1 THE COURT: May I see it first, please?

2 Have you seen this, Mr. Galmore?

3 Sir?

4 MR. GALMORE: Yes, sir.

5 Q. With respect to State's #2, Detective Boyd, what is that?

6 A. It's a six-pack lineup, ah, that was constructed by the
7 State Law Enforcement Division for the purpose of this
8 investigation.

9 Q. And how is that lineup prepared?

10 A. It is, ah, there is a request form when you develop a
11 suspect in a - - in a individual crime, you fill out the request
12 form, the reason for it and email it to the, ah, to the State
13 Law Enforcement Division in Columbia, and, typically, you get a
14 lineup back within an hour. It's gotten faster, typically, now
15 fifteen or twenty minutes you can get one back that's used for
16 court purposes.

17 Q. What criteria is used to select the people whose pictures
18 are included in a photo lineup?

19 A. It asks different information about the gender, the age,
20 driver's license number. If they have an identification card or
21 South Carolina driver's license, then their photograph can be
22 used, and that's what these are. They're constructed of
23 photographs of people throughout the state, and I think they
24 just put in different criteria, age group, race, hair style, and
25 then they were able to pick from that.

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. And did you ever present those photo lineups to anybody for
2 identification?

3 A. Yes, sir, I did.

4 Q. Who were they?

5 A. Ms. Mary White who was the victim, the cashier on duty at
6 the time, and Mr. Malcolm Norris, the individual that was the
7 victim outside.

8 Q. And is that the Cash Dash in Loris?

9 A. The Cash and Dash, yes, sir.

10 Q. Okay.

11 Um, now, where was William Long when this lineup was
12 presented to the victim?

13 A. He was in jail.

14 Q. He wasn't present?

15 A. No, sir. He was in jail.

16 Q. Tell the Court how this photo lineup was presented.

17 A. Ah, you - - we pretty well standardize the way we do things
18 for the purpose of standardization. We present the photograph.
19 We tell them to begin with. "It's possible that the suspect is
20 in this six-pack. May or may not. Take your time. Look at
21 each individual face. If you determine that - - should I
22 continue?"

23 Q. Yes, continue, please.

24 A. "If you determine that the individual is in here, we're
25 going to use your first response. So, if you're right, you're

1 right, and if you're wrong, you're wrong."

2 When they, typically, when they pick them out, you have
3 them circle and sign, and then sign the identification form as
4 well.

5 Q. Did you or anyone in your presence or to your knowledge
6 influence or suggest to either Ms. White or Mr. Norris which
7 photo to select?

8 A. No, sir.

9 Q. Did you show either Ms. White or Mr. Norris any photos of
10 the defendant prior to them viewing the lineup?

11 A. No, sir.

12 Q. Now, with respect to, I believe it's State's #1 and #3,
13 what did you call those?

14 A. The Photo Lineup Identification Form.

15 Q. And was that - - were the disclaimers in those forms read
16 to Ms. White and Mr. Norris?

17 A. Yes, sir.

18 I would point out, though, I have on State's Exhibit #1,
19 the date as '06 instead of '07. We'd just flipped over to '07,
20 and I guess I hadn't - - I didn't - - I wrote 1/3/06 and,
21 obviously, that was just an error.

22 Q. So, that was the date you actually put the presentation on
23 - - on - -

24 A. '07.

25 Q. - - January 3rd of '07, about five days later?

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Right.

2 Q. Okay.

3 Now, with respect to Ms. White, after you reviewed that
4 instruction sheet with her, did she - - was she able to select
5 a photo?

6 A. Yes, sir.

7 Q. Which photo did she select?

8 A. She chose #2, the defendant's photo.

9 Q. And who is that a photo of?

10 A. Mr. Long.

11 Q. That's the defendant?

12 A. The defendant, Mr. Long.

13 Q. How long did it take for Ms. White to select that photo?

14 A. Sir, I don't - - I don't know. It was - - it was a brief
15 - - she just took a few seconds. It wasn't very long at all.

16 Q. A matter of few seconds she was able to select that photo?

17 A. Yes, sir. Under a minute.

18 Q. Um, what about Mr. Norris. Did you present the photos to
19 him, was he able to pick somebody out of the photo lineup?

20 A. He picked out the defendant, Mr. Long, also.

21 Q. And do you recall how long it took him to pick out the
22 defendant?

23 A. No, sir. It was probably about the same. I'd say under
24 a minute.

25 Q. Okay.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 Detective Boyd, did any person that reviewed those lineup
2 cards select any other person as -- as being involved in that -
3 - in the robbery?

4 A. No, sir. That was the only two I presented, and they were
5 -- they both had Mr. Long.

6 Q. Thank you.

7 Please answer any questions Mr. Galmore may have.

8 (The Court Reporter accepts State's Exhibits #1, #2, #3 #4
9 for identification.)

10 THE COURT: Have you concluded your examination?

11 MR. FILIBERTO: No, sir. We're just waiting on Mr. -
12 - I've concluded mine. Mr. Galmore is going to with respect to
13 this witness. The State will have one more witness.

14 MR. GALMORE: Thank you.

15 CROSS EXAMINATION BY MR. GALMORE:

16 Q. Mr. Long, can you tell me how long Ms. White was in - -
17 excuse me, Detective Boyd, I'm sorry. Could you tell me how
18 long she told you that she was in Mr. Long's presence?

19 A. In regards to the - - I'm sorry?

20 Q. At the time when the Cash and Dash Convenience Store was
21 robbed.

22 A. It was probably less than a minute I would say.

23 Q. Did she tell you that or you just making an estimate?

24 A. I was standing there.

25 Q. You were standing at the Cash and Dash when it was robbed?

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 A. You going to need to start over, sir, because I was
2 confused by your first question.

3 Q. Okay.

4 Did you ask Ms. White how long she was in Mr. Long's
5 presence at the time the Cash and Dash was robbed?

6 A. No, sir. I looked at the video and could tell how long
7 they were face to face.

8 Q. Okay.

9 A. I didn't specifically ask her how long he was there with
10 the gun.

11 Q. Did you ask Mr. Norris how long he was in Mr. Long's
12 presence before he was robbed?

13 A. Again, I saw it on video but, no, sir, I didn't ask him
14 specifically.

15 Q. Do you know if Mr. Norris had been working earlier that
16 night?

17 A. Yes, sir. He had.

18 Q. He had been?

19 A. Yes, sir.

20 Q. So, he was at some point just gotten off work?

21 A. Yes, sir.

22 Q. And it's correct that Ms. White was at work at the time of
23 the robbery?

24 A. Right.

25 Q. Do you know if Mr. Long, excuse me, Mr. Norris might have

1 been drinking prior to this incident occurring?

2 A. Prior to lineup or the up - - -

3 Q. No, prior to the robbery.

4 A. I wasn't there that night, sir, but there was no indication
5 that he had been drinking any alcohol.

6 Q. Did Ms. White give you a description of the clothing that
7 the suspect wore in the robbery?

8 A. It was facial recognition only, sir.

9 In fact, she - - she stated later that she knew - - knew
10 him.

11 Q. Did she provide any characteristics other than facial
12 recognition is what I'm trying to get at. Did she describe his
13 clothes?

14 A. At the initially - -

15 Q. Yes.

16 A. - - report.

17 I could look if you - - -

18 Q. Please, sir.

19 A. I don't have any indication that she was able to provide a
20 clothing description at the time.

21 Q. Okay.

22 Did Mr. Norris provide a description

23 A. No, sir.

24 Q. - - description of clothing?

25 No, sir?

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 A. No, sir.

2 Q. All right.

3 Was Ms. White able to describe any other physical
4 characteristics of the suspect: Height, weight, physical
5 build?

6 A. At the time it was afterwards. It was five days later.
7 This was - - the contact I had with her was not initial on the
8 scene. It was simply presenting this six-pack lineup for her
9 with the facial characteristics provided on the six-pack and her
10 memory of this alleged suspect at the time.

11 Q. Okay, so you don't - - -

12 A. So, no, there was no - - there was nothing given at that
13 time. We were here. She was presented with the lineup. She
14 picked him out and signed the paperwork.

15 Q. Did she give you any physical characteristics in order for
16 you to decide who would go into the lineup?

17 A. No, that didn't have anything to do with her.

18 Q. So, she didn't - - -

19 A. I'd already developed a suspect at that time and came back
20 with that - - with him in the lineup.

21 Q. But prior to you showing her the lineup she didn't give you
22 anything as far as - -

23 A. No.

24 Q. - - physical description?

25 A. No.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 Q. What about Mr. Norris?

2 A. I had - - no, sir, I didn't speak to them at all prior to
3 this about the characteristics.

4 Q. Could you describe for me how long Mr. Long came to be - -
5 -

6 THE COURT: What - - how - - you telling me that she
7 didn't say - - she had to tell you something or you wouldn't
8 have known how to fix the lineup.

9 DETECTIVE BOYD: No, sir. I had - - he was developed as
10 a suspect prior to me having the lineup.

11 THE COURT: Well, did she tell you whether it was a
12 Caucasian or African-American?

13 DETECTIVE BOYD: Yes, sir. All in the initial report.
14 The officer that came out initially.

15 THE COURT: Well, that's what I want in the record.
16 What's the initial report show?

17 DETECTIVE BOYD: Yes, sir.

18 It has, "Black male, 32 to 40, 5'8", 150, black hair, brown
19 eyes.

20 THE COURT: Okay.

21 DETECTIVE BOYD: Black hooded shirt, white tee shirt,
22 blue jeans, white sneakers, scar above the left eye.

23 THE COURT: And based on that identification - - based
24 on that knowledge you had, ah, some information that might have
25 led to - - -

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 DETECTIVE BOYD: Yes, sir.

2 We were able to develop him as a suspect later, yes, sir.

3 THE COURT: All right. I just wanted the record to
4 reflect that you had some knowledge from somewhere in fixing it.

5 DETECTIVE BOYD: I was confused. I thought he meant at
6 the time of the six-pack.

7 THE COURT: Well, that's what I want - - that's why I
8 wanted to clarify.

9 Go ahead.

10 Q. Well, that's my question. How did you come to arrest Mr.
11 Long or how did Horry County Police come to take Mr. Long into
12 custody?

13 A. He was encountered by a road officer the following day
14 after the armed robbery occurred.

15 Q. Was that road officer made aware of this physical
16 description?

17 A. Yes, sir.

18 He had knowledge that this had occurred.

19 At the time of the arrest he had some of the property of
20 two of our victims on his person, and I was called because I had
21 the case.

22 Q. And how did the road officer receive knowledge of this
23 physical description?

24 A. It's common to pass out that information when you have
25 different things that occur within your sector or within your

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 area, the officers talk between shifts or after shifts, pass on
2 through emails. There's no telling how he got it. He could
3 have got it through any - - any number of ways.

4 But I mean, I - - you know in your area and in your sector
5 what's occurred, especially something as violent as this was.

6 Q. Do you have any documentation where he might have received
7 an email or attended a briefing?

8 A. I don't have. No, sir. You'd have to talk - - I don't
9 know about that.

10 Q. So, you don't know if he knew of his description at the
11 time he made the arrest?

12 A. No, sir. I don't know specifically if he knew the
13 description that I just read but it was put out throughout the
14 road officers.

15 Q. Did you put it out to the road officers?

16 A. No, sir. I just got it that morning.

17 Q. But some kind of way they found that they should be on the
18 lookout for someone that ended up being William Long?

19 A. No, sir. No, sir. That's not what I said.

20 There's no doubt that he knew that it occurred but at the
21 time of the arrest he had the property in his possession.

22 Q. I understand that. I'm trying to understand how that
23 officer knew to stop that man.

24 A. Maybe you should ask him.

25 Q. Maybe we should.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 Okay.

2 Let me ask you about this, ah, six-pack. You said it was
3 prepared by SLED?

4 A. Yes, sir.

5 Q. When was it prepared by SLED?

6 A. It would have been prior to showing and after the - - after
7 the crime.

8 Q. Yes, sir. Do you have an idea of when you received it?

9 A. By email?

10 Q. Yes, sir.

11 A. No, sir. It was between that three day period.

12 Q. Okay.

13 But it was shown to Ms. White and Mr. Norris on January 3rd,
14 is that correct?

15 A. January 3rd.

16 Q. Okay.

17 And this incident occurred on December 28th. Is that
18 correct?

19 A. December 27th.

20 Q. 27th, I'm sorry, thank you.

21 Is there any reason why Horry County Police Department
22 didn't put together the physical - - the, ah, six-pack lineup?

23 A. Well, there's two different ways. You could do it
24 yourself. We had access to the jail screening. You could do
25 it. Ah, I wasn't really any good at it. So I used the, ah,

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 the State Law Enforcement Division. They were able to do it
2 quickly and more professional looking than mine. So I just used
3 - - I just use that resource each time.

4 THE COURT: Let me ask you this as we proceed.

5 Are you alleging somehow that, ah, this proceeding is
6 tainted by some previous illegal identification of the
7 defendant?

8 MR. GALMORE: No. What I'm alleging is that this officer
9 isn't competent to testify about what Mr. Norris and Ms. White
10 were able to view, what they witnessed.

11 THE COURT: Well, he can testify to the extent that that
12 was a basis for him compiling the photo lineup, and that's what
13 he's doing.

14 Is the witness here - - you got the witness himself here?

15 MR. FILIBERTO: Say that again, sir? I'm sorry?

16 THE COURT: Is the witness here who identified the
17 defendant in the photo lineup?

18 MR. FILIBERTO: He'll be here tomorrow, sir. I didn't
19 think I needed him for this hearing.

20 THE COURT: Well, you don't.

21 Mr. Galmore, I have seen this lineup, and it's clearly of
22 various African-American individuals generally of the same
23 height, same weight, same haircut. There's nothing that would
24 pick out this defendant other than the witnesses' view and
25 knowledge of what he saw.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 Now, ordinarily, you have an in camera hearing such as this
2 when you are alleging that there was a previous viewing that was
3 impermissible by the defendant. I don't - - by the witness.
4 I don't hear you say that.

5 MR. GALMORE: No, Your Honor. What I'm looking at is Ms.
6 White and Mr. Norris' degree of attention to the person that
7 robbed him, their opportunity to see him, their opportunity to
8 make other descriptions.

9 THE COURT: Well, that's another issue, and when they
10 testify you'll have that opportunity to go into all of these
11 things.

12 My concern here, I'm looking at a photo lineup that's in
13 and of itself permissible because it - - it displays six
14 African-Americans generally of the same height, same weight,
15 same complexion, and I don't see where you're saying there's
16 anything wrong about the lineup.

17 You don't suggest that the witness saw the defendant some
18 other place other than at the time of the alleged incident, do
19 you?

20 MR. GALMORE: No, sir.

21 THE COURT: Do you have any, in fairness to these
22 proceedings, do you have any position with the fairness of the
23 lineup? Is anything you allege would point to him rather than
24 the others other than the witness' statement?

25 MR. GALMORE: No, sir.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 MR. FILIBERTO: Your Honor, I'd ask the Court to make
2 an inquiry regarding the third photo lineup which was presented
3 to the carjack victim rather than - - -

4 THE COURT: Well, that lineup again - - -

5 MR. FILIBERTO: I just want to know if there's a basis
6 other than what he's been talking about with respect to that.

7 THE COURT: Again, it's, ah - - -

8 MR. GALMORE: With respect to this third lineup - - -

9 THE COURT: All right. Well, let me say this to you.
10 I've examined the photographs used in this photographic
11 lineup, and I find that each of the photographs contain persons
12 of the same race, size and facial features. This record
13 supports the conclusion that the victim in-court identification
14 of the defendant did not stem from any lineup procedures giving
15 rise to a substantial likelihood or misidentification in
16 violation of the defendant's constitutional rights, and in
17 fairness to defense counsel, you clearly agree with this.

18 The photographs used in all of these lineups were not
19 suggestive, and due process was not violated.

20 Now, insofar as the witnesses in a position to identify it,
21 we'll permit that testimony at the appropriate time - -

22 MR. GALMORE: Yes, sir.

23 THE COURT: - - and you will have the right to cross
24 examine them.

25 MR. GALMORE: Yes, sir.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 THE COURT: But I see nothing even in your position that
2 is suggestive that there was some impermissible actions taken
3 with regards to this photo lineup.

4 MR. GALMORE: I'm just suggesting, Your Honor, that if
5 we're going to testify about Ms. - - if we're going to take
6 testimony about Ms. White and Mr. Norris doing identifications,
7 perhaps Ms. White and Mr. Norris need to be here.

8 THE COURT: Well, it would - - that's - - their
9 identification is another issue. The problem I have in this is
10 you - - is his constitutional rights violated by this lineup,
11 and by the testimony I think it's perfectly permissible.

12 The witness based on his testimony was reliable. The
13 identification was made shortly - - was it the next day or two
14 days after?

15 MR. GALMORE: Seven days, Your Honor.

16 THE COURT: Pardon me?

17 MR. GALMORE: Seven days, Your Honor.

18 THE COURT: Seven days. Well, that's not an unduly
19 length of time.

20 So, I see, frankly, nothing wrong with this lineup.

21 MR. GALMORE: Yes, sir, Your Honor.

22 THE COURT: And you, of course, will be permitted to
23 cross examine on the issue - - on the other issues that you
24 raised. How long they had to observe him.

25 But apparently one of the witnesses if the allegations are

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 correct was in the car with this defendant for a period - - for
2 a good period of time, wasn't he?

3 MR. FILIBERTO: Your Honor, that's a separate lineup.
4 We're going to do that next.

5 THE COURT: I understand.

6 MR. GALMORE: Yes, sir.

7 THE COURT: But this incident at the filling station
8 with the defendant occurred - - night or day?

9 MR. FILIBERTO: Regarding these two, it was at night
10 and in a lit store.

11 THE COURT: Okay. Well, let's take testimony on the
12 other issue.

13 I see nothing wrong with these photo lineups.

14 MR. FILIBERTO: Thank you, sir.

15 MR. GALMORE: Thank you, Your Honor.

16 MR. FILIBERTO: Ah, the State would call Steve Clark as
17 a witness.

18 (IN CAMERA) STEPHEN CLARK, BEING DULY SWORN,
19 TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: Please state your name and spell your
21 last for the record.

22 MR. CLARK: Stephen Clark, C-l-a-r-k.

23 DIRECT EXAMINATION BY MR. FILIBERTO:

24 Q. Mr. Clark, where are you currently employed?

25 A. Grand Strand Regional Medical Center.

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. Now, prior to working there, did you for the Horry County
2 Police Department?

3 A. Yes, sir. I was a detective.

4 Q. Were you assigned to matters related to a case involving
5 Nathan Smith?

6 A. Yes, sir.

7 Q. Let me show you's what's been marked as State's #5 and
8 State's #6 and see if you recognize those.

9 A. Yes, sir, I do.

10 Q. With respect to, ah, State's #6, could you tell the Court
11 what that is?

12 A. That is the six-pack lineup I developed in reference to
13 this case, sir.

14 Q. Ah, please tell the Court how and when this photo lineup
15 was prepared.

16 A. Ah, I was assigned this case on the 28th of December, 2006.
17 Shortly thereafter, we, Detective Boyd and myself, ah, he
18 working the other alleged incidents, me working the car jacking
19 and the kidnapping, ah, we were able to develop Mr. Long as a
20 suspect. I went to the jail screen at the police department and
21 created the lineup that is State's #6.

22 Q. Is that commonly done?

23 A. Yes, sir.

24 Q. Ah, when was that lineup prepared?

25 A. I prepared it on December 29, 2006.

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. And did you present that to anyone for identification
2 purposes?

3 A. Yes. I presented that to Mr. Nathan O'Brian Smith, the
4 victim.

5 Q. And when did you do that?

6 A. On December 29, 2006.

7 Q. So, this is two days after the alleged crime?

8 A. Yes, sir.

9 Q. Was the defendant anywhere in the area when the lineup was
10 presented to the victim?

11 A. Say that again?

12 Q. Was the defendant present when you presented the lineup to
13 the victim?

14 A. No, sir. As far as I know he was in jail.

15 Q. Um, tell the Court how the photo lineup was presented.

16 A. Ah, Mr. Smith was brought into my office. I had already
17 previously prepared this six-pack lineup. I explained to him
18 that the person who was responsible for the car jacking and
19 kidnapping of him may or may not be within this six-pack lineup,
20 and if he was there, to please identify him.

21 Q. Did you or anyone in your presence or to your knowledge
22 influence or suggest to Mr. Smith which photo to select?

23 A. No, sir.

24 Q. Did you show Mr. Smith any photos of the defendant prior to
25 his viewing the six-pack?

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. No, sir.

2 Q. And with respect to State's #5, you recognize that?

3 A. Yes, sir.

4 Q. And what is that?

5 A. This is the Photo - - Photo Lineup Identification Form that
6 is used in conjunction with the six-pack lineup to further, ah,
7 have the victim identify the defendant in the case.

8 Q. Now, as part of your process did you read that to Mr.
9 Smith?

10 A. Yes, sir, I did.

11 Q. Ah, what did he do after the item was read to him?

12 A. He, ah, looked at the photo lineup. He, upon looking at
13 probably less than twenty seconds, he pointed directly to Mr.
14 Long's picture and said, "That's the guy who robbed me."

15 Ah, I told him to circle that picture if that's the person
16 who did this to him, put his name and date on it and in
17 conjunction to also put his initials and the date next to, ah,
18 spot number six which is next to Mr. Long on the six-pack lineup
19 on the Photo Lineup Form.

20 Q. So, the photo he selected, that was definitely Mr. Long?

21 A. Yes, sir.

22 MR. FILIBERTO: Your Honor, I'm going to hand these up
23 to the Court to review.

24 Q. How certain was Mr. Smith?

25 A. He was absolutely certain.

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 Q. To your knowledge, did any other person select a different
2 person out of that lineup as being involved in the - - in the
3 crime you were investigating?

4 A. For the part of this case I was investigating Mr. Smith was
5 my only victim.

6 Q. Okay.

7 And as far as - - you didn't show that lineup to another
8 witness or anything?

9 A. No, sir, no.

10 Q. Okay.

11 Thank you. Please answer any questions Mr. Galmore may
12 have.

13 A. Yes, sir.

14 CROSS EXAMINATION BY MR. GALMORE:

15 Q. Mr. Clark, it's your testimony that you created the six-
16 pack lineup yourself?

17 A. Yes, sir, I did.

18 Q. And where did you get the photos for the six-pack lineup?

19 A. Ah, from the jail screen that the police department has
20 access to.

21 Q. Ah, was it the J. Reuben Long screen?

22 A. Yes, sir.

23 Q. And would those be photos of people in booking uniforms?

24 A. They would be, sir.

25 Q. So, the photograph that the Court has in its custody right

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 now, the picture of - - where you allege to be Mr. Long in a
2 jailhouse uniform?

3 A. Yes, sir.

4 Q. When did this car jacking occur, sir?

5 A. December 27, 2006.

6 Q.. And when did you show your photographic lineup to Mr., ah,
7 Mr. Smith?

8 A. December 29, 2006.

9 Q. That's four days - - approximately two days later?

10 A. Yes, sir.

11 Q. Is it typical to get a photo lineup and shown to a victim
12 in two days?

13 A. It depends on the case but, yes, I've done it in the past
14 as well.

15 I know some other detectives that have done theirs a little
16 sooner.

17 Q. Let me hand you what has not been marked and ask if you can
18 identify that.

19 A. That was the - - one of the initial lineups I tried to
20 create. If you notice the lineup that the Judge has right now,
21 it's in black and white. The reason for that instead of being
22 in color was that the color printer that was attached to that
23 jail screen is - - was broken on that particular day. So, I
24 actually took my digital camera and took a photograph of the
25 screen. This is what it was initially printed out. When I saw

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 the quality of it, I took a digital picture of the screen and
2 printed it out from my desktop printer. Hence, the quality of
3 that versus this.

4 (The Court Reporter marks the lineup as Defendant's Exhibit
5 #1 for identification.)

6 THE COURT: Again, let the record reflect that I've
7 reviewed the photographs with regard to this issue, and I find
8 that they are not suggestive and constitute six African-
9 Americans generally of the same height, same weight, same
10 haircut, same color, and there's nothing to indicate that they
11 are unduly suggestive.

12 Q. Let me hand you what's been marked as Defendant's Exhibit
13 #1 and ask if you recognize that.

14 A. Yes, sir.

15 Q. And tell the Court what that exhibit is.

16 A. That was the first lineup I tried to create from the faulty
17 printer at the jail screen at the police department.

18 Q. Okay. So you generated that lineup?

19 A. I did.

20 Q. Is that lineup the same as these people in State's Exhibit
21 #6?

22 A. Yes, it is.

23 Just looking at facial recognition portions: Noses,
24 facial hair for the few that you can see, it is the same people.

25 MR. GALMORE: I would move to have Defendant's Exhibit #1

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 for I.D. as Defendant's Exhibit #1, Your Honor.

2 THE COURT: All right, sir.

3 Are they not the same?

4 MR. GALMORE: I would leave that to the Court's
5 discretion, Your Honor.

6 THE COURT: Well, this is a pretrial. If there's some
7 question about it, I want it to come up.

8 MR. GALMORE: Yes, sir.

9 THE COURT: I'm just curious. This is a photo lineup.
10 Why is this done in this matter?

11 MR. CLARK: As I said a few moments ago - - -

12 THE COURT: Sir?

13 MR. CLARK: As I said a few moment ago, Your Honor, if
14 you look at a better quality picture, you can see the outline of
15 a television screen on that. That's actually taken with a
16 digital photo.

17 That first print that came off the printer, the printer was
18 down that day.

19 THE COURT: This one?

20 MR. CLARK: That one, sir.

21 So what I did was I took a picture with my digital camera
22 of the screen and printed it out way from the digital camera
23 because I couldn't get the lineup printer to work properly.

24 THE COURT: It appears to me to be the same but you're -
25 - you're relying on this one that clearly shows the six

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1 individuals.

2 MR. CLARK: Yes, sir.

3 THE COURT: All right, sir.

4 MR. GALMORE: Thank you, Your Honor.

5 COURT REPORTER: So, Your Honor, are we admitting the
6 Defendant's Exhibit?

7 THE COURT: Yes, for purposes of this hearing. Not for
8 - - rule on at the trial depending.

9 MR. FILIBERTO: At the trial, sir, I would have a
10 relevancy objection.

11 THE COURT: I understand.

12 Q. No. You did not show Defendant's Exhibit #1 to Mr. Smith?

13 A. No, I did not.

14 Q. You showed him State's Exhibit #6?

15 A. Yes, sir.

16 Q. And it's your testimony that he identified number six as
17 the person that robbed him?

18 A. Yes, sir.

19 Q. And it's your testimony that #6 is the picture of William
20 Long?

21 A. Yes, sir.

22 MR. GALMORE: I have nothing further for this witness,
23 Your Honor.

24 THE COURT: All right.

25 And these witnesses who identified that in each instance

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1 they were alleged victims. Is that true?

2 MR. CLARK: Yes, sir.

3 THE COURT: All right.

4 MR. GALMORE: Your Honor, if I might be heard on this
5 issue?

6 THE COURT: Yes, sir.

7 MR. GALMORE: I would just submit to the Court that this
8 photo that they have as State's Exhibit #6, the picture of Mr.
9 Long is nothing like the prior two photo identifications. They
10 seem to be totally different photographs, Your Honor, and, ah,
11 I think if all three sets of photos went before the jury, they
12 would have a problem determining that both people are Mr. Long.

13 THE COURT: Well, they - - they - - these photos,
14 they're the one that took them. They going to the jury.

15 MR. GALMORE: Yes, sir.

16 THE COURT: I see nothing wrong with them but it's for
17 the jury to determine.

18 MR. GALMORE: Furthermore, Your Honor, there was testimony
19 that this is a photo - - this is a booking photo. He's in a
20 jailhouse uniform, and I would submit that's unduly suggestive.

21 THE COURT: This doesn't show the jailhouse uniform.

22 MR. FILIBERTO: It was in black and white. So, they
23 couldn't have thought of that.

24 THE COURT: It's in black and white, and there's nothing
25 on this picture that tells me he's in a uniform.

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1 Show it to me. Where you see it?

2 MR. GALMORE: The testimony is he was wearing a jailhouse
3 uniform.

4 THE COURT: I know it but this photo lineup doesn't show
5 that.

6 MR. GALMORE: Number six, Your Honor, appears to me to be
7 a jailhouse uniform.

8 THE COURT: How? Tell me how that's a jailhouse
9 uniform. It's black and white.

10 MR. GALMORE: Well, there's testimony that it is.

11 THE COURT: I know but - - -

12 MR. GALMORE: Well, it looks like a jail uniform to me.
13 So I asked him about it, and he says, "Yes, it's a jail
14 uniform."

15 THE COURT: Well, it doesn't look like one to me.

16 Of course, don't mention unless he brings it out, don't
17 mention jailhouse uniform.

18 MR. CLARK: Yes, sir. Yes, sir.

19 THE COURT: We are concerned as to whether or not this
20 photograph is unduly suggestive.

21 MR. GALMORE: Yes, sir.

22 THE COURT: There is nothing about his collar in black
23 and white to suggest it's a jailhouse uniform. There's nothing
24 in there that suggests that.

25 MR. GALMORE: Well, Your Honor, the gentlemen in two,

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 three and four look to be wearing tee-shirts, sir.

2 THE COURT: Well, I understand that but these others
3 have a collar to them. That number four has a collar. Number
4 five has a collar. That's no tee-shirt - - that's no tee-shirt
5 with number two or I can't - - number three is no tee-shirt, all
6 of them.

7 MR. GALMORE: Yes, sir, Your Honor. That is the basis of
8 our motion.

9 THE COURT: Well, I understand.
10 The photograph will speak for itself as to that.

11 MR. GALMORE: Thank you very much, Your Honor.

12 MR. FILIBERTO: Thank you, Your Honor.

13 THE COURT: Now, with regard to the reliability of the
14 witnesses, it's evident that, ah, the - - the kidnapping victim
15 had some hours of opportunity to view.

16 Do you want - - you want to have a hearing with these
17 witnesses on their opportunity. The alleged victim was in the
18 car with him for a considerable period of time with kidnapping.

19 MR. GALMORE: Yes, sir. I understand that's the
20 testimony. I would like to inquire of the people who actually
21 did the - - who - - yes, the witnesses.

22 THE COURT: I want to bring the witnesses up and we'll
23 deal with it this afternoon. Can you get them?

24 MR. FILIBERTO: I don't think I can get them, sir.

25 THE COURT: Why?

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1 MR. FILIBERTO: I - - I have them under subpoena. I
2 can try and get them. I told them to be here in the morning.
3 I didn't - - the fact that the victims picked out - - I even
4 inquired of the Court whether or not the Court thought that they
5 would be necessary to be here today.

6 THE COURT: Well, he's entitled for me to make a
7 preliminary hearing as to the reliability of it as to the time
8 they had it if he wants to do it.

9 If you can't get them here this afternoon, we'll do it in
10 the morning prior to beginning of trial.

11 MR. FILIBERTO: I can try and get them, sir. I'll make
12 a phone call.

13 THE COURT: Well, if they can't come, they can't come
14 but I - - I - - -

15 MR. FILIBERTO: I would just ask the Court to inquire.
16 What - - you know, what issue about their presentation of the
17 lineup is - - is there.

18 THE COURT: No, he's going to another issue now. He's
19 off of that. He's talking about the reliability of the
20 witnesses.

21 Ordinarily, you would have such a hearing when you had some
22 third party witnesses. I've never had a hearing where they
23 question the reliability of the witness itself.

24 MR. FILIBERTO: Reliability or believability, Your
25 Honor, I guess that would be a question for the jury.

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1 THE COURT: But, now, we'll have a short hearing on
2 this.

3 MR. GALMORE: Thank you, Your Honor.

4 THE COURT: It's going to be very short, though.

5 MR. GALMORE: Yes, sir, Your Honor.

6 THE COURT: But he may - - he's entitled to inquire of
7 the victims as to what their testimony is about the lineup
8 procedure.

9 MR. FILIBERTO: About the lineup procedure, yes, Your
10 Honor.

11 THE COURT: Yes.

12 MR. FILIBERTO: And I'd asked that the defense be
13 limited - - -

14 THE COURT: No. He can also inquire as to the
15 reliability of the identification in general. I'm not going to
16 limit him.

17 MR. FILIBERTO: Thank you, sir.

18 THE COURT: You know, you've got to prove the question
19 of reliability is for the jury to determine ultimately but I
20 have to in due process he's entitled to take an in camera look
21 at it.

22 MR. GALMORE: Yes, sir. Thank you.

23 THE COURT: Not going to be lengthy about it, though,
24 because, ah, obviously, the alleged victim in the kidnapping
25 case had adequate opportunity to view any culprit that took away

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1 their liberty.

2 You would have to agree with that, won't you?

3 MR. GALMORE: Yes, sir.

4 MR. FILIBERTO: I just ask the Court to make inquiry if
5 we need all three victims here this afternoon if I can get them
6 here this afternoon or if there is some less number.

7 THE COURT: You've got the woman who says she was
8 hijacked and kidnapped.

9 MR. FILIBERTO: That's a gentleman, sir. Yes.

10 THE COURT: And then you got - - what's your next one?
11 Robbery when?

12 MR. FILIBERTO: Then there's the armed robbery of the
13 man pumping gas at the Cash and Dash and the armed robbery of
14 the Cash and Dash.

15 THE COURT: You going - - all of them going to testify,
16 aren't they?

17 MR. FILIBERTO: Absolutely, sir.

18 They'll be here tomorrow.

19 THE COURT: Then have them here tomorrow, and I'll - -
20 I'll let him have some limited testimony on it.

21 He's surely entitled to cross examine them on the photo
22 lineup.

23 MR. FILIBERTO: Certainly.

24 THE COURT: And I'll let some limited examination on
25 their ability to pick him out.

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1 MR. GALMORE: Yes, sir. Thank you.

2 THE COURT: That could go to identification. It could
3 go to their ability to pick him out of a lineup, too. So, we'll
4 do it both ways.

5 MR. FILIBERTO: Yes, sir.

6 THE COURT: And I'd like to do it later on this
7 afternoon if we can.

8 Well, let's just do it first thing tomorrow. I'm not
9 going to let Mr. Galmore go long in that because, clearly, it's
10 a question for the jury.

11 MR. GALMORE: Yes, sir.

12 THE COURT: All right, sir.

13 MR. FILIBERTO: Yes, sir.

14 THE COURT: Anything further?

15 MR. GALMORE: No, sir, Your Honor.

16 THE COURT: All right, sir.

17 Now, we'll be back at 2:30 to select a jury.

18 MR. GALMORE: Yes, sir.

19 THE COURT: Now, do this, and I appreciate the fact that
20 Mr. Long has behaved himself during this process but just tell
21 him that I cannot in fairness to him permit any outburst or that
22 kind of thing.

23 MR. FILIBERTO: Your Honor.

24 MR. GALMORE: Yes, sir.

25 THE COURT: And then - - if I - - if I have to do it,

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1 I'll take appropriate action as I've told him, and I will do it.

2 MR. GALMORE: Yes, sir.

3 THE COURT: Okay.

4 I've got to do it for his protection.

5 MR. LONG: Your Honor, may I speak, please?

6 THE COURT: Yes, sir.

7 Stand up, please. Stand up right there.

8 Yes, sir.

9 MR. LONG: A lot of - - a lot of issues that they're
10 bringing up, you know, I mean I got some input on them but I
11 don't know how to address them to them being that he's over
12 there and I'm over here and - - and - - -

13 THE COURT: You going to have to address what?

14 MR. LONG: I got - - I got issues. They bringing up issues
15 but I got some - - I got responses to them.

16 THE COURT: Here's what will happen, and this is a good
17 question.

18 The State can put up all of their witnesses. Your attorney
19 will have an opportunity to cross examine them on anything they
20 say, and you can discuss with your attorney what questions you
21 want him to ask.

22 MR. LONG: Okay.

23 THE COURT: After they get through, you can get on the
24 stand yourself and tell the jury whatever you think is
25 appropriate. You understand?

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1 MR. LONG: All right.

2 THE COURT: So, you will have a chance to get on the - -
3 on the stand.

4 Now, when you do that, they will have a right to ask you
5 some questions, too, you understand?

6 MR. LONG: Yes, sir.

7 THE COURT: And you can't get on the stand and testify
8 to your side of it and they start asking you questions, and you
9 say you not going to answer them. You understand?

10 MR. LONG: Yes, sir.

11 I got - - I got - - I got one more question.

12 THE COURT: Yes, sir?

13 Now, you also have an opportunity - - if you care to, you
14 don't have to testify.

15 MR. LONG: Okay. I understand that.

16 THE COURT: And if you elect not to testify, I would
17 charge the jury that the fact that you did not testify cannot be
18 used against you but we'll go into that again at appropriate
19 time.

20 Now, what other questions did you have, Mr. Long?

21 MR. LONG: Mr. Boyd, right here, he stated that he went to
22 the judge Aaron Butler with a video that - - that - - that, ah,
23 contained clear footage of me robbing the store. Me and my
24 lawyer sot down and viewed these videos, and I'm not on there as
25 clear as day as he said.

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1 THE COURT: The video will speak for itself.

2 MR. LONG: Okay, now.

3 THE COURT: If it doesn't say what he said, the jury
4 will know that.

5 MR. LONG: They will what?

6 THE COURT: The jury's going to see the video.

7 MR. LONG: Is there any need to go any further if it doesn't
8 show me on it clear as day of robbing the store?

9 THE COURT: Well, that's for the jury to decide.

10 MR. LONG: That's what's on those warrants now.

11 THE COURT: The jury will take all of the testimony
12 together and make their decision.

13 They just won't use the video. They'll also use the
14 lineup, and they'll also use the testimony of the alleged
15 victims themselves.

16 MR. LONG: We - - we going into the case then. What I'm
17 saying in order for him to have got the warrants, he had to go
18 to the judge to give the judge some hard facts, and that video
19 was suppose to be the facts. Now, if I'm not on that video as
20 he stated to the judge, that mean he lied under oath to get them
21 as he lied.

22 THE COURT: Well, we'll deal with that if it comes up.
23 Don't you worry about that.

24 MR. LONG: If that's the case, I don't feel like, I mean,
25 there should be no reason why I should go into that case, then.

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1 THE COURT: Well, let me - -

2 MR. LONG: There shouldn't be no case.

3 THE COURT: - - tell you something.

4 If the jury believes these witnesses against you, they can
5 convict you on that testimony alone. They don't even need the
6 video.

7 MR. LONG: The witnesses got no business with information
8 about me if this man went to the judge and lied to him about
9 getting a warrant. They ain't got no business with no knowledge
10 about me period.

11 THE COURT: Well, that's another issue.

12 MR. LONG: I mean, he put me in that setting.

13 THE COURT: Well, your view of the law is erroneous.

14 MR. LONG: So, I'm wrong?

15 THE COURT: Yeah.

16 You talk to your lawyer about that.

17 MR. LONG: That means you can lie to a judge to get a
18 warrant to have somebody locked up.

19 THE COURT: That's another issue.

20 MR. LONG: That's the only issue. That's why I got locked
21 up.

22 THE COURT: The only issue - - let me tell you this, Mr.
23 Long.

24 The only issue we going to talk about in your case is
25 whether or not in December of 2006 you car jacked that car, you

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1 committed that armed robbery, you kidnapped that woman and
2 whether or not later that day they found the key to that car in
3 your pocket. That's what we talking about, and the jury can say
4 yes or no. That's the issue.

5 I don't know whether they found the key to the car in your
6 pocket or not. If they did, that would be substantial evidence
7 that you kidnapped - - car jacked that car if you had the key in
8 your pocket. I don't know whether you did or not.

9 MR. LONG: I agree - - I agree - - I agree with all that but
10 all of that derived from the two warrant - - from the warrants.

11 THE COURT: Well, you been indicted by the Grand Jury,
12 so the warrants are not an issue for us to talk about.

13 All right. Anything further?

14 MR. FILIBERTO: Nothing - - nothing from the State at
15 this time.

16 THE COURT: All right.

17 MR. FILIBERTO: Although, Your Honor, you had asked?

18 THE COURT: Sir?

19 MR. FILIBERTO: You had directed the State to get with
20 defense counsel and present the videos to Mr. Long - -

21 THE COURT: Yes, sir.

22 MR. FILIBERTO: - - before we select the jury. It's
23 now 2:05, and you have the jury back coming back like two, ah -

24 - -

25 THE COURT: Well, it won't take - - how long will it

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1 take you to go down there and do it?

2 MR. FILIBERTO: Okay. I'll try and do it right now,
3 sir.

4 THE COURT: Do - - go do it right now. The jury's on
5 the way.

6 MR. FILIBERTO: Thank you.

7 THE COURT: I want him to see it before - - see it
8 before the jury is selected. Go ahead.

9 MR. GALMORE: Yes, sir.

10 MR. FILIBERTO: We'll do it.

11 THE COURT: All right. Mike.

12 MR. GALMORE: Thank you, Your Honor.

13 (The Court recesses the trial of this case at 2:08 p.m.)

TRIAL

(The Court reconvenes the trial of this case at 2:43 p.m. for the purpose of selecting the jury.)

THE COURT: Be seated, please.

Linda, this should be a Court's Exhibit. What is that?

COURT REPORTER: This is the Order of your finding of competency. It's filed in the Clerk's file.

THE COURT: I want it as a Court's Exhibit.

COURT REPORTER: You want it as a Court's Exhibit?

THE COURT: Yes, ma'am.

COURT REPORTER: All right.

(The Court Reporter accepts the Order of the Court as Court's Exhibit #2.)

THE COURT: All right, sir.

Were you able to get either one of those witnesses here?

MR. FILIBERTO: Your Honor, I thought we ended with you telling me to have the witnesses come in tomorrow prior to court.

THE COURT: All right. That's fine.

Is anything else at this time?

MR. GALMORE: No, sir, Your Honor.

MR. FILIBERTO: To pick a jury -- other than pick a jury.

THE COURT: All right, sir.

Bring the jury on. Have the defendant come in the

REMARKS OF THE COURT

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1 courtroom.

2 (The defendant comes into the courtroom and takes a seat at
3 the defense table with his attorney.

4 The Court addresses scheduling issues off the record and,
5 thereafter, the jury panel is brought into the courtroom.)

REMARKS OF THE COURT

7 THE COURT: Good afternoon, ladies and gentlemen. You
8 folks have been drawn at random for the purposes of selecting a
9 jury in the case to be called in just a moment.

10 By way of introduction, I'm Judge Cottingham from
11 Bennettsville, South Carolina. Under our system of rotation I
12 have been assigned as the presiding judge for this week. I,
13 too, want to welcome all of you to a term of criminal court
14 recognizing that all of you are here at considerable
15 inconvenience to your personal lives and to your families and to
16 your work place, and we deeply appreciate your presence.

17 Call your case, Solicitor.

18 MR. FILIBERTO: Thank you, Your Honor. If it please
19 the Court?

20 Your Honor, the State would call the case, State of South
21 Carolina vs. William Long. This will indictments 2007-GS-26-
22 875. This is a true-billed indictment for armed robbery; 2007-
23 GS-26-873, a true-billed indictment for armed robbery; 2007-GS-
24 26-868, a true-billed indictment for possession of a weapon
25 during the commission of a violent crime; 2008-GS-26-871, a

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1 true-billed indictment for car jacking; 2007-GS-26-869, a true-
2 billed indictment for kidnapping.

3 THE COURT: Thank you.

4 Mr. Galmore, you represent the defendant?

5 MR. GALMORE: Yes, sir, Your Honor.

6 THE COURT: Ready for trial?

7 MR. GALMORE: Yes, sir.

8 VOIR DIRE

9 THE COURT: All right, sir.

10 Ladies and gentlemen of the jury panel, I am about to ask
11 of you certain questions concerning the cases that the
12 Solicitor's Office has just called who is charged with
13 kidnapping, car jacking and two counts of armed robbery.

14 I tell you that in your answers there are no wrong answers
15 for you to give. We are simply trying to determine whether you
16 have knowledge concerning any facts and circumstances of these
17 cases or if you have formed or expressed any opinion as to any
18 of the facts regarding this thing.

19 I tell you from the outset that there's nothing wrong with
20 you having viewed, listened to or read anything about any
21 particular case but if you have, ah, we need to know about it.

22 Now, this defendant is charged with these offenses, his
23 name being William Von Long.

24 Now, I'm going to read the allegations of these indictments
25 such that you would have sufficient knowledge to answer my

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1 following questions remembering, now, that these indictments and
2 the allegations they contain are in no sense any evidence. It's
3 simply the allegations, and to these allegations and to these
4 indictments this defendant specifically pleads not guilty which,
5 therefore, places the burden of proof upon the State of South
6 Carolina to prove him guilty if they can by evidence unanimously
7 beyond a reasonable doubt.

8 Now, with reference to the armed robbery it is alleged that
9 this defendant did in Horry County on December 27th of 2006 while
10 armed with a deadly weapon take and carry away property of one
11 Malcolm Norris.

12 With reference to the other indictment, it is alleged that
13 in Horry County on or about December 27th of 2006 while armed
14 with a deadly weapon that he did take and carry away personal
15 property of the Cash and Dash Store in Loris, South Carolina.

16 It is alleged that in the commission of these offenses that
17 he also had a violent - - that he possessed a weapon during the
18 commission of a violent crime.

19 And, finally, with reference to the allegations of car
20 jacking, it is alleged that William Von Long did in Horry County
21 on or about December 27, 2006, take and carry away one 1997
22 Toyota Camry from Nathan O. Smith by force and violence.

23 My first inquiry, do any of you know this defendant in any
24 capacity whatsoever?

25 I'll ask Mr. Long. Have him stand and face the jury

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1 please.

2 (The defendant stands and faces the jury panel.)

3 THE COURT: This is the defendant.

4 Are any of you connected with this defendant by way of
5 marriage in anyway or relationship? Do any of you have any
6 close personal connections with this defendant - neighbors,
7 church, co-workers?

8 How many of you, if any, know Mr. Long in any capacity
9 whatsoever? If anybody even knows him, I want you to stand and
10 let's make further inquiry.

11 Yes, ma'am. May I have your name? Come forward, please,
12 ma'am. Come forward, please, and good afternoon.

13 May I have your name for the record, please?

14 MS. BELL: Wendy Bell.

15 THE COURT: And come forward.

16 What is your response when I inquired as to who knows Mr.
17 Long?

18 MS. BELL: He goes to my church.

19 THE COURT: Ma'am?

20 MS. BELL: He goes to my church.

21 THE COURT: He's a member of your church? He's been to
22 your church?

23 MS. BELL: His family also goes to my church.

24 THE COURT: Okay.

25 Are you a close relative - - close member or close member

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1 of his family?

2 MS. BELL: Yes.

3 THE COURT: You are?

4 MS. BELL: Yes, sir.

5 THE COURT: Would that impact on your ability to be a
6 fair juror in this case?

7 MS. BELL: Yes.

8 THE COURT: It would?

9 I will excuse this juror.

10 MR. GALMORE: Yes, sir, thank you, Your Honor.

11 THE COURT: Thank you so much.

12 MR. FILIBERTO: Thank you, sir.

13 THE COURT: Ma'am, what is your jury number?

14 MS. BELL: #25.

15 THE COURT: Thank you so much.

16 Anyone else?

17 She may leave if she cares to.

18 Now, before you leave, wait a minute. What's the
19 instructions for the jury panel?

20 Call in - - you may well be a juror in another case. So
21 you call in after 6:00 tonight for further instructions with the
22 rest of the panel.

23 MS. BELL: Okay.

24 THE COURT: And I thank you for being with us this
25 afternoon.

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1 Now, one of the alleged defendants with regard to armed
2 robbery is Mary White who at that time was said to be at the
3 Cash and Dash Store in Loris, South Carolina.

4 Any of you have any connection with Mary White, family,
5 friends?

6 How many of you here are from Loris? Raise your hand,
7 please.

8 (Several jurors raised their hands.)

9 THE COURT: Okay.

10 May I have your names, please?

11 MS. RABON: Shirley Rabon.

12 THE COURT: Who else is from Loris? This is just for
13 my information.

14 Ma'am? Please stand so we can recognize you.

15 MS. WEITZEL: Kathryn Weitzel.

16 THE COURT: Okay.

17 Anyone else? Yes, sir?

18 MR. FOX: Tim Fox.

19 THE COURT: From Loris.

20 Anyone else?

21 All right.

22 It is alleged that this armed robbery occurred at the Cash
23 and Dash Store? Any of you owners of the Cash and Dash? Any
24 of you have any particular close connection with the Cash and
25 Dash Store?

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1 How many of you know Mary White who allegedly was working
2 there at the time? Any of you?

3 All right.

4 With regards to the armed robbery the alleged victim was
5 Malcolm Norris. Any of you know Malcolm Morris? In any way
6 related to him? Any of you have any connection with Malcolm
7 Norris, please stand?

8 The alleged victim in the car jacking is Nathan O. Smith.
9 Any of you know Mr. Smith? Related to him in any way? Have any
10 connection with Nathan O. Smith?

11 Now, ladies and gentlemen, it is alleged that these
12 incidences occurred on December 27th and December - - all of it
13 on December 27th. Is that the allegations?

14 MR. FILIBERTO: Yes, sir, 2006.

15 THE COURT: You may have read or heard something about
16 it, particular those folks from Loris. Is any of you aware of
17 anything that you may have heard or read about these alleged
18 incidences with particular reference, and I say that because we
19 got two folks - - three folks from Loris, about a robbery at the
20 Cash and Dash? Any of you - - anybody familiar with anything
21 involving these alleged instances?

22 It is alleged that there was a car jacking, alleged that
23 there was a robbery of Cash and Dash and alleged that there was
24 another robbery at that place. Any of you familiar with
25 anything about any incidences in this case?

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1 Now, ladies and gentlemen, my interest and that of the
2 attorneys and that of the State and of the defendant is to
3 ensure that we get in the trial of this case twelve folks with
4 no friends to reward, no enemies to punish, twelve people who
5 can say under oath, "I have no biases or prejudices in this
6 case. I will base my verdict on the law and evidence heard in
7 this courtroom."

8 Let me talk to you about what we say sometimes with
9 reference to biases and prejudices.

10 Some years ago I was trying a young man in another county
11 for DUI felony, it having been alleged that he killed a young
12 girl while drunk driving. We were trying this individual for
13 drunk driving for killing someone.

14 I asked the question of the panel, "Any of you have any
15 such biases or prejudices that you feel that you could not be
16 fair to either the State or the defendant?"

17 A lady got up in the far corner and said, "Judge, I can't
18 be fair to him. My daughter was killed by a drunk driver just
19 a year ago, and I - - I can't be fair."

20 And I appreciated that.

21 In that same panel of jurors, a gentleman got up and said,
22 "Judge, I can't be fair to the State of South Carolina. They
23 prosecuted my son three times for the same thing until he was
24 finally found innocent. I can't be fair to the State of South
25 Carolina."

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1 So, we develop biases or prejudices based on events
2 occurring in our life.

3 Now, in this case we've got an individual who comes under
4 the presumption of innocence charged with car jacking, use of a
5 deadly weapon in the commission of a crime and two charges of
6 armed robbery.

7 Now, I need to know from your personal experiences or from
8 your experiences with your personal family. Do any of you have
9 such biases or prejudices that you cannot give the State a fair
10 trial and this defendant? If you say you have such prejudice
11 you feel that you could not be fair to one or the other, stand
12 up and I'll excuse you from this case.

13 All right.

14 Yes, sir, come forward and we'll talk privately.

15 Counsel, come here to the Bench and let's talk privately,
16 please.

17 (Juror approaches the Bench along with attorneys.)

18 THE COURT: May I have your name, sir?

19 MR. ROOKS: James Rooks.

20 THE COURT: Talk quietly. Don't want the rest of the
21 panel to hear what you say.

22 COURT REPORTER: Your Honor, is that going to be on the
23 record?

24 THE COURT: No, ma'am.

25 (The Court and the juror talk at the Bench off the record

VOIR DIRE

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1 in the presence of the jury panel but outside the hearing of the
2 jury panel.)

3 THE COURT: By and with the consent of the State and the
4 defendant, this juror is excused to return to the jury panel.

5 Please call in after 6:00, and I appreciate your response.

6 CLERK OF COURT: Sir, what was your name again?

7 MR. ROOK: James Rook.

8 CLERK OF COURT: #312, James Rook.

9 MR. ROOK: Right.

10 THE COURT: Thank you so much.

11 MR. LONG: Appreciate your honesty, buddy.

12 MR. ROOK: All right.

13 (The juror departs the courtroom.)

14 THE COURT: Now, the State of South Carolina is
15 represented by the Solicitor's Office of this circuit. Do any
16 of you or any of you employed by the Solicitor's Office or any
17 of your immediate family employed by the Solicitor's Office?

18 Have any of you received assistance from the Solicitor's
19 Office such as a victim, ah, in the past year or so?

20 Any of - - introduce yourself, Larry, please.

21 MR. FILIBERTO: My name is Larry Filiberto, and I'm
22 Assistant Solicitor in Horry County.

23 THE COURT: Any of you related by - - related to this
24 individual, have any close personal connection with him?

25 Mr. Galmore, please identify yourself for me.

VOIR DIRE

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1 MR. GALMORE: My name is James Galmore. I'm an Assistant
2 Public Defender with the Horry County Public Defender's Office.

3 THE COURT: Is any of you had any assistance from the
4 Public Defender's Office of Horry County in the last six months
5 or year?

6 Any of you related by blood or connected by marriage with
7 Mr. Galmore who represents this defendant?

8 All right, sir.

9 For the State, is there any additional inquiry?

10 MR. FILIBERTO: Nothing, Your Honor.

11 THE COURT: For the defense?

12 MR. GALMORE: We'd ask the Court to inquire if any jurors
13 have family members who are law enforcement officers.

14 THE COURT: Are what?

15 MR. GALMORE: Law enforcement officers.

16 THE COURT: I will do that.

17 MR. GALMORE: Thank you.

18 THE COURT: All right.

19 Does any member of this jury panel have a family member who
20 is a law enforcement officer? If so, please stand.

21 Please stand for me, and I'll make inquiry.

22 May I have your name?

23 MS. GOODREAU: Yes, sir. Cheryl Goodreau.

24 THE COURT: And what is your response?

25 MS. GOODREAU: My father is a retired SLED Agent.

JURY SELECTION

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1 THE COURT: Is what?

2 MS. GOODREAU: Retired SLED Agent.

3 THE COURT: Retired SLED Agent. I accept that for
4 information. Thank you so much.

5 May I have his name?

6 MS. GOODREAU: Eugene McNeil.

7 THE COURT: Your father's name?

8 MS. GOODREAU: Eugene McNeil.

9 THE COURT: Your jury number, please?

10 MS. GOODREAU: #115.

11 THE COURT: Thank you.

12 Yes, sir, your name?

13 MR. SEMSEY: Jeff Semsey.

14 THE COURT: Your jury number?

15 MR. SEMSEY: #322.

16 THE COURT: And your response, sir?

17 MR. SEMSEY: I have a cousin who is a police officer?

18 THE COURT: Where?

19 MR. SEMSEY: In Norwood, New Jersey.

20 THE COURT: Where?

21 MR. SEMSEY: Norwood, New Jersey.

22 THE COURT: Okay.

23 Thank you so much.

24 Yes, ma'am, may I have your name?

25 MS. KAHN: Shai Kahn.

JURY SELECTION

133

1 THE COURT: And your number?
2 MS. KAHN: #187.
3 THE COURT: And your response?
4 MS. KAHN: My brother-in-law is a DEA Agent.
5 THE COURT: Where?
6 MS. KAHN: DEA.
7 THE COURT: DEA?
8 MS. KAHN: Yes.
9 THE COURT: I accept all of that as information.
10 Is that what you need, counsel?
11 MR. GALMORE: Yes, sir. Thank you, Your Honor.
12 THE COURT: All right.
13 You need any further inquiry?
14 MR. GALMORE: No, sir, Your Honor.
15 THE COURT: All right.
16 Let's pull the jury. The strikes are five and ten.
17 MR. FILIBERTO: Thank you, sir.

JURY SELECTION

18
19 CLERK OF COURT: When I call your name, if you'll just
20 come stand right up beside the Deputy and face - - turn around
21 and face the back of the courtroom.
22 If you'll bring all your belongings with you when you come.
23 #347, Jo Ann Stephenson.
24 What say the State?
25 MR. FILIBERTO: Please present the juror.

JURY SELECTION

134

1 CLERK OF COURT: Defense?

2 MR. GALMORE: Please excuse the juror in the trial of this
3 case.

4 CLERK OF COURT: You're excused from this particular
5 case. You can go back and have a seat.

6 #409, Joseph Williams.

7 What say the State?

8 MR. FILIBERTO: Please excuse this juror.

9 CLERK OF COURT: You're excused from this particular
10 case. You can go back and have a seat.

11 #3, Mary Alexander.

12 What say the State?

13 MR. FILIBERTO: Please present the juror.

14 CLERK OF COURT: The defense

15 MR. GALMORE: Please seat the juror.

16 CLERK OF COURT: Please be seated in the jury box.

17 #121, Ryan Grainger.

18 What say the State?

19 MR. FILIBERTO: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. GALMORE: Please excuse the juror in the trial of this
22 case.

23 CLERK OF COURT: You're excused from this particular
24 case.

25 #22, Lana Becker.

JURY SELECTION

135

1 What say the State?

2 MR. FILIBERTO: Please present the juror.

3 CLERK OF COURT: The defense?

4 MR. GALMORE: Please seat the juror.

5 CLERK OF COURT: Please be seated in the jury box.

6 #106, Timothy Fox.

7 What say the State?

8 MR. FILIBERTO: Please present the juror.

9 CLERK OF COURT: The defense?

10 MR. GALMORE: Please excuse the juror in the trial of this
11 case.

12 CLERK OF COURT: You're excused from this particular
13 case.

14 #153, Tasha Hills.

15 What say the State?

16 MR. FILIBERTO: Please present the juror.

17 CLERK OF COURT: The defense?

18 MR. GALMORE: Please seat the juror.

19 CLERK OF COURT: Please be seated in the jury box.

20 #211, Blackwelder Lipinsky.

21 What say the State?

22 MR. FILIBERTO: Please seat the juror.

23 CLERK OF COURT: The defense?

24 MR. GALMORE: Please seat the juror.

25 CLERK OF COURT: Please be seated in the jury box.

JURY SELECTION

136

1 #53, Cathy Carrol.

2 What say the State?

3 MR. FILIBERTO: Please present the juror.

4 CLERK OF COURT: The defense?

5 MR. GALMORE: Please seat the juror.

6 CLERK OF COURT: Please be seated in the jury box.

7 #399, Kathryn Weitzel.

8 What say the State?

9 MR. FILIBERTO: Please present the juror.

10 CLERK OF COURT: The defense?

11 MR. GALMORE: Please excuse the juror from the trial of
12 this case.

13 CLERK OF COURT: You're excused from this particular
14 case.

15 #417, Jeanne Winkler.

16 What say the State?

17 MR. FILIBERTO: Present the juror.

18 CLERK OF COURT: The defense?

19 MR. GALMORE: Please seat the juror.

20 CLERK OF COURT: Please be seated in the jury box.

21 #190, Wade Kennard.

22 What say the State?

23 MR. FILIBERTO: Please present the juror.

24 CLERK OF COURT: The defense?

25 MR. GALMORE: Please excuse the juror in the trial of this

JURY SELECTION

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1 case.

2 CLERK OF COURT: You're excused from this particular
3 case.

4 #212, Francis Lithgow.

5 What say the State?

6 MR. FILIBERTO: Please present the juror.

7 CLERK OF COURT: The defense?

8 MR. GALMORE: Please excuse the juror in the trial of this
9 case.

10 CLERK OF COURT: You're excused from this particular
11 case.

12 #14, Jeffrey Semsey.

13 MR. FILIBERTO: What was that number, Madame Clerk?

14 CLERK OF COURT: #322.

15 What say the State?

16 MR. FILIBERTO: Please present the juror.

17 CLERK OF COURT: The defense?

18 MR. GALMORE: Please excuse the juror in the trial of this
19 case.

20 CLERK OF COURT: You're excused from the trial of this
21 particular case.

22 #255, Ronnie Moses.

23 What say the State?

24 MR. FILIBERTO: Please present the juror.

25 CLERK OF COURT: The defense?

JURY SELECTION

138

1 MR. GALMORE: Please seat the juror.

2 CLERK OF COURT: Please be seated in the jury box.

3 #133, Tamara Hardee.

4 What say the State?

5 MR. FILIBERTO: Please present the juror.

6 CLERK OF COURT: The defense?

7 MR. GALMORE: Please seat the juror.

8 CLERK OF COURT: Please be seated in the jury box.

9 #187, Shai Kahn.

10 What say the State?

11 MR. FILIBERTO: Please present the juror.

12 CLERK OF COURT: The defense?

13 MR. GALMORE: Please excuse the juror in the trial of this
14 case.

15 CLERK OF COURT: You're excused from this particular
16 case.

17 #384, Veria Vereen.

18 What say the State?

19 MR. FILIBERTO: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. GALMORE: Please excuse the juror in the trial of this
22 case.

23 CLERK OF COURT: You're excused from this particular
24 case.

25 THE COURT: Is that nine or ten?

JURY SELECTION

139

1 CLERK OF COURT: Nine, Judge.
2 #120, Juliet Graham.
3 What say the State?
4 MR. FILIBERTO: Please present the juror.
5 CLERK OF COURT: The defense?
6 MR. GALMORE: Please seat the juror.
7 CLERK OF COURT: Please be seated in the jury box.
8 #26, Carlos Bellamy. #26, Carlos Bellamy.
9 THE COURT: Can we excuse Carlos - - find out what
10 happened to Carlos Bellamy.
11 Any objection to excusing Carlos from this participation?
12 MR. FILIBERTO: No objection from the State, sir.
13 MR. GALMORE: No, sir, Your Honor.
14 THE COURT: All right, sir. Fine.
15 Let's proceed, now.
16 CLERK OF COURT: #41, Melody Breeden.
17 THE COURT: You want to tell me what happened to the
18 rest of them in there?
19 CLERK OF COURT: Those are the two that we excused
20 earlier.
21 THE COURT: All right. That's fine
22 All right. This is Melody Breeden?
23 CLERK OF COURT: Yes, sir.
24 THE COURT: Okay.
25 What say the State?

JURY SELECTION

140

1 MR. FILIBERTO: Please excuse this juror from the trial
2 of this case.

3 CLERK OF COURT: You're excused from this particular
4 case.

5 #245, Nicholas Melle.

6 What say the State?

7 MR. FILIBERTO: Please present the juror.

8 CLERK OF COURT: The defense?

9 MR. GALMORE: Please seat the juror.

10 CLERK OF COURT: Please be seated in the jury box.

11 #8, Mona Amorese.

12 What say the State?

13 MR. FILIBERTO: Please present the juror.

14 CLERK OF COURT: The defense?

15 MR. GALMORE: Please seat the juror.

16 CLERK OF COURT: Please be seated in the jury box.

17 #429, John Willitts.

18 What say the State?

19 MR. FILIBERTO: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. GALMORE: Please excuse the juror in the trial of this
22 case.

23 CLERK OF COURT: You're excused from this particular
24 case.

25 #115, Cheryl Goodreau.

JURY SELECTION

141

1 What say the State?

2 MR. FILIBERTO: Please present the juror.

3 CLERK OF COURT: The defense?

4 MR. GALMORE: Please seat the juror.

5 CLERK OF COURT: Please be seated in the jury box.

6 THE COURT: All right.

7 We'll have two alternates. Strike of one and two as to

8 each alternate.

9 Thank you.

10 CLERK OF COURT: #123, Lucy Griffith.

11 What say the State?

12 MR. FILIBERTO: Please present the juror.

13 CLERK OF COURT: The defense?

14 MR. GALMORE: Please seat the juror.

15 CLERK OF COURT: Please be seated in the jury box.

16 THE COURT: That will be alternate number one.

17 CLERK OF COURT: #387, Cynthia Visconti.

18 What say the State?

19 MR. FILIBERTO: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. GALMORE: Please seat the juror.

22 CLERK OF COURT: Please have a seat in the jury box.

23 THE COURT: Please escort the jury panel to the jury

24 room for me momentarily.

25 (The jury retires to the jury room at 3:20 p.m.)

JURY SELECTION

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1 THE COURT: For the State, any motions regarding the
2 composition of the jury?

3 MR. FILIBERTO: Nothing, Your Honor.

4 THE COURT: For the defense?

5 MR. GALMORE: No, sir, Your Honor.

6 THE COURT: No Batson issues? Okay.

7 The jury will stand.

8 Ladies and gentlemen, for those of you who were not
9 selected, please call in tonight after 6:00 for further
10 information and instructions.

11 I appreciate your presence here so much. Thank you so
12 much.

13 You are now returned to the general jury pool.

14 (The jury panel is released to call in after 6:00 p.m.
15 tonight and departs the courtroom at 3:21 p.m.)

16 THE COURT: Mr. Galmore?

17 MR. GALMORE: Yes, sir.

18 THE COURT: As I understand, you still want to have the
19 witnesses on the photo lineup.

20 Is that correct?

21 MR. GALMORE: Yes, sir, I would.

22 THE COURT: I'll tell the jury to come back at 10:00 and
23 we'll start on that at 9:30.

24 MR. GALMORE: Yes, sir,

25 THE COURT: All right. Bring the jury in, please.

JURY SELECTION

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1 Bring the jury in, please.

2 (The jury returns to the courtroom at 3:22 p.m.)

3 THE COURT: Ladies and gentlemen, you twelve and you two
4 alternates, if necessary, have been selected as the trier of the
5 facts in this case.

6 Ordinarily we would have you come back at 9:30 but I have
7 some other issues in another matter to deal with at 9:30.

8 So, I ask that you return to this jury room at 10:00 in the
9 morning, not the courthouse or not downstairs but to this jury
10 room.

11 Now, please, during the evening permit no one to discuss
12 this case with you. Let no one discuss it with you. You must
13 not discuss it with anyone and make, please, no independent
14 inquiry.

15 And we say that for this reason.

16 You are the sole and only finders of the facts in this case
17 as jurors, and you will find the facts after listening to the
18 testimony, judging credibility and believability of the
19 witnesses and observing what other documents that may be in the
20 trial of this case.

21 And whatever your verdict is, either guilty or not guilty,
22 we want it based on the law and evidence heard in this courtroom
23 and not from some other source.

24 So, don't discuss the case with anyone. Let no one discuss

JURY SELECTION

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1 it with you. Make, please, no independent inquiry.

2 And remember this.

3 I would understand that when we break for lunch or
4 whatever, two or three of you may want to talk about some issue
5 in the case. You must not even discuss the case among
6 yourselves until I have given it to you for your deliberation.

7 And we say that simply because before you begin your
8 thought process you must have heard all of the testimony and the
9 final arguments and law on the case.

10 So, I'll excuse you, now. Have a good evening. See you
11 back at 10:00 in the morning.

12 Thank you.

13 I will - - what is that?

14 If something comes up about the tv or in the newspaper,
15 it's not likely but if it shows up, please disregard it, again,
16 as I've indicated to you.

17 I will select a foreperson in the morning.

18 (The jury is released to return at 10:00 a.m. on Tuesday
19 and departs the courtroom at 3:25 p.m.)

20 THE COURT: All right. Mr. Galmore, there's nothing
21 else that we need to discuss on this case, is there?

22 MR. GALMORE: Nothing further at this time, Your Honor.

23 THE COURT: All right, sir.

24 Take the defendant, please, out.

25 MR. FILIBERTO: Thank you, Judge.

JURY SELECTION

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- 1 (The Court adjourns this case for the day and thereafter
- 2 addresses other matters before the Court.)

TUESDAY, APRIL 14, 2009

(The Court reconvenes the trial of this case with all parties present in the courtroom.)

THE COURT: All right, sir.

MR. FILIBERTO: Good morning, Your Honor.

THE COURT: My Court Reporter had indicated earlier that you wanted to pre-mark your exhibits which I want done. Have you done that yet?

MR. FILIBERTO: She's in the process right now, sir.

THE COURT: How about yours?

MR. GALMORE: No, sir, we're fine.

THE COURT: Okay.

To save some time, now, you have already seen and looked at each of the exhibits?

MR. GALMORE: Yes, sir.

THE COURT: So, we won't need to have you look at them again?

MR. GALMORE: No, sir.

THE COURT: All right.

COURT REPORTER: Your Honor, if you'll give me just one minute, I'll have this done.

THE COURT: Yeah, I am.

We don't need to be on the record.

(The Court discusses scheduling matters off the record.)

THE COURT: Okay. Now, let's get on the record,

MOTION TO SUPPRESS

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1 please.

2 COURT REPORTER: Thank you, Your Honor.

3 MOTION TO SUPPRESS

4 THE COURT: All right, sir.

5 At the conclusion of yesterday's proceedings we were having
6 inquiry with reference to the photo lineup. I had made a
7 ruling on that matter but after the ruling, the defense counsel
8 asked that we call in on that subject the three victim
9 witnesses, and for that purpose I now open that proceeding, and
10 we'll take their testimony subject to the cross examination by
11 counsel for the defendant.

12 Is that what you asked for, Mr. Galmore?

13 MR. GALMORE: Yes, sir, Your Honor.

14 THE COURT: All right. Let's proceed.

15 MR. FILIBERTO: Thank you, Your Honor.

16 The State would call Nathan Smith to the stand.

17 (The witness takes the witness stand.)

18 (IN CAMERA) NATHAN SMITH, BEING DULY
19 SWORN, TESTIFIES AS FOLLOWS:

20 CLERK OF COURT: State your full name and spell your
21 last.

22 MR. SMITH: Nathan Smith, S-m-i-t-h.

23 DIRECT EXAMINATION BY MR. FILIBERTO:

24 Q. Mr. Smith, let me show you what's been marked as State's #5
25 and #6 and see if you recognize those.

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Yes, I do.

2 Q. With respect to State's #5 what is that?

3 A. That is a picture of the defendant.

4 Q. Okay.

5 Is it several pictures?

6 A. There's several pictures up there.

7 Q. Okay.

8 When did you first see that?

9 A. See the picture?

10 Q. When was that paper presented to you?

11 A. When I went down to identify the defendant who had robbed
12 me.

13 Q. And you say, "Robbed you."

14 He actually forced you to go someplace and he took your
15 car?

16 A. Yes, sir.

17 Q. Okay.

18 Ah, when that lineup was presented to you, did the officer
19 or anybody there attempt to tell you which of the photos to
20 pick?

21 A. No.

22 Q. Did, ah, anybody show you a photo, a separate, single photo
23 of the defendant prior to you looking at that lineup?

24 A. No.

25 Q. How long did it take you from the first time that you

MR. SMITH - CROSS EXAMINATION BY MR. GALMORE

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1 looked at it until the time you identified, picked out the
2 defendant?

3 A. Less than five seconds.

4 Q. You have no doubt that was - - that that was the person who
5 took your car and forced you to drive over to the Loris area?

6 A. I have no doubt.

7 Q. Thank you. Please answer any questions the defense may
8 have.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION BY MR. GALMORE:

11 Q. Mr. Smith, at the time you were working at the Fairfield
12 Resort?

13 A. At the time I was.

14 Q. In what capacity, sir? In what capacity? What did you
15 do?

16 A. I worked at the front desk. I was a Guest Service Rep., a
17 Front Desk Rep.

18 Q. On what shift?

19 A. Ah, third shift at the time.

20 Q. Okay.

21 So, when this thing occurred you were just getting off an
22 eight hour shift?

23 A. That's correct.

24 Q. Do they have any security cameras at the Fairfield Resort?

25 A. They do.

MR. SMITH - CROSS EXAMINATION BY MR. GALMORE

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1 Q. They do? Did they have them in that area that day?

2 A. Um, I don't think. Not in that area where I was walking
3 at towards my car they didn't.

4 Q. The hotel does have security cameras?

5 A. It does.

6 Q. Do they have security officers?

7 A. They do. They do have security officers.

8 MR. FILIBERTO: Your Honor, I'd object to the
9 relevance.

10 THE COURT: Has nothing to do with this.

11 MR. GALMORE: Yes, sir.

12 Q. Mr. Smith, were you able to give a physical description of
13 your assailant to the police officers?

14 A. I was.

15 Q. What description did you give them?

16 A. That the gentleman was probably about 5'7", about one - -
17 140 to 155 pounds.

18 Q. Any thing else or that's just it?

19 A. That's all I can remember.

20 Q. Can you tell this Court on what date your car was taken
21 from you?

22 A. Sure.

23 Date of December 27th of 2006.

24 Q. And when did you go look at this photo lineup?

25 A. Within a few days after the incident occurred?

MR. SMITH - EXAMINATION BY THE COURT

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1 Q. Would - - would it have been December 28th?

2 A. I'm not sure. I'm not sure what date it was. I just know
3 it was a day or two afterwards.

4 Q. Do you have any idea who put together that photo lineup?

5 A. I'm not sure.

6 Q. How long were you in the presence of your assailant?

7 A. Maybe about an hour or so. Maybe about an hour.

8 Q. Did you have any conversation with him?

9 A. With the defendant?

10 Q. Yes, sir.

11 A. Yes, I did. That day he asked me to take him to Dalton,
12 North Carolina, and I told him I didn't have any gas, and he
13 said, "Well, if you don't take me, then you going to meet my
14 little friend."

15 Q. Okay.

16 A. And, actually, I'm not sure if he had a gun in his coat but
17 I know he pointed something at me because I know it was still
18 dark at the time, and I just went ahead and proceeded and drove
19 on - - you know, drove on down Highway 22.

20 Q. So, you never actually saw a gun?

21 A. I didn't.

22 Q. Thank you, sir.

23 No further questions.

24 EXAMINATION BY THE COURT:

25 Q. Let me ask you this.

MR. SMITH - EXAMINATION BY THE COURT

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1 What was your initial confrontation, if any, with this
2 defendant?

3 A. Um, well, as I was leaving work, as I said, you know, being
4 a Rep. at the Resort, I speak to everyone. So, the only thing
5 that I did was just, "Hey, how you doing?"

6 Q. Where were you when you did?

7 A. At the Resort going towards my car.

8 Q. And what happened?

9 A. And as I said, "Hey, how you doing?"

10 And, you know, he was saying, "I need for you to take me
11 somewhere."

12 And I just told him I didn't have any gas.

13 And he said, "Well, if you don't take me, you going to meet
14 my little friend."

15 And we got in the vehicle and started driving.

16 Q. And you were under the impression he had a gun and was
17 pointing it at you?

18 A. Yes, sir.

19 Q. Okay.

20 How was it that you got - - got loose from him?

21 A. Um, we was in the car. He just, kind of, you know, shoved
22 me out the car. You know, we wasn't really going that fast.
23 It was on a dirt road, and he shoved me out the car pointing
24 something at me, and I just, you know, just got out the car.

25 Q. Who was driving at the time?

MR. SMITH - EXAMINATION BY THE COURT

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1 A. He was, the defendant.

2 Q. How far had you gone from where you originally met him
3 until you were allegedly shoved out the car?

4 A. I'd say about ten miles away from the Resort that I worked
5 from.

6 Q. You were going at his request?

7 A. Right.

8 Q. And he shoved you out at that time?

9 A. Right.

10 Q. And I believe you said this whole thing took about an hour?

11 A. About an hour. Yes, sir.

12 Q. All right. You may come down.

13 Thank you.

14 Next witness, please.

15 (The witness leaves the witness stand.)

16 MR. FILIBERTO: The State would call Malcolm Norris.

17 (The witness takes the witness stand.)

18 THE COURT: The record will reflect that this proceeding
19 is held outside the presence of the jury.

20 (IN CAMERA) MALCOLM NORRIS, BEING DULY SWORN,

21 TESTIFIES AS FOLLOWS:

22 CLERK OF COURT: Please state your name and spell your
23 last.

24 MR. NORRIS: Malcolm Norris, N-o-r-r-i-s.

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

154

1 DIRECT EXAMINATION BY MR. FILIBERTO:

2 Q. Good morning, Mr. Norris.

3 A. Good morning.

4 Q. Do you recall being presented a package of several photos
5 regarding the armed robbery that took place at the Cash and Dash
6 in 2006?

7 A. Ah, yes, sir.

8 Q. I'm going to show you what's been marked as State's #3 and
9 State's #4 and see if you recognize them.

10 A. Yes, sir, I do.

11 Q. What is State's #4?

12 A. State's Exhibit.

13 Q. Is that - - what is it?

14 Do you remember when it was presented to you?

15 A. I remember they brought by some pictures, and I picked the
16 number two picture out and had to sign my name on it.

17 Q. Is that the thing that you signed your name on?

18 A. Yes, sir, number two.

19 Q. Okay.

20 Did anybody at anytime tell you which picture to select?

21 A. Ah, no, sir.

22 Q. Did anybody show you a separate picture of the defendant
23 prior to your looking at those photos?

24 A. No, sir.

25 Q. The time you looked at that and picked him out do you have

MR. NORRIS - CROSS EXAMINATION BY MR. GALMORE

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1 any doubt that that is the person that robbed you at the Cash
2 and Dash on that night?

3 A. No, sir.

4 Q. Please answer any questions Mr. Galmore has.

5 CROSS EXAMINATION BY MR. GALMORE:

6 Q. Mr. Norris, do you know Mr. Long other than this incident?

7 A. No, sir.

8 Q. You had never previously met him?

9 A. No, sir.

10 Q. How long would you say you were in his presence?

11 A. Probably a total of about five minutes.

12 Q. Did you give a description to the police officers of the
13 person that, ah, robbed you?

14 A. Ah, yes, sir, to the best of my knowledge.

15 Q. And what was that description?

16 A. I told them he was wearing a dark coat. That was about
17 the only thing I really remembered because he had a gun poked
18 right in my chest.

19 Q. Now, when you looked at that State's exhibit, does - - does
20 - - do any of the people in there have on a dark coat?

21 THE COURT: What was that question, please?

22 MR. GALMORE: He indicated that his description was that
23 the perpetrator had on a dark coat, and I asked him if any of
24 the people in the photographs had on a dark coat.

25 THE COURT: The photograph will speak for itself.

MR. NORRIS - CROSS EXAMINATION BY MR. GALMORE

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1 MR. FILIBERTO: Yes, sir.

2 Q. Were you able to describe the facial characteristics of the
3 perpetrator, sir?

4 A. Ah, no, sir. I just knew the face at the time they
5 brought the photos by to me.

6 Q. Did you describe the face to the police officers prior to
7 seeing the photo?

8 A. To the best of my knowledge, yes, sir.

9 Q. What was your description?

10 A. I think I told them he had a big nose and a little scar on
11 his face.

12 Q. Did you put your description in writing?

13 A. I wrote something on a piece of paper. It's been a while.

14 Q. When did you look at these photos after the crime? How
15 long after the crime?

16 A. It was a few days afterwards.

17 Q. If I told you it was seven days after, would that sound
18 accurate to you?

19 A. It would have been within seven days, yes, sir.

20 Q. Thank you, sir.

21 No further questions.

22 THE COURT: All right, sir.

23 You may come down.

24 (The witness leaves the witness stand.)

25 THE COURT: Next witness, please.

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 MR. FILIBERTO: The State calls Mary White.

2 (The witness takes the witness stand.)

3 (IN CAMERA) MARY WHITE, BEING DULY SWORN,
4 TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Please state your name and spell your
6 last for the record.

7 MS. WHITE: My name is Mary White. White, W-h-i-t-e.

8 DIRECT EXAMINATION BY MR. FILIBERTO:

9 Q. Good morning, Ms. White.

10 A. Good morning.

11 Q. You were working at the Cash and Dash on December 27, 2006,
12 is that right?

13 A. Yes.

14 Q. Did you, ah, did the police, ah, it was robbed that
15 evening, correct?

16 A. Yes.

17 Q. Did the police have occasion to - - let me show you what's
18 been marked as State's #1 and #2 and see if you recognize them.

19 A. Yes.

20 Q. With respect to State's #2, what is that?

21 A. It's a picture of the defendant.

22 Q. Is there more than one picture?

23 Is it several pictures on the page?

24 A. Yes.

25 Q. When the police presented that to you, were you able to - -

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 several photos, was it marked in any way?

2 A. No.

3 Q. And did they ask you if you could identify the person who
4 robbed you?

5 A. Yes.

6 Q. Were you able to?

7 A. Yes.

8 Q. And you marked it on that sheet?

9 A. Yes.

10 Q. Did anybody tell you what photo to mark?

11 A. No.

12 Q. Did anybody show you a separate picture of the defendant
13 prior to your looking at that?

14 A. No.

15 Q. You have no doubt, then, that that is the person who robbed
16 you?

17 A. No doubt.

18 Q. Please answer any questions Mr. Galmore has.

19 THE COURT: Mr. Galmore.

20 MR. GALMORE: Yes, sir.

21 THE COURT: You may proceed.

22 MR. GALMORE: Thank you.

23 CROSS EXAMINATION BY MR. GALMORE:

24 Q. Ms. White, you were working at the Cash and Dash on the
25 night in question?

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 A. Yes.

2 Q. Were you just starting your shift or coming up on the end
3 of it?

4 A. It was coming at the end of it.

5 Q. And what time did you go in to work that day?

6 A. 2:00.

7 Q. And this occurred about what time, ma'am?

8 A. 10:45.

9 Q. Were you able to give the police any physical description
10 of the assailant?

11 A. Yes.

12 Q. And what would the physical description have been?

13 A. He had on a dark coat. He had a cap on, blue jeans.

14 Q. All right..

15 Can you tell the Court how long it was between the time
16 when this crime occurred and when you looked at those photo
17 lineups?

18 A. It was a couple of days after.

19 Q. If I told you it was seven days, would you think that was
20 accurate?

21 A. It was within seven days.

22 Q. How long were you in the suspect's presence, ma'am?

23 A. From a quarter till eleven until ten after eleven.

24 Q. You saying he was in the store for twenty-five minutes?

25 A. No. I say he came in the store and say he going to fill

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 up, and he went back out, and I turned the pump on, and he went
2 out, and he didn't come back in until after eleven because the
3 store was closed.

4 Well, it was exactly 11:00 because she was getting ready to
5 lock the door, and he came in. So, I assumed that he was coming
6 in to pay for his gas.

7 Q. Okay.

8 So, when he came in after filling up the pump, how long did
9 you have a chance to see him?

10 A. The whole time he was out there.

11 Q. And you weren't taking care of other customers?

12 A. It was just before closing. We had only a very few
13 customers coming in and out the door paying for gas.

14 Q. So, you're telling me you had twenty-five minutes to look
15 at the person who was there?

16 A. No, I'm not telling you that. I'm telling you that he
17 went back out, and I was waiting on him because I looked over.
18 I touched the thing where you turned the pump on, and it was
19 still - - it was still running. So, I went back to start doing
20 to finishing up my paperwork.

21 Q. What I'm asking you is how long did you have to look at
22 him.

23 At first he came in and said, "Turn on the pump."

24 How long were you looking at him during that period?

25 A. About two minutes, and I turned - - he went back. I told

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 him it was on. He went back to pump to fill up.

2 Q. Okay.

3 And when - - when he came in with the shotgun, how long
4 were you looking at him then?

5 A. He was in there about not even five minutes.

6 Q. Okay.

7 Thank you, ma'am.

8 THE COURT: You may come down.

9 You have any other witnesses.

10 MR. FILIBERTO: No, sir.

11 (The witness leaves the witness stand.)

12 THE COURT: All right, sir.

13 Mr. Galmore, you have any witnesses you want to present on
14 this issue?

15 MR. GALMORE: No, Your Honor, but I would ask you to
16 suppress the photo i.d.'s and the in-court identification in
17 this case.

18 THE COURT: On what basis?

19 MR. GALMORE: Well, I was asking about the witnesses'
20 degree of attention to Mr. Long. Ah, most of them just said
21 he had on a dark or dark clothing, rather.

22 THE COURT: The first witness road with him for an hour.

23 MR. GALMORE: Yes, sir. The first witness did ride with
24 him for an hour.

25 Ah, so, he - - he - - that first witness did have an

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1 opportunity to view him. However, when I asked about the
2 description he was able to give, there was - - it just wasn't
3 there in my humble opinion.

4 Also, there's a substantial length of time between when the
5 crime occurred and when the photo lineups were taken.

6 THE COURT: There are many cases that hold seven days is
7 not a substantial difference.

RULING OF THE COURT

8
9 THE COURT: No, sir. I conclude, ah, I'm - - yesterday
10 I was satisfied beyond any reasonable doubt that the lineups
11 were satisfactorily done in accordance with the law and in the
12 protection of his constitutional rights.

13 However, at your request, I opened it up again to hear
14 these three witnesses, and after hearing them, I am absolutely
15 certain again that the lineup procedure was properly done in
16 that his constitutional rights were in no way violated.

17 Your motion in that regard is respectfully denied, and I
18 again make this finding for the record.

19 I have examined the photographs used in these photographic
20 lineups, and I find that each photograph contains persons of the
21 same size, weight and facial features. The record supports the
22 conclusion that the victims' in-court identification of the
23 defendant did not stem from any lineup procedure giving rise to
24 a substantial likelihood of mis-identification of the
25 defendant's constitutional rights.

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1 The photographs used were not suggestive, and due process
2 was not violated.

3 They are admissible in the evidence for the jury's
4 consideration as finders of the facts.

5 Mr. Galmore, the jury, of course, will weigh the issues
6 that you raise in asking that I do not permit them to go in the
7 record but, clearly, they are for the jury.

8 MR. GALMORE: Yes, sir.

9 THE COURT: All right, sir.

10 Is there anything further?

11 MR. GALMORE: No, sir.

12 THE COURT: Anything further from the State?

13 MR. FILIBERTO: No, Your Honor.

14 THE COURT: All right.

15 I have appointed - - do I have a bailiff here. Where is
16 a bailiff.

17 MR. FILIBERTO: She is waiting to bring the jurors in
18 when you're ready for them.

19 THE COURT: I am ready.

20 Please advise them that I have appointed Nicholas A. Mell,
21 M-e-l-l, and have him take the Foreperson's chair for me.

22 THE COURT: Gentlemen, come forward, please. Mr.
23 Galmore.

24 (Bench conference held off the record and outside the
25 presence of the jury.)

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1 The jury returns to the courtroom at 10:11 a.m.)

2 THE COURT: Let the record now reflect that the jury and
3 the two alternates are present.

4 Swear the jury, please.

5 JURY SWORN

6 (Clerk of Court swears the jury.)

7 REMARKS OF THE COURT

8 THE COURT: Good morning, Mr. Foreman, ladies and
9 gentlemen.

10 Mr. Melle, I have designated you as Foreperson of the Jury.

11 You will occupy that seat at all times. The alternates will
12 always occupy those two chairs. The rest of you may sit as you
13 choose to.

14 Mr. Melle, your duty will be to preside in the jury room
15 during the deliberations and to be the jury's spokesman in the
16 courtroom.

17 I, of course, will keep you and the jury fully advised with
18 reference to your duties.

19 Recognizing that for many of you this may be the first time
20 you sat as a juror in a criminal case, let me give you some
21 brief instructions as to how we will proceed.

22 You will recall on yesterday that the State called these
23 various cases against William Von Long.

24 One indictment was possession of a weapon during the
25 commission of a crime. Now, this indictment is in no sense any

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1 evidence. Evidence comes from this witness stand under oath.

2 To this indictment this defendant, Mr. Long, pleads not
3 guilty.

4 Now, another indictment as against this same defendant is
5 kidnapping. To this indictment this defendant specifically
6 pleads not guilty.

7 A third indictment is for car jacking. As to this
8 indictment this defendant pleads not guilty.

9 And the last indictment - - no, there's another indictment
10 for armed robbery. To this indictment this defendant pleads
11 not guilty.

12 There's a second indictment for an additional armed
13 robbery, and to this armed robbery, this defendant pleads not
14 guilty.

15 Now, ladies and gentlemen, I tell you at the outset. It is
16 a fundamental proposition of law that this defendant and all
17 defendants walks into this court under the presumption of
18 innocence. That presumption remains with him from the moment
19 he comes in from the moment of the indictments throughout the
20 trial until you, the jury, unanimously, if you should, find him
21 guilty beyond a reasonable doubt.

22 Now, a defendant doesn't have to prove a thing. The State
23 must prove him guilty beyond a reasonable doubt.

24 Now, you twelve folks have been selected by counsel for the
25 State and counsel for the defendant as jurors in this case, and

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1 you are what we call the sole and only finders of the facts in
2 this case. From this moment on there is nobody in this wide
3 world that can tell you twelve what the facts are.

4 Jurors have said in the past years, "Well, Judge
5 Cottingham, you say we are the finders of the facts. How are
6 we to know what the facts are?"

7 Well, under oath there will be various witnesses testifying
8 subject to examination and cross examination. In addition to
9 that, there will be other documents placed in the record for
10 your consideration. You judge the credibility, the
11 believability of every witness who testifies.

12 You may believe all of what a witness says or none. You
13 may believe a small portion and disregard the larger.

14 You, though, as finders of the facts will judge, weigh and
15 consider all of the testimony and anything else that may be
16 introduced into this record for your consideration.

17 After the various witnesses have testified, I will charge
18 you with regards to the law as to each of these indictments, and
19 I will charge you the elements of each indictment that the State
20 must prove unanimously beyond a reasonable doubt.

21 Following that charge on the law, the defendant and the
22 State will have an opportunity to give you a final summation as
23 to what they think the law - - what they think the evidence
24 suggests.

25 Initially, they going to present to you in just a moment

OPENING STATEMENT - MR. FILIBERTO

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1 opening statements kind of as a guideline to help you follow
2 their position.

3 Now, I tell you now and I tell you again. What the
4 lawyers tell you is not evidence. It's their view of the
5 evidence but it's not evidence. Evidence comes from this
6 witness stand under oath.

7 After the final summation of counsel, I will then give you
8 any final instructions that are necessary, and then I'll ask you
9 to go to the jury room and to begin your deliberations as to
10 each of these indictments, and I will explain that further at
11 the conclusion of all the testimony.

12 I give you these preliminary instructions which are not a
13 substitute for the final instructions that I will give you but
14 merely to help you follow the case as it progresses.

15 You may have your opening statement.

16 MR. GALMORE: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 (Bench conference held off the record and in the presence
19 of the jury but outside the hearing of the jury.)

20 THE COURT: All right.

21 Have your opening statement, please.

22 OPENING STATEMENT BY MR. FILIBERTO

23 MR. FILIBERTO: Thank you, Your Honor. If it please
24 the Court?

25 Good morning. I'll begin by apologizing. My voice is

OPENING STATEMENT - MR. FILIBERTO

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1 a little raspy. I'm getting over a cold. I'll say I feel
2 better than I sound but I'll do my very best to speak clearly
3 for y'all and for the Court Reporter.

4 I appreciate your service here. I know this is
5 inconvenient and that y'all probably have a long list of other
6 places you prefer to be today but your service is so very
7 important to this system that we have, particularly in regard to
8 a criminal trial.

9 Now, you've heard a number of times already and will
10 continue to hear throughout the course of the trial that the
11 burden of proof in a criminal case is on the State, the people
12 I represent to prove their case beyond a reasonable doubt, and
13 that burden is not insubstantial. It's a large burden. The
14 only person that has to prove anything in a matter like this is
15 the prosecution.

16 I think that burden is right where it should be. I think
17 the State has the obligation to make its case to y'all and to
18 ask for you to see the evidence the way the State has determined
19 it to be - - as the State has determined the evidence to be.
20 Again, I think it's appropriately placed.

21 Now, really, you kind of got more than you bargained for in
22 this instance. We're just not going to ask you to make one
23 decision today. We're going to ask you to make five separate
24 decisions today.

25 There are, ah, there's a charge of kidnapping, and, again,

OPENING STATEMENT - MR. FILIBERTO

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1 the judge at the end of the trial will tell you what the law is
2 to apply to these facts.

3 If there's any question, go with what the judge says, not
4 Mr. Galmore or my presentation.

5 But, beginning, one of the charges is kidnapping, and - -
6 and I always get nervous about that because I think people are
7 going to think it involves ransom and - - and stealth, you know,
8 a few other things like the ship's captain that was out on the
9 waters of Africa.

10 That's not the case. If you forcibly take a person without
11 authority of law and you either confine them or forcibly remove
12 them, that's kidnapping.

13 There's car jacking. That's taking of a vehicle from the
14 presence and possession of a person by force or threat of force.

15 There's armed robbery, the taking of property from somebody
16 else either while armed or in presenting something or implying
17 that they were armed and that person does reasonably believe
18 that the person who was robbing them was armed.

19 And the use of a deadly weapon during the commission of a
20 violent crime, and that's sort of straight forward.

21 And then, again, the judge will instruct you specifically
22 as to the law.

23 If somebody is actually in possession of a deadly weapon,
24 that could be a knife or a gun, and I believe in this trial, the
25 evidence will show you that that is a gun, and committing a

OPENING STATEMENT - MR. GALMORE

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1 violent crime, that is a separate crime under the law in South
2 Carolina.

3 And I'll ask you at the end of this trial to consider each
4 of those and I'd ask you react at that point with the
5 appropriate verdict.

6 The State's presentation of this case is really not going
7 to be very long. There will be evidence, ah, of the police
8 investigations, evidence of how the defendant was identified in
9 the crime, the testimony from the actual crime victims and other
10 physical evidence and we'll go through all of that during the
11 trial, and then I'll get a chance to talk to you about all of
12 that at the final closing.

13 Thank you for your service in this matter. I'd ask that
14 you just, again, pay close attention to the witnesses, to the
15 physical evidence that's presented to you and then I'll be up to
16 talk to you again at the end of the trial.

17 Thank you.

18 THE COURT: Mr. Galmore.

19 MR. GALMORE: If it please the Court.

OPENING STATEMENT BY MR. GALMORE

21 MR. GALMORE: Ladies and gentlemen, Good morning. I'd
22 like to talk to you about roles and responsibilities because
23 everyone in this courtroom has a responsibility.

24 I have a responsibility as Mr. Long's attorney to
25 demonstrate to you the shortcomings, the weaknesses, the

OPENING STATEMENT - MR. GALMORE

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1 loopholes, the problems, the difficulties in this case, and I'll
2 try my best to demonstrate those things to you today.

3 Madame Court Reporter has a very important responsibility.
4 Her job is to take a record of everything that's said in this
5 courtroom during this trial.

6 Even yesterday when you all stood up, "Hi, my name is John.
7 I live twenty miles from the courthouse."

8 That was being wrote down.

9 Twenty years from now we'll be able to go back and find
10 this tape and listen to these words again. That's her
11 responsibility in here today, and I'm confident she will do her
12 job adequately.

13 Madame Clerk has a job as well. She keeps all of the
14 written notes of these proceedings. The verdict form where
15 you check guilty or not guilty, fifty years from now, it will
16 still be in the basement of this courthouse. That's her job is
17 to maintain these records, and I have no doubt that she will do
18 her job admirably today as well.

19 His Honor has a very important job to do. His Honor is
20 suppose to give you the law. He will instruct you on what the
21 law is.

22 And that's the same thing that's happening in the courtroom
23 next door, in the courtroom across the street, up there at the
24 M. L. Brown Building. They're having trials over there, too.
25 They have juries over there, too. They have judges instructing

OPENING STATEMENT - MR. GALMORE

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1 juries on what the law is, and you as jurors will have to apply
2 the facts to the law.

3 Let me give you an example of what I mean.

4 The judge might tell you. If you find that John Doe ran
5 a red light, you'd have to find him guilty. If you find that
6 John Doe didn't run the red light, you have to find him not
7 guilty.

8 Now, some person is going to come in and say, "I was at the
9 light, and the light was red."

10 John Doe is going to come in and say, "I was at the light,
11 and the light was green."

12 He gave you the law but you have to decide the facts.

13 And so when these people get on the stand and say these
14 convergent stories, you're going to have to decide who to
15 believe and you're going to have to decide that beyond a
16 reasonable doubt.

17 And if you all get back there and you unanimously agree
18 that you think that light was green, then he's already given you
19 the law. You must find him not guilty.

20 And if you all get back there and you unanimously agree
21 that you believe the witnesses and you think the light was red,
22 then he's given you the law. You must find him guilty.

23 That's how the law and the facts interplay.

24 Now, we get to where it gets kind of dicey because these
25 police officers have a job, too. They took a oath just like

OPENING STATEMENT - MR. GALMORE

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1 I took a oath. The Solicitor took a oath, too. I took mine
2 in 1995, and the State of South Carolina gave me a licence to
3 practice law. They took their oath, and they gave them a badge
4 and a gun.

5 Their job is to investigate these crimes, to find evidence
6 of these crimes and to give that evidence to the Solicitor.
7 They're the first line of defense.

8 I will tell you today. They didn't do a proper job.

9 The Solicitor, his role is to present this evidence as
10 given to him by the police to you and to convince you beyond a
11 reasonable doubt that Mr. Long is guilty of what they say he
12 did.

13 Again, if he's not given adequate evidence, he can't
14 present to you adequate evidence. He's not going to be able to
15 do his job.

16 But here is where it gets tricky because then your job
17 comes into play.

18 I took my oath in '95. You took your oath fifteen minutes
19 ago but you do have an oath. You have an obligation that if
20 the State does not meet its burden beyond a reasonable doubt,
21 that's why the judge said this often. Beyond a reasonable
22 doubt is about not just a phrase. It's a concept.

23 And let me explain it like this.

24 Let's say this is a football field, a hundred yards from
25 end to end, end zone to end zone. The law has different

OPENING STATEMENT - MR. GALMORE

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1 standards of proof meaning the amount of believability or
2 credibility you can apply to a case.

3 In a civil case, and they're having civil cases I think the
4 judge told you yesterday, we're having two civil cases also.

5 In a civil case where you're suing somebody to get some
6 money, the standard of proof is by preponderance of the
7 evidence. That means they would only have to prove it up here
8 to the fifty yard line just one toe over, the scales of justice
9 just ever so slightly tilting but that's a civil case.

10 We have administrative cases like if you're trying to get
11 your driver's license back where the standard of proof is what's
12 called clear and convincing evidence. That's up here
13 someplace. You got to get a little bit closer to that end
14 zone.

15 But today you sit on a general sessions case, a criminal
16 case, and because the punishment is not pay some money, the
17 punishment is go to jail, the standard of proof that he is
18 required to give you is a lot higher than one toe over the fifty
19 yard line.

20 I tell you now. They don't have to score a touchdown
21 because that would mean beyond every doubt. You could have a
22 doubt if there are fish in the Waccamaw River but I submit there
23 are. That would be unreasonable. That would be a stupid
24 doubt.

25 So, they don't have to prove to you beyond every

OPENING STATEMENT - MR. GALMORE

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1 conceivable possibility that this man is guilty of this offense.
2 However, they have to come so close to that end zone that all
3 reasonable doubt is excluded. You'll be thinking that next
4 play they're going in. That's the way your job is set up.
5 They have to convince you beyond a reasonable doubt that Mr.
6 Long is guilty of the things they say, and I tell you now.
7 Because the police didn't do their job, the Solicitor cannot do
8 his job, and, yet, they're asking you to pick up their slack.
9 They're asking you to ignore the shortcomings, the loopholes,
10 the discrepancies and say guilty anyway.

11 I'm asking you to fulfill the oath that you have just
12 taken, and that oath says if you can't find him guilty beyond a
13 reasonable doubt, then cut him loose.

14 This case is not going to be a long case. Not a very
15 complicated case but at the conclusion I'm going to be asking
16 you to find Mr. Long not guilty.

17 Thank you for your time and attention.

18 THE COURT: Call your first witness.

19 MR. FILIBERTO: Thank you, Your Honor.

20 The State calls Kevin Suggs.

21 (The witness takes the witness stand.)

22 OFFICER KEVIN BRADLEY SUGGS, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Please state your name for the record.

25 MR. SUGGS: Kevin Bradley Suggs, S-u-g-g-s.

OFFICER SUGGS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 DIRECT EXAMINATION BY MR. FILIBERTO:

2 Q. Good morning, Officer Suggs.

3 A. Good morning, sir.

4 Q. Where are you currently employed?

5 A. With Horry County Police Department.

6 Q. And how long have you been employed there?

7 A. Almost six years. Over five, over five and a half.

8 Q. Officer Suggs, were you working on Thursday, December 28,
9 2006?

10 A. Yes, sir, I was.

11 Q. Generally, what were your assigned duties that day?

12 A. I was assigned a regular patrol, pretty much just
13 patrolling the area looking for criminal activity.

14 Q. Did your duties that day result in your having any contact
15 with the defendant, William Long?

16 A. Yes, sir, it did.

17 Q. Would you explain to the jury the circumstances that led up
18 to that contact?

19 A. Pretty much what occurred was myself and another officer
20 had been told and we'd received information about a series of
21 crimes or criminal activity that had been occurring. We were
22 trying to investigate it. We were talking to people that we
23 knew in the community.

24 We'd ask people, if, you know, if you saw anybody with
25 somebody with some money that normally shouldn't probably money

OFFICER SUGGS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 or that was throwing money around, you know, give us a call and
2 let us know. We were just trying to get some leads.

3 We had one individual that, ah, I knew that was kind of had
4 some criminal dealings that I'd put in jail a few times, and
5 they called me and informed me about Mr. Long, ah, having a
6 little bit of money.

7 Also, the other officer that was there had received some
8 information as well on Mr. Long, and we had received the
9 information as to his location at that time when we were
10 talking.

11 Q. Where was that location that you heard he was?

12 A. We were instructed that he was at a mobile home off of, um,
13 Carey Lane off of - - which is off Highway 348 in Horry County,
14 more or less in Loris, in the Loris section of Horry County.

15 Q. Upon your receiving this information, what did you do?

16 A. Um, we, another off-duty officer had pulled up there, and
17 I wasn't sure if I knew Mr. Long or not as far as visually
18 I.D.'ing him at which point in time that officer said, "Yeah, I
19 went to school with him."

20 So, I asked him if he would mind going with us to - - to
21 visually I.D. him so we would know who we were looking for him
22 so he didn't lie to us or whatever and we miss him.

23 We left from there from Cherry Hill Baptist Church which is
24 off of Daisy Road. We left there. Went over to Carey Lane.
25 As we were traveling up Carey Lane which is a dirt road, we

OFFICER SUGGS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 observed - - I observed Mr. Long first walking across - - -

2 Q. Let's - - let's stop you there.

3 About what time of day was it?

4 A. It was approximately I'd say 3:30 in the afternoon.

5 Q. It was light out?

6 A. Yes, sir.

7 Q. And, again, when you got to that location, what did you
8 observe?

9 A. I observed Mr. Long walking across a yard where some mobile
10 homes were. Um, I then asked the other officer, I said, "Is
11 that him?"

12 And then at which point in time, the other officer said,
13 "Yeah, that's him."

14 So, we pulled around up to Mr. Long to talk with him.

15 Well, as we were pulling up at that time we were about to
16 stop, he took off running. So I proceeded to follow him with
17 the patrol car, and we were following him. He was headed toward
18 the woods at which time he appeared to pull something from his
19 back waistband which appeared to be silver in color and looked
20 like a firearm. I'm actually pretty sure it was a firearm.

21 Q. What happened next?

22 A. The officer that was riding with me got out of the vehicle
23 when Mr. Long hit the woods and proceeded to parallel him
24 through the woods. I maneuvered the patrol car around the
25 woods. He yelled at me that there was a pond in the woods. I

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1 then exited my patrol car, drew my gun. We began entering the
2 woods. We were yelling at Mr. Long to drop the weapon at which
3 point in time he threw the gun into the pond. He was trapped up
4 against it. Then he jumped or fell in the pond when he threw
5 the weapon.

6 Q. Were you able to retrieve him from the pond?

7 A. Yes, sir. We got him out of the pond.

8 Q. What did you do next?

9 A. After we got him out of the pond, we secured him.
10 Handcuffed him. We then walked him back out of the wooded
11 area, ah, to the road where our patrol car was. We then
12 proceeded to search him for another weapons or contraband or
13 anything of that nature.

14 Q. That would be the reason why you would search him at that
15 time?

16 A. Yes, sir.

17 Q. At this time I'm going to show you what's been marked for
18 identification as State's #8, #9 and #10.

19 THE COURT: The record will reflect that you have
20 previously seen these exhibits.

21 MR. GALMORE: Yes, Your Honor.

22 THE COURT: Without objection.

23 Q. State's #8, do you recognize that?

24 A. Yes, sir.

25 Q. What is that?

OFFICER SUGGS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. That is the -- some of the items that we pulled off of Mr.
2 Long: The wallet, the credit cards and the driver's license
3 belonging to that gentleman there.

4 Q. Were -- were, ah, the items in the wallet at the time you
5 took them out?

6 A. Yes, sir.

7 Q. Or you actually removed them?

8 A. Yes, sir. We removed the wallet. We took the wallet out
9 of his pocket.

10 Q. And the identification, that was identification that
11 identified Mr. Long?

12 A. No, sir.

13 Q. Ah, what is the name on the identification?

14 A. Malcolm Ray Norris.

15 Q. Does this photo clearly and accurately reflect the items
16 that were in the wallet that you took from the defendant?

17 A. Yes, sir, still wet and everything.

18 MR. FILIBERTO: At this time the State would move to
19 have State's #8 into evidence.

20 THE COURT: It is so admitted.

21 Mr. Foreman, these matters that I introduce into evidence
22 will be with you in the jury room during your deliberations.

23 You, of course, may publish it at this time if you care to.

24 (The Court Reporter accepts State's Exhibit #8 in
25 evidence.)

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1 Q. I show you State's #9. I'd ask you if you recognize that?

2 A. Yes, sir. It's the watch we took off of him.

3 Q. Was he wearing the watch?

4 A. I believe he was.

5 Q. Does that photo clearly and accurately depict the watch
6 that you removed from the defendant?

7 A. As I remember, yes, sir.

8 Q. Did you later determine that that watch did not belong to
9 the defendant?

10 A. I did not. It was later determined that it was actually,
11 by another officer I believe it was determined that it was taken
12 from one of the victims.

13 Q. Thank you.

14 MR. FILIBERTO: At this time the State would move
15 State's #9 into evidence.

16 THE COURT: You may do so without objection.

17 (The Court Reporter accepts State's Exhibit #9 in
18 evidence.)

19 Q. Okay, and then State's #10.

20 THE COURT: Do you care to publish those documents?

21 MR. FILIBERTO: I will - - I will at the end, sir.

22 A. A set of car keys, maybe house keys, some lock keys.

23 Q. And those - - -

24 A. We took those off of him as well.

25 Q. Thank you.

OFFICER SUGGS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Do they clearly represent the keys as you took them?

2 A. Yes, sir.

3 MR. FILIBERTO: The State would move State's #10 into
4 evidence, Your Honor.

5 MR. GALMORE: No objection.

6 (The Court Reporter accepts State's Exhibit #10 in
7 evidence.)

8 MR. FILIBERTO: At this time I would publish these to
9 the jury.

10 Q. Now, I'm going to hand you what's premarked for
11 identification as State's #12 and #13 and ask you if you
12 recognize those?

13 A. Yes, sir. These are the clothes that he was wearing.

14 This is the - - do you want me to identify all of it
15 individually?

16 Q. Generally.

17 A. These are the clothes that he was wearing on that day.

18 Q. Do you feel those photos clearly and accurately represent
19 the clothes that he was wearing that day?

20 A. Oh, yes, sir.

21 MR. FILIBERTO: The State would move State's #12 and
22 #13 into evidence.

23 MR. GALMORE: No objection.

24 THE COURT: Without objection they are in.

25 (The Court Reporter accepts State's Exhibits #12 and #13 in

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 evidence.)

2 Q. Thank you, Officer Suggs. Please answer any questions Mr.
3 Galmore may have.

4 CROSS EXAMINATION BY MR. GALMORE:

5 Q. Officer Suggs, you indicated that you had received some
6 information that Mr. Long might have been in possession of more
7 money than he should have had?

8 A. Pretty much we were trying to follow any that we could
9 find, yes, sir.

10 Q. Did you put this in a written report?

11 A. No, sir, I didn't.

12 Q. Well, who told you this information?

13 A. That was - - there was another incident which had occurred
14 that morning, um, and the person which worked at the other - -
15 is it Market Express up on Highway 9 which had had a similar
16 incident to what this case is related to - - -

17 MR. GALMORE: Move to strike, Your Honor

18 THE COURT: Sir? Well, you asked him, now. Don't go
19 into it if you don't want him to answer.

20 MR. GALMORE: He was just giving us anonymous information.

21 THE COURT: Well, you the one that asked him where he
22 got it from. He didn't ask it.

23 I'm not going to strike it but just be careful. You - -
24 if you ask the question, he's entitled to answer it.

25 You asked him, specifically, "Where did you get the

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 information?"

2 And he told you.

3 THE COURT: Go ahead.

4 A. There was another incident, sir, at the Market.

5 THE COURT: Don't go into it.

6 A. Okay.

7 Pretty much the other person that worked at this other
8 establishment undoubtedly knew him.

9 Q. Did you put any of this in writing?

10 A. No, sir.

11 Again, it was lead.

12 Q. So, you were not specifically told by any detective or
13 supervisor to go looking for Mr. Long?

14 A. No, sir. We received a phone call.

15 Q. You testified that as you were chasing Mr. Long, you saw
16 what you believed to be a pistol?

17 A. Yes, sir, silver in color.

18 Q. And you said he threw it in the pond?

19 A. Yes, sir.

20 Q. Did you put this in writing?

21 A. Yes, sir, it was on the supplemental form.

22 THE COURT: For the record, let the record reflect what
23 you're giving him.

24 MR. GALMORE: Yes, sir.

25 Q. Officer Suggs, let me hand you what's been marked for

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 identification purposes only as Defendant's Exhibit #2 - -

2 A. Yes, sir.

3 Q. - - and ask you if you recognize this document.

4 A. Yes, sir. I wrote it.

5 Q. Okay, and what is that document?

6 A. This is the supplemental that I wrote on 3/27 of '09 to the
7 incident.

8 Q. What was the date that you arrested Mr. Long?

9 A. Mr. Long was arrested on 12/28 of '06.

10 Q. 12/28/06?

11 A. Yes, sir.

12 Q. And when did you write this supplemental report?

13 A. The Supplemental was written on the 27th of March, this
14 year.

15 Q. 3/27/09?

16 A. Yes, sir.

17 Q. And did you write anywhere prior to 3/27/09 that Mr. Long
18 appeared to have a pistol in his possession?

19 A. No, sir.

20 Q. You indicated in your supplemental report that y'all
21 dragged the pond?

22 A. We did.

23 Q. How many people were out there helping drag the pond, sir?

24 A. Ah, our Crime Scene Unit was out there. I believe there
25 were two detective, maybe two supervisors and it was at shift-

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 change. So there were probably, like, six other officers out
2 there or more, again, because we called - - we called when he
3 was running from us that he had a gun. So they were pretty much
4 sending everybody.

5 Q. So, you had approximately six officers out dragging a pond
6 two and a half years ago, and no one chose to write it down
7 until March 27th of '09?

8 A. There was a lot of stuff going on. Actually, I actually
9 didn't write the incident report. Officer Edge wrote the
10 incident report. There was a lot of stuff going on at the time.
11 He was informed that there was a gun involved. I was dealing
12 with the other situation at the time. Plus, at the time my
13 supervisor had come on the scene and was debriefing me, and I
14 was having - - having to deal with some other things that were
15 going on.

16 I guess he - - again, he was not the officer that was in
17 pursuit of this subject, and he was tasked with having to write
18 the incident report, ah, and he undoubtedly neglected or failed
19 to put it in there, and I didn't realize it because I didn't
20 read behind him.

21 However, supervisor was made aware. Crime Scene was called
22 out, and they did drag the pond to the best of our ability.

23 Q. Do you have any crime scene reports of this pond dragging?

24 A. I don't believe - - I don't know if they do or not, sir.
25 I know Investigator Caulder was the investigator that was out

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 there dragging the pond.

2 Q. So, it would have been Investigator Caulder's job to write
3 a report?

4 A. I don't - - I'm not sure what Crime's Scene's policy is for
5 that.

6 Q. Is your patrol vehicle equipped with a camera?

7 A. Yes, sir, it is.

8 Q. Was the camera operating back in December of '06?

9 A. Yes, sir, it was.

10 Q. Is any of this chase and capture on-camera?

11 A. No, sir, it was not. The camera was not activated because
12 the blue lights were not turned on. Then when I saw him pull
13 the gun, that was not the first thing on my mind.

14 Q. Do you have a gun?

15 A. Yes, sir, I do.

16 Q. No, not you. Did you recover the gun you saw?

17 A. No, sir, we did not.

18 Q. After he was captured, did you turn on your blue lights?

19 A. No, sir. I didn't.

20 After I got out of the car, went in the wood and got him as
21 I said before, there was no need to cut the blue lights on in my
22 opinion. I mean, I didn't see the need to cut them on. I
23 think that some of the officers that got on scene may have had
24 their cameras running. I'm not sure.

25 Mine never got cut on, no, sir.

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 Q. When was Mr. Long searched?

2 A. After we got him back to the roadway and had him secured as
3 far as so that there wouldn't be anymore issue with him trying
4 to flee us or if he had any other additional weapons on him
5 where he could harm us.

6 Q. And that's when you allege that you pulled the wallet out
7 of his pocket and the watch off of his wrist?

8 A. Yes, sir, and that is not alleged. That is what happened.

9 Q. Do you have this on video?

10 A. No, sir, I do not.

11 Q. So we have only your word to take on that issue?

12 A. My word and four other officers.

13 Q. Four other officers?

14 A. Yes, sir.

15 Q. Which four would those be?

16 A. Officer Michael Hillbrand, Officer Donald Edge, ah, and
17 Officer Terry Fowler, and Officer Randall Suggs.

18 MR. GALMORE: Court's indulgence, Your Honor.

19 Q. After Mr. Long was taken into custody, did you have to take
20 him to the hospital?

21 A. No, sir, I did not.

22 Q. Do you know if he was taken to the hospital by Horry County
23 Police?

24 A. It's my understanding that he was taken to the hospital.

25 Q. Do you know the reason why he was taken to the hospital?

OFFICER SUGGS - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 A. He was claiming that I had ran him over with my car.

2 Q. And you deny doing that?

3 A. Well, I - - he made it pretty far in the woods if I ran him
4 over with the car. No, sir, I did not run him over with the
5 car.

6 Q. If you had your camera on, we would know for sure. Is that
7 correct?

8 A. I didn't run him over with the car

9 Q. Thank you. No further questions.

10 (The Court Reporter accepts Defendant's Exhibit #2 for
11 identification only.)

12 MR. FILIBERTO: Just briefly, Your Honor.

13 REDIRECT EXAMINATION BY MR. FILIBERTO:

14 Q. And you aware that the defendant was taken to the hospital?

15 A. Yes, sir.

16 Q. To your knowledge was the defendant treated for any
17 injuries?

18 A. No, sir.

19 They - - the, ah, I don't know exactly what the terminology
20 for - - how the - - the doctor described it but I think it was
21 actually in one of the, ah, the doctor described it pretty much
22 as though nothing was wrong with him. They ran scans and stuff
23 like that, and there was no injuries.

24 He was transported directly to the - - -

25 Q. And, again, no question you removed photos of the evidence:

OFFICER SUGGS - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 The watch, the wallet and the car keys? Took from the
2 possession of this defendant while you arrested him?

3 A. No doubt.

4 MR. FILIBERTO: Nothing further.

5 THE COURT: All right, sir.

6 You may come down, Officer.

7 MR. FILIBERTO: Your Honor, the State would request
8 that Officer Suggs be allowed to return to his regular duties.

9 MR. GALMORE: No objection, Your Honor.

10 THE COURT: All right, sir.

11 Thank you.

12 (The witness leaves the witness stand.)

13 THE COURT: I'm going to permit you to leave but just be
14 available in the event somebody needs to call you later.

15 Thank you, Officer.

16 All right. Call your next witness, please.

17 MR. FILIBERTO: Thank you, Your Honor.

18 The State would call Steve Clark.

19 (The witness takes the witness stand.)

20 STEPHEN CLARK, BEING DULY SWORN,

21 TESTIFIES AS FOLLOWS:

22 CLERK OF COURT: State your name for the record and
23 spell your last.

24 MR. CLARK: Stephen Clerk, with a p-h, C-l-a-r-k.

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 DIRECT EXAMINATION BY MR. FILIBERTO:

2 Q. Mr. Clark, will you tell the Court where you currently are
3 employed?

4 A. Grand Strand Regional Medical Center?

5 Q. How long have you worked there?

6 A. Approximately a year and a half.

7 Q. Prior to that time, where did you work?

8 A. I was employed with the Horry County Police Department as
9 a detective.

10 Q. And how long did you work there?

11 A. A little bit over six years.

12 Q. Now, when working in that capacity, were you assigned any
13 duties that relate to the matters that bring us here today?

14 A. Yes, sir, I was.

15 Q. Tell the jury what your duties were.

16 A. Um, I was assigned this case on December 28, 2006. What
17 initially happened was December 27th, Mr. Smith, ah, said that he
18 had been car jacked leaving his place of employment at Fairfield
19 Resorts in the Lake Arrowhead Road area, essentially, where it
20 began.

21 Q. Car jacked, did he also - - to your knowledge did he also
22 report that he had been forced to go someplace against his will?

23 A. Yes, sir.

24 Q. And, again, when were those incidences reported to take
25 place?

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. December 27, 2006, was the date that Mr. Smith was car
2 jacked/kidnapped, and I was assigned the case on December 28,
3 2006.

4 Q. Do you recall where he states that he was initially in
5 contact with the defendant?

6 A. He stated that he was leaving his place of employment,
7 Fairfield Resorts, and he was walking across the parking lot to
8 his car to go home.

9 Q. And do you know where Fairfield Resorts is located?

10 A. That's in the Lake Arrowhead Road of Horry County.

11 Q. Can describe to the jury the vehicle that the victim as
12 reported as having.

13 A. It's a green in color Toyota Camry. I'm trying to find
14 the year here. 1997.

15 Q. Now, as a result of your investigation were you able to
16 determine or identify a potential suspect in this case?

17 A. Yes, sir.

18 Q. And who was that suspect?

19 A. That would be Mr. William Long, the defendant.

20 Q. Please tell the jury what led you to believe that the
21 defendant was a suspect in the case.

22 A. Detective Boyd who is the detective who is handling the
23 armed robbery side of this case or he was assigned that side of
24 it, he and I shared an office.

25 He was assigned his case I'm not sure on what date. As I

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 said, I was assigned on December 28, 2006.

2 We were discussing different matters of the cases we were
3 each assigned that morning, and Detective Boyd had mentioned to
4 me that he had been assigned this armed robbery and that he
5 already had a suspect in jail. So we just started comparing
6 notes and discovered that the descriptions matched as well as
7 the car that seen on the video at the Hot Spot.

8 Q. Now, did you take any steps to confirm whether or not your
9 suspicions regarding the defendant, the defendant's involvement
10 in these matters? Did you try and confirm that your suspect
11 was the person who committed the crimes in you were
12 investigating?

13 A. Yes. Once we established Mr. Long as a potential suspect,
14 ah, Mr. Smith was called in. A photo lineup was created and
15 Mr. Smith was able to identify Mr. Long from that photo lineup.

16 MR. FILIBERTO: Court's indulgence just one minute,
17 Your Honor.

18 Q. I show you what's been marked for identification as State's
19 #5 and #6 and see if you recognize them?

20 A. Yes, sir, I do.

21 Q. In respect to State's #5, what is that?

22 A. State's #5 is the Photo Lineup Identification Form that was
23 used by Mr. Smith to - - -

24 Q. Tell the jury, please, what that is.

25 A. When we present a six-pack lineup which is what this would

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 be, ah, we also do this in conjunction. This is the Photo
2 Lineup I.D. Form. We typically ask the victim of a crime if
3 you can identify the person that would be in the photo or the
4 person who harmed you, robbed you, whatever the case might be
5 may or may not be in this photo lineup. If this person is
6 there, please identify the person, and we always go with the
7 first reaction of the - - of the victim.

8 After they've made an I.D. if they make an I.D., then we
9 also ask them to comply along with this form which has - - these
10 are all numbered in sequence 1 through 6. We ask them to
11 identify which person identified as their assailant, ah, as to
12 1 through 6, initial it and sign and date the form.

13 Q. Okay.

14 Explain to the jury how you actually create a photo lineup.

15 A. There's two different ways you can do it. You can go
16 through SLED and then to do it but the Horry County Police - - -

17 Q. SLED?

18 A. The State Law Enforcement Division in Columbia.

19 You can email them with all the different criteria: Race,
20 height, weight, hairstyle, all these different factors, and if
21 you have a suspect, you can actually include that social
22 security number, driver's license number or if you have an I.D.
23 number and include that person in the lineup if you want a
24 particular suspect you want included in the lineup.

25 Ah, also, at the police department we have access to the

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 jail screen at J. Reuben Long, and if that person that you think
2 is your suspect is potentially - - has potentially been
3 arrested, you can review that - - -

4 MR. GALMORE: Objection, Your Honor.

5 THE COURT: Yes, sir.

6 State - - -

7 MR. GALMORE: He's suggesting that my client has been
8 arrested.

9 THE COURT: His question - - -

10 MR. FILIBERTO: Your Honor, he was talking about
11 generally how a photo lineup is created - -

12 THE COURT: Well, sure.

13 MR. FILIBERTO: - - either using a driver's license
14 photo, photo I.D. and sometimes they use booking photos.

15 THE COURT: I understand.

16 I accept that as a general information as to how one is
17 created, and it is only for that purpose.

18 Go ahead.

19 A. Again, as I was stating. If the person has been arrested
20 in the past, you can go through and put that person in the
21 lineup and also use the general characteristics of that person:

22 Height, weight, build, hairstyle, things of that nature, and
23 created a composite of six different photos that are similar to
24 the person that you suspect may be guilty for that crime.

25 Q. Detective Clark, at the time the photo lineup that you had,

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 had the defendant in this case been taken into custody on these
2 charges?

3 A. Yes, he had. Not on my charges per se but he had been
4 taken into custody.

5 Q. On the charges that we're here for today?

6 A. Yes, sir.

7 Q. And through that booking process a photo had been taken?

8 A. Yes, sir

9 Q. Thank you.

10 When you presented the photo lineup - - or did you present
11 the photo lineup to the victim in the case that you were
12 investigating?

13 A. Yes, sir, I did.

14 Q. And when you showed him that photo lineup, did you in
15 anyway suggest to him which of the photos to pick?

16 A. No, sir.

17 Q. Did anybody else to your knowledge - - was anybody else
18 present?

19 A. No, sir.

20 Q. Did anybody to your knowledge suggest to him which photo
21 that he should pick?

22 A. No, sir.

23 Q. Did you in anyway show the victim separate and apart a
24 photo of the defendant?

25 A. No, sir. No, sir.

MR. CLARK - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. Detective, the exhibits that you have, they are - - are
2 they the originals?

3 A. Yes, these are the originals.

4 Q. And have they been changed or alternated in anyway - -

5 A. No, sir.

6 Q. - - from the time that you presented them to the - - to the
7 victim?

8 A. No, sir.

9 Q. And did you ask the victim to see if he could select the
10 person who he had told you had forced him to drive somebody to
11 a different location and then took his car under threat of
12 force?

13 A. Yes, sir.

14 Q. Was he able to select somebody?

15 A. Yes, sir.

16 Q. Which photo - - what number photo did he select?

17 A. He selected photo #6.

18 Q. And who is that a photo of?

19 A. That's of the defendant, Mr. Long.

20 Q. How long did it take the victim upon looking at the photo
21 array select the photo he selected?

22 A. I would guess less than ten seconds. He immediately went
23 straight to it.

24 Q. Did he - - did he make any statement to you?

25 A. No, not at that time.

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Thank you. Please answer any questions Mr. Galtore has.
2 (The Court Reporter accepts State's Exhibits #5 and #6 for
3 identification.)

4 CROSS EXAMINATION BY MR. GALMORE:

5 Q. Mr. Clark, suffice it to say you were not at the Fairfield
6 Resort on the morning of December 27th?

7 A. No, sir.

8 Q. All right.

9 So, you don't have any firsthand information regarding the
10 alleged kidnapping and car jacking?

11 A. No, sir.

12 Q. The information that you have is what was given to you by
13 Mr. Smith. Is that correct?

14 A. Yes, sir.

15 Q. Did you go to the Fairfield Resort at any time?

16 A. No, sir.

17 Q. Do you know if the Fairfield Resort has security cameras?

18 A. I asked Mr. Smith at the time I believe and if I remember
19 right. He told me they did but not in that section of the
20 parking lot.

21 Q. So, you did not attempt to get any video footage of the
22 alleged - -

23 A. No, sir, I did not.

24 Q. - - car jack?

25 How did Mr. Smith come to be in possession of his vehicle

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 again?

2 A. Um, um, excuse me just a minute to review my notes.

3 On December 28th, his car was found on Angel Wood Drive.
4 From what I understand Mr. Smith and his father went to that
5 location to identify the car, and it was taken back to the
6 police department.

7 Q. Did the police come pick up the car.

8 A. Squeaky Stone picked up the car and brought it to the
9 police department.

10 Q. And for what purpose was it brought to the police
11 department?

12 A. For impound and processing.

13 Q. Okay. What do you mean when you say processing?

14 A. Typically, it would be an inventory of the car to further
15 inventory the car to obtain from it evidence that might be
16 obtained from it: Fingerprints, DNA, things of that nature, if
17 it's deemed necessary to do that.

18 Q. Was his car, in fact, inventoried?

19 A. It was inventoried on the scene by the officer who
20 recovered the vehicle.

21 Q. Was the car dusted for fingerprints?

22 A. Not that I know of.

23 Q. You didn't ask for the vehicle to be dusted for prints?

24 A. I did not, no.

25 Q. Did you come to learn that items had been moved inside the

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 vehicle?

2 A. Not until several days later.

3 Q. Items had been moved but, yet, you still did not ask for
4 the car to be dusted for prints?

5 A. By this point the car had already been returned back to the
6 Smiths from what I believe.

7 Q. Did you come to mind that the tag on the vehicle had been
8 altered?

9 A. No, I was not aware of that.

10 Q. So, it's your testimony that you did not ask for this car
11 to be dusted?

12 A. I did not, no.

13 Q. Let me hand you what's been marked for identification
14 purposes as Defense Exhibit #3 and ask you if you recognize
15 that?

16 A. I do.

17 Q. And what is that, sir?

18 A. Vehicle Impound and Inventory Record.

19 Q. Is this the type of document you would have in your case
20 file if this automobile had been tested in this case?

21 A. Yes, it would be.

22 Q. Would that have been - - I know you don't work for the
23 police department anymore but that is in your official police
24 file in this case.

25 A. I believe so, yes, sir.

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 Q. And you were the person responsible for compiling the
2 police file on this case?

3 A. Yes, I was.

4 Yes, I have it.

5 MR. GALMORE: Your Honor, I'd move at this time to have
6 Defense Exhibit #3 for identification moved into evidence as
7 Defendant's Exhibit #3.

8 THE COURT: What says the State?

9 MR. FILIBERTO: I don't think the proper foundation has
10 been laid, sir.

11 THE COURT: In what way? State it for the record.

12 MR. FILIBERTO: Your Honor, he simply asked if that was
13 the form that he would have. He doesn't indicate that that is
14 a form that he prepared.

15 THE COURT: You going to have to put - - if you want it
16 in the record, you going to have to get the author. He's not
17 the author of that.

18 MR. GALMORE: Your Honor, this is the person in charge of
19 the police file, and it's contained in his file.

20 THE COURT: He can't testify as to the authenticity. Is
21 the person who prepared that available?

22 MR. FILIBERTO: Not to my knowledge, sir.

23 THE COURT: Let me see the - - let me see the form.

24 MR. FILIBERTO: I don't know who he is.

25 THE COURT: Is this a part of your records?

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 MR. CLARK: It's part of the official case file, sir.

2 THE COURT: I'm going to permit it under the business
3 record rule.

4 MR. GALMORE: Thank you, Your Honor.

5 (The Court Reporter accepts Defendant's Exhibit #3 into
6 evidence.)

7 Q. Could you read for the jury the part of this Vehicle
8 Impound Report which says, "Miscellaneous Property in Vehicle?"

9 A. Books in truck left for proc. - - for proc. - - assuming
10 processing, car city tag placed on by perpetrator in processing,
11 radio missing.

12 Q. So, it was in the police report that the tag had been
13 changed?

14 A. It was on that form, yes.

15 Q. Under the section that says, "Inventory Taken", can you
16 read what it says under the third star, third asterisk?

17 A. Metallic car city tag was placed in - - placed in by
18 perpetrator. Process for prints.

19 MR. GALMORE: May I publish, Your Honor?

20 THE COURT: Yes, sir.

21 Q. So, it had been requested that this car be dusted for
22 prints. Is that correct?

23 A. Yes, by that officer.

24 Q. But it's your testimony that you don't have any prints in
25 your file?

MR. CLARK - CROSS EXAMINATION BY MR. GALMORE

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1 A. I do not.

2 Q. Now, you testified that you put together the photo lineup
3 in this case?

4 A. On this initial part of the case, yes, sir.

5 Q. And you showed that photo lineup to Mr. Smith?

6 A. Yes, I did.

7 Q. I mean, as far as the six pictures that are in that lineup,
8 you were the person that chose those particular faces?

9 A. Yes.

10 Q. Can you tell me specifically where Mr. Smith was let out of
11 his vehicle?

12 A. I believe he was let off on Hardee Road which is in the
13 Loris Section of Horry County.

14 Q. And approximately how far is that from the Fairfield
15 Resort?

16 A. I'm not familiar with that area. I can only go by what
17 Mr. Smith had said earlier, approximately ten miles.

18 Q. So, you think Mr. Smith was taken a distance of
19 approximately ten miles?

20 A. I would assume, sir. I honestly don't know that area that
21 well to make that assumption.

22 MR. GALMORE: Court's indulgence, Your Honor.

23 Q. Now, you indicated that Mr. Smith was let out on Hardee
24 Road in Loris Community. That's correct?

25 A. Yes.

MR. CLARK - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. And this kidnapping and car jacking took place at the
2 Fairfield Resorts?

3 A. Uh-huh.

4 Q. And where is the Fairfield Resorts located, sir?

5 A. It's on Lake Arrowhead Road, I believe.

6 Q. That would be in Myrtle Beach?

7 A. Myrtle Beach. The Sector Two area Horry County Police
8 covers.

9 Q. All right.

10 Is that within the city of Myrtle Beach?

11 A. No, sir.

12 Q. Between Myrtle Beach and North Myrtle Beach?

13 A. Yes. The Restaurant Row area, that area I believe.

14 Q. Okay. All right.

15 Thank you very much, sir. No further questions.

16 MR. FILIBERTO: Just a few, Your Honor.

17 REDIRECT EXAMINATION BY MR. FILIBERTO:

18 Q. Mr. Clark, when the victim's vehicle was recovered, it was
19 not in the possession of the defendant, correct?

20 A. No.

21 Q. In your experience as a detective, if there's something
22 that's found independent and away, is it a possibility that that
23 type of evidence diminishes fingerprint evidence?

24 A. Very much so.

25 Q. Did you ultimately get arrest warrants for the defendant in

MR. CLARK - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 this case?

2 A. Yes, I did.

3 Q. And you based that on what?

4 A. Witness - - witness identification.

5 Q. Identification by the victim of this defendant in the
6 matters in which you sought the warrants?

7 A. Yes, sir.

8 MR. FILIBERTO: Nothing further.

9 THE COURT: All right, sir. You may come down.

10 (The witness leaves the witness stand.)

11 MR. FILIBERTO: Your Honor, the State would request
12 that this witness can be released from his subpoena so he can go
13 back to his regular job.

14 MR. GALMORE: No objection, Your Honor.

15 THE COURT: Without objection. Okay.

16 MR. CLARK: Thank you, sir.

17 THE COURT: All right. Call your next witness.

18 MR. FILIBERTO: The State would call Detective Toby
19 Boyd.

20 (The witness takes the witness stand.)

21 DETECTIVE TOBY BOYD, BEING DULY SWORN,
22 TESTIFIES AS FOLLOWS:

23 CLERK OF COURT: State your name for the record and
24 spell your last.

25 DETECTIVE BOYD: My name is Toby Boyd, B-o-y-d.

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 DIRECT EXAMINATION BY MR. FILIBERTO:

2 Q. Detective Boyd, can you please tell the Court where you're
3 currently employed?

4 A. Yes, sir. I work for the Horry County Police Department.

5 Q. And how long?

6 A. Ten years.

7 Q. And in what capacity are you currently employed?

8 A. Oh, currently, I'm assigned to Uniform Patrol of the North
9 Precinct as Corporal.

10 Q. At the time - - what capacity were you working in back in
11 December of 2006?

12 A. I was a Violent Crime Detective assigned to the Criminal
13 Investigation Division.

14 Q. While working in that capacity, were you assigned any
15 duties relating to the matters that bring us here today?

16 A. Yes, sir, I was. I received this armed robbery that
17 occurred at the Cash and Dash on the 28th of December of '06.

18 Q. Tell us a little bit about the allegations in the report
19 that you received.

20 A. According to the witnesses on the scene, ah, an individual
21 came to the gas pump and, ah, drew \$35.00 worth of fuel into a
22 vehicle after which he produced a sawed-off shotgun and robbed
23 a victim that was in the parking lot who was also pumping gas,
24 a Mr. Malcolm Norris.

25 Took money from him. Went into the store. Money and a

-DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 watch, I think it was. \$160.00 and a watch valued at \$100.00.

2 The suspect then went into the store with the shotgun.

3 Robbed the victim Mary White who was the cashier at the time

4 and, ah, took from her \$435 in cash and came back out and fled.

5 Q. I'm going to show you State's #7 and ask if you recognize
6 it?

7 A. Yes, sir.

8 Q. What is that, Detective?

9 A. I recovered a DVD/CD from the crime that occurred.

10 Q. Who did you recover that from?

11 A. The victim, Ms. Mary White, gave that to me.

12 Q. From the store?

13 A. Yes, sir.

14 And this is a still-photo taken from that. It shows, ah,
15 the victim, Mr. Malcolm Norris, on the left with his vehicle
16 pumping gas and the vehicle with a male on the right as well.

17 Q. Did you ever determine who that person was leaning on the
18 vehicle?

19 A. Yes, sir.

20 After I was contacted by Officer Suggs who made the initial
21 arrest on him, um, I came out as well. I went out that evening
22 to the scene and spoke to him and also went to the Cash and
23 Dash.

24 Q. Let me stop you there.

25 When you were doing your investigation and looking at the

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 video, did any of the witnesses at that time point out anything
2 about the video? Did they - - the - - why don't you get into
3 how you identified who that was?

4 A. Um, after it was determined that Mr. Long had the property
5 on his possession belonging to Malcolm Norris, I conducted or
6 constructed a lineup, six-pack lineup and presented it to the
7 two victims.

8 Q. Did you later identify the vehicle that's in that photo,
9 the sedan vehicle?

10 A. Yes, sir. The victim in the actual car jacking was able
11 to look at it later and identify that as his victim - - I mean
12 his vehicle but that was Detective Clark's case.

13 Q. Does that fairly and accurately represent the photo from
14 the video that you took that night?

15 A. Yes, sir.

16 MR. FILIBERTO: At this time the State would move
17 State's #7 into evidence, Your Honor.

18 THE COURT: All right, sir.

19 MR. GALMORE: No objection, Your Honor.

20 THE COURT: Without objection.

21 MR. FILIBERTO: The State would publish.

22 THE COURT: All right.

23 (The Court Reporter accepts State's Exhibit #7 into
24 evidence.)

25 Q. Detective Boyd, as a result of your investigation, did you

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 - - did your investigation lead you to a possible suspect in
2 those matters that you were investigating?

3 A. Yes, sir.

4 Both of the victims were presented a lineup, and they were
5 both able to, ah, accurately identify him. As a result, I was
6 - - -

7 Q. How did you identify the person that you had as a suspect?

8 A. He - - well, we were able to view him, look at him and also
9 the video - - the video tape and he had the property of Mr.
10 Malcolm Norris in his pocket at the time of the arrest.

11 Q. Now, let's go back to - - where did the actual armed
12 robberies take place?

13 A. The actual address is 701 Highway 701 North in the Loris
14 Section of Horry County - - at the Cash and Dash Store.

15 Q. Now, after you identified somebody, ah, the defendant as a
16 suspect, did you take steps to confirm that with the victims?

17 A. Yes, sir, with the lineup.

18 I requested and received a six-pack photograph lineup from
19 the State Law Enforcement Division and, subsequently, presented
20 that to the two victims.

21 Q. I want to show you what's been marked as State's #3 and #4
22 - -

23 A. Okay.

24 Q. - - and State's #1 and #2.

25 Let's start with #1 and #2, what is that?

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Ah, State's Exhibit #1 is a Photo Lineup Identification
2 Form. It's a standard form we use within the county with this -
3 - -

4 Q. Explain to the jury again what that's used for.

5 A. This form has the, ah, the, ah, areas one, two, three,
6 four, five, six which corresponds with the six photographs that
7 we have. The victim or witness looks at the, ah, lineup which
8 is also numbered one, two, three, four, five, six. If they
9 determine that they can find the person in the lineup, then they
10 go over to the form. Initial beside their appropriate number.
11 Also, they write the number two in up there with the address and
12 date, and everybody signs it.

13 We also ask that they circle the person's face and sign
14 their name so there is no question that anything has been
15 altered.

16 Q. Now, is there a disclaimer of sorts on that form?

17 A. The top portion.

18 Q. Okay. If you would read to the jury that disclaimer.

19 A. Yes, sir.

20 You will be asked to look at several photographs. The fact
21 that the photographs are shown to you should not influence your
22 judgment. You should not conclude nor guess that the
23 photographs contain the picture of the person who committed the
24 crime. You are not obliged to identify anyone. It is just as
25 important to free innocent persons from suspicion as to identify

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 guilty parties.

2 I observed the following lineup up, and then there's a line
3 there for the address, on - - -

4 Q. That's enough for the purposes.

5 A. Okay.

6 Q. I show to you State's #2. What is that?

7 A. That's the six-pack lineup that Ms. Mary White was
8 presented.

9 Q. Now, is that - - are State's #1 and #2 the original?

10 A. Yes, sir.

11 Q. Have they been altered or changed in any way since you put
12 them into evidence?

13 A. No, sir.

14 Q. Tell the jury how you created your six-pack photo lineup.

15 A. Well, like you heard earlier, there's two different ways.
16 You can do one of your own. Quite frankly, I was never really
17 good at doing my own.

18 And I'd send a request form to the State Law Enforcement
19 Division and ask for the criteria and person's identification or
20 driver's license number, and they'll send you one back from the
21 statewide, ah, data base that they have of driver's license
22 photographs.

23 So, that's what I did. I did the State Law Enforcement
24 Division version. They do a better job than I do.

25 Q. Now, did you present State's #1 and #2 to one of your

1 victims in this case?

2 A. #1 and #2 was for Ms. Mary White?

3 Q. Did you present those to her?

4 A. Yes, sir.

5 Q. When you presented them, did you suggest to Ms. White which
6 photo to pick? Did you suggest which photo - - -

7 A. Which suspect? No, sir. No.

8 Q. Did anybody - -

9 A. No, sir.

10 Q. - - suggest one?

11 Who else was present when you presented those to her?

12 A. Ah, just she and I.

13 Q. And you - - did you show her a separate photo of the
14 defendant prior to her - -

15 A. No, sir.

16 Q. - - seeing this.

17 How long had you showed it to her was she able to select
18 the person?

19 A. Um, it was - - you mean how did she look at it?

20 Q. How long did she look at it before she selected a photo?

21 A. It was a matter of seconds. I don't know. Maybe ten
22 seconds.

23 Q. The - - what number photo did she select?

24 A. Number two.

25 Q. Who is that a photo of?

DETECTIVE BOYD - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. William Long.

2 Q. Looking at State's #3, what is that?

3 A. State's #3 is the Photo Lineup Identification Form that was
4 presented to Mr. Malcolm Norris the same day.

5 Q. Other than having a different name on it, is everything the
6 same?

7 A. Every - - everything is the same.

8 Q. What about the State's #4?

9 A. That's just an additional color copy of the six-pack that
10 I received from SLED, the same one that Ms. Mary White looked
11 at.

12 Q. And that - - was that presented to somebody other than Mary
13 White?

14 A. Malcolm Norris, the other victim.

15 Q. Again, how long - - well, did you in anyway suggest to Mr.
16 Norris which photo?

17 A. No, sir.

18 Q. To your knowledge, did anybody else suggestion - - make a
19 suggestion to Mr. Norris which photo to pick?

20 A. No, sir, nobody did.

21 Q. And who else was present when you presented this lineup?

22 A. It was just he and I.

23 Q. How long if you recall did it take for Mr. Norris to select
24 a photo?

25 A. I was trying to remember and it was brief, sir, but I can't

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 say. I would say under ten seconds, probably, maybe under
2 fifteen.. It was brief. It was quick.

3 Q. The, ah, what number of photo did Mr. Norris?

4 A. On the what? Number two.

5 Q. This is basically the same six-pack photo lineup?

6 A. It's the exact same. It's just - - I just printed two of
7 them because I had two victims.

8 Q. And, again, for the record. Whose photo is that?

9 A. William Long.

10 Q. Thank you. Please answer any questions Mr. Galmore may
11 have.

12 CROSS EXAMINATION BY MR. GALMORE:

13 Q. Detective Boyd, your first involvement was when you were
14 called to the scene at the Cash and Dash?

15 A. Yes, sir, my first physical involvement was. I had - - no,
16 no, no. I didn't go to the scene in the case.

17 I received the case assigned to me on the 28th at 11:00.

18 Q. Did you send an investigator a Crime Scene Analyst to the
19 Cash and Dash?

20 A. No, we weren't - - we weren't called to, ah, to the armed
21 robbery at the store. There was the initial responding
22 officers went out but they wasn't - - an investigator didn't go
23 out.

24 Q. Was anything in the store dusted for fingerprints?

25 A. Inside, no, sir. Nothing inside the store was.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Was the pump dusted for fingerprints?

2 A. Yes, sir, it was. Sgt. Gause was able to dust it but,
3 quite frankly, with hundreds or possibly thousands of different
4 people touching that, I saw very little evidentiary value to it
5 and didn't - - I didn't pursue it any further.

6 Q. You didn't have the prints analyzed is what you're saying?

7 A. Right.

8 Q. So, someone had the pump dusted but they were not analyzed?

9 A. There was four partial prints that were - - that were - -
10 latent prints that were recovered and lifted from there. No,
11 sir. Like I said. Potentially, thousands of different people.
12 There was no evidentiary value to it at all.

13 Q. But you - - once you had a suspect in custody, would that
14 perhaps increased the evidentiary value?

15 A. Well, perhaps, maybe, possibly.

16 Q. But it wasn't done?

17 A. I don't know.

18 Q. It was not done in this case?

19 A. Correct.

20 Q. Did any officers have the cash drawer dusted for prints?

21 A. No, sir. Again, that - - it would - - the drag marks and
22 considered that as well but I - - it wasn't done. No, sir.

23 Q. Mr. Long was taken into custody the next day after the Cash
24 and Dash robbery. Is that correct?

25 A. That's right.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Is it true that he was taken to the hospital after he was
2 taken into custody?

3 A. Yes, sir.

4 Q. What attempt was made to capture the person who robbed the
5 Cash and Dash on the night that it was robbed?

6 A. Um, initially, when the officer got there, he was already
7 gone. The information could have possibly been given out to
8 the, ah, that sector or that precinct but so far as having an
9 identification on him that night, there was none.

10 Q. They had an identification on the vehicle, correct?

11 A. Well, they had certainly had a partial description of it,
12 yes, sir. That wasn't any identification on it on that night.

13 Q. Wasn't any road blocks set up?

14 A. No, sir. No road blocks.

15 Q. No officers reported locating a green Toyota Camry on the
16 night of the robbery?

17 A. No, sir.

18 Q. And when Mr. Long was taken into custody, he was not
19 driving a green Toyota Camry?

20 A. He was in a pond. No, sir. He wasn't driving anything.

21 Q. You indicated that you had SLED to prepare your photo
22 lineup?

23 A. Yes, sir.

24 Q. Why did you have SLED prepare your report -- your lineup?

25 A. Like I said. It was -- there's two different ways. We

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 can do it ourselves off the jail screen if a person had been
2 arrested before and had a jail photograph or we can do it that
3 way, and, like I said, I've done it both ways, and, quite
4 frankly, they do a better job than I do. So I just allow them
5 to do it. It's quick. You can email the request in and,
6 typically, you get it right back. They do better than me.

7 Q. Do you know where SLED obtained their photos?

8 A. Yes, sir. From their statewide data base from driver's
9 license and identification cards.

10 Q. So, the picture that was on the SLED lineup, that would be
11 Mr. Long's driver's license photo?

12 A. That's correct. That would be the last one that they had
13 of him.

14 Q. Did you attempt to show the witnesses the video of the
15 robbery?

16 A. Ms. Mary White, obviously, looked at it.

17 We had a few, ah, relatively vague witness statements but
18 no one else looked at the video. I didn't see what purpose that
19 would serve.

20 Q. Well, seeing Mr. Norris identified Mr. Long through his
21 driver's license photo, correct?

22 A. Yes, sir, from the six-pack.

23 Q. Did anybody identify him from the video?

24 A. Yes, sir. Miss Mary did.

25 Q. She sat down with you and looked at the video and said,

1 "That's him"?

2 A. We looked at it together when she presented it to me, yes,
3 sir.

4 Q. And she said the person on that video was William Long?

5 A. After - - no, sir. No, sir. Let me back up so we're
6 clear.

7 She showed that to me and then later identified him by
8 name. She knew him personally by name but when I showed him -
9 - when I showed her the six-pack was days later.

10 Q. Did you reduce this revelation to writing?

11 A. Which one?

12 Q. That she looked at the video with you and she identified
13 this person as William Long? Did you put that in writing
14 anywhere?

15 A. That's not what I said, Mr. Galmore.

16 Q. Please explain.

17 A. That's not what I said.

18 We looked at the video initially the day she gave that to
19 me, and I took it from her, and then that's not when she said
20 that was him. I thought you meant at a different time.

21 Q. Well, when you looked at the video initially, was she able
22 to say, "Wow, I know him. That's William Long"?

23 A. No, sir.

24 Q. She did not. Okay.

25 Now, at a later point she looked at the photographs.

DETECTIVE BOYD - CROSS EXAMINATION BY MR. GALMORE

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1 A. On the 3rd. I think it was the 3rd. Yes, sir. It was the
2 3rd of January, '06 - - '07, and that's when she looked at him
3 and picked him out.

4 Q. Now, when she looked at that six-pack and picked him out,
5 did she tell you, "I know him."

6 A. She revealed that the Solicitor at a later time. She
7 didn't tell me personally that.

8 Q. So when you took that six-pack, you did not know that she
9 already knew William Long?

10 A. No, sir.

11 Q. And she told the Solicitor at some later point that she'd
12 known him?

13 A. Right.

14 Q. In that video the suspect uses a shotgun, correct?

15 A. It appears to be a sawed-off shotgun. It's a - - it's
16 longer than a regular small pistol.

17 Q. When Mr. Long was taken into custody, did the police
18 recover a sawed-off shotgun?

19 A. No, sir.

20 Q. Was a sawed-off shotgun found in the Toyota Camry?

21 A. No, sir.

22 We didn't recover a sawed-off shotgun at all.

23 Q. You didn't recover a shotgun at all?

24 A. No, sir.

25 Q. Do you know approximately what time Mr. Long was taken to

DETECTIVE BODY - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 the hospital?

2 A. Yes, well, he was actually taken. I've got the medical
3 report. 18:23 was his admission time, 6:23 p.m.

4 Q. And what time was Mr. Long taken into custody?

5 A. Shortly before that but I can give you the exact time.
6 4:30 p.m. was his arrest time.

7 Q. Well, what was Mr. Long doing between 4:30 and 6:30?

8 A. At the time he was complaining. Said he was hurt. Said
9 somebody had run over him, and, ah, we were doing - - I assume
10 the officers on the scene were doing the administrative part,
11 the inventory of what was there, waiting for the crime scene guy
12 to come and look for the gun that he threw into the pond, the
13 things that you would normally expect to be doing on the scene.

14 He was taken - - you'd have to assume he got there around
15 6:00 p.m. So, an hour and a half.

16 Q. He remained on the scene complaining of injuries for an
17 hour and a half?

18 A. I can't really say. I don't know.

19 MR. GALMORE: Court's indulgence, Your Honor.

20 No further questions, Your Honor.

21 MR. FILIBERTO: Just a few, Your Honor.

22 REDIRECT EXAMINATION BY MR. FILIBERTO:

23 Q. Detective Boyd, the time that you say the defendant was
24 taken into custody, where did you get that time from?

25 A. It was on the booking report.

DETECTIVE BODY - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. And so you weren't there?

2 A. No, sir.

3 Q. Do you know if the defendant complained about being run
4 over by a car initially or at some later time?

5 A. I - - no, sir, I don't know. He never complained it to
6 me.

7 MR. FILIBERTO: Nothing further.

8 THE COURT: All right.

9 Come down. Thank you.

10 (The witness leaves the witness stand.)

11 THE COURT: All right.

12 The jury has been out here very patiently for approximately
13 an hour and a half. Let's take about a fifteen minute break,
14 and I'll be calling you back.

15 You may retire to the jury room, please.

16 (The jury retires to the jury room at 11:33 a.m.)

17 THE COURT: We are in recess.

18 (The Court recesses the trial of this case for a short
19 break and thereafter reconvenes the trial of this case.)

20 THE COURT: Thank you. Be seated.

21 Are we ready for the jury?

22 MR. FILIBERTO: Yes, Your Honor.

23 THE COURT: Ready?

24 MR. GALMORE: Yes, sir.

25 THE COURT: Bring the jury in for me, please.

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Got your witness ready?

2 MR. FILIBERTO: All right, sir.

3 (The jury returns to the courtroom at 11:58 a.m.)

4 THE COURT: All right, sir.

5 MR. FILIBERTO: Thank you, Your Honor.

6 The State would call Nathan Smith.

7 (The witness takes the witness stand.)

8 NATHAN O. SMITH, BEING DULY SWORN,

9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: State your name and spell your last for
11 the record.

12 MR. SMITH: Nathan Smith, S-m-i-t-h.

13 DIRECT EXAMINATION BY MR. FILIBERTO:

14 Q. Mr. Smith, where do you currently live? Where do you
15 currently live?

16 A. Charlotte, North Carolina.

17 Q. And what do you do?

18 A. I work at Johnson & Wales University, and I'm in the
19 Financial Aid Office, and I attend school also at Johnson &
20 Wales.

21 Q. Now, where did you live back in December 27th of 2006?

22 A. In the Wampee Community or Poplar Community of South
23 Carolina.

24 Q. Did you work at that time?

25 A. I did.

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. And where did you work?

2 A. At Fairfield Resorts which is now Windham Resorts?

3 Q. And what town is that in?

4 A. It's in Myrtle Beach, South Carolina.

5 Q. And did you work on December 27th of 2006?

6 A. I did.

7 Q. Which shift did you work on?

8 A. Third?

9 Q. What does that mean? Explain that.

10 A. That's from 11:00 p.m. until 7:00 a.m.

11 Q. And explain to the jury what your job was.

12 A. I worked at the front desk as a Guest Service
13 Representative basically just checking in and checking out
14 guests.

15 Q. What time did you get off work that morning?

16 A. At 7:00 a.m.

17 Q. When you were leaving work that morning, did you come into
18 contact with the defendant in this case?

19 A. I did.

20 Q. Tell the jury what happened at that time.

21 A. Um, I was leaving to go home, and I saw the defendant.

22 "Hi, you know, hi. How you doing?"

23 You know, just approached him like that, and, um, he didn't
24 say anything. So, when I started walking, he said, "I need for
25 you to take me to Dothan, North Carolina."

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 MR. GALMORE: Objection, hearsay, Your Honor.

2 THE COURT: Well, he says he's talking to the defendant.

3 MR. GALMORE: Yes, sir.

4 THE COURT: No, sir. I - - that's an alleged utterance
5 by the defendant. He's entitled to - - there's no hearsay
6 there.

7 I'll leave it for the jury to consider whether he said it
8 or not and the import of it but, clearly, he's entitled to
9 testify to it.

10 Q. So, again, the defendant asked you to take you someplace?

11 A. Right.

12 Q. Go ahead.

13 A. He asked me to take him somewhere, and he said, "To Dothan,
14 North Carolina."

15 And I told him I didn't have any gas. You know, I
16 couldn't take him anywhere.

17 He said, "If you don't take me, you going to meet my little
18 friend."

19 Q. What did you believe that to mean?

20 A. Meaning that he said some type of weapon like a gun, you
21 know, to kind of scare me up.

22 Q. At that time when he said that to you, did you feel free to
23 just leave and go home as you had planned?

24 A. No, no, I didn't.

25 Q. And, again, you did it because you felt that he was armed

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 and he was threatening you?

2 A. Right. Right. I felt kind of threatened.

3 Q. What did you do then?

4 A. I then proceeded to get in the vehicle and drive.

5 Q. Did this defendant get in the vehicle?

6 A. Right.

7 Q. And where did you drive to?

8 A. I drove, like, through the Loris - - we drove on Highway
9 22, straight Highway 22. Then in the Red Bluff area of Loris.

10 Q. While you were driving, did you do anything to get some
11 help or some attention?

12 A. No, I didn't - - well, actually, I did. I started speeding
13 so that I would have a - - so that a cop maybe could stop me
14 and, you know, try to help me but I didn't never have anything
15 to happen.

16 Q. Did the defendant make any comments to you regarding your
17 driving?

18 A. Other than just to keep driving.

19 Q. Did he notice that you were speeding?

20 A. He did.

21 Q. Did he say anything about that?

22 A. Yeah. He told me to slow down.

23 Q. And did you - - you complied with his order to slow down?

24 A. I did.

25 Q. What happened next?

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. We reached the Loris Community or Red Bluff area, and we
2 was down Hardee Road in the Loris Community, and that's where we
3 kind of got into a confrontation, argument and he told me to get
4 out of the car.

5 Q. What specifically, if you remember, did he say to you?

6 A. Um, just told me to just, you know, to just get out the
7 car. If he didn't - - if I didn't get out the car, then he was
8 going to shoot me.

9 Q. What did you do then?

10 A. I went ahead and proceeded with him what he said, and I got
11 out the car.

12 Q. What did the defendant do?

13 A. And he took off with my vehicle.

14 Q. What did you do next?

15 A. After that I just - - well, I kept walking because I didn't
16 have a cell phone or anything. The cell phone and everything
17 was inside the vehicle. So, I had no way, you know, to
18 communicate with a police officer or anyone else. So, I walked
19 until I saw someone driving down the road, and I called, you
20 know, police, and they came.

21 Q. What kind of - - what make and car of vehicle were you
22 driving that day?

23 A. It was a green Toyota Camry, 1997.

24 Q. Let me show you what's been marked as State's #7 already in
25 evidence and ask you if you can identify the vehicle in there?

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Yes, that's my vehicle.

2 Q. Do you recognize the person that's leaning on it?

3 A. Yes. That's the defendant.

4 THE COURT: Did you identify for the record where that
5 picture was allegedly taken?

6 MR. FILIBERTO: Yes, Your Honor.

7 We placed it into evidence. It was the photograph. he
8 officer identified it as being taken, a still-shot from the
9 surveillance video at the Cash and Dash in Loris.

10 Q. And I'll show you what's been marked for identification as
11 State's #5 and State's #6 and ask you if you recognize those?

12 A. I do. That's the defendant.

13 Q. Now, with respect to State's #5, what is that?

14 A. That's also a picture of the defendant.

15 Q. Okay.

16 Is there more than one picture on that sheet?

17 A. There is.

18 Q. How many pictures are there?

19 A. There are six pictures.

20 Q. Who initially presented that to you?

21 A. One of the investigators, um, I can't remember his name but
22 it was one of the investigators.

23 Q. Was it Detective Boyd here?

24 A. No.

25 Q. Oh, I'm sorry. It would be Detective Clark.

MR. SMITH - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Right.

2 Q. He was the investigator of this crime.

3 Um, okay.

4 Well, when he presented that to you, did he suggest
5 anything to you about which photo to select?

6 A. No, he didn't.

7 Q. Did he tell you that the defendant was in that -- in those
8 pictures?

9 A. No, he didn't.

10 Q. Did anybody suggest to you which photo to pick?

11 A. No.

12 Q. Did anybody show you a separate picture of the defendant
13 before you picked him?

14 A. No.

15 Q. Were you able to pick a photo of the person who car jacked
16 you and kidnapped you?

17 A. I was able to do that, yes.

18 Q. Did the detective ask you to mark that in any way?

19 A. He just asked, you know, he said, "Pick the person that
20 robbed you."

21 Q. Did he ask you to do any mark on the photos?

22 A. He told me to circle it and initial.

23 Q. Did you do that?

24 A. I did.

25 Q. Did you fill out -- with respect TO State's #5, did you

MR. SMITH - CROSS EXAMINATION BY MR. GALMORE

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1 fill out a number for that photo list?

2 A. I did.

3 Q. Now, have either of those things been changed in any way
4 since they were presented to you before?

5 A. No.

6 MR. FILIBERTO: Your Honor, at this time the State
7 would move State's #5 and #6 into evidence.

8 THE COURT: You may do so.

9 (The Court Reporter accepts State's #5 and #6 into
10 evidence.)

11 MR. FILIBERTO: I will publish them.

12 Q. Mr. Smith, as you sit here today, do you have any doubt the
13 person whose photo you selected in that photographic lineup is
14 the person who forced you to drive your car from Fairfield
15 Resorts, ah, to a location some distance away and then forcibly
16 took your car under threat of violence.

17 A. I have no doubt.

18 Q. Please answer any questions Mr. Galmore may have.

19 THE COURT: Mr. Galmore.

20 CROSS EXAMINATION BY MR. GALMORE:

21 Q. Mr. Smith, are there security officers at the Fairfield
22 Resort?

23 A. There are.

24 Q. Did you attempt to call for any of them?

25 A. I did not. They were already gone, you know, as of 7:00.

MR. SMITH - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Was there anyone in the parking lot with you?

2 A. There was not.

3 Q. They have security cameras at the Fairfield Resort?

4 A. They do.

5 Q. Did you attempt to walk away from Mr. Long?

6 A. Yes, I did.

7 Q. Why didn't you continue walking?

8 A. Because he attempted in a way - - he approached me in a way
9 that made me feel threatened. So - - -

10 MR. GALMORE: Your Honor - - Court's indulgence, Your
11 Honor.

12 MR. FILIBERTO: Your Honor, may we approach?

13 (The Court holds a Bench conference off the record and in
14 the presence of the jury but outside the hearing of the jury.)

15 THE COURT: The defendant is entitled to consult with
16 his attorney at anytime during these proceedings.

17 You may proceed.

18 Q. Did you previously testify that you approached him?

19 A. Yes.

20 Q. Okay.

21 And now you're testifying that he approached you in a
22 threatening manner?

23 A. Well, this is after I - - after I approached - - well, this
24 is how it went.

25 After I approached the defendant. We was just saying,

MR. SMITH - CROSS EXAMINATION BY MR. GALMORE

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1 "Hey, how you doing?", he didn't say anything. Afterwards, he
2 did tell me. He say, "Well, I need for you to take me to
3 Dothan, North Carolina."

4 I told him I didn't have any gas, and after that he said,
5 "Well, if you don't take me, you going to have to meet my little
6 friend."

7 And then we proceeded after that.

8 Q. Did he ever display a weapon?

9 A. No.

10 Q. Did you even see a gun?

11 A. I didn't see a gun.

12 Q. And while you were driving, did you pass any red lights?

13 A. I passed one.

14 Q. Did you attempt to get out the car at any time?

15 A. No, I didn't.

16 Q. And you continued to ride along -- drive the car along?

17 A. Yes.

18 Q. Where did you say he dropped you off at?

19 A. This was off on Hardee Road.

20 Q. And how far is that from the Fairfield Resort?

21 A. Probably about ten miles.

22 Q. How long would you have been in the car with your
23 assailant?

24 A. Probably about an hour.

25 Q. You went down 22 and then down Red Bluff Community?

MR. SMITH - CROSS EXAMINATION BY MR. GALMORE

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1 A. That's correct.

2 Q. You went about ten miles in an hour?

3 A. About ten miles.

4 Q. Were you able to give the police a description of your
5 assailant?

6 A. I did.

7 Q. What was that description?

8 A. Just that he was about 5, 7. Probably about a hundred,
9 between a hundred and forty, a hundred and fifty pounds, and
10 that's all I was able to tell them.

11 Q. That's all you were able to tell them.

12 A. Yes.

13 Q. And next thing you know they brought you back this lineup?

14 A. Right.

15 Q. That lineup doesn't display height and weight, does it?

16 A. No.

17 Q. Was your assailant wearing gloves at the time?

18 A. I can't remember that.

19 Q. You can't remember?

20 A. Un-huh.

21 Q. How is it that you came to recover your vehicle?

22 A. Um, someone called my house and asked for my dad, and they
23 gave, you know, instructions, directions where my vehicle was.

24 So, me and my dad, we went over in the area where they said
25 the car was, and that was it.

MR. SMITH - CROSS EXAMINATION BY MR. GALMORE

233

1 Q. Do you know who called you?

2 A. Don't know who called. It was a blocked number who
3 called.

4 Q. And you don't know if Mr. Long called you or some other
5 person?

6 A. I don't know.

7 Q. What did you do when you got in your vehicle?

8 A. We sat in the car and called the police and the
9 investigator.

10 Q. So, you told the police where the car was located?

11 A. Well, my dad told him because he was the one who they
12 called. So, he told them where we were - - where we were at.

13 Q. So, they didn't actually find the car. Someone called you,
14 and you let the police know where the car was.

15 A. Right because that was the instructions given to us.

16 Q. Did you notice if anything had been moved in the car?

17 A. Yes, I could.

18 There was a radio taken out, um, and that was it inside
19 of the car, and then on the tag was changed outside of the
20 vehicle.

21 Q. Were there any items that were moved from the trunk to the
22 interior or vice versa?

23 A. Ah, when the trunk was open, I didn't see my books that I
24 had at the time. They wasn't even in the inside. They wasn't
25 in the trunk either. So, I don't know where they were.

MR. SMITH - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. Your school books?

2 A. Right.

3 Q. Were there any items that were moved into the car from the
4 trunk?

5 A. Um, I can't remember if it was or not. I'm not sure.

6 Q. Do you remember what date you were asked to come in and
7 look at that photo lineup?

8 A. I'm not sure. I just know it was within, like, seven days
9 after the incident happened. It was within those seven days.

10 MR. GALMORE: Court's indulgence, Your Honor.

11 No further questions, Your Honor.

12 THE COURT: All right, sir.

13 You have any redirect?

14 MR. FILIBERTO: Just very briefly, Your Honor.

15 REDIRECT EXAMINATION BY MR. FILIBERTO:

16 Q. Mr. Smith, you indicated that a phone call was received at
17 your home telling you that the car had been seen, ah, discovered
18 and then a location. Is that right?

19 A. Yes.

20 Q. Did you receive that call?

21 A. No, it was my father.

22 Q. So, you didn't speak with that person?

23 A. I didn't.

24 Q. You don't know who it was?

25 A. I don't.

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. You don't know if it was the police? Don't know it wasn't
2 the police?

3 A. Right.

4 MR. FILIBERTO: Nothing further.

5 THE COURT: Come down. Thank you.

6 Call your next witness.

7 (The witness leaves the witness stand.)

8 MR. FILIBERTO: Your Honor, may we approach fore a
9 second?

10 THE COURT: Yes.

11 (Bench conference held off record and in the presence of
12 the jury but outside the hearing of the jury.)

13 MR. FILIBERTO: The State calls Malcolm Norris.

14 (The witness takes the witness stand.)

15 MALCOLM NORRIS, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: State your name for the record and
18 spell your last.

19 MR. NORRIS: Malcolm Norris, N-o-r-r-i-s.

20 DIRECT EXAMINATION BY MR. FILIBERTO:

21 Q. Mr. Norris, where do you currently live?

22 A. Tabor City, North Carolina.

23 Q. And where do you work?

24 A. Fields Food Stores in Loris, South Carolina.

25 Q. Were you working there in December back in 2006?

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Yes, sir.

2 Q. Mr. Norris, did you ever stop at the Cash and Dash Station
3 in Loris?

4 A. Stopped there all the time.

5 Q. Do you remember stopping there the night of December 27,
6 2006?

7 A. Yes, sir, I do.

8 Q. And while you were there, do you recall having any contact
9 with the defendant in this case?

10 A. Yes, sir. When I pulled up I seen a gentleman pumping gas
11 and kind of looked odd. He went and jumped back in the car.

12 I pulled up to the pumps, and I started to fuel up. He
13 came out of the car with the shotgun, held it into my chest.
14 Told me to give him my wallet and my watch, and then he asked me
15 to empty my pocket, and I told him that was the only thing that
16 I had.

17 He turned around and told me to wait right there, and when
18 he did, when he turned his back, I took off and run.

19 Q. Where did he go?

20 A. He went inside the store.

21 Q. Mr. Norris, I'm going to show you what's been marked as
22 State's #3 and #4 for identification and ask you if you
23 recognize those?

24 A. Yes, sir, I do.

25 Q. Regarding State's #4, what is that?

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

237

1 A. A picture of the defendant.

2 Q. Are there more than one picture on that sheet?

3 A. Ah, yes, sir. There's six.

4 Q. When - - do you remember when that was presented to you?

5 A. It was right shortly after the incident occurred.

6 Q. When it was presented to you, did anybody suggest to you
7 what person to select?

8 A. Ah, no, sir.

9 Q. Does anybody - - did anybody show you a separate picture of
10 the defendant prior to you viewing that lineup?

11 A. No, sir.

12 Q. Had you ever seen the defendant before that night at the
13 Cash and Dash?

14 A. No, sir.

15 Q. Were you able to identify a photograph from the pictures
16 that were presented to you?

17 A. Ah, yes, sir.

18 Q. Did the police ask you to mark that in anyway?

19 A. Yes, sir. Asked me to circle it and sign my name up under
20 it.

21 Q. With respect to State's #5, ah, did the police ask you to
22 read that?

23 A. Ah, yes, sir.

24 Q. Did they ask you to write - - write down anything on that?

25 A. He asked me to read it, sign it, ah, and he asked me to

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 identify a photo out of the lineup.

2 Q. Okay.

3 And did you do that?

4 A. Ah, yes, sir, I did.

5 Q. Okay.

6 Are both of those documents in the same shape as when you
7 gave them back to the police after you reviewed them? Have they
8 been changed in any way?

9 A. No, sir.

10 MR. FILIBERTO: At this time, Your Honor, I would move
11 State's #4 and #3 into evidence.

12 THE COURT: All right, sir. Without objection.

13 (The Court Reporter accepts State's Exhibits #3 and #4 into
14 evidence.)

15 Q. Now, I show you State's #8 and #9 and see if you can
16 identify those?

17 A. Yes, sir. #8 is my personal belongings, my wallet, ah,
18 cash, credit cards, ah, driver's license, and #9 is my watch.

19 MR. FILIBERTO: Now, these are already in evidence and
20 being testified to as being the property taken from the
21 defendant at his arrest.

22 Q. Did you receive this property back?

23 A. Ah, yes, sir. I'm wearing the watch today.

24 Q. Who gave it back to you?

25 A. I had to come over in Horry County over in Conway and pick

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 it up.

2 Q. Did the police give it back to you?

3 A. Ah, yes, sir. I had to go out to the Law Enforcement
4 Center and pick it up.

5 Q. Mr. Norris, now I'm going to show you what's been premarked
6 for identification as State's #18, I'm sorry, #17, and ask if
7 you recognize it.

8 A. It looks like a video tape.

9 Q. Did you have occasion previously to look at that video?

10 A. I have viewed it. Ah - - -

11 Q. Does it fairly and accurately show what happened to you
12 that night out at the Cash and Dash?

13 A. Yes, sir.

14 MR. FILIBERTO: Your Honor, the State would move
15 State's #17 into evidence.

16 MR. GALMORE: Your Honor, I would object. Improper
17 foundation. He's not in charge of the video. He doesn't work
18 at the Cash and Dash. He's not the person responsible for
19 taking these videos.

20 MR. FILIBERTO: And, Your Honor, I would say he was
21 there. He had the opportunity to review the video and to lay
22 the foundation that it fairly and accurately shows what happened
23 to him that night.

24 THE COURT: Who is the operator of the Cash and Dash?

25 MR. FILIBERTO: The operator?

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 THE COURT: Yes.

2 MR. FILIBERTO: The owner?

3 THE COURT: Yes. No. Who was operating at the time.
4 Whatever do you have that this video was at the Cash and - - he
5 can't know that, can he.

6 MR. FILIBERTO: He knows he was there, and it happened.

7 THE COURT: I understand.

8 MR. FILIBERTO: The authorities collected this from the
9 Cash and Dash.

10 THE COURT: If he testifies - - has he seen the video?

11 MR. FILIBERTO: Yes, sir. He testified to that.

12 THE COURT: Okay.

13 And he is testifying this video for the jury - - I'm going
14 to let it in.

15 MR. GALMORE: Yes, sir.

16 THE COURT: He can identify it. He says it's him. So
17 I'll let the jury decide whether it's him or not or whether it's
18 the defendant or not.

19 I'll let the jury look at it for what weight they think it
20 should be given.

21 MR. GALMORE: Yes, sir.

22 (The Court Reporter accepts State's Exhibit #17 into
23 evidence.)

24 THE COURT: All right, sir.

25 Are you ready to set it up at this time, Solicitor?

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 MR. FILIBERTO: Yes, sir.

2 THE COURT: All right.

3 I'm going to let you go to the jury room just a few minutes
4 while we set this up for your consideration.

5 Thank you.

6 (The jury retires to the jury room at 12:24 p.m.)

7 THE COURT: All right. Let's set it up.

8 We are in recess.

9 (The Court recesses the trial of this case briefly and
10 thereafter reconvenes the trial of this case.)

11 THE COURT: We're on the record, Linda. Are we on the
12 record?

13 COURT REPORTER: Yes, sir, Your Honor.

14 THE COURT: Mr. Galmore, I want the record to reflect
15 that you and your defendant have previously seen this video.

16 MR. GALMORE: Yes, sir.

17 THE COURT: All right, sir.

18 When you get it, we'll start right at the beginning.

19 MR. FILIBERTO: The entire length of the video, Your
20 Honor, is seven minutes, thirty-four seconds.

21 THE COURT: Okay. Is that the beginning of it?

22 MR. FILIBERTO: Yeah. We did it all the way back at
23 the beginning.

24 THE COURT: Okay.

25 All right. Bring the jury in. I'll go around to the

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 side. Don't start until I get around there, please.

2 You can run it back a frame or two if you care to so the
3 jury can understand the beginning of it. Can you run it back a
4 frame or two?

5 MR. FILIBERTO: I got it at the very beginning right
6 there.

7 THE COURT: All right. Well, just - - -

8 MR. FILIBERTO: I mean, at the actual event that I want
9 them to view. It's about four or five minutes. I can move it
10 forward if Your Honor wants.

11 THE COURT: No, no. Let's start right there.

12 MR. FILIBERTO: At the very beginning of the video.

13 THE COURT: Let's see what we got.

14 You are saying that the first two or three minutes does not
15 depict that that you are interested in?

16 MR. FILIBERTO: Right. It doesn't show the robbery.
17 It does not show the robbery of this victim.

18 THE COURT: All right.

19 Somebody tell the jury to come in?

20 (The jury returns to the courtroom at 12:31 p.m.)

21 THE COURT: Now, counsel, you, of course, at any time
22 may stop the video to ask any additional questions and then go
23 forward if you choose if that's the best way to explain it to
24 the jury.

25 MR. FILIBERTO: Thank you, sir. Thank you.

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 THE COURT: And I will permit defense counsel to do the
2 same thing.

3 All right. Proceed.

4 MR. FILIBERTO: Thank you, Your Honor.

5 At this time the State would like to publish the video that
6 is in evidence to the jury.

7 (The video, State's Exhibit #17, is published to the jury
8 while the Solicitor continues to inquire of the witness, Mr.
9 Norris, as direct examination.)

10 CONTINUED DIRECT EXAMINATION OF MR. NORRIS BY MR. FILIBERTO:

11 (Video is played and then paused for question.)

12 MR. FILIBERTO: Your Honor, if I could just pause this
13 for a minute?

14 Q. Mr. Norris, you recognize the truck on the left side of
15 that screen?

16 A. Ah, yes, sir. That's my truck.

17 Thank you.

18 (Video is played and then paused for question.)

19 MR. FILIBERTO: I'm going to pause this for another
20 minute.

21 Q. Mr. Norris, do you recognize the person who got out of the
22 car on the right side of the screen?

23 A. Yes, sir. That's the defendant.

24 (Video is played and then paused for question.)

25 Q. What's that - - Mr. Norris, what's happening here?

MR. NORRIS - DIRECT EXAMINATION BY MR. FILIBERTO

244

1 A. Ah, he's got a sawed-off pump shotgun, looks to be a twelve
2 gauge and he's asking me to get my billfold.

3 Q. Thank you.

4 (Video continues to play and then paused for question.)

5 MR. FILIBERTO: And, again, I'm going to stop it for
6 just a quick second.

7 Q. Mr. Norris, what are you doing here?

8 A. He's actually got the shotgun pushed up in my chest cavity,
9 and, ah, I'm handing him the wallet, and he's also making me
10 take my watch off.

11 Q. Thank you.

12 (Video continues to play until the end of the video.)

13 MR. FILIBERTO: That's all of the relevant footage.

14 THE COURT: That concludes the video?

15 MR. FILIBERTO: That concludes this video, sir.

16 THE COURT: You have another one?

17 MR. FILIBERTO: We have one for the next witness, sir.

18 THE COURT: Okay. Hold up until I get back around.

19 MR. FILIBERTO: Oh, yeah.

20 (The Court returns to the Bench, and the video player is
21 removed.)

22 THE COURT: All right, sir. You may proceed.

23 MR. FILIBERTO: Your Honor, I'm sorry.

24 A. That's all the State has. Please answer any questions Mr.
25 Galmore has.

MR. NORRIS - CROSS EXAMINATION BY MR. GALMORE

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1 THE COURT: All right.

2 Mr. Galmore.

3 CROSS EXAMINATION BY MR. GALMORE:

4 Q. Mr. Norris, what were you doing at the Cash and Dash that
5 evening?

6 A. I just got off work and stopped by to get some gas on the
7 way home.

8 Q. So, you had just finished working that day?

9 A. Um, yes, sir.

10 Q. Were you able to give the police a description of your
11 assailant?

12 A. I told them that I remember he had a black coat. Ah, I
13 want to say I told them he was wearing a pair of jeans. It's
14 been a while back, and I know he had a little scar on his face.

15 Q. You noted that he had a scar on his face?

16 A. Yes, sir. Best I remember. He had some kind of little
17 nick or scar on his face.

18 Q. Did you put that in your statement to the police?

19 A. I believe I did but I'm not sure.

20 Q. Mr. Norris, let me hand you what's been marked for
21 identification purposes as Defendant's Exhibit #4 and ask if you
22 recognize that form.

23 A. Yes, sir, I do.

24 Q. And what is that document, sir?

25 A. Ah, it's a statement given by me.

MR. NORRIS - CROSS EXAMINATION BY MR. GALMORE

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1 Q. You wrote that document?

2 A. Ah, yes, sir.

3 Q. Where in that document does it say he has a scar on his
4 face?

5 A. I don't see anything in the document that has that on
6 there.

7 Q. What description did you give?

8 A. Ah, black male around forty years old.

9 Q. That was the only description you were able to give the
10 police officers. Is that correct?

11 A. Ah, yes, sir. That's what in there.

12 Q. Now, if you had remembered anything more than that, you
13 would have put it in that document. Is that correct?

14 A. Yes, sir. I was pretty shook up at the time.

15 Q. Understandably so, sir.

16 A. Right.

17 Q. Would it be fair to say you weren't paying a one hundred
18 percent attention to the man because you had a shotgun pointed
19 at you?

20 A. Ah, no, sir. I know the face but as far as what he was
21 wearing and all, it's kind of hard to say, I mean, when
22 somebody's got the gun pushed right up in your chest.

23 Q. Was your assailant wearing any gloves?

24 A. I didn't see any gloves. Could have been gloves. I'm
25 not sure.

MR. NORRIS - CROSS EXAMINATION BY MR. GALMORE

247

1 Q. You're not sure if he had on gloves or not?

2 A. He could have been wearing gloves. I'm not sure.

3 He didn't have a mask or nothing on.

4 Q. Well, you spent some time with him as we saw from the
5 video. Did you see gloves or not?

6 MR. FILIBERTO: Your Honor, I would object to that.
7 Asked and answered. He said - - -

8 THE COURT: I sustain that.

9 MR. GALMORE: I asked a different question. I asked if
10 he saw gloves on the video.

11 My first question was did he recall if he had on gloves.

12 THE COURT: The video. I'll let you ask that question.
13 The video speaks for itself. Go ahead.

14 Q. Did you see gloves in the video?

15 A. Ah, not that I'm aware of.

16 Q. And you handed over your wallet to your assailant?

17 A. Ah, yes, sir, I did.

18 Q. When you handed it over, did he have on gloves?

19 A. I'm not sure.

20 Q. Have you received your wallet back from the police
21 department?

22 A. Yes, sir, I did.

23 Q. Would your wallet be evidence in this case?

24 A. Ah, it could be. I mean - - -

25 MR. FILIBERTO: That asks for a legal conclusion.

MR. NORRIS - CROSS EXAMINATION BY MR. GALMORE

248

1 THE COURT: Sir?

2 MR. FILIBERTO: Objection.

3 THE COURT: What is your question?

4 MR. GALMORE: I said would his wallet be evidence in this
5 case.

6 THE COURT: That would be up to the investigating
7 officers, not him.

8 Q. Were there any other people at the pump?

9 A. There were a few people up next to the store area, and when
10 he told me to wait until he got back, I ran across the road and
11 called 911. I had my cell phone in my jacket pocket.

12 Q. And you looked at a photo on January 3rd of 2007. Is that
13 correct?

14 A. Ah, yes, sir, whenever he brought it by.

15 Q. Okay.

16 And you were able to pick out Mr. Long as #2 as being the
17 person involved?

18 A. Yes, sir.

19 Q. Were you influenced in any way by the police officers in
20 reaching that conclusion?

21 A. No, sir.

22 Q. But it is fair to say that it was a week between the
23 robbery and when you looked at those photos?

24 A. Yes, sir. I know it was about seven days later. It was
25 within seven days of the robbery.

MR. NORRIS - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Now, as far as this video, how many times have you seen
2 that?

3 A. I've seen the video, ah, probably been a couple of weeks
4 ago, and I watched the video right shortly after the robbery one
5 day at the store.

6 Q. You went to the store, and they showed it to you.

7 A. Well, they just showed me where they had a picture of m
8 truck up there.

9 Q. Who showed it to you at the store?

10 A. Ah, Margaret.

11 Q. So, the police didn't show you the video. The cashier
12 showed you the video?

13 A. Ah, yes, sir. It was the employee.

14 Q. How did you come to go look at the video at the store?

15 A. I stop by and get gas all the time.

16 Q. Did you just ask them could you see the video?

17 A. Well, she said she had a video where - - where I got robbed
18 that night.

19 Q. Did you report this back to the police that they were
20 showing your video to you at the store?

21 A. Ah, no, sir.

22 MR. GALMORE: Court's indulgence, Your Honor.

23 Q. You indicated, sir, that you called 911?

24 A. Yes, sir, I did.

25 Q. And you spoke with a dispatcher, I assume?

MR. NORRIS - REDIRECT EXAMINATION BY MR. FILIBERTO

250

1 A. Ah, yes, sir.

2 Q. Have you heard the dispatch tape?

3 A. Ah, no, sir. I haven't.

4 Q. So as part of preparing for this trial the Solicitor didn't
5 share with you your 911 call?

6 A. Ah, no, sir.

7 Q. Do you know what you told them on the 911 tape?

8 A. I told them that a gentleman had robbed me, and he went in
9 the store, and they needed to get those ladies some help because
10 he was robbing the store as well.

11 Q. Did you give a description on the 911 tape?

12 A. I'm not sure.

13 Ah, yeah. I told them it was a black male.

14 Q. Thank you very much.

15 A. Ah, yes, sir.

16 (The Court Reporter accepts Defendant's Exhibit #4 for
17 identification only.)

18 REDIRECT EXAMINATION BY MR. FILIBERTO:

19 Q. The report that you wrote out for the police that Mr.
20 Galmore showed you, the, um, police asked you to write down your
21 statement for them?

22 A. Ah, yes, sir.

23 Q. Now, did you also talk with the police, have a conversation
24 with them?

25 A. Ah, no, sir. They, ah, I had very little questioning that

MR. NORRIS - REDIRECT EXAMINATION BY MR. FILIBERTO 251

1 night, and I believe it was Mr. Boyd that came by and talked to
2 me later on this matter as far as identifying.

3 Q. So, you didn't write down everything you said to Mr. Boyd,
4 did you? You didn't write what everything you said to Mr. Boyd
5 down on that piece of paper, did you?

6 A. Ah, no, sir.

7 Q. Mr. Norris, as you sit here today, do you have any doubt
8 that the person you picked out in that photographic lineup was
9 the person who put a gun in your chest and robbed you of your
10 watch and your wallet?

11 A. No, sir. I don't have no doubt.

12 MR. FILIBERTO: Nothing further, Judge.

13 MR. GALMORE: Nothing further, Your Honor.

14 THE COURT: All right. You may come down.

15 (The witness leaves the witness stand.)

16 THE COURT: This appears about 1:00. This is a good
17 time to take the break for lunch. Is that all right?

18 MR. FILIBERTO: That would be fine with the State, Your
19 Honor.

20 THE COURT: That suit you?

21 MR. GALMORE: Yes, sir.

22 THE COURT: All right, Mr. Foreman, ladies and
23 gentlemen, it's 1:00. When we return I would ask that you
24 return to the jury room promptly at 2:30 so we can proceed at
25 that time.

MR. NORRIS - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 Please remember my admonition. Do not discuss this case
2 with anyone. Let no one discuss it with you. Under no
3 circumstances discuss it among yourselves.

4 You know, I can see why when you break for lunch two or
5 three of you might want to start discussing some issue in the
6 case, and that's improper for the following reasons.

7 First, you haven't heard all of the evidence nor a
8 summation but one of the more important reasons is that,
9 ultimately, whatever your decision is, it must be the unanimous
10 decision of all twelve of you, and if three or four of you
11 during lunch are discussing some issue in the case, you are
12 depriving your fellow jurors of your thought process, and
13 they're entitled to that.

14 And, consequently, it is imperative that no discussion be
15 made in this case among yourselves until I have given you the
16 case for your deliberation and say to you, "Mr. Foreman, you may
17 now begin your deliberation."

18 So, please remember that.

19 One additional thing. When you are on the courthouse
20 grounds in any way, always wear your jury badge. Sometimes
21 folks start talking about a case not realizing you are a juror,
22 and that's improper, too, and so, please wear your juror badge
23 in a prominent place so that everyone will understand not to
24 discuss any issue in this case in your presence.

25 Thank you so much. Have a nice lunch. Be back promptly,

MR. NORRIS - REDIRECT EXAMINATION BY MR. FILIBERTO

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1 please, at 2:30.

2 Thank you.

3 (The jury departs the courtroom for lunch at 12:52 p.m. to
4 return at 2:30 p.m.)

5 THE COURT: All right.

6 I think we got the charge for that.

7 All right. We will be in recess until 2:30. I'll have
8 a plea not involving this case at 2:15.

9 MR. FILIBERTO: Thank you, sir.

10 MR. GALMORE: Thank you, Judge.

11 (The Court recesses the trial of this case for lunch at
12 12:53 p.m.)

MOTION TO SEQUESTER AND RULING OF THE COURT

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1 (The Court reconvenes the trial of this case with all
2 parties present in the courtroom.)

3 THE COURT: All right.

4 Mr. Galmore, you ready?

5 MR. GALMORE: Yes, sir.

6 THE COURT: Bring the defendant in.

7 You ready?

8 MR. FILIBERTO: Yes, sir.

9 Your Honor, just before the jury comes in, Mr. Smith, the
10 victim, one of the witnesses that testified, he's requested. He
11 goes to college up in North Carolina. He's requested to be
12 released from his subpoena so that he could go back to school.

13 THE COURT: I think that's appropriate.

14 MR. GALMORE: Yes, sir. No objection, Your Honor.

15 THE COURT: I will release him.

16 MR. FILIBERTO: Thank you, Your Honor.

17 THE COURT: And I thank him for his appearance here.

18 Thank you.

19 MR. FILIBERTO: Thank you, sir.

MOTION TO SEQUESTER AND RULING OF THE COURT

20
21 THE COURT: Let's see.

22 You had made a motion this morning to sequester the
23 witnesses.

24 MR. GALMORE: Yes, sir, Your Honor.

25 THE COURT: I decline to do that because the only

MOTION TO SEQUESTER AND RULING OF THE COURT

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1 witnesses were the two investigating officers and the three
2 victims.

3 The investigating officers, there were two, one to each
4 incident.

5 The three victims had a absolute right to be in the court
6 inasmuch as all of these allegations against the defendant were
7 of a continuing nature. One fit into the other.

8 Based on that I concluded that the victims themselves were
9 entitled to be in the courtroom.

10 If there's any other witnesses, though, I'll have them
11 sequestered for you.

12 MR. GALMORE: Thank you for allowing that - - allowing me
13 to put the motion on the record.

14 THE COURT: All right.

15 If there's any other witnesses that's not victims or not
16 investigating officers, sequester them.

17 MR. FILIBERTO: Thank you, sir.

18 THE COURT: All right.

19 Bring the jury in.

20 How many witnesses does the State have?

21 MR. FILIBERTO: Your Honor?

22 THE COURT: How many witnesses?

23 MR. FILIBERTO: The State has one more.

24 THE COURT: Okay.

25 We can probably finish this this afternoon.

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

256

1 You got another video?

2 Mr. Galmore?

3 (The Court confers with counsel off the record and outside
4 the presence of the jury.)

5 MR. GALMORE: May we approach, Your Honor.

6 THE COURT: Yes.

7 (The Court again confers with counsel off the record and
8 outside the presence of the jury.)

9 The jury returns to the courtroom at 2:41 p.m.)

10 THE COURT: Good afternoon.

11 All right. Call your next witness, please.

12 MR. FILIBERTO: Thank you.

13 The State would call Mary White.

14 (The witness takes the witness stand.)

15 MARY WHITE, BEING DULY SWORN, TESTIFIES

16 AS FOLLOWS:

17 CLERK OF COURT: State your name, for the record and
18 spell your last.

19 MS. WHITE: My full name Miss Mary White, W-h-i-t-e.

20 DIRECT EXAMINATION BY MR. FILIBERTO:

21 Q. Good afternoon, Ms. White.

22 A. Good afternoon.

23 Q. Where do you currently live?

24 A. I live in Loris.

25 Q. In Loris.

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 What kind of work do you do?

2 A. None right now.

3 Q. Were you working back in December, 2006?

4 A. Yes.

5 Q. Where were you working at that time?

6 A. Cash and Dash.

7 Q. Where is that?

8 A. It's on Highway 701 North.

9 Q. Is that in Loris?

10 A. Loris.

11 Q. Loris.

12 Do you remember if you were working the evening of December
13 27, 2006?

14 A. We were.

15 Q. What were your job duties that night?

16 A. I was running the main register.

17 Q. And while you were at work that night, did you have any
18 contact with William Long, the defendant in this case?

19 A. It was - - it was a quarter to eleven. We had fifteen
20 more minutes to work, and he came in, and he pulled up under the
21 garage and came to the door and told me to turn on the pumps
22 because he was going to fill up.

23 Q. Okay. What happened next?

24 A. I turned on the pumps and told him he can go ahead.

25 Q. Did the defendant come into the store a little later?

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Um, it was later on when he came in. When he came in, he
2 came rushing through the door, and he came up to the register.

3 Q. What did he, ah, what did he do at that time?

4 A. At that time I was taking care of another gentleman, and he
5 was paying for something but I forgot what he was paying for but
6 he was paying for some stuff, and he looked at that gentleman,
7 and he said, "I'll take that."

8 And he said, "No."

9 So, he showed him the gun, and he give it to him, and he
10 turned around. He told me to open the cash register.

11 Q. And did you do that?

12 A. I just looked at him at first.

13 Q. Did you eventually open the cash register?

14 A. I did.

15 Q. What happened next?

16 A. He just left. He got it and left.

17 Q. Did he take anything out of the cash register?

18 A. He, ah, when - - as soon as I opened the cash register, he
19 reached over and he grabbed some of the money, and he left.

20 Q. I'm going to show you what's been marked for identification
21 as State's #1 and State's #2. See if you recognize those
22 documents.

23 A. Yes.

24 Q. Can you tell us what State's #2 is?

25 A. It's the face - - it's the defendant.

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. Is it a photograph?

2 A. It is.

3 Q. Is it more than one photograph?

4 A. It is.

5 Q. How many? All together?

6 A. Of - - of the defendant?

7 Q. Of the different pictures. How many different?

8 A. Six.

9 Q. Six.

10 Who showed you that initially?

11 A. It was the officer came in.

12 Q. The - - with respect to State's #1, did the officer show
13 you that, too? Do you recognize that, the other piece of
14 paper?

15 A. This?

16 Q. Not the one with the pictures but the other piece of paper.
17 Do you recognize that?

18 A. Yes.

19 Q. And did the officer also show you that at the same time?

20 A. Yes.

21 Q. When the officer showed you the series of photographs, did
22 he tell you which photograph to pick?

23 A. No.

24 Q. Did anybody else tell you which photograph to pick?

25 A. No because no one was in the room but me.

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 Q. Did the officer show you another picture separate and apart
2 of the defendant before you looked at those?

3 A. No.

4 Q. Did the officer ask you if the person who robbed you at
5 gunpoint that night if his photo was in that - - in those six
6 pictures? Did he ask you if the defendant's photo was in
7 there?

8 A. Yes.

9 Q. Were you able to identify his photo?

10 A. Yes.

11 Q. How long do you think it took you from the time he handed
12 you the paper until you spotted his photo?

13 A. The minute he laid it on the table.

14 Q. Did he ask you to mark the - - the one photo that you
15 picked?

16 A. Yes.

17 Q. Did you do that?

18 A. Yes.

19 Q. Did you also sign the other document - - the one that
20 doesn't have photos, did you sign that one?

21 A. I don't remember.

22 Q. And did you write the number of the photo on that one?

23 A. I think so.

24 Q. Do those two documents look the same way they looked at the
25 time you selected the photo?

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 A. Yes.

2 MR. FILIBERTO: Your Honor, at this point the State
3 would move to have State's #1 and #2 into evidence.

4 THE COURT: You may do so.

5 (The Court Reporter accepts State's Exhibits #1 and #2 into
6 evidence.)

7 Q. All right.

8 Now, I'm going to show you what's been marked for
9 identification as State's #18 and see if you recognize it.

10 A. Yes.

11 Q. What is that?

12 A. It's a video tape of the store surveillance camera it came
13 from.

14 Q. Did you have occasion previously to view that video?

15 A. Yes, I did.

16 Q. Does it fairly and accurately show what happened the night
17 of December 27, 2006, regarding the armed robbery?

18 A. Yes, it does.

19 MR. FILIBERTO: Your Honor, at this time the State
20 would move State's #18 into evidence.

21 THE COURT: Yes, sir.

22 MR. GALMORE: Your Honor, we would again object to this.

23 She may be an employee at the store but she's not the
24 person that's in charge of the video surveillance system.

25 THE COURT: The video evidence, if any, will speak for

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 itself. It's for the jury's consideration. They can give it
2 such weight as they in their opinion determine it deserves.

3 Are you set up and ready to go?

4 MR. FILIBERTO: Yes, sir. Give me one quick minute.

5 THE COURT: I don't think we need - - you, apparently,
6 demonstrated you know how to operate it.

7 (The Court Reporter accepts State's Exhibit #18 into
8 evidence.)

9 MR. FILIBERTO: Yeah. Just give me one quick minutes,
10 sir.

11 THE COURT: All right, sir.

12 When you get it ready, I want the lights diminished,
13 please, Mike.

14 Let's go around.

15 Q. Ms. White, before we play the video, is this a picture of
16 you working that night?

17 A. Yes.

18 (The video, State's Exhibit #18, is played for the video
19 and then paused for questions.)

20 Q. Let me stop that real quickly, Ms. White. Who is that
21 person standing in front of your counter right now?

22 A. The, um, that's the defendant.

23 Q. And what is he holding in his hand?

24 A. It look like a sawed-off shotgun.

25 (The video continues to be played and then paused for

MS. WHITE - DIRECT EXAMINATION BY MR. FILIBERTO

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1 questions.)

2 Q. Let me just stop right there. What is he doing right
3 there?

4 A. He's taking cash out the drawer.

5 (Video continues to be played and then paused for
6 questions.)

7 Q. And what is he doing right there?

8 A. Right there?

9 Q. Yeah.

10 A. I was pushing a button.

11 Q. What is that button?

12 A. Well, whenever you push that button, that button alarms the
13 cops.

14 Q. Okay.

15 (The video continues to be played until its end.)

16 THE COURT: All right. One minute. I'll come back
17 around.

18 (The Court returns to the Bench.)

19 THE COURT: All right, sir. You may resume your
20 examination.

21 MR. FILIBERTO: Thank you.

22 Q. Ms. White, really, one more question. As you sit there
23 today, do you have any doubt that the person that you selected
24 from that photo lineup is the defendant William Long?

25 A. I have no doubt.

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Is the person who pointed a rifle at you and robbed your
2 cash register?

3 A. Yes.

4 THE COURT: Mr. Galmore.

5 MR. GALMORE: Thank you, sir.

6 CROSS EXAMINATION BY MR. GALMORE:

7 Q. Ms. White, do you know Mr. Long?

8 A. I know of him because we stayed in the same community.

9 Q. Well, yes or no. Have you ever met him before?

10 A. Never talked to him one on one.

11 Q. Well, how long have you known of him?

12 A. For years.

13 Q. When you say years, can you put a number on it - five,
14 ten.

15 A. Since he was a child, ever since he was a child.

16 Q. So, you've known this person since he was a child?

17 A. Yes.

18 Q. But according to your testimony you've never actually known
19 his name?

20 A. Yes, I know his name.

21 Q. So, you know him?

22 A. I know his name, yes.

23 Q. Okay.

24 On the night of the video, did you know his name?

25 A. Did I know his name?

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Yes.

2 A. Yes.

3 Q. Did you tell the police, "I know who robbed the store. It
4 was William Long?"

5 A. No, I did not.

6 Q. In fact, when you wrote the statement to the police, you
7 wrote, simply, that a black man robbed the store. Is that
8 correct?

9 A. Correct.

10 Q. Why wouldn't you just write down, "William Long robbed my
11 store."?

12 A. Why I didn't because they asked me to describe what he had
13 on.

14 Q. And you didn't think it important to say the name of the
15 person that robbed the store.

16 A. No because I wasn't thinking at the time.

17 Q. Did you tell anybody that you knew who robbed the store?

18 A. Did I tell anybody?

19 Q. Yes, ma'am?

20 A. No, I did not.

21 Q. How long did you have a chance to see the person that
22 robbed the store?

23 A. Long enough for him to come in the store and put his gun on
24 me, and while he was taking the money out of the register and
25 just whenever he told me to turn on the pumps.

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 Q. Would you say thirty seconds?

2 A. I said I seen this guy before.

3 Q. So, you've seen him before.

4 A. Uh-huh.

5 Q. How many other people were in the store with you?

6 A. That was on the shift working?

7 Q. Yes, ma'am.

8 A. It was two other ladies. One was in the office counting
9 down on the second drawer, and the other one was counting the
10 cigarettes.

11 Q. So, it was a total of three cashiers working that night?

12 A. Yes.

13 Q. And how many customers were in the store?

14 A. I don't quite know how many. It was about, probably about
15 four or five because it was the last quarter of the night. We
16 was getting ready to close, and everybody was coming in getting
17 gas and getting, um, different things.

18 Q. You had three cashiers and four or five - - -

19 A. One of the drawers was already shut down. It was shut
20 down before closing waiting for closing.

21 Q. But she was still in the store.

22 A. She was in the office.

23 Q. So would it be fair to say that there were at least seven
24 people in the store?

25 A. I can't remember.

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 Q. There were many people in the store.

2 A. I'm not going to say there was many people because it was
3 the last hour of closing, and just about everybody knows that
4 Cash and Dash closes at exactly 11:00.

5 Q. But to your knowledge there were four or five customers in
6 the store?

7 A. Yeah, because there it was a lineup. You know, they was
8 coming lined up.

9 Q. And there were three cashiers in the store?

10 A. There was one in the office counting her drawer doing her
11 paperwork and the other one, she wasn't a cashier. She was the
12 floor person that kept the floors and stuff and the drink stuff
13 stocked up and to make sure all the trash cans was dumped, and
14 she was the one counting down everything.

15 Q. There were three employees there?

16 A. Three employees that night.

17 Q. Yes, ma'am.

18 Was the assailant wearing gloves on his hands?

19 A. I didn't see any gloves.

20 Q. Okay.

21 Did you see him reach into that cash drawer?

22 A. Yeah, I'm standing right there in front of the cash drawer.
23 How I could not see it?

24 Q. So, his hands touched the cash drawer?

25 A. That's right.

MS. WHITE - CROSS EXAMINATION BY MR. GALMORE

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1 Q. All right.

2 Did you call 911?

3 A. No, I did not.

4 Q. When you looked at that photo lineup, did you tell the
5 officer that was William Long?

6 A. No, I did not. I said I know that guy. I've seen his face
7 before.

8 Q. Do you know which officer responded to the scene?

9 A. No, I can't remember.

10 Q. Have you seen the officer that responded to the scene in
11 court here today?

12 A. That night it was a lot of officers there but I don't know
13 their names. I can't remember all of them but the guy that
14 brought me that photograph, I remember him.

15 Q. And who was that?

16 A. Toby. His name was Toby.

17 Q. That's Detective Boyd?

18 A. That's right.

19 Q. Okay.

20 But on the night in question how many officers were at the
21 Cash and Dash?

22 A. As I can remember, I think it was about five or six of
23 them. They was all dressed in uniform. They was uniform
24 officers.

25 Q. Did you give them a description of who they should be

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1 looking for?

2 A. They asked me, "Describe what the defendant was driving."

3 Did I see what he was driving? Did I see what he was
4 wearing?

5 Q. And what did you tell them?

6 A. And I told them he had on a dark coat with a dark hat. He
7 had on blue jeans.

8 Q. Did you tell them he had on a white shirt?

9 A. Yes.

10 Q. And what did you tell them about the car he was driving?

11 A. I told them the car was a green Camry and I did not see no
12 tags.

13 Q. That was your description of the car, a green Camry?

14 A. Yes.

15 MR. GALMORE: Court's indulgence, Your Honor.

16 Q. Ms. White, how did you come to mind Mr. Long's name?

17 A. Because I know his father.

18 Q. So, you're familiar with his family?

19 A. Not familiar with them. I know them to talk to them. His
20 father, I saw a couple of times. I use to live right cross the
21 road from them. His father use to own a club.

22 MR. GALMORE: No further questions.

23 THE COURT: Any further questions?

24 MR. FILIBERTO: No, nothing from the State.

25 THE COURT: You may come down. Thank you.

THE STATE RESTS

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1 MR. GALMORE: Your Honor, may we have a moment? Your
2 Honor?

3 THE COURT: Come back a minute. You can inquire, Mr.
4 Galmore.

5 (The defendant confers with his counsel off the record.)

6 THE COURT: Wait a minute. You're talking too loud,
7 now.

8 MR. LONG: I'm sorry.

9 THE COURT: Not for me. I don't want the jury to hear
10 your conversation.

11 MR. LONG: Yes, sir. I apologize, Your Honor.

12 THE COURT: No, you don't owe an apology. I'm trying to
13 protect your rights. Whisper to him.

14 MR. LONG: Okay.

15 (The defendant continues to confer with his attorney off
16 the record.)

17 MR. GALMORE: No further questions, Judge.

18 THE COURT: All right, sir.

19 You may come down. Thank you.

20 (The witness leaves the witness stand.)

21 THE COURT: Any further witnesses.

22 THE STATE RESTS

23 MR. FILIBERTO: At this time, Your Honor, the State
24 rests.

25 THE COURT: All right.

MOTIONS AND RULING OF THE COURT

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1 The State rests. We'll let you go to your jury room a few
2 minutes, and we'll -- we'll be calling you back in about ten or
3 fifteen minutes.

4 Thank you.

5 Send them to the jury room, please.

6 (The jury retires to the jury room at 3:03 p.m.)

7 MOTIONS AND RULING OF THE COURT

8 THE COURT: All right, sir. Yes, sir.

9 MR. GALMORE: Yes, sir, Your Honor.

10 At this time, I would move for a directed verdict on all
11 charges, Your Honor.

12 Ah, looking at the evidence in the light most favorable to
13 the State, there's simply insufficient evidence. We've seen,
14 ah, videos that aren't very clear. We've had some questionable
15 photo lineups. There's witness identification, and those
16 witness identifications seem to me to be unreliable.

17 THE COURT: Let's cut to the quick.

18 The evidence in the case that three separate victims have
19 testified that he did. Now, that's for the jury to determine.

20 There's also evidence that he was in possession of the car
21 that was hijacked. There's also evidence that he was in
22 possession of the key to the car that was hijacked. There's
23 also evidence that he was in possession of the watch and the
24 pocketbook of the individual who was robbed by shotgun at the
25 station.

CHARGE OF THE COURT TO DEFENDANT/RIGHT TO TESTIFY OR NOT

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1 There is ample evidence if believed by the jury to convict
2 him beyond a reasonable doubt but that's for the jury, not for
3 me. But that's the evidence for them.

4 MR. GALMORE: Yes, sir. Thank you.

5 THE COURT: So, I respectfully deny your motion.

6 MR. GALMORE: Thank you, Your Honor.

7 THE COURT: Now, I need to know for the record whether
8 or not the defendant desires to testify.

9 MR. GALMORE: Yes, Your Honor. I would ask you to advise
10 him of his rights in that regard.

CHARGE OF THE COURT TO DEFENDANT/RIGHT TO TESTIFY OR NOT

12 THE COURT: All right. Please stand.

13 (The defendant stands before the Court.)

14 THE COURT: This is outside the presence of the jury.

15 The State has presented its testimony for the consideration
16 of the jury. The trial now switches to you where you can put
17 up such witnesses as you think would help you, and you're
18 certainly entitled to get on the stand and to testify under
19 oath, and then, however, subject yourself to cross examination
20 by the State.

21 Now, as I told the jury in the beginning and I'll tell them
22 again, you are presumed innocent. You don't have to prove a
23 thing. You don't have to testify.

24 If you elect not to testify I would charge the jury that
25 the fact that you did not testify cannot, must not be used

CHARGE OF THE COURT TO DEFENDANT/RIGHT TO TESTIFY OR NOT

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1 against you in anyway whatsoever.

2 I would further charge the jury that the fact that you did
3 not testify could not even enter into their deliberations in the
4 jury room.

5 Now, listen very carefully.

6 Obviously, you will discuss this question with your
7 distinguished attorney but the final decision to testify or not
8 testify rests with you. You cannot hereafter say, "Well, he
9 told me testify, and I didn't want to," or, "I didn't want to
10 testify and he made me do it."

11 He can't do that.

12 You'll discuss it with him but the right to testify or not
13 testify is yours and yours alone. Do you understand that?

14 MR. LONG: Yes, sir.

15 The witness that I wanted to question, he - - -

16 THE COURT: Sir?

17 MR. LONG: The witness that I wanted to question, he's
18 done it. I mean, the individual - - -

19 THE COURT: No, sir. You don't have a right to question
20 witnesses. Your lawyer does that.

21 MR. LONG: But he's gone.

22 THE COURT: Well, he's done that.

23 MR. LONG: And like you were saying - - -

24 THE COURT: Please answer my question. Do you want to
25 testify or not testify?

CHARGE OF THE COURT TO DEFENDANT/RIGHT TO TESTIFY OR NOT

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1 MR. LONG: Yes, sir. Yes, sir.

2 THE COURT: Sir?

3 MR. LONG: Yes, sir.

4 THE COURT: You desire to testify?

5 MR. LONG: Yes, sir.

6 THE COURT: Now, remember this.

7 If you testify and that's your decision, they have a right
8 to ask you some questions, too, and you must answer those
9 questions. You understand?

10 MR. LONG: Yes, sir.

11 THE COURT: All right.

12 Yes, sir?

13 MR. FILIBERTO: Your Honor, I just would hand up to the
14 Court a copy of some certified convictions of the defendant -
15 felony convictions, strong arm robbery, grand larceny, escape,
16 malicious injury to personal property.

17 THE COURT: No. Ain't going to do that.

18 MR. LONG: I did my time for those, Your Honor. I did
19 my time for those.

20 THE COURT: I understand.

21 The only ones that I'm going to permit are larceny because
22 that involves stealing and armed robbery?

23 MR. FILIBERTO: Strong arm robbery.

24 THE COURT: I'll permit you - - not going to go into the
25 escape.

CHARGE OF THE COURT TO DEFENDANT/RIGHT TO TESTIFY OR NOT

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1 MR. GALMORE: Your Honor.

2 THE COURT: What was the other one?

3 MR. FILIBERTO: Those are the - - there's several
4 felonies but the two regarding theft - strong arm robbery, grand
5 larceny.

6 THE COURT: Well, as you understand, and I know you
7 would understand. It doesn't even require a balancing test
8 where there are crimes of dishonesty.

9 MR. GALMORE: Yes, sir, Your Honor. We would also - - -

10 THE COURT: And he needs to know that we're not going
11 into the details of them but if he testifies on the issue of
12 credibility he's entitled to bring that up, and, of course, I
13 would charge the jury that that can only be used if at all as to
14 his credibility and believability and not for any evidence in
15 this case but they are entitled to show if he testifies.

16 MR. GALMORE: Your Honor, we would ask you to prohibit the
17 State from allowing those particular convictions of strong arm
18 robbery and - - because it was highly prejudicial.

19 THE COURT: The law requires me to do it. They crimes
20 of dishonesty. If they weren't crimes of dishonesty, then I
21 would go into a balancing test with you

22 MR. GALMORE: Yes, sir.

23 THE COURT: But the law clearly shows. It clearly is a
24 two prong test.

25 MR. GALMORE: Yes, sir.

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1 THE COURT: Crimes of dishonesty are admissible as to
2 his credibility and believability.

3 MR. GALMORE: Yes, sir.

4 THE COURT: I understand they might or might not be
5 prejudicial but I - - I will give a clarifying instruction to
6 the jury as I've indicated.

7 You understand?

8 MR. GALMORE: Yes, sir.

9 THE COURT: All right.

10 Now, do you have any other witnesses?

11 (The defendant and his attorney confer off the record.)

12 MR. GALMORE: No further witnesses, Your Honor.

13 THE COURT: Just him - - he desires to testify?

14 MR. GALMORE: Yes, sir.

15 THE COURT: Well, he's certainly entitled to that.

16 All right.

17 Bring the jury in, please.

18 MR. FILIBERTO: May I ask for a two minute break?

19 THE COURT: Sir?

20 MR. FILIBERTO: Two minute break for myself.

21 THE COURT: Why didn't you take it - - go ahead. We'll
22 wait just a minute.

23 Hold on.

24 (State's counsel departs courtroom and then returns.)

25 MR. FILIBERTO: The State's ready to proceed.

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1 THE COURT: All right, sir.

2 Bring the jury in.

3 (The jury returns to the courtroom at 3:13 p.m.)

4 THE COURT: All right, sir.

5 You may call your witness.

6 MR. GALMORE: The defense calls William Long to the stand.

7 THE COURT: Okay.

8 Have him come around, please.

9 (The witness takes the witness stand.)

10 WILLIAM VON LONG, BEING DULY SWORN,

11 TESTIFIES AS FOLLOWS:

12 CLERK OF COURT: State your full name and spell your
13 last name.

14 MR. LONG: William Von Long, L-o-n-g.

15 DIRECT EXAMINATION BY MR. GALMORE:

16 Q. Mr. Long, where are you from?

17 A. Loris.

18 Q. Loris? Have you lived in Loris all your life?

19 A. Ah, just about, since I was eight years old.

20 Q. Mr. Long, I - - what can you tell us about this claim that
21 you kidnapped and car jacked Mr. Smith?

22 A. On, um, December 27, 2006?

23 Q. Yes, sir.

24 A. I was walking from a section of Wampee/Poplar area of
25 Longs, and I guess he did just get off work but he passed, and

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1 I was trying to get a ride back to my house back - - back up my
2 way, and I was high on cocaine, crack, excuse me, crack.

3 Been misled as a child.

4 But, anyway, he went by me the first time, and he turn back
5 around and came by me again. I waved him down. He kept going
6 and he turned around and went back that way again. He slowed
7 down and came back again. Then he stopped.

8 Opened his car door. Puts his car door open and he say,
9 "What's up, buddy?"

10 I say, "Ain't nothing."

11 He say, "What's good?"

12 I say, "Ain't nothing."

13 He say, "Just getting off work."

14 I'm, like, "What's up?"

15 And he was, like, "What's going on with you?"

16 And, you know, the way he was acting led me to believe he
17 was gay which he was, which he was.

18 So, he was, like, "Jump in."

19 And I was, like, I was, like, "What you got on your mind?"

20 And he was, like, "Anything."

21 And I'm going to be honest. I'm going to be honest. I
22 went with him because I was trying to get high. You see what
23 I'm saying, and then I was getting high all night off crack.

24 Ain't had no more money. Ain't had no vehicle. Here he go
25 pulling up with this car, gay. I'm not gay. You see what I'm

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1 saying but the way he came off on me, then I'm going to act like
2 I'm gay.

3 So, he tell me to get in his car. I got in his car.

4 It was, like, "You know some place to go?"

5 I said, "Yeah, I know a dirt road."

6 And we went, ah, actually, Red Bluff.

7 He said that we was - - he was at Myrtle Beach, said that
8 I was there but I wasn't there. I was walking from Poplar, and,
9 actually, that's not Myrtle Beach or Loris is not ten miles from
10 Myrtle Beach like he said. That's a lie.

11 But, anyway, we look for - - we went to the dirt road, and
12 where I knew where we was at over there by Franklin Holmes
13 house. What's the area of Fairfield Resort, I mean, Fairfield
14 Road, the dirt road?

15 Q. Hardee Road?

16 A. Yeah. We went there.

17 So, he got out the car. He pulled over. Got out the car
18 and stuff.

19 He was, like, "What's up?"

20 I was, like, "Whatever?"

21 So, he's, like, "What we going to do?"

22 I said, "Well, let's go behind the car."

23 Because right now, I'm thinking I'm going to jack but not
24 jacking, you know what I mean. I'm just going to get his car
25 and take off for him playing me like that, and I'm going to go

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 get high, and that's what I did.

2 And he got out the car. Came behind his car pulling his
3 pants down, and I told. I say, "Hold up. Let me go to the car
4 and get me a condom."

5 I reached in his car for my coat to get a condom out of my
6 coat. Jumped on the driver's side and took off.

7 He grabbed the side of the door, start holding on to the
8 car and fell in the ditch.

9 That's how he end up walking from, ah, Red Bluff back to,
10 I think, IGA is where he called the police.

11 I left. Went over to get high. Ran out of money. Met
12 some fellows. They wanted to rent the car. So I rent the car
13 to them. They gave me some crack. They took off. I don't know
14 what happened.

15 They came back. Ah, it was cold during the time. Gave me
16 a black leather coat, and I didn't really know what was in the
17 coat. They just gave me the coat and some more crack. They
18 told me the car was over in, like, the **** (unintelligible)
19 area.

20 So, I went walking, and as I went walking, he pulled up.
21 When he pulled up, I took off running because I had the crack
22 and the stems and stuff in my pocket. He ran in the back of me
23 with the police car, knocked me in the bushes.

24 I jumped up. Ran in the woods. When I was running in the
25 woods, I got trapped in the woods. I couldn't get out. I seen

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 a pond. Jumped in the pond and tried to swim to the other side.
2 That's when they got me.

3 Held me in the woods from, like, 3:30 to, like, 8:30 that
4 evening. Wet up in the back of the police car hoping that I'd
5 get out and run so they could shoot me.

6 Went to the hospital. They did a report for this. I filed
7 a lawsuit against them, and that - - they little accusations
8 just like J. Reuben Long. Excuse me. They beat me up. I
9 filed a lawsuit against them, and they just hiding. That's the
10 truth.

11 Q. Mr. Long, back to the - - back to the claim against Mr.
12 Smith. You deny that you kidnapped Mr. Smith?

13 A. No, I didn't kidnap him.

14 I mean at Fairfield Resort? Why would I be there at 7:30
15 in the morning, 8:30 in the morning. I mean, come on man. You
16 got cameras there. No disrespect towards white folk but black
17 man out there early in the morning, somebody going to pay
18 attention to him. What is he doing out there? You know what I
19 mean? Somebody going to call the security guard. That's
20 obvious, man.

21 And I'm just sitting out there waiting on him, big 250
22 pound individual and I'm just going to roll him and take his
23 car. I ain't showed him no gun. This is according to what he
24 said.

25 Q. It's your testimony that he flagged you down - - -

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1 A. No, he - - -

2 Q. Or, excuse me. You flagged him down.

3 A. I was walking trying to get - - trying to get to Loris back
4 where I stay at. He pulled over, sat and I guess he was
5 deciding within himself what to do.

6 I mean, he pulled over with some gay junk. That's what he
7 did. You see what I'm saying.

8 He tried, you know what I mean. I did what I did.

9 But I did not kidnap him. I did not car jack him like he's
10 saying. I did what he did because he started playing me.

11 Q. Now, as far as the - - -

12 A. I rented the car for crack. I had a problem. I mean I
13 was getting high. I rented it.

14 I don't know what happened to the car. I don't know
15 nothing about no robbery.

16 Q. As far as the Cash and Dash Convenience Store?

17 A. I don't know nothing about no robberies. I know that O. V.
18 Cox, Jeff Cox, Miss Cathy Cox use to run the store about, like,
19 fifteen years ago. I use to work for her and my father use to
20 work for her. Other than that, I don't know nothing about no
21 robbery.

22 Q. You use to work at that Cash and Dash?

23 A. Yeah, me and my father.

24 We didn't have food on our table, and Mr. O. V. Cox gave my
25 father the money to put food on our table. They good people to

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 us. I'd never take nothing from them.

2 But I don't know who own the store now, and I ain't robbed
3 no store, and I ain't been to no store, and as far as that day,
4 that ain't me, man.

5 She says she knows.

6 Q. Right.

7 A. She says she know me. If she knew me, when they came to
8 the store why didn't she just simply tell the police, "Okay.
9 William Long did this."?

10 Q. So, you deny that you were in that store?

11 A. I wasn't in that store, man.

12 Q. Regarding the robbery of Mr. Norris, did you have any
13 involvement in that?

14 A. No. I don't know that man.

15 Like I said. I got that coat from them dudes. I don't
16 know that man.

17 Q. Do you know who you gave the car to?

18 A. Do I know who I gave it to?

19 Q. Yes.

20 A. Drug dealers. Those little young cats.

21 Q. And why did you give them the car?

22 A. To get more crack to get high.

23 Q. When you were arrested, tell us the circumstances of how
24 you came to be in custody?

25 A. I already told you that.

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 Q. Go over it again.

2 A. I was walking. He pulled up. I ran because I had a stem
3 in my pocket and crack. He ran into the back of me with the
4 police car and knocked me in the bush. I ran in the woods.

5 And ain't had no where to go. Jumped in the pond and tried
6 to swim to the other side, and that's when they got me.

7 Drug me out. Kept me out there 3:30 to 8:30 that night,
8 cold and wet with the window down in the police car hoping I
9 would jump out and run so they could shoot me.

10 Took me to the hospital.

11 Ah, actually, they carried me in the jail. My leg was
12 messed up but the doctor said there was nothing wrong with it
13 but it was. They carried me in the jail. I didn't walk. They
14 carried me in the hospital.

15 Q. Did you have a pistol on you?

16 A. They were going - - say that again?

17 Q. Did you have a pistol on you when they came after you?

18 A. No, I ain't had no pistol. If I would have had a pistol,
19 I would have sold it for the crack.

20 Q. And it's your testimony that you were not involved in
21 either of the armed robberies?

22 A. Man, I don't know nothing about no robbery.

23 Q. You've seen the video in this case. Does that appear to
24 be you in the video?

25 A. Nah. That ain't me. I don't know who - - I can't tell

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 who it is.

2 As far as those photos right there - - can I see that,
3 please, sir?

4 Q. Yes, sir.

5 A. This photo right here of me - - -

6 Q. For the record, that's State's Exhibit #2.

7 A. This photo right here of me is back, like, when I was
8 twenty-one years old. I don't understand how she can say this
9 was the individual who robbed that store, you know what I mean,
10 when there's seventeen years difference.

11 Q. What photo is this of you?

12 A. That one in the middle right there.

13 Q. When you say this was back when you were twenty-one years
14 old, what do you mean?

15 A. I mean that I was young. I was young. I was seventeen
16 years younger.

17 Q. Where did SLED get this photograph?

18 A. I don't have no idea where they got it from, man.

19 Q. Okay.

20 A. I guess they got it off my I.D. or something, driver's
21 license or something or permit. I don't know.

22 Q. That's your - - that's your driver's license photo from
23 when you were twenty-one years old?

24 A. I don't remember. I'm not going to say that now. I'm
25 going to say I - - well, I guess that's where they got it from.

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1 You know. I ain't got no other pictures where he could have
2 got it from. He got it from, I don't know, license or permit
3 or something.

4 Q. What can you tell the jury about this picture, State's
5 Exhibit #6?

6 A. That's me.

7 Q. That's you?

8 A. Yeah, that's me.

9 That's the picture - - that's the picture that they took of
10 me the night they took me to jail.

11 Q. And this is the one that Mr. Smith picked out. Is that
12 correct?

13 A. I don't know what Mr. Smith picked out. I know that this
14 is the photo of me with the jumpsuit on at the jail. So, they
15 took this picture of me at the jail, and then they took it back
16 to Mr. Smith and showed it to him while I was in jail.

17 Q. And that's why he was able to pick you out of this picture
18 here?

19 A. I guess. I can't speak on that behalf. On that I can't
20 speak on that.

21 Q. But it's your testimony that the reason why he was able to
22 identify you is because - - -

23 A. That's obvious. They gave him me. Just like they gave
24 them to her and gave them to him. This man doesn't know who I
25 am, and she doesn't know me either.

MR. LONG - DIRECT EXAMINATION BY MR. GALMORE

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1 Q. Let me hand you what's been marked as State's Exhibit #7.
2 Is that you in this photograph?

3 A. Nah. That ain't me. I don't know who that is.
4 Can y'all tell me who he is?

5 MR. FILIBERTO: Your Honor, I - - Your Honor.

6 A. Can anybody tell who this individual is?

7 MR. FILIBERTO: The State would object to the defendant
8 addressing the jury.

9 THE COURT: Sir?

10 MR. FILIBERTO: The State would object to the defendant
11 addressing the jury.

12 THE COURT: No, sir. He can answer the question.
13 Go ahead.

14 A. Can anybody here identify it who it is?

15 THE COURT: Wait a minute.

16 MR. FILIBERTO: And, again - - -

17 THE COURT: That's improper.

18 A. I apologize.

19 I don't know who he is.

20 Q. I asked you. Is this you?

21 A. Nah, it ain't me.

22 Q. Okay.

23 What can you tell the jury about these items that they
24 claim were in your possession?

25 A. I don't know nothing about them items, man. All I know was

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 I had the coat on, and I ran. I guess they got it out the
2 coat. I don't know. I was cold.

3 I don't know. I don't know what was in the coat like I
4 said. I just left the crack house walking, and he came, and
5 that's when I ran. I don't know.

6 Q. Is there anything else that you want to explain to this
7 jury?

8 A. About what?

9 Q. About these charges against you?

10 A. I didn't commit no robberies. I didn't rob no store.

11 I didn't rob no store. This man just simply ran in to the
12 back of me with the police car, and I filed a suit against the
13 State, and they dropped these charges on me.

14 Just like they went in and indicted me for some charges
15 individually. I been locked up in J. Reuben Long for two years
16 and three months for two armed robberies, kidnapping and car
17 jacking. Now, today, all of a sudden, I got seven armed
18 robberies.

19 Q. Please answer any questions the State has.

20 A. I'll try.

21 CROSS EXAMINATION BY MR. FILIBERTO:

22 Q. Mr. Long, is it your testimony that -- the photo that's
23 circle in this photo is not you or that it is you?

24 A. That's a photo of me when I was, like, twenty-one.

25 Q. But it is a photo of you?

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 A. Yes, it's most definitely a photo of me when I was younger.

2 Q. And, again, the photo in this lineup that's circled, is
3 that a photo of you?

4 A. Ah, could you show me that - - that photo again? And put
5 that one up at the same time. I would like to see both of them
6 at the same time.

7 Q. No, no.

8 A. I would like to see both of them at the same time.

9 MR. FILIBERTO: Your Honor, I - - would you tell the
10 witness to answer my question.

11 THE COURT: Wait a minute, now. Wait - - wait - - wait.

12 MR. FILIBERTO: Please direct him to answer my
13 question, Your Honor.

14 THE COURT: Just answer the question, now.

15 Let me say this to you.

16 MR. LONG: Yes, sir.

17 THE COURT: You very properly answered all the questions
18 of your own attorney.

19 MR. LONG: Okay.

20 THE COURT: Now, under our rules, you got to answer his
21 questions, too.

22 MR. LONG: Okay.

23 THE COURT: Okay?

24 Q. Is this - - -

25 A. I - - -

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 THE COURT: Wait a minute. Let him ask the question and
2 then answer.

3 Q. Is this photo that's circled a photograph of you?

4 A. Yeah.

5 Q. Thank you.

6 MR. LONG: Your Honor.

7 THE COURT: Wait a minute, now.

8 He'll ask the questions, and you'll answer them.

9 Q. Now, your testimony is that Nathan Smith drove by you over
10 somewhere in the Wampee Community?

11 A. Yeah.

12 Q. That was the morning of - - what time of day was that?
13 What time of day was that on December 27th?

14 A. I guess about 7:30. That's what he said.

15 Q. 7:30 in the morning?

16 A. Yeah.

17 Q. Do you agree with that?

18 A. It could have been somewhere around in that area. Exact
19 time, I couldn't tell you, 7:30 or 8:00.

20 Q. Now, where is it that you lived at that time?

21 A. Where did I live?

22 Q. Yes.

23 A. In the Loris area, somewhere in Loris.

24 Q. How far away from that area?

25 A. Ah, probably fifteen minutes, twenty minutes.

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 Q. What were you doing over in the area that morning?

2 A. Getting high.

3 Q. So, you were out all night?

4 A. Crack head.

5 Q. The question is, "Were you out all night?"

6 A. Yeah, getting high.

7 Q. Defendant, you testified that the defendant stopped. He
8 drove by you once, came back and then stopped. Is that correct?

9 A. I think I said he did that more than one or two times.

10 Q. When he stopped, you testified that you got in his car. Is
11 that correct?

12 A. He invited me in his car.

13 Q. But you got in. You physically got inside his car?

14 A. How else would I get in there?

15 Q. So the answer to that is yes?

16 A. Obviously.

17 Q. You traveled a distance and then, ultimately, you testified
18 that the defendant and you got out - - the victim and you got
19 out of the car and that you, ultimately, jumped in his car and
20 sped off. Is that right?

21 A. Actually, I said the man was gay. He tried to play me like
22 a fool on some homosexual junk. He got out the car - - -

23 MR. FILIBERTO: Your Honor, I'd ask that - - -

24 THE COURT: Wait a minute, now.

25 Answer the question. He asked you did you get in the car

1 and speed off. That's what he asked you.

2 A. Yes, sir.

3 Q. And you testified later that you traded the car to somebody
4 else for some - - some drugs.

5 A. I rented it to them.

6 Q. With respect to the armed robbery of Malcolm Norris, now,
7 you testified that you had nothing to do with that. Is that
8 correct?

9 A. That's correct.

10 Q. That you were nowhere near that gas station that night.

11 A. I couldn't tell you nothing about that, nothing about it.

12 Q. And you testified that this photograph is not you?

13 A. That's right.

14 Q. Is that a photograph of Mr. Smith's car?

15 A. I don't know who - - what that is. That's not no
16 photograph of me.

17 Q. With respect to the armed robbery - - armed robbery of Mary
18 White, you indicated that you were not there. You did not do
19 that. Is that correct?

20 A. That's what I just said.

21 Q. And, yet, Ms. White says she's known you for many years.

22 A. Well, that's weird because I don't know her.

23 Q. She said that she knows of you. She didn't say that she
24 knows you.

25 A. Oh.

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 Q. She said that she knows of you.

2 A. Of me but she don't know my name.

3 Q. So, is she mistaken or is she lying?

4 A. I don't know. I mean, you might need to ask her that. She
5 the one that said she know of me but - - -

6 THE COURT: Talk to him, please, not the jury.

7 MR. LONG: Okay.

8 A. Yeah, her store got robbed, and the detective, police
9 pulled up on the scene and want to know who did it, and she
10 don't give them my name.

11 So, I mean, ain't no way she could have known me.

12 If I were in the store and you robbed me, police come in
13 the store, "Who did it?"

14 "Such and such did it."

15 Q. But she identified you today as the person who robbed her?

16 A. That be today. I mean, you coached her into doing it.
17 After you put picture - - after you put pictures of me in her
18 face and say, "Hey, this him."

19 Q. She identified you today as the person who robbed her. Is
20 that correct? Yes or no?

21 A. Like I said, you put - -

22 THE COURT: The record will reflect her testimony. He
23 doesn't have to answer that.

24 A. - - pictures in her face and made her say it.

25 THE COURT: The jury will understand the previous

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 testimony, and they can weigh it.

2 Q. Now, it's your testimony that you didn't know you had these
3 car keys when you were arrested?

4 A. Like I say. I just got the coat, and I took off.

5 Q. And that you didn't know you had this wallet or this money,
6 yet, you were on a crack binge?

7 A. Like I said. All of that stuff must have been in the coat.
8 I don't know.

9 Q. And you didn't know you had this watch?

10 Where did the police find this watch?

11 A. I don't know.

12 Q. You don't know?

13 A. Nope.

14 They got me out the pond.

15 One guy said he took it off my wrist earlier. I don't know
16 where he got it from. I know it wasn't on my wrist. I know
17 that much.

18 Q. Mr. Long, have all your answers been truthful today?

19 A. Ah, yes, sir, to the best of my knowledge they have.

20 Q. This isn't your first run-in to problems with the law, is
21 it?

22 A. No. I've been convicted of a robbery before but I did my
23 time for that and lost several loved ones behind that. So, I
24 learned my lesson from that.

25 Q. Were you convicted in 1997 for strong arm robbery?

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 A. Yes, sir. I did eight years and a half for it and lost my
2 momma and daddy while I was locked up.

3 Q. What about grand larceny? Were you convicted of grand
4 larceny?

5 A. Yeah. All that - - all that was together. When I - - -

6 THE COURT: All right. Let me tell the jury.

7 When an individual testifies under circumstances, a prior
8 prison record, if any, may be inquired into for one purpose and
9 one purpose only and that is as to the believability and
10 credibility.

11 A person's prior record cannot, must not be used as any
12 evidence against him as to his guilt for the - - for the crime
13 that he's now on trial for.

14 But our law says if an individual has been committed - -
15 has committed a prior crime of dishonesty, that prior crime can
16 be admitted for one purpose, and that is as to his credibility
17 and believability if in your discretion you conclude it's proper
18 to consider it for that purpose.

19 But I tell you. It can only be used, if at all, for that
20 purpose and no other.

21 All right.

22 Q. Again, those convictions were for strong arm robbery and
23 grand larceny, those are - - those are matters of taking
24 somebody else's property?

25 A. I did them, and I pleaded guilty to them, and I did my

MR. LONG - CROSS EXAMINATION BY MR. FILIBERTO

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1 time.

2 THE COURT: He said he's done them. He admitted it.
3 Get on to something else.

4 MR. FILIBERTO: Yes, sir. Yes, sir.

5 Q. So, you're asking the jury today to believe that three
6 separate people, two of whom clearly testified they never knew
7 you before, made a mistake or somehow errantly picked you out of
8 a photo lineup?

9 A. No. What I'm asking the jury to do is - - -

10 Q. No, I'm not - - please answer my question.

11 You're telling the Court today that - - -

12 A. No, I'm telling the Court and what I'm telling the Court,
13 you telling me what I'm telling the Court. That's what I'm
14 saying.

15 MR. FILIBERTO: Your Honor, I'd ask the witness to
16 answer my question.

17 A. You putting words in my mouth.

18 THE COURT: I'm telling you, please, one more time.
19 Ask the question, and you answer it.

20 MR. LONG: Yes, sir.

21 THE COURT: All right.

22 Q. You'd ask the Court to believe - - -

23 A. No, I didn't ask the Courts that.

24 THE COURT: That's an improper question.

25 A. That's what you ask the Court.

THE DEFENDANT RESTS

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1 THE COURT: Rephrase the question.

2 Q. It's your testimony that three separate individuals
3 errantly picked you out as people who committed crimes against
4 them?

5 A. That is not my testimony. That's what you said.

6 Q. So, they did pick you out of a lineup?

7 A. I don't know nothing about that, brother. That's what you
8 saying.

9 Only thing I'm asking the Court to do is what my lawyer
10 asked them to do, and that is weigh the evidence out. That's
11 what I'm asking them to do.

12 MR. FILIBERTO: Your Honor, the State doesn't have
13 anything else.

14 THE COURT: Sir?

15 MR. FILIBERTO: The State doesn't have anything else.

16 THE COURT: All right.

17 You have any - - any additional questions?

18 MR. GALMORE: No, Your Honor.

19 THE COURT: All right.

20 You may come down. Thank you.

21 MR. LONG: Yes, sir.

22 (The witness leaves the witness stand.)

23 THE COURT: Any further witness?

24 THE DEFENDANT RESTS

25 MR. GALMORE: The defense would rest.

OFFICER SUGGS - DIRECT EXAMINATION BY MR. FILIBERTO

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1 THE COURT: Anything in reply?

2 MR. FILIBERTO: Your Honor, the State would have a very
3 brief rebuttal witness.

4 THE COURT: Call your witness.

5 MR. FILIBERTO: The State would call Officer Kevin
6 Suggs back to the stand.

7 (The witness takes the witness stand.)

8 THE COURT: You are still under oath.

9 OFFICER KEVIN BRADLEY SUGGS, BEING
10 PREVIOUSLY SWORN, TESTIFIES AS FOLLOWS:

11 DIRECT EXAMINATION BY MR. FILIBERTO:

12 Q. Officer Suggs, just to remind the jury, again. Were you
13 the arresting officer in this case?

14 A. Yes, sir. I pulled him out of the pond.

15 Q. And when you arrested the defendant, you searched him?

16 A. Yes, sir.

17 Q. You found - - let me show you again.

18 THE COURT: Ask him what he found. Don't tell him what
19 he found.

20 Q. What did you find, again?

21 A. In relation to?

22 Q. In possession of the defendant when you arrested him?

23 A. There was a watch and there was property belonging to Mr.
24 Norris as well as some narcotics.

25 Q. Where was the wallet found?

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 A. I'm not exactly sure where the wallet was found but I do
2 remember the watch was on his wrist.

3 Q. Not in his pocket? It was on his wrist?

4 A. It was on his wrist.

5 MR. FILIBERTO: Nothing further.

6 THE COURT: Any examination?

7 MR. GALMORE: Yes, sir, Your Honor.

8 CROSS EXAMINATION BY MR. GALMORE:

9 Q. Officer Suggs, why didn't you put that in your report, sir?

10 A. I didn't do a report.

11 Q. That's right. You didn't do a report until two and a half
12 years later, right?

13 Answer my question. Did you do a report two and a half
14 years later?

15 A. The report was done on that day, sir, and I did a
16 supplemental when I was advised that some of the information
17 regarding the gun was not in there.

18 Q. Someone told you to do a report two and a half years later?

19 A. No. I was advised that the gun was not in the report. I
20 was under the impression the gun was in the report. The
21 supervisors were notified. It was called out over the radio
22 that the gentleman had pulled a gun on us, and we had other
23 officers coming.

24 Q. Okay. I understand you corrected the gun in your report.

25 A. It was an oversight on the part of the officer doing the

OFFICER SUGGS - CROSS EXAMINATION BY MR. GALMORE

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1 report.

2 Q. Did you fail to correct the watch discrepancy as well?

3 A. Again, sir, if you'll notice on the report and, also, on
4 the evidence sheet, I took the property off. Other officers
5 documents it. I did not, actually, myself do any paperwork in
6 regards to this.

7 I apprehended the subject and then I had to be debriefed by
8 my supervisor.

9 Q. You did do paperwork in this.

10 A. Yes, sir, I did do a supplemental.

11 Q. Two and a half years later.

12 A. Yes, sir, I did.

13 Q. Now, at that time two and a half years after the fact, did
14 you explain that this watch was allegedly on his wrist?

15 A. No, sir.

16 Q. Thank you.

17 MR. GALMORE: No further questions.

18 THE COURT: Anything further?

19 MR. FILIBERTO: No, sir.

20 THE COURT: All right.

21 You may come down.

22 (The witness leaves the witness stand.)

23 THE COURT: Any other witnesses?

24 MR. FILIBERTO: No, sir.

25 THE COURT: All right.

MOTIONS AND RULING OF THE COURT

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1 I'm going to let you go to the jury room for just a minute,
2 and we'll be calling you back out.

3 (The jury retires to the jury room at 3:39 p.m.)

4 THE COURT: All right, gentlemen, it's a little after
5 3:30. We going ahead with this case.

6 Any motions on behalf of the State?

MOTIONS AND RULING OF THE COURT

8 MR. FILIBERTO: Nothing, Your Honor.

9 THE COURT: For the defense?

10 MR. GALMORE: I want to renew my motion for a directed
11 verdict.

12 THE COURT: That motion, again, is respectfully denied.
13 There is sufficient evidence for the jury to consider whether or
14 not he committed some or none of these charges.

15 MR. GALMORE: Yes, sir.

16 THE COURT: It's a question for the jury.

17 The evidence is, obviously, there.

18 Yes, sir.

19 MR. FILIBERTO: Your Honor, just - - since both sides
20 have rested, I'd ask that the State's witnesses be released from
21 their subpoenas.

22 THE COURT: Yes, sir, they may.

23 All right. As I'm prone to do by agreement of counsel
24 here I'm going to go ahead and charge the jury as I usually do.

25 Jurors have told me in the past. "I wish I'd have known

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1 the elements before lawyers gave me summation. I could have
2 followed their position better."

3 Mr. Galmore, I've done that with you before. Do you have
4 any objection to that process?

5 MR. GALMORE: No, sir.

6 THE COURT: And do you?

7 MR. FILIBERTO: None.

8 THE COURT: All right.

9 MR. GALMORE: Your Honor, there is one thing, though.

10 Given the testimony from Mr. Long, we would ask for on the
11 charge of car jacking, we'd ask for a lesser included offense of
12 grand larceny.

13 If they believe his testimony, he did take the car but it
14 wouldn't have been by force or intimation or from the Fairfield
15 Resort.

16 THE COURT: What do you say about that?

17 MR. FILIBERTO: Your Honor, I would guess in an
18 abundance of caution, I would not object.

19 THE COURT: I'll charge grand larceny as a lesser
20 included.

21 MR. FILIBERTO: Thank you, sir.

22 MR. GALMORE: Thank you.

23 THE COURT: Because he says he took it but he said he
24 didn't do it by force or violence. Yeah, I'll do that.

25 MR. GALMORE: Thank you, Your Honor.

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1 THE COURT: All right.

2 You want to take a short break of about five minutes before
3 we proceed?

4 Go ahead.

5 MR. FILIBERTO: Thank you, sir.

6 (The Court recesses the trial of this case briefly and
7 thereafter reconvenes the trial of this case.)

8 THE COURT: All right.

9 Let the record reflect that by agreement of counsel, I am
10 going to charge the jury prior to summation but in accordance
11 with the statute that says summation shall be made after
12 arguments, I will have some concluding remarks, and that process
13 is consented to by attorney for the State and the defense.

14 Is that right?

15 MR. FILIBERTO: Yes, sir.

16 MR. GALMORE: Yes, sir.

17 THE COURT: All right. Thank you.

18 Bring the jury in.

19 (The jury returns to the courtroom at 3:51 p.m.)

20 CHARGE OF THE COURT

21 THE COURT: Mr. Foreman, ladies and gentlemen, you have
22 heard all of the testimony in this case, and we are now at the
23 stage where we have final arguments of counsel, and I will give
24 you the instructions in the law.

25 Jurors in the past few years have said to me, "Judge, I

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1 wish you would have told us what the law was even before they
2 gave final arguments. I believe I could have followed their
3 position better."

4 And so with consent of counsel for the State and the
5 defense, I'm going to charge you the law at this time, and at
6 the end of their summations, I'll be back with you with some
7 concluding remarks.

8 Now, remember during your deliberations at all times you
9 are the finders of the facts, and we'll go into that in more
10 detail but, if during your deliberations you have a question of
11 law, Mr. Foreman, you write pencil and paper provided you write
12 that question of law down and let me know about it, and I'll be
13 glad to talk to you about it.

14 Now, Mr. Foreman, and members of the jury, the State of
15 South Carolina charges this defendant, one William Long, with
16 five separate offenses.

17 One is car jacking to which he pleads not guilty.

18 The next charge is kidnapping to which he pleads not
19 guilty.

20 The next charge is indictment for armed robbery, and then
21 there is a second indictment for armed robbery, and then he is
22 charged with a separate and different offense which is
23 possession of a weapon during the commission of a violent crime.

24 So, as to all of these charges, this defendant specifically
25 pleads not guilty.

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1 Now, in consideration of each of these indictments, you
2 will consider the evidence separately as to each one.

3 As an example and example only, your verdict as to all five
4 could be not guilty. Can be guilty depending on your view. I
5 make no reference as to what your verdict should be.

6 Your verdict might be not guilty as to some and guilty as to
7 the other.

8 I tell you this just to emphasize to you that you consider
9 the evidence separately as to each indictment which will be with
10 you in the jury room and thereafter write your verdict
11 accordingly.

12 Now, as I indicated before, to these indictments this
13 defendant has pled not guilty which places upon the State of
14 South Carolina the burden of proving the defendant guilty.

15 A person charged with committing a criminal offense in
16 South Carolina is never, ever required to prove himself
17 innocent.

18 I charge you that it is a vital, important rule of law of
19 evidence that a defendant in a criminal case no matter how great
20 or serious may be the offense with which he is charged must
21 always be presumed innocent until his guilt has been proven
22 beyond a reasonable doubt.

23 This presumption of innocence remains with this defendant
24 at all times from the moment of his arraignment throughout the
25 trial until you, the jury, have upon the testimony and evidence

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1 presented reached a verdict of guilty beyond a reasonable doubt.
2 For it is the solemn duty of the jury if not clearly convinced
3 of his guilt beyond every reasonable doubt to the contrary to
4 acquit the defendant of the crimes charged.

5 Now, I have used the term reasonable doubt. Let me explain
6 that to you.

7 The State has the burden of proving the defendant guilty
8 beyond a reasonable doubt. Some of you may have served as
9 jurors in civil cases where you were told it is only necessary
10 to prove that a fact is more likely true than not.

11 In criminal cases, the State's proof must be more powerful
12 than that. It must be beyond a reasonable doubt.

13 Ladies and gentlemen, proof beyond a reasonable doubt is
14 proof that leaves you firmly convinced of the defendant's guilt.
15 There are very few things in this wide world that we know with
16 absolute certainty, and in criminal cases the law does not
17 require absolute certainty and the law does not require proof
18 that overcomes every possible doubt.

19 If you are firmly convinced of the defendant's guilt, you
20 must find him guilty.

21 On the other hand, if the State has failed in proof beyond
22 a reasonable doubt, then find him not guilty.

23 Now, ladies and gentlemen, under the Constitution of South
24 Carolina you are the sole and only finders of the facts in this
25 case. I do not have the right to pass upon any facts or even to

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1 express an opinion I might have as to them nor may I intimate to
2 you in any way whatever - - what I might think about the guilt
3 of innocence of this defendant.

4 I tell you that if any word, ruling, mannerism of mine
5 might tend to indicate to any of you how I feel about any issue
6 between these litigants, please disregard that. I am not
7 entitled to a factual opinion, and I absolutely have none.

8 You are the judges, the sole judges of the credibility, the
9 believability of the witnesses who have testified in this case.
10 In passing upon their credibility you may take into
11 consideration such things as, if you choose, the appearance and
12 manner of the various witnesses who testified sometimes referred
13 to as the demeanor of a witness.

14 You may consider was a witness forthright or hesitant.
15 You, of you choose to, was a witness' testimony consistent or
16 did it contain discrepancies?

17 What was the ability of the witness to know about the facts
18 which he or she may have testified to?

19 Obviously you would always consider. Did a witness have a
20 cause or reason to be biased and prejudiced in favor of the
21 testimony that he or she gave?

22 You are entitled to consider. Was the testimony of a
23 witness corroborated or made stronger by other testimony in
24 evidence or was it made weaker or impeached by such other
25 testimony.

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1 As jurors, ladies and gentlemen, you have a right to
2 believe a small portion of a witness' testimony, disregard the
3 larger or vice versa in your opinion.

4 You may believe all of a witness' testimony or none. You
5 may believe the testimony of a single witness against that of
6 many witnesses or the other way around.

7 Most certainly, you do not determine the matter of
8 credibility or believability by counting up the number of
9 witnesses who may have testified for one side or the other.

10 Mr. Foreman and ladies and gentlemen, throughout this
11 entire process you have but one single objective, just one, and
12 that is to seek the truth regardless of from what source or what
13 witness that truth be derived.

14 You know, said another way we like to say that as finders
15 of the facts and as jurors, you didn't leave your common sense
16 on the streets of Conway, South Carolina, when you walked into
17 this courtroom, and we all know in everyday lives, when folks
18 tell us things, we kind of size them up.

19 We have certain tools we use be it talking to our children
20 or people at work or where ever, we have certain tools, our
21 common sense, to make us decide whether we want to believe them
22 or not believe them, and that's a process, too, you bring into
23 the courtroom as jurors, literally, off the street, and we say
24 to you. You find the facts. You judge the credibility. You
25 judge the believability and make that determination.

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1 Now, all of these things you will consider bearing in mind
2 that you must give the defendant the benefit of every reasonable
3 doubt.

4 Now, by the same constitution that makes unto you twelve
5 the finders of the facts, that same august document makes unto
6 me the instructor of the law the law as I now give it to you.

7 You may disagree with what the law is or ought to be but
8 for the purposes of this trial your oath requires that you
9 accept the law as I tell you it is remembering, however, that as
10 finders of the facts, you take the facts as you find them to be
11 and apply them to the law of the case and thereafter reach a
12 verdict.

13 Verdict comes from the Latin word "verdicto" meaning to
14 speak the truth

15 Now, the first indictment that I want to discuss with you
16 is car jacking. The defendant is charged with car jacking. In
17 order to prove car jacking, the State must prove beyond a
18 reasonable doubt that the defendant took or attempted to take a
19 motor vehicle from another person by force or violence or by
20 intimidation while the person was operating the vehicle or while
21 the person was in the vehicle.

22 The State then must prove with regard to the car jacking
23 that this defendant using force and violence took the automobile
24 of another while he was either in the automobile or in the
25 process of operating it, and as all other things, the State must

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1 prove those charges beyond a reasonable doubt.

2 The next charge is kidnapping. Kidnapping is the
3 intentional taking of a person and compelling him or her to be
4 detained against his or her will. It is the willful and
5 unlawful seizing of a person against his will with an intent to
6 cause himself to be confined, imprisoned or detained.

7 The essence of the offense of kidnapping is the unlawful
8 secret holding or imprisonment of a person. Kidnapping means
9 the carrying away of a person by unlawful force or by fraud or
10 against his or her will and detaining him or her.

11 The elements of kidnapping are, one, unlawful seizure,
12 confine, invade, decoy, kidnap or carry away of another person
13 by any means whatsoever without authority of law.

14 The gist of the offense of kidnapping is some sort of
15 compulsion but the law says that the requisite force or
16 compulsion need not consist of the use of actual physical force
17 or violence of another.

18 The offense of kidnapping commences when one is wrongfully
19 and unlawfully deprived of his or her liberty for any period of
20 time.

21 Now, I want to discuss with you the charges with regards to
22 armed robbery.

23 Larceny is defined in the law as the taking and carrying
24 away of the property of another with the intent to permanently
25 deprive that person of that property. The simple definition is

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1 stealing.

2 Now, when you steal somebody's property, it's called in the
3 law grand larceny or larceny depending on the amount.

4 If you take somebody's property by force and violence, it's
5 called robbery.

6 Now, if in stealing somebody's property by way of robbery
7 there is an additional element and if you take somebody's
8 property or steal it while armed with a deadly weapon, it is
9 armed robbery.

10 Now, this defendant upon two indictments is charged with
11 the offense of armed robbery.

12 You will recall that I tell you that grand larceny is the
13 stealing of the property of another. Robbery is the stealing by
14 force and violence. Armed robbery is doing that while armed
15 with a deadly weapon.

16 Let me give you a more precise definition.

17 The crime of armed robbery which is in two of the
18 indictments as I have explained them to you, in order to make
19 out the crime of armed robbery an additional element is required
20 to be proven than in robbery alone. The robbery must have been
21 committed with a deadly weapon. That is, the person committing
22 the robbery had and used a deadly weapon with which he placed
23 the one in possession of the property in fear in order to obtain
24 the property.

25 And so I say to you. You first must conclude beyond a

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1 reasonable doubt that there was a robbery. Second, you must
2 conclude that that robbery was performed with a deadly weapon.
3 Thirdly, you must conclude that this defendant did it.

4 And these three things as all other things must be proven
5 to your satisfaction beyond a reasonable doubt.

6 In this case the defendant as you are well aware from the
7 testimony is charged with two separate counts of armed robbery.

8 Now, there is another charge, and that relates to the
9 indictment with reference to the commission of a felony,
10 possession of a deadly weapon during the commission of a violent
11 crime.

12 This statute provides that one who in commission of a
13 violent crime has a deadly weapon, he is guilty of another
14 offense.

15 Now, the elements of that charge are as follows:

16 One, there must have been a violent crime. I charge you as
17 a matter of law that armed robbery is a violent crime.

18 The State must prove beyond a reasonable doubt that in the
19 commission of that charge a deadly weapon was used, and the
20 State must prove that this defendant did it.

21 As all other issues, they must prove beyond a reasonable
22 doubt.

23 Now, an issue in this case is the identification of the
24 defendant as the perpetrator of the various crimes charged in
25 these five indictments.

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1 The State of South Carolina has the burden of proving the
2 identify beyond a reasonable doubt.

3 Identification testimony is an expression of belief or
4 impression by a witness. You may consider the opportunity a
5 witness had to observe the alleged defendant at the time of the
6 offense and to thereafter make an identification. It is for
7 you, the jury, to determine the identification testimony of the
8 defendant.

9 You must consider the credibility of each of the
10 identifying witnesses in the same way as other witnesses. You
11 may consider his or her truthfulness as well as capacity,
12 opportunity and circumstances of the observation of the matters
13 which they have testified.

14 Now, I want to emphasize to you that in the testimony of
15 the examination of this defendant there was testimony as to his
16 prior record. If you conclude that that was, in fact, his
17 prior record, you may if you choose use it as to his credibility
18 and believability and for no other purpose whatsoever. A
19 person's prior crime is absolutely no evidence of his
20 criminality in the charges for which he is on trial.

21 It may be if you choose to use it to credibility and
22 believability if you conclude that he, in fact, had committed
23 these prior crimes.

24 Now, Mr. Foreman, when you begin your deliberations your
25 verdict, as I've indicated to you, as to each indictment is to

CHARGE OF THE COURT

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1 be considered separately. It may be guilty or not guilty as to
2 some, guilty or not guilty of the other, not guilty of all or
3 guilty of all. It depends on your view of the evidence of each
4 one.

5 Whatever your verdict is, it must be the unanimous verdict
6 of all twelve of you. It could not be a verdict of the minority
7 or majority. It must be unanimous.

8 Now, I'm going to let you go to the jury room just a few
9 minutes to relax. Give you an opportunity to relax just a
10 second before we have final concluding arguments.

11 You may go to the jury room just a minute.

12 (The jury retires to the jury room at 4:13 p.m.)

13 THE COURT: All right, sir. Let's get on the record.

14 I have concluded that grand larceny is not a lesser
15 included as to car jacking.

16 Other than that, is there any exceptions or additions?

17 MR. FILIBERTO: None from the State, sir.

18 THE COURT: How about from you?

19 I respectfully decline to charge as a lesser including of
20 kidnapping grand larceny because the elements are totally
21 different.

22 MR. GALMORE: Yes, sir.

23 Just note my objection for the record.

24 THE COURT: I say you have asked that I charge as a
25 lesser included.

CHARGE OF THE COURT

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1 MR. GALMORE: Yes, sir.

2 THE COURT: I conclude it's not proper.

3 All right, sir. When we return, you'll have your argument.

4 MR. GALMORE: Yes, sir.

5 THE COURT: And then we'll conclude with his and the
6 jury can begin deliberations.

7 MR. GALMORE: Yes, sir.

8 THE COURT: But there's no exceptions or addition to the
9 charge other than the fact that you requested as a lesser
10 included grand larceny?

11 MR. GALMORE: That's all, Your Honor.

12 THE COURT: All right, sir.

13 MR. FILIBERTO: Nothing from the State.

14 THE COURT: What do you say? Do you have a position
15 about his lesser included?

16 MR. FILIBERTO: None, Your Honor. We defer to the
17 Court. We defer to the Court.

18 THE COURT: I just don't conclude that it's a lesser
19 included of car jacking.

20 All right. Where's my bailiff.

21 Go tell the jury I'm ready when they are.

22 Gentlemen, when I bring the jury back, I'm going to read
23 them the statute itself with regards to, ah, robbery with a
24 deadly weapon.

25 MR. GALMORE: Yes, sir, Your Honor.

ADDITIONAL CHARGE OF THE COURT

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1 (The jury returns to the courtroom at 4:13 p.m.)

2 ADDITIONAL CHARGE OF THE COURT

3 THE COURT: Mr. Foreman, in discussing the various
4 indictments with you, I gave you the law with regards to the
5 possession of a weapon during the commission of a violent crime,
6 and, ah, with regards to that I want to read you the specific
7 statute relating to that issue.

8 Section 16-11-330 regarding robbery and attempted robbery
9 while armed with a deadly weapon provides as follows:

10 A person who commits robbery while armed with a pistol,
11 dirk, slingshot, medal knuckles, razors or other deadly weapons
12 or while alleging either by action or words he was armed while
13 using a representation of a deadly weapon or any object which a
14 person presents during the commission of a robbery reasonably
15 believed to be a deadly weapon is guilty of robbery while armed
16 with a deadly weapon.

17 Now, in that case the State must prove:

- 18 1. That there was a robbery;
19 2. That the culprit was armed with a deadly weapon, and
20 3. That the defendant was the one who did it.

21 And as with all other issues, they must prove that beyond
22 a reasonable doubt.

23 I have previously provided to you the law with regards to
24 the other indictments emphasizing again that during your
25 deliberations if you have any question as to what the law is,

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1 write them down and I'll be glad to call you back out.

2 All right. Under our rules, the defense has the
3 opportunity of proceeding first, and you may do so.

4 SUMMATION BY MR. GALMORE

5 MR. GALMORE: May it please the Court, Your Honor?

6 Ladies and gentlemen, cases break down to three basic
7 defense, and it goes like this. It's real simple.

8 Number one, it didn't happen.

9 Number two, it happened but it wasn't me.

10 Number three, it happened. It was me. Wait a minute. Let
11 me explain.

12 The first case where it didn't happen. Let's say you're
13 the manager of the Scotchman Gas Station and one night they call
14 in and say, "Oh, I've been robbed at gun point and beaten over
15 the head."

16 Well, the police go back and do some investigation and
17 figure out that you, in fact, were not robbed and beat over the
18 head but that you hit yourself in the head and stole the money
19 bag.

20 Whoever they have sitting at that table over there charged
21 with robbery would be found not guilty under the theory that it
22 didn't happen. There was no robbery. Pretty simple.

23 Number two, it happened but it wasn't me.

24 I will grant you that the Cash and Dash was robbed at gun
25 point. I'll give you that. However, I tell you that it

SUMMATION BY MR. GALMORE

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1 wasn't William Long who did it.

2 Therefore, the State of South Carolina has the burden of
3 proving that he did it beyond a reasonable doubt. That's what
4 this case is all about, the State's burden of proof.

5 Now, I explained it to you in terms of football field and
6 you didn't have to score but you had to be down there close to
7 the end zone at least.

8 You've heard all of the evidence in this case, and I submit
9 to you. We are not there.

10 I told you that the police officers didn't do what they
11 needed to do. They can't do anything except have what the
12 police gave them. So now they're asking you to do their work
13 for them.

14 Let's go through the evidence and let's go through the lack
15 of evidence.

16 The best thing that the State has presented to you today is
17 these two videos. There's two on one or two or whatever,
18 video. You saw them. They looked, well, they didn't look that
19 great. Each and every one of you is going to have to go back
20 into that jury room, and you're going to have to decide for
21 yourself. Could you tell who that was on that video? That's
22 the question that's before you.

23 The same thing with this picture. Mr. Long said it best
24 when he sat up there and held it up. Can you tell if that's
25 him? I can't.

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1 And it's not your job to guess if that is him. That's not
2 your job to assume that it's him. It's not your job to say,
3 "Well, I just don't like him anyway. So I'm going to say it's
4 him."

5 You have to say in your mind and in your heart, each and
6 every one of you, "I think that's him on that tape. I am firmly
7 convinced."

8 That's what the judge said when he said beyond a reasonable
9 doubt. He said you must be firmly convinced.

10 You can take Madame Court Reporter's word. She can play it
11 back for you. You can hear Judge Cottingham's statement to you
12 a few minutes ago. He said beyond a reasonable doubt means you
13 must be firmly convinced of his guilt.

14 Well, those tapes don't take us there.

15 Those tapes show a robbery. I'll grant you that but they
16 don't show William Long as the person committing them.

17 So, now what does the State have for you? They give us
18 these photo lineups.

19 And we've got these two people, Mr. Norris and Ms. White,
20 who looked at these lineups and said, "It was #2."

21 Well, let's deal with Mr. Norris first. Like I said. No
22 doubt that he was robbed. I tell you that I don't think it was
23 William Long that did it.

24 Mr. Norris looked at these photos. Picks him out.

25 Well, truth be told. If you're being robbed at gunpoint,

SUMMATION BY MR. GALMORE

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1 he said it. "The shotgun was in my chest."

2 Hate to say it but you're probably not paying attention to
3 height, weight, physical characteristics, whether or not he had
4 a beard or not or like he said, whether he had a cut over his
5 eye.

6 Truth is, you're looking at that gun, and you're hoping it
7 ain't going off. That is a very nerve racking moment. You
8 cannot expect this man to come into court, excuse me, come down
9 to the police department seven days later and remember that.
10 That's simply too traumatizing a situation.

11 Now, Ms. White, I'm not sure where her testimony ends up.
12 It went all over the map. She said she knows Mr. Long. She
13 didn't say. She didn't tell the police, "Oh, I know who robbed
14 me. It was William Long."

15 This would have been real simple if William Long walked
16 into the Cash and Dash with shotgun in hand and walks up to that
17 cash register, all she would have had to say, "William, what are
18 you doing?"

19 It's that simple.

20 She claimed to know his daddy. She claimed to know his
21 family. Play her testimony back if you want to but she didn't
22 tell the police it was him?

23 That's why I asked her about her written statement. In her
24 written statement she said a black male. All she would have had
25 to write in her statement instead of it being a page long was

SUMMATION BY MR. GALMORE

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1 two things, William Long, and it would be over. That would be
2 all that would be required of the State but she didn't.

3 So, I don't even know what to do with her statement.

4 Again, somebody has a shotgun in your face, your probably
5 not paying that much attention but that doesn't apply to her
6 because she claims to have known him.

7 Funny thing about that tape. Looks like when the person
8 goes in the store and robs the cashier, turns and robs the
9 customer in line. They didn't charge Mr. Long with that. I
10 don't know why.

11 Like I said. People don't do their jobs, everybody's hands
12 in the court system gets tied.

13 All I can tell you is what appears to be a third armed
14 robbery is not before you. Don't ask me why but it's not.

15 So, now that we've talked about the videos, that was the
16 big ammunition. Turns out not to be that clear.

17 Now that we've talked about the photo I.D.'s they are
18 suspect in my humble opinion.

19 What else does the State have to present to you? How else
20 can the State say, "I am firmly convinced. I am convinced
21 beyond a reasonable doubt that the person that committed these
22 crimes is William Long."?

23 Well, they can't because that's all they have.

24 They'll tell you that they - - well, let me back up.

25 Detective Boyd said, "Oh, we lifted some prints. I really

SUMMATION BY MR. GALMORE

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1 didn't do anything with them."

2 That's disappointing. It's disappointing because this man
3 is facing time in prison. If you got fingerprints and you got
4 a suspect, you don't have to test those prints against the
5 entire planet. You test them against William Long, and if it's
6 his prints on that pump, I got nothing to say. If it's his
7 prints in that cash drawer because you saw the video. Reached
8 in the cash drawer. If it's his prints there, I got nothing to
9 say.

10 And like I said. I don't know if - - I don't want to call
11 it laziness. I don't know what it is but a crucial piece of
12 evidence was simply disregarded, and for you all to be asked to
13 send someone to prison based on this lack of evidence is
14 disappointing.

15 Let's talk about this kidnapping, this car jacking.

16 To hear Mr. Smith tell it, traumatizing event.

17 To hear Mr. Long tell it. He was traumatized because he
18 had to walk down Hardee Road, and Mr. Long told a story which I,
19 quite frankly, believe over Mr. Smith.

20 He got up. He said, "Yes, I have been arrested before. I
21 did it. I pled to it. I did my time."

22 That's what he told you.

23 And it's true. He did the crime. He admitted that he did
24 the crime. He did the time.

25 He told you. He's got a drug problem. He was trying to

SUMMATION BY MR. GALMORE

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1 scheme up on some money to get some drugs. Why if he robbed
2 the Cash and Dash would he have a pocketful of Mr. Norris'
3 money? If you're a drug addict, that money would have been gone
4 a long time ago.

5 I don't know how many of you have to deal with things like
6 addiction in your personal lives or business lives or what lives
7 but that truth. That money would not have been there, what, a
8 whole day later. No, it would not have been there.

9 The police officer said Mr. Long threw a pistol in the
10 lake, and he told you the truth again. If you want drugs, that
11 pistol would have been sold for crack a long time ago.

12 Simply no way a crack addict is going to hold on to
13 something. It's like he told you with the car. It can be
14 traded for crack.

15 That gun would have been gone. Wouldn't have been running
16 around with it.

17 It was really disappointing when I talked about the lack of
18 evidence, the lack of prints, the claim of a gun, the claim, "We
19 dragged the pond."

20 And nobody seemed to think enough of it to write it down.

21 "He had a gun but we couldn't find it."

22 Shotgun, where is it at? There is a complete lack of
23 evidence because what they've done is drove down Carey Lane.
24 Saw William Long and decided to pull him over to talk to him.

25 In Mr. Long's mind. "Oh, I've got drugs in my pocket. I

SUMMATION BY MR. GALMORE

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1 have to run."

2 That was it. That's how he became a suspect.

3 I don't know about all this, "We had information that day."

4 I don't know about that. All I know is Mr. Long was
5 walking down the street.

6 And you're going to be asked to judge the credibility of
7 the witnesses, and you're going to be asked to weigh the value
8 of this evidence.

9 You have taken an oath as jurors. I think the judge said
10 you have a solemn duty to acquit if this evidence does not meet
11 the legal standard.

12 You see. In a way, Mr. Long isn't really on trial. I
13 know he is, and I'm not crazy or anything but what is on trial
14 is the State of South Carolina because they have the burden of
15 proof.

16 Right now this moment Mr. Long is innocent. What you're
17 doing is judging whether the State of South Carolina has brought
18 you sufficient evidence to convict him. Whether he's guilty or
19 not guilty is the by-product of what the State has presented to
20 you in court, and if they have not presented you enough evidence
21 that - - that convinces you beyond a reasonable doubt, you have
22 an obligation to find Mr. Long not guilty.

23 Now, you might get back there and you might say, "I don't
24 like him. I think he did it. It looks like he did it."

25 That's not the law, ladies and gentlemen. The judge never

SUMMATION BY MR. FILIBERTO

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1 said one time that you could find him guilty if it looks like he
2 did it. The judge never said you can find him guilty if,
3 "Well, I just don't like him."

4 That's not sufficient. The State has to prove it's case.
5 It has to be beyond a reasonable doubt. You have to be firmly
6 convinced of his guilt, and if you're not, then you have a legal
7 obligation to say not guilty.

8 We're asking you to say not guilty because we don't believe
9 the State has proven their case sufficiently.

10 Thank you for your time and attention.

11 THE COURT: Thank you, Mr. Galmore.

12 Solicitor.

SUMMATION BY MR. FILIBERTO

14 MR. FILIBERTO: Ladies and gentlemen, William Long is
15 a person who wants what he wants when he wants it.

16 He wanted a ride. You heard the testimony of Nathan Smith
17 leaving his job at seven in the morning walking to his car. The
18 defendant who he'd never saw before, didn't know the man at all
19 says, "I need a ride up somewhere in North Carolina."

20 He said, "Man, I got no gas. I got to go."

21 He said, "If you don't take me, you're going to meet my
22 little friend."

23 You heard Nathan say that. He testified he took that to
24 mean he had a gun and that he was threatened harm if he didn't
25 take him. So he took him.

SUMMATION BY MR. FILIBERTO

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1 He testified that he was scared. So he tried to speed his
2 car up to catch the attention of a police officer. The
3 defendant noticed it and told him to slow down.

4 He testified that he drove a certain distance down a dirt
5 road out there somewhere near the Loris Community, and he had
6 the victim stop, and he told him to get out of the car, and he
7 threatened him. He testified that he showed - - grabbed at
8 something. He didn't see what it was but he thought it was a
9 gun.

10 He, Mr. Smith walked down the road. Called the police
11 right away.

12 No question about Mr. Smith's testimony.

13 Mr. Long wanted a ride when he wanted it, and he took it at
14 threat of force. He made Nathan Smith drive. Nathan Smith
15 testified before you. He did not feel free to leave and go home
16 like he had wanted to and that he was forced to leave where he
17 was and to go to another place.

18 The judge has instructed you on the law, and, again, I
19 point to you to always take what the judge says regarding the
20 law. That's kidnapping.

21 If - - there's no testimony at all that William Long had
22 authority of law to make Nathan Smith go.

23 Let's talk about car jacking. William Long decided he
24 wanted Nathan Smith's car, and he wanted it then.

25 "If you don't get out of this car, you going to get hurt."

SUMMATION BY MR. FILIBERTO

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1 Fearing for his safety, he got out of that vehicle, and
2 William Long took his vehicle and sped down the highway.

3 Clearly, that was Mr. Smith's testimony.

4 The State #7 is evidence. It's admittedly a grainy photo
5 of a person leaning on a car at the Cash and Dash. Nathan Smith
6 identified this car as his. It was a green Toyota Camry.

7 It was also identified by Mary White when she looked at the
8 video and called the police and reported a green Toyota Camry.

9 Malcolm Norris testified that was William Long leaning on
10 the car. No question about their testimony.

11 Mr. Norris testified he got off work. He was going home.
12 Pulls in to get some gas. Started pumping gas. It's shown on
13 the video, and the defendant came around and pointed a sawed-off
14 shotgun at him. Put it in his chest, he said. Took his watch
15 and his wallet. His wallet first, then his watch. Told him to
16 stay there while he went into the store.

17 Mr. Norris, thankfully, once the defendant went into the
18 store took off and called the police.

19 William Long wanted Mr. Norris' watch and his wallet, and
20 he took it.

21 William Long went into the Cash and Dash Convenient Store,
22 walked up to the camera and pointed that shotgun at Mary White.
23 Told her to open the cash register.

24 You heard her testimony. He reached in and took the money
25 and fled the store, left.

SUMMATION BY MR. FILIBERTO

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1 It's all on video.

2 Is it a high definition screen quality video? No. You can
3 clearly see the gun? I'll leave that for yourselves.

4 MR. LONG: Your Honor.

5 MR. FILIBERTO: Each of the three victims in this a,
6 Nathan Smith, Malcolm Norris and Mary White, separately and
7 apart were shown six-pack photo I.D.'s. Each of them
8 separately and apart within seconds picked out the defendant's
9 photograph as the person who committed the crimes that they were
10 victims of. There's no question that that's what the victims'
11 testimony was and the police's testimony. That was the case.

12 Testimony of Officer Suggs is that when the defendant - -
13 when he approached the defendant, he ran.

14 The defendant testified he ran because he had drugs in his
15 possession.

16 I don't know how that is. I don't know why he ran but he
17 ran.

18 They had to chase him down. They brought him into custody
19 and after taking him into custody and arresting him, Officer
20 Suggs testified that they recovered from him several items - a
21 watch that Malcolm Norris testified belonged to him. In fact,
22 he was wearing it today.

23 A wallet with all kinds of photo I.D. and other information
24 that belonged to Malcolm Norris. And, again, this was in
25 William Long's possession when he was arrested.

SUMMATION BY MR. FILIBERTO

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1 A set of car keys that belonged to the car jacked car in
2 Mr. Long's possession when he was arrested.

3 And, again, I point out the photo lineups of all three,
4 these are in evidence. You can have these back in the jury room
5 and you'll be able to see them.

6 The lineups were presented in a matter of days to the
7 victims. They all very quickly without any prompting or
8 hesitation selected photos of the defendant in this case.

9 Defense attorney - - defense counsel has argued and asked
10 you to focus on a couple of things. I just want to address
11 those a little bit.

12 He talks about fingerprints and lack of fingerprint
13 analysis and tells you that it wasn't done. He's also kind of
14 asked you to narrowly focus in on that specific thing. I would
15 ask you to look at the evidence in its entirety.

16 It's actually very rare that a prosecutor gets a case with
17 as much evidence as we have in this case. Videos of the
18 crime, the defendant caught in possession of items that are
19 clearly linked back to the victims, three very quick, clear,
20 unequivocal selections of a photo from a photo lineup.

21 The police in evaluating what they need to do in order to
22 investigate a case and create evidence, they look at what they
23 have. They have got photo I.D's, unequivocal, not one, not
24 two but three.

25 They've got the property of the victims in the possession

SUMMATION BY MR. FILIBERTO

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1 of the defendant when he was arrested, and they have videos of
2 the crimes - - of two of the crimes, clearly, and in that video
3 the defendant seen in possession of the hijacked car.

4 I don't know what would be enough evidence. Um, that's
5 clearly at some point the police in their experience and
6 judgment decide that there's enough.

7 Ladies and gentlemen, I would tell you. There's enough.
8 There's enough. There's more than enough.

9 I would ask you to consider all of the evidence in it's
10 entirety before you go to the jury room.

11 Let's also make a couple of comments about Mr. Long's
12 testimony. Do you know of anybody that can be that unlucky?

13 He acknowledged taking the car not under threat of force
14 but he said he took the car. So he did have conversations with
15 Nathan Smith.

16 He said he was never at the Cash and Dash and that he
17 rented the car out for some drugs or some money. He wasn't
18 clear which and that, um, he got a coat from one of those people
19 he rented the car to and he testified that the watch and wallet
20 - - I think he testified they were in the coat. He was unaware
21 they were they.

22 Um, Officer Suggs, I asked him to just briefly come back to
23 the stand. He testified that he removed that watch from William
24 Long's wrist at the time he arrested him.

25 I can't imagine anybody with worse luck to have traded the

SUMMATION BY MR. FILIBERTO

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1 car that he took and got evidence in two armed robberies where
2 he was also picked out of a photo iden - - array by the victims
3 of the armed robberies clearly and within a matter of a few
4 seconds.

5 William Long wants the things he wants when he wants them.
6 I would submit to you that people don't get things that way.

7 One other thing I'd like to talk about and that's the use
8 of a deadly weapon during a violent crime.

9 Clearly, there is testimony of Mr. Norris and Ms. White
10 that the defendant had a sawed-off shotgun in his hand, and
11 you've seen the videos but I'm going to just ask you to watch
12 the in-store video just one more time so you'll have a chance to
13 see that.

14 Bear with me one second.

15 (The attorney for the State sets up and plays for the jury
16 the video identified as State's Exhibit #18.)

17 MR. FILIBERTO: I would point out to the jury. There's
18 no question. You can clearly see the rifle pointed at Ms.
19 White, and she identified this defendant, William Long, taking
20 the cash from the cash register and then leaving the scene.

21 Just a final comment. I ask you as you go back to the jury
22 room when you consider the evidence that you consider it all.
23 That you consider the photo I.D.'s. You consider the physical
24 evidence, the videos, the testimonial evidence.

25 As Mr. Galmore pointed out, on a couple of occasions you

FINAL CHARGE OF THE COURT

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1 are entitled to request it. Have evidence that took place on
2 that witness stand played back to you. That would be your
3 decision.

4 As the judge indicated during his opening comments that
5 he's going to ask you to reach a verdict on each of these five
6 counts, and a verdict really means to speak the truth, and
7 that's all the State would ask in this case. That you find a
8 verdict that speaks the truth.

9 We'd ask that you find William Long guilty of the armed
10 robbery of Malcolm Norris, the armed robbery of Mary White at
11 the Cash and Dash Gas Station, kidnapping of Nathan Smith, car
12 jacking of Nathan Smith and the use of a deadly weapon during
13 the commission of a violent crime.

14 Appreciate your attention.

15 THE COURT: Thank you, counsel for the State and, Mr.
16 Galmore, thank you, counsel for the defense.

FINAL CHARGE OF THE COURT

18 THE COURT: Ladies and gentlemen, I have previously
19 instructed you with regards to the charges here which are, as
20 you are well aware, two charges of armed robbery, one of
21 kidnapping, one of car jacking and one of the use of a deadly
22 weapon while in the commission of a violent crime.

23 I have charged you previously with regards to the facts in
24 the case - - not the facts but the issues in the case and have
25 instructed you that as to each issue in the case, the State must

FINAL CHARGE OF THE COURT

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1 prove it beyond a reasonable doubt and prove it further that
2 this defendant did it.

3 I would ask during your deliberations that you keep these
4 instructions of law in your mind remembering at all times that
5 you twelve are the finders of the facts in this case. You are
6 the judges of the credibility and the believability of all the
7 witnesses who have testified.

8 You take the facts as you find them to be and apply them to
9 the law of the case as I have given it to you and thereafter
10 reach a verdict.

11 I remind you, too, that there are five separate
12 indictments. You will consider the evidence separately as to
13 each indictment.

14 The evidence - - the verdict could be the same as to each
15 of them or different as to all of them depending on your view of
16 the facts.

17 Mr. Foreman, if at any time any member of your jury has
18 some question about what the law is write it down on a piece of
19 paper and let it go but let me know.

20 Now, I'm going to send you to the jury room. DO not begin
21 your deliberation until these verdict forms come in along with
22 what I've introduced into evidence.

23 I had word while ago that somebody wanted to smoke a
24 cigarette.

25 Mr. Foreman, let them smoke a cigarette but do not - -

ALTERNATES SEPARATED

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1 we'll let them go out and smoke a cigarette but do not begin
2 your deliberations until they return.

3 Our rule is that all deliberations must be in the presence
4 of all twelve of you. Go to your jury room.

5 Alternates will remain in the courtroom.

6 Please retire.

7 If the gentleman or lady who wants to smoke, we'll take
8 them out and smoke but - - go ahead.

9 (The jury retires to the jury room at 4:53 p.m.)

10 ALTERNATES SEPARATED

11 THE COURT: Sas to the alternates, I'm going to have you
12 go to a separate place, and we'll leave you comfortable.

13 You may wonder, "Well, everybody looks okay. Why in the
14 world they keeping me?"

15 Let me tell you. At 2:30 in the morning six months ago I
16 had to discharge a juror and, fortunately, I left - - had an
17 alternate.

18 I was in Charleston trying a murder case, and I let the
19 alternate go. Thirty minutes later somebody had an epileptic
20 attack.

21 I was in Florence six months ago, and, fortunately, I had
22 an alternate, and we got word that one of the juror's daughters
23 had been in a serious automobile wreck and was about to die in
24 the emergency room, and, obviously, I had to let her go.

25 So, I tell you. Things happen and that's why I've got to

EXHIBITS AND INDICTMENTS AGREED UPON BY COUNSEL

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1 keep you.

2 I wish our rules permitted the alternates to go in with you
3 because you've been here very patiently but, unfortunately, they
4 do not.

5 Mr. Bailiff, take them to a place of quiet retreat. Give
6 them such- - take care of them.

7 Thank you.

8 EXHIBITS AND INDICTMENTS AGREED UPON BY COUNSEL

9 THE COURT: All right. Gentlemen, come forward, now,
10 and let's agree on what's going on.

11 And, Larry, let me ask you something. Come here both of
12 you.

13 (The Court confers off the record at the Bench and outside
14 the presence of the jury.)

15 THE COURT: Agree on what goes in, now.

16 (The Court Reporter and both the attorney for the State and
17 the attorney of the defendant review and agree on the exhibits
18 to be submitted to the jury.)

19 COURT REPORTER: We need to put on the record that the
20 exhibits have been agreed upon.

21 THE COURT: Put that on the record.

22 COURT REPORTER: And these are the indictments that need
23 to go back?

24 THE COURT: Yes. All five of them.

25 Gentlemen, you've looked at the indictments?

ADDITIONAL CHARGE OF THE COURT

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1 MR. FILIBERTO: Yes, sir.

2 MR. GALMORE: Yes, sir.

3 THE COURT: Don't let them begin deliberations until
4 they're done smoking.

5 MR. FILIBERTO: Do you have verdict forms?

6 THE COURT: Ain't no verdict forms. It's just guilty or
7 not guilty on the things.

8 MR. FILIBERTO: I didn't instruct the jury that they
9 would mark anything on the indictments. I thought that you did
10 that, sir.

11 THE COURT: Probably did not.

12 Well, bring the jury back when they come back in and I'll
13 talk to them.

14 Let me know when they get in, we'll do that.

15 (The Court recesses this case until the jury returns from
16 their break and then reconvenes the trial of this case.)

17 BAILIFF: You ready for them, Your Honor.

18 THE COURT: Bring the jury in.

19 Bring the alternates back in.

20 (The jury returns to the courtroom at 5:04 p.m.)

21 ADDITIONAL CHARGE OF THE COURT

22 THE COURT: All right. The smokers are back. So,
23 you'll be ready to begin your deliberations in just a moment.

24 One further thought, Mr. Foreman. You twelve have been
25 selected as fair and impartial jurors sworn to impartially try

JURY BEGINS DELIBERATIONS AT 5:06 P.M.

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1 and determine the facts of this case, and when you comply with
2 your oath to do so, then no one will have a right to criticize
3 your verdict, and you would have fully discharged your duties as
4 jurors.

5 You should not and must not be influenced by opinions or
6 expressions of opinions, if any, which you may have heard on the
7 outside but you are to decide this case according to the
8 testimony that you have heard in the law of this case.

9 Now, as you begin your deliberations when as to any verdict
10 - - any indictment you have reached a unanimous verdict,
11 consider them separately. Turn on the back of the indictment
12 under the word "Verdict" and either write guilty or not guilty
13 and sign your name.

14 You will do that as to each indictment, there being five in
15 number. So we will need five separate verdicts of either not
16 guilty or guilty, whatever it is and you would thereafter sign
17 your name.

18 Please, now, begin your deliberations.

19 The Foreman only will sign them for me.

20 Take my alternates back.

21 JURY BEGINS DELIBERATIONS AT 5:06 P.M.

22 (The jury retires to the jury room at 5:06 p.m. to begin
23 deliberations.)

24 THE COURT: Now, Mr. Galmore.

25 MR. GALMORE: Yes, sir.

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 THE COURT: Keep close in because I've found from time
2 to time jurors have some questions, and I'll need you here, both
3 of you. So stay close in where I can find you on a moment's
4 notice.

5 MR. GALMORE: Yes, Your Honor.

6 MR. FILIBERTO: Yes, sir.

7 (The Court recesses the trial of this case awaiting the
8 call of the jury.

9 Upon receiving a question from the jury, the Court
10 reconvenes the trial of this case at 6:23 p.m.)

11 JURY QUESTIONS AND RESPONSE OF THE COURT

12 THE COURT: Bring -- be bringing the jury out, please.

13 BAILIFF: Your Honor, you want the alternates, too?

14 THE COURT: Sir?

15 BAILIFF: You want the alternates, too?

16 THE COURT: Anytime I speak to the jury, the alternates
17 must be present.

18 BAILIFF: Yes, sir.

19 (The jury returns to the courtroom at 6:25 p.m.)

20 THE COURT: Let the record reflect that the jury and the
21 alternates are present.

22 Mrs. McCall, I want the record now to show that early on in
23 the evening the jury propounded the following question?

24 "Where did Nathan Smith live at the time of the incident?"

25 And by agreement of counsel the following reply was made to

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 them in writing.

2 "By agreement of counsel it is stipulated that the
3 testimony of Nathan Smith was that he lived in the Wampee
4 Community."

5 You agree with that?

6 MR. FILIBERTO: Yes, sir.

7 THE COURT: You agree with that?

8 MR. GALMORE: Yes, sir.

9 THE COURT: Now, the record should reflect, too, that
10 this jury has requested a showing of the videos, and I'm
11 assuming from that, Mr. Foreman, that you want both videos. Is
12 that correct?

13 FOREMAN OF THE JURY: Yes, sir.

14 THE COURT: All right.

15 Now, in addition to that, you have asked for the testimony
16 of -- of the alleged victim, Norris, and the testimony of the
17 alleged victim, Nathan Smith.

18 Is that correct?

19 FOREMAN OF THE JURY: Yes, sir.

20 THE COURT: Now, in connection with that, of course, we
21 want you to hear such testimony as you think is proper.
22 Obviously, we don't want -- if we can help it, we don't want to
23 play every word from every witness that was said during the
24 trial of the case but if you want that, that's what we'll do.

25 The reason I bring this up is quite often jurors want some

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 portion of a witness' testimony played and not all of it, and so
2 I don't know what you're looking for. That's for you to
3 determine but if at the time you are satisfied with the
4 testimony, let me - - somebody raise their hand and we'll stop.
5 If not, we'll play the complete testimony.

6 I say that. Sometimes there's one little piece of the
7 testimony early on that a juror wants to replay but doesn't need
8 to hear all of it. My information - - my statement to you,
9 however, is that we'll play all of it just as much as you want
10 to but I call to your attention the fact that we can limit if
11 you - - if you - - if you're satisfied with the portion that's
12 being played.

13 Everybody understand that?

14 Let it be understood, though, that I at no time am limiting
15 your request to hear such testimony replayed as you want to.

16 All right. Let's do the videos at this time.

17 Now, there will be no conversation by anybody in regards to
18 the videos. They speak for themselves.

19 MR. FILIBERTO: Yes, sir.

20 (Both videos, State's Exhibits #17 and #18, are played for
21 viewing by the jury.)

22 MR. FILIBERTO: Your Honor, that's the end of the videos.

23 THE COURT: Okay.

24 MR. FILIBERTO: It's just restarting.

25 THE COURT: Okay.

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 Is this the second incident?

2 MR. FILIBERTO: No. I'm going to play the second
3 video. Just Court's indulgence for one minute.

4 THE COURT: Okay.

5 They want to hear both of them. So, let's play - - play
6 the second one.

7 (The second video is played for viewing by the jury.)

8 MR. FILIBERTO: That concludes that video, Your Honor.
9 The video is over, Your Honor.

10 THE COURT: Sir?

11 MR. FILIBERTO: That - - that video is over now.

12 THE COURT: Okay.

13 You ready for the second one?

14 MR. FILIBERTO: We just played the second one.

15 THE COURT: Okay.

16 That's finished, too. Okay.

17 All right.

18 Those are the two videos that you wanted to see, Mr.
19 Foreman?

20 FOREMAN OF THE JURY: Yes, sir.

21 THE COURT: Now, we going to play the testimony.
22 Which one first, Mrs. Linda?

23 COURT REPORTER: Your Honor, this will be the testimony
24 of Nathan Smith.

25 THE COURT: Nathan Smith will be the first testimony.

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 All right. Play it, please.

2 (The Court Reporter plays the testimony of Nathan Smith and
3 Malcolm Norris, both off the record.)

4 THE COURT: You have now heard the testimony of the two
5 witnesses that you requested. Please resume your deliberations,
6 and when you have verdicts as to the five indictments, please
7 let me know.

8 Thank you.

9 (The jury retires to the jury room at 7:18 p.m. to continue
10 deliberations.)

11 THE COURT: All right. We'll be in recess subject to
12 the call of the Court. The attorneys will remain close by in
13 case I need you.

14 MR. FILIBERTO: Yes, sir.

15 MR. GALMORE: Yes, sir.

16 THE COURT: Mrs. McCall, the record will reflect that
17 these are the question and one answer.

18 (The Court Reporter accepts the Jury Question and Response
19 of the Court as Court's Exhibit #3.

20 The Court then recesses the trial of this case and
21 reconvenes at 8:32 p.m. upon further question from the jury.)

22 THE COURT: Bring the defendant in, please.

23 Did the family wish to come back? We don't have a
24 verdict, yet.

25 Larry, come forward before we call the jury in.

MOTION AND RULING OF THE COURT

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1 (Bench conference held off record and outside the presence
2 of the jury.)

3 MOTION AND RULING OF THE COURT

4 MR. GALMORE: Your Honor, should I make my motion for the
5 jury comes in?

6 THE COURT: Yes, sir. Let's get on the record.

7 It is has come to the Court's attention that with regards
8 to Indictment 870 sent in to the jury, that number was
9 erroneously given to the Clerk by the Solicitor. The
10 appropriate number -- the number you gave him was what? The
11 appropriate one is 870 that I have in my hand.

12 MR. FILIBERTO: Court's indulgence, Your Honor.

13 THE COURT: Okay.

14 It was just an administrative error, and the jury received
15 the wrong indictment, and I'm going to substitute the correct
16 indictment. All of the testimony relates to the victim, Nathan
17 O. Smith. The erroneous indictment related to a George to
18 Phillips.

19 MR. GALMORE: Just for the record, I would make a
20 motion for a mistrial. It's my position that the jury has now
21 been exposed to -- to the fact that there is another indictment
22 out there, perhaps, that there is even another charge, Your
23 Honor.

24 I will give -- I will give a curative instruction with
25 reference to that. This was simply an administrative error with

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1 the Solicitor confronted with five separate indictments gave to
2 the Clerk the wrong number, and that erroneous indictment is
3 back there when the indictment that I hold in my hand should
4 have gone back there.

5 MR. GALMORE: Yes, sir.

6 Just for the record I think it is highly prejudicial.

7 THE COURT: I understand. I don't conclude that it is
8 but I will - - I will told the jury that there is no adverse
9 inference at all to be given to this erroneous indictment
10 because it was a simple clerical error made by - - made by the
11 Solicitor when he gave us the wrong number.

12 I now give them the right number, and all the testimony
13 relates to this one.

14 MR. GALMORE: Yes, sir.

15 THE COURT: You will be protected for the record.

16 It's clearly just an erroneous - - a - - a clerical error.

17 MR. GALMORE: Yes, sir.

18 And thank you for your ruling. I would just ask the Court
19 to take those steps.

20 THE COURT: Now, I want the record to reflect that I've
21 dealt with this and who is George T. Phillips, and that was the
22 erroneous indictment, and we correct that by sending the correct
23 one.

24 Now, the jury has informed me that they have reached a
25 verdict on, and this will be a part of the record, on three

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1 counts. They didn't say which ones.

2 They have not reached a verdict on two.

3 I have instructed the Bailiff to have the Foreman of the
4 Grand Jury to put those three they have reached a unanimous
5 verdict on, and what it is I do not know. Hand it to me in a
6 sealed envelope, and I'm going to hand it to the Clerk - - to
7 my Court Reporter.

8 Is that satisfactory to you?

9 MR. GALMORE: Yes, sir. That is satisfactory.

10 If I could just for a moment go back to the motion for
11 mistrial?

12 THE COURT: Sure.

13 MR. GALMORE: Well, as you know, the jury did write
14 a question, and the question was, "Who is George Phillips?"

15 THE COURT: Right.

16 MR. GALMORE: And - - and that's the indictment that they
17 have in the back.

18 Now, of you look at the verdicts, they've reached a verdict
19 on three, and they have not reached a verdict on two.

20 And just the fact that the two armed robberies and the
21 weapons go together, I'm surmising that those are the three that
22 they reached a verdict on.

23 Now, if they haven't reached a verdict on these two and one
24 of them is a kidnapping and the kidnapping indictment has the
25 wrong man's name on it.

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1 THE COURT: You know, it well be - - I can't get into
2 the minds of the jury. I suspect that they haven't reached the
3 verdict on the other two because they don't know who George T.
4 Phillips is. There's been no testimony.

5 This was just a clerical error that the wrong indictment
6 was sent in there. We going to now send in the correct
7 indictment with further instructions by me.

8 You are protected by the record but there's no basis for a
9 mistrial when just the wrong indictment happened to go back
10 there.

11 MR. GALMORE: Yes, sir. Thank you, Your Honor.

12 THE COURT: But I understand your position.

13 MS. ELDER: Your Honor, can we approach for a minute?

14 THE COURT: Yes.

15 (Bench conference is held off the record and outside the
16 presence of the jury.)

17 THE COURT: Has the - - has the Foreman of the Jury
18 complied with my instructions?

19 BAILIFF: Yes, sir.

20 THE COURT: Bring the jury in, please.

21 (The jury returns to the courtroom at 8:41 p.m.)

22 THE COURT: Mr. Foreman, I have received a communication
23 from you that you have reached a unanimous verdict with
24 reference to three indictments.

25 FOREMAN OF THE JURY: Yes, sir.

MOTION AND RULING OF THE COURT

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1 THE COURT: I have asked that you put the three
2 indictments in a sealed envelope. Have you done that?

3 FOREMAN OF THE JURY: Yes, sir.

4 THE COURT: Madame Clerk, please accept these
5 indictments, and they remain sealed until further order of the
6 Court.

7 CHARGE OF THE COURT

8 THE COURT: I am further advised that you still are
9 considering the other two indictments, and we'll return at 9:30
10 in the morning for that purpose.

11 Now, please hand to the Clerk the indictment regarding an
12 alleged George T. Phillips. Do you have that indictment?

13 (Jury Foreman passes indictment to Clerk of Court.)

14 THE COURT: When the Solicitor called these various
15 cases, he clerically made a mistake, and he called Indictment
16 869 which is the one you had in your possession when in place he
17 should have called Indictment 870. So, simply because of a
18 clerical error, the wrong indictment was sent to you for your
19 consideration, and I have in my hands the correct indictment,
20 and this indictment is as follows:

21 "That William Von Long did in Horry County on or about
22 December 27, 2006, unlawfully seize, confine, inveigle, decoy,
23 kidnap, abduct or carry away one Nathan O. Smith without
24 authority of law and in violation."

25 There is absolutely no adverse inference to be derived as

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1 against this defendant for a wrong indictment going into your
2 possession. It's simply a clerical error where the Solicitor
3 called the wrong number.

4 I have in my hand the correct indictment, and I ask the
5 jury as the finders of the facts consider this indictment rather
6 than the other.

7 It's just simply a clerical mistake. One went in. The
8 other one should have gone in.

9 Now, please hand to me - - let me have the other
10 indictment, please, and I will hold these indictments, this one
11 and the other one, and I will give them to you in the morning at
12 9:30.

13 Now, I want the record to reflect that I am substituting
14 the erroneous indictment that went in for the correct
15 indictment. It's simply a clerical error and nothing else, and
16 it's absolutely no adverse inference to be derived as against
17 this defendant for that mistake of the Solicitor.

18 Now, let me say this to you.

19 I want to thank all of you today for your hard work. I've
20 observed, Mr. Foreman, you and your distinguished jury, and I've
21 noted throughout this testimony that all of you have been just
22 as intent as you can be which tells me that I've got a wonderful
23 jury intent on doing their duty in accordance with their oath.

24 Another indication that y'all are deliberating very
25 carefully as you should is the fact the you picked up this

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1 clerical error, and nobody else out here did.

2 That tells me y'all ought to run things out here, and maybe
3 we ought to go back there but I thank you for this.

4 I would ask, please, that you return at 9:30 in the
5 morning. When all twelve of you are there, let the Bailiff
6 know and at that time I will send these indictments to you for
7 further deliberation.

8 We, of course, will not publish the three verdicts that you
9 had until we have resolved all issues.

10 Again, do not discuss this case with anyone. Permit no one
11 to discuss it with you. Do not discuss it among yourselves
12 except in the jury room when all are present.

13 I now will have to ask that the alternates come back, too.
14 Now, when the alternates come back, I want the bailiffs to take
15 them to where ever they are. They, unfortunately, can not go
16 in with the jury.

17 Anybody have any questions?

18 Now, I want to make sure that my jury has some ham biscuits
19 or something in the morning when they get here. Can you do that
20 for me?

21 CLERK OF COURT: Yes, sir.

22 THE COURT: Find some.

23 That's what we do in Marlboro County.

24 See y'all at 9:30. Thank you so much.

25 Mr. Bailiff, Mike, escort this jury down.

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1 DEPUTY: They've got them to be sure they make it out.

2 (The jury departs the courtroom and is released to return
3 at 9:30 a.m. on Wednesday.)

4 THE COURT: All right. Gentlemen, come forward. I
5 want you to look at the erroneous - - -

6 (Attorneys review indictments at the Bench and off record.)

7 THE COURT: All right. You see the one that's going
8 back there.

9 Are we on the record, Mrs. McCall?

10 COURT REPORTER: Yes, sir, Your Honor.

11 THE COURT: Okay.

12 I do want the record to reflect that the kidnapping arose
13 out of the alleged car jacking, and the car jacking indictment
14 is correct in that it alleges the victim is Nathan O. Smith.

15 So, obviously, when the kidnapping indictment had the name
16 of Phillips, obviously, that was a clerical mistake because it
17 had to be the same victim if it occurred at all with reference
18 to the car jacking and the kidnapping.

19 So, I see no prejudice to this defendant by sending in the
20 right indictment, and all the evidence relates to Nathan O.
21 Smith.

22 MR. GALMORE: Respectfully, Your Honor, these
23 indictments had different indictments. So, now, the jury knows
24 that he has additional charges out there.

25 THE COURT: I understand that, and I've told them

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1 they're not to considerate it. There's absolutely no adverse
2 inference to be derived to him, and, ah, I think it's
3 appropriate. We'll let the Supreme Court deal with it.

4 MR. FILIBERTO: Yes, sir.

5 THE COURT: I'm going to hold these two in the morning.

6 All right. Your position is for the record but I'm not
7 going to mistry that on a simple clerical error, particular when
8 the car jacking indictment has the correct defendant - -

9 MR. GALMORE: Yes, sir.

10 THE COURT: - - and the kidnapping has to derive from
11 that incident, and that's why they said, "Who is George
12 Phillips?"

13 MR. GALMORE: Yes, sir.

14 THE COURT: There can't be any mistrial on that basis.

15 MR. GALMORE: Yes, sir. Thank you.

16 THE COURT: All right.

17 Everybody agrees, now, that I've handled the proper
18 procedure with reference to the unanimous verdicts on the one
19 that we've received?

20 MR. GALMORE: Yes, sir.

21 THE COURT: You have no questions about that?

22 MR. LONG: Oh - - -

23 THE COURT: No, sir. You don't have any questions. You
24 talk to your lawyer.

25 MR. LONG: Yes, sir. I think you should note for the record

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1 that the judge - - that the Supreme Court should handle that
2 issue. It's as though I'm already guilty when that envelope is
3 already sealed. Nobody knows the verdict.

4 He just said, "Let the Supreme - - -

5 THE COURT: Keep your voice down.

6 If he keeps talking, I'm going to send him out the
7 courtroom.

8 MR. LONG: If it please the Court - - -

9 THE COURT: Keep your voice down.

10 We are in recess until 9:30 in the morning.

11 MR. FILIBERTO: Thank you, Your Honor.

12 COURT REPORTER: Your Honor, one question.

13 THE COURT: Wait a minute, now.

14 COURT REPORTER: The exhibits are in the jury room.

15 THE COURT: Mr. Oliver, I want to leave the exhibits in
16 the jury but I want them locked and secured. You assure me that
17 that will be done?

18 DEPUTY OLIVER: Yes, sir.

19 THE COURT: All right. We in recess.

20 Thank you. See y'all in the morning at 9:30.

21 Make the jury notes Courts' Exhibits.

22 (The Court Reporter accepts the Jury Question and Notes as
23 Court's Exhibits #4 and #5.

24 MOTION AND RULING OF THE COURT

25 MR. GALMORE: Yes, sir. May we go on the record for a

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1 moment?

2 THE COURT: Yes, sir.

3 MR. GALMORE: My client is concerned because the Court's
4 comment to the effect of, "Let the Supreme Court deal with it."

5 THE COURT: That was outside the presence of the jury.

6 MR. GALMORE: Yes, sir, Your Honor, but he is of the
7 contention that Your Honor has concluded that he is guilty of
8 those offenses, and we would like to have a new trial based on
9 that motion.

10 THE COURT: He's not entitled to that conclusion.

11 I don't know what issues will be given to the Supreme
12 Court, if any, but that comment was certainly not made in the
13 presence of the jury. I haven't made any conclusions one way
14 or the other.

15 The record will reflect what it is, and it may be an issue.

16 It may not.

17 I don't know whether it will have - - you agree with me,
18 though, that the comment was made outside the presence of the
19 jury?

20 MR. GALMORE: Yes, sir, I do agree.

21 THE COURT: All right.

22 That's fine. Thank you.

23 All right.

24 No, I - - tell him that I've made no determination one way
25 or the other. The Supreme Court can look at it in a variety of

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1 ways.

2 MR. GALMORE: Yes, sir. I'll explain it to him.

3 THE COURT: Okay. It may not be necessary at all.

4 MR. LONG: I've been convicted and locked up. That's only
5 how I'm going to get to the Supreme Court.

6 MR. GALMORE: Yes, sir. I have explained to him.
7 The only way to get to the Supreme Court is to be convicted.

8 MR. LONG: I just want to put it on the record. Yes, sir.
9 I just wanted to put it on the record.

10 I ain't worried about it. You can't beat it. You can't
11 beat it.

12 THE COURT: Get him out of here.

13 Now, I've done told him one time. If he wants me to bound
14 him and gag him, I'll do it.

15 Take him out of here.

16 MR. LONG: We'll be here in the morning.

17 (The defendant is escorted out of the courtroom by
18 deputies.)

19 THE COURT: All right.

20 See you in the morning at 9:30.

21 (The Court recesses the trial of this case for the evening
22 to reconvene at 9:30 a.m. on Wednesday.)

COURT REPORTER: Yes, Your Honor.

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 THE COURT: Okay.

2 (All parties are now present in the courtroom.)

3 THE COURT: Bring my jury in, please.

4 (The jury returns to the courtroom at 10:46 a.m.)

5 THE COURT: Is Fran next door? I need to speak to him
6 a minute.

7 Heather, did you send word down there for the jury to come
8 back at 11:00?

9 CLERK OF COURT: Yes, sir, I did.

10 THE COURT: Good morning, Mr. Foreman, ladies and
11 gentlemen.

12 Again, we all appreciate your services for the State of
13 South Carolina and for the County of Horry in serving as jurors.

14 You have sent me the following notation.

15 You want to hear the defendant's testimony. Is that
16 correct?

17 FOREMAN OF THE JURY: Yes, sir.

18 THE COURT: Okay. I want to say to you now as I did
19 before. You are entitled to hear the entire testimony, his
20 testimony on direct and the cross examination by the defendant -
21 - by the attorney for the State.

22 However, if there is a certain portion of his testimony
23 that you want to hear and that's all, let me know whoever is
24 satisfied with what they heard, and we'll stop it in the
25 interest of time.

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1 However, if you want to hear the entire testimony on direct
2 and cross, that's going to be available, and we'll run it all
3 until you or some member of your jury say that they've heard
4 that portion that they wish to hear.

5 Everybody understand that?

6 All you have to do - - I don't know if all of you want to
7 hear it or some of you or one of you but you're entitled to it.
8 Just let me know if at some point you've heard it sufficiently.

9 Mrs. McCall, have we set up to where we can hear it again?

10 COURT REPORTER: Yes, Your Honor.

11 THE COURT: Would you please begin?

12 (The testimony of the defendant is played in its entirety
13 for the jury.)

14 THE COURT: Now, in addition to that, you have requested
15 that I recharge you the law of - - with reference to the two
16 pending indictments that you are now considering. Is that
17 correct?

18 FOREMAN OF THE JURY: Yes, sir.

19 THE COURT: All right. The first one that you are
20 considering is the car jacking. As I give these definitions to
21 you, remember, too, my former definitions with regards to his
22 presumption of innocence, the credibility of witnesses and the
23 fact that you twelve are the sole and only finders of the facts,
24 understanding, too, that I am the instructor in the law, and you
25 are required under your oath to take the law as I charge it to

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1 you remembering at all times to take the facts as you find them
2 to be and apply that to the instructions in the case.

3 The defendant is charged with car jacking. In order to
4 prove car jacking, the State must prove beyond a reasonable
5 doubt, one, that the - - this defendant, took or attempted to
6 take a motor vehicle from another person by force and violence
7 or by intimidation while the person was operating that vehicle.
8 Very simple.

9 If as an example, it's not any factual situation that's in
10 this case, but if you drive up to Walmart and somebody comes up
11 by force or violence or by intimidation or by threat and takes
12 your car, that is car jacking by force or violence or by
13 intimidation.

14 Now, the State must prove these things beyond a reasonable
15 doubt. The offense of car jacking is relatively simple.

16 Let me read it to you again. There's nothing detailed
17 about car jacking. If somebody comes up and takes your
18 automobile by force or violence or intimidation, that's car
19 jacking.

20 I don't know how to express or explain that any closer to
21 you.

22 Now, the State must prove that beyond a reasonable doubt.

23 Now, kidnapping. You know, a lot of people think of
24 kidnapping as in the Linbergh situation where somebody kidnaps
25 an individual, ties them up, throws them in a trunk and holds

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 them for ransom. That is kidnapping but there are other forms
2 of kidnapping.

3 If you deprive somebody of their freedom by force or
4 violence for any length of time, that is kidnapping also.

5 Now, let me read that to you. You just don't have to get
6 somebody and tie them up and throw them in the trunk of a car
7 and pick up the phone and say, "I want a million dollars."

8 That's kidnapping but there are other forms of kidnapping,
9 too.

10 Kidnapping is the intentional taking of a person and
11 compelling him or her to be detained against his or her will.
12 It is the willful and unlawful seizing of a person against his
13 or her will with an intent to cause him to be either confined,
14 imprisoned or detained.

15 The essence of the offense of kidnapping is the unlawful,
16 secret holding or imprisonment of a person. Kidnapping means
17 the carrying away of a person by unlawful force or by fraud
18 against his or her will or by seizing and detaining him or her
19 for the purpose of carrying him or her away.

20 The elements of kidnapping which must be proved beyond a
21 reasonable doubt is, one, unlawfully seize or confine or
22 inveigle or decoy or kidnap or abduct or carry away any other
23 person by any means whatsoever without authority of law.

24 So, if somebody grabs you or forces you to leave against
25 your will and detains you for a period of time, that is

JURY QUESTIONS AND RESPONSE OF THE COURT

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1 kidnapping.

2 The gist of the offense of kidnapping is some form of
3 compulsion but the law says that the requisite force of
4 compulsion need not consist of the use of actual physical force
5 or violence.

6 The offense of kidnapping commences when one is unlawfully
7 and wrongfully deprived of his or her freedom and continues
8 until his or her freedom is restored. That, too, is kidnapping.

9 The State must prove these things beyond a reasonable doubt
10 and must prove that this defendant did it.

11 Please, now, resume your deliberations and thank you so
12 much.

13 (The jury retires to the jury room at 11:17 a.m. to
14 continue deliberations in this case.)

15 THE COURT: The requests of the jury as to those issues
16 are now made a part of the record.

17 (The Court Reporter accept the Jury Notes as Court's
18 Exhibit #6.)

19 THE COURT: For the State, any exceptions or additions
20 to those charges?

21 MR. FILIBERTO: No, sir.

22 THE COURT: For the defendant?

23 MR. GALMORE: No, sir.

24 THE COURT: What - - another matter I need to put on the
25 record is last night you recall through inadvertence and just by

JURY ADVISES VERDICT REACHED AT 12:16 P.M.

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1 administrative error, the wrong indictment went into the jury,
2 and we've withdrawn that, and the correct indictment has gone.

3 I do want the record to reflect that as is my policy I do
4 two things prior to the beginning of the deliberations of the
5 jury.

6 First, I ask that the State and the defense agree as to the
7 evidence going in, and, secondly, I hand the indictments to the
8 State and to the defendant as I did last night and asked if you
9 had any objections to it. You will recall that?

10 MR. GALMORE: Yes, sir.

11 THE COURT: And there were none, and the record so
12 reflects.

13 MR. GALMORE: Yes, sir.

14 THE COURT: That's true, isn't it?

15 MR. GALMORE: Yes, sir.

16 THE COURT: All right.

17 Thank you.

18 We just need to have that on the record.

19 MR. GALMORE: Yes, sir.

20 THE COURT: All right.

21 Subject to the call of the Court, we are in recess.

22 MR. FILIBERTO: Thank you, sir.

23 JURY ADVISES VERDICT REACHED AT 12:16 P.M.

24 (The Court recesses the trial of this case awaiting the
25 advice of the jury and upon advise of the jury as to verdicts at

VERDICT AS TO THREE INDICTMENTS

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1 12:16 p.m. the court reconvenes the trial of this case.)

2 THE COURT: Don't bring the jury - - hold on.

3 CLERK OF COURT: The jury asked if they can go down and
4 have a smoke break before you bring them in?

5 THE COURT: Yeah, tell him to do that.

6 CLERK OF COURT: Oliver told them he would ask you.

7 THE COURT: Heather?

8 CLERK OF COURT: Yes, sir?

9 THE COURT: Where is the sealed indictments?

10 CLERK OF COURT: Right here.

11 (The Court addresses other matters off the record waiting
12 on the return of the jury and then reconvenes this case.)

13 VERDICT AS TO THREE INDICTMENTS

14 THE COURT: All right. Mr. Foreman, I will deal with
15 your note in just a few moments but at this time I want to deal
16 with your sentences on the sealed sentence.

17 Madame Clerk, deliver this sealed sentence to the
18 Foreperson. Have him open it and then bring the sentences back
19 to me.

20 CLERK OF COURT: Yes, sir.

21 THE COURT: This is the document that you sealed with
22 your initials last evening and has been in the Office of the
23 Clerk of Court's hand until that time.

24 (The Clerk of Court passes sealed indictments to Foreman of
25 the Jury who opens sealed envelope and hands the indictments

VERDICT AS TO THREE INDICTMENTS

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1 with the verdicts to the Clerk of Court. The Clerk of Court
2 then passes the indictments to the Court.)

3 THE COURT: All right.

4 Ladies and gentlemen, I understand that the publishing of
5 the verdict may impact on one side or the other but I don't want
6 to have any comment or any outburst from anybody relative to the
7 publishing of the verdict.

8 Publish the verdict, please.

9 CLERK OF COURT: Indictment #07-GS-26-868, The State vs.
10 William Von Long on the charge of possession of a weapon during
11 the commission of a violent crime, we, the jury, by unanimous
12 consent find the defendant guilty.

13 Signed by Juror #245, Nicholas Melle, dated April 14, 2009.

14 THE COURT: Mr. Foreman, ladies and gentlemen, if this
15 be the unanimous verdict of all twelve, please signify by
16 raising your right hand.

17 Let the record so signify that all twelve have unanimously
18 said it is a unanimous verdict.

19 As to the next one.

20 CLERK OF COURT: Indictment #07-GS-26-873, The State vs.
21 William Von Long on the charge of armed robbery, we, the jury,
22 by unanimous consent find the defendant guilty.

23 Dated April 14, 2009, signed by Juror #245, Nicholas Melle.

24 THE COURT: If this be the unanimous verdict of all,
25 please signify by raising your right hand.

MISTRIAL AS TO TWO INDICTMENTS

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1 Let the record reflect that the jury has so certified.

2 Next, please.

3 CLERK OF COURT: Indictment #07-GS-26-875, The State vs.
4 William Von Long on the charge of armed robbery, we, the jury,
5 by unanimous consent find the defendant guilty.

6 Signed by Juror #245, Nicholas Melle, dated April 14, 2009.

7 THE COURT: If this be the unanimous verdict of all
8 twelve, please signify by raising your right hand.

9 The jury has so signified.

10 MISTRIAL AS TO TWO INDICTMENTS

11 THE COURT: All right.

12 Now, ladies and gentlemen of the jury, I have received the
13 following communication which I certainly respect.

14 "The jury believes that we will not reach a decision on the
15 last two indictments which are the car jacking and kidnapping."

16 Is that correct?

17 FOREMAN OF THE JURY: Yes, sir.

18 THE COURT: Okay.

19 Well, let me say this to you that you have reached a
20 unanimous verdict on three charges, and our system is grateful
21 for that.

22 Based on the testimony here I have absolutely no problem
23 with your inability to agree unanimously.

24 You know, nobody agreed at the time. So, correspondingly,
25 it's sometimes quite difficult to agree initially but ordinarily

JURY POLLED

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1 we get a verdict, and that's in our system.

2 A mistrial, ordinarily, is an unfortunate thing because
3 that means, simply, nobody wins. It just means everybody loses.
4 That just certainly means that at some other date these same
5 folks will come before me. The same testimony will be
6 presented, and I'll have twelve folks just like you listen to
7 the testimony, and I have no reason to believe that I can find
8 a better, more intelligent juror than you twelve.

9 But you deliberated yesterday, and I certainly accept your
10 judgment that as to these two indictments you cannot unanimously
11 agree. Having said that, though, I deeply appreciate your
12 services with reference to the three indictments which you found
13 guilty which are, indeed, serious, serious matters.

14 Now, at this time, for the jury's edification, now, I want
15 you to tell - - show - - tell me his prior record plus his
16 conduct at the Detention Center in the last few months.

17 JURY POLLED

18 MR. GALMORE: Your Honor, before we go there, I would
19 request that the jury be polled with regard to the verdicts.

20 THE COURT: Yes, I will do that.

21 I'll poll the jury.

22 As I poll, we are polling as to all three indictments. I'm
23 going to let them poll.

24 Counsel Galmore, I'm polling them one time as to the three
25 indictments.

JURY POLLED

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1 MR. GALMORE: Yes, sir.

2 THE COURT: All right.

3 As to these three indictments she's going to ask you the
4 question, "Is this your verdict and is it still your verdict?"

5 Please go one by one.

6 CLERK OF COURT: Okay.

7 When I call your name, please stand.

8 Juror #3, Mary Alexander.

9 Is this your verdict?

10 MS. ALEXANDER: Yes, ma'am.

11 CLERK OF COURT: Is it still your verdict?

12 MS. ALEXANDER: Yes, ma'am.

13 CLERK OF COURT: Juror #22, Lana Becker.

14 Is this your verdict?

15 MS. BECKER: Yes, ma'am.

16 CLERK OF COURT: Is this still your verdict?

17 MS. BECKER: Yes, ma'am.

18 CLERK OF COURT: Juror #153, Tasha Hills.

19 Is this your verdict.

20 MS. HILLS: Yes.

21 CLERK OF COURT: Is this still your verdict?

22 MS. HILLS: Yes.

23 CLERK OF COURT: Juror #211, Blackwelder Lipinsky.

24 Is this your verdict?

25 MS. LIPINSKY: Yes.

JURY POLLED

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1 CLERK OF COURT: Is this still your verdict?
2 MS. LIPINSKY: Yes.
3 CLERK OF COURT: Juror #53, Cathy Carrol.
4 Is this your verdict.
5 MS. CARROL: Yes.
6 CLERK OF COURT: Is this still your verdict?
7 MS. CARROL: Yes.
8 CLERK OF COURT: Juror #417, Jeanne Winkler.
9 Is this your verdict?
10 MS. WINKLER: Yes.
11 CLERK OF COURT: Is this still your verdict?
12 MS. WINKLER: Yes.
13 CLERK OF COURT: Juror #255, Ronnie Moses.
14 Is this your verdict?
15 MR. MOSES: Yes.
16 CLERK OF COURT: Is this still your verdict?
17 MR. MOSES: Yes.
18 CLERK OF COURT: Thank you.
19 Juror #133, Tamara Hardee.
20 Is this your verdict?
21 MS. HARDEE: Yes.
22 CLERK OF COURT: Is this still your verdict?
23 MS. HARDEE: Yes.
24 CLERK OF COURT: Juror #120, Juliet Graham.
25 Is this your verdict?

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1 MS. GRAHAM: Yes.

2 CLERK OF COURT: Is this still your verdict?

3 MS. GRAHAM: Yes.

4 CLERK OF COURT: Juror #245, Nicholas Melle.

5 Is this your verdict?

6 MR. MELLE: Yes.

7 CLERK OF COURT: Is this still your verdict?

8 MR. MELLE: Yes.

9 CLERK OF COURT: #8, Mona Amorese.

10 Is this your verdict?

11 MS. AMORESE: Yes.

12 CLERK OF COURT: Is this still your verdict?

13 MS. AMORESE: Yes.

14 CLERK OF COURT: Juror #115, Cheryl Goodreau.

15 Is this your verdict?

16 MS. GOODREAU: Yes.

17 CLERK OF COURT: Is this still your verdict?

18 MS. GOODREAU: Yes.

19 THE COURT: Mr. Foreman, sometimes when a jury has given
20 a verdict of guilty or not guilty as it may be and read in the
21 paper that that individual had a long prior record, jurors have
22 called me on the phone before and said, "Judge, why didn't you
23 tell us about all that?"

24 Well, as I -- that is impermissible in a trial of a case
25 because we want the defendant tried on what he's charged with,

JURY POLLED

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1 not what he's done before.

2 Now, the only exception to it is that if he is convicted of
3 a crime of dishonesty such as grand larceny and robbery, you're
4 entitled to know that, and I let that in because that impacts on
5 that witness' credibility and believability, and his
6 believability and credibility is serious, serious, and,
7 obviously, some members of the jury even though he'd been
8 convicted him, and that's fine because I told you that it could
9 only be used for credibility and believability.

10 But now, in fairness to this jury, I want this jury to
11 know his prior and I want them to know of his conduct while in -
12 - in the Detention Center hitting on officers and so forth.

13 MR. FILIBERTO: Your Honor, I'd - - -

14 THE COURT: Is anybody from the Detention Center here?
15 Come around.

16 I want you to tell me his prior record, and then I want - -
17 in fairness to the jury, I want this jury to know what we been
18 dealing with here.

19 MR. FILIBERTO: The defendant was arrested - -
20 convicted, rather, of forgery in 1996, strong arm robbery in
21 1997. He was charged with armed robbery but he was convicted
22 of strong arm robbery, grand larceny, malicious injury to
23 personal property, resisting arrest, escape, assault and battery
24 in 2006 shortly after he got out of prison. While he was
25 incarcerated in J. Reuben Long, the long stack of disciplinary

JURY POLLED

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1 complaints regarding fights and other issues but, ah, on, ah, I
2 have the indictments on this and will decide whether or not we
3 go forward later but on video tape you can clearly see him
4 spitting in the face of one corrections officer, and then when
5 several came around to take him into custody for that, he
6 punched in the face the female corrections officer that was a
7 part of the fray.

8 And I would tell you that that is clearly on video and a
9 much clearer video than the one y'all saw for this trial.

10 MR. LONG: Like the robbery was on video.

11 MR. FILIBERTO: Anything else, sir?

12 THE COURT: No. I just wanted the jury to know what the
13 situation was and to tell you why I didn't let that in. I
14 didn't want that to prejudice this defendant. I wanted if you
15 convicted him I wanted you to convict him on what he's charged
16 with, and that's what you did.

17 I'm prepared to give sentencing at this time. Those of you
18 who care to leave may do so. If you care to stay, you may do
19 that.

20 Anyone care to leave? Thank you.

21 (All jurors remain in the courtroom.)

22 THE COURT: All right. Be glad to hear from you.
23 Have the defendant stand, please.

24 (The defendant stands before the Court.)

25 MR. GALMORE: Thank you, Your Honor.

COURT DECLARES MISTRIAL AS TO TWO INDICTMENTS

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1 I would respectfully move for a mistrial at this time.

2 THE COURT: I'll do that outside the presence of the
3 jury after sentencing.

4 MR. GALMORE: Yes, Your Honor.

5 I suppose I should wait on my motion for a new trial?

6 THE COURT: I will - - all motions are done after
7 sentencing procedure and we will do that at that time.

8 MR. GALMORE: I understand, Your Honor.

9 THE COURT: You're entitled to that. You got ten days
10 to make your motion but I want to hear them today so I can rule
11 on them.

12 MR. GALMORE: First, I would like to address these
13 charges.

14 COURT DECLARES MISTRIAL AS TO TWO INDICTMENTS

15 THE COURT: Wait a minute.

16 She was calling to my attention the two indictments on this
17 note. Let me go ahead and say this.

18 As to the two indictments that you were unable to agree on,
19 and I certainly understand that, I am going to declare a
20 mistrial as to those indictments based on his communication that
21 I have received.

22 "The jury believes that we will not reach a verdict on the
23 last two issues."

24 And that's still your view, Mr. Foreman?

25 FOREMAN OF THE JURY: Yes, sir.

SENTENCE OF THE COURT

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1 THE COURT: All right.

2 This is made a part of the record.

3 (The Jury Note is made Court's Exhibit #7 by the Court
4 Reporter.)

5 SENTENCE OF THE COURT

6 THE COURT: Now, I'm prepared to have the sentencing
7 proceeding at this time. Is there anything further you want to
8 tell me?

9 MR. GALMORE: Yes, Your Honor.

10 First, to address this disciplinary record at the Detention
11 Center. I've reviewed that record, and these have to be some
12 of the pettiest complaints against Mr. Long that are humanly
13 possible. In one instance he's charged with being out of place
14 because he was playing cards in another inmates - - -

15 THE COURT: I'm not interested in that.

16 MR. GALMORE: You wanted the jury to know. So let them
17 know.

18 THE COURT: How about spitting in the face of the female
19 officer?

20 MR. GALMORE: Your Honor, it is on video tape, and Mr.
21 Long has filed a lawsuit against the Detention Center in that
22 regard.

23 THE COURT: Okay.

24 You want to talk to me about - - about the matter I'm at a
25 sentencing proceeding conviction of these charges. Let's deal

SENTENCE OF THE COURT

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1 with that.

2 MR. GALMORE: Yes, sir, Your Honor.

3 We'd ask you to take into consideration that he does have
4 some mental health issues. We're not trying to rehash the
5 whole Blair hearing that we had on Monday but he's got an eighth
6 grade education. He's been in special education classes all his
7 life.

8 I've talked with his family members about it. They told me
9 on one occasion they went out to a Magistrate in Green Sea to
10 try to get some mental help for him. They didn't know who to go
11 to. So they went to the Magistrate and the Magistrate ended up
12 charging them with blue tickets for not leaving his office.

13 So, these people have tried to get help for Mr. Long, and
14 the system has failed him.

15 He is a person that has mental - - a history of mental
16 illness in the Department of Corrections. Has a history of
17 mental illness on the streets, and when the family went to go
18 get help, he, excuse me, they were ticketed for not leaving the
19 Magistrate's Office. I think that's shameful on behalf of Horry
20 County.

21 THE COURT: I don't know whether that occurred or not
22 but this jury needs to know that when that issue was first
23 raised, he was sent to the State Hospital and examined
24 extensively. The report came back, a trained psychiatrist and
25 trained doctors that he was absolutely malingering.

SENTENCE OF THE COURT

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1 In an abundance of precaution I had that - - those doctors
2 come back here Monday morning and had another hearing with
3 testimony. The testimony is the same thing, malingering.
4 There is no testimony that his physical or mental condition
5 would have been a basis for his horrible criminal record.

6 And they can say what they want to but, ah, examinations
7 indicate that he's just absolutely malingering. You heard his
8 testimony as I did. That testimony was from a coherent
9 individual, precise and direct. Whether he was telling the
10 truth or not throughout that was for you to determine and not
11 me.

12 But that testimony was clearly not an individual who was
13 suffering under some severe mental disability, and the record
14 will reflect that.

15 Is there anything he cares to tell me?

16 MR. GALMORE: Your Honor, I would also point out that Mr.
17 Long has been under mental - - mental care and treatment since
18 the age of thirteen. Mr. Long is currently on seroquel which I
19 think the psychiatrist testified as an anti-psychotic
20 medication.

21 He has been diagnosed with schizophrenia and by polar even
22 the State of South Carolina said he is competent to stand trial.

23 With regard to these charges here, Your Honor, he testified
24 from the stand that he was on drugs at the time. We think that
25 when you couple mental illness along with drug use,

SENTENCE OF THE COURT

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1 unfortunately, situations like this will occur.

2 We just ask the Court to take into consideration that - -
3 that he does have some mental problems and he does have some
4 drug addiction problems.

5 Whatever the sentence the Court imposes - - first of all,
6 we'd ask the Court to impose the minimum, mandatory ten year
7 sentence in this case. I understand if the Court could not but
8 we are making that request on his behalf.

9 We'd ask the Court to run these sentences concurrent. We'd
10 ask the Court to give him an opportunity while he's in the
11 Department of Corrections to get some help for his drug problem
12 and for his mental health problems.

13 THE COURT: First, I want to enlighten the jury, too,
14 that I sometimes come incensed when I hear defendants or their
15 attorneys say, "Well, Judge, this happened because he was on
16 drugs."

17 You know, when I return home on Friday night in
18 Bennettsville, South Carolina, and I walk into my home and see
19 it's been destroyed, vandalized and burglarized, I don't want to
20 hear that whoever did it was on drugs. I want them to go to
21 jail, and most God fearing people feel that way.

22 So, I'm - - I'm sorry about the scourge of drugs but it's
23 absolutely undoing our community. These drugs are actually
24 scrambling the brains of young children, and they are causing
25 adults to commit crime after crime which may not have been done

SENTENCE OF THE COURT

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1 had it not been for drugs.

2 When I came on the Bench - - Bar as a lawyer in 1953 in
3 little old Marlboro County the total docket was about 110. That
4 docket today is 1400, and about 90% of it, 95% of it is either
5 drug related or because they were on drugs or because they're
6 being tried for drugs. That's what's going on in drugs. So,
7 I'm not sympathetic anymore to, "They was on drugs."

8 Because they are destroying the fabric of our communities.

9 Now, in this case my understanding of this is he may have
10 a drug problem. He doesn't have a mental problem sufficient for
11 him not to know right or wrong. We've had him examined on
12 several occasions.

13 I conclude that this individual is a menace to society, and
14 I conclude that if he isn't stopped, he's going to kill
15 somebody. I'm surprised that somebody wasn't killed on this
16 event, quite frankly.

17 Drug dealers don't care, don't care.

18 With his prior record, we know that he'll do it again. I
19 mean, he's done it again. The courts have given him
20 opportunity after opportunity. I want to get him off the public
21 problem for as long as I can, and I propose to do that.

22 I thank you for your comments.

23 With regard to armed robbery, upon Indictment 07-GS-26-873,
24 could give him thirty years on that but I'm going to give him
25 twenty-five. That's for armed robbery.

SENTENCE OF THE COURT

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1 For an indictment for armed robbery, 07-GS-26-875, again,
2 armed robbery, could give him thirty. I'm going to give him
3 twenty-five consecutive.

4 Upon Indictment 07-GS-26-868, indictment for possession of
5 a weapon during the commission of a violent crime, I'm going to,
6 impose a sentence of ten years consecutive.

7 With reference to the other two charges of kidnapping and
8 the other one was kidnapping and car jacking, those cases will
9 be mistried.

10 He got twenty-five, twenty-five consecutive and ten more
11 consecutive.

12 MR. LONG: Make it life, all right.

13 THE COURT: Thank you, sir.

14 MR. LONG: All right. I be back.

15 THE COURT: Take him out of here.

16 You are now excused and I thank you.

17 (As the officers begin to lead the defendant out of the
18 courtroom, a sister of the defendant stands and begins screaming
19 out at the Court as she walks down the row of other family
20 members heading for the courtroom exit.)

21 LATASHA MCCOLLUM, SISTER OF DEFENDANT: He's lying. You
22 know he's lying. Just like the prison guards was lying.

23 You lying when you said he was a menace to society.

24 (Other family members stand and attempt to subdue the
25 sister. Officers rush to the screaming sister as she moves

SENTENCE OF THE COURT

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1 toward the exit.)

2 MS. MCCOLLUM: Get off of me.

3 (And chaos ensued.)

4 THE COURT: Wait a minute. Hey.

5 (The officers move the parties who are now screaming at
6 each other and wailing unintelligibly out of the courtroom while
7 the sister of the defendant continues to scream out.)

8 LATASHA MCCOLLUM: I'm not doing anything. All right.
9 I'm not doing anything.

10 (As all unruly parties are moved into the hallways by the
11 officers, the courtroom becomes quiet, and the Court addresses
12 the jury who is still sitting in the jury box.)

13 THE COURT: I thank you for your services.

14 What instructions do you have for the jury tomorrow?

15 CLERK OF COURT: They're to call back tonight after six.

16 THE COURT: Tonight after six.

17 I've got a jury coming in at two.

18 CLERK OF COURT: Yes, sir.

19 THE COURT: Please call back after 6:00 tonight, and
20 thank you so much.

21 Wait a minute. Excuse me.

22 I want an officer here to escort this jury down. So bring
23 an officer back here.

24 I want my jury escorted down. Thank you so much.

25 (The jury departs the courtroom under escort with

MOTIONS AND RULING OF THE COURT

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1 instructions to call in after 6:00 tonight.)

2 THE COURT: Now, I want those people arrested, put in
3 the Detention Center. Bring them back before me in the
4 morning.

5 (The Court leaves the Bench momentarily and then returns to
6 the courtroom.)

7 MOTIONS AND RULING OF THE COURT

8 THE COURT: Where is Mr. Galmore, please?

9 MR. GALMORE: Yes, sir.

10 THE COURT: All right. I'll be glad to hear your
11 motions in regard - - -

12 MR. GALMORE: First, Your Honor, I would make a motion for
13 a mistrial.

14 The reason why I'm making this motion is prior to the jury
15 being polled, the Court made a reference about the defendant's
16 criminal history and his disciplinary record at the Detention
17 Center.

18 THE COURT: Wait a minute. Wait a minute, now. That's
19 not true prior to being polled. I - - before anything was
20 said, each one of them raised their hand and said it was
21 unanimous. I polled them.

22 MR. GALMORE: Yes, sir, but before the Clerk polled them,
23 the information about his criminal record and his disciplinary
24 was made - - was given to this jury so that when they were
25 individually polled, perhaps, they had in their minds about his

MOTIONS AND RULING OF THE COURT

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1 prior record.

2 THE COURT: You had an opportunity - - you had an
3 opportunity to ask for the polling at the time I did the
4 polling, and you did not do that.

5 MR. FILIBERTO: Your Honor, if I might? If I might
6 point out to the Court that the only thing the jury heard was
7 that you had asked me to give his record and his disciplinary
8 file.

9 THE COURT: I understand.

10 MR. FILIBERTO: They did not hear what the record was
11 until after the polling.

12 THE COURT: The record was not said. The record will
13 reflect that but that motion is denied for a lot of reasons.

14 One is the jury was polled. You had an opportunity to ask
15 for further polling at that time. You did not do that, and I
16 simply asked for him to give his record, and it was after that
17 that you asked for a polling prior to his record being
18 presented, and the record is replete with that.

19 MR. GALMORE: Yes, sir.

20 THE COURT: So, that's denied.

21 What's your next motion?

22 MR. GALMORE: I'd also make a motion for a new trial and
23 motion for an order in arrest of judgment just based on the
24 insufficiency of the indictment and the insufficiency of the
25 evidence that was presented in trial today.

MOTIONS AND RULING OF THE COURT

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1 THE COURT: Well, unfortunately for the defendant and I
2 say to his family, the evidence was simply overwhelming.

3 He didn't bring it out but they need to know. The same
4 shoes, black and white, that he had in the lake was the same
5 shoe that was shown in the video at the Crash and Dash or
6 whatever it was, black and white.

7 At the time of his arrest he had the wrist watch on his
8 hand. He had the victim's pocketbook in his pocket, and he had
9 the key to the car that he hijacked in his pocket, absolutely
10 overwhelming.

11 And he was identified by three credible witnesses.

12 I don't believe that his family believes thinks that he
13 didn't do it. I don't believe that.

14 Now, I know that they were upset about the length of time
15 that I gave him but I want to tell them why.

16 He probably has some type of mental illness but it's not
17 sufficient that he doesn't know right from wrong. I'm fearful
18 that if he stays out there, he's going to kill somebody.
19 There's no question about, and somebody will have to put him in
20 jail for the rest of his life or give him the supreme
21 punishment.

22 If they can't handle themselves, I wan them out of here
23 now.

24 (Family member breaks down and is escorted from the
25 courtroom.)

MOTIONS AND RULING OF THE COURT

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1 THE COURT: Now, what's your other motions, please?

2 MR. GALMORE: Those would be our motions, Your Honor.

3 THE COURT: Okay.

4 Well, the evidence is overwhelming, and I thank you for
5 that. You've done a good job as a Public Defender in the case.
6 He was given every - - every defense that he had but your
7 motions are respectfully denied.

8 There is ample evidence from which the jury could base
9 their verdict.

10 MR. GALMORE: Yes, sir.

11 THE COURT: Now, who was the person against my
12 instruction had so much to say at the conclusion of the
13 sentencing proceeding? Which one was that?

14 You want to tell me why you did not - - -

15 MS. MCCOLLUM: Yes, because you said that he was
16 lying. Just like you knew the officer right here was lying and
17 all the rest of the witnesses. You heard their lies, and they
18 was telling their stories, and you looked right over him and
19 said something over the top and denied everything he said like
20 he was lying.

21 You heard the lies they was telling me. I am not even a
22 judge, and I knew they was lying.

23 THE COURT: I tell you what you do. You take her on to
24 jail and bring her back tomorrow, and I'm going to have a
25 contempt of court proceeding, and I appoint you to defend her.

MOTIONS AND RULING OF THE COURT

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1 Put her in jail right this minute.

2 That's fine. Take her on.

3 (The officers remove the party from the courtroom as she
4 continues to scream out at the Court.)

5 THE COURT: Can you give me her name, please?

6 All right. Anything prior to lunch?

7 We'll be back at 2:00. Thank you.

8 COURT REPORTER: I really think I need to get her name
9 on the record.

10 THE COURT: I want her name on the record.

11 Find out her name, please. So we can have it on the
12 record.

13 Mrs. McCall, I want the record to show that she was
14 speaking in a loud and rude voice, now.

15 MR. GALMORE: Yes, sir. For the record, her name is
16 Latasha McCollum.

17 THE COURT: Thank you.

18 I want the panel of thirty-five back in the morning. The
19 rest of the jury panel I want to call in tomorrow night because
20 this case may settle.

21 I just want to make sure I've got the availability of a
22 jury in case they come in and plead in the morning which
23 wouldn't surprise me.

24 CLERK OF COURT: Yes, sir.

25 THE COURT: But I want thirty-five so I can use them for

SENTENCE OF THE COURT AMENDED

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1 another case if I have to.

2 (The Court recesses the trial of this case and reconvenes
3 this trial for further motions.)

4 SENTENCE OF THE COURT AMENDED

5 THE COURT: Good afternoon. Be seated, please.

6 One minute. I want to get on the record.

7 Let me hold that case.

8 I want the one that's in dispute, the ten year one.

9 Mrs. McCall, let the record now reflect that in reference
10 to the case as to William Von Long charged with possession of a
11 firearm during the commission of a violent crime, through
12 inadvertence I sentenced him to ten years consecutive but, in
13 fact, it is my intention to sentence him to five years
14 consecutive as provided by statute, and the sentence is,
15 therefore, amended to conform with my true intentions of five
16 years consecutive.

17 Have her change that.

18 CLERK OF COURT: The indictment number is 07-868.

19 THE COURT: I'll amend the sentencing sheet.

20 (The Court adjourns the trial of this case at 3:07 p.m.)

21 - - - (END OF TRANSCRIPT) - - -

GENERAL SESSIONS JURY SELECTION

CASE NO. 076526-875, 873, 868, 871, 869 DATE: 4-13-09PLAINTIFF: STATEATTORNEY: Larry Filiberto A SDEFENDANT: William LongATTORNEY: James Calmore APDPRESIDING JUDGE Edward B. Cottingham COURT REPORTER: LINDA W. MCCALL

STRIKES

JUROR #	NAME	RACE	SEX	COURT	STATE	DEF.	ACCEPT
347	Jo Ann Stephenson	C	F			X	
409	Joseph Williams	AA	M		X		
3	May Alexander	C	F				✓
121	Ryan Grainger	C	M			X	
22	Lana Becker	C	F				✓
106	Timothy Fox	C	M			X	
153	Tasha Hills	AA	F				✓
211	Blackwelder Lepinsky	C	F				✓
53	Cathy Carroll	C	F				✓
399	Kathryn Wentzell	C	F			X	
417	Jeannel Winkler	C	F				✓
190	Wade Kennard	C	M			X	
212	Francis Lethgow	C	F			X	
322	Jeffrey Semsey	C	M			X	
255	Connie Moses	AA	M				✓
133	Tamara Haidee	C	F				✓
187	Shai Kahn	C	F			X	
384	Vernig Vereen	AA	F			X	
120	Juliet Graham	AA	F				✓
26	Carlos Bellamy not present						
41	Melody Breedon	C	F		X		
245	Nicholas Melle	C	M				✓
8	Mona Amorese	C	F				✓
429	John W. Little	C	M			X	
115	Cheryl Goodreau	C	F				✓
	Alternates						
123	Lucy Griffith	C	F				✓
387	Cynthia Visconti	C	F				✓

CERTIFICATE OF COURT REPORTER

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF Horry)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of all the proceedings had and evidence
8 introduced in the trial of the captioned case, relative to
9 appeal, in the Court of General Sessions of Horry County, South
10 Carolina.

11 I do further certify that I am neither of kin, counsel,
12 nor interest to any party hereto.

13 August 15, 2009

14 Linda W. McCall

15 Linda W. McCall

16 Official Reporter
17
18
19

FORM 5

STATE OF SOUTH CAROLINA

County of Horry

IN THE COURT OF COMMON PLEAS

William v. Long 238950

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFJUL 29 AM 9:47
CLERK OF COURT
HARRIS-HARDINSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORP INST. 990 WISACKY HWY
BISHOPVILLE SC 29010
2. Name and location of Court which imposed sentence GENERAL SESSION
PO BOX 677, CONWAY SC 29528-0677
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007GS 2600 875 ARM Robbery

- (b) 200765 2600 873 Arm Robbery
- (c) 200765 2600 868 Possession of a weapon
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4/15/09 5 years consecutive to 875
- (b) 4/15/09 25 years consecutive to 873
- (c) 4/15/09 25 years consecutive to 868
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Judgment of conviction
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. THE COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. CONVICTION AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted February 1, 2012 Filed March 7, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. unpublished opinion No. 2012-UP-166
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) DUE PROCESS violation
 (b) Probable cause violation
 (c) INEFFECTIVE ASSISTANCE OF COUNSEL violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10): SEE Attachment pg. 1, 2, 3 for continue answers for (a)(b)(c)
- (a) A 6 pks photograph line up was constructed
 (b) The arrest warrants in this case were without
 (c) The photograph lineup, and statements by the
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: _____
 i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____

This answer refers to question 11 (A) of Pg. 3 form 5 after it was determined that i had the property in my possession belonging to one of the victims. SEE Trial Transcript. DET. Boyd-Direct Examination By Mr. Filiberto Pg. 208 line 4-6, and presented to the victims in this case. DET. Boyd-Direct Examination By Mr. Filiberto Pg. 208 line 5-7 The victims themselves had nothing to do with this line up being constructed. DET. Boyd-Cross Examination By Mr. Galmore Pg. 89 line 15-25, Pg. 90 line 1-3 when this 6pk photograph line up was constructed. I was put in it in a jailhouse uniform, and it was presented to the victims in this case. Mr. Clark - Cross Examination By Mr. Galmore Pg. 102 line 25, Pg. 103 line 1-2, Pg. 208 line 6-7. My trial Attorney presented this issue to Your Honor, Edward B. Cottingham during my trial, and he said "of course, don't mention it unless he brings it out, don't mention jailhouse uniform". Mr. Clark - Cross Examination By Mr. Galmore Pg. 108 line 16-17 The problem with this lineup is that the others whose in this with me look to be wearing teashirts. Mr. Clark - Cross Examination By Mr. Galmore Pg. 108 line 25, Pg. 109 line 1-3 The victims were also told that their perpetrator was in custody. one was even told by the police as well his belongings were found, and where he could go pick them up from. Mr. Norris-Direct Examination By Filiberto Pg. 238 line 15-18, 22-25, Pg. 239 line 1-4.

The victims eventually picked me out, and the warrants for my arrest were issued based upon. Mr. Clark - ~~REDSPECT~~ Examination By Mr. Filiberto Pg. 204 line 25, Pg. 205 line 1-7

This answer refers to question 11 (B) of Pg. 3 form 5 probable cause. SEE Arrest warrants. They were issued 12/29/06. The victims didn't view the line ups until 1/31/07 (51 days after the warrants were issued. SEE Photograph line up identification form in this case. So, there's no way the warrants could have been issued based up on the victims identification when there was none?

However, before this lineup, and these statements got presented. The victims in this case identified their assailant as a black man. SEE TRIAL TRANSCRIPT. Mr. Norris - Cross Examination By Mr. Galtmore Pg. 246 line 7-14, and Ms. White - Cross Examination By Mr. Galtmore Pg. 265 line 3-9 which wasn't probable cause either for the warrants to be issued for my arrest.

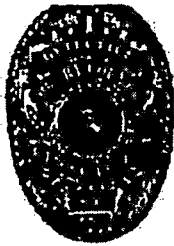
This answer refers to question 11 (C) of Pg. 3 form 5 police to the victims in this case were suggestive.

The warrants issued for my arrest were without probable cause. If this had been known to the court by my trial attorney things may have turned out different for me. However, because they weren't known my trial attorney was ineffective, and I was denied my right to a fair trial.

Sincerely,

William V. Hong[#] 238950
LEF. CORC INST. 990

W. Sackby Hwy Bishopville
SC. 29010



Horry County Police Department

Criminal Investigations Division

Photo Line Up Identification Form

Case Number: 06115130

You will be asked to look at several photographs. The fact that the photographs are shown to you should not influence your judgment. You should not conclude nor guess that the photographs contain the picture of the person who committed the crime. You are not obliged to identify anyone. It is just as important to free innocent persons from suspicion, as to identify guilty parties.

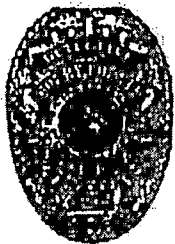
I observed the following photo line up at [REDACTED]
On 1/3/06 . I picked the photo # 2 as numbered below. Please initial beside the number below and sign.

Photo # 1 _____	Photo # 4 _____
Photo # 2 <u>1</u> <u>[REDACTED]</u>	Photo # 5 _____
Photo # 3 _____	Photo # 6 _____

Name: Mary [REDACTED]
Address: [REDACTED]
[REDACTED]
Telephone: [REDACTED]

Signature: [REDACTED]

Witness: [REDACTED] Det T. Boyd
Conducted by: [REDACTED] Det T. Boyd



Horry County Police Department
Criminal Investigations Division

Photo Line Up Identification Form

Case Number: 06115130

You will be asked to look at several photographs. The fact that the photographs are shown to you should not influence your judgment. You should not conclude nor guess that the photographs contain the picture of the person who committed the crime. You are not obliged to identify anyone. It is just as important to free innocent persons from suspicion, as to identify guilty parties.

I observed the following photo line up at [REDACTED]
On 1/3/07 I picked the photo # 2 as numbered below. Please initial beside the number below and sign.

Photo # 1	Photo # 4
Photo # 2	Photo # 5
Photo # 3	Photo # 6

Name: Malcolm [REDACTED]

Signature: [REDACTED]

Address: [REDACTED]

Telephone: [REDACTED]

Witness: [Signature] Det. T. Boyd

Conducted by: [Signature] Det. T. Boyd

J316621

STATE OF SOUTH CAROLINA

☒ County / ☐ Municipality of
HORRY

THE STATE
against

WILLIAM VON LONG

Address:

LORIS SC

Date: SSN:

Sex: M Race: B Height: Weight:

State: DL #: SC

DOB: Agency ORI #:

Issuing Agency:

Prosecuting Officer:

Offense: ARMED ROBBERY, ROBBERY WHILE ARMED
WITH A DEADLY WEAPON

Offense Code:

Code / Ordinance Sec. 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the
☐ County / ☐ Municipality of

The accused
to be arrested and brought before me to be
satisfied with according to law.

Signature of Judge

(L.S.)

at

RETURN

copy of this arrest warrant was delivered to

Defendant William V. Long

12-29-06

[Signature]
Signature of Constable / Law Enforcement Officer

RETURN WARRANT TO:

☒ County / ☐ Municipality of
HORRY

AFFIDAVIT

I and my associate
S.C. Attorney General
April 21, 2003
SACA 013
030401

Personally appeared before me the affiant DET. TOBY BOYD who
being duly sworn deposes and says that defendant WILLIAM VON LONG
did within this county and state on 12/27/2006 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County / ☐ Municipality of
in the following particulars:

DESCRIPTION OF OFFENSE: 16-11-0330(A)

ARMED ROBBERY, ROBBERY WHILE ARMED WITH A DEADLY WEAPON

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

"SEE ATTACHED AFFIDAVIT"

CASE #06115130

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County / ☐ Municipality of
HORRY

Affiant's Address 2560 N MAIN STREET
CONWAY SC 29526

Affiant's Telephone (843) 915-5350

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 12/27/2006 defendant WILLIAM VON LONG

did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County / ☐ Municipality of) as set forth below:

DESCRIPTION OF OFFENSE: 16-11-0330(A)

ARMED ROBBERY, ROBBERY WHILE ARMED WITH A DEADLY WEAPON

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant
and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 12/29/2006

[Signature]
Signature of Issuing Judge

Judge Code: 22

Judge's Name AARON C. BUTLER

Judge's Address 4152 J. REUBEN LONG AVE.

CONWAY, S.C.

Judge's Telephone (843) 365-9222

Issuing Court: ☒ Magistrate ☐ J. ☐ Circuit

ORIGINAL

iv.

(c) the disposition thereof:

i.

ii.

iii.

iv.

(d) the date of each such disposition:

i.

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i.

ii.

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii.

iii.

(b) the proceedings in which each ground was raised:

i.

ii.

iii.

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) DUE PROCESS / First collateral attack
 (b) Probable cause / First collateral attack
 (c) Ineffective assistance of counsel / First collateral attack

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered Ayes to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. James Galmore P.O. Box 1666 Conway SC 29526

ii. Elizabeth Franklin P.O. Box 11589 Columbia SC 29211-1589

iii. _____

- (b) the proceedings at which each such attorney represented you:

i. TRIAL

ii. DIRECT APPEAL

iii. _____

To make conviction and sentence legally void

20. Are you now under sentence from any other court that you have not challenged?

County of Horry

I, William Von Long # 238950, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

~~William V. Long~~
William V. Long

SWORN to and subscribed before me this 26
day of Nov., 2012.
Debra Sires (I.S.)
Notary Public

My Commission Expires: 11-4-2015

012 NOV 29 AM 9:47
CLANIE HUGGINS-WARD
CLERK OF COURT

2-12

9212

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) ☒ I am the applicant in this action and I believe I am entitled to redress.
- (2) ☒ Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

William V. Long 238950
Applicant

SWORN or affirmed to and subscribed before me this
16 day of Nov., 2012

Debra Sines
Notary Public

My Commission Expires: 11-4-2015

CLERK OF COURT
CLANIE HUGGINS-YARD
2512 NOV 29 AM 9:47
COUNTY

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2012-CP-26-9212
	)	
William V. Long, 238950,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 29, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. The Applicant was indicted at the March 2007 term of the Horry County Grand Jury for armed robbery (2007-GS-26-0874) and two counts of possession of a weapon during the commission of a violent crime (2007-GS-26-0875 and 2007-GS-26-0868). Michael Suggs, Esquire, represented Applicant. On April 15, 2009, Applicant was tried before a jury and convicted as indicted, and was sentenced by the Honorable Edward B. Cottingham to an aggregate twenty-five years imprisonment. Applicant appealed his conviction and sentence and was represented by James C. Galmore, Esquire. Applicant's conviction and sentence were affirmed in unpublished opinion No. 2012-UP-166 and the matter was remitted to the lower court on March 7, 2012.

Attached herewith and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and if available, the transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Respondent interprets Applicant's allegations as that he is being held in custody unlawfully for the following reasons:

- a. "Due Process Violation"
- b. "Probable Cause Violation."
- c. "Ineffectiver Assistance of Counsel Violation."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

3-19, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

2012-CP-26-9212

WILLIAM V. LONG, #238950)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

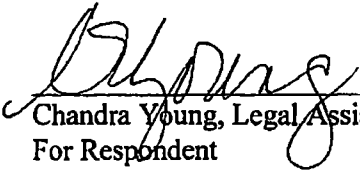
STATE OF SOUTH CAROLINA,)

Respondent.)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Cecil Clarkson, Esquire
602A 27th Avenue North
Myrtle Beach, SC 29577**

DATED this 15th day of March, 2013.


Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-26-9212

WILLIAM V. LONG, #238950,)

Applicant,)

v.)

STATE OF SOUTH CAROLINA,)

Respondent.)

AMENDED APPLICATION FOR
 POST-CONVICTION RELIEF

13 JUL 23 PM 2:23
 CLERK OF COURT

1. Place of Detention: Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010
2. Name and Location of Court which imposed sentence: Court of General Sessions, PO Box 677, Conway, SC 29528-0677
3. Name(s) of co-defendants(s) (if any) _____
4. The Indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-26-875 - Armed Robbery
 - (b) 2007-GS-26-873 - Armed Robbery
 - (c) 2007-GS-26-868 - Possession of a Weapon
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 15, 2009 - sentenced to 5 years consecutive
 - (b) April 15, 2009 - sentenced to 25 years consecutive
 - (c) April 15, 2009 - sentenced to 25 years consecutive
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty XX
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or imposition of sentence: Judgment of conviction
8. If you answered "yes" to (7), list:

- (a) The name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
- (b) the result in each such Court to which you appealed:
 i. Conviction affirmed
 ii. _____
 iii. _____
- (c) The date of each such result:
 i. Submitted February 1, 2012 and filed March 7, 2012
 ii. _____
 iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. Unpublished Opinion No.: 2012-UP-166
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) Due process violation
 (b) Probable cause violation
 (c) Ineffective assistance of counsel violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) Ground 1 – Perjury - On December 29, 2006, Judge Aaron Butler issued Warrant No.: J316621 for my arrest and probable cause was based on upon a statement in the Sworn Affidavit that was false. See Sworn Affidavit Case No. 06115130 and store surveillance video. It doesn't show me committing the robberies. Counsel is ineffective for failing to make a motion to have the video suppressed based upon the false statement in the Warrant Affidavit, and this failure prejudiced the outcome of the case, and the issue wasn't preserved for direct review.
 (b) Ground 2 – Arrest - On December 28, 2006, Officer Kevin Suggs arrested me. I was walking down Currie Lane and he pulled up behind me. I kept walking because he never indicated to me that I was under arrest. Well, when I went in the woods (a shortcut to where I was going) he and another officer got out of the car and pulled their guns on me, handcuffed and searched me for no reason. See Case Activity Report #06115130. Counsel is ineffective for failing to make a motion to have the evidence seized unlawfully

suppressed, and this failure prejudiced the outcome of the case and the issue wasn't preserved for direct review.

(c) Ground 3 – Fingerprints and Conflicting Statements - On March 1, 2007, the grand jurors of Horry County indicted me for two (2) counts of armed robbery and possession of a weapon during the commission of a violent crime. The Cash/Dash, 701 Hwy. 701 N in Loris was robbed December 27, 2006. See Incident Report No. 06115130. The subject wasn't wearing any gloves. He reached in the register and drew \$35.00 worth of fuel into his vehicle. Prints were lifted from the pump but not analyzed and the register inside the store was never dusted. Tr. Pg. 214 and 215 Lines 24-25 and Lines 1-7. The vehicle that he was driving was found on Angelwood in Loris. It was requested that this vehicle be dusted for prints but it was never done. Tr. Pg. 202 and 203 Lines 21-25 and Line 1. The victims in this robbery identified their assailant in the initial report as a black male, 5' 8", around 40 years old, 150 pounds, black hooded shirt, white t-shirt, blue jeans, white sneakers and scar below left eye. When the victim's property was given back to them and they were told "I had been arrested" they picked me out of a photo lineup. See Photo Lineup No. 06115130. This is a photo of me when I was 21 years old. It doesn't display height or weight. There's no scar below my left eye and the color of my clothes aren't known. Counsel is ineffective for failing to make a motion to have the indictment squashed based upon the insufficiency of the evidence, and this failure prejudiced the outcome of the case, and the issue wasn't preserved for direct review.

(d) Ground 4 – In-Court Identification – On April 13-15, 2009, trial counsel made a motion to have the in court identification suppressed because there was testimony I was in a jailhouse uniform Tr. Pg. 102 and 103 Line 25 and Lines 1-3 while the others looked to be wearing t-shirts. Tr. Pg. 108 Line 25, and Pg. 109 Line 1. The courts denied the motion, and told my counsel "of course, don't mention jailhouse uniform unless it was brought out" Tr. Pg. 108 Lines 16-17. Appellant counsel is ineffective for failing to raise suggestive in-court identification on direct appeal. Suggestive in court identification could have been raised on direct appeal because it was an issue raised and ruled on by the courts. Tr. Pg. 107-108 Lines 4-25 and Lines 1-17. This failure prejudiced the outcome of the case and the issue wasn't preserved for direct review.

(e) Ground 5 – Ineffective Assistance of Appellant Counsel – Counsel failed to raise ineffective assistance of trial counsel on direct appeal. Counsel could have raised ineffective assistance of trial counsel on direct appeal because it was an issue raised and ruled on by the courts. Tr. Pg. 4 Lines 18-25. This failure prejudiced the outcome of the case and the issue wasn't preserved for direct review.

12. Prior to this application, have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law: No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion or application which you have filed?
No

15. If you answered "yes" to (14), identify:

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Due process/First collateral attack
- (b) Probable cause/First collateral attack
- (c) Ineffective assistance of counsel/First collateral attack

17. Were you represented by an attorney at any time during the course of:

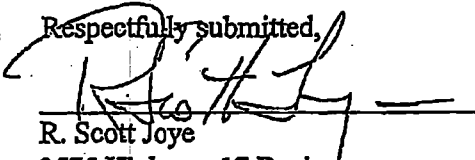
- (a) your arraignment and plea? Yes

- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. James Galmore, PO Box 1666, Conway, SC 29526
- ii. Elizabeth Franklin, PO Box 11589, Columbia, SC 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
- To void conviction and proceed for a new trial
- _____

20. Are you under sentence from any other Court that you have not challenged?
- No

Wherefore Applicant requests that his petition for post-conviction relief be granted.

Respectfully submitted,


 R. Scott Joye
 3575 Highway 17 Business
 Murrells Inlet, South Carolina 29576
 (843) 357-6454
 (843) 651-8127(fax)

July 22, 2013

1
2 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
3 COUNTY OF HORRY) CASE NO: 2012-CP-26-9212
4 PCR HEARING

5
6 B E F O R E: The Honorable G. Thomas Cooper
February 4th, 2015

7
8 WILLIAM V. LONG,

9 Petitioner,

10 vs.

11 STATE OF SOUTH CAROLINA,

12 Respondent.

13
14 APPEARANCES:

15
16 Scott Joye, Esq.
For the Petitioner.

17
18 Joshua Thomas, Esq.
For the Respondent.

19
20
21
22 Court Reporter:
Natalie Dahl, RPR
23
24
25

 ORIGINAL

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I-N-D-E-X

WITNESS

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Examination by the Court..... 51

E-X-H-I-B-I-T-S

PETITIONER'S EXHIBITS

MARKED & ADMITTED

NO EXHIBITS

CALL OF THE CASE

P-R-O-C-E-E-D-I-N-G-S

1
2 THE COURT: Good morning.

3 MR. THOMAS: This is William Long versus State of
4 South Carolina, 2012-CP-26-9212, March 2007 indictment
5 for two counts of armed robbery, possession of a
6 weapon during the commission of violent crime, car
7 jacking and kidnapping. He was represented by James
8 Galmore on those charges. It went to trial April 13
9 through 15, 2009. He was convicted of the armed
10 robbery and possession of a weapon during the
11 commission of a violent crime. There was a mistrial
12 on the car jacking and kidnapping charges. The jury
13 could not reach a verdict. Judge Cottingham sentenced
14 him for 25 years for one armed robbery, a consecutive
15 25 on the second armed robbery and a consecutive five
16 years on possession of a weapon during the commission
17 of a violent crime.

18 Betsy Bess (phonetic) from the Office of Public
19 Defense did prepare an appeal, and Court of Appeals
20 confirmed the conviction in 2012-UP-166, returned the
21 remittitur on March 23, 2012, filed this PCR
22 thereafter November of 2012 alleging various accounts
23 of ineffective assistance of counsel. He is present
24 in the courtroom and represented by Scott Joye, and
25 State is ready to proceed.

WILLIAM LONG - DIRECT EXAMINATION

1 MR. JOYE: Yes, sir. I would call Mr. Long at
2 this time.

3 (WILLIAM LONG, having been duly sworn,
4 testified as follows:)

5 DIRECT-EXAMINATION

6 BY MR. JOYE:

7 Q Good morning, Mr. Long.

8 A Good morning.

9 Q You filed this post-conviction relief
10 application?

11 A Yes, sir.

12 Q And you allege that Mr. Galtmore was -- he was
13 your attorney?

14 A Yes.

15 Q And it is your allegation that Mr. Galtmore --
16 that his services didn't meet the standard for other
17 criminal defense attorneys; is that what you allege?

18 A Yeah.

19 Q And, in fact -- and but for these deficiencies in
20 his representation, there was a great likelihood you
21 would not be convicted?

22 A Possibly.

23 Q Having said that, can you tell the Court how Mr.
24 Galtmore was ineffective as your counsel?

25 A Try to. First he failed to review the videotape

WILLIAM LONG - DIRECT EXAMINATION

1 of the robbery with me when the State had the plea
2 offer on the table.

3 THE COURT: Slow down. You might be nervous. I
4 have to hear what you are saying.

5 THE WITNESS: He failed to review the videotape
6 with me while the State had a plea offer on the table.

7 THE COURT: What videotape?

8 THE WITNESS: Of the robbery. I didn't see that
9 until the day of trial.

10 Q (MR. JOYE) Now, you had an arraignment
11 approximately a week prior to that?

12 A I'm not sure.

13 Q About a week before that, they brought you into
14 court and explained what the offer was?

15 A Yeah, but I didn't see the video.

16 Q But you had not seen the video at that time?

17 A No, he said it wouldn't show up.

18 Q That is Tuesday, April 7th before you started
19 trial on Monday; do you remember that?

20 A I believe so.

21 Q But at that time you had not seen the videotape?

22 A No.

23 Q At some point in time, did you subsequently see
24 the videotapes?

25 A Yeah.

WILLIAM LONG - DIRECT EXAMINATION

1 Q And --

2 A Starting the day of trial.

3 Q And you were in the courtroom when certain
4 videotapes were entered?

5 A Yeah.

6 MR. JOYE: I don't know how you want to handle
7 this, but these are the exhibits from the trial. I
8 don't know if you would like us to put them into
9 evidence, or if they would be Court's exhibits;
10 however the Court would choose to deal with that.
11 They are the exhibits from the State which includes
12 the video.

13 THE COURT: State's position?

14 MR. THOMAS: I have no problem with the Court
15 reviewing those and making it part of this record. I
16 guess I would think, theoretically, if it is part of
17 the trial record, it is accessible as part of the
18 court record on PCR. So I guess if we want to check
19 those out and let you view them. I'm -- unless we
20 make a copy.

21 THE COURT: I'm not sure I need to review. He
22 just said he didn't review them. I don't know what is
23 on there.

24 MR. JOYE: Judge, I'm going deeper into that, and
25 I'm just trying -- just a housekeeping matter.

WILLIAM LONG - DIRECT EXAMINATION

1 THE COURT: Court's exhibit for the present. The
2 question is: Are they going to be available for
3 appellant review?

4 MR. THOMAS: They usually issue an order to the
5 clerk of court to release them to the appellant court.

6 THE COURT: Right. Go ahead, Mr. Joye.

7 MR. JOYE: Thank you, Your Honor. State's 17 and
8 18, two videotapes.

9 Q (MR. JOYE) We went back and looked at them now,
10 correct?

11 A Yeah.

12 Q Now....

13 MR. THOMAS: I think maybe -- can we approach?

14 THE CLERK: I think they needed to stay in
15 general sessions.

16 (Whereupon, a bench conference was had.)

17 MR. JOYE: We will not mark them. We'll put them
18 back in here, and they will be available for the
19 Court.

20 Q (MR. JOYE) Had you looked at the videotapes? Do
21 you believe at that point you would have pled guilty?

22 A I would have accepted the 18-year plea if I knew
23 that it showed the guy had the same sneakers and same
24 clothes on. I would have taken the plea.

25 Q How else was your attorney deficient?

WILLIAM LONG - DIRECT EXAMINATION

1 A Video. Also, it was -- detective said I was seen
2 on the video clear as day committing the robberies, but
3 it didn't show me on the video committing the
4 robberies, and that was probable cause for the warrant.
5 The video didn't show up, so I don't see how he got the
6 warrant.

7 Q So you believe that Mr. Galtore didn't
8 sufficiently challenge the warrant?

9 A Yeah.

10 MR. JOYE: Beg the Court's indulgence.

11 (A brief pause in the proceedings.)

12 Q (MR. JOYE) I'll show you a copy of the warrant
13 affidavit, and I've highlighted a particular portion.
14 Would you tell the judge what that says?

15 A It says the entire incident was captured on store
16 surveillance video which clearly showed the Defendant
17 committing the robberies.

18 Q And it is your contention that on those videos,
19 you can't see that?

20 A No, you can't.

21 Q All right. What else was Mr. Galtore deficient
22 in?

23 A He failed to show that the detective lied to
24 obtain a warrant, give false statement.

25 Q So you didn't cross-examine him about that?

WILLIAM LONG - DIRECT EXAMINATION

1 A No.

2 Q That would have gone to his credibility and to
3 his issues with the jury?

4 A Uh-huh.

5 Q You think that then it would have been more
6 likely that the jury wouldn't have believed other
7 things that that detective would have said?

8 A I believe it would have turned out different.

9 Q All right. What else did Mr. Galmore do that was
10 deficient?

11 A He failed to investigate and present evidence
12 that other customers could not ID me.

13 Q So you are saying that Mr. Galmore didn't send
14 anybody out to talk to these other customers?

15 A No.

16 Q Do you know if Mr. Galmore had any of these other
17 customers' names?

18 A It was in the transcript or incident report.

19 Q They were in the incident report?

20 A Yeah.

21 Q And you -- and Mr. Galmore never discussed it
22 with you?

23 A No.

24 Q You don't know that he never sent anybody to talk
25 to them, you just never discussed it with him?

WILLIAM LONG - DIRECT EXAMINATION

1 A Never discussed it with him.

2 Q And that would have been important to know what
3 they may have had to say?

4 A Yeah.

5 Q In fact, if they picked you out of the line-up
6 perhaps, then that would have been something that would
7 also make you think about pleaing?

8 A If they picked me out of the line-up in a
9 jailhouse uniform --

10 Q I'm talking about the other customers.

11 A Yeah. Yeah.

12 Q If he called these other customers and they said,
13 No, I couldn't tell who the person was -- because there
14 were clearly other customers in the store, at least in
15 the videos?

16 A Yeah.

17 Q And other customers at the gas pump?

18 A Uh-huh.

19 Q Now, this incident, in reviewing the videos, it
20 revolves around an area around a gas pump, and an area
21 around inside the store?

22 A Uh-huh.

23 Q And if you look at it, whoever perpetrated this
24 crime, pulls up, pumps gas, customers come and go, the
25 person who committed the crime actually pulls out a

WILLIAM LONG - DIRECT EXAMINATION

1 gun, points it at another customer pumping gas,
2 correct?

3 A Uh-huh.

4 Q Is that what we just saw?

5 A Uh-huh.

6 Q Goes inside. We saw a video of the store being
7 robbed at that point, correct?

8 A Uh-huh.

9 Q And he comes back out and leaves?

10 A That's correct.

11 Q But there is people in the store, people coming
12 and going outside of the store?

13 A Yeah.

14 Q So whoever was there would have been easily seen
15 by all of those people?

16 A Yeah. Yeah.

17 Q And none of those were called to trial?

18 A None of them.

19 Q All right. Tell me something else that your
20 attorney was deficient at?

21 A Failed to establish that the 911 tape identified
22 the video as a gray Toyota Camry, not a green one.

23 Q He didn't question anybody about that?

24 A No.

25 Q Was the 911 tape played in court?

WILLIAM LONG - DIRECT EXAMINATION

1 A I'm not sure. I believe it was, though.

2 Q Okay. So the fact that they got that wrong meant
3 they could have gotten a lot of other things wrong
4 about the photo line-ups?

5 A Yeah.

6 Q Speaking of the photo line-ups, you said he was
7 deficient in failing to challenge the photo line-ups?

8 A Uh-huh.

9 Q Now, not only was there -- whoever robbed the
10 Cash and Dash, and the gentleman outside of the gas
11 pump at the Cash and Dash, it seems likely to have been
12 the same person that robbed the clerk over in North
13 Myrtle Beach who was coming off of work, right?

14 A Not Myrtle Beach.

15 Q Was it Myrtle Beach, not North Myrtle Beach?

16 A I don't know what you are talking about.

17 Q You were tried also, and the case was mistried
18 on --

19 A Oh, you are talking about the kidnapping?

20 Q The kidnapping.

21 A That is what they were trying to say?

22 Q Yeah. Kidnapping and robbery?

23 A Yeah.

24 Q And it seems kind of likely that whoever did do
25 that, did the Cash and Dash, right?

WILLIAM LONG - DIRECT EXAMINATION

1 A Yeah, that is what they were trying to say.

2 Q And nobody found you guilty of the kidnapping and
3 robbery of the clerk from the motel in Myrtle Beach?

4 A No. No. No.

5 Q Now, you said that there were issues with the
6 photo line-ups. I'll show you what was previously
7 marked as State's Exhibit 1. What issues did you have
8 with -- excuse me. State's Exhibit 1 was the photo
9 line-up identification and who identified it.

10 State's Exhibit 2 is the identification itself.

11 Now, what was the problem with that line-up?

12 A That wasn't a line-up.

13 Q That wasn't the line-up they showed them?

14 A No. They had me in jailhouse uniform and rest
15 were in T-shirts, and he said something about it during
16 trial.

17 Q That is the same one as we just saw (indicates)?

18 A Yeah.

19 Q The one you had a problem with was this one, and
20 this was the case that you were not convicted on,
21 right?

22 A Yeah (indicates).

23 Q But the gentleman in that case testified in the
24 whole case, right?

25 A No, he just testified in his case and left.

WILLIAM LONG - DIRECT EXAMINATION

1 Q That is what I'm saying. It wasn't two separate
2 trials; it was one trial?

3 A Yeah.

4 Q You are saying that that is a photo line-up from
5 the jail?

6 A It is the one that they showed. I'm not sure
7 that is the one or not, but the one in court was the
8 one in a jailhouse uniform.

9 Q Okay. And you say that your attorney, Mr.
10 Galmore, failed to challenge that, ask that it be
11 excluded?

12 A Suppress it.

13 Q Yeah, suppress it.

14 Now, in your in-court identification, what can
15 you tell us about that?

16 A That is the same thing, I was in a jailhouse
17 uniform.

18 Q I'm talking about the in-court identification.

19 A That is a picture of me when I was like 17 or 18
20 years old.

21 Q How old were you at the time of your trial?

22 A About 38.

23 Q Did you know where the picture came from?

24 A Yeah. He told me it came from my driver's
25 license, permit or something.

WILLIAM LONG - DIRECT EXAMINATION

1 Q Did you have a driver's license at the time of
2 the --

3 A No.

4 Q So you only got a license once in your life?

5 A Yeah.

6 Q What else and how else was Mr. Galmore deficient?

7 A He failed to let me know that I had a right to
8 address the Court at my sentencing, he didn't tell me
9 nothing about that.

10 Q What would you have told the Court at that time?

11 A Well, I probably would have told them I would
12 take the plea or I didn't do it. I would have
13 explained what was going on.

14 Q All right, sir. Anything else about Mr. Galmore
15 that you want the Court to know?

16 A He failed to cross-examine Mr. Smith as he
17 testified I was in the video, when the video didn't
18 clearly show me.

19 Q So you are saying that -- Mr. Smith was the
20 gentleman that there is no video with, right?

21 A Yeah.

22 Q And so you have to explain that better. I'm not
23 quite following you there.

24 A Mr. Smith told them that that was his car seen at
25 the Cash and Dash on the video, that I was the one

WILLIAM LONG - DIRECT EXAMINATION

1 leaning against it, but the video didn't show me, my
2 face, they didn't know who it was and he didn't
3 cross-examine on that.

4 Q And you think that would have unfairly prejudiced
5 the jury against you?

6 A Yeah.

7 Q Mr. Long, this is your one and only opportunity
8 to do this, so whatever issues you have, you need to
9 raise those issues, and let's cover them in court. Is
10 there anything else?

11 A The judge gave him an opportunity to review the
12 indictments, and he reviewed them, but still sent the
13 wrong indictment to the jury.

14 Q Okay. Now --

15 A And that informed them that I had other
16 outstanding charges out there.

17 Q There is three separate alleged victims in this
18 case. One was Ms. Mary White who was the clerk at the
19 Cash and Dash, correct?

20 A Uh-huh.

21 Q The other one was Nathan Smith whose car was --
22 it was argued that he was kidnapped and his car was
23 taken from him?

24 A Yeah.

25 Q And the third was Mr. Malcolm Norris, Junior, who

WILLIAM LONG - DIRECT EXAMINATION

1 was the gentleman that was robbed by someone at the gas
2 pump?

3 A Uh-huh.

4 Q But there was somewhere in the transcript, after
5 the jury had gone back, another indictment had gone
6 back to the jury that had a totally different name?

7 A Yeah.

8 Q That was another charge that you were charged
9 with, but never was brought into court to be tried?

10 A Yeah.

11 Q And he went forward on that indictment even
12 though that case was never called?

13 A No, it wasn't called.

14 Q That witness was never called?

15 A No.

16 Q So that would have alleged that you had been
17 involved in another robbery?

18 A That they didn't hear a thing about, yeah.

19 Q And did he, in fact, raise that issue? Did that
20 issue get raised at some point in time after the
21 indictment went back with the jury?

22 A He made a motion for mistrial, but he didn't
23 object after the judge gave the curative instruction.

24 Q So he didn't object to the curative instruction?

25 A No.

WILLIAM LONG - DIRECT EXAMINATION

1 Q So it wasn't available for appellant review?

2 A That's right, it wasn't reserved.

3 THE COURT: You are saying that the judge sent
4 the indictment on an unrelated charge to the jury?

5 MR. JOYE: Yes, sir. If you'll give me a second,
6 I'll point it out to you.

7 THE COURT: I have the transcripts. Was it a
8 mistake? Did he intend to do that?

9 MR. JOYE: There were other indictments that he
10 was not actually tried on.

11 THE WITNESS: He said it was a mistake, but the
12 judge gave him an opportunity to review the
13 indictments, him and the other attorney for the State.

14 THE COURT: Well, indictments --

15 MR. JOYE: Your Honor, here you go, 343, top of
16 the page. Mr. Galmore: Should I make a motion for
17 the jury comes in --

18 THE COURT: Wait a minute. I have 343. Where
19 are you?

20 MR. JOYE: Top of the page, Bench conference held
21 off the record and outside the presence --

22 THE COURT: All right.

23 (A brief pause in the proceedings.)

24 THE COURT: It was erroneously given to the clerk
25 by the Solicitor. All right. So when they were

WILLIAM LONG - DIRECT EXAMINATION

1 accumulating the evidence, before the jury starts
2 deliberations, gathering up all of the evidence and
3 there is an indictment that was not part of the trial,
4 it was sent to the jury?

5 MR. JOYE: That's correct, Your Honor. And I
6 believe it names a different name, Judge.

7 THE COURT: It says 870.

8 MR. JOYE: George T. Phillips. If you look at
9 Lines 17 and 18, Judge.

10 THE COURT: I see it.

11 MR. JOYE: Thank you, sir.

12 Q (MR. JOYE) So in addition to all of the evidence
13 that is in -- that the State put in to try to convict
14 you, now an indictment, which no one knows anything
15 about, goes back to the jury?

16 A That's right.

17 Q With a name they've never heard before?

18 A That's right.

19 THE COURT: But charging this Defendant?

20 MR. JOYE: Charging?

21 Q (MR. JOYE) Charging you?

22 A That's right.

23 Q Now, Mr. Galmore did ask for a mistrial based on
24 that?

25 A Yeah, he asked for a mistrial, the judge denied

WILLIAM LONG - DIRECT EXAMINATION

1 it because he said he gave him the opportunity to look
2 at it.

3 Q Because you are saying that the judge, prior to
4 sending everything back, told the lawyers to look at
5 everything and make sure the stuff that goes back with
6 them is the right stuff?

7 A Yeah.

8 Q Obviously you would have not have wanted that to
9 go back to the jury?

10 A That's right.

11 Q Mr. Long, again, I can't reiterate this enough,
12 this is your day in court and your one and only time to
13 do this. Is there anything else you feel this Court
14 needs to know, now is the time.

15 A He failed to cross-examine Kevin Suggs on trial
16 testimony, too. He stated the reasons to arrest me was
17 because someone told them I had a lot of money on me.

18 Q Now, he didn't object to what somebody else said,
19 did he? In other words, Officer Suggs testified that a
20 confidential informant told him this stuff?

21 A But it wasn't in his police report, he only said
22 that during trial.

23 Q And do you know if he was given the name of the
24 confidential informant?

25 A No, I don't know.

WILLIAM LONG - DIRECT EXAMINATION

1 Q Do you know if the name of the confidential
2 informant was anywhere in any of your paperwork?

3 A Huh-huh.

4 Q Do you know if any investigator ever spoke to any
5 confidential informant who supposedly gave this
6 information?

7 A No.

8 Q But he didn't object to the hearsay of the
9 confidential informant?

10 A He didn't point that out that it wasn't in the
11 police report.

12 Q And that is in Officer Kevin Suggs' original
13 testimony?

14 A That is trial testimony, but it was not in his
15 police report. He also said that I had a gun, but he
16 didn't put that in his police report either. He didn't
17 state that until the day I went to trial.

18 Q The day you went to trial, that would involve
19 when they alleged that you were running from him and
20 threw it in the pond?

21 A No -- yeah, that is when he said it.

22 Q When he alleged that?

23 A Yeah, but it wasn't put in the police report.

24 Q But there was no police report about any gun?

25 A No.

WILLIAM LONG - DIRECT EXAMINATION

1 Q No gun was ever found?

2 A No.

3 Q And they brought in everybody and searched, and
4 searched and searched that pond, didn't they?

5 A Yeah.

6 Q All right. What else?

7 A He failed to prepare me for trial, too. I was
8 telling the State I had some robberies. The State had
9 prosecuted me -- or had warrants on me for like seven
10 other robberies, and he didn't tell me nothing about
11 that, and I said it, and they used it against me. They
12 didn't tell me to say it in court.

13 Q You said it in front of the jury?

14 A Yeah.

15 Q So when you testified, you talked about other
16 robberies?

17 A Yeah, but I didn't know because he didn't tell
18 me. He didn't know what evidence they had on me until
19 the day of trial. I don't recall like -- you know, me
20 and him had enough time to prepare for trial because we
21 just seen the evidence.

22 Q Having said that, how about me and you, have we
23 had enough time to prepare for this?

24 A Yeah.

25 Q Just want to clear that up. Anything else you

WILLIAM LONG - DIRECT EXAMINATION

1 need to tell the Court?

2 A That is about it.

3 Q Is there anything with regards to appellant
4 counsel you think the Court should know?

5 A Well, my trial lawyer made a motion to suppress
6 in court and out court identification, but he didn't
7 tell the judge at the time that the in-court
8 identification was suggested, and he didn't grant that
9 motion.

10 Q So that really would have been back, again, on
11 Mr. Galmore, not the appellant counsel?

12 A Yeah. Yeah.

13 Q Anything else?

14 A That's it.

15 MR. JOYE: Thank you. If you would, answer any
16 questions Mr. Thomas might have.

17 THE COURT: Was there a Biggers hearing?

18 MR. THOMAS: There was Biggers on Page 78 of the
19 transcript.

20 CROSS-EXAMINATION

21 BY MR. THOMAS:

22 Q I'll be brief. How many meetings did you have
23 with Mr. Galmore?

24 A I think we saw each other like two, three times.

25 Q And you said you never saw the video until the

WILLIAM LONG - DIRECT EXAMINATION

1 day before trial, the full video?

2 A Yeah.

3 Q Did you get a chance to see everything else
4 though?

5 A Yeah.

6 Q As far as, I guess, the issue with the other
7 charges that were brought up in terms of your other
8 pending charges, didn't Judge Cottingham repeatedly
9 tell you not to talk about those?

10 A No.

11 Q Talking about this plea deal. Did you ever tell
12 Mr. Galmore after you saw the video that you wanted a
13 plea deal back?

14 A We were in court.

15 Q So you didn't tell him, Now that I see the video,
16 I want the plea deal?

17 A That is how I felt, but I didn't tell him that.

18 Q Judge Cottingham issued -- when that other
19 indictment went back to the jury, Judge Cottingham
20 issued a curative instruction to disregard that?

21 A Yeah.

22 Q And Mr. Galmore actually -- he did cross-examine
23 everybody. I mean, he talked about the fact there was
24 no gun found, didn't he? That came out when he talked
25 to the officer, that didn't come out when the State

JAMES GALMORE - DIRECT EXAMINATION

1 examined him; isn't that true?

2 A Yeah.

3 Q And he also brought out the fact there was no
4 fingerprints?

5 A That's right.

6 Q And also brought out the fact that one of the
7 victims, Ms. White, said that she actually knew you?

8 A That is what they said, but she didn't ID me.

9 Q You testified in this trial, right?

10 A Yeah.

11 Q And you basically -- you testified -- you told
12 the jury that that picture on the video didn't look
13 like you?

14 A I told them it wasn't me.

15 Q So that was your defense, wasn't it?

16 A Yeah.

17 MR. THOMAS: Thank you, Mr. Long. That is all I
18 have.

19 MR. JOYE: Nothing further, Your Honor.

20 THE COURT: You can come down. Thank you.

21 MR. JOYE: That is our showing.

22 MR. THOMAS: State calls Mr. Galtmore to the
23 stand.

24 (JAMES GALMORE, having been duly sworn,
25 testified as follows:)

JAMES GALMORE - DIRECT EXAMINATION

DIRECT-EXAMINATION

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BY MR. THOMAS:

Q Could you briefly give us a brief overview of your experience as a criminal lawyer?

A Admitted to the South Carolina Bar in 1995, first try, first time. I worked in private practice for a few years, and then in 1998 I started with the Public Defender's Office here in Horry County, and been here since 1998.

Q And how did you become involved in this case?

A Well, this case was initially assigned to another attorney in the Public Defender's Office by the name of Mike Suggs. He was appointed January 5th of 2007 -- I'm trying to find when I was appointed to take over representation, if you can hold on a moment.

(A brief pause in the proceedings.)

Q (MR. THOMAS) Mr. Long raised the issue about the quality of representation before trial, didn't he?

A Say it again?

Q Mr. Long raised the issue of your representation of him, or he raised that in front of Judge Cottingham?

A Yes. It is on the record. We had several problems, run-ins. I guess the best way to say it would be bumping heads. I wasn't able to get Mr. Long to assist me with this case. I was assigned to take

JAMES GALMORE - DIRECT EXAMINATION

1 over representation of Mr. Long -- while I have the
2 order, it doesn't have a date on it. Hold on just a
3 minute. I'll get back to the original question.

4 (A brief pause in the proceedings.)

5 A I'm guessing at this point that it would have
6 been around May of 2008 that I was appointed to
7 represent Mr. Long. I think specifically December 13,
8 2007 is when the file was transferred from Mike Suggs
9 to myself.

10 Q (MR. THOMAS) And during the course of your
11 representation, did you have an opportunity to meet
12 with him in jail?

13 A Yes. I met with Mr. Long on several occasions.
14 Let me go back. Mike Suggs initially met with Mr. Long
15 January 25 of 2007. Mike Suggs reports that the
16 Defendant told both the jail staff and me -- referring
17 to Mr. Suggs -- that he retained a private attorney and
18 did not wish to talk to me. Defendant refused to tell
19 anyone the name of the attorney, only saying that she
20 will be in touch. Defendant had a bad attitude.

21 The next time when Mr. Suggs met with Mr. Long
22 was February of 2007, and he noted: Jail visit.
23 Defendant refused to leave his cell to talk to me. He
24 told the jail staff that he has a private attorney and
25 did not want to see me.

JAMES GALMORE - DIRECT EXAMINATION

1 Mr. Suggs went out to see him again February 27
2 of 2007 and reported that the Defendant called --
3 sorry. The Defendant called from the jail on the
4 27th. He wanted to see the videotapes. He did not
5 explain why. He would not talk to me at the jail. He
6 also would not answer directly whether or not he was
7 retaining a private attorney.

8 I initially spoke with Mr. Long, looks like, May
9 of 2008, and at that time Mr. Long told me that he
10 would do ten years. I made a note that at that time
11 we saw the videos. I next talked to Mr. Long
12 September 17 of 2008, and my note is that he was at
13 the courthouse for an arraignment. Now, when I say an
14 "arraignment," I use that term loosely. They called
15 it an arraignment, it is really not. It is more of a
16 rejection of a plea offer. On that date he would have
17 been offered a deal and asked if he wanted to take it
18 or not. I made a note in my file that Mr. Long was
19 talking to the lights and the wall, and I can't read
20 my own writing at this point, but it does say talking
21 to lights and wall. So I believe that Mr. Long was --
22 either had a mental competency issue or was
23 malingering trying to create an issue.

24 I spoke with Mr. Long again February of 2009. He
25 was in court February 13, 2009 in court before Judge

JAMES GALMORE - DIRECT EXAMINATION

1 Cottingham. At that time Mr. Long said no to the
2 18-year plea offer. I made a note that his attitude
3 and behavior was rude and disrespectful to the Court.
4 There was an issue as to whether Mr. Long would be
5 filing a grievance against me. Judge Cottingham told
6 him that not even a grievance would get him a new
7 attorney. I think Judge Cottingham indirectly
8 suggested that he file a grievance because there was
9 subsequently a grievance filed against me, and I would
10 point out that it was pending at the time of
11 Mr. Long's trial.

12 I contacted the Office of Disciplinary Counsel
13 and asked them what I needed to do in this situation,
14 how do I go about being relieved on the case, and they
15 explained to me that I was obligated to represent
16 Mr. Long even with a pending grievance. I explained
17 to them that I thought that might be asking for
18 trouble down the road because, I guess, if I was
19 Mr. Long, I would say that Galmore didn't give me his
20 best effort because I had a pending grievance filed
21 against him, but the Office of Disciplinary Counsel
22 indicated that I was to represent him, and I went
23 forward with it.

24 Now, getting back to you on --

25 Q Let me interrupt you there. Did you give him

JAMES GALMORE - DIRECT EXAMINATION

1 your best effort?

2 A I tried, yes, sir.

3 Q Go ahead.

4 A Okay. Back to the February 13, 2009 meeting with
5 the client. I have a note that prior to an
6 arraignment, Defendant spoke to me, then he refused to
7 speak to me, then he asked for a ten-year, non-violent
8 plea offer, then he refused to speak to me when I tried
9 to explain that if I was able to get a ten-year plea,
10 it would be violent. Of course the plea was for 18,
11 but we were discussing the possibilities of a ten-year
12 plea, and he refused to communicate with me.

13 My next meeting would be March 10, 2009. He
14 called at that time and I talked to him on the phone,
15 and I advised him that I will be getting William Hall
16 -- William S. Hall -- or Waccamaw Mental Health's
17 files, and his case will be called for trial within
18 the next three months. The Solicitor told me that his
19 case would be tried in August -- excuse me, April term
20 of court.

21 Thereafter, on March 26, 2009, I asked our office
22 investigator to go out to the jail to get Mr. Long to
23 sign release forms for medical records, mental health
24 records. Mr. Long refused to sign the forms. On
25 March 26 of 2009, I was at the jail. Mr. Long would

JAMES GALMORE - DIRECT EXAMINATION

1 not sign the forms for the release of his medical
2 records. I advised him that I could not present a
3 mental health defense if I did not have access to his
4 mental health records. March 31, I visited the crime
5 scene in Loris and I spoke with Mr. Long at the
6 detention center. It looks likes the next time we met
7 -- well, April 3rd is when I actually received the
8 grievance that had been discussed about on
9 February 13. I then asked my boss, Ms. Orrie West,
10 Chief Public Defender, about how to handle this
11 situation, and, again, I was told that I was obligated
12 to represent him.

13 I left out that I also met with Mr. Long on
14 October 7, 2008 and January 26 of 2009. When I met
15 with him on October 7, 2008, we discussed having a
16 private evaluation, but as I just testified, we never
17 got the competency records prior to trial. January 26
18 of 2009 I met with Mr. Long at the detention center,
19 explained to me that he was on Seroquel, and again we
20 needed his mental health records. He explained that
21 his mother had suffered from paranoid schizophrenia,
22 and he explained that he wanted to take a deal and he
23 wanted that deal to include his North Carolina time.

24 February 19, Mr. Long called the office to
25 reiterate that he wanted to try to get a ten-year

JAMES GALMORE - DIRECT EXAMINATION

1 deal. I attempted to negotiate that with the
2 Solicitor, and February 24 the Solicitor got back to
3 me and said that he was not offering a ten-year deal.
4 I met with Mr. Long several different occasions.

5 Q And in those meetings -- first of all, tell us
6 what the State's evidence was that they provided to you
7 in discovery.

8 A Okay. Well, the allegations are that Mr. Long,
9 or whoever the suspect was, had robbed a hotel desk
10 clerk, night auditor, who was getting off of work at
11 7:00 a.m. The allegations are that that person was
12 forced into his own car and told to drive from North
13 Myrtle Beach to the Loris community, and then he was
14 kicked out of the car and the car was taken.

15 Thereafter, there was a robbery at the Cash and
16 Dash convenience store, which is on Main Street in
17 Loris, and that is the incident where the person was
18 robbed at the pump while pumping gas, and then the
19 suspect went into the store and robbed the store.
20 There was then a third robbery the next day, which was
21 at another local convenience store in the Loris
22 community. That is the allegation with the indictment
23 that went before the jury by mistake. So he was
24 facing several robberies. We had videos from the Cash
25 and Dash convenience store and from the other store,

JAMES GALMORE - DIRECT EXAMINATION

1 but there was no video of the strong arm robbery and
2 kidnapping that occurred with the hotel desk clerk.

3 Q (MR. THOMAS) And as far as you sharing that with
4 him, did you attempt to share that discovery with
5 Mr. Long?

6 A Yes. Hold on just a minute. I can give you the
7 dates. I have a note on March -- May 31st of 2007,
8 copy of his discovery was mailed to him at the jail.
9 Prior to trial, I would have gone out to talk to
10 Mr. Long about the discovery in the case. This is the
11 discovery. It is approximately 2 inches thick, and I
12 sat down and went through every page of discovery with
13 Mr. Long, and as far as the video, there was discussion
14 about the problem of the video.

15 Q Could you explain what happened with the videos
16 from the armed robbery at the convenience store?

17 A I have the videos. What happened is we didn't
18 have the software that was compatible with these
19 videos. You know, Mr. Long says he didn't see the
20 video, that is not quite accurate. I showed Mr. Long
21 the video -- first showed him the videos of May 15,
22 2008 at the detention center, and then again, once the
23 trial date came up and it became an issue, that would
24 have been April 7th of 2009, I believe. I have a note
25 that Judge Cottingham had a hearing. Defendant would

JAMES GALMORE - DIRECT EXAMINATION

1 not say good morning to the judge. Given the option of
2 having his own -- option of having a public defender or
3 his own attorney or pro se, Defendant said he wanted to
4 go pro se. Judge ordered me to show videos again,
5 because Defendant lied. Defendant sat down in court.
6 Defendant said he wanted to go pro se, and the judge
7 ordered me to get an order for the Waccamaw Mental
8 Health records. So there is a couple different issues
9 going on there. One, I was commenting on his demeanor
10 before the Court. Also, like I said, Mr. Long told the
11 judge that he hadn't seen the video, but he had seen
12 the videos. Again, the date I showed him the videos
13 was May 15, 2008, and after this hearing on April 7th,
14 I went to show him the videos again because Judge
15 Cottingham ordered me in court to go out to the jail
16 and show him the videos. Also, we were still trying to
17 explore the mental health issues, but to be honest with
18 you, it was really too late to get the records and do
19 something with them.

20 Q You did have him evaluated, though?

21 A Hold on. Yes, it looks like maybe that would
22 have been back in 2007 when his evaluation was done.

23 Q Was there a Blair hearing before the trial?

24 A You would have to -- I assume there was, but you
25 would have to remind me. I don't have a transcript.

JAMES GALMORE - DIRECT EXAMINATION

1 MR. THOMAS: May I approach, Your Honor?

2 THE COURT: Sure.

3 Q I'll show you Page 37 to see if this refreshes
4 your recollection. Is that right on Line 5 there. Was
5 there a Blair hearing?

6 A Yes. There was a Blair hearing held in
7 Mr. Long's case.

8 Q As far as the rest of your investigation, what
9 else did you do besides examining him and going over
10 the discovery?

11 A Well, I went over his discovery with him and I
12 reviewed the crime scenes. Unfortunately, I wasn't
13 able to get any cooperation from Mr. Long. He wouldn't
14 talk to me. At various points throughout my
15 representation, he threatened to do physical harm to
16 me, which, you know -- in fact, he testified in his own
17 defense, and prior to his testimony, I had no idea what
18 he was going to say to the jury because he did not
19 discuss it, not from my lack of trying to discuss it
20 with him.

21 Q And so as far as -- he didn't tell you that you
22 needed to look for an alibi witness or anything like
23 that?

24 A No. He did not discuss his case with me at all.
25 The only discussion is he kept asking for the ten-year

JAMES GALMORE - DIRECT EXAMINATION

1 deal.

2 Q He's testified -- obviously you heard him -- that
3 had he seen that second video on that disk before
4 trial, he would have accepted the plea that the
5 Solicitor offered. Did he tell you that, or what were
6 your discussions about pleaing at the last minute after
7 he saw the video again?

8 A Even after he saw the video, at that point we
9 were days away from trial. He still did not discuss
10 anything with me. I mean, I sat in a room and
11 discussed every piece of paper that is in this -- in
12 his discovery, and he had no reply.

13 Q So let's talk about the trial. What kind of
14 challenges did you make in terms of the line-up?

15 A I don't remember.

16 Q Well, did you challenge the line-up?

17 A Yes, sir. Yes, sir.

18 Q And as part of that, do you recall talking about
19 the fact that some of the pictures showed him in the
20 jailhouse uniform?

21 A Again, I don't recall all of the details of what
22 was said. If it is in the transcript, I stand by it.

23 Q But you do remember having a lengthy Neil versus
24 Biggers hearing?

25 A Yes.

JAMES GALMORE - DIRECT EXAMINATION

1 Q As far as that indictment problem with the jury,
2 do you remember Judge Cottingham issuing a curative
3 instruction on that?

4 A Yes, I do.

5 Q And I guess Officer Suggs' testimony, what was
6 your trial strategy on cross-examination of Officer
7 Suggs in terms of the CI, how he got the information?

8 A Officer Suggs was the arresting officer. His
9 testimony was that he was in the area patrolling and
10 saw Mr. long, and once he attempted to stop Mr. Long,
11 he ended up running and jumping into a pond, or
12 something like that, and he couldn't swim, so they got
13 him out of the pond. When he was arrested, according
14 to Officer Suggs, Mr. Long was wearing a jacket that
15 belonged to the hotel desk clerk who would have been
16 the first person that was robbed.

17 MR. LONG: No, that's not true.

18 MR. JOYE: Shhh.

19 Q (MR. THOMAS) How did he say he came upon Mr. Long
20 as a suspect; do you recall that?

21 A No, I don't. Can you show me the transcript?

22 MR. THOMAS: May I approach?

23 THE COURT: Certainly.

24 THE WITNESS: I don't know where it is at.

25 Q (MR. THOMAS) Page 176, Line 17, read through Page

JAMES GALMORE - DIRECT EXAMINATION

1 177, Line 2.

2 A (Witness examines document.)

3 (A brief pause in the proceedings.)

4 THE WITNESS: Okay. What is your question, sir?

5 Q (MR. THOMAS) My question is -- there was testimony
6 that there was hearsay about a CI, and I want to know
7 -- I guess, first, how did Officer Suggs come to want
8 to initiate that stop on Mr. Long?

9 A His testimony is that he was talking to people in
10 the communities trying to find out if anyone had a
11 large amount of money or throwing money around, and
12 they were trying to look for leads. He testified that,
13 I had one individual that I knew was kind of -- had
14 some criminal dealings that I put in jail a few times,
15 and they called me and informed me about Mr. Long
16 having a little bit of money. Also, the other officer
17 was there and received information as well on Mr. Long,
18 and we received the information as to his location at
19 that time when we were talking.

20 So according to Officer Suggs, he was just asking
21 people in the community if they had any information
22 that could help, and he received information on
23 Mr. Long.

24 Q I guess my question is, why isn't that
25 objectionable as hearsay?

JAMES GALMORE - DIRECT EXAMINATION

1 A Because it is what he did in the course of his
2 investigation.

3 Q As far as Officer Suggs' testimony, you kind of
4 -- you had a big cross-examination of him. He
5 testified that he saw a gun; do you remember that?

6 A Yes.

7 Q But do you remember what your cross-examination
8 was regarding that gun?

9 A I don't think a gun was ever introduced. I think
10 they claimed that they tried to drag the pond or a
11 scuba-diver went into the pond, but not able to find
12 the gun.

13 Q So you brought that out on cross-examination?

14 A Yes.

15 Q As far as the warrant that led to his arrest, you
16 reviewed all of that beforehand, before trial?

17 A Yes.

18 Q Is there any reason why you didn't make any
19 objection to that, anything that you remember looking
20 at and going, This is objectionable, I need to move for
21 some sort of relief here?

22 A Well, I understand he is saying it didn't have
23 enough probable cause, but I didn't think there was an
24 issue there. The warrant seemed to be proper to me.

25 Q I know you said he wouldn't -- I guess you didn't

JAMES GALMORE - CROSS-EXAMINATION

1 have any discussion with him about what he wants to
2 testify to?

3 A No discussion at all.

4 Q But Judge Cottingham had a -- at different times
5 had a discussion about what he was allowed to say and
6 what he wasn't allowed to say?

7 A Yes, sir.

8 Q Do you remember Judge Cottingham telling him he
9 couldn't talk about any other pending charges he had?

10 A Yes. As a matter of fact, I was not aware of any
11 other pending charges. These must be the North
12 Carolina charges that he's referring to, because I had
13 warrants for the hotel desk clerk for Cash and Dash and
14 for the other store. I didn't have seven other
15 warrants, so I don't know what robberies they are
16 referring to.

17 MR. THOMAS: Thank you. I'll have you answer any
18 questions Mr. Joye has.

19 CROSS-EXAMINATION

20 BY MR. JOYE:

21 Q Thank you, Mr. Galmore. Looking at the affidavit
22 Mr. Thomas just asked you about, if you would, look at
23 the highlighted portion. In remembering everything --
24 and I know it is a few years -- I'm sure you haven't
25 reviewed the videotapes lately?

JAMES GALMORE - CROSS-EXAMINATION

1 A That's correct.

2 Q Now, I've just reviewed the videotapes and I'm
3 wondering can you clearly say that the person
4 committing this is Mr. Long?

5 A I haven't looked at the names for several years,
6 but I recall it being a robbery of a person pumping
7 gas. The suspect pulls up, gets out of the car and
8 robs the guy standing there pumping gas.

9 Q In fact, State's Exhibit No. 7 was introduced at
10 trial. I feel certain they pulled the best picture
11 they could pull out of the videotapes; wouldn't you
12 agree with that?

13 A That is how they do it, yes, sir.

14 Q That is how they do it?

15 A Yes, sir.

16 Q That is the best they could come up with in
17 attempting to identify the person who robbed the
18 victims, that is the best they could come up with?

19 A Yes, sir.

20 Q You wouldn't -- thank you, Mr. Galmore. It
21 wouldn't be any more likely to show a better rendition
22 of whomever robbed these victims than that depiction
23 right there?

24 A That would be fair to say, yes.

25 Q Thank you, sir. Now, you would agree with me

JAMES GALMORE - CROSS-EXAMINATION

1 that other than clothing, we really can tell that we
2 have a black male?

3 A Yes.

4 Q Other than that, we can't really tell a whole
5 heck of a lot, can we?

6 A I guess that would be something that the jury
7 would have to decide, if it looked like him or not.

8 Q How about you? I mean, I'm saying is this a
9 clear and concise picture of Mr. Long sufficient to
10 say, hey, that is Mr. Long, let's go out and get an
11 arrest warrant?

12 A It's not the world's clearest picture.

13 Q Thank you. In terms of -- you said that you
14 showed him -- I believe in May of 2008 -- a videotape
15 that was actually two DVDs or CDs. I don't even know
16 what you call them anymore, they have so many different
17 names to them. You went out there with a computer and
18 you showed him the disk and whatever was on that disc?

19 A The problem was I think the tapes, CDs, had
20 multiple camera angles, and I was able to show him two,
21 three angles instead of five camera angles, but by the
22 time, you know -- he saw the disk initially and saw it
23 again after Judge Cottingham ordered that I go back out
24 to the jail and show him everything. That second time
25 we were able to see every different camera angle.

JAMES GALMORE - CROSS-EXAMINATION

1 Q At that time there was no 18-year deal on the
2 table, was there?

3 A Hold on. I have a letter about that plea offer
4 deal, if you will hold on a second.

5 (A brief pause in the proceedings.)

6 A I have a letter from the Solicitor, and the
7 Solicitor was Lawrence Filiberto. The letter says that
8 the plea offer for 18 years was opened until
9 February 1, 2008. We had an arraignment February 13 of
10 2009 where Mr. Long -- where Mr. Long rejected the plea
11 offer before Judge Cottingham. So it was at least
12 opened until February of 2009, and the second time I
13 went with the videos was -- would have been
14 April 7th of 2009.

15 Q (MR. JOYE) So that February offer was no longer any
16 good in April?

17 A That's correct.

18 Q And some of those camera angles were better than
19 others?

20 A Yes, sir.

21 Q I know this far back there is no way in the world
22 that you can remember how good some were and how others
23 were?

24 A Right. That's correct.

25 Q But, certainly, it could have been that the very

JAMES GALMORE - CROSS-EXAMINATION

1 camera angles that they had, he never saw until April?

2 A Yes, sir. That is possible, yes, sir.

3 Q Because in the Blair hearing you, in fact, said
4 look, he can't see all the videos because we just
5 couldn't get them in -- I know what you are talking
6 about, I went back with my computer and Mr. Long
7 earlier and I understand it took finagling before I
8 figured it out.

9 A Right.

10 Q Allow me to kind of go over Officer Suggs'
11 testimony. To initially arrest him, Officer Suggs
12 testified in front of the jury that he had spoken to a
13 confidential informant, correct?

14 A I don't actually remember -- if it is in the
15 transcript, I stand by it.

16 MR. JOYE: Turn to Page 176.

17 THE COURT: The witness has the transcript?

18 MR. JOYE: I didn't realize he had one. I wanted
19 to bring it to the Court's attention.

20 Q (MR. JOYE) This is on direct examination by
21 Mr. Filiberto. Line 17 he asked about circumstances
22 that led up to that contact. Officer Suggs started
23 talking about how I had gone out in the community and
24 asked did you see anyone throwing money around that
25 probably shouldn't have that money, and basically an

JAMES GALMORE - CROSS-EXAMINATION

1 individual said, yeah, you need to talk to Mr. Long?

2 A Yes, sir.

3 Q But you didn't object to that as hearsay, did
4 you?

5 A I did not.

6 Q Now, would it have been proper to object to that
7 statement coming in as hearsay in the statement then
8 having to prove the proper foundation by bringing that
9 witness in?

10 A I should have objected to the statement.

11 Q On Line 15 on Page 177 there was another officer
12 who identified that's him, yeah, I went to -- I went to
13 school with him, or something like that. So that was
14 also hearsay that was not objected to?

15 A Yes, that's correct. He testified -- Officer
16 Suggs testified about what the second officer said to
17 him.

18 Q And then, again, on Line 13 on 178?

19 A Yes, sir. Officer Suggs repeats what the second
20 officer said to him.

21 Q All of those, you would agree with me, were
22 improper, either hearsay based on the facts they didn't
23 have anybody to lay the foundation for those
24 foundations?

25 A Yes, sir. I should have objected to those

JAMES GALMORE - CROSS-EXAMINATION

1 statements.

2 Q You would -- perhaps so much so that the other
3 officer's identification to Mr. Suggs that led to his
4 arrest, you would agree that the statement by some
5 person in the community saying he has more money than
6 he probably should have, that would be highly
7 prejudicial, wouldn't it?

8 A That could be prejudicial.

9 MR. JOYE: Beg the Court's indulgence one second.

10 Q (MR. JOYE) I have read the transcript, talked to
11 Mr. Long and I'm still not clear about the indictment
12 that went back. Can you tell me -- was that an
13 indictment -- were there other charges he was not
14 tried on, did that actually -- was the Market Express
15 alleged that he had robbed it previously or sometime
16 in the --

17 A Mr. Long was basically charged with three sets of
18 robberies. The first one would have been the hotel
19 desk clerk, car jacking and kidnapping. He was --
20 subsequently a mistrial was declared on those charges.

21 Q However, that was within the umbrella of the
22 trial?

23 A Right. We went to trial on those charges, and a
24 mistrial was declared on those. The second set of
25 charges would have been the robbery at the Cash and

JAMES GALMORE - CROSS-EXAMINATION

1 Dash, and the robbery of the person pumping gas at the
2 Cash and Dash. He went to trial on those, and those
3 were the ones that he was convicted for. The third
4 robbery, which I think they said occurred the next day,
5 which would have been another convenience store in
6 Longs, the Market Express, that is the indictment that
7 went before the jury by mistake.

8 What happens is that at the end of trial the
9 judge tells the attorneys to get all of the documents
10 together and the court reporter, we all sit around and
11 make sure all of the exhibits were properly marked and
12 which are introduced and not introduced. In addition
13 to a verdict form that goes in the back, the
14 indictments are sent back there also. It was an
15 oversight on my part, oversight on everyone's part
16 that an indictment got back there that wasn't supposed
17 to be there.

18 Q So if I understand your testimony, the original
19 indictment was that he did on December 27th at
20 10:30 p.m. go to the Cash and Dash, and the first set
21 -- the second set I mean, the person pumping gas as
22 well as the clerk inside --

23 A Yes, sir.

24 Q And he -- those did go back properly. However,
25 also another indictment that named another victim,

JAMES GALMORE - CROSS-EXAMINATION

1 another store, another date, all of those went back to
2 the jury?

3 A That's correct.

4 Q So the jury would look at the indictments not
5 only the events of 27th of December, but allegedly the
6 events of December 28th in which they had no
7 information other than now the indictment has gone
8 back?

9 A Yes, sir.

10 Q Did you object to the judge's curative
11 instruction?

12 A I did not.

13 Q I had the opportunity to look at these DVDs, CDs,
14 disks. I had an opportunity to look at them. There
15 were a number of people that were -- there were two
16 clerks in the store, people coming and going, people
17 pumping gas. Did you have the benefit of having the
18 names of those people?

19 A No, sir.

20 Q They were not in the -- in your reports?

21 A Let me make sure.

22 Q Let me do it this way. If the names were in the
23 reports, no investigator ever went out to talk to them,
24 did they?

25 A That is correct, the investigator did not go out.

JAMES GALMORE - REDIRECT EXAMINATION

1 Q Not on your behalf?

2 A No, sir.

3 Q You never contacted anyone -- any of the
4 potential witnesses to the robberies to see if they
5 could identify someone other than Mr. Long?

6 A No, sir, I did not.

7 Q If they -- whether they did or didn't or you had
8 the names, you didn't raise the issue with the jury
9 that, hey, all of these people are coming and going,
10 where are they; you didn't raise issue, did you?

11 A I did not.

12 Q Why didn't the State talk to him or why didn't
13 the State get statements or anything, none of that came
14 out?

15 A That's correct.

16 Q And if they did, you didn't talk to them?

17 A That's correct.

18 MR. JOYE: Nothing further.

19 REDIRECT-EXAMINATION

20 BY MR. THOMAS:

21 Q Briefly. What could happen if a warrant gets
22 dismissed in terms of Grand Jury?

23 A A person can be indicted anyway, and it happens
24 often. So dismissal of a warrant is not the end of a
25 case.

JAMES GALMORE - REDIRECT EXAMINATION

1 Q There was an arraignment in February of 2009
2 where he rejected the plea, why did he reject that
3 plea?

4 A I didn't write down a reason. I just wrote down
5 that he said no to the 18-year offer.

6 Q But he had previously asked you for a ten-year
7 plea?

8 A Yes, sir.

9 Q If an officer is testifying about his
10 investigation and what he did to undertake to go and
11 investigate something further, is that hearsay?

12 A Well, what happens in the course of investigation
13 in that regard is hearsay, but I can understand where
14 Officer Suggs does comment on what another person told
15 him.

16 Q And as far as the indictment goes, I'm confused.
17 There were five charges here. Did five indictments go
18 back, and one of them was wrong, or did six indictments
19 go back?

20 A I don't remember how it happened.

21 Q But there was -- the judge issued a curative
22 instruction?

23 A Yes, sir.

24 Q After you asked for a mistrial?

25 A Yes, sir.

JAMES GALMORE - EXAMINATION BY THE COURT

1 MR. THOMAS: Thank you, Mr. Galmore.

2 THE COURT: I'm confused, too.

3 EXAMINATION

4 BY THE COURT:

5 Q Was he being tried -- you said he was tried on
6 several cases at the same time?

7 A Right.

8 Q Was he being tried on the third case as well?

9 A No, sir, he was not being tried for the third
10 case.

11 Q The mini mart, or whatever it is?

12 A The market, yes, sir.

13 Q He was not being tried on that case?

14 A No, sir.

15 Q How did that -- if you know -- where did that
16 indictment come from? How did it --

17 A I can only....

18 Q Speculate?

19 A Yeah, speculate it was a mistake. I don't know
20 where the indictment came from.

21 Q Judge Cottingham says on Page 347, When the
22 Solicitor called these various -- go ahead and look,
23 Line 14. He says, When the Solicitor called these
24 various cases, he apparently made a mistake, and he
25 called Indictment 869, which is the one you have in

JAMES GALMORE - EXAMINATION BY THE COURT

1 your possession. When in place, he should have called
2 Indictment 870. So simply because of a clerical error,
3 the wrong indictment was sent to you for your
4 consideration, and I have in my hand the correct
5 indictment, and this indictment is as follows.

6 So other than the submission of 869 to the jury,
7 no testimony was involved pursuant to that indictment.

8 A That's correct.

9 Q So it was just a piece of paper went in?

10 A Yes, sir.

11 Q All right. Thank you.

12 THE COURT: That's all I have. Anything further?

13 MR. THOMAS: No follow-up.

14 MR. JOYE: Nothing, Your Honor.

15 THE COURT: Thank you. You may come down, sir.

16 MR. THOMAS: State's showing, Your Honor.

17 THE COURT: Any summations, if you wish to?

18 MR. THOMAS: We ask that Mr. Galmore be excused.

19 MR. JOYE: Without objection.

20 THE COURT: I'm sorry, without objection.

21 MR. JOYE: Judge, I don't think I really have
22 anything to add other than it does appear to me that
23 they sent the wrong indictment back and sent 869,
24 which was a separate and distinct -- separate date,
25 separate victim, separate store, separate instance,

JAMES GALMORE - EXAMINATION BY THE COURT

1 separate everything else with Mr. Long named as the
2 defendant, and then had to substitute that indictment.
3 You know, we don't know what in the world happened in
4 the jury room, and that is -- that's the case.

5 THE COURT: That arguments should have been --
6 and I think was made -- to Judge Cottingham. That is
7 not the issue here today.

8 MR. JOYE: Yes, sir. But the fact of the matter
9 is that Mr. Galmore failed to note something of --
10 Judge, sometimes we may send something back, and I
11 know it happens. I mean, it's happened to me before
12 that perhaps was it in evidence or we didn't get
13 everything, and they may be ancillary things, but an
14 indictment which gives it -- that was his job, Mr.
15 Galmore's specific job, to make sure that that didn't
16 happen. I feel that --

17 THE COURT: Well, it didn't happen.

18 MR. JOYE: The wrong indictment go back --

19 THE COURT: When reviewing the evidence prior to
20 submission to the jury?

21 MR. JOYE: Yes, sir. Yes, sir.

22 THE COURT: I see.

23 MR. JOYE: That is where I'm saying that that
24 would so prejudice a jury as to perhaps void any and
25 all other evidence. There are other things --

JAMES GALMORE - EXAMINATION BY THE COURT

1 certainly I understand trial strategy. You know, when
2 you try these things, when you look back on them, you
3 know, it is already 20/20. The problem I have is
4 certainly that issue, the fact that we allowed -- he
5 allowed Mr. -- I'm sorry -- he allowed the officer to
6 get into facts that should have been -- a foundation
7 should have been laid, particularly to hearsay
8 evidence of somebody -- Mr. Long having more money
9 than he should have, things of that nature which
10 really prejudiced my client in the eyes of the jury.

11 I understand a lot of the issues with
12 identification and things, and I think those have been
13 fleshed out in a great, great deal, but these are the
14 things I want to point out to the Court that I feel
15 Mr. Galmore is deficient in, and because of that, my
16 client was prejudiced such that he didn't receive a
17 fair trial and was likely convicted based on those.

18 THE COURT: Thank you. I have much, Counsel.
19 I'll accept proposed orders within 30 days. Thank
20 you.

21 (Whereupon the proceedings concluded.)
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the matter of the captioned case,
11 relative to appeal, in the Court of Common Pleas for
12 Horry County, South Carolina, on the 4th day of
13 February, 2015.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.

16
17 February 3, 2016

18
19 
20

21 Natalie Dahl, RPR

22 Court Reporter
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

William V. Long, #238950,

)
)

Case No. 2012-CP-26-9212

Applicant,

)
)

v.

)
)

ORDER OF DISMISSAL

State of South Carolina,

)
)

Respondent.

)
)

HORRY COUNTY
2015 APR -9 PM12:10
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 29, 2012. Respondent made a timely Return on or about March 15, 2013. The Court convened an evidentiary hearing into the matter on February 4, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by R. Scott Joye, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, James C. Galmore, Esquire, also testified. The Court had before it a copy of the trial transcript, the records of the Horry County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief and amendment, and the return. The Court also had before it the exhibits from Applicant's criminal trial, which were made part of the record of this proceeding by stipulation of the parties. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In March 2007, the Horry County Grand

Jury indicted Applicant for possession of a weapon during the commission of a violent crime (2007-GS-26-868), kidnapping (2007-GS-26-870), carjacking (2007-GS-26-871), and two (2) counts of armed robbery (2007-GS-26-873, -875). James C. Galmore, Esquire ("trial counsel"), represented Applicant. On April 13, 2009, Applicant proceeded to trial before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty of possession off a weapon during the commission of a violent crime and both counts of armed robbery. The jury did not reach a verdict on the carjacking and kidnapping counts, and Judge Cottingham declared a mistrial on those charges. Judge Cottingham sentenced Applicant to consecutive terms of twenty-five (25) years imprisonment for each armed robbery conviction, and a consecutive term of five (5) years imprisonment for the possession of a weapon during the commission of a violent crime conviction.

Applicant filed a timely notice of appeal. Elizabeth A. Franklin-Best, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on March 7, 2012. State v. Long, Op. No. 2012-UP-166 (S.C. Ct. App. filed March 7, 2012). The Court of Appeals returned the remittitur to the circuit court on March 23, 2012.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Due Process Violation"
2. "Probable Cause Violation"
3. "Ineffective Assistance of Counsel Violation"

In an amended application filed July 23, 2013, Applicant alleged the following grounds for relief:

1. "Ground 1 - Perjury - On December 29, 2006, Judge Aaron Butler issued Warrant No.: J316621 for my arrest and probable cause was based on upon a statement in



the Sworn Affidavit that was false. See Sworn Affidavit Case No. 06115130 and store surveillance video. It doesn't show me committing the robberies. Counsel is ineffective for failing to make a motion to have the video suppressed based upon the false statement in the Warrant Affidavit, and this failure prejudiced the outcome of the case, and the issue wasn't preserved for direct review."

2. "Ground 2 - Arrest - On December 28, 2006, Officer Kevin Suggs arrested me. I was walking down Currie Lane and he pulled up behind me. I kept walking because he never indicated to me that I was under arrest. Well, when I went in the woods (a shortcut to where I was going) he and another officer got out of the car and pulled their guns on me, handcuffed and searched me for no reason. See Case Activity Report #06115130. Counsel is ineffective for failing to make a motion to have the evidence seized unlawfully suppressed, and this failure prejudiced the outcome of the case and the issue wasn't preserved for direct review."
3. "Ground 3 - Fingerprints and Conflicting Statements - On March 1, 2007, the grand jurors of Horry County indicted me for two (2) counts of armed robbery and possession of a weapon during the commission of a violent crime. The Cash/Dash, 701 Hwy, 701 N in Loris was robbed December 27, 2006. See Incident Report No. 06115130. The subject wasn't wearing any gloves. He reached in the register and drew \$35.00 worth of fuel into his vehicle. Prints were lifted from the pump but not analyzed and the register inside the store was never dusted. Tr. Pg. 214 and 215 Lines 24-25 and Lines 1-7. The vehicle that he was driving was found on Angelwood in Loris. It was requested that this vehicle be dusted for prints but it was never done. Tr. Pg. 202 and 203 Lines 21-25 and Line 1. The victims in this robbery identified their assailant in the initial report as a black male. 5'8", around 40 years old, 150 pounds, black hooded shirt, white t-shirt, blue jeans, white sneakers and scar below left eye. When the victim's property was given back to them and they were told 'I had been arrested' they picked me out of a photo lineup. See Photo Lineup No. 06115130. This is a photo of me when I was 21 years old. It doesn't display height or weight. There's no scar below my left eye and the color of my clothes aren't known. Counsel is ineffective for failing to make a motion to have the indictment squashed based upon the insufficiency of the evidence, and this failure prejudiced the outcome of the case, and the issue wasn't preserved for direct review."
4. "Ground 4 - In-Court Identification - On April 13-15, 2009, trial counsel made a motion to have the in court identification suppressed because there was testimony I was in a jailhouse uniform Tr. Pg. 102 and 103 Line 25 and Lines 1-3 while the others looked to be wearing t-shirts. Tr. Pg. 108 Line 25, and Pg. 109 Line 1. The courts denied the motion, and told my counsel 'of course, don't mention jailhouse uniform unless it was brought out' Tr. Pg. 108 Lines 16-17. Appellant counsel is ineffective for failing to raise suggestive in-court identification on direct appeal. Suggestive in court identification could have been raised on direct appeal because it was an issue raised and ruled on by the courts. Tr. Pg. 107- 108 Lines 4-25 and Lines 1-17. This failure prejudiced the outcome of the case and the issue wasn't preserved for direct review."

312 = 3

5. "Ground 5 - Ineffective Assistance of Appellant Counsel - Counsel failed to raise ineffective assistance of trial counsel on direct appeal. Counsel could have raised ineffective assistance of trial counsel on direct appeal because it was an issue raised and ruled on by the courts. Tr. Pg. 4 Lines 18-25. This failure prejudiced the outcome of the case and the issue wasn't preserved for direct review."

At the evidentiary hearing, Applicant proceeded on only the following allegations of ineffective assistance of trial counsel:

1. Failure to review the tape of the incident prior to the expiration of the first plea offer.
2. Failure to challenge the arrest warrant that stated the video clearly shows Applicant, which it does not.
3. Failure to cross-examine the investigating officers on the fact the arrest warrant stated the video clearly shows Applicant, which it does not.
4. Failure to investigate other customers at the store at the time of the incident.
5. Failure to cross-examine witnesses about the discrepancies in the 911 tape.
6. Failure to challenge the lineup as unduly suggestive.
7. Failure to advise Applicant he had a right to address the judge at sentencing.
8. Failure to object to hearsay in Officer Suggs testimony about how he located Applicant.
9. Failure to properly object to the wrong indictment being sent back to the jury.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Generally, the Court finds trial counsel's testimony credible and Applicant's not credible, especially in light of the extensive trial record before the Court. Set forth below are the other relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Summary of Testimony

Applicant testified trial counsel failed to review the video tape of the incident with him prior to

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trial. He also testified he did not see the video before being arraigned and rejecting the State's initial plea offer. He testified if he had seen the video at that time, he would have accepted the plea offer because some angles of the video showed the perpetrator wearing shoes and clothes similar to Applicant's. However, Applicant admitted he did not ask trial counsel to attempt to negotiate a plea deal once he saw the video the day of trial.

Applicant also testified the video contained numerous angles, none of which clearly show his face. Applicant believes the arrest warrant affidavit falsely stated the video clearly shows him. He testified trial counsel should have moved to have the arrest warrant dismissed for lack of probable cause. He also testified trial counsel could have impeached the arresting officer with the fact the video was not clear. He further testified trial counsel should have impeached another investigating officer regarding the video.

Applicant testified trial counsel failed to investigate other customers that were at the store the day of the incident. He also testified trial counsel failed to explore the fact the 911 tape indicated the perpetrator was driving a grey car, not a green one. Applicant testified trial counsel should have objected to testimony from Officer Suggs regarding conversations he had with members of the community while looking for Applicant. Applicant believes this testimony was improper hearsay.

Applicant further testified trial counsel failed to challenge the victim's identification as tainted by an unduly suggestive lineup. He believes the fact he was in prison clothes in the lineup caused the victim to pick him out of the lineup. Applicant testified trial counsel also failed to review the indictments before sending them to the jury, which resulted in the jury viewing an indictment that he was not on trial for. He further testified trial counsel improperly acquiesced to the trial judge's curative instruction regarding the indictment. Applicant also testified trial counsel failed to advise him

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he had a right to address the judge at sentencing.

Trial counsel testified he has been a public defender since 1998. He was appointed to Applicant's case in December 2007. He recalled several meetings with Applicant. Trial counsel testified he attempted to share discovery with Applicant during these meetings, but Applicant was generally non-cooperative. Trial counsel recalled having Applicant evaluated prior to trial. He also recalled Applicant rejecting the State's eighteen (18) year plea offer. He recalled Applicant wanting a ten (10) year plea offer, but being unable to get the State to make such an offer. Trial counsel recalled Applicant being arraigned in February 2009 and rejecting the State's plea offer at that time. He did not recall Applicant requesting to plea after watching the video immediately before trial.

Trial counsel testified he visited the crime scene as part of his investigation. He further testified Applicant did not give him any further leads to investigate. He also testified the incident reports did not mention the names of any other customers in the store at the time of the incident. Trial counsel recalled Applicant filling a grievance against him. However, he continued to represent Applicant after discussing the grievance with his supervisor and the Office of Disciplinary Counsel. Trial counsel testified Applicant did not discuss the case with him despite his numerous visits to the detention center. Trial counsel identified at least two (2) occasions where he showed the video of the armed robbery to Applicant: March 2008 and April 2009. Trial counsel admitted the video showed the robbery from numerous angles, and he may have only shown Applicant a few of them. However, he recalled reviewing all angles of the incident with Applicant immediately before trial.

Trial counsel testified he did not see any issues with the probable cause in the arrest warrant. He also testified that merely having an arrest warrant dismissed does not prevent the State from indicting defendants. Trial counsel recalled cross-examining the investigating officers on the video.



from the store. He also recalled cross-examining the robbery victim about her identification of Applicant. Trial counsel testified he challenged the photo lineup based on Applicant's picture showing him in a jail uniform. He also testified he did not object to Officer Suggs' testimony regarding his conversations with members of the community because such testimony was not hearsay, but was testimony about why Officer Suggs conducted his investigation.

Trial counsel testified he did not know what Applicant would testify to at trial because Applicant refused to share that information beforehand. However, he recalled Applicant having numerous discussions on the record with Judge Cottingham about how Applicant should not mention his other pending charges at trial. He also recalled Applicant mentioning these other charges during his testimony. Trial counsel testified an indictment from one of Applicant's other kidnapping charges was inadvertently sent to the jury room instead of the indictment for the kidnapping Applicant was tried for. However, he recalled the State did not present any evidence regarding that charge, and Judge Cottingham issued a curative instruction after his motion for a mistrial.

B. Ineffective Assistance of Trial Counsel

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where Applicant alleges ineffective assistance of trial counsel as a ground for relief, he must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass,

753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this strong presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

1. Failure to review the tape of the incident prior to the expiration of the first plea offer.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to review the video with him prior to the expiration of his first plea offer. Regarding this specific allegation, the Court finds trial counsel's testimony credible, and Applicant's not credible. Trial counsel's records indicate he reviewed the videos with Applicant in March 2008. The record indicates Applicant was arraigned on October 7, 2008, and again on March 13, 2009. (Trial Tr. p. 22, lines 1-2; lines 18-25). Applicant was aware of the content of the videos when he declined the State's plea offers. Although there may have been angles of the incident Applicant had not seen at that time, he was fully aware the State planned to argue those videos showed him committing the armed robberies. The Court does not find credible his testimony that seeing further angles of the video would have

caused him to accept the State's offer. Cf. Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012) (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he "was fully aware of the inculpatory nature of the [evidence] throughout the negotiations"). Furthermore, Applicant did not request trial counsel attempt to secure a plea deal after viewing the video on the eve of trial. Accordingly, the Court finds Applicant has not demonstrated he would have accepted the State's offer even with further review of the video. See, e.g., Lafler v. Cooper, __U.S. ___, 132 S. Ct. 1376, 1385 (2012) (in the context of ineffective assistance of counsel regarding plea bargains, defendant must show he "would have accepted the plea" to show prejudice).

2. Failure to challenge the arrest warrant.

The Court finds Applicant failed to meet his burden to demonstrate trial counsel ineffective for failing to challenge the arrest warrant. The Court finds trial counsel's testimony on this issue credible, and finds Applicant's testimony neither credible nor legally accurate. Applicant alleges trial counsel should have challenged the arrest warrant because the affidavit stated the video clearly shows Applicant, which it does not. Trial counsel candidly admitted the video did not provide the best picture of Applicant. However, he also admitted there were no other grounds to challenge the validity of the warrant. The Court agrees with trial counsel's assessment. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) ("Where, as here, counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel." (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Although the video may not "clearly show" Applicant, the officer could have reasonably determined it was Applicant on the video based on his investigation. Accordingly, Applicant has not demonstrated trial counsel was deficient where he would not have any proper grounds to object to the issuance of the arrest warrant. See Palacio v. State, 333

S.C. 506, 514, 511 S.E.2d 62, 67 (1999) (no deficiency where "it would have been futile for Attorney to have made such arguments").

Regardless, an unlawful arrest does not preclude the court from exercising jurisdiction over Applicant where he was later indicted by the grand jury. See State v. Holliday, 255 S.C. 142, 146, 177 S.E.2d 541, 543 (1970) (citing State v. Waitus, 226 S.C. 44, 83 S.E.2d 629; State v. Swilling, 246 S.C. 144, 142 S.E.2d 864; Thompson v. State, 251 S.C. 593, 164 S.E.2d 760). Because the State could have properly secured a conviction at trial even if trial counsel had successfully challenged the arrest warrant, Applicant has not demonstrated he was prejudiced by trial counsel's failure to challenge the arrest warrant.

3. Failure to cross-examine the investigating officers regarding the video.

The Court finds Applicant failed to demonstrate trial counsel was ineffective in failing to further cross-examine the investigating officers on the video's depiction of Applicant. The record demonstrates trial counsel cross-examined Detective Boyd on whether the victim was able to identify Applicant on the video. (Trial Tr. p. 217, line 14-p. 218, line 24). Applicant has failed to show how further exploration of this issue would have changed the result of his trial. Skeen v. State, 325 S.C. 210, 216-17, 481 S.E.2d 129, 133 (1997) (court will not "speculate whether a 'better' cross examination would have helped" the applicant). Furthermore, Applicant personally argued to the jury that the person on the video did not resemble him. (Trial Tr. p. 284, line 23-p. 285, line 1; p. 287, lines 1-21). Therefore, further examination of Detective Boyd on this issue would have been merely cumulative to the information already before the jury. See Edwards v. State, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("[W]here evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it

forward." (citations omitted)). The Court finds Applicant failed to demonstrate trial counsel's conduct was unreasonable or that he was prejudiced by trial counsel's conduct.

4. Failure to investigate other customers at the store at the time of the incident.

The Court finds Applicant failed to meet his burden to prove on the allegation trial counsel failed to investigate other individuals who may have been at the store at the time of the incident. Regarding this allegation, the Court finds credible trial counsel's testimony he was not provided the names of any other persons at the store. Because he did not have these names, trial counsel had no reason to believe an investigation was warranted. Therefore, the Court finds the decision to not further investigate these individuals was a strategic one. Stokes, 308 S.C. at 548, 419 S.E.2d at 779.

Furthermore, failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Here, Applicant presented no evidence of what information could have been discovered had trial counsel been able to ascertain the identity of these other individuals. Applicant also failed to present any of these individuals at the evidentiary hearing. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (applicant must present testimony of a favorable witness at evidentiary hearing in order to establish prejudice (citations omitted)). Accordingly, the Court finds Applicant failed to demonstrate trial counsel was ineffective in this regard.

5. Failure to cross-examine witnesses about the discrepancies in the 911 tape.

The Court finds Applicant failed to meet his burden to show trial counsel ineffective for failing to cross-examine witnesses regarding the 911 tape. Applicant has not demonstrated how the description of the victim's car was relevant to the ultimate issue of his guilt or innocence. The record

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clearly indicates the victim's car was green. (Trial Tr. p. 192, lines 11-14; p. 226, lines 21-23; p. 269, lines 10-14). Any testimony regarding the color of the vehicle, even if some witness had described the car as "grey" and not "green" would have been cumulative and irrelevant. Edwards, 392 S.C. at 459, 710 S.E.2d at 66 (no prejudice from failing to introduce cumulative evidence). Furthermore, a copy of a 911 recording was not entered into evidence at the trial or at the evidentiary hearing. Thus, Applicant has not demonstrated to the Court that the 911 recording is inconsistent with the witnesses' testimony about the color of the car. See Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 267 (1993) (finding of prejudice cannot be based on "pure conjecture"). Accordingly, the Court finds Applicant has not demonstrated trial counsel was ineffective.

6. Failure to challenge the lineup as unduly suggestive.

The Court finds Applicant failed to meet his burden of proof on his allegation trial counsel was ineffective in challenging the photo lineup. Trial counsel made a pre-trial motion to suppress the witnesses' identification from the photo lineup. (Trial Tr. p. 147-163). During that motion, trial counsel argued the lineup was unduly suggestive because Applicant appeared in prison clothes. Judge Cottingham disagreed, and denied trial counsel's motion. The issue of whether Judge Cottingham properly admitted the identification could have been raised in Applicant's direct appeal. Accordingly, Applicant cannot challenge that ruling in post-conviction relief. See S.C. Code Ann. § 17-27-20(b) (Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction."); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.").

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Regardless, the Court finds the photo lineups and in-court identifications were properly admitted. The testimony at the suppression hearing demonstrates the lineups used photographs of comparable size and composition, with subjects of similar characteristics, and the officers did not expressly or implicitly suggest which photograph to select. State v. Patterson, 337 S.C. 215, 230, 522 S.E.2d 845, 852 (Ct. App. 1999). The lineup was not unduly suggestive simply because the picture may show Applicant in a prison uniform. State v. Ford, 334 S.C. 444, 449-50, 513 S.E.2d 385, 387-88 (Ct. App. 1999); see also State v. Miller, 258 S.C. 573, 576, 190 S.E.2d 23, 25 (1972) (lineup admissible where defendant made "no showing that the clothing selected could have reasonably given the impression that those in the lineup were being held on any charge other than that being investigated"). Furthermore, the in-court identification of the victims was not tainted by the identification because the testimony also indicates the victims had ample opportunity to view Applicant during the incidents, the lineups were viewed shortly thereafter, and the victims immediately recognized Applicant. Patterson, 337 S.C. at 230-31, 522 S.E.2d at 853. Because the lineups and identification were admissible evidence, Applicant has failed to demonstrate how trial counsel was ineffective in further challenging their admission. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

7. Failure to advise Applicant he had a right to address the judge at sentencing.

The Court finds Applicant failed to demonstrate trial counsel failed to advise him he could address the judge before sentencing. Applicant has no constitutional right to allocution before a sentencing judge. See Hill v. United States, 368 U.S. 424, 428 (1962) ("The failure of a trial court to ask a defendant represented by an attorney whether he has anything to say before sentence is imposed [...] is an error which is neither jurisdictional nor constitutional."). Because Applicant has no constitutional right to address the sentencing judge, trial counsel was under no duty to advise him in

this manner. Furthermore, the record indicates trial counsel presented a thorough statement in mitigation. (Trial Tr. p. 372-375). Applicant has not articulated how a further presentation would have altered Judge Cottingham's ultimate sentence. Clark, 315 S.C. at 388, 434 S.E.2d at 267 (1993) (finding of prejudice cannot be based on "pure conjecture"). Accordingly, the Court finds Applicant has not shown trial counsel ineffective in advising Applicant regarding the sentencing proceeding.

8. Failure to object to hearsay in Officer Suggs' testimony.

The Court find Applicant failed to meet his burden to show trial counsel ineffective for failing to object to hearsay in Officer Suggs' testimony about how he located Applicant. Applicant alleges trial counsel should have lodged a hearsay objection to Officer Suggs testimony regarding information he received from a third-party that caused him to search for Applicant. (Trial Tr. p. 177, lines 3-14). Testimony is not objectionable hearsay unless it is offered to prove the truth of the matter asserted. State v. Brown, 317 S.C. 55, 63, 451 S.E.2d 888, 894 (1994) (citing State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991)). Thus, testimony "is not hearsay if it is offered for the limited purpose of explaining why a government investigation was undertaken." Id. (citing United States v. Love, 767 F.2d 1052 (4th Cir. 1985)). Officer Suggs testified he received word from a third-party that Applicant had a "little bit of money" and was staying in a mobile home. The record indicates the third party's statements Officer Suggs repeated were not entered for the truth of what the third party said – that Applicant had money and was in a mobile home. Instead, they were introduced to show why Officer Suggs was in the area when he encountered Applicant walking on the side of the road. Thus, the third-party's statements were merely offered to show why Officer Suggs wanted to stop and investigate Applicant on the day he was apprehended. See State v. Thompson, 352 S.C. 552, 559, 575 S.E.2d 77, 81 (Ct. App. 2003) ("In the instant case, the officers' testimony regarding statements made by the

bystander were not entered for their truth but rather to explain and outline the officers' investigation and their reasons for going to the Thompsons' home."'). Because this testimony was not objectionable on hearsay grounds, trial counsel was not deficient for failing to lodge an objection. Palacio, 333 S.C. at 514, 511 S.E.2d at 67.

9. Failure to properly object to the wrong indictment being sent back to the jury.

The Court finds Applicant failed to meet his burden of proof to show trial counsel ineffective for failing to properly object to the jury being provided with a kidnapping indictment that the State had not proceeded to trial on. Trial counsel initially moved for a mistrial based on the wrong indictment being sent back. (Trial Tr. p. 343, lines 19-23). The Court of Appeals addressed whether "the trial court erred in denying [Applicant's] motion for a mistrial when the wrong indictment was inadvertently sent back to the jury." Long, Op. No. 2012-UP-166. Because this very issue was raised in his direct appeal, Applicant cannot re-raise this issue in a collateral proceeding. S.C. Code Ann. § 17-27-20(b); Simmons, 264 S.C. at 423, 215 S.E.2d at 885.

Regardless, the Court finds Applicant was not prejudiced by the incorrect indictment being sent to the jury. The incorrect indictment referenced a kidnapping charge. Because the jury could not reach a verdict on the kidnapping charges properly before them, there is no indication the introduction of an unrelated kidnapping charge caused them to believe Applicant was predisposed to commit kidnappings. Furthermore, the fact Applicant had other pending charges was already before the jury. Applicant himself testified he had seven pending armed robbery charges despite being warned against such testimony by Judge Cottingham. (Trial Tr. p. 288, lines 10-18). Because any adverse inference to be drawn from the indictment was cumulative to Applicant's trial testimony, he was not prejudiced by its introduction. Likewise, there was no evidence presented regarding the facts of the other

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indictment. See State v. Thompson, 352 S.C. 552, 561, 575 S.E.2d 77, 82 (Ct. App. 2003) ([A] vague reference to a defendant's prior criminal record is not sufficient to justify a mistrial where there is no attempt by the State to introduce evidence that the accused has been convicted of other crimes." (citations omitted)). Finally, Judge Cottingham issued a thorough instruction for the jury to disregard the incorrect indictment. State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999) ("Generally, a curative instruction is deemed to have cured any alleged error." (citations omitted)). Therefore, the Court finds Applicant has not demonstrated he was prejudiced by trial counsel's lack of a further objection to the incorrect indictment being sent to the jury room.

10. Overwhelming evidence of guilt.

Independent of the above analysis, the Court finds Applicant has not demonstrated he was prejudiced by the actions of trial counsel because there is overwhelming evidence of Applicant's guilt. The kidnapping victim identified Applicant as the person who stole his car. Surveillance video of the armed robberies shows Applicant driving the kidnapping victim's car. The armed robbery victims identified Applicant as the assailant. When approached by officers, Applicant fled. When officers apprehended Applicant, he was in possession of the kidnapping victim's car keys and an armed robbery victim's watch. In light of this overwhelming evidence, the Court finds Applicant has not demonstrated trial counsel was ineffective in any way. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt).

C. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such

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allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from his attorney's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, his attorney must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 31 day of MARCH, 2015.


 THE HONORABLE G. THOMAS COOPER, JR.
 Presiding Judge

COLUMBIA, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 OF THE FIFTEENTH JUDICIAL CIRCUIT
 CASE NO: 2012-CP-26-9212

WILLIAM V. LONG, #238950,)

Applicant,)

v.)

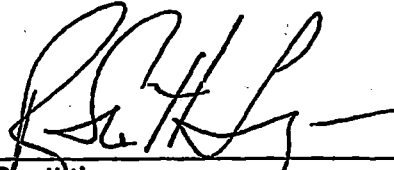
STATE OF SOUTH CAROLINA,)

Respondent)

MOTION TO RECONSIDER

HORRY COUNTY
 2015 APR 29 PM 3:22
 MELANIE HUGHES - MARB
 CLERK OF COURT

The Applicant, William V. Long, by and through his undersigned attorney, hereby moves this Honorable Court to reconsider its ruling under Rule 59(e) of the SC Rules of Civil Procedure on the previous proposed Order. A copy of which is attached hereto.


 R. Scott Joye
 Attorney for Applicant
 3575 Highway 17 Business
 Murrells Inlet, SC 29576
 843-357-6454

April 24, 2015
 Murrells Inlet, SC

COPY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

)
)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

William V. Long, #238950,

)
)

Case No. 2012-CP-26-9212

Applicant,

)
)

**RETURN TO APPLICANT'S
MOTION TO RECONSIDER**

v.

)
)

State of South Carolina,

)
)

Respondent.

)
)

Respondent, by and through undersigned counsel, making a Return to Applicant's Motion to Reconsider, would respectfully show unto this Court:

1. The matter is before the Court by way of a post-conviction relief action filed November 29, 2012.
2. An evidentiary hearing was convened on February 4, 2015, at the Horry County Courthouse.
3. Applicant was present at the hearing and represented by R. Scott Joye, Esquire. Applicant testified in his own behalf. Also testifying was James C. Galmore, Esquire ("trial counsel").
4. After a full review of the evidence presented at the evidentiary hearing and proposed orders from both parties, this Court issued an order dated March 31, 2015, and filed April 9, 2015, denying the application for post-conviction relief.
5. Applicant – through counsel – filed a Motion to Reconsider on April 29, 2015 (which was received by Respondent on May 4, 2015).
6. Respondent submits Applicant's motion to reconsider should be denied. Respondent submits this Court's order properly addresses the issues raised in this case. Specifically, Respondent

submits the Court properly found trial counsel was not ineffective for failing to challenge the arrest warrant, for failing to review the view with Applicant, for failing to investigate, or for failing to object to Officer Suggs' testimony.

7. Therefore, Respondent submits Applicant's Motion to Reconsider should be denied

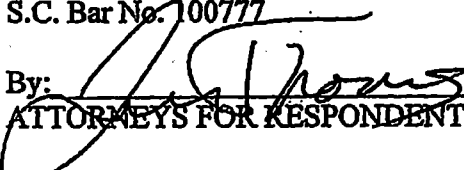
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

May 4, 2015

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

William V. Long, #238950

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE FIFTEENTH JUDICIAL CIRCUIT

2015 APR 25 AM 10:20

CLERK OF COURT

C/A No.: 2012-CP-26-09212

**ORDER DENYING APPLICANT'S
MOTION TO RECONSIDER**

This matter comes before the Court by way of Defendant's Motion to Reconsider pursuant to Rule 59(e), SCRPC. Specifically, Defendant asks this Court to reconsider its Order Granting Applicant's Application for Post-Conviction Relief filed April 9, 2015.

After careful consideration of the record in this case and the submissions of the parties, this Court is unable to discover any material fact or principle of law that has either been overlooked or disregarded and further finds no error of law or facts not appropriately considered. Accordingly, this Court hereby **DENIES** Defendant's Motion under Rule 59(e), SCRPC, to Reconsider this Court's Order filed October 23, 2014. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

IT IS SO ORDERED.Columbia, South Carolina
August 12, 2015

 G. Thomas Cooper, Jr., Judge
 Fifth Judicial Circuit

STATE OF SOUTH CAROLINA

INDICTMENT FOR:

COUNTY OF HORRY

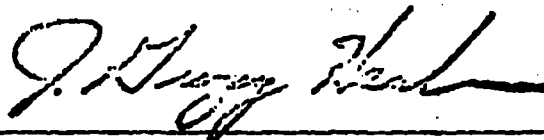
POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIMEFILED
HORRY COUNTY
2009 APR 20 PM 2:17
MELANIE HIGGINS
CLERK OF COURT

At a Court of General Sessions, convened on March 1, 2007, the
Jurors of Horry County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
CDR: 0549 16-23-0490

That William Von Long did in Horry County, on or about December 27, 2006, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. 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

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT FOR:

ARMED ROBBERY

At a Court of General Sessions, convened on March 1, 2007, the Grand Jurors of Horry County present upon their oath:

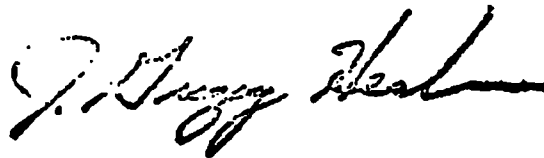
ARMED ROBBERY

CDR: 0139 16-11-0330(A)

FILED
HORRY COUNTY
2009 APR 20 PM 2:17
MELANIE HUGGINS
CLERK OF COURT

That William Von Long did in Horry County on or about December 27, 2006, while armed with a deadly weapon, to wit: a firearm, take and carry away personal property of Malcolm Norris from or in the immediate presence of Malcolm Norris with intent to deprive Malcolm Norris of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. 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

BOY HCPD
WITNESSES

DOCKET NO. 2007-GS-26-875

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY
LRF 83940

COURT OF GENERAL SESSIONS

MARCH TERM 2007

THE STATE

Vs.

ARREST WARRANT NO.

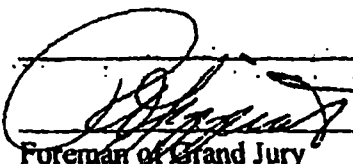
CAW200702016
CDR: 0139 16-11-0330(A)

WILLIAM VON LONG B/M

LORIS SC 29569
DOB:
SSN:

DOA: 12/29/06

ACTION OF GRAND JURY
TRUE BILL


Foreman of Grand Jury MAR 01 2007

VERDICT

Foreman of Petit Jury Date:

ATTORNEY: MIKE SUGGS

INDICTMENT FOR:

ARMED ROBBERY

J. GREGORY HEMBREE, SOLICITOR

ORIGINAL

FILED
HORRY COUNTY
2009 APR 20 PM 2:17
MEL & MIE HUGGINS
CLERK OF COURT

2009 MAR 17 PM 1:32

CERTIFIED COPY

STATE OF SOUTH CAROLINA)

INDICTMENT FOR:

COUNTY OF HORRY)

ARMED ROBBERY

At a Court of General Sessions, convened on March 1, 2007, the Grand Jurors of Horry County present upon their oath:

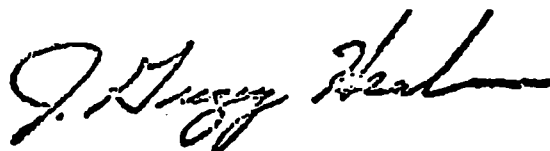
FILED
HORRY COUNTY
2009 APR 20 PM 2:17
MELBA HUGGINS
CLERK OF COURT

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That William Von Long did in Horry County on or about December 27, 2006, while armed with a deadly weapon, to wit: a firearm, take and carry away personal property of Marco Perez from or in the immediate presence of Marco Perez with intent to deprive Marco Perez of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. 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