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STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY

RECEIVED

The Honorable R. Knox McMahon, Circuit Court Judge

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THE STATE,

SC Court of Appeals
RESPONDENT,

v.

KENNETH OREDELL MURRAY

APPELLANT.

APPELLATE CASE NO. 2014-000051

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VOLUME ONE OF ONE
PAGES 1-399

INDEX

INDEX	i
MOTIONS	1
TRIAL TRANSCRIPT DATED OCTOBER 30, 2013	10
TESTIMONY	
JACKSON v. DENNO HEARING	21
JUSTIN HEMBREE	
Direct examination by Sol. Ziegler	23
Cross-examination by Ms. Penn	40
Redirect examination by Sol. Ziegler	53
KENNETH MURRAY	
Direct examination by Sol. Ziegler	58
Cross-examination by Ms. Penn	67
Redirect examination by Sol. Ziegler	84
Recross-examination by Ms. Penn	86
AMY McCARTHY	
Direct examination by Sol. Ziegler	88
Cross-examination by Ms. Penn	91
JULIUS BUNCUM	
Direct examination by Sol. Ziegler	95
Cross-examination by Ms. Penn	103
MICHELE BACON	
Direct examination by Sol. Ziegler	121
Cross-examination by Ms. Penn	134
Redirect examination by Sol. Ziegler	136
DESMONDE ELLINGTON	
Direct examination by Sol. Ziegler	142
Cross-examination by Ms. Penn	164

Redirect examination by Sol. Ziegler	167
Recross-examination by Ms. Penn	168
ANN SON	
Direct examination by Sol. Ziegler	169
Cross-examination by Ms. Penn	175
Direct examination by Sol. Ziegler	182
Cross-examination by Ms. Penn	188
Redirect examination by Sol. Ziegler	191
Recross-examination by Ms. Penn	192
ROBERT MAGIE	
Direct examination by Sol. Ziegler	193
Cross-examination by Ms. Penn	197
FOUAD BOUANI	
Direct examination by Sol. Ziegler	198
Cross-examination by Ms. Penn	209
LAMAR MITCHELL	
Direct examination by Sol. Ziegler	214
Cross-examination by Ms. Penn	220
Redirect examination by Sol. Ziegler	222
Recross-examination by Ms. Penn	223
VANCE STEPHENSON	
Direct examination by Sol. Ziegler	224
Cross-examination by Ms. Penn	229
JUSTIN HEMBREE	
Direct examination by Sol. Ziegler	230
Cross-examination by Ms. Penn	249
Redirect examination by Sol. Ziegler	263
Recross-examination by Ms. Penn	269
CHRIS HELM	
Direct examination by Sol. Ziegler	272

Cross-examination by Ms. Penn	290
Redirect examination by Sol. Ziegler	298
Recross-examination by Ms. Penn	299
JUSTIN HEMBREE	
Cross-examination by Ms. Penn	300
Redirect examination by Sol. Ziegler	307
CHRIS HELMS	
Direct examination by Sol. Ziegler	311
Cross-examination by Ms. Penn	321
RAY HAUPT	
Direct examination by Sol. Ziegler	324
Cross-examination by Ms. Penn	330
Motion	332
Charge by the Court	351
MOTION TO RECONSIDER- November 7, 2013	392
INDICTMENT	398
CERTIFICATE OF COUNSEL	400

EXHIBITS

NOS.	DESCRIPTION	ID	EV
	<u>STATE</u>		
S-15	Statement of Mr. Murray (*Also Court's C-2)	300	300
S-17	Lineup Admonition		380
S-18	Lineup Admonition		381
S-19	Lineup Admonition		382
	<u>DEFENSE</u>		
D-1	Lineup Admonition	308	
	<u>COURT</u>		
C-1	Advice of Rights form (*Also State's S-14)		57
C-3	Statement	101	
C-4	Advice of Rights form	105	
C-5	Search warrant	154	
C-6	Lineup Admonition		334
C-7	Lineup Admonition		337
C-8	Lineup Admonition		338
C-9	Lineup Admonition		339
C-11	Lineup Admonition		342
C-13	Note from Jury		488
C-14	Note from Jury		488
C-15	Note from Jury		488

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: All right. Solicitor, anything from the State before we bring our jury panel up?

SOLICITOR ZIEGLER: Your Honor, the State has nothing in pretrial motions. The defense does have some pretrial motions, but we did want to just ask that the defense does not get into any details of the defendant's background in opening statements, that they were not proven, Your Honor.

Also wanted to discuss with the -- with, with Your Honor the mention of other charges, other unrelated charges that the defendant has, and I know defense counsel has a motion for that as well.

THE COURT: All right. Thank you.

Thank you very much, solicitor.

Ms. Penn.

MS. PENN: Yes, Your Honor.

THE COURT: All right. Does defense have any motions before we bring the jury panel up?

MS. PENN: We do, Your Honor.

THE COURT: All right.

MS. PENN: We have a couple.

THE COURT: All right.

MS. PENN: First of all, I'd like to make a motion for a continuance --

1 THE COURT: All right.

2 MS. PENN: -- based on the fact that we have not yet
3 been able to locate one of the witnesses that we need in our
4 case. My investigator started looking for him yesterday.
5 It's only been a day. We'd ask for more time to try to find
6 him, and I know, I know the State's probably gonna speak a
7 little more about that, that witness, but that witness is,
8 is very important to our case, and I don't know how much
9 Your Honor wants me to get into why we think he's important.
10 But, you know, we don't have him.

11 THE COURT: Well, I don't, I don't want you to have to
12 reveal your defense, Ms. Penn. You know, I need to know
13 some information to determine if he's a material witness.
14 But at the same time, I don't -- you don't have to reveal
15 your defense unless it's an alibi defense, of course, and
16 then you can respond by way of reciprocal Rule 5.

17 MS. PENN: He's not an alibi witness, but he is a
18 material witness in that he will be testifying as to one of
19 the, I think one of the crucial conflicting facts in the
20 case.

21 THE COURT: All right. Well, let me ask you, Ms. Penn,
22 when, when were you given notice of this case was going to
23 be called for trial?

24 MS. PENN: Two weeks ago I think, Your Honor, is when
25 the trial notices go out.

1 THE COURT: Say again.

2 MS. PENN: I think it's -- the trial notices go out
3 about two weeks in advance, Your Honor.

4 THE COURT: And how long have you been representing
5 Mr., Mr. Murray?

6 MS. PENN: I've had him for the past year, Your Honor.

7 THE COURT: A year.

8 And you've had previous contact with this witness?

9 MS. PENN: I have not.

10 THE COURT: You have not.

11 How long have you known of the existence of this
12 witness?

13 MS. PENN: Since the beginning of the case.

14 THE COURT: Has there been attempts to interview him
15 within -- by you or any member of your staff during the
16 period of time that you've represented Mr. Murray?

17 MS. PENN: No, Your Honor.

18 THE COURT: Has this witness given a written statement?

19 MS. PENN: He has.

20 THE COURT: You, you have that statement?

21 MS. PENN: I do have the statement, Your Honor.

22 THE COURT: And, and who did he give that statement to?

23 MS. PENN: He gave it to one of the detectives. I'm
24 not sure if it's Detective Byrd.

25 Your Honor, I beg the Court's indulgence.

1 SOLICITOR SHEALY: It was, it was John Byrd that he
2 gave it to.

3 THE COURT: All right. So, you've, you've -- and
4 you've had that statement by this witness during the entire
5 course of your representation of Mr. Murray?

6 MS. PENN: Yes, Your Honor.

7 THE COURT: All right. May, may I see a copy of the
8 statement?

9 MS. PENN: Yes, Your Honor.

10 May I approach the bench?

11 THE COURT: Yes, ma'am. Thank you.

12 (Pause.)

13 THE COURT: All right. Anything further in that
14 regard, Ms. Penn --

15 MS. PENN: No, Your Honor.

16 THE COURT: -- in regard to the motion to continue?

17 All right. Solicitor.

18 SOLICITOR SHEALY: Your Honor, just by way of
19 background, this is a case that involved two codefendants.
20 The codefendant, Cleveland Major, has pled guilty.

21 Just to kind of let you know how difficult is it to
22 find Mark Mitchell, despite the fact that Ms. Penn just
23 started yesterday, when Cleveland Major's trial was
24 scheduled to go in June of 2013, an investigator from our
25 office, Matt Casey, who's present in the courtroom, made the

1 effort to find Mr. Mitchell. In doing so, he ran a rap
2 sheet under the name that was given on the statement. That
3 being Mark Anthony Mitchell. And when doing so and entering
4 the date of birth, a rap sheet pulled up for Lamar Anthony
5 Mitchell, a completely different name, but with the same
6 date of birth, and a driving record for a Lamar Mitchell
7 with the same -- the previous address for that person being
8 close with.

9 So, number one, I'm not sure that when our statement
10 says Mark Anthony Mitchell that that, in fact, is his name.
11 But despite that, Matt Casey, in an effort to get him
12 interviewed and to determine whether or not we would use him
13 in the trial of Cleveland Major, wasn't able to do so.

14 Then, in preparation for this trial, Kenny Barfield,
15 who's present in the courtroom and who is an investigator in
16 our office, also made an effort to find Mr. Mitchell and was
17 unable to do so. He went through the, the path of the sites
18 that law enforcement had in trying to get contact
19 information.

20 We can't find a Mark Anthony Mitchell. So, I don't
21 know that any efforts on Ms. Penn's part would even been
22 fruitful.

23 But in addition to that, yesterday, Justin Hembree,
24 Sergeant at Mount Pleasant, called over and had them run the
25 name to see if we could find him after Your Honor had asked

1 that we assist in getting those subpoenas served, and so
2 we're not finding the name Mark Anthony Mitchell in anyway
3 in an effort to, for us to even talk to him.

4 So, our position would be that, number one, her waiting
5 till yesterday is probably inappropriate obviously with the
6 case of this age. But in addition to that, even if she were
7 to have more time, I have now had three investigators try to
8 find Mark Anthony Mitchell and have been unable to do so.
9 If your, if Your Honor would like, I could put into
10 evidence, as Court's Exhibits, his statement being---

11 THE COURT: His statement?

12 SOLICITOR SHEALY: Mark Anthony Mitchell's statement
13 that reflects his date of birth and physical address, the
14 driving record of Lamar Mitchell that would reflect an
15 earlier address that matches the one of Mark Mitchell, and
16 the rap sheet of Lamar Mitchell.

17 MS. PENN: Your Honor, I think I actually just concede
18 this because we, we have him. We found him.

19 THE COURT: All right.

20 MS. PENN: We've already found him. So, this is---

21 THE COURT: Well, that was -- the detective that just
22 came in was the detective from the Perry Mason show and he
23 found the missing witness, is that right, Ms. Penn?

24 MS. PENN: That, that's correct, Your Honor.

25 THE COURT: All right. So, you have him served under

1 subpoena?

2 MS. PENN: He is under subpoena, Your Honor.

3 THE COURT: All right. And is it Mark Anthony
4 Mitchell?

5 UNIDENTIFIED PERSON: No, it's Lamar Mitchell.

6 THE COURT: Lamar Anthony Mitchell?

7 UNIDENTIFIED PERSON: Yes, I have been pulling Mark.

8 THE COURT: Call him Mark?

9 UNIDENTIFIED PERSON: He just called me this morning.

10 THE COURT: All right. I like that name Mark Anthony.
11 Rings a bell for some reason.

12 Be that as it may then, I would not have to rule then.

13 You withdraw your motion for a continuance?

14 MS. PENN: Yes, Your Honor. That's correct.

15 THE COURT: Is that correct?

16 All right. Thank you.

17 You have other motions, Ms., Ms. Penn?

18 MS. PENN: I do, Your Honor.

19 THE COURT: All right.

20 MS. PENN: My client has a motion to have me relieved
21 as counsel.

22 THE COURT: All right.

23 MS. PENN: He asked that he be able to speak to the
24 Court and make that motion.

25 THE COURT: All right. If you would -- let's see.

1 Please stand for me.

2 Madam Clerk, would you place Mr. Murray under oath for
3 me please?

4 (WHEREUPON, the defendant was placed under oath at this
5 time.)

6 THE COURT: All right. Good morning.

7 THE DEFENDANT: Good morning, sir.

8 THE COURT: Tell me your full name.

9 THE DEFENDANT: Kenneth Murray.

10 THE COURT: How old are you, Mr. Murray?

11 THE DEFENDANT: Twenty-nine, sir.

12 THE COURT: Do you have a middle name?

13 THE DEFENDANT: Oredell.

14 THE COURT: How much education do you have?

15 THE DEFENDANT: I'm not sure. I have, I have a -- I
16 got a disability.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: To the twelfth.

19 THE COURT: Excuse me?

20 THE DEFENDANT: Twelfth grade.

21 THE COURT: Twelfth grade.

22 Did you graduate?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Can you read?

25 Can you write?

1 THE DEFENDANT: Here and there.

2 THE COURT: Okay. All right. Now, you heard Ms. Penn,
3 your attorney, tell me you have a motion to make. I, I
4 don't want to hear anything about your case. I don't want
5 you to say anything about your case.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I just want to hear about your motion in
8 regard to your lawyer, and I would advise you not to say
9 anything about any private communications that you've had
10 with your lawyer.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. I'll be glad to hear from you,
15 Mr. Murray.

16 THE DEFENDANT: Okay. Well, well, Ms. Penn, I spoke
17 with Ms. Penn many times about me getting, when she comes to
18 me, and asked her for my motion of discovery and every time
19 she comes she always tell me I'm like I'm gonna send it to
20 you. well, she not sent it. I ain't never got it. And
21 like when -- probably about a week or a week and a half ago
22 I spoke to Ms. Penn about my, my motion again, and she had
23 give me like police reports or whatever, and I told her like
24 some things that I pointed out and she didn't want to
25 acknowledge the things that I was really showing her as

1 messed up in my case.

2 And I -- I usually I'm not good on details, but I was
3 trying to show her a lot of things that's not right and she
4 didn't want to acknowledge it, and she didn't want to have
5 an understanding.

6 Then this is, then is really the important part I'm
7 trying to tell you, that, that evidence was tampered with
8 and I try to point that out to her, and she, she told me
9 that, when I told her about that, she told me that the
10 officers can tamper with another officer evidence, and do --
11 I told her that can't happen and under any circumstances of
12 any case. The officer can not do that, and she told me that
13 she has -- when I told her that it's -- I told her that it
14 wasn't placed in evidence, and, and that's when I told her
15 that, that it wasn't placed in evidence, and that's when she
16 told me that she have it.

17 So, am I not entitled to my evidence to prove my
18 innocence and she tell me that I'm gonna be guilty when I'm
19 trying to prove my innocence, and I got a letter fax from
20 paperwork to show that it's a lot of illegal things that's
21 done in my case, but she don't want to acknowledge it.

22 THE COURT: You had other lawyers?

23 THE DEFENDANT: No, sir.

24 THE COURT: Ms. Penn is the only lawyer you've had?

25 THE DEFENDANT: I had Cody Groeber.

1 THE COURT: Say again.

2 THE DEFENDANT: Mr. Groeber.

3 THE COURT: And how long did you have that gentleman?

4 THE DEFENDANT: Probably about a year, sir.

5 THE COURT: And what, what happened to him?

6 THE DEFENDANT: I had got a letter saying it was a
7 conflict of interest or something out of the group. I don't
8 know what happened to him.

9 THE COURT: And then Ms. Penn has been representing you
10 for how long?

11 THE DEFENDANT: Probably about a year and a half.
12 Probably about a year and a half. Something like that, sir.

13 THE COURT: All right. Well, Ms. Penn is a, a very
14 good trial lawyer, Mr., Mr. Murray. You want me to --
15 here's your choices. I'll relieve her as your lawyer. You
16 represent yourself.

17 Is that what you want to do?

18 THE DEFENDANT: Can I have an understanding, sir?

19 THE COURT: Sir?

20 THE DEFENDANT: Can I have an understanding about that?
21 I mean---

22 THE COURT: Tell me what you mean by that.

23 THE DEFENDANT: If I represent myself, would that be a
24 bad thing?

25 THE COURT: Well, I'm gonna talk to you about the

1 dangers of self-representation, Mr. Murray.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: A lawyer, in a criminal trial, that's an
4 experienced criminal trial attorney can be of great
5 assistance to you in presenting your case. They know the
6 rules of evidence. If you represent yourself, I would
7 expect you to know those rules of evidence.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: They know what objections to make to
10 evidence coming in that may be offered by the State. If you
11 represented yourself, I would expect you to know when to
12 make objections. You not only have to make objections, you
13 have to preserve those objections for the record so that if
14 you're found guilty, and the case is appealed, the Appellate
15 Court would have a record to look at or you could lose all
16 those objections.

17 A lawyer knows what defenses may be appropriate. If
18 you've given a statement, I, I don't know if you have or
19 not. I know -- what I know about the case is what I've
20 learned this morning.

21 You may of given a statement. I don't know if you have
22 or not. A lawyer would know what motions to make in regard
23 to the statement. There may be eye witness identification
24 testimony. A lawyer would know the cases that are
25 appropriate to present to the Court and the questions to ask

1 eye witnesses concerning the identification of the alleged
2 defendant.

3 what is the potential punishment that your client is
4 facing, Ms. Penn, if he were convicted of armed robbery?

5 MS. PENN: Ten to thirty years, Your Honor.

6 THE COURT: So, not less than ten nor more than thirty
7 years.

8 So, you, you're telling me you can read and write a
9 little bit?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You got a twelfth grade education.

12 Have you ever been in criminal court before?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you ever represented yourself in
15 criminal court before?

16 THE DEFENDANT: No, sir.

17 THE COURT: Have you always had a lawyer represent
18 yourself, represent you in court before?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Has there been jury trials or pled guilty
21 or---

22 THE DEFENDANT: Guilty pleas, sir.

23 THE COURT: All of them guilty pleas?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: So, you've never gone through with a, a

1 jury trial?

2 THE DEFENDANT: No, sir.

3 THE COURT: Well, I can't tell you what to do. The
4 decision you make is your decision. But I can tell you that
5 Ms. Penn's a good trial lawyer. She's prepared. She made
6 the appropriate motion concerning a motion to continue the
7 case based on Mr. Lamar Mark Anthony -- I forgot his last
8 name.

9 UNIDENTIFIED PERSON: Mitchell.

10 THE COURT: Mitchell. Thank you.

11 It's very dangerous to represent yourself.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Very dangerous. There's a lot of pitfalls
14 out there. There's a lot of mind fields out there that you,
15 you're not familiar with. You're a very intelligent young
16 man, but you're not, you're not trained in the law. You
17 have a seasoned prosecutor, seasoned attorneys over here on
18 the, on the State that you would, you would be an adversary
19 to.

20 I don't know how long either one of them have practiced
21 law. But I know, I know at least one of them is a, is a
22 very experienced trial lawyer. The other one is a trial
23 lawyer also, but that's your decision.

24 From what you're telling me, and, of course, during the
25 course of the trial you have the opportunity to talk with

1 your attorney. When a witness is on the stand, you can
2 write notes to her and such like that, and generally, my
3 procedure is, when an attorney, Ms. Penn, cross-examines a
4 witness, I always allow them to go back to their client
5 before they conclude a cross-examination to see if there's
6 anything else that the client may want them to address.

7 THE DEFENDANT: Can I ask you---

8 THE COURT: You understand that?

9 THE DEFENDANT: Yes, sir.

10 Can I ask you another question?

11 THE COURT: Yes, sir.

12 THE DEFENDANT: There's a lot of things that I want to
13 be presented to you, and I asked her if I can, if there
14 would be a chance of anytime in my trial like I can present
15 what I have to you, the evidence.

16 THE COURT: There's, there's no hybrid representation.
17 By that I mean you're either represented by a lawyer or you
18 represent yourself. Now, that being said, you can certainly
19 talk with your lawyer at anytime, at anytime.

20 THE DEFENDANT: I tried many times, sir.

21 THE COURT: I'm talking about during the course of the
22 trial or when we take breaks, and she can present that to me
23 in your presence.

24 THE DEFENDANT: Okay.

25 THE COURT: On the record.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You do not want to represent yourself?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right.

9 All right. Thank you. Thank you very much.

10 Do you have any other questions about that?

11 THE DEFENDANT: No, sir.

12 THE COURT: And that's your decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And that's your decision freely and
15 intelligently and voluntarily made?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Your call?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Thank you.

20 Thank you very much, and, Mr. Murray, you, you -- if
21 you need to talk with Ms. Penn outside the presence of the
22 jury, once we've selected a jury, you just let her know and
23 she can put me on notice, and if I think it's appropriate
24 I'll allow it and I'll certainly take a recess.

25 THE DEFENDANT: Okay.

1 THE COURT: All right.

2 THE DEFENDANT: I'll do that, sir.

3 THE COURT: All right. Thank you.

4 Thank you very much.

5 You may be seated.

6 Other motions, Ms., Ms. Penn?

7 MS. PENN: Yes, Your Honor.

8 I also ask that you put on the record that my client is
9 looking at life without parole if he's convicted of this
10 charge and is convicted of another charge.

11 THE COURT: Well, I think, I think I've given an
12 advisory opinion in that regard. I don't think that's
13 anything for me to rule on. You can, you can certainly put
14 it on the record and the solicitor can place on the record
15 whatever they so prefer. But all that is in front of me
16 right now is an armed robbery charge where he can get up to
17 30 years and I'm kind of like Winston Churchill. Well, no,
18 I'm not at all like Winston Churchill. I can predict the
19 future, but only a little bit of it.

20 I have no idea what might happen once I, once I do.
21 But you're welcome to put whatever you want on the record
22 that's involved here.

23 MS. PENN: Thank you, Your Honor.

24 SOLICITOR SHEALY: I might could address that judge if
25 it's okay?

1 THE COURT: Yes, ma'am.

2 SOLICITOR SHEALY: I had advised Ms. Penn previously,
3 when we were preparing the Cleveland Major case, that if, if
4 Mr. Murray is convicted in this case, that will be a most
5 serious crime for him. He faces, in relationship to a
6 Piggly Wiggly armed robbery, two armed robbery charges and
7 two kidnapping charges.

8 So, if he is convicted on this charge, prior to the
9 trial of the Piggly Wiggly armed robbery, we will be serving
10 a life without parole notice on him, and I guess, out of an
11 abundance of caution, Ms. Penn wants to make sure that
12 Mr. Murray acknowledges that he's been advised of that.

13 THE COURT: All right.

14 Thank you.

15 Thank you very much, solicitor.

16 Stand back up for me, Mr. Murray.

17 (Defendant complies.)

18 THE COURT: Did you hear what the solicitor said?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Tell me, tell me what that -- your
21 understanding of that is.

22 THE DEFENDANT: She said if I was -- if I'm gonna be
23 convicted, serve life without parole.

24 THE COURT: If you're convicted in this armed robbery,
25 then the solicitor is saying you have a pending, two pending

1 armed robberies and two pending --

2 SOLICITOR SHEALY: Kidnapping.

3 THE COURT: -- kidnappings and that the solicitor would
4 then move to seek life without parole, and if you're
5 convicted on any of those charges---

6 SOLICITOR SHEALY: That's correct.

7 THE COURT: ---your sentence would be life without
8 parole.

9 Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions you want to ask
12 the Court about that?

13 THE DEFENDANT: No, sir.

14 THE COURT: Anything further you would like me to ask
15 your client in that regard, Ms. Penn?

16 MS. PENN: No, Your Honor.

17 THE COURT: All right.

18 SOLICITOR SHEALY: Your Honor, I think you clarified
19 it. I do believe you clarified it. I notice that when
20 Mr. Murray first responded he seemed to suggest that he
21 thought he could get LWOP'ed for this, and I just want to
22 make sure -- well, I'll wait till she finishes talking to
23 him.

24 (Pause.)

25 MS. PENN: Sorry, Your Honor.

1 THE COURT: No, that's, that's quite all right, and
2 perhaps -- I think his first response was that, in this
3 trial, if you're found guilty of armed robbery in this
4 trial, I could sentence you from no less than ten or no more
5 than thirty years.

6 You understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you're convicted in this trial, the
9 solicitor is saying they're then going to serve a notice on
10 you of the intention to seek life without parole on your
11 other pending charges of armed robbery and kidnapping.

12 Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you've talked to your lawyers about
15 that, correct?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You need any more time to talk to your
18 lawyers about that?

19 THE DEFENDANT: No, sir.

20 THE COURT: Sir?

21 THE DEFENDANT: No, sir.

22 THE COURT: And so you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any questions you want to ask
25 me about that?

1 THE DEFENDANT: No, sir.

2 THE COURT: Anything further, solicitor?

3 SOLICITOR SHEALY: No, sir. Thank you.

4 THE COURT: Thank you.

5 Thank you very much, Mr. Murray. You may be seated.

6 Any other motions, Ms. Penn?

7 MS. PENN: I do have some suppression motions, but I
8 think those would perhaps make more sense after we do the
9 Jackson v. Denno hearing.

10 THE COURT: All right.

11 All right. Well, then, then y'all are ready to select
12 a jury?

13 MS. PENN: Yes, Your Honor, we are.

14 THE COURT: All right. I need a witness list and I
15 need voir dire.

16 SOLICITOR ZIEGLER: Yes, Your Honor.

17 May I approach, Your Honor?

18 THE COURT: Yes, sir, please.

19 All right. However we get the jury panel up here, if
20 you'd bring us our jury please.

21 SOLICITOR SHEALY: I'm sorry.

22 We're gonna select the jury and then do the Jackson v.
23 Denno judge?

24 THE COURT: Yes, ma'am.

25 SOLICITOR SHEALY: Okay. The jury is coming up. We

1 had our office look at the jury list to see if we had any
2 connections with anyone, and I'm gonna just advise Ms.
3 Penn---

4 THE COURT: Sure.

5 SOLICITOR SHEALY: ---of who those people are.

6 THE COURT: Yes, ma'am. Thank you.

7 (Pause.)

8 SOLICITOR SHEALY: Your Honor, may we approach just for
9 a moment?

10 THE COURT: Yes, ma'am.

11 (WHEREUPON, a bench conference was held at this time.)

12 (WHEREUPON, the following takes place within the
13 presence of the entire jury panel.)

14 THE COURT: Well, let me ask the solicitor, solicitor,
15 will you call your next case for trial please?

16 SOLICITOR ZIEGLER: Your Honor, the next case is State
17 versus Kenneth Oredell Murray.

18 THE COURT: All right. And Mr. Kenneth Oredell Murray
19 is present?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Along with his attorneys?

22 MS. PENN: Yes, Your Honor.

23 THE COURT: And ready for trial?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Thank you. You may be, you may

Justin Hembree - Direct examination
by Solicitor Ziegler

1 THE COURT: All right. It appears Mr. Murray is
2 present in the courtroom along with his attorneys. The
3 Solicitor is also present.

4 Our first motion is Jackson versus Denno?

5 SOLICITOR ZIEGLER: Yes, Your Honor.

6 THE COURT: All right. Solicitor, you may call your
7 first witness.

8 SOLICITOR ZIEGLER: Thank you, Your Honor.

9 The State calls Sergeant Justin Hembree.

10 THE COURT: All right. Come around and be sworn for
11 us, sergeant.

12 JUSTIN HEMBREE, having been first duly
13 sworn, testified as follows:

14 THE CLERK: If you could please have a seat and state
15 your name for the record spelling your last name.

16 THE WITNESS: I'm Detective Sergeant Justin Hembree.
17 H-E-M-B-R-E-E, Mount Pleasant Police Department.

18 THE COURT: All right. Solicitor.

19 SOLICITOR ZIEGLER: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY SOLICITOR ZIEGLER:

22 Q Good afternoon, Sergeant Hembree.

23 Sergeant Hembree, where are you employed?

24 A The Mount Pleasant Police Department.

25 THE COURT: Speak up just a little bit for me,

Justin Hembree - Direct examination
by Solicitor Ziegler

1 sergeant.

2 THE WITNESS: Yes, sir.

3 THE COURT: Thank you.

4 Q And how long have you been employed at the Mount
5 Pleasant Police Department?

6 A I'm currently in my 12th year of employment.

7 Q What is your current position?

8 A I'm the sergeant over detectives for the office of
9 criminal investigations.

10 Q What was your position in July of 2011?

11 A The same.

12 Q The same position.

13 So, what are your duties and responsibilities in that
14 position?

15 A I supervise case, case management, the day-to-day case
16 load. Supervise all the detectives in the office as well as
17 victim advocates and assist in major cases as well.

18 Q Okay. In your capacity as a detective sergeant with
19 the Mount Pleasant Police Department, did you assist in the
20 execution of a lawful search warrant at 2627 Linnen Lane on
21 July 28th, 2011?

22 A I did.

23 Q In the course of executing that search warrant, did you
24 arrest Kenneth Murray?

25 A Yes, sir.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 Q what did you arrest him for?

2 A Possession of cocaine.

3 Q And after making that arrest on July 28th, 2011, did
4 you interview Kenneth Murray?

5 A Yes, sir.

6 Q Was Murray advised of his Miranda rights prior to that
7 interview?

8 A He was.

9 Q And did he ask for an attorney at that time?

10 A He did not.

11 Q Did he indicate that he did not want to talk anymore?

12 A No, sir.

13 Q Did he invoke his Miranda rights specifically at
14 anytime before or during that interview?

15 A No, sir.

16 Q What was the subject matter of that interview?

17 A The interview was in reference to several recent armed
18 robberies that we had had in the Mount Pleasant area.

19 Q Was there any discussion, in that interview, of an
20 armed robbery at a Pizza Hut?

21 A In the initial interview?

22 Q Yes.

23 A I believe there was, yes, sir.

24 Q Was, was Murray charged with any other crimes as a
25 result of that initial interview?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A The initial interview, he's charged with a robbery of
2 the Piggly Wiggly grocery store on Riviera Drive in Mount
3 Pleasant.

4 Q And was he, was he then booked into the Charleston
5 County Detention Center---

6 A Yes.

7 Q ---on that charge?

8 A Yes, sir.

9 Q Let's move forward to August 2nd, 2011.

10 Did, did you interview Kenneth Murray again on August
11 2nd regarding an armed robbery of the Pizza Hut at 2161-C US
12 17 in Mount Pleasant?

13 A I did.

14 Q Where did that interview take place?

15 A Within the office of criminal investigations at the
16 Mount Pleasant Police Department.

17 Q Who initiated that interview?

18 A Mr. Murray. I received a phone message that he wanted
19 to further speak with me. So, I made arrangements to have
20 him brought to the interview room on that date for, for
21 another interview.

22 Q Okay. Had, had you requested that Mr. Murray come to
23 the Police Department to be interviewed regarding that Pizza
24 Hut armed robbery?

25 A No, sir.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 Q When, when Mr. Murray arrived at the police station,
2 briefly how did, how did he begin the conversation when he
3 arrived?

4 A He was brought to the Police Department by Detective
5 Mass Matana. So, I, I met with him in the interview room.
6 I knew that Mr. Murray was a smoker. I offered him a smoke
7 break prior to the start of the interview. We went outside.
8 He had a smoke break. At the conclusion of that we returned
9 to the interview room and I completed a written advisement
10 of rights form with Mr. Murray.

11 Q And did he, did he tell you he wanted to speak with you
12 when he arrived?

13 A At the conclusion of that form he, he explained that he
14 had further wanted to speak with me, that he had some more
15 information about the robbery at the Pizza Hut in Mount
16 Pleasant.

17 Q Was he under arrest for the Pizza Hut armed robbery at
18 that time?

19 A No, sir.

20 Q Before we get into the substance of that interview with
21 him, I'd like to talk about the advisement of his Miranda
22 warnings.

23 Did you advise Murray of his Constitutional rights
24 pursuant to Miranda prior to this August 2nd interview?

25 A Prior to this interview, yes, sir.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 Q And was the advisement of Miranda rights accomplished
2 by -- in writing?

3 A A written form, a standardized form that our department
4 uses.

5 SOLICITOR ZIEGLER: Permission to approach the witness,
6 Your Honor.

7 THE COURT: Yes, sir.

8 Q I'm now showing you what will be marked as Court's
9 Exhibit for identification, identification purposes.

10 Can you identify this document?

11 A That's a Mount Pleasant Police Department advisement of
12 rights---

13 Q And---

14 A ---from August the 2nd, 2011.

15 Q And how are you, how are you familiar with that
16 document?

17 A Again, it's a standardized form that we use at our
18 agency to advise subjects of Miranda.

19 SOLICITOR ZIEGLER: State moves to admit Court's
20 Exhibit 1, Your Honor.

21 THE COURT: Any objections for purposes of this
22 hearing, Ms. Penn?

23 MS. PENN: No objection, Your Honor.

24 THE COURT: Court's 1.

25 (WHEREUPON, the advice of rights form was marked as

Justin Hembree - Direct examination
by Solicitor Ziegler

1 Court's Exhibit No. 1 and received into evidence for
2 purposes of this hearing only at this time.)

3 Q I want to show you this form here with you.

4 Sergeant Hembree, how did you, how did you explain
5 Murray's rights to him using this document?

6 A We fill in the personal information of the subject to
7 be interviewed and then the first line advises them that I'm
8 a member of the Mount Pleasant Police Department. I advise
9 him my name, and then I read each line of the form. They
10 initial beside each line of the form, and they sign in two
11 different portions of the form acknowledging understanding.

12 Q I'd like to go through each of those rights
13 individually with you. There are, there are five rights on
14 that, on that advisement of rights.

15 What, what is the first one?

16 A That I have the absolute right to remain silent and do
17 not have to answer a question or give a statement and this
18 fact can not be used against me.

19 Q Did Murray sign his initials by that first, first one?

20 A Yes, sir.

21 Q And please read the second right please.

22 A That if I do answer questions or give a statement,
23 anything I say can and will be used against me in a court of
24 law.

25 Q Did he initial by that one?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A Yes, sir.

2 Q Please read the first or the third right.

3 A That I have the right to consult with a lawyer of my
4 choice before I answer questions or give a statement and to
5 also have him present while I am being questioned.

6 Q Did, did he initial by that one?

7 A He did.

8 Q Please read the fourth one on there please.

9 A That if I wished to talk to a lawyer or have him
10 present, but, but am unable to afford to hire a lawyer, one
11 will be appointed to represent me free of charge.

12 Q Did he initial his name by that one?

13 A Yes, sir.

14 Q And please read the final right that's on there.

15 A That if I decide to answer questions or give a
16 statement without having a lawyer present representing me, I
17 have the absolute right, during this interview, to stop
18 answering questions and remain silent.

19 Q Did he initial by that one?

20 A Yes, sir.

21 Q Did Murray indicate he understood those rights?

22 A Yes, sir.

23 Q How did he do that?

24 A Standard procedure in our office, we will both verbally
25 acknowledge they understand and they will sign a form.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 There's a portion that says I fully understand each of these
2 rights that have -- which have been explained to me and they
3 sign that portion of the form.

4 Q Okay. Did, did you witness the signature indicating he
5 waived his rights?

6 A Yes, sir.

7 Q I'm sorry. Indicating that he understood his rights?

8 A Yes, sir.

9 Q And understanding those rights, did Murray waive his
10 rights?

11 A Yes, sir.

12 Q How did he do that?

13 A The second portion of the format, at the bottom, it
14 says I fully understand each of these rights which have been
15 explained to me, and having these in mind, I wish to waive
16 these rights. No threats, forces, or promises of any kind
17 have been made to me by anyone to induce or cause me to
18 waive these rights and answer questions. I read that to the
19 subject, I read it to Mr. Murray, and then they sign
20 acknowledging an understanding.

21 Q Did you witness Mr. Murray's signature indicating that
22 he waived his rights?

23 A Yes, sir.

24 Q Did Murray appear to have any difficulty understanding
25 his rights?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A No, sir.

2 Q Did he indicate at anytime that he wanted to, that he
3 wanted an attorney before speaking with the police?

4 A No, sir.

5 Q And now we'll get into the substance of the interview a
6 little bit, Sergeant Hembree.

7 Who was, who was present during the interview?

8 A In the initial portion of the conversation, it was, it
9 was Mr. Murray and I. And when -- at the conclusion of the
10 interview or towards the conclusion of the interview when we
11 were, when we were beginning to prepare his written
12 statement, Captain McCarthy, Amy McCarthy was present for
13 that portion.

14 Q Okay. At the time of the interview, what was Mr.
15 Murray's approximate age?

16 A As best I can recall, 28.

17 Q But he was -- was he an adult?

18 A Yes, sir.

19 Q What was Mr. Murray's demeanor?

20 A Cooperative, polite.

21 Q Did he seem coherent?

22 A Yes, sir.

23 Q Did he seem rational?

24 A Yes, sir.

25 Q Did he seem like he understood what was happening?

Justin Hembree - Direct examination
by Solicitor Ziegler

- 1 A He did.
- 2 Q Did he seem to have any physical problems or defects?
- 3 A No, sir.
- 4 Q Did Murray seem to be under the influence of alcohol or
- 5 drugs?
- 6 A No, sir.
- 7 Q Did you make any threats to Murray?
- 8 A No, sir.
- 9 Q Was he under duress in anyway?
- 10 A No, sir.
- 11 Q Did you make any promises to him?
- 12 A No, sir.
- 13 Q Did you or any other officer make any
- 14 misrepresentations to Murray?
- 15 A No, sir.
- 16 Q Briefly, what were the physical surroundings of, of the
- 17 room in which the interview took place?
- 18 A It's a standard interview room. It's a, a medium sized
- 19 office space with a desk and several chairs.
- 20 Q Is that where you would interview anyone that came in
- 21 to speak in the department?
- 22 A We interview both victims and suspects in the same
- 23 room.
- 24 Q And approximately how long was that, that interview?
- 25 A Approximately three hours.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 Q Were, were any breaks taken during the interview?

2 A The initial smoke break. I don't recall any other
3 breaks.

4 Q Did, did you offer Murray any conveniences or -- well,
5 you did say that you offered him a smoke break prior to the
6 interview and did he accept that?

7 A Yes, sir.

8 Q Did Murray make any requests before the interview for
9 food or drink or bathroom?

10 A No, sir.

11 Q To the best of your knowledge, was Murray's statement
12 freely and voluntarily given?

13 A Yes, sir.

14 Q And was the statement reduced to writing?

15 A Yes, it was.

16 Q Who wrote the statement?

17 A I did.

18 Q Is that, is that standard procedure?

19 A It is. I often ask the, the defendants if they are
20 able to write legibly, fairly, and -- or if they would
21 prefer I write it, and, and often times I'll, I'll write it
22 for them.

23 Q Did Murray sign that statement?

24 A He did.

25 Q And you said Captain McCarthy was present while that

Justin Hembree - Direct examination
by Solicitor Ziegler

1 statement was taken?

2 A Yes, sir.

3 SOLICITOR ZIEGLER: Court's indulgence, Your Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 SOLICITOR ZIEGLER: Your Honor, I'd like to show the
7 witness a copy, a redacted copy of the statement.

8 THE COURT: Yes, sir.

9 SOLICITOR ZIEGLER: I'll, I'll hand it to defense
10 counsel as well.

11 Would Your Honor like a copy?

12 THE COURT: I would.

13 SOLICITOR ZIEGLER: And, Your Honor, to, to explain
14 that redaction, there were references in this statement to
15 other crimes.

16 THE COURT: All right.

17 SOLICITOR ZIEGLER: He was interviewed regarding the
18 Piggly wiggly robbery as well, and so there are details of
19 that in the statement which, which I've had redacted.

20 May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 SOLICITOR ZIEGLER: And would Your Honor like, like the
23 witness to publish the statement before the Court?

24 THE COURT: I guess my answer to that, solicitor, is I
25 would like you to conduct your motion hearing and question

Justin Hembree - Direct examination
by Solicitor Ziegler

1 the witness in whatever manner you deem appropriate---

2 SOLICITOR ZIEGLER: Understood.

3 THE COURT: ---until Ms. Penn objects.

4 SOLICITOR ZIEGLER: Thank you.

5 May I approach the witness, Your Honor?

6 THE COURT: Yes, sir.

7 Q Sergeant Hembree, I'm showing you what will be marked
8 as Court's Exhibit 2 for identification purposes.

9 Can you identify that document?

10 A Yes, it's a written statement of Kenneth Murray.

11 Q And how are you familiar with this document?

12 A I wrote it. He, he narrated it. I wrote it for him.

13 SOLICITOR ZIEGLER: The State moves, moves to admit
14 Court's Exhibit 2, Your Honor.

15 THE COURT: Court's 2 is admitted for purposes of this
16 hearing.

17 (WHEREUPON, the statement was marked as Court's Exhibit
18 No. 2 and received into evidence for purposes of this
19 hearing only at this time.)

20 Q Sergeant Hembree, what was the date and time that this
21 statement was taken?

22 A This is August the 2nd, 2011, at 1:25PM.

23 Q What did Murray say in that statement?

24 Please, please read it for the Court.

25 A Standard procedure. We always write the beginning line

Justin Hembree - Direct examination
by Solicitor Ziegler

1 and this is what I wrote. This is the written statement of
2 Kenneth Oredell Murray written by Sergeant Justin Hembree
3 and his statement begins with in the robbery of the Pizza
4 Hut at Six Mile on 17, I had a BB gun that y'all found under
5 my mattress. Bootsie had a 9-millimeter gun. Bootsie was
6 around the neighborhood and asked me if I wanted to go with
7 him on it.

8 We went in Pizza Hut. I think there was about three
9 people inside. We robbed them and left. We got like \$200.
10 We were parked on the side of the building in a blue
11 Mitsubishi, a newer model. Bootsie drove us away after the
12 robbery. We were parked at the dealership next door. We
13 left there and went back to my house on Linnen Lane.

14 Q Thank you.

15 Did you read that statement back to Murray after it was
16 completed?

17 A I did.

18 Q Did he make any corrections to it?

19 A No, sir, again, it's standard procedure in our office
20 we will read the statement and we will offer any corrections
21 that need to be made.

22 Q Is that your signature witnessing Murray's statement on
23 the bottom of that document?

24 A Yes, sir.

25 Q Did Murray sign in the bottom of his statement?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A He did.

2 Q And who else's signature is on that statement?

3 A Captain McCarthy.

4 Q Did this statement of, of Mr. Murray provide you with
5 any information about the armed robbery that you did not
6 have before the interview?

7 A It did.

8 Q What, what was some of that information that you
9 learned?

10 A In the conversation, it's not noted in this statement,
11 but in the interview I learned that Bootsie had a brother
12 named Kevin Major.

13 MS. PENN: Your Honor, at this point I'd like to object
14 as to relevance for the purposes of this hearing.

15 THE COURT: I do not think it's relevant for purposes
16 of this hearing, solicitor. I would sustain the objection.

17 SOLICITOR ZIEGLER: Thank you.

18 Q In his statement Murray says that he and a person known
19 as Bootsie participated in the Pizza Hut armed robbery?

20 A Yes, sir.

21 Q Who, who did you determine Bootsie to be?

22 A Cleveland Clarence Major.

23 Q How, how did you determine that?

24 A Photographic lineup.

25 MS. PENN: Your Honor, again I object as to the

Justin Hembree - Direct examination
by Solicitor Ziegler

1 relevance for the purposes of this hearing.

2 THE COURT: Yeah, I don't know that that goes to the
3 voluntariness of the statement.

4 SOLICITOR ZIEGLER: All right.

5 THE COURT: It might go to the credibility of and the
6 cooperation. Not necessarily the voluntariness of it.

7 SOLICITOR ZIEGLER: Okay, Your Honor.

8 Court's indulgence please.

9 THE COURT: Yes, sir, certainly.

10 (Pause.)

11 Q Sergeant Hembree, I just want to clarify.

12 Did you make any threats to Murray during the course of
13 this interview?

14 A No, sir.

15 Q And during the, during this three hour interview, what,
16 what was the cause of taking three hours?

17 what else -- what other things happened during that
18 interview that, that it---

19 A Well, the---

20 Q ---slowed it down?

21 A Backing up to the initial interaction, Mr., Mr. Murray
22 was retrieved from the jail about 10:00AM. We first had a
23 smoke break. So, whatever that time period was. And then,
24 through the process of the interview, information was
25 learned that required breaks in the interview process for me

Justin Hembree - Direct examination
by Solicitor Ziegler

1 to relay it to other investigations for assistance, and I
2 would leave the interview room and come back. So, it took
3 about three hours.

4 Q Okay. So, were, were there times when you would be out
5 of the room---

6 A Yes, sir.

7 Q ---and other things would be happening?
8 Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 SOLICITOR ZIEGLER: State has no further questions for
12 the witness, Your Honor.

13 THE COURT: Thank you.

14 SOLICITOR ZIEGLER: Please answer any questions of
15 defense counsel.

16 THE COURT: Thank you, solicitor.

17 Ms. Penn.

18 CROSS-EXAMINATION

19 BY MS. PENN:

20 Q Good afternoon.

21 A Hello.

22 Q Sergeant Hembree, when you arrived at the house, you
23 took, as soon as you saw Kenneth Murray, you took him into
24 custody?

25 A Yes, ma'am.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q You recognized him?

2 A I did.

3 Q And you did a pat down and arrested him for possession
4 of crack?

5 A Cocaine.

6 Q I'm sorry.

7 Cocaine?

8 A Yes, ma'am.

9 Q And you put him in handcuffs?

10 A Yes, ma'am.

11 Q And you didn't take him to Mount Pleasant right away,
12 right?

13 A No, ma'am.

14 Q Y'all were at the house for about an hour before he got
15 taken to Mount Pleasant?

16 A Okay.

17 Q Is that a yes?

18 THE COURT: Is that a yes?

19 A I apologize. I don't know the exact timeframe we were
20 at the house. We were there a period of time.

21 Q Okay.

22 A Yeah.

23 Q Thank you.

24 And y'all talked a little bit---

25 A Yes, ma'am.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q ---when he was at the house?

2 And at that time did you complete a signed waiver form?

3 A No, ma'am, on scene I did a verbal Miranda in the
4 presence of Officer Matt Parks I believe.

5 Q Okay. But there's no -- nothing with the signature?

6 A No, ma'am.

7 Q Okay.

8 A May I, may I continue on with that?

9 Q Sure.

10 A On that particular day I was a team leader on our SWAT
11 team as well, and so we were continuing some efforts in the
12 house as far as clearing and things like that, and it
13 wouldn't be realistic to have a form or anything like that.
14 It was a -- more of a dynamic situation.

15 Q Okay. And he didn't complete a written statement
16 during that hour time?

17 A No, ma'am.

18 Q Okay. Now, when y'all were, were talking during that
19 first amount of time at the house, he was evasive?

20 A Yes, ma'am.

21 Q He was not cooperative?

22 A I would say he didn't really talk much.

23 Q He didn't want to talk to you, did he?

24 A I didn't say that he didn't want to talk to me. I said
25 he didn't talk much. He just didn't have a lot to say.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q So, he was silent?

2 A For portions of it, uh-huh. (Affirmative).

3 Q But he didn't really say anything of value during that
4 hour?

5 A Nothing of value.

6 Q Okay. Now, you've talked a little -- you describe a
7 little bit the room -- after that he gets taken to Mount
8 Pleasant?

9 A Yes, ma'am.

10 Q Yes.

11 And he's put into an interview room?

12 A Yes, ma'am.

13 Q And you described that room as a medium sized room?

14 A It's a medium sized room, you know, an interview room.

15 Q What do you mean by medium sized?

16 A It's a standard interview room. I'm not real good with
17 size. Eight by ten maybe.

18 Q Okay. Are there any windows in there?

19 A No, ma'am.

20 Q Is there like an attached bathroom or anything like
21 that?

22 A No, ma'am.

23 Q Water fountain?

24 A No, ma'am.

25 Q Clock?

Justin Hembree - Cross-examination
by Ms. Penn

1 A No, ma'am.

2 Q Phone?

3 A No, ma'am.

4 Q Okay. And I think you said there was a, a table and
5 two chairs?

6 A Table and some chairs.

7 You're referencing the day that he was originally
8 arrested for possession of cocaine?

9 Q Yes, sir, the first day -- the 28th.

10 A Okay. So that was a separate interview room from what
11 Mr. Ziegler asked me about.

12 Q Okay.

13 A Mr. Ziegler inquired about the day of the statement was
14 taken.

15 Q Got you.

16 Can you please tell me about the room from the
17 28th when he's arrested?

18 A It's another interview room within our department also
19 equipped with a desk and several chairs. I don't recall the
20 exact amount of chairs to be honest with you. No windows.
21 It's air conditioned. No phones, which is just standard I
22 think -- I believe standard construction for an interview
23 room.

24 Q Was there a clock?

25 A No, ma'am.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q And when you say it was air conditioning, was the air
2 conditioning like this?

3 A Yeah, I mean departmental air conditioning. It doesn't
4 have a thermostat in the room or anything like that.

5 Q And how long -- I think -- is he in that room for about
6 an hour with you?

7 A The initial day?

8 Q Yes, sir.

9 A No, ma'am, it was longer than that.

10 Q How long was that?

11 A Best I can recall, I was in and out of the room, but I
12 think it was, it was a long day. About nine hours.

13 Q About nine hours?

14 A Yes, ma'am.

15 Q And he, he eventually gives a statement?

16 A For a separate robbery.

17 Q Yes.

18 And that -- the time on that statement is around eleven
19 o'clock at night?

20 A I don't recall. I'm sorry.

21 Q Do you think if I showed you the statement it would
22 refresh your---

23 A Sure.

24 Q ---recollection?

25 You can give it back to me later.

Justin Hembree - Cross-examination
by Ms. Penn

- 1 A Yes, ma'am.
- 2 Q Okay. The time on, the time of the statement was
- 3 23:15?
- 4 A Yes, ma'am.
- 5 Q And for nonmilitary, that is 11:15 at night?
- 6 A Yes, ma'am.
- 7 Q And you said you were in and out of the room.
- 8 When you were in and out of the room, was Mr. Murray
- 9 allowed to go in and out of the room?
- 10 A No, ma'am, he was under arrest.
- 11 Q All right. He was in handcuffs?
- 12 A I believe his handcuffs were moved to the front.
- 13 Q Okay.
- 14 A But yes, ma'am.
- 15 Q And when you were questioning him, were you talking
- 16 like we are now?
- 17 A Yeah. Yes, ma'am.
- 18 Q You didn't yell at him?
- 19 A No, ma'am.
- 20 Q You didn't kick any chairs?
- 21 A I don't kick chairs.
- 22 Q Okay. Now, from one o'clock in the afternoon until
- 23 eleven o'clock at night, did he immediately, once he got to
- 24 the station, tell you everything that had happened?
- 25 A No, ma'am.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q Did he originally not want to talk to you?

2 A He never said that he didn't want to talk to me. He
3 again was just quiet, more of a listener. I guess, like a
4 listener, he did answer some questions.

5 Q And after the statement was signed, did the questions
6 stop?

7 A Yes, ma'am, as best I can recall, yes, ma'am.

8 Q And when you read him -- what -- do you know what time
9 you read him the waiver form on that first one?

10 A On that day, no, ma'am, hu huh. (Negative).

11 Q You don't remember that?

12 A It would of been -- standard procedure would of been as
13 soon as we entered the room. That's what the, the practice
14 of the Police Department is.

15 Q But you're not sure?

16 You can't remember for sure if you did?

17 A No, ma'am, I would, I would -- every day -- a routine
18 for me would be as soon as we entered the interview room.

19 Q Okay. And there's no date on the waiver like there is
20 on the statement or, I'm sorry, not date.

21 There's no time on the waiver like there is on the
22 statement?

23 A Correct.

24 Q Let's move forward a little bit to the second interview

25 --

Justin Hembree - Cross-examination
by Ms. Penn

1 Q Did he originally not want to talk to you?

2 A He never said that he didn't want to talk to me. He
3 again was just quiet, more of a listener. I guess, like a
4 listener, he did answer some questions.

5 Q And after the statement was signed, did the questions
6 stop?

7 A Yes, ma'am, as best I can recall, yes, ma'am.

8 Q And when you read him -- what -- do you know what time
9 you read him the waiver form on that first one?

10 A On that day, no, ma'am, hu huh. (Negative).

11 Q You don't remember that?

12 A It would of been -- standard procedure would of been as
13 soon as we entered the room. That's what the, the practice
14 of the Police Department is.

15 Q But you're not sure?

16 You can't remember for sure if you did?

17 A No, ma'am, I would, I would -- every day -- a routine
18 for me would be as soon as we entered the interview room.

19 Q Okay. And there's no date on the waiver like there is
20 on the statement or, I'm sorry, not date.

21 There's no time on the waiver like there is on the
22 statement?

23 A Correct.

24 Q Let's move forward a little bit to the second interview
25 --

Justin Hembree - Cross-examination
by Ms. Penn

1 A Okay.

2 Q -- to August the 2nd.

3 A Okay.

4 Q Did he first approach you or who started talking first
5 once he --?

6 A I offered the smoke break immediately just as a
7 courtesy, and when we went in the interview room I
8 immediately completed the written advisement of rights form
9 that we talked about earlier, and then, as best I can
10 recall, Mr. Murray immediately tells me that he, that he
11 wanted to talk to me and he called to, to talk to me from
12 the jail.

13 Q And I think earlier you testified that his demeanor
14 was, I can't remember your exact words, but calm and
15 rational maybe, something like that?

16 A Okay.

17 Q Did he cry when you were interrogating him?

18 A On this day I don't recall him crying.

19 Q You don't remember him crying?

20 If I, if I showed you a police report, would that
21 refresh your recollection?

22 A Merely referencing a police report jog my memory, I
23 believe at a point during the photo lineup he did cry.

24 Q All right. Did he cry a lot?

25 A Not that I recall.

Justin Hembree - Cross-examination
by Ms. Penn

1 A Okay.

2 Q -- to August the 2nd.

3 A Okay.

4 Q Did he first approach you or who started talking first
5 once he --?

6 A I offered the smoke break immediately just as a
7 courtesy, and when we went in the interview room I
8 immediately completed the written advisement of rights form
9 that we talked about earlier, and then, as best I can
10 recall, Mr. Murray immediately tells me that he, that he
11 wanted to talk to me and he called to, to talk to me from
12 the jail.

13 Q And I think earlier you testified that his demeanor
14 was, I can't remember your exact words, but calm and
15 rational maybe, something like that?

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17 Q Did he cry when you were interrogating him?

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20 If I, if I showed you a police report, would that
21 refresh your recollection?

22 A Merely referencing a police report jog my memory, I
23 believe at a point during the photo lineup he did cry.

24 Q All right. Did he cry a lot?

25 A Not that I recall.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q Now -- I'm sorry. Can we please back -- go back to the
2 first day?

3 During that first interrogation, he got one Pepsi, is
4 that correct?

5 A That's what the statement you just showed me said, that
6 he was offered a Pepsi.

7 Q Okay. And that's it?

8 There's nothing else that you remember him getting
9 or---

10 A I, I don't recall if he was offered food or not.

11 Q Okay.

12 A I believe he was.

13 Q But you can't tell from---

14 A From -- I didn't -- need to review that statement form
15 that you just showed me for a second.

16 Q Well, let me, let me ask you this.

17 If he had been offered food, would you have written
18 that down?

19 A I would of written it down, yes, and if he accepted it,
20 yes.

21 Q Okay. Now, at Mount Pleasant, in these interview
22 rooms, these rooms are just for interviews, correct?

23 A Yes, ma'am.

24 Q That's the reason they're there?

25 A Yes, ma'am.

Justin Hembree - Cross-examination
by Ms. Penn

- 1 Q There's no video in those rooms?
- 2 A No, ma'am.
- 3 Q There are no handheld video recorders y'all can take
- 4 from room to room?
- 5 A No, ma'am.
- 6 Q But you do videotape certain things?
- 7 A The department does, yes, ma'am.
- 8 Q Like DUI's?
- 9 A Yes, ma'am.
- 10 Q Those have to be videotaped?
- 11 A Correct.
- 12 Q And so now all Mount Pleasant cars have video in their
- 13 cars?
- 14 A Okay.
- 15 Q But for interrogation, confessions, these aren't
- 16 videotaped?
- 17 A Not currently, no, ma'am.
- 18 Q So, our evidence of what happened in that room is
- 19 pretty kind of limited to what we have in the statement that
- 20 we have, right?
- 21 A And the witnesses involved, yes, ma'am.
- 22 Q Sure.
- 23 And nobody in the department has an iPhone?
- 24 A I'm sure they do.
- 25 Q Okay. And y'all never use your iPhones to videotape

Justin Hembree - Cross-examination
by Ms. Penn

1 anything?

2 A Videotape interviews, no, ma'am.

3 MS. PENN: Okay. Court's indulgence.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 Q Sergeant, you have the waiver of rights form from the
7 2nd in front of you, right?

8 A Yes, ma'am.

9 Q Okay. And there are two lines for witnesses there?

10 A Yes, ma'am.

11 Q And only one of them is signed?

12 A Yes, ma'am.

13 Q And that's you?

14 A Yes, ma'am.

15 MS. PENN: Thank you, Your Honor. I have no further
16 questions.

17 THE COURT: Thank you, Ms. Penn.

18 Redirect, solicitor?

19 SOLICITOR SHEALY: Beg the Court's indulgence just a
20 moment.

21 (Pause.)

22 SOLICITOR ZIEGLER: State will redirect, Your Honor.

23 REDIRECT EXAMINATION

24 BY SOLICITOR ZIEGLER:

25 Q To clarify, Sergeant Hembree, how, how long was the

Justin Hembree - Redirect examination
by Solicitor Ziegler

1 time period between this first August or July 28th
2 interview and this second August 2nd interview?

3 A Well, obviously the days between the 28th and the
4 2nd.

5 Q Math skills for us.

6 A Right.

7 Q And why is that second interview or why did that second
8 interview happen?

9 A I was -- I received a message that Mr. Murray wanted to
10 further speak with me.

11 Q And when he, when he returned to speak with you the
12 second time, did he ever say that he wanted an attorney?

13 A No, sir.

14 Q Thank you. No further questions.

15 THE COURT: Recross, Ms. Penn?

16 MS. PENN: No recross, Your Honor.

17 THE COURT: Thank you.

18 Thank you very much, sergeant. You may step down.

19 Solicitor, you may call your next witness.

20 Yes, ma'am, Ms. Penn.

21 MS. PENN: Your Honor, I forgot to ask earlier. We
22 would ask that the witnesses be sequestered and that the
23 state's witnesses be directed not to talk about their case
24 with each other.

25 THE COURT: All right. The chief investigating

1 officer, of course, can remain, the victim can remain, and
2 expert witnesses can remain, and how about the evidence
3 custodian?

4 I don't want them shuffling evidence in and out here.

5 SOLICITOR SHEALY: There's, there's only -- it's
6 just -- there's just the gun. So, we won't have that
7 difficulty.

8 THE COURT: All right. So whoever you designate as
9 your chief investigating officer may remain, solicitor.
10 All right. Ms. Penn.

11 MS. PENN: Your Honor, I'm sorry.

12 Could you please also instruct the State's witnesses
13 not to speak to each other about the testimony?

14 THE COURT: Well, y'all know what sequestration is,
15 don't you?

16 SOLICITOR SHEALY: We do, Your Honor.

17 THE COURT: And then you advise the officers. I'm not
18 gonna instruct.

19 SOLICITOR SHEALY: Yes, Your Honor.

20 THE COURT: They can't talk about their testimony.

21 MS. PENN: Our concern is that they're kind of---

22 THE COURT: Ma'am?

23 MS. PENN: They're kind of---

24 SOLICITOR SHEALY: They're all out, right outside in
25 the hall where they always wait to---

1 THE COURT: I understand.

2 SOLICITOR SHEALY: ---be called, but I can certainly go
3 out there right now and explain to them as well.

4 THE COURT: They hadn't -- I just sequestered them.
5 So, they can't be---

6 SOLICITOR SHEALY: No, I know.

7 THE COURT: ---talking at all about it.

8 SOLICITOR SHEALY: But she seems to be concerned that
9 they're congregating out there, but they are because they're
10 right outside the door.

11 THE COURT: Well, I'm not gonna place them inside or
12 outside. That's up to y'all and the witnesses.

13 SOLICITOR SHEALY: Right.

14 THE COURT: I don't know who they are.

15 All right. Call your next witness, solicitor.

16 SOLICITOR ZIEGLER: State calls Captain Amy McCarthy.

17 (Pause.)

18 SOLICITOR ZIEGLER: Your Honor, Captain McCarthy is
19 moving her car apparently and we're -- we will---

20 THE COURT: I can't, I can't hear you.

21 SOLICITOR ZIEGLER: Captain McCarthy is currently out
22 of the building and we -- moving her car. We will not call
23 her as a witness.

24 THE COURT: Well, I'm not gonna, I'm not gonna keep you
25 from calling a witness, solicitor. If you need to call her,

1 we'll take a break now and we'll come back later. I just --
2 is there another one available to call or, if not, we'll
3 wait on the captain to come and we'll take our luncheon
4 recess?

5 That's fine.

6 SOLICITOR SHEALY: The only thing I was wondering is I
7 don't know that it's necessary to call her unless the
8 defendant takes the stand and something comes up that we may
9 need to. So, we can just proceed on if that suits the
10 Court.

11 THE COURT: All right. So, as far as the Jackson
12 versus Denno presentation from the State, unless there's any
13 reply to whatever the defense may put up, you offer no more
14 testimony at this time, is that correct?

15 SOLICITOR ZIEGLER: That's right, Your Honor.

16 THE COURT: All right, sir.

17 All right. Ms. Penn, does the defense intend to
18 present any evidence or testimony?

19 MS. PENN: We intend to call Kenneth Murray, Your
20 Honor.

21 THE COURT: All right. Mr. Murray, if you'd come
22 around and be sworn for me please.

23 KENNETH MURRAY, having been first
24 duly sworn, testified as follows:

25 THE CLERK: If you could please have a seat. State

Kenneth Murray - Direct examination
by Ms. Penn

1 your name and spell your last name for the record.

2 THE WITNESS: Kenneth Murray.

3 DIRECT EXAMINATION

4 BY MS. PENN:

5 Q Hey, Kenneth.

6 A M-U-R-R-A-Y.

7 Q Hi, Kenneth.

8 How are you?

9 A All right.

10 Q You doing okay?

11 A Yes, ma'am.

12 Q Are you a little nervous?

13 A Not really.

14 Q I'm gonna ask you a bunch of questions.

15 All right. In 2011, how old were you?

16 A Twenty-seven.

17 Q Did you have a job?

18 A No, ma'am.

19 Q Okay. How far did you get in school?

20 A Twelfth.

21 Q Again, I'm---

22 THE COURT: Speak up a little bit for me please.

23 THE WITNESS: Twelfth, sir.

24 THE COURT: Thank you.

25 Q I know we've talked a little bit about this, but tell

Kenneth Murray - Direct examination
by Ms. Penn

- 1 the judge what kinds of classes you took in school.
- 2 A I had a disability.
- 3 Q what was that disability?
- 4 A I think comprehension. I really had no comprehension.
- 5 Q Do you know what that means?
- 6 A Yes, ma'am.
- 7 Q what does that mean?
- 8 A That I can not understand very well.
- 9 Q You can't understand what very well?
- 10 A Some things. That's what I was in school from.
- 11 Q Did you take some kind of test?
- 12 A Not that I know of.
- 13 Q Did you just have trouble with homework and stuff?
- 14 A Yes, ma'am.
- 15 Q Did you get in trouble in classes?
- 16 A Yes, ma'am.
- 17 Q Did you have trouble with like English class?
- 18 A Yeah, a lot of things, a lot of classes, but
- 19 understanding other things.
- 20 Q Okay. And is that why you were kind of in special ed
- 21 classes?
- 22 A Yes, ma'am.
- 23 Q Okay. Now, when do you think you started taking those
- 24 classes?
- 25 A Seventh grade.

Kenneth Murray - Direct examination
by Ms. Penn

- 1 Q Do you -- were your grades bad?
- 2 Is that why you got put in those classes?
- 3 A I don't, I don't recall.
- 4 Q You don't remember?
- 5 A No, ma'am.
- 6 Q Okay. Was school difficult for you?
- 7 A Kind of.
- 8 Q I mean was it easy for you?
- 9 A Yes, ma'am.
- 10 Q Okay. Even though you were in special ed classes?
- 11 A Yes, ma'am.
- 12 Q Okay. I'm gonna fast forward a little bit. Let's talk
- 13 about the day you were arrested.
- 14 Okay?
- 15 A Yes, ma'am.
- 16 Q Now, when you were arrested, did you tell the police
- 17 you didn't want to talk to them?
- 18 A Yes, ma'am, after, after I got in handcuffs.
- 19 Q What did you say exactly?
- 20 A I told them I didn't want to speak.
- 21 Q Now, did you have a lawyer at this point?
- 22 A No, ma'am.
- 23 Q Are you sure?
- 24 A No, I didn't have a lawyer at the time, ma'am.
- 25 Q Do you mean that a lawyer wasn't with you?

Kenneth Murray - Direct examination
by Ms. Penn

1 A No, ma'am.

2 Q Okay. Did you tell the police you wanted a lawyer?

3 A When I got to the police station.

4 Q You told them you wanted a lawyer?

5 A Yeah, but at that time I didn't told them.

6 Q I'm sorry. You're confusing me.

7 Are you saying you didn't tell them when you were
8 arrested?

9 A Yeah, when I was arrested.

10 Q Okay. But when you got to the station you told them
11 you wanted a lawyer?

12 A Corporal Buncum I told that I wanted to speak to my
13 lawyer or someone.

14 Q And after you told Buncum that, did he go get you a
15 lawyer?

16 A No, ma'am, he, he referred to call my father.

17 Q Okay. And what time do you think that was about?

18 A When they had me like in the room.

19 Q And when you got to the station, did you tell the
20 police you didn't want to talk to them?

21 A I told Corporal Buncum I didn't know anything. I did
22 told him I didn't want to speak to him.

23 Q Did you tell Sergeant Hembree that?

24 A Yes, ma'am, when I, when I was first arrested. He was
25 accusing me of being somebody who robbed something.

Kenneth Murray - Direct examination
by Ms. Penn

- 1 Q And what did you say to him?
- 2 A I told him I didn't rob anything and he kept accusing
- 3 me and saying that I was that person. Someone told them
- 4 that I did something, and I told him I wasn't involved in
- 5 nothing, and he keep forcing it on me.
- 6 Q And when you are first taken to Mount Pleasant, can you
- 7 talk to us a little bit about the room you were in?
- 8 How big do you think it was?
- 9 A It wasn't that big.
- 10 Q Okay. You were handed -- were you handcuffed?
- 11 A Yes, ma'am.
- 12 Q Did you think that if you asked them they would just
- 13 let you go?
- 14 A No, ma'am.
- 15 Q Did you get to call anybody?
- 16 A Corporal Buncum called my father.
- 17 Q Did you get to speak to your father?
- 18 A No, he didn't let me speak to him.
- 19 Q Okay. And had you had any alcohol or drugs that day?
- 20 A Yes, ma'am.
- 21 Q What did you have?
- 22 A Alcohol.
- 23 Q How much alcohol do you think?
- 24 A Like five drinks.
- 25 Q Okay. And were you feeling like your best self?

Kenneth Murray - Direct examination
by Ms. Penn

1 A No, ma'am.

2 Q How did you feel?

3 A I was, I was drowsy.

4 Q Okay. Now, when you were at the station---

5 A Yes, ma'am.

6 Q ---did anybody threaten you?

7 A Detective Hembree did.

8 Q What did he say?

9 A He threatened me about getting me time. He showed
10 me -- he told me that he found a bullet on my porch and that
11 if I didn't tell him something about the crime that he would
12 get me about 15 years or something like that, and I told him
13 I didn't know anything about the crime.

14 Q Did you believe him when he said that?

15 A I didn't know what to believe.

16 Q Now, talk to me a little bit about what it was like,
17 okay, to be in that room from one o'clock until eleven
18 o'clock.

19 A I was being tortured by Detective Hembree.

20 Q What do you mean by that?

21 Be specific.

22 A By him going in and out the room. He kept kicking,
23 kicked chairs and he was -- kept accusing me of being
24 someone that did a robbery.

25 Q So, when he told you no, he didn't just leave you, did

Kenneth Murray - Direct examination
by Ms. Penn

1 he?

2 A No, ma'am.

3 Q He just kept coming?

4 A Yes, ma'am.

5 SOLICITOR SHEALY: Your Honor, I object to the leading
6 nature of the questions.

7 THE COURT: Yes, ma'am, I would sustain the objection.

8 Q What was Hembree like when he was questioning you?

9 A He was aggressive.

10 Q What does aggressive mean to you?

11 A Like he was getting all in my face telling me that I
12 was a person that had robbed something and someone gave him
13 information on something, some females, and I told him I
14 don't know anything about that, and that's when he had led
15 me out the room, he had come back in, and he kicked chairs,
16 and I mean I was in handcuffs. I was scared. I didn't know
17 what to do, and that went on for about ten hours. At least
18 ten hours.

19 Q Okay. You've seen the statement from the 28th?

20 A Yes, ma'am.

21 Q Did you write that statement?

22 A No, ma'am.

23 Q Did you get to read that statement?

24 A No, ma'am.

25 Q Did you sign that statement?

Kenneth Murray - Direct examination
by MS. Penn

1 A I was forced to sign it.

2 Q why did you sign the statement?

3 A I was forced to sign it.

4 Q Explain that to the judge for me.

5 A When Detective Hembree told me to sign a statement, he
6 wrote it out and he told me to sign it while I was sitting
7 in there.

8 Q And you didn't -- did you think you could say no?

9 A I couldn't say anything.

10 Q Okay. Let's fast forward a little bit to August the
11 2nd, okay, the second interview.

12 what did you call Mount Pleasant police for?

13 A I called them to speak to Detective Hembree about the,
14 the robbery that -- the first one that he had put on me. I
15 called him to speak to him about that.

16 Q Is that what happened when you got to the station?

17 A No, ma'am.

18 Q what did you end up talking about?

19 A We was -- I spoke to him about what happened that first
20 time cause I was intoxicated and I was dozing off on him,
21 and I really wanted to know what really happened cause if I
22 had confessed it I would of just left it alone, but I wanted
23 to know what happened.

24 Q And on the 2nd, did you feel like you were in charge of
25 the conversation?

Kenneth Murray - Direct examination
by MS. Penn

- 1 A No, ma'am.
- 2 Q Who did you think was in charge?
- 3 A Detective Hembree.
- 4 Q And you've seen the statement from the 2nd.
- 5 Did you write that?
- 6 A No, ma'am.
- 7 Q Did Hembree write it?
- 8 A Yes, ma'am.
- 9 Q Did you read it?
- 10 A No, ma'am.
- 11 Q Were you given the chance to read it?
- 12 A No, ma'am.
- 13 Q And did you sign it?
- 14 A Yes, ma'am.
- 15 Q Why did you do that?
- 16 A Cause I was forced to sign it.
- 17 Q Do you remember -- did you cry during that second
- 18 interrogation?
- 19 A Yes, ma'am.
- 20 Q Why were you crying?
- 21 A Cause I was forced to pick out people that, that I
- 22 don't know about in the investigation.
- 23 Q Did you feel like you had any choice?
- 24 A No, ma'am.
- 25 MS. PENN: Court's indulgence.

Kenneth Murray - Direct examination
by Ms. Penn

1 THE COURT: Yes, ma'am.

2 (Pause.)

3 MS. PENN: I have no further questions, Your Honor.

4 THE COURT: Thank you.

5 Q Go ahead and answer Ms. Shealy.

6 THE COURT: Thank you, Ms. Penn.

7 Solicitor.

8 SOLICITOR SHEALY: May it please the Court?

9 CROSS-EXAMINATION

10 BY SOLICITOR SHEALY:

11 Q Mr. Murray, you said you went to Wando?

12 A Yes, ma'am.

13 Q And you went to the 12th grade?

14 A Yes, ma'am.

15 Q And you were doing okay in school?

16 A Yes, ma'am.

17 Q Okay. Did you tell us you have or have not ever worked
18 anywhere?

19 A I use to work.

20 Q Where did you work?

21 A With my father doing plastering.

22 Q Okay. And were you working pretty much full-time with
23 him or just occasionally?

24 A Yes, I use to work full-time.

25 Q And how long did you do that type of work with him?

Kenneth Murray - Cross-examination
by Solicitor Shealy

- 1 A Since I was younger.
- 2 Q Were you working at the time that you got arrested?
- 3 A No, ma'am.
- 4 Q You weren't working anywhere?
- 5 A No, ma'am.
- 6 Q Okay. Now, let's, let's just take it step-by-step.
- 7 okay?
- 8 A Okay.
- 9 Q When you got arrested for the possession of cocaine
- 10 charge --
- 11 A Yes, ma'am.
- 12 Q -- you were telling this Court that you were telling
- 13 everybody I don't want to talk?
- 14 A Yes, ma'am.
- 15 Q And you are saying that you said that at the scene
- 16 while they're searching the house?
- 17 A When -- see, when he came to the house, it was like my
- 18 uncle place and he took me upstairs and he was asking me
- 19 questions and I told him---
- 20 Q Who did?
- 21 A Detective Hembree. And he -- I was automatically
- 22 accused of being someone that robbed the other business.
- 23 Q Which other business?
- 24 A The Piggly wiggly.
- 25 Q The Piggly wiggly?

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 A Yes, ma'am.

2 Q Okay. Now, you told us though that you go back to the
3 police station, is that correct, that night?

4 A That's afterwards.

5 Q After that.

6 And it's you and Mr. Hembree in a room talking, is that
7 correct?

8 A Yes, ma'am.

9 Q And are you telling this Court that he was throwing
10 chairs around?

11 A No, he, he kicked the chair.

12 Q Kicking chairs around?

13 A Yeah, he didn't throw it.

14 Q And were you in an area where there were other people
15 outside of that room?

16 A No, ma'am.

17 Q Where was the---

18 A I think, I think they did work in offices inside the
19 building outside that room.

20 Q Okay. So, there was a room and then there were other
21 places that people were working outside of the room?

22 A Yes, ma'am.

23 Q And was the door closed?

24 A Yes, ma'am.

25 Q So, you, you're telling the Court then that sergeant

Kenneth Murray - Cross-examination
by Solicitor Shealy

- 1 Hembree started kicking chairs around?
- 2 A I mean he didn't kick chairs like that. He kicked it a
3 couple times, but he didn't kick chairs around like that.
- 4 Q Well, when you were telling Ms. Penn a few minutes ago
5 that you had been dozing --
- 6 A Yes, ma'am.
- 7 Q -- you talking about during that process?
- 8 A No, that, that was the first day.
- 9 Q The -- what do you mean the first day?
- 10 A The first -- when I first got arrested.
- 11 Q Are you talking about you were dozing at the scene when
12 you were arrested?
- 13 A No, no, I was dozing off at the, at the police station.
- 14 Q Okay. So, which time is it that you're saying that
15 Sergeant Hembree---
- 16 A The -- ma'am?
- 17 Q That Sergeant Hembree kicked the chairs?
- 18 A That was the first time.
- 19 Q Okay. And isn't the first time the time when you're at
20 the station after you've been arrested for possession of
21 cocaine?
- 22 A Yes, ma'am.
- 23 Q And that's the time that he's kicking chairs?
- 24 A At the police station.
- 25 Q And that's the time that you were dozing?

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 A No, not around that time. That was like later on that
2 night I was dozing off.

3 Q Okay.

4 A And at the time I did doze off on Corporal Buncum too
5 like when I first got to the police station like three
6 o'clock that, that day.

7 Q You were just sleepy?

8 A I nodded off. I didn't sleep.

9 Q So, the fact that you had been in a house where a
10 search warrant was executed and guns were found and---

11 A It wasn't guns found.

12 Q There was a gun found, was there not?

13 A Not that I knew of.

14 Q Did you---

15 A I think---

16 Q In your mattress?

17 A I think, I think a BB gun was found.

18 Q And that was from underneath your mattress?

19 A Yes, ma'am.

20 MS. PENN: Your Honor, I'd like to object as to
21 relevance again.

22 THE COURT: Overruled.

23 Q Despite the fact that that had just occurred, you still
24 were dozing?

25 A No, ma'am.

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 Q Well, Mr. Murray, were you dozing or were you not
2 dozing?

3 A I wasn't dozing around that time.

4 Q Okay. So, the time that you say that Mr., that
5 Sergeant Hembree was so aggressive was the time when you
6 were in a room with people working outside that room, is
7 that correct?

8 A Yes, ma'am.

9 Q And what do you -- tell me again what you say he
10 threatened you with?

11 A A bullet. He say---

12 Q He threatened you with a bullet?

13 A He say he found a bullet on my porch and he told me
14 that he was gonna call the Feds and try to get me 15 years
15 and I needed to know something about the crime. If I don't,
16 he's gonna call them and he's gonna try to get me time.

17 Q So, are you telling the Court you lied in a statement?

18 A That I lied in a statement?

19 Q Yeah.

20 Are you saying that you lied in any kind of statement?

21 MS. PENN: Objection, Your Honor.

22 A I didn't lie in no statement.

23 THE COURT: What -- excuse me.

24 What's your objection, Ms. Penn?

25 What's the basis?

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 MS. PENN: Your Honor, I don't think this is relevant
2 as to the purpose of the hearing whether or not his
3 statement is voluntary. I don't think whether or not he --
4 what -- the contents of the statement are up for debate in
5 this period.

6 THE COURT: It's credibility. He's taken the witness
7 stand. She's on cross. So, I would overrule that
8 objection.

9 Q Mr. Murray, on the occasion that you were in the room
10 with Sergeant Hembree --

11 A Yes, ma'am.

12 Q -- and then Captain McCarthy came in, a female --

13 A Yes, ma'am.

14 Q -- are you telling us that you were threatened in some
15 way to write the statement that you wrote?

16 A I didn't wrote no statement.

17 Q well, that Sergeant Hembree wrote for you.

18 Are you telling me---

19 A He done already wrote it for me.

20 Q He didn't write it for you?

21 A No, ma'am.

22 Q well, let me show you -- did you -- if we could, judge,
23 have marked for Court's Exhibit, I'm not sure what number
24 we're on, the statement given on July 28th?

25 THE COURT: I think it will be three.

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 Madam Court reporter, Court's 3?

2 COURT REPORTER: Yes.

3 (WHEREUPON, the statement was marked as Court's Exhibit
4 No. 3 for identification purposes only at this time.)

5 SOLICITOR SHEALY: May I approach, Your Honor?

6 Showing you what's been marked as Court's Exhibit No.
7 3, could you state for the Court what the date of that
8 statement is?

9 A 7/28/11.

10 Q Okay. And is this your signature on that page?

11 A Yes, ma'am.

12 Q Okay. And is your signature right there?

13 A Yes, ma'am.

14 Q And Sergeant Hembree was writing this statement for
15 you, is that correct?

16 A He would -- he never wrote it for me.

17 Q Why did you sign it, Mr. Murray?

18 A Cause I was forced to sign it.

19 Q How did he force you to sign it?

20 A Doing aggressive things around me.

21 Q Okay. Tell me those aggressive things again.

22 A He jumps in my face and does all the aggressive stuff.

23 Q Like what?

24 A Like kicking stuff, aggressive things.

25 Q Well, you said it wasn't all that kicking.

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 A No, I mean that's what he does, and from that first
2 time, I, I didn't -- I was scared of him.

3 Q Were you scared because you knew you were in trouble?

4 A I know how he is.

5 Q You know how Sergeant Hembree is?

6 A Yes.

7 Q Did he know how you were?

8 A No.

9 Q You were scared because you knew your goose was cooked?

10 A No, I wasn't.

11 Q You had the opportunity to look at this statement
12 before you signed it, did you not?

13 A No, ma'am.

14 Q You're saying Sergeant Hembree just handed it to you
15 and said sign it?

16 A Yes, ma'am.

17 Q And Captain McCarthy was in there as well, is that
18 correct?

19 A She was -- she only came in when I was crying that
20 night.

21 Q And you were crying because why?

22 A Cause I, I did something that I was forced to do.

23 Q Meaning the statement?

24 A Yes, ma'am.

25 Q Not going into a grocery store with a loaded weapon and

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 pointing it at teenagers?

2 A No, I didn't---

3 MS. PENN: Objection, Your Honor.

4 THE COURT: Is that in the Court's 3?

5 SOLICITOR SHEALY: Is that in what?

6 THE COURT: Is that in Court's 3?

7 SOLICITOR SHEALY: No, but he's saying that he's crying
8 that evening. I'm trying to explore why it was, in fact, he
9 was crying.

10 THE COURT: What's the basis of your objection, Ms.
11 Penn?

12 MS. PENN: Same objection, Your Honor. Just that it's
13 irrelevant for the purposes of the hearing. This is about
14 voluntariness, not about what is in the statement.

15 THE COURT: I would overrule the objection.

16 Q You were weeping that night because you were forced to
17 sign a statement --

18 A Yes, ma'am.

19 Q -- or because you felt bad about what you had done?

20 A No.

21 Q You didn't feel bad?

22 A No, not -- I was held hostage.

23 Q Oh, you were held hostage?

24 A You might as well say.

25 Q Might as well say..

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 Okay. And this is after he gave you a Pepsi?

2 A Yeah, that was after.

3 Q And then after the Pepsi and the restroom break, all of
4 a sudden you're a hostage?

5 A I been a hostage all day since one o'clock in the
6 afternoon all the way to midnight.

7 Q Do you use the word hostage to mean the same thing as
8 arrested?

9 A You might as well say. I was in handcuff.

10 Q Okay. So, you were arrested, therefore you were a
11 hostage?

12 A Might as well say. I couldn't do anything. I was
13 tired.

14 Q Sleeping?

15 A I didn't, I didn't have nothing to say.

16 Q Now, between the date of the 28th and August 2nd,
17 did you, in fact, call and leave a message for Sergeant
18 Hembree?

19 A Yes, I didn't want to speak to him.

20 Q Okay. So, you wanted to talk to him?

21 A Yes, ma'am.

22 Q And you never told Sergeant Hembree that you wanted a
23 lawyer, did you?

24 A No, I told Corporal Buncum.

25 Q And do you remember signing with Corporal Buncum?

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 A No, ma'am, I couldn't -- I can't recall.

2 SOLICITOR SHEALY: Your Honor, I would offer an
3 advisement of rights dated 7/28/2011 as a Court's Exhibit.

4 THE COURT: All right. Ms. Penn.

5 MS. PENN: No objection, Your Honor.

6 THE COURT: Be Court's 4.

7 That's 7/28?

8 SOLICITOR SHEALY: Yes, sir.

9 (WHEREUPON, the advice of rights form was marked as
10 Court's Exhibit No. 4 for identification purposes only at
11 this time.)

12 Q Showing you, Mr. Murray, what has been marked as
13 Court's Exhibit 4, I ask you, is that your signature on the
14 form?

15 A Yes, ma'am.

16 Q Okay. And do you see the checkmarks by each right that
17 is been read out?

18 A Who, who is it by?

19 Q This is by Deputy Buncum.

20 A Yeah, I have the right to remain silent, this and that.

21 Q Okay. And did you then sign, in fact, that you waived
22 those rights?

23 A Yeah, I see.

24 Q Okay. So, your signature is on two spots on the
25 advisement of rights dated October -- July 28th, 2011,

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 correct?

2 A Yes, ma'am.

3 Q But now you're telling the Court that that's not right?

4 A No, I didn't say that.

5 Q You told them you wanted a lawyer?

6 A I didn't say that's right. That wasn't right.

7 Q It is right?

8 A Yeah, that is right.

9 Q So, he told you you had the rights and you said you'd
10 go ahead and talk?

11 A No, I didn't speak to him about nothing around the time
12 I was arrested. I spoke to him -- I got in the interview
13 room about three o'clock in the afternoon, and as soon as I
14 got -- they say I don't know nothing about nothing and I
15 don't want to speak to nobody, and that's when I told him I
16 needed -- I wanted to speak to my lawyer or somebody and
17 that's when he referred -- he said Corporal Buncum, he said
18 he know my father and he know my aunt and every -- my uncles
19 and he said he grew up with them and this and that, and
20 that's when I told him that I wanted to speak to somebody
21 and that's when he referred -- instead of him referring me
22 to my lawyer, he decided to call my, my father and he didn't
23 even let me speak to my father.

24 Q Well, did you tell him -- did you tell Officer Buncum
25 that you wanted to talk to your family?

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 A No, he just -- he, he came up with that.

2 Q He came up with it?

3 A Yeah, he -- when I asked for a lawyer or someone to
4 speak to he decided to call my father.

5 Q Okay. But you signed that you waive your rights after
6 he read them to you?

7 A I don't know too much about that.

8 Q Well, you know about that's your signature?

9 A Yes, ma'am.

10 Q Right?

11 And you've agreed that there's nothing wrong with this
12 form, is that correct?

13 A Yeah, I don't know too much about it, ma'am.

14 Q You don't know too much about it.

15 Okay. So then after Sergeant Hembree had been so
16 aggressive with you, after he held you hostage, after he, in
17 some way, puts his foot to a chair and threatens you, you
18 call him and tell him you want to talk to him.

19 That's correct, right?

20 A Yeah, about, about the incident that happened the first
21 time.

22 Q And what do you mean the incident the first time?

23 A About what, what was said and what was written.

24 Q You wanted to tell him what your involvement was?

25 A No.

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 Q Oh, you just wanted to talk to him about how he had
2 been mean to you?

3 A But what happened about what I was forced to do.
4 That's what I came to really speak to him about.

5 Q I don't understand what you mean.

6 Can you explain that to me?

7 A I came -- I call him to speak to him about what I was
8 forced to do.

9 Q You called him and said you wanted to talk to him about
10 what you had been forced to do?

11 A Yeah.

12 Q So, the same man who kept you hostage, who threatened
13 you, and who'd been aggressive, you wanted to have another
14 conversation with him?

15 A Yes, cause I was in jail.

16 Q You were in jail and realized that you better come
17 clean.

18 Isn't that the truth, Mr. Murray?

19 A No, no, that wasn't.

20 Q Well, when you go and talk to Mr., Sergeant Hembree,
21 you give him details of not one but two crimes, is that
22 correct?

23 A No, ma'am.

24 Q You don't give him any details?

25 A No, ma'am.

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 Q Sergeant Hembree was sitting there just like writing a
2 short story then?

3 A After I---

4 Q You didn't tell him the facts?

5 A After, after he did a photographic report and made me
6 pick out people that I knew. That's when he, he wrote that.

7 Q Mr. Murray, you gave him the names of Jarrett Graddick,
8 Preston Swenton, or Preston from Hamlin, Danta Smalls all in
9 connection with the Piggly wiggly robbery, is that correct?

10 A No, ma'am, when he first came he already had those
11 names.

12 Q He already had the names?

13 A Yes, ma'am.

14 Q And then what about Bootsie?

15 A He, he asked me wasn't no Cleveland, and I told him I
16 don't know nobody by the name of Cleveland. And when he
17 asked me if I know Bootsie, I told him I know Bootsie and I
18 told him he has another name, Kevin Major.

19 Q Mr. Murray, it's not until you give your statement that
20 Cleveland Major even gets arrested, isn't that correct?

21 A Yes, ma'am.

22 Q But you're gonna say that Sergeant Hembree already knew
23 about Cleveland Major. He just hadn't bothered to arrest
24 him.

25 A I was already a suspect before.

Kenneth Murray - Cross-examination
by Solicitor Shealy

1 Q You were what?

2 A He said I was already a suspect when he, when he came
3 the first time and he questioned me about the Pizza Hut.

4 Q So, are you telling this Court that all the details
5 that you gave Sergeant Hembree that he did not have he made
6 up?

7 A Yes, ma'am.

8 Q Cause he doesn't want to arrest the correct people. He
9 just wants to arrest anybody.

10 A I -- wherever he got his information from, ma'am.

11 Q When you came back back there -- came back to the
12 police station on the night that you asked to be able to
13 speak to Sergeant Hembree, you never asked for a lawyer, did
14 you?

15 A No, ma'am.

16 SOLICITOR SHEALY: I beg the Court's indulgence a
17 moment.

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 SOLICITOR SHEALY: I have no further questions. Thank
21 you, Your Honor.

22 THE COURT: Thank you, solicitor.

23 Redirect, Ms. Penn?

24 MS. PENN: Thank you, Your Honor.

25 REDIRECT EXAMINATION

Kenneth Murray - Redirect examination
by MS. Penn

1 BY MS. PENN:

2 Q Kenneth, tell me a little bit about plastering and what
3 you did.

4 A Plastering what?

5 Q The stuff you did with your dad.

6 what, what can kind of work is that?

7 A Like stucco work. It's like dealing with cement and
8 stuff like that.

9 Q You basically put stuff on a wall?

10 A Yes, ma'am.

11 Q Okay. It doesn't involve reading?

12 A No, ma'am.

13 Q Writing?

14 A Hu huh. (Negative).

15 Q And let's go back a little bit and clarify.

16 when you said you felt like you were surrounded, you
17 were at the police station, right?

18 A Yes, ma'am.

19 Q And you weren't at your house?

20 A No, ma'am.

21 Q You were surrounded by policemen?

22 A Yes, ma'am.

23 Q Okay. And when you said you were sleeping, were you
24 ever sleeping when Hembree was in the room with you?

25 A No, I didn't. I do it like a little bit. I wasn't

Kenneth Murray - Redirect examination
by Ms. Penn

1 sleep sleeping, no.

2 Q Were you alone when that was going on?

3 A Yes, ma'am.

4 Q So, it wasn't like Hembree was kicking chairs and you
5 were falling asleep on him?

6 A No, at one, at one point in time he came in and I just
7 seen a chair flying and he just got in my face like I need
8 to tell him something.

9 Q And you told the police you wanted a lawyer?

10 A Yeah, earlier that day.

11 Q And you told them you didn't have anything to say to
12 them?

13 A No.

14 Q And you didn't want to speak?

15 SOLICITOR SHEALY: Object to the leading, Your Honor.

16 THE COURT: Rephrase the question, ma'am.

17 Q Did you tell the police you wanted to speak to them?

18 A No. I mean yeah, I did tell them I didn't want to
19 speak to them.

20 Q Okay. Nothing further.

21 A Numerous times.

22 Q I'm sorry, Kenneth. I cut you off.

23 what did you say?

24 A Numerous times I told them all day long I didn't know
25 anything. All day long I told them that.

Kenneth Murray - Redirect examination
by Ms. Penn

1 Q Okay. Thank you, Kenneth.

2 Thank you, Your Honor. No further questions.

3 THE COURT: Recross.

4 SOLICITOR SHEALY: Just briefly, Your Honor.

5 RECROSS EXAMINATION

6 BY SOLICITOR SHEALY:

7 Q So, Mr. Murray, you're now saying that all day long you
8 were telling them you wanted a lawyer?

9 A No, I'm not all day long I didn't tell them that. I
10 told only one officer that I wanted a lawyer.

11 Q Okay.

12 A I didn't tell, I didn't---

13 Q What was the all day long you just talked about?

14 A What was the all day long?

15 Q You just answered her all day long.

16 A Yeah.

17 Q What, what happened all day long?

18 A I wasn't -- I was in a room with them all day long.

19 Q Okay. And -- but you're saying you only asked one
20 lawyer, one -- are you saying that you only asked one law
21 enforcement officer for a lawyer?

22 A Yes, ma'am.

23 Q And that's Detective Buncum who you signed the waiver
24 of rights on?

25 A Yes, ma'am.

Recross examination
by Solicitor Shealy

1 Q And the chair, now it's flying through the room?

2 A Now it's flying through the room?

3 What do you mean?

4 Q You just told Ms. Penn that when Sergeant Hembree came
5 in there you saw a chair flying.

6 A No, I was speaking about like earlier that night.

7 Q Earlier that night you saw a chair flying?

8 A Well, later that night.

9 SOLICITOR SHEALY: I have nothing further.

10 THE COURT: Thank you.

11 Thank you very much, Mr. Murray. You may step down and
12 return to your seat.

13 All right. Does the defense intend to produce any
14 additional evidence and testimony in the hearing, Ms. Penn?

15 MS. PENN: No, Your Honor.

16 THE COURT: Thank you.

17 Does the State intend to present any reply testimony,
18 solicitor?

19 SOLICITOR SHEALY: Your Honor, we may need one moment
20 to confer with our investigator --

21 THE COURT: All right.

22 SOLICITOR SHEALY: -- if that's okay.

23 THE COURT: Yes, ma'am.

24 (Pause.)

25 THE COURT: All right. Solicitor.

Amy McCarthy - Direct examination
by Solicitor Ziegler

1 your name spelling your last name for the record.

2 THE WITNESS: It's Amy McCarthy. M-C-C-A-R-T-H-Y.

3 DIRECT EXAMINATION

4 BY SOLICITOR ZIEGLER:

5 Q Thank you, Captain McCarthy.

6 where are you employed?

7 A Mount Pleasant Police Department.

8 Q How long have you been employed there?

9 A Twenty-three years.

10 Q What is your current position?

11 A I'm the commander of narcotics investigations and
12 evidence and crime scene units.

13 Q And what was your position in July of 2011?

14 A It was the same. I was over those units.

15 Q And in that position with the Mount Pleasant Police
16 Department, were you present for any portion of an interview
17 of Kenneth Murray on August 2nd, 2011, regarding an armed
18 robbery at the Pizza Hut at 2161-C US 17 in Mount Pleasant?

19 A Yes, I was.

20 Q Where did that interview take place?

21 A In the interview room which is located in our
22 investigations division.

23 Q And who, who conducted that interview?

24 A Detective Sergeant Hembree.

25 Q Did Murray give a written statement in the course of

Amy McCarthy - Direct examination
by Solicitor Ziegler

1 that interview?

2 A He did.

3 Q And were you present while Murray's statement was
4 reduced to writing?

5 A Yes.

6 Q In the course of the interview, did you, did you hear
7 any chairs being flown around or any loud noises coming from
8 the room?

9 A No.

10 Q Did you, did you see any, anyone angry or being
11 generally loud?

12 A No.

13 Q What was Murray's demeanor during that interview?

14 A He was quiet. He just -- he was quiet.

15 Q Did he seem coherent?

16 A He did.

17 Q Did he seem like he understood what was happening?

18 A Yes.

19 Q Was he coerced in anyway to make a statement?

20 A No.

21 Q And who wrote Murray's words down on paper?

22 A Sergeant Hembree.

23 Q Is it standard procedure to do that?

24 A Yes.

25 Q Did Murray acknowledge that his statement was freely

Amy McCarthy - Direct examination
by Solicitor Ziegler

1 and voluntarily, voluntarily made and did he acknowledge
2 that it was true and correct to the best of his knowledge?

3 A Yes.

4 Q How did he do that?

5 A He signed it. It was read to him and he acknowledged
6 that he understood it and signed it.

7 Q Did you watch Murray sign his name---

8 A Yes.

9 Q ---to the statement?

10 A Yes.

11 Q If I may pull the Court's Exhibit 2 please?

12 I'm now showing you Court's Exhibit 2.

13 Can you identify this document?

14 A Yes, that's the statement that Sergeant Hembree took
15 from Mr. Murray.

16 Q Okay. And is Mr. Murray's signature on that document?

17 A Yes.

18 Q Is your signature on that document?

19 A Yes, as a witness.

20 Q And is anyone else's signature on the document?

21 A Sergeant Hembree.

22 Q Thank you.

23 A Uh-huh. (Affirmative).

24 SOLICITOR ZIEGLER: Court's indulgence, Your Honor.

25 THE COURT: Yes, sir.

Amy McCarthy - Direct examination
by Solicitor Ziegler

1 (Pause.)

2 Q Captain McCarthy, did you, did you witness Sergeant
3 Hembree trying to influence what Kenneth Murray was
4 saying---

5 A No.

6 Q ---what he, what he told police?

7 A Hu huh. (Negative).

8 Q Was, was Sergeant Hembree writing the words as Kenneth,
9 as Kenneth Murray spoke them?

10 MS. PENN: Objection to leading.

11 THE COURT: Restate the question, solicitor.

12 Q Did you, did you witness Sergeant Hembree writing the
13 defendant's statement?

14 A I did.

15 Q And where did, where did those words come from on the
16 statement?

17 A Mr. Murray.

18 SOLICITOR ZIEGLER: Okay. No further questions, Your
19 Honor.

20 THE COURT: Thank you.

21 Thank you, Mr. Solicitor.

22 Ms. Penn.

23 MS. PENN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. PENN:

Amy McCarthy - Cross-examination
by Ms. Penn

- 1 Q Hi, Captain McCarthy.
- 2 A Hey.
- 3 Q You went to the police academy?
- 4 A Yes, ma'am.
- 5 Q And you had to go through training?
- 6 A Yes.
- 7 Q And part of the things you learned there is how to
- 8 write a police report?
- 9 A Correct.
- 10 Q And police reports are really important?
- 11 They are -- are they really important?
- 12 A They are.
- 13 Q Okay. And they're important because they preserve --
- 14 I'm sorry. I need to ask, to ask and answer yes or no.
- 15 A Oh, I didn't know you were asking a question. Yes,
- 16 that's true.
- 17 Q Police reports are important because this was two years
- 18 ago?
- 19 This was two years ago, wasn't it?
- 20 A It was, yes.
- 21 Q And in that course of time, this is not been the only
- 22 case you've worked on?
- 23 A That's correct.
- 24 Q You've worked on lots of cases?
- 25 A I oversee several cases, correct.

Amy McCarthy - Cross-examination
by Ms. Penn

1 Q And you, you've seen, I'm, I'm assuming, lots of
2 confessions?

3 A Yes.

4 Q Lots of statements?

5 A Yes.

6 Q You've seen lots of interrogations?

7 A Yes.

8 Q And it would be hard to remember one from the other?

9 A Not necessarily, no.

10 Q How many statements do you think you've witnessed in
11 the past two years?

12 A In the past two years?

13 I haven't witnessed that many. I'm, I'm a supervisor.
14 So, I don't, I don't conduct them myself. I may serve as a,
15 as a witness if asked. So, myself, I don't conduct many
16 interviews myself. So, there hasn't been that many in the
17 last two years.

18 Q Do you ever record your impressions with the police
19 statement?

20 A My what?

21 Q Your impressions of what happened -- do you ever write
22 police reports?

23 A At some point I may. I haven't in this role that I
24 have currently that I'm --.

25 Q And you didn't in this case?

Amy McCarthy - Cross-examination
by Ms. Penn

1 A I don't recall.

2 Q You don't remember whether or not you wrote a report in
3 this case?

4 A I---

5 Q Is that what you said?

6 A I don't remember. If I would of it would of been a
7 supplement. It would of been an incident report and I don't
8 recall if I did.

9 Q Do you remember what time you came into the interview
10 room on the 2nd of August?

11 A No, ma'am, I don't.

12 Q Do you remember what time you left?

13 A No.

14 Q Do you remember how long you were in there for?

15 A It wasn't long. Probably ten minutes or so.

16 Q Thank you.

17 Your Honor, I have no further questions.

18 THE COURT: Redirect, solicitor?

19 SOLICITOR ZIEGLER: No further questions, Your Honor.

20 THE COURT: Thank you.

21 Thank you very much, captain. You may step down.

22 All right. Any further witnesses in reply to be
23 offered by the State?

24 SOLICITOR ZIEGLER: Your Honor, may we approach the
25 bench?

Julius Buncum - Direct examination
by Solicitor Shealy

1 Q Mr. Buncum, you are no longer employed with law
2 enforcement, is that correct?

3 A That's correct.

4 Q And previously you worked at the Mount Pleasant Police
5 Department?

6 A Yes, ma'am.

7 Q How long did you work there?

8 A Approximately 11 years.

9 Q And where are you working now?

10 A Trident Technical College.

11 Q Focusing your attention back to July 28th of 2011, do
12 you remember whether you were present during the execution
13 of a search warrant on Linnen Lane?

14 A I don't believe I was.

15 Q Did you have any occasion to speak with Kenneth Murray
16 later at the police station?

17 A Yes, ma'am.

18 Q Okay. And could you describe for the Court, if you
19 would please, what your role was and what took place?

20 A My role was to basically advise Mr. Murray of his
21 rights, go in there and try to build a rapport with him, and
22 start talking to him.

23 Q Okay. And, in fact, did that occur in a room that
24 y'all handle interviews at the Police Department?

25 Do you remember?

Julius Buncum - Direct examination
by Solicitor Shealy

1 A That particular interview I can't say for certain, but
2 that was what we would normally do. But I'm pretty sure it
3 was.

4 Q Okay. And if it was not that room, it was an interview
5 room?

6 A Yes, it was.

7 Q And if you would please first describe to the judge
8 whether or not Kenneth Murray appeared to have any
9 difficulty in communicating with you?

10 A None at all.

11 Q Did he appear to be intelligent enough to understand
12 your questions and to answer questions appropriately?

13 A He did.

14 Q What was his demeanor like?
15 How was he behaving?

16 A I would say his -- he was a little nervous. He didn't
17 want to be there. It's obvious.

18 Q Okay.

19 A And just I guess the way someone would act who didn't
20 want to be and didn't want to talk to someone at that time.

21 Q At that time.

22 Okay. And did you, in fact, go through the exercise of
23 advising him of his rights?

24 A Yes, I did.

25 Q Do you know what Sergeant Hembree was doing while you

Julius Buncum - Direct examination
by Solicitor Shealy

1 were doing this?

2 Do you remember?

3 A I don't know where he was. I know he was close by.

4 Q At that time were you in investigations or were you in
5 another capacity?

6 A I was in another capacity.

7 Q Okay. So, was the plan for you to actually interview
8 Mr. Murray or for you to wait until Mr. Hembree was
9 available to interview him?

10 A If -- I, I went in to, to read him his rights, build a
11 rapport. It if was gonna go anywhere, if he was gonna do --
12 if I could see where he was gonna do a little bit more
13 talking, then I would see if I can get somebody else to come
14 in.

15 Q Okay. And, in fact, Sergeant Hembree did come in?

16 A Yes, ma'am.

17 Q If you would, describe the process of advising
18 Mr. Murray of his rights.

19 A What we did -- what we have is advisement of rights
20 forms, and we would fill out the top and we have five
21 paragraphs and we would read each one, and normally I have
22 him to initial by the number. I'm looking at this one. It
23 has checkmarks. But I normally have him to initial these,
24 these five paragraphs after I read it and they understand
25 it.

Julius Buncum - Direct examination
by Solicitor Shealy

1 Q Okay. And when you fill out the top part of that form
2 where it indicates his name and his address, his sex, his
3 date of birth, who -- from whom are you getting that
4 information?

5 A I'm getting that from him.

6 Q Okay. And did he willingly give you that information?

7 A Yes, ma'am.

8 Q As you indicated that you read through numbers one
9 through five, would you have read them from the form?

10 A Yes, ma'am.

11 Q And at the completion of each numbered right, would you
12 ask him whether or not he understood what you had previously
13 read to him?

14 A Yes, ma'am.

15 Q Okay. So, did you do that at all the way down through
16 five, one through five?

17 A All the way through five.

18 Q Could you just state for the record please and read to
19 us what you read to him that day?

20 A What I read to him is who I was obviously, and he had
21 the absolute right to remain silent. And what I do is I
22 usually have it down where they could see it, and basically
23 go word-for-word, and you don't have to answer any questions
24 or give a statement and this fact can not be used against
25 you. Did I do answer -- that if I do answer questions or

Julius Buncum - Direct examination
by Solicitor Shealy

1 give a statement, anything I say can and will be used
2 against me in a court of law, and he initial, he initialed
3 on down.

4 Then I have a right to consult with a lawyer of my
5 choice before I answer questions or give a statement, and
6 also to have him present while I'm being questioned. That
7 if I wish to talk to a lawyer or have him present, if I'm
8 unable to afford to hire a lawyer, one would be appointed to
9 represent me free of charge. That if I decide to answer
10 questions or give a statement without having a lawyer
11 present representing me, I have the absolute right, during
12 this interview, to stop answering questions and to remain
13 silent and I ask him if he fully understood. He says yes.
14 I said well, if you understand, then I need for you to sign
15 here.

16 Q Okay. And showing you Court's Exhibit No. 4, and I
17 think it's probably the original of what you're reading
18 from, is that the document that you're talking about?

19 A Yes, it is.

20 Q Okay. And you were using the term initialing by each
21 number, but there are actually what type of markings there?

22 A Checkmarks.

23 Q who put the checkmarks there?

24 A It must of been him cause I asked him---

25 Q Do you remember specifically?

Julius Buncum - Direct examination
by Solicitor Shealy

1 A No, I don't.

2 Q Okay. But as a---

3 A I wouldn't put checkmarks.

4 Q Okay. That's, that's not something you typically do?

5 A No, it's not.

6 Q And when you asked him whether he understood them, it
7 is his signature that's reflected on the form?

8 A Yes, ma'am.

9 Q Now, did you then go further and discuss with him the
10 waiver of his rights?

11 A Yes, ma'am.

12 Q And could you please tell the judge, if you would, how
13 that process worked?

14 A Yes, sir. What, what I do is I asked him, after five
15 paragraphs, if he, if he understood the rights, could he
16 sign here. He understand those and he read them and then I
17 had -- I read the, the last paragraph. I fully understand
18 each of these rights which have been explained to me. And
19 having these in mind, I wish to waive these rights.

20 No threats, force, or promises of any kind have been
21 made to me by anyone to induce me, to induce or cause me to
22 waive these rights and answer questions, and I explained to
23 him that this is the part where we need to talk about some
24 things and he signed that.

25 Q Okay. And that is his signature reflected on the form?

Julius Buncum - Direct examination
by Solicitor Shealy

1 A Yes, ma'am.

2 Q With your witnessing---

3 A Yes, it is.

4 Q -- on it -- same page?

5 Tell us, if you would, if, at any point, he indicated
6 to you no, I'd like to talk to a lawyer.

7 A No.

8 Q Okay. Had he done that, what would you have done?

9 A It would of stopped and I would of went out and told --
10 Sergeant Hembree was the case -- well, he was the person in
11 charge that it's over, he's lawyering up, and we transport
12 him.

13 Q Okay. And do you remember any discussion with
14 Mr. Murray about some, knowing some of his family members?

15 A I may have. I very well may have. When I went in, my
16 job was to build a rapport and loosen him up a little bit
17 and make him feel a little bit more comfortable cause
18 everyone comes in is a little nervous. So, I probably --
19 that's typically what I probably would of done.

20 Q And do you, in fact, know some of his family members?

21 A I think I do.

22 Q Okay. Where are you from?

23 A I'm from Mount Pleasant.

24 Q And you've lived there for how many years?

25 A All my life.

Julius Buncum - Direct examination
by Solicitor Shealy

1 Q Okay. Do you recall whether or not you told Mr. Murray
2 that you would call a lawyer for him?

3 A I can't say for sure. I probably -- no.

4 Q Well, did he ever ask you to call a lawyer for him?

5 A No.

6 Q In reading him his rights, you told him he has the
7 right to a lawyer?

8 A Yes, ma'am.

9 Q Okay. And then did he ever ask you to please call one
10 for him?

11 A No.

12 Q And regarding family members, did you make any type of
13 phone call to a relative of his or tell him that you would
14 make a call to a relative of his?

15 A Once again, I don't know the particulars. It's been a
16 while. And whoever the relatives were, and I can't remember
17 right now who we were talking about, I don't know who, but
18 my job was to loosen him up. So, I may have said, you know,
19 if you need me to call somebody for you I'll call because he
20 was nervous, you know, and I just want to loosen him up.
21 He's a young guy.

22 Q And did you, in fact, as far as you remember, call
23 anyone?

24 A I can't remember.

25 Q Okay. But, again, at any point from the time that you

Julius Buncum - Direct examination
by Solicitor Shealy

1 first started dealing with Mr. Murray until Mr. Hembree came
2 in, did he, at any point, tell you he wanted a lawyer or he
3 wanted you to call a lawyer for him?

4 A No, ma'am, I wouldn't of -- I would of advised Sergeant
5 Hembree at that, you know, that there's no sense in going
6 in.

7 Q Right.

8 Okay. I have no further questions.

9 THE COURT: May I see---

10 SOLICITOR SHEALY: Sure.

11 THE COURT: ---Court's 4, solicitor?

12 Thank you.

13 Ms. Penn.

14 MS. PENN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. PENN:

17 Q Hi, Mr. Buncum.

18 A Hello.

19 Q You said earlier that Mr. Murray was nervous, correct?

20 A Well, everyone -- yes, ma'am, everyone's nervous.

21 Q Okay. And you also said that he didn't want to be
22 there, is that correct?

23 A I'm sure that -- yeah, I'm pretty sure. He didn't say
24 he didn't want to be there, but I don't know anyone who
25 would want to be there.

Julius Buncum - Cross-examination
by Mr. Penn

1 Q well, you, you just testified he, you thought he didn't
2 want to be there?

3 A Yes, that's -- my job was to build a rapport and calm
4 him down cause I know no one wants to be there.

5 Q And what's -- what made you think that he didn't want
6 to be there besides the general nobody wants to be there?

7 A That's it. That's basically it. I know -- as long as
8 I have been an investigator, I pretty much know that people
9 don't want to be in a position sitting with an officer who
10 we're accusing of doing some type of crime.

11 Q So, your job is to soften him up as you put it?

12 A well, of course, soften him, get them comfortable, more
13 comfortable than they are because they're, they're not gonna
14 be as comfortable walking in and speaking to someone they
15 don't know about something they may have done. So, I -- my
16 job, as an investigator, is to build a rapport, get him a
17 little bit more comfortable, loosen him up a little bit,
18 calm him down.

19 Q And one of the ways you do that is mentioning family or
20 people y'all might know that are in common?

21 A Right.

22 Q And you're not sure, but you think you might of done
23 that in this case?

24 A I may have. I've done it in the past. I may have done
25 it and I can't tell you I've done that for certain on this

Julius Buncum - Cross-examination
by Mr. Penn

1 particular person.

2 Q And you're not sure if you know or don't know members
3 of his family?

4 A I can't remember. I probably do, but I can't remember.
5 I can't remember the particulars of this particular case.

6 Q This was two years ago?

7 A Yes, ma'am.

8 Q And you're not sure if you know somebody now that you
9 might of known two years ago, is that correct?

10 A That's not correct. If you give me a name I'll let you
11 know if I know them.

12 Q Well, you know Mr. Murray or you knew him in 2011?

13 A Well, I grew up in---

14 Q You were interviewing him?

15 A Right, I don't --.

16 Q And you told him that you had family in common or---

17 A I may have.

18 Q You just don't remember?

19 A I don't remember.

20 Q You don't remember if you called his father?

21 A Don't remember.

22 Q You don't remember if you called his parents?

23 A I don't. Now, if you give me a name it may trigger,
24 but then I can let you know.

25 Q Did he give the names of his parents when he was in

Julius Buncum - Cross-examination
by Mr. Penn

1 there with you?

2 A Once again, ma'am, I can't remember the particulars of
3 the interview. All I remember is advising him of his
4 rights, talking to him, and we talked about something, I
5 can't exactly remember, but that was the basis of it.

6 Q And do you remember what time that form was filled out?

7 A This particular form, no, I don't. If I didn't write
8 it down I don't.

9 Q Do you remember how long you spoke to him?

10 A It was pretty lengthy. I'd say somewhere around the
11 neighborhood of an hour or so. I mean it wasn't no rushed
12 conversation. That's why I wanted to, you know, calm. We
13 wanted to talk.

14 Q And you testified that normally you have defendants
15 write their initials?

16 A That's what I normally do. I normally have them to
17 initial, put their initials there.

18 Q But that's not what happened in this case?

19 A This didn't happen here.

20 Q He did not initial?

21 A He didn't put initials there.

22 MS. PENN: Court's indulgence.

23 THE COURT: Yes, ma'am.

24 (Pause.)

25 MS. PENN: No further questions, Your Honor.

1 THE COURT: Redirect, solicitor?

2 SOLICITOR SHEALY: No further questions. Thank you.

3 THE COURT: Thank you.

4 Thank you very much for being with us this afternoon---

5 THE WITNESS: Yes, sir.

6 THE COURT: ---Officer Buncum. You may step down.

7 All right. Any other witnesses in reply on behalf of
8 the State, solicitor?

9 SOLICITOR SHEALY: No further questions. No further
10 witnesses. Excuse me.

11 THE COURT: All right. Ms. Penn, any witnesses in sur
12 reply?

13 MS. PENN: No, Your Honor.

14 THE COURT: All right. Thank you.

15 Thank you very much.

16 All right. Solicitor, I'll be glad to hear from you.

17 SOLICITOR ZIEGLER: Thank you, Your Honor.

18 In this case we have Mr. Murray who, when presented at
19 the Police Department, presented without any physical
20 defects or mental defects. He came as an adult. He even
21 initiated the, the interview on August 2nd to come speak
22 at the police station. It was voluntary on his part to call
23 and initiate that interview. He called Mount Pleasant
24 Police Department, that is, and leave a message for Justin
25 Hembree.

1 Justin Hembree, in fact, did arrange for Mr. Murray to
2 come to the police station after receiving that call, and
3 did interview him. Prior to that interview he verbally, and
4 in a written fashion, advised Mr. Murray of his rights.

5 So, for the purposes of Jackson v. Denno, Your Honor,
6 it's apparent that this interview and statement of
7 Mr. Murray was voluntary and it was also taken in compliance
8 with Miranda, and for that, for that reason, Your Honor, we
9 ask that you -- for that reason, Your Honor, we ask that you
10 allow this statement into evidence.

11 THE COURT: Thank you.

12 Thank you very much, solicitor.

13 Ms. Penn.

14 MS. PENN: Thank you, Your Honor.

15 Our motion for suppression is two parts. The first
16 part is that Miranda was invoked by my client. He said he
17 didn't want to talk, he said he wanted an attorney, and he
18 was ignored.

19 Your Honor, my client is not the slickest. He is not
20 the most sophisticated with his language, but he knew to say
21 I don't want to talk to y'all, I want my lawyer, and his
22 rights were ignored. He was ignored. Nobody listened to
23 him. They did not, under Miranda, and just leave him alone.
24 Instead they kept pushing him. They kept badgering him.
25 That first interrogation is ten hours. He gets one Pepsi

1 for ten hours.

2 I -- unfortunately we have no video. I can't see what
3 happened in that room, but Mr. Murray can tell you. He
4 tells you that Sergeant Hembree was not as pleasant to
5 Mr. Murray as he was to me, that he badgered him, that he
6 kept at him, he kept asking him questions, threatened him
7 with a bullet, threaten to put charges on him. Said that
8 he'd have to do 15 years.

9 My client remembers Buncum coming in as the softening
10 guy, as the guy to soften my client up, to get him to feel
11 comfortable, to talk to him about family they may or may not
12 have in common depending on who you believe, and Buncum
13 doesn't remember a lot of things.

14 There's no police report. He doesn't remember whether
15 he actually knows anybody Mr. Murray knows. But he
16 conveniently remembers that no, my client did not invoke his
17 right.

18 The other supporting witnesses for the State that would
19 say my client didn't invoke, he was treated nicely, nobody
20 yelled at him, nobody threatened him, they were only in
21 there for ten minutes, an hour of a ten hour interrogation.
22 They don't know, and they don't remember.

23 Once my client said I don't want to talk to y'all, I
24 want a lawyer, they should of left him alone. But he was
25 not strong willed enough to stand up to them and he caved

1 and he signed a statement close to 11:00, after eleven
2 o'clock at night, after he had been arrested at one o'clock
3 in the afternoon, and because of the -- and, furthermore,
4 it's our position that the suppression is not obviously for
5 the first statement, but for the second statement because
6 the second statement given in August is fruit of the
7 poisonous tree.

8 Once my client's will has been overborne and he has
9 asserted his right and nobody listens to him, he thinks
10 well, I try to tell them, nobody listens to me, the rules
11 have changed. They don't play by the rules I think about.
12 So, I'm gonna try to work with these new rules, and,
13 therefore, we're asking that the motion -- the statement
14 from August is also suppressed and that interrogation is
15 three hours long.

16 The second part of our motion to suppress is that his
17 statement was involuntary. Again, the time, ten hour
18 timeframe of one, the three hour timeframe of another, my
19 client's education or lack thereof, Your Honor, he told the
20 court that he did okay in school. He was a special ed
21 student since seventh grade. He didn't finish.

22 During the first interrogation, the only thing anybody
23 remembers is one Pepsi for ten hours. My client testified
24 that he was threatened with charges, and that Sergeant
25 Hembree, on that day, first day, kicked chairs and invaded

1 his personal space.

2 Your Honor, his will was overcome. His statement was
3 not voluntary. He did what he thought he had to do to get
4 out of there and have a signed statement. And once he
5 signed and did what he was, what he was told to do, the
6 questioning stopped, and that's a pattern he learned, but
7 that does not mean those words are his or that his statement
8 was voluntary.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 Thank you, Ms. Penn.

12 (Pause.)

13 THE COURT: All right. Anything in response,
14 solicitor?

15 SOLICITOR ZIEGLER: Yes, Your Honor.

16 I'd like to quickly address the earlier interview.
17 That's no credible evidence that the defendant invoked his
18 Miranda rights during that earlier interview, and the
19 defendant also did not testify that, that he was hungry or
20 thirsty during that interview as well.

21 Mr. Buncum offered for the defense to provide him with
22 names of family members of Mr. Murray and they were not
23 provided. So, he could not answer whether he did.

24 That's all we have, Your Honor.

25 THE COURT: Thank you.

1 Thank you, solicitor.

2 You care to respond, Ms. Penn?

3 You stood up.

4 MS. PENN: Just briefly, Your Honor.

5 THE COURT: Certainly.

6 MS. PENN: As far as cooperation is concerned, my
7 client brings up Buncum. He says I told Buncum I wanted a
8 lawyer, and Buncum remembered being with my client and
9 remembers -- well, doesn't remember, but possibly might have
10 spoken to him and spoken about his family, which is
11 consistent with his role as softener and with what my client
12 has said.

13 THE COURT: All right. Thank you.

14 Thank you very much.

15 All right. In the analysis of the statement to the
16 Court, of course, looks at it, understands it, but the State
17 must prove -- answer the four questions by a preponderance
18 of the evidence. In determining whether a statement was
19 voluntarily given, the Court must determine the totality of
20 the circumstances surrounding the giving of the confession.
21 As I understand it, the motion to suppress is focused on the
22 8/2/11, 2 August '11 statement that was given to Sergeant
23 Hembree.

24 So, they're four questions that the Court must answer.
25 The first question, did the defendant make this statement.

1 This statement being Court's Exhibit No. 2.

2 I find that the State has proven, by a preponderance of
3 the evidence, that he did make this statement. The
4 testimony by the officer, Sergeant Hembree, was that he
5 wrote the statement. It is indicated on the statement this
6 is the written statement of Kenneth Oredell Murray written
7 by Sergeant Justin Hembree. It is signed in two spots by
8 Mr. Murray indicating first I have read or have had read to
9 me the foregoing statement, which has been freely and
10 voluntarily made by me. It is true and correct to the best
11 of my knowledge, the defendant's signature and the two
12 witnesses on that, and he also indicates I have received a
13 copy of the above statement and his signature.

14 The second question is whether or not he was
15 administered his Miranda warnings before he was questioned
16 by law enforcement.

17 Well, I'll start from the most recent and work my way
18 backwards. As I look at the Court's Exhibit No. 1, that is
19 the Mount Pleasant Police Department advisement of rights to
20 Kenneth O. Murray dated 2 August 2011. It appears that
21 those rights were advised to Mr. Murray by Sergeant Justin
22 Hembree.

23 There are four sentences numbered one, two, three, and
24 four. To the left there's a line. The officer testified he
25 advised him of those rights. There the initials appear K.M.

1 by -- to the left of each one of those numbers.

2 At the bottom of -- two-thirds of the way down it says
3 I fully understand each of these rights which have been
4 explained to me. Signed by Kenneth Murray, dated 8/2/11,
5 and witnessed by Sergeant Hembree. Therefore, a waiver of
6 rights. I fully understand each of these rights which have
7 been explained to me, and having these in mind, I wish to
8 waive these rights. No threats, force, or promises of any
9 kind have been made to me by anyone to induce or cause me to
10 waive these rights and answer questions.

11 Of course, there's no question, from the testimony
12 between Sergeant Hembree and the defendant himself, that he,
13 the defendant, initiated this conduct, this contact with
14 Sergeant Hembree. Sergeant Hembree did not initiate that.
15 It's uncontradicted in the record and the defendant agreed
16 with that.

17 As I continue to work backwards from the timeline and
18 just, just review the other statements given by the, by the
19 defendant, Court's Exhibit No. 4 is a Mount Pleasant Police
20 Department advisement of rights given to Murray, Kenneth
21 Oredell. All the data is the same address, city, DOB.
22 There's no phone number on the first, on Court's Exhibit No.
23 2. There's a phone number on Court's Exhibit No. 2.

24 Mr. Buncum or former Officer Buncum came in here and
25 testified he advised him of his rights, that he testified as

1 his demeanor, that he appeared nervous as most people do
2 when they're gonna be confronted by law enforcement and
3 accused of a crime, that he, his opinion, Mr. Buncum's
4 opinion was that he understood those rights, that he signed
5 that he understood those rights, and that he signed a waiver
6 of those rights.

7 There's some testimony offered by -- in argument
8 offered by the defense concerning I believe Mr. Buncum's
9 characterization was loosen him up and part softening up and
10 kind of making him feel more comfortable. In the cases that
11 I'm familiar with, and I quote, "excessive friendliness on
12 the part of an interrogator can be deceptive. In some
13 instances, in combination with other tactics, it might
14 create an atmosphere in which a suspect forgets that his
15 questioner is in an adversarial role and thereby prompt
16 admissions that the suspect ordinarily only makes to a
17 friend. Not to the police. Nevertheless, the good guy
18 approach is recognized as a permissible interrogation
19 tactic." Citing Miller versus Fenton, 479 U.S. 989, 1986,
20 "holding confession admissible despite interrogating
21 officer's support in an encouraging manner aimed at winning
22 appellate's trust in making him feel comfortable about
23 confessing."

24 Also citing Beckwith versus United States, 425 U.S.
25 341, "interrogator had sympathetic attitude, but confession

1 was voluntary." Crater versus Cupp, 394 U.S. 731,
2 "confession voluntary when petitioner begins confessing
3 after the officer's sympathetically suggesting that the
4 victim had started a fight."

5 So, that, that approach is, is one of the factors that
6 you look at, but that, of course, does not necessarily make
7 a statement involuntary.

8 To go a little bit further back in the timeline, of
9 course, Sergeant Hembree testified that he verbally advised
10 Mr. Murray of his rights at the scene on Linnen Street when
11 they executed the search warrant at that time. So, he had
12 been given that Miranda rights three times.

13 I find, Ms. Penn, talking about Mr. Buncum's convenient
14 memory, and I, I, of course, disagree with that
15 characterization of Mr. Buncum, but I do agree that
16 convenient memory of Mr., Mr. Murray. He can remember
17 chairs being kicked. He can also remember asking for a
18 lawyer. He can remember threats being made, but he also
19 asked for a lawyer. He can be -- he can remember Sergeant
20 Hembree being up in his face, but he's also drowsy. He's
21 had five drinks, five alcohol drinks. So, his, his memory
22 is very, very selective, and I find it, I find it not, not,
23 not credible.

24 I see no reason to go into the factors. I do not find
25 any credibility. Both officers testified that he did not

1 ask for a lawyer, did not -- he did not invoke his right to
2 remain silent. Captain McCarthy also confirmed that she was
3 in there and her observation of him.

4 So, looking at the totality of the second question
5 then, of course, is whether or not he was administered his
6 Miranda warnings before he was questioned by law enforcement
7 officers. He was on 8/2/11 when he initiated contact. He
8 was on 7/28/11 in writing, and on 7/28/11 verbally by, by
9 two different officers.

10 The third question is whether or not the State has
11 proven, by preponderance of the evidence, he did knowingly
12 and intelligently waived his Constitutional rights. I've
13 already stated in the record that there is the waivers in
14 writing.

15 But in determining the voluntariness, the Court must
16 consider the totality of the circumstances surrounding the
17 defendant's giving of the statement, his youth, his
18 education or lack thereof, low intelligence, lack of any
19 advice of the accused's Constitutional rights, length of
20 detention, repeated and prolonged nature of questioning, and
21 the use of physical punishment such as deprivation of food
22 or sleep. Furthermore, no one factor is determinative, but
23 each case requires careful scrutiny of all the surrounding
24 circumstances.

25 On 8/2/11, it appears that he was brought, at his

1 request, to the Mount Pleasant Police Department to talk to
2 the sergeant that he claimed was threatening, was up in his
3 face, and was kicking chairs around, and, and he thought
4 that would be a good idea and he thinks that's credible. I
5 find no credibility. I find credibility that he requested
6 to come, but that defeats his position as to the 28th as
7 far as this Court is determined -- is concerned.

8 He's, he's born in 1984. He's in his late twenties.
9 He went to the twelfth grade. You know, they talk about
10 special education. To me that's like collateral damage.
11 Collateral damage is still damage. Special education is
12 still education. High school diplomas, college degrees,
13 extent of education, that doesn't measure intelligence.

14 Mr. Murray was able to track questioning both from his
15 attorneys and from the solicitors. While on the stand, his
16 responses were reasonable and appropriate and he seemed to
17 understand the questions and give what he considered to be
18 appropriate, although I think it would be in, noncredible
19 testimony.

20 So, his age is not a factor. Length of detention on
21 8/2/11 is not a factor. Three hours with a smoke break. He
22 was talking. Then there's half of the talking, there's the
23 writing of the statement at his request.

24 I find no issue with the fact there was or was not
25 videoed. Obviously if I allow the statement in, Ms. Penn

1 could decide to bring that issue before the jury.

2 So, I find the State is proven, by a preponderance of
3 the evidence, that the, as to the third question, was the
4 confession knowingly and intelligently, did he knowingly and
5 intelligently waive his Constitutional rights, I find that
6 he did.

7 I find at no point during the period of time leading up
8 to this statement that was given that he was not given
9 Miranda or that he ever invoked any of his Miranda rights.
10 With that being said, the redacted statement of
11 8/2/11 is admissible. I'm the gatekeeper in that regard and
12 I find, by a preponderance of the evidence, and the jury
13 will consider it under the standard of proof beyond a
14 reasonable doubt.

15 Ms. Penn, you have another motion you say?

16 MS. PENN: I do, Your Honor.

17 THE COURT: All right. And what is that motion?

18 MS. PENN: Our other challenge to the statement is that
19 it's fruit of the poisonous tree from---

20 THE COURT: I thought I addressed that.

21 MS. PENN: It's, it's a different argument. If you'll
22 let me continue---

23 THE COURT: Okay.

24 MS. PENN: ---I'll clarify.

25 From the search warrant, it gets police into 2627

1 Linnen Lane. Your Honor---

2 THE COURT: Wong Son, is that the case?

3 Wong Son?

4 MS. PENN: Yes, sir, Wong Son is the case. It's---

5 THE COURT: It's fruit of the poisonous tree?

6 MS. PENN: That's correct.

7 THE COURT: What year was that case?

8 That's, that's all right.

9 MS. PENN: It is 1963, Your Honor.

10 THE COURT: All right. Thank you.

11 MS. PENN: But it's still good law last time I checked.

12 THE COURT: That's real good law.

13 MS. PENN: And it states that evidence must be excluded

14 if it would not have come to light before the illegal

15 actions of the police and the evidence has been obtained by

16 exploitation of that illegality.

17 I have the search warrant.

18 May I approach?

19 THE COURT: Yes, ma'am.

20 And this is a copy I can mark on?

21 MS. PENN: Yes, Your Honor.

22 THE COURT: All right.

23 (Pause.)

24 THE COURT: All right.

25 MS. PENN: Your Honor, it's our position that that

1 warrant from the 28th of July was insufficient in that it
2 does not establish probable cause. It's conclusionary and
3 provides no information about the source's credibility other
4 than to say that this source is credible.

5 You can't tell, from reading the warrant, how or why
6 police thought guns would be in the house other than a
7 general statement that a suspect lived there.

8 Your Honor, that's not probable cause. Because Mr.
9 Murray's arrested in the house, and from there all things
10 flow, all the statements are obtained from that initial
11 arrest. We would ask that his statements be suppressed as
12 fruit of the unlawful search of the poisonous tree.

13 THE COURT: All right. Solicitor.

14 SOLICITOR SHEALY: Your Honor, we'd like to call
15 Michele Bacon to the stand.

16 THE COURT: All right.

17 MICHELE BACON, having been first duly
18 sworn, testified as follows:

19 THE CLERK: If you could please have a seat and state
20 your name spelling your last name for the record.

21 THE WITNESS: Michele Bacon. B-A-C-O-N.

22 DIRECT EXAMINATION

23 BY SOLICITOR SHEALY:

24 Q Ms. Bacon, if you would, please tell the jury where you
25 are currently working.

Michele Bacon - Direct examination
by Solicitor Shealy

1 A The Mount Pleasant Police Department.

2 Q And in what capacity now?

3 A I'm in the uniform patrol division as a field training
4 officer.

5 Q And prior to that, were you in the detective unit?

6 A Yes.

7 Q And how long were you there?

8 A Approximately seven years.

9 Q Focusing your attention back to July 28th of 2011.

10 First, if you could tell the judge, were you
11 investigating an armed robbery that took place at a Chinese
12 food restaurant?

13 A Yes.

14 Q And what?

15 A Golden Bowl.

16 Q Golden Bowl.

17 And when did that armed robbery occur?

18 A May 27th, 2011.

19 Q Okay. And as a part of that investigation, did you or
20 someone -- another detective interview the victims in that
21 case?

22 A Yes.

23 Q Was it you that interviewed them or was---

24 A I interviewed---

25 Q ---the interrogation---

Michele Bacon - Direct examination
by Solicitor Shealy

1 A Yes, I interviewed one of the victims. Another officer
2 interviewed the two other victims.

3 Q Okay. And just briefly could you describe that crime
4 to us?

5 A The victims reported that two suspects entered from the
6 back-door of the restaurant and one was armed with a
7 handgun. The suspects were -- one had on all black
8 clothing. The other one was wearing a little bit of
9 camouflaged. They both had their faces covered. They
10 entered the business and advised the employees to -- I think
11 that they motioned with the gun just to open the register.
12 So, they, the victims opened the register, gave them the
13 money, and they also went underneath the counter and gave
14 them some money bags containing receipts and other paperwork
15 related to the store and the two suspects then fled out the
16 back-door.

17 Q Okay. And regarding the money bags, then those
18 actually came from the place of the restaurant, of the
19 restaurant?

20 A That's correct.

21 Q Did you, after initially investigating the case, have
22 the occasion to interview a suspect in the Chinese
23 restaurant robbery?

24 A Yes.

25 Q Okay. And we'll just call it the Golden Bowl robbery.

Michele Bacon - Direct examination
by Solicitor Shealy

1 A Okay.

2 Q Who did you interview?

3 A I interviewed Denzel Moultrie.

4 Q Okay. And based on your interview of Denzel Moultrie,
5 did you learn the identity of the people who went into the
6 restaurant?

7 A Yes.

8 Q And who were those people?

9 A Jarrett Graddick and Keenan Coakley.

10 Q Okay. And did Mr. Moultrie, in his interview, indicate
11 what his role was in the armed robbery?

12 A Yes, he said---

13 Q What was his role?

14 A ---that he was the lookout.

15 Q Okay. Now, did he give you details of the, the plan to
16 go over there and the robbery?

17 A He did.

18 Q And pursuant to having interviewed him, did you, in
19 fact, prepare a search warrant?

20 A I did.

21 Q Do you have the original search warrant in---

22 A I do.

23 Q May I hold that please?

24 A (Witness complies.)

25 For which residence?

Michele Bacon - Direct examination
by Solicitor Shealy

1 Q Jarrett Graddick.

2 Your Honor, at this time I would like to mark the
3 original search warrant as a Court's Exhibit.

4 THE COURT: All right. Yes, ma'am.

5 Be Court's 5, Madam Court Reporter?

6 COURT REPORTER: Yes.

7 THE COURT: Five?

8 SOLICITOR SHEALY: That's correct.

9 COURT REPORTER: Yes, that's correct.

10 (WHEREUPON, the search warrant was marked as Court's
11 Exhibit No. 5 for identification purposes only at this
12 time.)

13 SOLICITOR SHEALY: And you have a copy of it, Your
14 Honor, is that correct?

15 THE COURT: Yes, ma'am.

16 Q I'll hand this back to you.

17 Now, where did you take the search warrant once it was
18 prepared?

19 A To Charleston County magistrate Tom Lynn.

20 Q And had you been to Magistrate Lynn's office on other
21 occasions with search warrants?

22 A Yes, I have.

23 Q If you would please describe to the judge how Judge
24 Lynn to conduct the presentation of the search warrants once
25 an officer comes there with one to his office.

Michele Bacon - Direct examination
by Solicitor Shealy

1 A Sure. Typically when I enter the office, Judge Lynn's
2 office, I will hand him the search warrant and he'll tell me
3 to go ahead and take a seat and then he'll ask me about the
4 facts of the, of the case, details of the case that kind of
5 led me up to obtaining the search warrant, whatever sort of
6 search warrant that I have for whatever case that I'm
7 investigating. So, I'll give him details such as, you know,
8 how we obtained specific information, what led us to believe
9 how this particular suspect was developed as a suspect, and
10 things of that nature.

11 So, I'll go over the, just the details of the case that
12 kind of led us to the actual drafting of the search warrant
13 and why we believe that those items were there.

14 Q Okay. And, in fact, in this search warrant, could you
15 indicate to the Court what the description of the property
16 sought was?

17 A Any instrumentalities of the crime of armed robbery to
18 include but not limited to any clothing, ID camouflaged
19 clothing, masks, glasses, gloves, shoes, shirt, pants, white
20 socks, guns, BB&T currency bags, US currency, notes,
21 ledgers, credit card receipts, and phones used and taken
22 during the commission of the crime.

23 Q Okay. So, when you go in to, to meet with Judge Lynn
24 to present him a search warrant, does he read the entire
25 search warrant in your presence?

Michele Bacon - Direct examination
by Solicitor Shealy

1 A Yes.

2 Q Okay. And does he, in fact, engage in questions of you
3 if he has questions for you?

4 A Yes.

5 Q Regarding the description of the property sought, you
6 had mentioned camouflaged clothing and you had gotten that
7 description previously from the victim?

8 A Correct.

9 Q Regarding the mask, did you also receive that
10 information from the victim?

11 A That's correct.

12 Q And as to the other items that are listed in that
13 description of the property sought, did those come both from
14 the victims and from Denzel Moultrie?

15 A Yes.

16 Q Do you recall whether or not, when you were speaking to
17 Judge Lynn, that you were describing to him where you had
18 gotten information from?

19 A Yes.

20 Q And there were actually two search warrants done
21 regarding the Golden Bowl, is that correct?

22 A It was three total.

23 Q Three?

24 A For all three defendants.

25 Q And so that would of been one for Mr. Moultrie, one for

Michele Bacon - Direct examination
by Solicitor Shealy

1 Mr. Coakley, and one for Mr. Graddick?

2 A Correct.

3 Q And the Court's Exhibit that I have presented you with
4 is one for Mr. Graddick?

5 A Correct.

6 Q Now, the description listed below, and I think that the
7 Court can certainly read it, that is a description of the
8 house that you believed that Jarrett Graddick lived in?

9 A Correct?

10 Q Is that correct?

11 A Yes.

12 Q And how did you have that information?

13 Had you had previous dealings with him?

14 A We had. I mean that's, that's a common -- that's an
15 address that comes up in our database at the Police
16 Department. I believe that's the address on his driver's
17 license.

18 Q Okay.

19 A That's his known residence.

20 Q And then regarding the, the reasons for you to believe
21 that there would still be property at that residence, could
22 you explain to the judge what you may have supplemented
23 that's not contained in your affidavit about why you
24 believed that there would be items of evidence there?

25 A Referring to?

Michele Bacon - Direct examination
by Solicitor Shealy

1 Q Let me see the Court's copy for a second.

2 Focusing your attention in this area regarding---

3 A Yes, ma'am.

4 Q ---your affidavit.

5 A Okay.

6 Q Do you recall whether or not you gave the judge further
7 information about who you, why you believed that a pistol
8 was used and that came from the victims?

9 I think you even noted that in your affidavit, is that
10 correct?

11 A That's correct.

12 Q And then earlier you, you had mentioned the BB&T bags.
13 Would you have explained to the judge why it was that
14 you believed that BB&T bags may be found there?

15 A Yes, because the victims said that there were BB&T
16 bags.

17 Q Okay. And then the description of the gun, did you
18 describe to the judge from whom you had learned about the
19 gun used in the case?

20 A Yes.

21 Q And that would of been?

22 A From the victim and Denzel Moultrie.

23 Q So, both from a codefendant and the victims?

24 A Correct.

25 Q And then regarding -- let's see.

Michele Bacon - Direct examination
by Solicitor Shealy

1 You indicated to the judge that, when interviewing
2 Denzel Moultrie and the way your search warrant reads, is he
3 gave specific corroborating information relative to the
4 robbery?

5 A Correct.

6 Q would you have supplemented your search warrant to the
7 judge in describing what the corroborating information was?

8 A Yes.

9 Q And do you recall what some of the corroborating
10 information was that you told the judge?

11 A Yes, Mr. Moultrie had mentioned, when he was the
12 lookout, where he parked was on Coakley Corner, and that's
13 where, the, the night of the robbery, we had a K-9 come out
14 and they tracked to actually Coakley Road, which is right
15 near Coakley Help Corner. Also Denzel Moultrie indicating
16 that one of his codefendants had possession of a gun and the
17 victims indicated that. Mr. Moultrie also mentioned that
18 one of his codefendants had a white bag that the money was
19 being placed in, and that was, that was confirmed by the
20 victims, that they had said that the, the perpetrators had a
21 white bag that they were putting the money in, and also the
22 clothing warn.

23 So, the dark clothing, the mask, the camouflaged
24 clothing. So, Denzel -- Mr. Moultrie gave me that
25 information --

Michele Bacon - Direct examination
by Solicitor Shealy

1 Q Okay.

2 A -- which, which the victims had reported.

3 Q And do you recall whether or not you shared that
4 information with Magistrate Lynn?

5 A I did.

6 Q Now, the last, the last sentence of your affidavit,
7 could you tell the judge first where you got that
8 information from and then also what you told Judge Lynn
9 about that?

10 A I received that information from our narcotics
11 detectives. The credible source was a criminal informant
12 and he had given our narcotics detectives, detectives
13 information that one of their CI's, criminal informant, had
14 advised them that he had seen guns at Jarrett Graddick's
15 residence, which is at 2627 Linnen Lane in Mount Pleasant.
16 And so I -- that's what I advised Judge Lynn of.

17 Q And do you recall what the informant said about how
18 recent to the date of the search warrant guns had been
19 found, had been seen there?

20 Do you remember?

21 A I don't remember specifically. I know that all of it,
22 all of the information kind of occurred within a week period
23 of time perhaps. The information received -- and it was all
24 around the time -- I believe that the CI stated something to
25 the effect of guns were always there after a robbery had

Michele Bacon - Direct examination
by Solicitor Shealy

1 occurred.

2 Q Okay. And you shared that information then with Judge
3 Lynn?

4 A Yes.

5 Q Now, this affidavit was done July 28th of 2011.

6 Do you recall whether you had any other conversation
7 with the judge about Jarrett Graddick and Keenan Coakley's
8 involvement in other robberies or would that not have taken
9 place at this time or do you remember?

10 A I, I don't recall. It may have -- it may have been
11 mentioned because we were having, and I don't have the dates
12 in front of me, but we were having a lot of robberies in the
13 area during that time and we kept hearing, just from
14 different sources on the street, a lot of what we call
15 chatter of Jarrett Graddick and Keenan Coakley being the
16 perpetrators of the, of these robberies. So --.

17 Q Now, after giving Judge Lynn that information, could
18 you please explain to the Court how it is that Judge Lynn
19 swears you and how that process takes place?

20 A Well, after I give him, you know, I -- the verbal
21 facts, and after he reads over the search warrant, right
22 before he actually signs the search warrant, he will raise
23 his right-hand, I'll raise my right-hand, and he'll ask me
24 do you swear that, that all the information contained in
25 this affidavit is true and correct to the best of your

Michele Bacon - Direct examination
by Solicitor Shealy

1 knowledge or something to that effect and I say yes, you
2 know, I swear. And then after that he'll -- I'll sign it
3 and then he signs it.

4 Q Okay. And then other than what was within the search
5 warrant, does he ask you any questions during the swearing
6 process about what y'all had discussed?

7 A Yes.

8 Q Can you explain how that happens?

9 A Well, he also says, you know, everything in the
10 affidavit, everything that we've discussed here today, is
11 that, is that true and correct and I say yes.

12 Q And, in fact, in connection with the Golden Bowl,
13 Jarrett Graddick and Keenan Coakley were arrested, is that
14 correct?

15 A Yes.

16 Q Along with Denzel Moultrie?

17 A Yes.

18 Q And could you tell the judge, if you would, is there
19 anything written in your affidavit that you are aware of
20 that is inaccurate, it's not correct?

21 A No.

22 Q And did you, at anytime, in any way, attempt to deceive
23 the judge, in any fashion, about the facts as they were?

24 A No.

25 SOLICITOR SHEALY: I beg the Court's indulgence just a

Michele Bacon - Direct examination
by Solicitor Shealy

1 moment.

2 (Pause.)

3 SOLICITOR SHEALY: I have no further questions.

4 Please answer any that the defense may have.

5 THE COURT: Thank you, solicitor.

6 Ms. Penn.

7 MS. PENN: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MS. PENN:

10 Q Detective Bacon, you testified that Denzel Moultrie is
11 the, is a credible source?

12 A Did I say that?

13 Q Yes.

14 A No.

15 Q No.

16 But in the search warrant, Denzel Moultrie is the one
17 who gives specific corroborating information?

18 THE COURT: When you say the first warrant, what are
19 you referring to?

20 MS. PENN: I'm sorry. The search warrant, Your Honor.

21 THE COURT: All right. I'm sorry.

22 A Yes.

23 Q That's what the search warrant says?

24 A Yes.

25 Q And Denzel Moultrie gives a couple different

Michele Bacon - Cross-examination
by Ms. Penn

1 statements, correct?

2 A Correct.

3 Q And, at first, he says he wasn't involved in the Golden
4 Bowl at all.

5 Is that true or not true?

6 A Yes.

7 Q First he says I had nothing to do with it, right?

8 A That's correct.

9 Q He was just -- actually he says that he was at Black
10 Biker's Week?

11 A Correct.

12 Q And he was---

13 THE COURT: He said he's where?

14 MS. PENN: At Black Biker's Week, Your Honor, in Myrtle
15 Beach.

16 THE COURT: All right.

17 Q But eventually he gives a statement saying that he was
18 the driver?

19 A That's correct.

20 Q And the source that you -- that is in the search
21 warrant in that last sentence where it says detectives
22 received information from a credible source that guns were
23 seen at Jarrett Graddick's listed residence, you just
24 testified that what the CI said was that guns were always
25 there after a robbery, correct?

Michele Bacon - Cross-examination
by Ms. Penn

1 A Correct.

2 Q Thank you.

3 I have no further questions, Your Honor.

4 THE COURT: Thank you.

5 SOLICITOR SHEALY: A couple follow-up questions.

6 REDIRECT EXAMINATION

7 BY SOLICITOR SHEALY:

8 Q Detective Bacon, in your experience as a, as a
9 detective, when you first talked to a suspect, is it
10 anything unusual about them denying involvement initially?

11 A No, not at all. Initially it's actually quite common
12 for defendants to, to minimize their involvement at first
13 and also what we call half truths. So, they'll give us half
14 of the truth and then, and then they'll give us the other
15 half would be a lie, and so that's very common in the very
16 beginning because they're afraid.

17 Q Okay. And you've articulated for us some of the
18 corroborating things that Denzel Moultrie says that matches
19 what the victim says, but you also indicated that there was
20 a detail that -- about where they had been on Coakley Road
21 that Denzel Moultrie would not have known that the K-9's hit
22 there, is that correct?

23 A That's correct.

24 Q So, based on his implicating himself, as well as
25 corroborating what the victims had told him, told you, and

Michele Bacon - Redirect examination
by Solicitor Shealy

1 the new information, you found him to be credible for
2 purposes of the search warrant, didn't you?

3 A Yes.

4 Q And as it related to the gun, there were guns used in
5 the incident itself?

6 A Correct.

7 Q And you also had independent information from narcotics
8 that Jarrett Graddick had guns in his house?

9 A Correct.

10 SOLICITOR SHEALY: I have nothing further.

11 THE COURT: Anything -- recross, Ms. Penn?

12 MS. PENN: No recross, Your Honor.

13 THE COURT: All right. Thank you.

14 Thank you very much.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: You may step down.

17 All right. Solicitor, do you have any other witnesses
18 to call in this regard?

19 SOLICITOR SHEALY: No, Your Honor.

20 THE COURT: All right. I'll be glad to hear from you,
21 Ms. Penn.

22 MS. PENN: Thank you, Your Honor.

23 Your Honor, I don't believe Detective, Detective
24 Bacon's testimony has fixed the facial invalidity of the
25 search warrant. She talked a little bit about the, about

1 Denzel Moultrie who gives a couple different statements, and
2 some of the statements are true and some of the statements
3 are not true.

4 Now, furthermore, with the actual search warrant
5 itself, as far as -- the only thing I can tell that links
6 the gun or a gun to the house is that last sentence where a
7 CI doesn't say I saw the specific kind of gun, that gun with
8 this characteristic or that characteristic used in this
9 robbery at this house. Instead the statement is very
10 general in that it is guns are always there.

11 There's nothing specific about that. There's nothing
12 that matches up with a victim's testimony of a certain kind
13 of gun being pointed at them, the CI then saying I saw that
14 very gun at this house.

15 Thank you, Your Honor.

16 THE COURT: Thank you.

17 Solicitor.

18 SOLICITOR SHEALY: Your Honor, I do think that the
19 search warrant satisfies 17-13-140 on its face. I think
20 what's crucial here is the oral supplementation that
21 Detective Bacon made to the, the magistrate involved. There
22 are -- and the magistrate, according to Detective Bacon, had
23 read the entire search warrant in its entirety.

24 There were certainly unique things being looked for in
25 the house other than just the gun. That be the B&B -- BB&T

1 currency bags, the camouflaged clothing.

2 I think that, based on Detective Bacon's testimony, in
3 combination with the search warrant, that the search warrant
4 indeed is valid.

5 THE COURT: Thank you.

6 Thank you very much, solicitor.

7 Anything in response, Ms. Penn?

8 MS. PENN: No, Your Honor.

9 THE COURT: All right. Thank you.

10 Thank you very much.

11 All right. In reviewing magistrate's determination of
12 the search warrant, I give great deference to the magistrate
13 whether or not he had a substantial basis for concluding
14 that probable cause existed.

15 In reviewing that determination, it's governed by,
16 again, the totality of the circumstances and our Appellate
17 Courts direct that we are to give great deference to the
18 magistrate. Affidavits are not meticulously drawn by
19 lawyers. They are normally drafted by nonlawyers in the
20 haste of a criminal investigation and should, therefore,
21 therefore, be viewed in a common sense and realistic
22 fashion.

23 The term probable cause does not import absolute
24 certainty. Rather, in determining whether a search warrant
25 should be issued, magistrates are concerned with

1 probabilities and not certainties.

2 A search is based on warrants will be given judicial
3 deference to the extent that an otherwise marginal search
4 warrant may be justified which meets the standard of
5 probable cause, and obviously it's clear, under State versus
6 Wesson and a long lines of cases, that you, you can
7 supplement written affidavit in the search warrant in lieu
8 of testimony.

9 I think there is sufficient probable cause in the
10 affidavit itself, number one.

11 Number two, however, a reviewing Court, if this is ever
12 reviewed, would say no there's not. I would then look to
13 that oral testimony that Detective Sergeant Bacon testified
14 to and the procedure that the magistrate went through and
15 her supplying specific information how she developed the
16 individual as a suspect, that the judge read the entire
17 warrant, and the judge asked her a number of questions.

18 Further, the additional info concerning the BB&T bags,
19 the white bags, it's also corroborated by a K-9 officer that
20 tracked to where the Codefendant Moultrie stated they parked
21 the car while he was the lookout.

22 The, the gun, in the last sentence, says further
23 corroborated by CI with narcotics that said that all of that
24 information came within a weeks period of time of the
25 issuance of the search warrant. Guns were always there

1 after a robbery had occurred.

2 I also take into account that, that Moultrie had given
3 different statements, according to cross-examination, that
4 A, nothing -- he had nothing to do with the Golden Bowl. B,
5 that he was at biker week in Myrtle Beach, and then, C,
6 eventually he gave a statement that he was the driver. He
7 offered to testify in redirect that his -- generally that
8 pattern of denial, I was somewhere else, and then admission
9 of.

10 So, I will find that the affidavit and the search
11 warrant is sufficient, and the statements of the Defendant
12 Murray are not fruits of the poisonous, poisonous tree.

13 All right. Any other motions, Ms. Penn?

14 MS. PENN: Yes, Your Honor.

15 We have a motion in limine to keep out any testimony or
16 evidence as to the other open charges that my client is
17 charged with pursuant to 404(b) on the grounds that it's
18 irrelevant to his current case.

19 THE COURT: Well, let's find if they're gonna use that.

20 Are y'all gonna use the other armed robbery?

21 SOLICITOR SHEALY: No, unless the door is opened.

22 THE COURT: All right.

23 SOLICITOR SHEALY: And, Your Honor, in contemplating
24 that, what we intended to do was just to indicate that --
25 what happens is Mr. Murray says in his statement that the

1 All right. The State will begin calling witnesses this
2 morning in its case in chief. I would ask you to please
3 give the parties, both the State and the defense, your
4 complete and undivided attention.

5 Thank you very much.

6 Solicitor, you may call your first witness.

7 SOLICITOR ZIEGLER: Thank you, Your Honor.

8 The State calls Mr. Desmond Ellington.

9 THE COURT: All right. Mr. Ellington, if you would,
10 just come around to my front right and be sworn by the, by
11 our clerk.

12 DESMONDE ELLINGTON, having been first
13 duly sworn, testified as follows:

14 THE CLERK: If you could please have a seat and state
15 your name spelling your last name for the record.

16 THE WITNESS: My name is Desmond Lewis Ellington.

17 E-L-L-I-N-G-T-O-N.

18 DIRECT EXAMINATION

19 BY SOLICITOR ZIEGLER:

20 Q Thank you.

21 Hello, Desmond.

22 A Hey.

23 Q Desmond, how old are you?

24 A Thirty-three.

25 Q And where are you currently employed?

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 where do you work now?

2 A Multiple places. I work at Glass Pro. Also still work
3 part-time at Pizza Hut.

4 THE COURT: Speak up a little bit for me please, Mr.
5 Ellington.

6 THE WITNESS: Uh-huh. (Affirmative).

7 I work at Glass Pro full-time. I work part-time also
8 at Pizza Hut and at Sonic also.

9 Q You stay busy?

10 A Yeah, pretty much.

11 Q How long have you been employed at Glass Pro and Pizza
12 Hut?

13 A Glass Pro, I've been there off and on for about two and
14 a half years. At Pizza Hut, I've been there almost 11 years
15 now.

16 Q Okay. So, what, what are some of your job
17 responsibilities at Glass Pro?

18 A Glass Pro, mostly just installing glass in your
19 windshield or glass and stuff like that.

20 Q And what about for Pizza Hut?

21 A Pizza Hut, I range from being the store manager. I've
22 been -- I run a shift manager now sometimes. I take
23 deliveries, clean the store, you know, make pizzas, stuff
24 like that. Pretty much everything in the store.

25 Q Okay. When we met last week, did I tell you that my

Desmonde Ellington - Direct examination
by Solicitor Ziegler

- 1 office ran your rap sheet and there was nothing on it?
- 2 A Yeah.
- 3 Q And, and what did you tell me when I told you that?
- 4 A I told you I had a misdemeanor from the police.
- 5 Q Okay. And did you, did you pay a fine for that?
- 6 A Yes, I did.
- 7 Q where did you pay that?
- 8 A Mount Pleasant.
- 9 Q was it a -- what kind of ticket?
- 10 was it a ticket?
- 11 A Yeah, a ticket, uh-huh. (Affirmative).
- 12 Q You were here yesterday.
- 13 Did Glass Pro allow you to have time off for that?
- 14 A Yes, they did.
- 15 Q Okay. And will you be here for the rest of the trial?
- 16 A I can. I took the day off also too. So --.
- 17 Q Okay. But you don't have to -- do you need to get back
- 18 to work?
- 19 A No, not today.
- 20 Q where were you employed in July 2011?
- 21 A Just working Pizza Hut. That was the only place I was
- 22 employed cause I was store manager at the time.
- 23 Q where was that Pizza Hut located?
- 24 A In Mount Pleasant on Highway 17 North. 2161-C.
- 25 Q Okay. Can you explain a little to the jury where that

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 Pizza Hut is in relation to things around it, maybe
2 landmarks around that area?

3 A Oh, yeah, right now they got a Cracker Barrel in the
4 area. They got Hobby Lobby that just opened back there, new
5 Harris Teeter --

6 Q Okay.

7 A -- right there on 17. We got a dry cleaners and a
8 laundromat in-between the Pizza Hut.

9 Q Okay. What was your position at Pizza Hut?
10 When -- you said you were the store manager?

11 A Store manager, uh-huh. (Affirmative).

12 Q And where were you on the night of July 22nd, 2011?

13 A Working a shift at Pizza Hut.

14 Q Were there any other employees there with you?

15 A Yeah, I had two others with me, a driver and a cook.

16 Q So we can get our bearings for the Pizza Hut and the
17 surroundings, I'm gonna show you a few photos.

18 A Uh-huh. (Affirmative).

19 Q And these photos have been marked for identification
20 purposes as State's Exhibits 1 through 13, and it's my
21 understanding there's no objection from defense counsel.

22 THE COURT: Is that correct, Ms. Penn?

23 MS. PENN: That's correct, Your Honor.

24 THE COURT: All right.. State's 1 through 13.

25 Thank you.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 Q And, Desmonde, I'm gonna put these photos -- I show
2 you---

3 THE COURT: How about he identifies them please?

4 SOLICITOR ZIEGLER: Sure.

5 THE COURT: Lay a foundation.

6 Q I'm going to present these photos to you one-by-one. I
7 want to know if you recognize them.

8 Do you recognize this one?

9 A Yes, it's the front of the store.

10 Q Okay.

11 THE COURT: You, you don't have to say what it is right
12 now. You can say it when you testify to it in front of the
13 jury. But just weed through them and see if you recognize
14 all those photographs.

15 THE WITNESS: Okay.

16 THE COURT: All right. Do you know what they are?

17 (Witness complies.)

18 Q Okay. Desmonde, I'm gonna show you the first
19 photograph here. This is marked State's Exhibit 6.

20 Do you recognize this photo?

21 A Yes, sir.

22 Q What is that?

23 A That is the front of the store.

24 Q And what is, what is the store next door to the Pizza
25 Hut there?

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 A It's in-between a dry cleaner and laundromat.

2 Q And this one might be a little difficult to see.

3 Can you identify what this is photo is?

4 A Yes, the front of the doors, a stick from when they
5 were doing construction in front of it.

6 Q Okay. Can you identify this one?

7 A That's the front counter. That's the till on the
8 counter from right after the robbery occurred.

9 Q I apologize. This was State's Exhibit No. 1, and this
10 shot of the front counter that you just identified is
11 State's Exhibit No. 2.

12 The next is State's Exhibit No. 3.

13 A That's a picture of the till after the robbery
14 happened.

15 Q Is that -- what's, what's the till?

16 A It goes into the cash drawer.

17 Q Okay. This next one is State's Exhibit 4.

18 A That's---

19 Q Can you identify that?

20 A That's a picture of a shoe print on the counter.

21 Q Next is State's Exhibit 5.

22 What is this, Desmonde?

23 A That's also another picture of the shoe print on the
24 counter.

25 Q Can you, can you point to the shoe print on there?

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 A Right here. Oh, right, right there.

2 Q Okay. Thank you.

3 A Uh-huh. (Affirmative).

4 Q This is State's Exhibit 7.

5 Can you identify that, Desmonde?

6 A That's just another shot of the front door of the
7 store.

8 Q And is this -- does this appear -- what time of day
9 does this appear to be?

10 A Daytime.

11 Q Okay. This is State's Exhibit 8.

12 A This is the inside of the store and a shot where the
13 brown doors would be going in to go back into the kitchen
14 area. Also showing the register where they took the money
15 out of the drawer.

16 Q Okay.

17 A And it's over the counter where I was at.

18 Q This is State's Exhibit 9.

19 Can you identify this one, Desmonde?

20 A Yeah, that's a shot of the opposite side of the front
21 counter area where you see both of the registers. Only one
22 of them was set up with the till, and the other two that
23 were working in the store were sitting kind of near the door
24 right there when the robbery occurred.

25 Q We'll, we'll get to that.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 which, which register has the till in it?

2 A The, this one right here.

3 Q Okay. Thank you.

4 This is State's Exhibit 10.

5 What is this, Desmonde?

6 A Just another shot of the front counter showing both of
7 the tills and the doorway and the sink there coming out.

8 Q This is State's Exhibit 11.

9 A That's inside the brown door where you come into the
10 kitchen area right where the store on -- the counter is and
11 the entrance, you know, where the soda machine is the
12 entrance to the front counter.

13 Q Where's this, where's this shot taken from?

14 A Standing in the kitchen going upward, upward part of
15 the store.

16 Q Okay. This is State's Exhibit 12.

17 A That's another shot of the brown doorway leading to the
18 front counter area.

19 Q Okay. And, finally, State's Exhibit No. 13.

20 A That's a shot taken kind of from where the other door
21 is and everything in the front counter area.

22 Q Thank you, Desmonde.

23 State moves to admit State's Exhibits 1 through 13.

24 THE COURT: All right. Without objection?

25 MS. PENN: No objection, Your Honor.

Desmonde Ellington - Direct examination.
by Solicitor Ziegler

1 THE COURT: One through 13 is in evidence without
2 objection.

3 (WHEREUPON, State's Exhibit Nos. 1 through 13 were
4 received into evidence at this time.)

5 Q And, Desmonde, from what direction -- I'm sorry.
6 On, on the night of July 22nd, coming -- you said
7 there were two other employees at the store?

8 A Uh-huh. (Affirmative).

9 Q Okay. And did anything unusual happen at the Pizza Hut
10 that night?

11 A Right after the last two customers walked out the door,
12 some guys ran in and stuck a stick in the door and, and came
13 in the door with guns---

14 Q Okay.

15 A ---and robbed me.

16 Q Approximately what time did those two people come into
17 the store?

18 A Probably about between 11:30 and 11:45. Somewhere in
19 that area.

20 Q Okay.

21 A Close to closing time.

22 Q What time was closing time?

23 A Twelve o'clock.

24 Q You remember what night of the week that was?

25 A It's a Friday I think.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 Q Desmonde, I'm, I'm going to return some of these photos
2 to have you explain where you were.

3 Desmonde, from what direction did these two people
4 approach the Pizza Hut?

5 A From where the dry cleaner is they came in.

6 Q Can you point that out for us please?

7 A They came in from this direction.

8 Q Okay. How many people did you see enter the Pizza Hut?

9 A Two people.

10 Q Did they come in at about the same time or was it
11 staggered?

12 A It was maybe a couple seconds of a stagger, but not
13 much.

14 Q And what were these people wearing?

15 A They were wearing gray sweaters and black pants, and
16 they had their sweaters over their heads.

17 Q How, how do you mean they had their sweaters over their
18 heads?

19 A Like they had it pulled over like this kind of sort on
20 holding it just so they can see up.

21 Q Okay. Could you tell what race they were?

22 A They were -- yeah, they were both black.

23 Q And how much of, how much of their, how much of a face
24 could you see through this sweater?

25 A Mostly just the chin area.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 Q Could you see the, the mouth area?

2 A Uh-huh. (Affirmative).

3 well, just, just on the main guy who I had.

4 Q Okay. Were -- and we'll get to that.

5 were they carrying anything?

6 A They both had pistols or guns or whatever it was.

7 Q Okay. And, Desmonde, would you mind speaking up a
8 little more for the jury and the Court please?

9 A Yeah.

10 Q Thank you.

11 Do these two men prop the door open when they came in?

12 A Yes, they used a stick from the construction area to
13 prop the door open as it was closing whenever the customers
14 walked out.

15 Q Now, Desmonde, when they entered, when these two men
16 entered, can you show me where you were in this photo?

17 A I was right here.

18 Q Okay. And on this photo, can you show me where the
19 other two employees were when these men entered the store?

20 A The driver was, at the time, was right here and the
21 cook was leaning against a doorway right here.

22 Q Okay. What did you and the other two employees do at
23 the, at the moment these two people entered the Pizza Hut?

24 A When they, when the first guy came through, the, the
25 cooking and driver -- the cook went straight to the floor.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 The driver kind of walked toward the back like into the
2 kitchen and then he hit the floor. So, he turned his back
3 before he hit the floor, and they both laid next to each
4 other by the sink area.

5 Q Okay. And what did you do?

6 A I kind of backed into the doorway toward the kitchen
7 and I laid on the floor.

8 Q Okay. Now, when you're talking about two people here,
9 and I want to kind of separate them in your, the way you
10 witnessed it as far as their roles---

11 A Uh-huh. (Affirmative).

12 Q ---in this incident.

13 So, let's talk first about -- well, briefly explain
14 what did each of them do when they came in.

15 A When the first guy came in he pointed a gun at us. He
16 jumped the counter and pointed the gun in my face, and I
17 kind of backed away and went in the floor cause the other
18 two had already hit the floor at that time.

19 Q What did the other person do?

20 A The other person came into the door and he went
21 straight to, to the kitchen area. He opened the brown door
22 and went to the kitchen area.

23 Q Let's talk about the one who jumped over the counter.

24 Do you know about how tall he was?

25 A He looked like he was about 6-foot. I mean he had --

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 he was taller than me.

2 Q Okay. Did you notice his height in comparison with the
3 other person?

4 A He looked a little bit taller than the other person.

5 Q After he jumped over the counter, who did he confront
6 first?

7 A He confronted me first. He stuck the gun in my face
8 and kind of turned around and went in the kitchen area by
9 the sink door.

10 Q Did he say anything?

11 A I couldn't, I couldn't -- if he said anything when he
12 first came in the door I didn't hear it.

13 Q Okay. And did he make, did he make any threats once he
14 was over the counter?

15 A Once we were laying on the floor he was talking to the
16 other two guys telling them to open the drawer.

17 Q Did you say anything to him?

18 A Once he started hassling about getting the door opened,
19 I told him that I would get the money and got up and I went
20 to the front counter to open the drawer.

21 Q What, what really made you realize he was serious about
22 this?

23 A When I went to open the drawer he was standing there
24 telling me well, hurry up, I'm gonna shoot somebody.

25 Q So, did -- when you told him you would open the drawer,

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 did he confront you at that time?

2 A He came back out front by the drawer so I could open it
3 and he was standing behind me.

4 Q Now, you said he was carrying a gun.

5 What did that gun look like?

6 A It was a long gun I mean. I get into stuff like that
7 and I'd never seen like that kind of gun or anything. So, I
8 couldn't really describe it. It just looked like it had a
9 long barrel or something like that.

10 Q Was it a -- did it appear to be a handgun?

11 A Yeah, like a handgun.

12 Q Did you perceive that to be a deadly weapon?

13 A Yeah, anytime somebody stick a gun in your face
14 that's---

15 Q Okay.

16 A Yeah.

17 Q Now, did he -- I think we may have, we may have touched
18 on this, but I want to clarify.

19 Did he point that gun at you?

20 A Yes, he did.

21 Q And you said he told you to open the cash register
22 drawer?

23 A Uh-huh. (Affirmative).

24 Q Did you open the cash register drawer for him?

25 A Yes, I did.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 Q After you opened the register, did, did he or the other
2 person remove anything from it?

3 A Yeah, after I opened the till I backed away from it and
4 he started taking money out of it and me and the other
5 person came up and helped take the money out of the drawer
6 also.

7 Q Okay. Were you standing -- where were you standing
8 when they did that?

9 A I was standing near the drawer, but I backed up a
10 little bit and I kind of turned away as they were starting
11 to take the money out of the drawer.

12 Q Did they keep that money?

13 A Yes, they did.

14 Q After, after they retrieved the money out of the
15 drawer, did they make any other demands?

16 A As they were taking the money out of the drawer, they
17 asked me to open the safe also.

18 Q What did you do when they demanded that the safe be
19 opened?

20 A I told them that I couldn't get the money out of the
21 safe this time of night and I walked over to the safe to put
22 the password in to show them that I couldn't get it out of
23 the safe.

24 Q Let's talk about the other person involved in this
25 incident, the one who did not jump over the counter.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 what did he do during this incident?

2 How did he participate?

3 A He mostly seemed to be a lookout. He didn't really see
4 anything or really move that much. He mostly just stood in
5 the doorway kind of in-between the kitchen and where the
6 soda machine is and everything.

7 Q Did he, did he take -- did he help take the money?

8 A I saw him walking kind of -- kind of saw him walking
9 toward the counter as I started to turn around, but, you
10 know, as far as I know he took it.

11 Q From where the other employees were laying down on the
12 other side of the kitchen from you or the other side of the
13 counter --

14 A Uh-huh. (Affirmative).

15 Q -- and, and knowing where this other -- this person was
16 standing, would you expect someone who was laying down over
17 by where those employees were laying down to be able to
18 see---

19 MS. PENN: Objection, Your Honor.

20 THE COURT: Sustained.

21 Q Now, this other person, you said he was carrying a gun
22 too?

23 A Yes, he was.

24 Q what did that gun look like?

25 A It looked the same as the other one.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 Q Did -- once they -- once you proved to them that you
2 could not open the safe, what did they do?

3 A As I was putting the password in and telling them I
4 couldn't open the safe and I backed up, the mean guy jumped
5 over the counter and ran out the door. The other guy, he
6 was in the doorway. He kind of glanced back into the
7 kitchen one time and he ran out the door too.

8 Q So, did it, did it appear that they left together?

9 A They kind of left behind each other, but --.

10 Q And what direction did they leave the store?

11 A After they went out the door they went back toward the
12 left where the dry cleaner is. Same way they came in.

13 Q Same way they came in.

14 Did they leave with the money from the cash register?

15 A Yes, they did.

16 Q What did you do after they left?

17 A After they left I went out to the front door to lock
18 the door, and as I was locking the door up, I still had the
19 door cracked open and it sounded like a car was pulling off
20 from the side of the, like where the Baker dealership next
21 to us, and a little road right there. So, it sound like a
22 car was kind of taking off from over there. You could tell
23 how the engine kind of like getting up to speed, and it
24 looked like a purplish and bluish Suzuki Forenza going past
25 the little white -- up there.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 Q Okay. Now, you just mentioned Baker Motor Company, and
2 you said that you thought you saw the car coming from that
3 direction.

4 A Uh-huh. (Affirmative).

5 Q Can you explain, with this photo, which direction the
6 Baker Motor Company is?

7 A Yes, it's, it's, it's some bushes and shrubbery on this
8 side of the store, and right after that it's a road that
9 goes in-between there, and the Baker dealership is right
10 there, and then it's a little day care and stuff behind
11 that. So, it seemed like they were pulling off from there
12 because that's the closest road to where the store is if
13 they were running that direction and then coming out.

14 Q Is the Baker -- and you -- is the Baker Motor Company
15 in the same direction as the way they went when they left?

16 A No, hu huh. (Negative). They went back towards like
17 they were going back towards Wando.

18 Q But when they left on, on---

19 A Oh.

20 Q When they left the store.

21 A Oh, yeah, when they first ran out, they ran towards the
22 dealership.

23 Q Okay.

24 A Uh-huh. (Affirmative).

25 Q Did you -- when did you call -- did you call the

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 police?

2 A Yes, we did. Right after I locked the door and
3 everything.

4 Q Did the police arrive soon after that?

5 A Yes, they did.

6 Q Approximately how long was it from the time that these
7 two men entered the store to the time that they left?

8 A I would say maybe two or three minutes, a short period
9 of time there.

10 SOLICITOR ZIEGLER: Okay. Court's indulgence please,
11 Your Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q Desmonde, who, who were the other two employees who
15 were working at the Pizza Hut that night?

16 A It was Lamar Mitchell, he was a cook, and Fouad Bouani.
17 He was the driver.

18 SOLICITOR ZIEGLER: Okay. And, Your Honor, would,
19 would you mind if the witness steps down from the witness
20 box to demonstrate something?

21 THE COURT: I do not.

22 Q Desmonde, can you please come down to the floor here?

23 A (Witness comes down from the stand.)

24 Q I'd like you to quickly again demonstrate how the
25 sweaters were worn, how these men wore their shirts.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 A They were kind of like this.

2 Q Okay. And how -- and demonstrate how they pointed the
3 gun at you if I'm you.

4 A Right there. He wasn't super close to me, but he was
5 pointing it like that, and then when I got there he kind of
6 ran this way into the kitchen.

7 Q Okay.

8 A But he had his hand up like this.

9 Q Okay. Thank you. You may be seated please.

10 A (Witness returns to the stand.)

11 Q Now, Desmonde, this -- the person that did not jump
12 over the counter, can you show me on this photo kind of
13 where he was?

14 I'll show you another one, another one from the inside,
15 but --.

16 A I mean he didn't really -- he was probably more in this
17 area behind the door, but --.

18 Q Do you mean -- which door do you mean?

19 A Behind this door.

20 Q Okay. That door I just showed you, where is that in,
21 in this -- where would that be in this photo?

22 A Kind of pretty much the opposite of where this wall is.

23 Q Okay. And remind the jury again please where the other
24 two employees were when these men entered.

25 A Well, the driver was -- I mean the driver was on the

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 counter, leaning on the counter right here and the cook was
2 leaning on the doorway right there.

3 Q And then what did -- when they went on the floor, where
4 did they go to the floor?

5 A They both hit the floor kind of under where the sink
6 was.

7 Q Okay. So, would there be anything -- is anything --
8 would anything obstruct their view of---

9 MS. PENN: Objection, Your Honor.

10 THE COURT: Rephrase the question. I would sustain
11 that objection.

12 SOLICITOR ZIEGLER: Court's indulgence please, Your
13 Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 Q Desmonde, remind us one more time where, where these
17 two other employees were.

18 A The cook was---

19 MS. PENN: Objection, Your Honor.

20 THE COURT: Overruled.

21 Q Go ahead please.

22 A The cook was leaning against this post right here and
23 the driver was up here leaning against the counter.

24 Q And when they went to the floor, where, where did they
25 go?

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 A When, when the first guy came in with the gun, the cook
2 hit the floor immediately. The driver ran into the kitchen
3 and hit the floor right next to the driver -- right next to
4 the cook.

5 Q And what is this on the bottom of the photo?

6 A Right here?

7 Q Yes.

8 A This is the front of the counter.

9 Q Okay. And the person who did not jump over the
10 counter, remind us more time please, Desmonde, where he was.

11 A As soon as he came in the door he went straight through
12 this door and kind of stood in the doorway kind of right
13 there.

14 Q And what is, what is on the left side of this photo
15 please?

16 A You mean the opposite side of the wall?

17 Q No, right -- in this, in this very photo, what do you
18 see here?

19 A Well, we got the cash drawer where all the money and
20 stuff was in.

21 THE COURT: You're gonna have to -- you turned away
22 from the jury. I apologize, Mr. Ellington. So, keep your
23 voice up so the jury can hear you.

24 THE WITNESS: Okay.

25 THE COURT: All right.

Desmonde Ellington - Direct examination
by Solicitor Ziegler

1 A Right here you got the cash drawer where all the money
2 was kept, the doorway right here that leads into the kitchen
3 area and stuff, and then we got the big brown door that
4 opens up from the -- coming inside this door that goes into,
5 that leads into the kitchen, and this is the counter area.
6 So, you got the floor behind the counter and everything.

7 Q Okay. Thank you, Desmonde.

8 Court's indulgence please, Your Honor.

9 THE COURT: Oh, yes, sir.

10 (Pause.)

11 SOLICITOR ZIEGLER: I have no further questions for
12 Mr. Ellington, Your Honor.

13 THE COURT: Thank you. Thank you, solicitor.

14 Ms. Penn.

15 MS. PENN: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. PENN:

18 Q Good morning.

19 A Hey, how you doing?

20 Q I'm good.

21 How are you?

22 A All right.

23 Q Mr. Ellington, when this happened, it happened really
24 fast, right?

25 A Yeah, for the most part.

Desmonde Ellington - Cross-examination
by Ms. Penn

1 Q You said two, three minutes?

2 A Yeah.

3 Q And somebody came in, stuck a gun in your face, right?

4 A Yes.

5 Q And you were staring at that gun?

6 A Yes.

7 Q You could describe it to us?

8 You said it was black and it was long?

9 A Yes.

10 Q And that gun was really scary, wasn't it?

11 A It was to me.

12 THE COURT: Speak up a little bit for me please, Mr.
13 Ellington.

14 THE WITNESS: Yes, sir.

15 Q Normally that's directed at me. So --.

16 Now, you testified earlier that you knew they were
17 serious because one man said hurry up, I'm going to shoot
18 someone, is that correct?

19 A He was saying hurry up and open the drawer before I
20 shoot someone.

21 Q Okay. Now, after this happened to you, the police
22 came, right?

23 A Yes, after everything was over, uh-huh. (Affirmative).

24 Q And when the police came and talked to you, they took a
25 statement from you?

Desmonde Ellington - Cross-examination
by Ms. Penn

1 A Yes.

2 Q And you told them everything you could tell them?

3 A Yes.

4 Q Because you wanted to make sure they caught the right
5 guy?

6 A Yes.

7 Q You wanted to make sure that they understood how
8 serious this was to them, right?

9 A Yes.

10 Q And you told them how scared you were?

11 A They didn't really ask if I was scared or anything, but
12 they asked me if I was okay.

13 Q Okay. They asked you if you were okay.

14 They wrote a statement for you, right?

15 A Yes.

16 Q And they had you read it?

17 A Yes.

18 Q And you got to read it and make sure that it was all,
19 you know, as you told them?

20 A Yes.

21 Q And sign it?

22 A I believe I signed it, yeah.

23 Q And in that statement you didn't say anything about
24 hurry up, I'm gonna shoot someone, is that right?

25 A I don't remember. I should of said that, but I don't

Desmonde Ellington - Cross-examination
by Ms. Penn

1 remember if I did.

2 Q Okay. You should of said it, but you don't remember if
3 you did or not?

4 A Uh-huh. (Affirmative).

5 MS. PENN: Okay. Court's indulgence, Your Honor.

6 THE COURT: Yes, ma'am.

7 (Pause.)

8 Q Thank you. I have no further questions.

9 THE COURT: Redirect, solicitor?

10 REDIRECT EXAMINATION

11 BY SOLICITOR ZIEGLER:

12 Q A couple more quick questions, Desmonde.

13 You remember, you remember giving a statement to the
14 officers?

15 A Yes, I do.

16 Q And did you tell them in that statement that there
17 were -- what did you tell them -- how many people did you
18 tell them came into the store?

19 A Two.

20 Q And did two people come into the store?

21 A Yes, they did. I was, I was the only person that saw
22 these people because the other two people hit the floor so
23 quick.

24 MS. PENN: Objection.

25 THE COURT: Overruled.

Desmonde Ellington - Redirect examination
by Solicitor Ziegler

1 You may continue, Mr. Ellington.

2 A The other people hit the floor as soon as the first
3 person came in, and, like I stated before, the driver turned
4 his back and went into the kitchen and hit the floor, and
5 there -- they may not have seen the other person also
6 because of the obstruction of where they were laying, and
7 that person -- the second person that came into the store
8 never came that deep into the kitchen for them to see him.

9 Q Okay. Thank you, Mr. Ellington.

10 THE COURT: Recross, Ms. Penn.

11 MS. PENN: Court's indulgence, Your Honor.

12 (Pause.)

13 RE CROSS EXAMINATION

14 BY MS. PENN:

15 Q Mr. Ellington?

16 A Yes.

17 Q That door or that doorway has no door, is that correct?

18 A No. Yes, it is. It doesn't have a door. It doesn't
19 have a door.

20 Q Thank you.

21 No further questions.

22 THE COURT: Thank you.

23 Thank you very much, Mr. Ellington. You may step down.

24 All right. Solicitor, you may call your next witness.

25 SOLICITOR ZIEGLER: State calls Ms. Ann Son.

Ann Son - Direct examination
by Solicitor Ziegler

1 THE COURT: All right. If you'd come up to my front
2 right and be sworn please.

3 ANN SON, having been first duly
4 sworn, testified as follows:

5 THE CLERK: If you could please have a seat and state
6 your name spelling your last name for the record.

7 THE WITNESS: My name is Ann Son. S-O-N.

8 DIRECT EXAMINATION

9 BY SOLICITOR ZIEGLER:

10 Q Morning, Ms. Son.

11 A Good morning.

12 Q Ms. Son, how old are you?

13 A I'm 38.

14 Q What is your highest level of education?

15 A I have a Bachelor's Degree in Business Management with
16 a concentration in marketing.

17 Q And what is your occupation?

18 A I am a dry cleaner.

19 Q Do you, do you manage the Village Cleaners located at
20 2161 U.S. 17 in Mount Pleasant?

21 A I do.

22 Q Were you managing that establishment in July of 2011?

23 A I was.

24 Q And where is the Village Cleaners in relation to Pizza
25 Hut?

Ann Son - Direct examination
by solicitor Ziegler

1 A If you're facing the Pizza Hut, we're located right
2 next door to the right.

3 Q That's if you're facing the Pizza Hut?

4 A Uh-huh. (Affirmative).

5 Q Did you have any surveillance cameras in the store in
6 July of 2011?

7 A We did.

8 MS. PENN: Your Honor, at this point --

9 THE COURT: Yes, ma'am.

10 MS. PENN: -- I have a matter of law.

11 THE COURT: All right. Thank you.

12 Madam Forelady, ladies and gentlemen of the jury, if
13 you please leave your notepads on your chair upside down and
14 take a brief recess. Do not discuss this case with anyone
15 including your fellow jurors while you're back there.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Ms. Penn.

19 MS. PENN: Thank you, Your Honor.

20 It's my understanding that Ms., Ms. Son is going to
21 testify about the surveillance video. That video no longer
22 exists.

23 Our objection would be to her testifying as to the
24 contents of what she saw on that video as a violation of the
25 Best Evidence Rule, Rule 1002.

Ann Son - Direct examination
by Solicitor Ziegler

1 THE COURT: All right. Well, thank you, Ms. Penn.
2 Solicitor.

3 SOLICITOR ZIEGLER: Your Honor, we do intend to offer a
4 witness, offer two witnesses to testify that, that that
5 video is no longer available due to a computer virus and
6 couldn't be obtained from the computer. There was no
7 available copy of it.

8 Given that, that the best evidence, the actual video,
9 is unavailable, we, we intend to introduce evidence of what
10 was on it through someone who watched that video and is
11 familiar with it. And if it will please the Court, I'd ask
12 a few more questions of, of the witness to show why it
13 wasn't available and a little further develop the facts,
14 Your Honor.

15 THE COURT: All right. Just, just give me a minute
16 please.

17 SOLICITOR ZIEGLER: Yes, sir.

18 (Pause.)

19 THE COURT: All right. Solicitor, you may examine the
20 witness on this point.

21 SOLICITOR ZIEGLER: Your Honor, the questions we'll be
22 asking will be focused on Rule 1004, Rule 1004 of the South
23 Carolina Rules of Evidence.

24 THE COURT: 1004?

25 SOLICITOR ZIEGLER: Yes.

Ann Son - Direct examination
by Solicitor Ziegler

1 THE COURT: Sub 1?

2 Sub 1 under 1004?

3 SOLICITOR ZIEGLER: Your Honor, it's sort of a -- it,
4 it can, can be either -- fall under 1 or Subsection 2.

5 THE COURT: All right. You may continue.

6 SOLICITOR ZIEGLER: Your Honor, may I continue with the
7 previous line of questioning?

8 THE COURT: Yes, sir.

9 CONTINUED DIRECT EXAMINATION

10 BY SOLICITOR ZIEGLER:

11 Q Ms. Son, did you have surveillance cameras in your
12 store in July 2011?

13 A We did.

14 Q Was -- what, what views were provided by the
15 surveillance cameras?

16 A There was one particular camera that was aimed directly
17 towards the front of the store --

18 Q Okay.

19 A -- closest to the Pizza Hut.

20 Q Was it capturing footage on the -- July 22nd, 2011?

21 A It was.

22 Q And what format was that footage stored?

23 A It's stored on the hard drive on our computer.

24 Q Did the Mount Pleasant Police Department request a copy
25 of that footage?

Ann Son - Direct examination
by Solicitor Ziegler

1 A They did and I tried to retrieve it and made a copy of
2 it on disk, but I was only able to view it and was not able
3 to make a copy of it. So, I asked them to come in and take
4 the computer with them.

5 Q Did you, did you view that footage at the request of
6 the Police Department?

7 A I did.

8 Q Did they highlight when they wanted, when the footage
9 would be from that they wanted you to view?

10 A A timeframe, yes, sir.

11 Q And did the Mount Pleasant Police Department attempt to
12 retrieve that surveillance video?

13 A Yes, they did.

14 Q Did they send, did they send anyone to pick it up?

15 You said they came to pick it up.

16 A Initially they did, uh-huh, and then they weren't able
17 to retrieve it from my location. So, I gave them permission
18 to take the computer and the hard drive with them to the
19 Police Department.

20 Q To your knowledge were they ever able to actually
21 retrieve that footage from the computer?

22 A No, they were not.

23 Q Do you know why?

24 A Because the computer had a serious virus that I was
25 unaware of.

Ann Son - Direct examination
by Solicitor Ziegler

1 SOLICITOR ZIEGLER: Your Honor, if you would like I can
2 ask Ms. Son what was on the videotape if you need that for
3 purposes of this hearing.

4 THE COURT: You may. You may do so.

5 Q Ms. Son, do you have a good memory of what was on
6 that---

7 A I do.

8 Q ---video?

9 Did you witness anything unusual on that video?

10 A I did.

11 Q What did you, what did you witness?

12 Ms. Son, what were you able to witness?

13 A Given the timeframe that they asked me to pull up, it
14 was after 11, 11:00, a little after 11:00, I noticed that
15 there was a female customer who left the Pizza Hut, and I
16 know she was female because she had on a skirt, and then I
17 was able to see two men walking briskly from our drive
18 through at the dry cleaner going into the Pizza Hut.

19 Q From what direction did those two men approach the
20 Pizza Hut?

21 A They were coming -- if you're facing our building, they
22 were coming from the right. There's some woods there, and
23 now there's a car dealership. They came from that
24 direction, pass the dry cleaners, into the Pizza Hut.

25 Q If you were, if you were inside of the dry cleaners --

Ann Son - Direct examination
by Solicitor Ziegler

- 1 A Uh-huh. (Affirmative).
- 2 Q -- looking out --
- 3 A Uh-huh. (Affirmative).
- 4 Q -- which direction?
- 5 A They would be coming from your left.
- 6 Q Okay. At what pace were they moving?
- 7 A Walking briskly.
- 8 Q Were they, were they carrying anything?
- 9 A I -- the first one was a short stocky -- shorter
- 10 stockier build male. The second one was a taller skinner
- 11 build male. The first one I did not see if there was
- 12 anything in his hand, but the second one was carrying a two
- 13 by four.
- 14 Q Did it appear that those, that those two men entered
- 15 the Pizza Hut?
- 16 A Yes.
- 17 Q How, how could you tell that?
- 18 A Because I saw them going into the Pizza Hut from the
- 19 video.
- 20 Q Does the video provide any view of people entering and
- 21 exiting the Pizza Hut?
- 22 A It does. That's how I was able to determine that they
- 23 came in after the previous customer left.
- 24 Q Did those, did those two men or did two men move past
- 25 the dry cleaners a second time?

Ann Son - Direct examination
by Solicitor Ziegler

1 A They did on their way out, but they were running
2 without anything in their hand.

3 Q About how long was that after --

4 A I would say about three---

5 Q -- after they left Pizza Hut?

6 A I would say about three minutes.

7 SOLICITOR ZIEGLER: Court's indulgence please, Your
8 Honor.

9 (Pause.)

10 SOLICITOR ZIEGLER: No further questions at this time,
11 Your Honor.

12 THE COURT: Thank you.

13 Anything you would like to ask in camera, Ms., Ms.
14 Penn?

15 MS. PENN: Yes, Your Honor.

16 CROSS-EXAMINATION

17 BY MS. PENN:

18 Q Ms. Son, you were first contacted about this on the
19 23rd?

20 A Uh-huh. (Affirmative).

21 Q Is that right?

22 And you were suppose to have a copy made?

23 A Yes.

24 Q And you didn't?

25 A I couldn't.

Ann Son - Cross-examination
by Ms. Penn

1 Q There is no copy that exists, right?

2 A No, there is not.

3 Q Okay. And when police contacted you about getting a
4 copy, that was about two weeks later?

5 A I'm not sure of the timeline.

6 Q You don't remember that?

7 A No, ma'am.

8 MS. PENN: Okay. I have no further questions, Your
9 Honor.

10 THE COURT: All right.

11 SOLICITOR ZIEGLER: Your Honor, we also have a
12 gentleman from the Town of Mount Pleasant, the IT staff
13 person who tried to retrieve that video. If you'd like to
14 hear from him as a witness you can.

15 (Pause.)

16 THE COURT: All right. Anything further on your
17 objection, Ms. Penn?

18 MS. PENN: No, Your Honor.

19 THE COURT: Anything further from the State as far as a
20 legal argument from either the Best Evidence Rule or
21 admissibility of the other evidence under the rule,
22 solicitor?

23 SOLICITOR ZIEGLER: Your Honor, I submit that the Mount
24 Pleasant Police Department and, and Ms. Son and our office
25 made all attempts to, all possible attempts to retrieve that

Ann Son - Cross-examination
by Ms. Penn

1 video and those were unsuccessful.

2 THE COURT: All right. Thank you.

3 Of course, the initial matter as to the lack of
4 presence of the video itself under State versus Cheeseboro
5 and Melton prior to any trial of a case, a homicide case,
6 and that's even very different than the factual situation
7 here to where the computer has a virus unknown to the owner
8 or the business operator of the computer.

9 It denotes to Rule 102, 1002 requirement of the
10 written -- cites State versus Worthy, 123 S.E.2 835, which
11 is a 1962 death penalty case out of Spartanburg County. In
12 that case it involved a confession by a suspect to a, to a
13 rape which, at the time, was a death penalty qualified case.
14 In that case there was a confession given voluntarily and
15 they were then taped recordings of such, and the tape
16 recording was not presented at trial. Although defense
17 didn't argue the Best Evidence Rule, the Court examined it
18 under the Best Evidence Rule cause the law, at the time, was
19 in favorem vitae.

20 The Court stated that it has been held that, according
21 to conversation, statements will not be excluded on the
22 ground that the testimony of witnesses who simultaneously
23 overheard then constitute the best evidence. Further, when
24 a person testifies as to what he or she either saw, or
25 heard, such testimony is primary evidence regardless of the

Ann Son - Cross-examination
by MS. Penn

1 same facts or reduced to writing or incorporated and a sound
2 recording, and that even though the recording might be more
3 satisfactory evidence than testimony from memory, but live
4 testimony from memory is not rendered incompetent by the
5 evidence of the former.

6 In a prosecution for an armed robbery where the
7 testimony of a police officer as to the defendant's
8 conversation with a prisoner in an adjoining cell is
9 objected to because a tape recording has been made of the
10 conversation who claimed to be the best evidence, the Court
11 held that the police officer could give oral testimony as to
12 what transpired between two prisoners. Surely even the tape
13 recording could not be regarded as any more, which I'll have
14 to look up the word, efficacious than the testimony of an
15 officer's memory as to what he actually heard.

16 There's been a lot of change in technology from 1962, I
17 assure you I know first hand, from 2013. We have a
18 computer. You have a witness testifying to what she saw on
19 the tape within a particular timeframe. You have the
20 indication that she attempted to copy it or retrieve it and
21 unable to do so, turned it over to law enforcement, unable
22 to do so.

23 There are no cases, by the way, to the notes. There
24 are no cases which deal with the applicability of the Best
25 Evidence Rule to photographs, and only one case deals with

Ann Son - Cross-examination
by Ms. Penn

1 the Best Evidence Rule as applied to Court. Since it talks
2 about heard or seen, I would rely on worthy. I think it's
3 admissible under the Best Evidence Rule. If not, it's
4 admissible under Rule 1004, loss or destroyed or not
5 obtainable based on computer technology.

6 Anything further, Ms. Penn, before we bring our jury
7 back?

8 MS. PENN: No, Your Honor.

9 THE COURT: Anything from the State?

10 SOLICITOR ZIEGLER: Nothing further, Your Honor.

11 THE COURT: Why don't we take about ten minutes then
12 since they're already out?

13 Ma'am, you may certainly step down and refresh yourself
14 during this brief recess. You may not discuss your
15 testimony with anyone.

16 All right?

17 THE WITNESS: Uh-huh. (Affirmative).

18 THE COURT: All right. Thank you very much.
19 We'll take about ten minutes.

20 (WHEREUPON, a short recess was taken at this time.)

21 SOLICITOR SHEALY: Your Honor, may we approach the
22 bench for a moment?

23 (WHEREUPON, a bench conference was held at this time.)

24 THE COURT: All right. Just in an abundance of
25 caution, I would advise, the number of spectators and 403s

Ann Son - Cross-examination
by Ms. Penn

1 that we have in the courtroom, and I'm sure you already bare
2 in mind with this, during lunch breaks there may be jurors
3 around down in the public areas, down in the same areas that
4 y'all may be in.

5 Just kind of keep that in mind. If you have a
6 conversation amongst yourselves about the trial, which I'm
7 sure you do, me and my clerk do, it's very unusual for
8 attorneys not to talk about a case, whether they're trying a
9 case or observing the trial of the case, so just, just be
10 mindful of the jurors. I understand and be aware even when
11 not in the courtroom or courthouse. They may show up at the
12 same places that y'all would have lunch or something or that
13 nature, and I believe they use the same elevators that y'all
14 may, y'all may use.

15 That's, that's certainly not by way of a complaint that
16 was brought to my attention or anything whatsoever. But
17 just, just to sort of elevate your antenna so to speak and
18 be cautious in that regard.

19 All right. Anything further from the State, solicitor?

20 SOLICITOR ZIEGLER: Nothing, Your Honor.

21 THE COURT: Ms. Penn?

22 MS. PENN: No, Your Honor.

23 THE COURT: All right. Bring the jury.

24 (WHEREUPON, the following takes place within the
25 presence of the jury.)

Ann Son - Direct examination
by Solicitor Ziegler

1 THE COURT: All right. Thank you.

2 welcome back, ladies and gentlemen. We're continuing
3 with the direct examination of the witness by, by the
4 solicitor in its case in chief. If you'll please continue
5 to give the parties your complete and undivided attention.

6 Solicitor, you may continue.

7 SOLICITOR ZIEGLER: Thank you, Your Honor.

8 CONTINUED DIRECT EXAMINATION

9 BY SOLICITOR ZIEGLER:

10 Q Okay. Ms. Son, I want to pick up right where we, where
11 we left off.

12 where is the Village Cleaners in relation to the Pizza
13 Hut in Mount Pleasant?

14 A If you're facing the Pizza Hut, we're directly to the
15 right.

16 Q I'm going to put a photo up on the screen. This is
17 State's Exhibit 6.

18 Ms. Son, can you show us on this photo where the
19 village Cleaners is?

20 A To the right. The building to the right.

21 Q Can you point to it please?

22 A (Witness complies.)

23 Q Can you, can you please stand and point to it on the
24 screen about---

25 A I'm sorry. Sure. It's this.

Ann Son - Direct examination
by Solicitor Ziegler

1 Q Okay. Thank you.

2 Did you have any surveillance cameras in the store in
3 July of 2011?

4 A I did.

5 Q What views were provided by those surveillance cameras?

6 A There's multiple angles. But the one that, that is --
7 there's one that's facing out towards the left set of
8 windows, which would be to the right of the column.

9 Q Okay. Does -- what view does that, that particular
10 camera provide?

11 A It's angled to -- so that it views straight ahead and
12 slightly to the right.

13 Q Okay. Does it provide a view of the sidewalk area in
14 front of the store?

15 A In front of the store it's mainly from the waist up
16 because the windows are half windows or two-thirds windows.
17 So, there's concrete below the windows.

18 Q Let's, let's talk about that, that camera that was
19 providing a view of the front of the store.

20 Was that camera capturing footage on the night of
21 July 22nd, 2011?

22 A Yes.

23 Q Okay. And if someone were walking on the sidewalk in
24 front of the dry cleaners, could you see them walking --
25 would you be able to see them walking?

Ann Son - Direct examination
by Solicitor Ziegler

1 A Yes.

2 Q In what format was that footage stored?

3 A It's stored on a hard drive.

4 Q Okay. Did the Mount Pleasant Police Department request
5 to view that footage?

6 A They did.

7 Q And for what date did they request to view that
8 footage?

9 A The actual date?

10 Q Yes.

11 A I don't recall the date.

12 Q Or from, from what night was the footage they
13 requested?

14 From what date was the actual footage they requested?

15 A I believe it was a Friday night.

16 Q Okay.

17 A It was --.

18 Q And did you allow them to come view that footage?

19 A I did.

20 Q Did you view that footage with them?

21 A I viewed it beforehand. They had asked me if I could
22 retrieve the video and make a copy. So, I was able to look
23 at the video multiple times and was not able to make a copy
24 till I called them and let them know and then they came to
25 try to help me make a copy.

Ann Son - Direct examination
by Solicitor Ziegler

1 Q Did the Mount Pleasant Police Department highlight the
2 time period that they wanted you to view that video?

3 A Yes.

4 Q What was, what was that time period?

5 A It was in the evening between 11:00 and 12:00.

6 Q Okay. Now, you, you touched on this a little bit, but
7 did you produce a copy of the footage for the Mount Pleasant
8 Police Department?

9 A No, I was not able to.

10 Q Did the Mount Pleasant Police Department attempt to
11 retrieve the video?

12 A They did. They came to our facility and tried to pull
13 the video back up, but they were unable to because there was
14 a virus on the computer. So, I gave them permission to take
15 the computer back to the Police Department and see if they
16 can retrieve it there.

17 Q As far as you know, were they able to retrieve it
18 there?

19 A No, they were not.

20 Q And why were they not able to -- please -- you may of
21 touched on it, but please repeat why they were not able to
22 view the, the footage or why they weren't able to retrieve
23 it from the computer?

24 A The computer apparently had a virus that I was unaware
25 of.

Ann Son - Direct examination
by Solicitor Ziegler

1 Q Now, you said you viewed the video at the request of
2 the Police Department and that they highlighted the time
3 they wanted you to watch that video.

4 During that time period that they requested, did you
5 witness anything unusual on the video?

6 A I did.

7 Q With -- what did you witness?

8 A I witnessed a female customer leaving Pizza Hut and
9 then two males walking really fast past my store going into
10 the Pizza Hut.

11 Q From what direction did those two males approach?

12 A They were coming from the right of the cleaners if
13 you're facing the building.

14 Q And if you were inside the building looking out of the
15 building, which direction were they walking?

16 A My left if I'm inside of the cleaners.

17 Q So, you---

18 A They were coming from my left walking towards the Pizza
19 Hut.

20 Q And that is if you were looking out of the dry
21 cleaners?

22 A Yes.

23 Q At what pace were they moving?

24 A They were walking pretty fast.

25 Q Okay. Did they appear to you that those males entered

Ann Son - Direct examination
by Solicitor Ziegler

1 the Pizza Hut?

2 A Yes, I saw them enter the Pizza Hut.

3 Q And did those males move past the dry cleaners a second
4 time?

5 A Yes, they did.

6 Q At, at what pace did they move past?

7 A They were running past the dry cleaners a second time.

8 Q And I want to backtrack quickly. Sorry.

9 When they, when they walked past the dry cleaners the
10 first time, were they carrying anything?

11 A The first one I wasn't able to see if he was carrying
12 anything, but the second one was carrying a two by four.
13 The first one was a shorter stockier male. The second one
14 was a taller slender male compared to the other, and, again,
15 the second one was holding a two by four in his hand.

16 Q Could you, could you tell exactly what that was?
17 Was it a---

18 A A piece of wood.

19 Q A piece of wood?

20 A Uh-huh. (Affirmative).

21 Q Okay. When they came back past the dry cleaners the
22 second time, were they carrying anything?

23 A No, they were not.

24 Q About how long was it from the time that they walked
25 past the dry cleaners the first time to, to when they walked

Ann Son - Direct examination
by Solicitor Ziegler

1 past the second time?

2 what was that time period?

3 A The second time they were running. It was about two,
4 I'm sorry, three minutes.

5 SOLICITOR ZIEGLER: Court's indulgence please, Your
6 Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 SOLICITOR ZIEGLER: State has no further questions for
10 the witness, Your Honor.

11 Please answer any questions the defense has.

12 THE COURT: Thank you, solicitor.

13 Ms., Ms. Penn.

14 MS. PENN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. PENN:

17 Q Ms. Son, you testified that you were the one to make a
18 copy, correct?

19 A They had asked me to retrieve the video and make a
20 copy, yes.

21 Q And it was your hard drive or the video was on your
22 hard drive?

23 A (Witness nods affirmatively.)

24 Q Is that a yes?

25 A Yes.

Ann Son - Cross-examination
by Ms. Penn

1 Q And to make that copy, you were going to put it on a --
2 burn it on a CD or something?

3 A Yes.

4 Q And how long do you think that would of taken?

5 A I'm not sure. I've never done that before.

6 Q You've never done that before?

7 A No.

8 Q Okay. You've never made a copy of a video onto a CD?

9 A No.

10 Q Okay. And you saw this video two years ago?

11 A Uh-huh. (Affirmative).

12 Q And you haven't watched it since cause it doesn't exist
13 anymore, correct?

14 A Uh-huh. (Affirmative).

15 Q And two years ago, when you spoke to the police, they
16 didn't ask you to write a statement for it, for them, did
17 they?

18 A I don't recall.

19 Q You don't remember?

20 You don't remember if they asked you to write a
21 statement for them?

22 A They did not ask me to write one out. They came and
23 asked me a series of questions and I answered their
24 questions.

25 Q So, you do remember they asked you to write a statement

Ann Son - Cross-examination
by MS. Penn

1 and the answer would be no, they did not?

2 A Right.

3 Q Okay.

4 A They did not ask me to write a statement.

5 Q Okay. And when they were asking questions, did you
6 take notes?

7 A No.

8 Q When you watched the video, did you take notes?

9 A Yes, I did take notes.

10 Q Do you have those with you?

11 A No, I do not.

12 Q Okay. And you testified that you have a good memory?

13 A Uh-huh. (Affirmative).

14 Q And the time that you remember is a little after 11:00,
15 is that correct?

16 A Uh-huh. (Affirmative).

17 Q Okay. And you remember the first one came out?

18 A No, that's not what I said.

19 Q I'm sorry. Please, what did you say?

20 A I said two males.

21 Q You did -- I'm sorry.

22 You didn't say that you remember first a female because
23 of her skirt?

24 A The first customer that exited the Pizza Hut or the
25 last customer that exited the Pizza Hut prior to these two

Ann Son - Cross-examination
by MS. Penn

1 men going in was a female.

2 Q Okay.

3 A Cause she had on a shirt.

4 Q I'm not trying to trick you.

5 A No, I understand.

6 Q And after that, then you saw the two men?

7 A Uh-huh. (Affirmative).

8 Q And you saw them go in?

9 A Uh-huh. (Affirmative).

10 Q And you saw them run out?

11 A Uh-huh. (Affirmative).

12 Q And they didn't have anything in their hands when they
13 ran out?

14 A No.

15 MS. PENN: Okay. Court's indulgence, Your Honor.

16 THE COURT: Sir -- yes, ma'am.

17 (Pause.)

18 MS. PENN: Thank you. I have no further questions.

19 THE COURT: Redirect, solicitor?

20 SOLICITOR ZIEGLER: Thank you, Your Honor.

21 REDIRECT EXAMINATION

22 BY SOLICITOR ZIEGLER:

23 Q Ms. Son, did you have a good memory of what you saw on

24 --

25 A I do.

Ann Son - Redirect examination
by Solicitor Ziegler

1 Q -- on that surveillance video?

2 Is this something that would stand out in your mind,
3 something -- was what you saw something that would stand out
4 in your mind as unusual?

5 A Well, I've never witnessed a robbery in progress.

6 Q Okay. Now, defense counsel said you didn't provide a
7 statement in this case.

8 Did you have any contact with the police the night of
9 the incident?

10 A The night of?

11 Q The night this happened, did the police contact you?

12 A No.

13 Q Was -- when -- was it a later -- was it at a later time
14 when they contacted you?

15 A It was. Shortly after.

16 Q Thank you. No further questions.

17 THE COURT: Recross, Ms. Penn.

18 MS. PENN: Just briefly, Your Honor.

19 RECROSS EXAMINATION

20 BY MS. PENN:

21 Q Ms. Son, what you testified you saw was two men who go
22 into the Pizza Hut and two men coming out, is that right?

23 A The same men, yes.

24 Q And your surveillance camera doesn't show what's going
25 on inside that Pizza Hut, does it?

Ann Son - Recross examination
by MS. Penn

1 A No, it does not.

2 Q Okay. Thank you.

3 I have no further questions.

4 THE COURT: Thank you.

5 Thank you so much for being with us this morning.

6 THE WITNESS: Thank you.

7 THE COURT: You may step down.

8 SOLICITOR ZIEGLER: Your Honor, we ask that the witness
9 be---

10 THE COURT: Can the young lady be excused?

11 SOLICITOR ZIEGLER: Yes, sir, that's fine, Your Honor.

12 MS. PENN: I have no objection.

13 THE COURT: All right. Thank you. You may be excused.

14 All right. You may call your next witness, solicitor.

15 SOLICITOR ZIEGLER: State calls Mr. Robert Magie.

16 THE COURT: Did you say Magie?

17 SOLICITOR ZIEGLER: Yes, Your Honor, it -- as far as I
18 know it's pronounced Magie.

19 ROBERT MAGIE, having been first duly
20 sworn, testified as follows:

21 THE CLERK: If you could please have a seat and state
22 your name spelling your last name for the record.

23 THE WITNESS: My name is Robert Magie. M-A-G-I-E.

24 DIRECT EXAMINATION

25 BY SOLICITOR ZIEGLER:

Robert Magie - Direct examination
by Solicitor Ziegler

1 Q Morning, Mr. Magie.

2 Mr. Magie, how old are you?

3 A I am 30.

4 Q What's your highest level of education?

5 A I have my Associate's in Arts.

6 Q And what is your occupation?

7 A I am an IT specialist at the Town of Mount Pleasant.

8 Q Was that your position in August 2011?

9 A It was.

10 Q What, what sort of training do you have in information
11 technology?

12 A I've got some school training classes. I have my
13 A-plus certification, my Plus certification, and mostly
14 on-the-job training.

15 Q Okay. How many, how many years approximately have you
16 worked in the field?

17 A I've been in the field for eight or nine years.

18 Q And in your position with the Town of Mount Pleasant,
19 what are your duties in that division?

20 A Just maintenance, troubleshooting, desk top support.

21 Q In August 2011, were you asked by the Mount Pleasant
22 Police Department to retrieve a surveillance video?

23 A Yes.

24 Q Where was that surveillance video from?

25 A It was from a laundromat.

Robert Magie - Direct examination
by Solicitor Ziegler

1 Q Do you -- was that called Village Cleaners?

2 A Yes.

3 Q And what did you -- when, when the Mount Pleasant
4 Police Department asked you to retrieve that video, where
5 did you go to retrieve that?

6 A We rode up to the cleaners and just looked at it from
7 there because it, it wasn't working.

8 Q What do you mean, what do you mean it wasn't working?

9 A Couldn't pull any of the video up.

10 Q How was that footage stored?

11 A Digitally I assume.

12 Q Was it stored in---

13 A In the actual tower of the processor.

14 Q Okay. In the actual hard drive?

15 A Yes.

16 Q Now, when you went to the dry cleaners, were you able
17 to retrieve that footage?

18 A We were not.

19 Q Why not or why, why weren't you able to retrieve that
20 footage?

21 A It was some hardware problem. We just couldn't get --
22 we couldn't get the video off.

23 Q What did you do -- what did you do after that, after
24 you realized you couldn't retrieve it there?

25 A I believe they bought it back to the station. We -- I,

Robert Magie - Direct examination
by Solicitor Ziegler

1 I put it in a disk trying to boot it to see if I can just
2 boot that hard drive from a live, a live disk and see if I
3 could get to the data that way and I couldn't.

4 Q And was it -- why couldn't you retrieve it back in the
5 office?

6 A There is no telling. Some sort of hardware issue.

7 Q All right. And, in your opinion, was that, was that
8 footage completely irretrievable?

9 A I -- not -- for the fools that I had, I couldn't
10 retrieve it. But I'm, I'm sure it probably could have been
11 retrieved through very expensive use of equipment that we,
12 we didn't have.

13 Q But with, with the abilities that were not---

14 A We couldn't get it with the ability we have, no.

15 SOLICITOR ZIEGLER: Court's indulgence please, Your
16 Honor.

17 (Pause.)

18 SOLICITOR ZIEGLER: No further questions for the
19 witness, Your Honor.

20 THE COURT: Thank you.

21 SOLICITOR ZIEGLER: Would you please answer any
22 questions the defense counsel may have?

23 THE WITNESS: Certainly.

24 THE COURT: Thank you, solicitor.

25 MS., MS. Penn.

Robert Magie - Cross-examination
by Ms. Penn

1 MS. PENN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. PENN:

4 Q Mr. Magie, you never saw the video?

5 A No.

6 Q You weren't asked to work on it until August the 9th?

7 A Not at that time.

8 Q Okay. And how long do you think you were at the
9 cleaners trying to turn it back on?

10 A We were there for maybe 45 minutes.

11 Q Okay. And how long do you think you worked on it at
12 the station?

13 A Another 45 minutes to an hour.

14 Q And y'all didn't send it out to another technician?

15 A No.

16 Q Or to an expert?

17 A No.

18 Q And the rest of the computer -- you could turn the
19 computer on, is that right?

20 A Yes.

21 Q You just couldn't access this particular video?

22 A Correct.

23 Q Thank you.

24 I have no further questions.

25 THE COURT: Redirect, solicitor?

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 SOLICITOR ZIEGLER: Nothing further, Your Honor.

2 THE COURT: Thank you.

3 Thank you very much, Mr. Magie. You may step down.

4 Any objection to this witness being excused?

5 MS. PENN: None from us, Your Honor.

6 SOLICITOR ZIEGLER: None from the State, Your Honor.

7 THE COURT: All right. You may be excused.

8 Solicitor, you may call your next witness.

9 SOLICITOR SHEALY: Fouad Bouani.

10 THE COURT: All right. Come around and be sworn
11 please.

12 FOUAD BOUANI, having been first duly
13 sworn, testified as follows:

14 THE CLERK: If you could please have a seat and state
15 your name spelling your last name for the record.

16 THE WITNESS: It's Fouad Bouani. The last name is
17 B-O-U-A-N-I.

18 DIRECT EXAMINATION

19 BY SOLICITOR SHEALY:

20 Q why don't you go ahead and spell your first name for us
21 too. The court reporter needs that.

22 A It's F-O-U-A-D.

23 Q If you would, Mr. Bouani, tell the jury a little bit
24 about yourself.

25 How old are you?

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 A Forty-six.

2 Q How long have you lived in the Charleston area?

3 THE COURT: Can you -- if you'd lean up for me please,
4 sir, and speak into the mic. Keep your voice up.

5 A It's about 16 years.

6 Q And where are you currently employed?

7 A With the Department of Transportation.

8 Q What do you do for the Department of Transportation?

9 A Engineer.

10 Q And how long have you been working there?

11 A About eight, ten years.

12 Q Okay. Focusing your attention back to July of 2011,
13 were you working at another occupation as well?

14 A Yes.

15 Q Where were you working there -- then?

16 A Same place. Same place.

17 Q And then did you -- were you ever employed by Pizza
18 Hut?

19 A Yeah, I worked part-time there too.

20 Q What type of work did you do for Pizza Hut?

21 A I just drive.

22 Q Okay. Focusing your attention specifically to July of
23 2011, were you working a Friday night when something unusual
24 happened at the store?

25 A Yes.

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 SOLICITOR SHEALY: Okay. Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 (Pause.)

4 Q Were you working that evening as a driver?

5 A Yes.

6 Q And what time does the Pizza Hut close generally?

7 A Back then, in 2011, it close at midnight.

8 Q Tell the jury, if you would, what unusual happened that
9 evening.

10 A Usually -- we usually close about twelve o'clock, and
11 we take -- and usually by 10:30 to eleven o'clock we
12 usually -- if somebody comes in, and then we just stand
13 there for -- we got like slow time usually between 10:30 and
14 11:00 sometimes. We catch up and clean-up and things like
15 that.

16 And as a routine, it's every Friday it seems like, the
17 same habit, and then just from nowhere, we would all stand
18 there and we had a long night and just in that rough day,
19 and it seems like a guy with a shirt covering his head, and
20 you could see him come in right there on the side from
21 the -- we got, we got -- there's a three building -- three
22 businesses. We got Pizza Hut in the middle. You got a
23 laundromat on the right-hand side. Also you got a dry
24 cleaner on the left-hand side.

25 As you see, he was coming from that laundromat side

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 walking along the wall down into the business, and, and you
2 see him right there and he had something in his hand, and
3 it's -- he got in, jumped over the counter, and says
4 everybody goes down, this is a robbery.

5 Q Okay. So, let me slow you down for just a little bit.

6 When you were indicating in what direction the guy came
7 from -- show you what's been previously marked as State's
8 Exhibit 7.

9 Show the jury where you first saw the man.

10 (Witness comes down from the stand.)

11 A Between the---

12 Q You're gonna have to probably stand up for me if you
13 would.

14 A Yeah.

15 Q It's behind you. The picture behind you.

16 A All right. It's gonna be somewhere -- he was coming
17 here along this wall right here. walks in here and he also
18 had a stick cause that was back then when U.S. 17 had
19 construction, new construction. So, he had one of the
20 lineman stakes because we have a buzzer there that gets, you
21 know, the door gets locked every time somebody comes in or
22 not. So, he was prying that door in if it was, if it was
23 not opened, and he just -- you can see him coming in here,
24 get inside, jump over the counter.

25 Q Okay. And when you say he jumped in the counter --

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 show you what's been previously marked as State's Exhibit 9.

2 what area of the counter are you talking about?

3 A Right here. Between the two -- right here.

4 Q Okay. And I tell you what, when you're turned with
5 your back to the jury, Mr. Bouani --

6 A Yes.

7 Q -- speak even a little bit more loudly --

8 A Oh, okay.

9 Q -- for me.

10 A It was between the two -- here.

11 Q Okay. Now, while you're there, show us where you were
12 standing when he first entered.

13 A Standing right here.

14 Q And was Mr. Ellington there?

15 A I believe he was.

16 Q He was working that night?

17 A Yeah, he was there. He was working.

18 Q And was there a Lamar Mitchell that was working that
19 night?

20 A Yes, he was there too as well.

21 Q Okay. Do you remember where Mitchell was?

22 A I believe he was right there where the -- in this
23 corner right here. There was someone here, and I believe
24 Lamar -- I mean Ellington was somewhere by the cash
25 register.

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 Q Okay. Now, you indicated that the man entered the
2 restaurant or the store, and when he hops over the counter,
3 tell the jury what you do.

4 A You know, as soon as I -- you know, he dove over the
5 counter, he says everybody backs down, this is a robbery,
6 and basically I was right here. So, basically I just went
7 back, back in and went out facing the ground. That was it.
8 So, that's why I probably couldn't see nothing from where I
9 was at.

10 Q Okay. You can have a seat back for us.

11 A (Witness returns to the stand.)

12 Q In that area that you just described as being the area
13 that you went down on the floor, does that lead to what area
14 of Pizza Hut?

15 What's back there?

16 (Witness comes down from the stand.)

17 A To the kitchen.

18 Q To the kitchen.

19 Okay. So, if you were -- are you further back than we
20 can see in this area?

21 A Yeah, basically where the sink is, that's where I was
22 on the ground. Somewhere in there.

23 Q Right in here?

24 A Yeah, it's a big opening right there behind on that
25 door right here in the kitchen and the kitchen, if you look

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 at it, it's basically the width of the, of the store.

2 Q Okay. So, the kitchen is running behind this area?

3 A Yes.

4 Q And when you got down on the floor, were you face up or
5 were you face down?

6 A Face down obviously.

7 Q So, after you saw that first guy come in, did you ever
8 see a second guy?

9 A No.

10 Q You can have a seat back again for me.

11 A (Witness returns to the stand.)

12 Q You indicated that the first guy in says get down?

13 A Yes.

14 Q And is that when you go down?

15 A Yes.

16 Q Tell the jury, if you would, when you see him enter --

17 A Uh-huh. (Affirmative).

18 Q Did you see him pry open the door?

19 A Well, before that there was a, a couple that was, that
20 come in to pick a pizza. I think that was about earlier
21 five minutes before he showed up, and I believe that he was
22 there for the longest time trying to maybe, back and forth
23 trying, you know, to get in anytime he can and there's
24 nobody watching I believe. That's all.

25 Q When you say you believe it, did you see him outside

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 the store?

2 A I didn't see him, no.

3 Q Okay. Well, don't tell us what you kind of concluded.

4 Just tell us what you actually saw.

5 A Yeah.

6 Q Okay. Did you see him pry open that door or did you
7 not?

8 A I see him -- he had a stick.

9 Q You just saw the stick?

10 A He has, he has like a -- he has like a plywood stick.

11 Q Now, do you know whether or not there was an effort to
12 get into the safe?

13 A Yeah, because he was asking. You know, he was asking.
14 That's what he was wanting.

15 Q Well---

16 A You know he basically, you know, aggressively, you
17 know, like---

18 Q He was what?

19 I'm sorry.

20 A Aggressively looking for that. I mean he was
21 pushing -- you know, he was -- he opened the safe and if you
22 opened the safe, you know, I'm gonna hurt everybody and all.

23 Q Well, tell the jury, how did this make you feel when he
24 came in?

25 A I'm frightened because of this, you know. But I soon

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 do it, you know. Like I said, you know, I was part-time job
2 because I want extra money doing it all the same time, you
3 know.

4 Q Get a little closer to the microphone for me.

5 A I say I'm frightened, you know, before because of that,
6 that fact, but---

7 Q Cause you're face down in the, in the kitchen area at
8 this point, right?

9 A Yeah.

10 Q Now, where in this photograph, showing you State's
11 Exhibit 10, where was the safe?

12 A The safe is in this corner right here in the bottom
13 here.

14 Q Okay. Over in this area?

15 A Yeah.

16 Q And from where you were laying down, could you even see
17 what was going on in the safe?

18 A No, all I see his feet because he come down and he, he
19 pulled a, he pulled a gun on everybody's head and is like
20 can you open safe. I'm like I got, you know, we got, we got
21 nowhere to open the safe.

22 Q Well, tell me that again.

23 When he gets -- when he jumps over the counter --

24 A Yes.

25 Q -- and you're flat on the floor --

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 A Yes.

2 Q -- you see what?

3 A I'm flat on the floor. He, he jump over the counter
4 and he start coming to each person to ask open the safe,
5 open the safe.

6 Q Well, come down here for me for a minute with the
7 Court's permission.

8 THE COURT: Yes, ma'am, certainly.

9 (Witness comes down from the stand.)

10 Q Show the jury how he was asking y'all about the safe?

11 A While we were all face down---

12 Q Turn this way. Turn towards the jury for me.

13 A We were face down on the ground, and then he comes in
14 and you can see he's got a -- he's like a trench coat or
15 something sticking out and looks like a gun and he -- all
16 you can see is the gun and you can see his feet and black
17 pants, and he's telling you open safe, open safe, I'm gonna
18 hurt you.

19 Q Well, what's he doing with what's in his hands?

20 Show us how he does it.

21 A Well, he says basically is got it out. He's ready to
22 go.

23 Q You can go ahead and have a seat.

24 (Witness returns to the stand.)

25 Q Do you know what was happening up in the counter area

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 from where you were laying down?

2 A No.

3 Q Okay. Now, showing you what's been marked as State's
4 Exhibit 8, tell the jury whether, with where you were laying
5 face down, could you see from that area if anyone were
6 standing in this area?

7 A No.

8 Q If someone had come through that door, showing you
9 State's Exhibit 11, and were you in this area right here, do
10 you see where I'm pointing?

11 A Yes.

12 Q would you have been able to see them from where you
13 were laying?

14 A No, ma'am.

15 Q You gave a statement to the police that night?

16 A Yes, I did.

17 Q And you gave them the details of what happened?

18 A Yes.

19 Q And when you gave that statement, did the officers
20 write it for you?

21 You, you spoke to them and then they wrote it down?

22 A They give me the options and that's all the options I
23 believe there was.

24 Q Okay. So, they wrote it?

25 A Yeah, they wrote it, the report, yeah.

Fouad Bouani - Direct examination
by Solicitor Ziegler

1 Q And you've told us today what you told them that night?

2 A Yes.

3 Q I have no further questions. Please answer anything
4 that the defense may have.

5 THE COURT: Thank you.

6 Thank you, solicitor.

7 MS. Penn.

8 MS. PENN: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MS. PENN:

11 Q Good morning.

12 A Good morning.

13 Q Mr. Bouani, how big would you say that area behind the
14 cash register is?

15 A Can, can I look at the pictures?

16 Can I look at the pictures?

17 Q Sure.

18 Do you want me to put them up for you?

19 A Yeah, please.

20 Q Okay. And the area I'm gonna ask you about is this
21 area right here.

22 A I would say about 5 feet wide by -- you know, it's
23 about 5 feet wide I would say. Five to seven feet wide.

24 (Witness comes down from the stand.)

25 Q Okay. And that area right in front of the counter like

Fouad Bouani - Cross-examination
by Ms. Penn

1 around here --

2 A Yes.

3 Q -- how big do you think that area is?

4 A From -- you're talking about the width of the front,
5 the front?

6 Q Yes, sir.

7 A I would say it's probably eight feet to ten feet I
8 believe.

9 Q Okay. Thank you. You can have a seat.

10 A (Witness returns to the stand.)

11 Q And you testified that you could see, from where you
12 were, you saw a guy walking from the direction of the
13 cleaners?

14 A Yes.

15 Q You saw him come through the door?

16 A Yes.

17 Q And I don't remember if you said you saw him put the
18 stick there or the stick was there?

19 A He had something in his hand.

20 Q Okay.

21 A He's got it like -- looks like a shirt or towel in his
22 face, and like he had something sticking out, and then all I
23 can see, he jumped over the counter between the two --

24 Q So, you saw him come through the door?

25 A Uh-huh. (Affirmative).

Fouad Bouani - Cross-examination
by Ms. Penn

- 1 Q Jump over the counter?
- 2 A Uh-huh. (Affirmative).
- 3 Q And then y'all hit the deck?
- 4 A Yes.
- 5 Q Okay. And---
- 6 A Cause I mean that's the first thing he was -- when he
- 7 came through, that's what he was asking -- he was shouting
- 8 was get down.
- 9 Q And when you talked to the police when they arrived,
- 10 you were upset?
- 11 A Yeah, obviously.
- 12 Q Obviously. Right. It's a stupid question.
- 13 You were angry?
- 14 A Well, I was scared.
- 15 Q You were scared?
- 16 A Yeah.
- 17 Q And you wanted to make sure you caught the guy who did
- 18 this to you?
- 19 A Sure.
- 20 Q So, you told the police everything you knew?
- 21 A Yeah.
- 22 Q You gave a description as best you could?
- 23 A Uh-huh. (Affirmative).
- 24 Q And that description was of a black man?
- 25 A Uh-huh. (Affirmative).

Fouad Bouani - Cross-examination
by Ms. Penn

1 Q Is that a yes?

2 A Yes.

3 Q The court reporter can't write down uh-huh.

4 A Yes.

5 THE COURT: well, y'all, y'all have allowed that. I'm
6 not pointing that out to you necessarily, Ms. Penn. The
7 solicitor has done it also with every one of the witnesses,
8 and I don't like to get involved with y'all's witnesses.

9 Please, if you would answer yes or no.

10 THE WITNESS: Yes.

11 THE COURT: Thank you, sir.

12 Q His shoes were black, is that right?

13 A Yes.

14 Q And he had black pants on?

15 A Yes.

16 Q And when you gave a statement to the police, you didn't
17 say anything about a trench coat, did you?

18 A But I know he had a trench coat.

19 Q But you didn't tell the police that when they arrived?

20 A well, I -- it was not written down I believe. So, it's
21 been two years ago. So --.

22 Q would it help you to remember if it was written down or
23 not if I showed you the statement?

24 A I got the statement right in front of me.

25 Q Okay. Does it say in the statement he was wearing a

Fouad Bouani - Cross-examination
by Ms. Penn

1 trench coat?

2 A I don't believe, but it says he's wearing black pants
3 and black shoes.

4 Q No trench coat is in the statement, right?

5 A No trench coat.

6 MS. PENN: Okay. Court's indulgence, Your Honor.

7 THE COURT: Yes, ma'am.

8 (Pause.)

9 MS. PENN: Thank you very much. No further questions.

10 THE COURT: Redirect, solicitor?

11 SOLICITOR SHEALY: No, Your Honor. We would just ask
12 that he be excused.

13 THE COURT: Thank you.

14 Thank you so much.

15 Any objection to him being excused?

16 MS. PENN: No objection, Your Honor.

17 THE COURT: Thank you.

18 Yes, sir. You may step down. Thank you for being with
19 us. You may be excused.

20 Solicitor, you may call your next witness.

21 SOLICITOR SHEALY: Lamar Mitchell.

22 THE COURT: All right. If you'd come around and be
23 sworn in for us please, Mr. Mitchell.

24 LAMAR MITCHELL, having been first
25 duly sworn, testified as follows:

Lamar Mitchell - Direct examination
by Solicitor Shealy

1 THE CLERK: If you could please have a seat and state
2 your name spelling your last name for the record.

3 THE WITNESS: Lamar Mitchell. M-I-T-C-H-E-L-L.

4 DIRECT EXAMINATION

5 BY SOLICITOR SHEALY:

6 Q Mr. Mitchell, tell the jury how old are you?

7 A I am 38.

8 Q And you are from the Charleston area?

9 A I guess you could say that.

10 Q How long have you been in Charleston?

11 A Since '97.

12 Q Okay. Are you---

13 MS. PENN: Speak up for me please, Mr. Mitchell.

14 Thank you, solicitor.

15 You may continue.

16 SOLICITOR SHEALY: Thank you, judge.

17 Q Are you employed somewhere now?

18 A Yes, ma'am.

19 Q Where are you working?

20 A Thompsons Industrial Service.

21 Q And how long have you been there?

22 A About two months now.

23 Q Okay. Focusing your attention back to July 22nd of
24 2011, could you tell the jury please where you were employed
25 at that time?

Lamar Mitchell - Direct examination
by Solicitor Shealy

1 A At Pizza Hut.

2 Q Okay. And would you tell us what happened around 11:30
3 that evening?

4 Were you working that night?

5 A Yes, ma'am.

6 Q And you were working as a what?

7 A I was a cook.

8 Q Okay. Tell the jury, if you would, what happened that
9 evening.

10 A Well, it was about closing time and two -- the
11 employees were just standing around, just conversating. We
12 noticed someone at the door. It was kind of staggering like
13 he was drunk, and before we know it, the door was being
14 opened, the person came in holding a gun. Pretty much told
15 us to get down on the floor. We got down on the floor,
16 proceeded to ask us to open the safe.

17 After we made clear to him, like after a certain amount
18 of time in our store, the safe can not be opened period.
19 After that we -- my manager at the time, which was Desmonde,
20 and the register, they proceed to get the money out the
21 register and, and that was pretty much it.

22 Q Okay. Now, first of all, describe for me, when that
23 man walks into the store, how, how does he walk in and how
24 is he holding the gun?

25 A Well, like I said, it looked, when I saw him, cause I

Lamar Mitchell - Direct examination
by Solicitor Shealy

1 was the one basically facing the door, when I saw him, it
2 looked like someone that was drinking cause the way he
3 staggered to the door, and it looks almost like he fell
4 over, but pretty much he liked reached in, opened the door
5 and stuck because we have a magnetic lock that's on the
6 door, and we just had a customer walk out. And I guess with
7 us talking, we usually flip the switch to lock the door.

8 So, he basically like he was staggering, fell down,
9 opened the door, put a piece of stick inside the door so the
10 door couldn't be locked and he came in.

11 Q Okay. And showing you what's been marked as State's
12 Exhibit 10, it's gonna be in front of you and it's also
13 gonna be behind you.

14 where were you when he walked in?

15 A I was in the -- if you can see to my left.

16 Q Stand up for me if you don't mind---

17 A All right.

18 Q ---and just make sure you speak loudly and point to
19 where you were.

20 (Witness complies.)

21 A I was here in this corner pretty much right here
22 leaning up against this right here.

23 Q Okay.

24 A I guess you need to know where everybody else was?

25 Q Tell us where they were.

Lamar Mitchell - Direct examination
by Solicitor Shealy

1 A Okay. My buddy, Desmond, was right here, and then
2 Fouad was in the corner over there.

3 Q You think Fouad was in the corner?

4 A Actually, if I'm correct, he might of been standing
5 beside me. But I know I was here and I know Desmond was
6 here.

7 Q Okay.

8 A Because I just came out the kitchen cause I was the one
9 that made the food for the order. So, we were all standing
10 around here just talking.

11 Q And when the man walks in with the gun, what do you do
12 as -- what does he tell y'all to do?

13 A He tells us to get down.

14 Q And where do you get down?

15 A I actually got down right here in the doorway because
16 I, when he came in, the gun was pretty much pointed at me.

17 Q Show us how he was holding it.

18 A I mean it was just pretty much straight out when he
19 walks in the door and he pretty much got on the counter and
20 he put -- he places his butt on the counter first and kind
21 of like put his legs around. So, I kind of froze because,
22 like I said, the gun was basically aimed at me. Desmond
23 went that way and Fouad went into the back and laid on the
24 ground. So, I was left standing here. So, I basically just
25 backed up and laid right here in the doorway.

Lamar Mitchell - Direct examination
by Solicitor Shealy

1 Q Okay. Tell us what happened -- you can go ahead and
2 have -- take your seat again.

3 (Witness complies.)

4 Q Tell us what happened then once you were on the ground
5 and once he came over the counter.

6 A He basically walked up to me. He kind of did like a
7 little kick, told me to open the safe, and I was like look,
8 I can't open the safe.

9 Q What was he doing with the gun when he told you to open
10 the safe?

11 A I wouldn't know cause I was basically put my, you know,
12 I put my hand down and had my head down just basically
13 just---

14 Q So you were face down?

15 A Right, I was face down to the floor.

16 Q Okay. Now, at anytime while all of that's going on, he
17 didn't have any success in getting in the safe, is that
18 right?

19 A No.

20 Q At anytime during that do you remember hearing a second
21 voice?

22 A The person that came in second, no, he didn't say
23 anything. All I know is that while he was telling us and
24 asking us to open the safe, I can basically hear money being
25 pulled out the drawer.

Lamar Mitchell - Direct examination
by Solicitor Shealy

- 1 Q And that was being done by someone else?
- 2 A Correct.
- 3 Q So, you say there were two people in there?
- 4 A Right.
- 5 Q One was demanding the safe be opened?
- 6 A Right.
- 7 Q And one was going -- getting the money out of the till?
- 8 A Right.
- 9 Q Tell the jury how it made you feel when they came in.
- 10 Did you like having the gun pointed at you?
- 11 A No, I mean it was just basically like, at the time, it
- 12 was like okay is this really happening.
- 13 Q It didn't seem real?
- 14 A Yeah, it was almost like slow motion.
- 15 Q Do you recall about how long the whole thing took
- 16 place?
- 17 A It had to be no more than two minutes. It wasn't that
- 18 long cause I think, once they realized that we couldn't open
- 19 the safe, it was just like okay.
- 20 Q At what point do you stand up?
- 21 A Once I was pretty sure that everyone was gone out the
- 22 store.
- 23 Q And what made you feel like they were gone?
- 24 A I mean you pretty much hear when the door closed.
- 25 Q Could you hear them go back over the counter?

Lamar Mitchell - Direct examination
by Solicitor Shealy

1 A Yes.

2 SOLICITOR SHEALY: I have no further questions, judge.

3 Answer any that the defense attorney might have.

4 THE COURT: Thank you, solicitor.

5 Ms. Penn.

6 MS. PENN: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. PENN:

9 Q Mr. Mitchell, you talked a little bit about the guy
10 staggering up the sidewalk through the door?

11 A Right.

12 Q And when you say staggering, you don't mean running, do
13 you?

14 A No.

15 Q It was kind of slow, wasn't it?

16 A Yes.

17 Q And you saw him come through the door. You saw him
18 come over the counter.

19 A Right.

20 Q And point a gun at you?

21 A Correct.

22 Q And tell you to get down?

23 A Right.

24 Q This was a pretty traumatic event. This is scary
25 stuff.

Lamar Mitchell - Cross-examination
by Ms. Penn

1 A Yes, it is.

2 Q And when the police got there, you wanted to make sure
3 whoever did this got caught?

4 A I'm pretty sure.

5 Q I'm sorry?

6 A Yes.

7 Q Okay. And it's -- and you know that when you talk to
8 the police that their job is to find who did this?

9 A Correct.

10 Q Their job is to solve this crime as it were?

11 A Correct.

12 Q And it's pretty important whether there's one guy or
13 two guys, isn't it?

14 A Correct.

15 Q And you gave them a statement?

16 A Uh-huh. (Affirmative).

17 Q Sorry?

18 THE COURT: Say yes or no.

19 A Yes, yes.

20 Q Okay.

21 THE COURT: Thank you very much.

22 Q And in that statement, do you remember what you told
23 the police about whether there was one guy or two guys?

24 A I told them I wasn't sure cause I know there was
25 someone standing over me. There's no telling what he did

Lamar Mitchell - Cross-examination
by Ms. Penn

1 once he asked me to, if I could -- to open the safe pretty
2 much. Like I said, I had my head down and I wasn't planning
3 on moving. I think, like I said, I see people get killed
4 for less.

5 So, I, I know I couldn't open the safe. There's no
6 need for me to make any movements. So, I basically did what
7 he told me to do. I know at the time I heard someone -- the
8 money being pulled out the drawer. So, that's why it said
9 it's no telling. He might of told me to open the safe. He
10 might of walked away and went to the safe. There's no
11 telling.

12 Q The question I asked was---

13 A Uh-huh. (Affirmative).

14 Q ---you told the police I'm not sure if there's a second
15 guy?

16 A Correct.

17 MS. PENN: Thank you, Your Honor. I have no further
18 questions.

19 THE COURT: Redirect, solicitor?

20 REDIRECT EXAMINATION

21 BY SOLICITOR SHEALY:

22 Q Mr. Mitchell, do you have a copy of your statement with
23 you?

24 A Yes, ma'am.

25 Q Okay. The part that Ms. Penn just asked you about

Lamar Mitchell - Redirect examination
by Solicitor Shealy

1 where you indicated I'm not sure if there was a second one

2 --

3 A Correct.

4 Q -- can you find that in your statement?

5 If you hand it to me I can direct you.

6 A (Witness complies.)

7 Q If you would begin with reading that statement and
8 continuing with the next line?

9 A I am, I am not sure if there was a second one. I
10 thought there was a second one because, while the first one
11 was asking me about the safe, I heard money being pulled
12 from the drawer.

13 Q Thank you.

14 I have no further questions.

15 THE COURT: Recross, Ms. Penn.

16 MS. PENN: Yes, sir, Your Honor.

17 RECROSS EXAMINATION

18 BY MS. PENN:

19 Q You couldn't describe the second guy, correct?

20 A That's correct, cause he---

21 Q Cause you couldn't see him?

22 A Correct.

23 Q And you didn't hear him?

24 A Correct.

25 Q Thank you.

Vance Stephenson - Direct examination
by Solicitor Ziegler

1 Q How long have you been employed there?

2 A Almost four years now or a little over four years now.

3 Q What's your current position there?

4 A Detective in the criminal investigations division.

5 Q Was that your position in July 2011?

6 A No, I was a patrol officer then.

7 Q So, as a patrol officer back in July of 2011, what,

8 what were your duties and responsibilities then?

9 A Conduct routine patrols, respond to calls, respond to
10 traffic accidents to name a few.

11 Q But you're a detective now?

12 A Correct.

13 Q In your capacity as a patrol officer with Mount
14 Pleasant Police Department, did you respond on July 22nd,
15 2011, to a report of an armed robbery at the Pizza Hut at
16 2161-C US 17?

17 A Yes, I did.

18 Q In what county is that Pizza Hut located?

19 A Charleston County.

20 Q Detective Stephenson, I'm gonna show you a photo and it
21 is marked as State's Exhibit 6.

22 Detective Stephenson, using this photo, can you
23 describe the environment and layout of this, of this Pizza
24 Hut that you responded to in the general surrounding area?

25 A Yes, the -- it's a small strip mall on Highway 17. At

Vance Stephenson - Direct examination
by Solicitor Ziegler

1 that point there's probably about I think roughly four
2 businesses in this strip mall that Pizza Hut was the second
3 over from the right-hand side. You had a Village Cleaners
4 on the right and I believe there's a laundromat that was on
5 the left-hand side of the business.

6 Q Okay. And what businesses were surrounding this strip
7 mall?

8 A If you're looking at the business to the right, it was
9 a Baker preowned car dealership.

10 Q Detective Stephenson, can you, can you please stand up
11 and point out on the screen which direction the Baker Motor
12 Company was?

13 (Witness complies.)

14 A It would be to my right. So, it would be on this
15 side---

16 Q Okay.

17 A ---that would be the Baker Motor Company.

18 Q And what business was on the other side of it?

19 A And then you'd have the laundromat in the strip mall
20 unattached where there's a -- I believe there's a gas
21 station, I think a Kangaroo Gas Station on the left-hand
22 side.

23 Q You can have a seat. Thank you.

24 (Witness complies.)

25 Q What did you observe upon your arrival at the Pizza Hut

Vance Stephenson - Direct examination
by Solicitor Ziegler

1 that night on July 22nd, 2011?

2 A I positioned my vehicle to the north side of the
3 business, which is to the left if you're looking at it, and
4 then the -- I could see the lights were on. Couldn't see
5 any, anyone from where my position was and other patrol
6 officers took their positions. And once dispatch made a
7 telephone call into the business to have the employees walk
8 out, that's when I saw the, the three employees walk towards
9 officers and Officer Jenkins went into the business to clear
10 it, make sure there's no one else in there, and that's when
11 the three employees started to rattle off what happened and
12 that's when we separated them so they could speak to
13 different officers.

14 Q What was the demeanor of those employees?

15 A They're all trying to talk at once trying to try to
16 tell us what was going on. They seemed distressed about
17 what had just happened.

18 Q Did you speak with any of the employees?

19 A Yes, I spoke to Mr. Bouani.

20 Q Were there, as far as you knew, were there any
21 customers at the Pizza Hut --

22 A No, not that I knew of.

23 Q -- when you arrived?

24 Did you locate any suspects from the armed robbery that
25 night at the Pizza Hut?

Vance Stephenson - Direct examination
by Solicitor Ziegler

1 A No, I did not.

2 Q Did, did you observe anything of interest on the
3 surface counter inside the Pizza Hut?

4 A There was a, a shoe print that was on top of the
5 counter inside the business and also inside the door there
6 was a stick or a stake that was lying on the ground.

7 Q What business was -- well, you said this dry cleaner
8 was located next door to the Pizza Hut.

9 Did you, did you notice anything of interest inside the
10 dry cleaner?

11 A We, we walked around that side to the dry cleaner and
12 it is a drive, drive through dry cleaner that you drive on
13 the right side and they have sliding glass doors. You can
14 see that it looked like they had, had a camera facing the
15 drive through, which is on the right side of the business.

16 Q Were there any -- did you see any other cameras?

17 A I did not. I didn't notice any other ones beside that
18 one.

19 Q How long did you remain at the scene that night?

20 A Until crime scene finished up and stayed with Detective
21 Byrd, and that's when we, we walked the scene and noticed
22 the camera there, and then at the Baker Motor Company, and
23 once we finished walking the perimeter we left. So, we were
24 the last one -- officers there.

25 Q Did you do anything else to investigate the case after

Vance Stephenson - Direct examination
by Solicitor Ziegler

1 that night?

2 A No, sir.

3 SOLICITOR ZIEGLER: Court's indulgence please, Your
4 Honor.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q Detective Stephenson, I'm going to show you one more
8 photo. I'm gonna show you it up close because it's tough to
9 see on the screen. This is marked as State's Exhibit 1.

10 Can you identify that photo for the jury, please?

11 A It's the photo from the front of the Pizza Hut. From
12 looking in, you could see this stick or this stake lying
13 just inside the door in the glass doors in the lobby area.

14 Q Thank you.

15 This is the, the photo I've just shown you, State's
16 Exhibit 1. I know it's tough to see on here.

17 But is this the same photo that I've just showed you?

18 A Yes, sir, it is.

19 Q Detective Stephenson, can you step off the stand and
20 just like to show this photo a little bit more clearly to
21 show to the jury.

22 A (Witness comes down from the stand.)

23 Q Again, this is State's Exhibit 1.

24 Could you identify this photo for the jury please
25 again?

Vance Stephenson - Direct examination
by Solicitor Ziegler

1 A The inside is the Pizza Hut. It's the lobby area where
2 the tiles are. The stake, the stake of wood was found
3 inside the business.

4 Q Have a seat again please.

5 A (Witness returns to the stand.)

6 SOLICITOR ZIEGLER: State has no further questions for
7 Detective Stephenson, Your Honor.

8 THE COURT: Thank you, solicitor.

9 MS. Penn.

10 MS. PENN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. PENN:

13 Q Detective Stephenson, you responded at 23:42, is that
14 right?

15 A Yes, ma'am.

16 Q And for normal people, that's 11:42 at night?

17 A Yes, ma'am.

18 Q And you responded pretty quickly to this do you think?

19 A Yes, ma'am.

20 Q Within --?

21 A Within maybe three minutes, I believe, from when the
22 call went out.

23 Q Thank you very much.

24 I have no further questions.

25 THE COURT: Thank you.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 introduce the Court's Exhibit that we---

2 THE COURT: I think that's 1 through 4.

3 SOLICITOR ZIEGLER: Yes, it is.

4 Sergeant Hembree, where are you employed?

5 A Mount Pleasant Police Department.

6 Q How long have you been employed at Mount Pleasant
7 Police Department?

8 A I'm in my twelfth year there.

9 Q What is your current position?

10 A I'm a supervisor of the criminal investigations bureau.

11 Q What was your position in July of 2011?

12 A The same.

13 Q And what, what were your duties and responsibilities in
14 that position?

15 A Supervise a, a group of detectives anywhere from minor
16 to major cases, victim advocate, victim advocates as well.
17 Sometimes participate in major cases as well.

18 Q In your capacity as a sergeant detective with Mount
19 Pleasant Police Department, did you interview Kenneth Murray
20 on August 2nd, 2011, regarding an armed robbery of the
21 Pizza Hut at 2161-C U.S. 17 in Mount Pleasant?

22 MS. PENN: Your Honor, we have an issue of law.

23 THE COURT: All right. Thank you.

24 Thank you very much, Ms. Penn.

25 Madam Forelady, ladies and gentlemen, if you would

Justin Hembree - Direct examination
by Solicitor Ziegler

1 please leave your notes and step to your jury room
2 momentarily while I take this matter up. Do not discuss the
3 case during this brief recess.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Ms. Penn.

7 MS. PENN: Thank you, Your Honor.

8 At this point we would like to renew our previous
9 objections. The objection and direction Mr. Murray is
10 taking on the grounds that he invoked his Miranda rights to
11 counsel, the statement was not voluntary, the statement was
12 the unlawful fruit of the poisonous tree from a search
13 warrant lacking probable cause, and, therefore, the
14 introduction of this statement, we contend, violates his
15 rights under the Fourth, Fifth, Sixth, and
16 Fourteenth Amendment, Amendments to the United States
17 Constitution, and the comparable provisions in South
18 Carolina also.

19 Thank you.

20 THE COURT: Thank you.

21 Thank you very much, Ms. Penn.

22 I would respectfully deny the motion and renew my
23 previous rulings.

24 All right. Anything further before we bring our jury
25 back in, solicitor?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 SOLICITOR ZIEGLER: Nothing further, Your Honor.

2 THE COURT: Ms. Penn.

3 MS. PENN: No, Your Honor.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. Our jury is back present in the
7 courtroom.

8 Thank you, Ms. Penn.

9 Solicitor, you may ask your next question.

10 SOLICITOR ZIEGLER: Thank you, Your Honor.

11 May I approach one more time and grab the exhibits?

12 THE COURT: Certainly.

13 CONTINUED DIRECT EXAMINATION

14 BY SOLICITOR ZIEGLER:

15 Q Sergeant Hembree, are you the lead detective in an, in
16 an investigation of a robbery, armed robbery at the Pizza
17 Hut at 2161-C U.S. 17 in Mount Pleasant?

18 A Yes, sir.

19 Q And, and in your capacity as a sergeant detective, did
20 you interview Kenneth Murray on August 2nd, 2011,
21 regarding that Pizza Hut armed robbery?

22 A Yes, sir.

23 Q And where did that interview take place?

24 A Within the criminal investigations office at the Mount
25 Pleasant Police Department.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 Q Who initiated that interview?

2 A Mr. Murray.

3 Q How did he do that?

4 A I received a phone message explaining that he wanted to
5 speak with me and made arrangements to meet with him in our
6 interview room.

7 Q At, at the time you met with him after he left you a
8 message, was Murray under arrest for the Pizza Hut armed
9 robbery at that time?

10 A No, sir.

11 Q Now, before we get into the substance of that
12 interview, I'd like to talk to you about the advisement of
13 Murray's Miranda rights.

14 Did you advise Mr. Murray of his Constitutional rights
15 pursuant to Miranda prior to that interview on August 2nd?

16 A Yes, sir.

17 Q Was the advisement of Miranda rights accomplished by
18 anybody?

19 A Yes, sir.

20 Q I'm now showing -- I will now show you what we've
21 marked for identification purposes as State's Exhibit 14.

22 Can you identify this document?

23 A It's Mount Pleasant Police Department advisement of
24 rights form.

25 Q And how are you familiar with this document?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A It's a standardized form that we use everyday for
2 advising subjects of Miranda rights.

3 SOLICITOR ZIEGLER: Your Honor, the State moves to
4 admit State's Exhibit No. 14 into evidence.

5 THE COURT: Can I see it please and may I see the
6 Court's Exhibit please?

7 (Pause.)

8 THE COURT: Where is, where is -- what's State's 14?

9 SOLICITOR ZIEGLER: It hadn't been actually marked yet,
10 but we've already admitted 1 through 13.

11 THE COURT: I thought -- subject to your previous
12 objection, Ms. Penn?

13 MS. PENN: Yes, Your Honor. That's fine.

14 THE COURT: All right. Provided, provided proper
15 foundation is laid, State's 14 will be in evidence subject
16 to previous objections.

17 (WHEREUPON, the advice of rights form was marked as
18 State's Exhibit No. 14 for identification purposes only at
19 this time.)

20 Q Sergeant Hembree, I'm presenting to you State's Exhibit
21 14 for your reference.

22 How did you explain Mr. Murray's rights to him using
23 this document, and I'd like to go through each one of the
24 rights individually, but briefly summarize how you explained
25 the rights to start off.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A Okay. The first thing we would do is fill out the
2 first three lines of the form which contain the information,
3 personal information of the subject to be, to be given
4 Miranda. Mr. Murray provides his personal information and
5 we fill that in.

6 The next line would be an introduction as myself as a,
7 as an officer of the Mount Pleasant Police Department. So,
8 I fill in my name, Sergeant Justin Hembree. The line says
9 has advised me that he is a member of the Mount Pleasant
10 Police Department and has further advised me and then it
11 goes into the rights.

12 Q Okay. And what is the first right listed on that
13 document?

14 A That I have the absolute right to remain silent and do
15 not have to answer any question or give a statement and this
16 fact can not be used against me.

17 Q And, Sergeant Hembree, could you -- I'd like you to
18 read those rights a little bit more slowly please. I know
19 you --

20 A Yes, sir.

21 Q -- read them all the time. So --

22 A Yes, sir.

23 Q -- you're use to it.

24 A You want it again?

25 Q Yes, please. Please read that---

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A Okay.

2 Q ---first one a little slower.

3 A That I have the absolute right to remain silent and do
4 not have to answer any question or give a statement and this
5 fact can not be used against me.

6 Q Thank you.

7 Did Mr. Murray place his initials next to that first
8 right?

9 A Yes, sir.

10 Q Please read the second right.

11 A That if I do answer questions or give a statement,
12 anything I say can and will be used against me in a Court of
13 law.

14 Q Did Mr. Murray initial by that right?

15 A Yes, sir.

16 Q Please read the third right for us.

17 A That if -- I have the right to consult with a lawyer of
18 my choice before I answer questions or give a statement and
19 also have him correct -- I'm sorry. I'll start over.

20 That I have the right to consult with a lawyer of my
21 choice before I answer questions or give a statement and
22 also to have him present while I'm being questioned.

23 Q Did he place his initials by that third right?

24 A Yes, sir.

25 Q Please read the fourth right for the jury.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A That if I wish to talk to a lawyer or have him present,
2 but am unable to afford or hire, to hire a lawyer, one will
3 be appointed to represent me free of charge.

4 Q Did he place his initials by that one?

5 A Yes, sir.

6 Q And please read the fifth and final right that is on
7 that document.

8 A That if I decide to answer questions or give a
9 statement without having a lawyer present representing me, I
10 have the absolute right, during this interview, to stop
11 answering questions and remain silent.

12 Q Did Mr. Murray place his initials by that one?

13 A Yes, sir.

14 Q After those rights were read to Mr. Murray and he
15 placed his initials next to them, did he -- did Mr. Murray
16 indicate that he understood those rights?

17 A Yes, sir, standard procedure it would be to verbally --
18 have him verbally acknowledge that they understand it and
19 then sign the form. There's a portion that says, directly
20 below the rights, it says I fully understand each of these
21 rights which have been explained to me and there's a blank
22 for the subject to sign. There's a date, blank, and then a
23 witness for me.

24 Q Did you witness Mr. Murray sign in that spot indicating
25 he understood his rights?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A Yes, sir.

2 Q Understanding his rights, did Mr. Murray then waive
3 those rights as he understood them?

4 A Yes, sir.

5 Q How did he do that?

6 A There's a next portion of the form, the waiver of
7 rights portion. I read to him again, verbally acknowledge
8 that he understands, and then there's a portion for him to
9 sign, and it reads I fully understand each of these rights
10 which have been explained to me, and having these in mind, I
11 wish to waive these rights. No threats, force, or promises
12 of any kind have been made to me by anyone to induce or
13 cause me to waive these rights and answer questions.

14 Q Now, did Mr. Murray appear to have any difficulty
15 understanding those rights?

16 A No, sir.

17 Q Did he indicate at any time that he would like an
18 attorney before speaking with police?

19 A No, sir.

20 Q Is, is there any video of that interview or is there
21 any missing video?

22 A No, sir.

23 Q Okay. Who was present during the interview?

24 A I was.

25 Q And at the time of the interview, what was Mr. Murray's

Justin Hembree - Direct examination
by Solicitor Ziegler

- 1 approximate age?
- 2 A The best I can recall, 27 or 28.
- 3 Q What was Mr. Murray's demeanor?
- 4 A He was calm, he was alert, forthcoming.
- 5 Q Did he seem coherent?
- 6 A Yes, sir.
- 7 Q Did he seem rational?
- 8 A Yes, sir.
- 9 Q Did he seem like he understood what was happening?
- 10 A Yes, sir.
- 11 Q Did he appear to have any physical problems or defects?
- 12 A No, sir.
- 13 Q Did he seem to be under the influence of alcohol or
- 14 drugs?
- 15 A No, sir.
- 16 Q Did you make any threats to him?
- 17 A No, sir.
- 18 Q Was he under duress in anyway?
- 19 A No, sir.
- 20 Q And did you make any promises or any misrepresentations
- 21 to him?
- 22 A No, sir.
- 23 Q Was it -- was it a hostile environment?
- 24 A No, sir.
- 25 Q Were you yelling at him?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A No, sir.

2 Q How long did the, the whole interview take on
3 August 2nd?

4 A About approximately three hours.

5 Q Were any breaks taken?

6 A Yes, sir, if I can start from the beginning,
7 Mr. Murray, as soon as I met with him, I knew that he
8 smokes. I offered him a chance to smoke and he accepted,
9 and then, when we entered the interview room, the first
10 thing I did was to fill out this form with Mr. Murray. He
11 signed and initialed acknowledging an understanding of it
12 and then we began the interview.

13 Q Did he make any requests for the interview such as for
14 food or drink or to use the bathroom?

15 A Not that I recall, sir.

16 Q To the best of your knowledge, based on those things,
17 was Mr. Murray's statement freely and voluntarily given?

18 A Yes, sir.

19 Q Was that statement reduced to writing?

20 A It was.

21 Q Who wrote that statement?

22 A I did.

23 Q Is that standard procedure to do that?

24 A Yes, sir.

25 Q Did Mr. Murray sign the statement?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A He did.

2 Q And who was present while the statement was taken?

3 A Captain Amy McCarthy was my supervisor.

4 (WHEREUPON, the statement was marked as State's Exhibit
5 No. 15 for identification purposes only at this time.)

6 Q I'm going to show you a document which has been
7 premarked for identification purposes. It will be State's
8 Exhibit No. 15.

9 Can you identify this document?

10 A Yes, sir, that's the statement form that you're talking
11 about. It's a Mount Pleasant Police Department's statement
12 form.

13 Q How are you familiar with it?

14 A Well, we use it everyday to take statements from
15 suspects or victims and that's the one you hold in front of
16 me is the one that I took from Kenneth Murray.

17 SOLICITOR ZIEGLER: Your Honor, the State moves to
18 admit State's Exhibit 15 into evidence.

19 THE COURT: Ms. Penn.

20 MS. PENN: We just renew our prior objections.

21 THE COURT: All right. 15's -- State 15 in evidence
22 subject to previous objections.

23 (WHEREUPON, State's Exhibit No. 15 was received into
24 evidence at this time.)

25 Q Sergeant Hembree, I'm gonna present State's Exhibit 15

Justin Hembree - Direct examination
by Solicitor Ziegler

1 to you for your reference.

2 what was the date and time that this written statement
3 was taken?

4 A August the 2nd, 2011, at 1:25PM.

5 Q And exactly what did Mr. Murray say in that statement?

6 I'd like you to read it for the jury please and slowly
7 as, slowly as practicable.

8 A Yes, sir.

9 Again, standard procedure is to articulate the, the
10 person writing the statement. So, the first line I wrote
11 says this is the written statement of Kenneth Oredell Murray
12 written by Sergeant Justin Hembree, and the statement begins
13 in the robbery of Pizza Hut at Six Mile Road on 17, I had a
14 BB gun that y'all found under, under my mattress. Bootsie
15 had a 9-millimeter gun. Bootsie was around the neighborhood
16 and asked me if I wanted to go with him on it.

17 We went to Pizza -- we went in Pizza Hut I think.
18 There was about three people inside. We robbed them and
19 left. We got like \$200. We were parked on the side of the
20 building in a blue Mitsubishi, a newer model. Bootsie drove
21 us away after the robbery. We were parked at the dealership
22 next door. We left there and went back to my house on
23 Linnen Lane.

24 Q Thank you, Sergeant Hembree.

25 A Yes, sir.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 Q Did Mr. Murray indicate in that statement that he had a
2 gun?

3 A Yes, sir, a BB gun.

4 Q Did he indicate in that statement that he had an
5 accomplice?

6 A Yes, sir.

7 Q Did he indicate that accomplice had a gun?

8 A Yes, sir.

9 Q Did he indicate that, with those guns in hand, that
10 they robbed the Pizza Hut?

11 A Yes, sir.

12 Q And did he indicate that they left the Pizza Hut
13 together?

14 A Yes, sir.

15 Q Now, did you read the statement back to Murray?

16 A I did.

17 Q Did he make any corrections to it?

18 A No, sir, again, as the standard procedure is to read
19 the form to make sure that it's correct and accurate and it
20 reflects properly what they want to say. We offer them the
21 chance to make any corrections. If they want to make those
22 corrections, to go back through and make them, and then they
23 would initial the corrections and I would initial the
24 corrections. There, there are none on this statement.

25 Q There are none---

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A No, sir.

2 Q ---on it?

3 Did Mr. Murray sign at the bottom of that statement?

4 A Yes, sir, we read the statement to them, again, like I
5 just mentioned, and there's a line that says I have read or
6 had read to me the foregoing statement, which has been
7 freely and voluntarily made by me, and is true and correct
8 to the best of my knowledge, and Mr. Murray signed in a
9 blank directly beside that.

10 Q And is your signature on the document witnessing
11 Murray's statement?

12 A Yes, sir.

13 Q And who else's signature is on that statement?

14 A My supervisor, Captain Amy McCarthy.

15 Q Well, did, did Mr. Murray's statement provide you with,
16 with any information about this armed robbery of the Pizza
17 Hut that you did not have before that interview?

18 A Yes, sir.

19 Q What were those things?

20 A To name a few, Bootsie, as an accomplice, we did not
21 know. He was able to provide verbally that -- you want me
22 to go into the verbal parts that go along with the
23 statement?

24 I'm not sure if you want me to do that.

25 Q Yes. You can indicate what he told you in the

Justin Hembree - Direct examination
by Solicitor Ziegler

1 interview.

2 A We have an interview and at the conclusion of the
3 interview is a written statement. In the verbal portion of
4 the interview he did explain or he further explained Bootsie
5 has a brother named Kevin Major. We did not know either of
6 those two facts. We did not know that Bootsie was armed
7 with a 9-millimeter gun. We did not know that, in the
8 verbal part of that interview, it's described as a Glock
9 handgun.

10 In the -- we did not know that Mr. Murray was in
11 possession of a BB gun that we had found under his mattress.
12 We, we had located that gun, but did not know that was, in
13 fact, the same gun.

14 They left in a blue Mitsubishi newer model. I believe,
15 if you recall, Mr. Ellington described it as a -- possibly a
16 Suzuki Forenza, a blue Mitsubishi is what we were told, and
17 that they went directly back to the house on Linnen Lane.
18 We would not have known that either.

19 Q Now, in this statement, Murray does indicate that he
20 and a person known to him as Bootsie participated in the
21 armed robbery.

22 who did you determine Bootsie to be and please explain
23 to the jury the, the logistics of that process after you
24 heard from Mr. Murray that Bootsie was involved?

25 A Yes, sir. An interview is a -- it's a fluid situation.

Justin Hembree - Direct examination
by Solicitor Ziegler

1 I have a support unit of detectives outside of the interview
2 room. I was provided with the name of Bootsie. I provided
3 it to the detectives, a task force officer that was assigned
4 that work for our department.

5 Knowing that Bootsie had a brother named Kevin Major,
6 he searched some database that -- law enforcement databases
7 and was able to identify Bootsie as possibly Cleveland
8 Clarence Major. Cleveland Clarence Major lives in the area,
9 has a brother named Kevin Major, uses the alias Bootsie.

10 with that, the detectives prepared a photo lineup that
11 contained six individuals, one of which being Cleveland
12 Clarence Major, and we have an independent administrator
13 present that lineup to Mr. Murray. The independent
14 administrator, as per the rules of our department, they
15 don't know the identity of the suspect in the photo lineup.
16 They don't even know that it contained -- if it does or does
17 not contain the suspect, and they present it independently
18 without us present and then, in the interview, we find out
19 the results.

20 Q So, after you ordered that, that six pack photo lineup
21 to try to identify Bootsie, did you, did Mr. Murray
22 identified anyone in that lineup?

23 A Cleveland -- Clarence Cleveland Major.

24 Q And that photo -- was that photo lineup presented to
25 Murray during your, course of your interview with him?

Justin Hembree - Direct examination
by Solicitor Ziegler

1 A Yes, sir, like I said, we met about 10:00AM. It's the
2 final portion of the written statement I took at 1:25PM.
3 So, in-between that time.

4 Q Okay. And did he -- how did he, how did he identify
5 Bootsie?

6 Did he -- I know you said he told you in the interview
7 that he participated in the robbery with Bootsie.

8 How did he identify him in the lineup?

9 A So, I learned that he identified him by circling, I
10 believe, his photo in the photo lineup.

11 Q Okay. How did he say -- how did he say he knew him?

12 A Well, so, I believe, if I recall in the form, it's a,
13 it's a -- he put that he's from the neighborhood, I believe.
14 But that's not uncommon.

15 When, when we're presenting a lineup and when I'm
16 asking to view a lineup with an independent administrator, I
17 clearly explain that I'm wanting to know the accomplice in
18 the Pizza Hut robbery. It's not that I just want to know if
19 they know anyone. I want to know if they know their
20 accomplice in the Pizza Hut robbery.

21 It's not uncommon, out of fear, that they will often
22 put I don't -- the neighborhood, around the corner because
23 they're identifying an accomplice in an armed robbery.

24 Q And based on Mr. Murray's identification of Cleveland
25 Major as this Bootsie character that you referred to in the

Justin Hembree - Direct examination
by Solicitor Ziegler

1 statement, based on that did you, did you arrest Cleveland
2 Major for the armed robbery at the Pizza Hut?

3 A I did.

4 Q When was he arrested?

5 A Later that evening.

6 Q And did he plead guilty to the armed robbery of the
7 Pizza Hut?

8 A He did.

9 SOLICITOR ZIEGLER: Court's indulgence please, Your
10 Honor.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q Sergeant Hembree, we, we discussed that Mr. Major made
14 verbal statements to you and then also a written statement.

15 Is it normal to have a time period between those two
16 where you're listening to the verbal statements first?

17 A Mr. Murray's, in any, any interview, yes, yes. There's
18 a verbal portion prior to the written statement, yes.

19 Q Okay. And during the, during the course of that
20 approximately three hour interview, were there, were there
21 times when you would leave the room or when there were just
22 kind of lulls in what you were discussing?

23 A Yes, sir.

24 Q Okay. What were the reasons for that -- for those?

25 A The -- in short, the investigator process. I have to,

Justin Hembree - Direct examination
by Solicitor Ziegler

1 you know, get folks to do the, the research while I'm going
2 in and out of the interview room to get the information.
3 Then I have to find an independent administrator, we have to
4 put the lineup together, those type things. Take -- they
5 take time.

6 SOLICITOR ZIEGLER: State has no further questions,
7 Your Honor.

8 THE COURT: Thank you.

9 Thank you, solicitor.

10 Ms. Penn.

11 MS. PENN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. PENN:

14 Q Good morning, Sergeant Hembree.

15 A Hello.

16 Q The day on the statement is the 2nd of August 2011,
17 correct?

18 A Yes, ma'am.

19 Q And would it surprise you if I told you that Kenneth
20 Murray was at the station before 9:30?

21 A It would surprise me I guess.

22 Q It would surprise you.

23 (WHEREUPON, the photographic lineup admonition was
24 marked as Defendant's Exhibit No. 1 for identification
25 purposes only at this time.)

Justin Hembree - Cross-examination
by Ms. Penn

1 MS. PENN: May I approach the witness, Your Honor?

2 THE COURT: Yes, ma'am.

3 Q without reading this out loud or telling us what it is,
4 does that refresh your memory as to the time Kenneth Murray
5 was at the station that day?

6 A Yes, ma'am.

7 Q And would you---

8 A well, I see that, I see this piece of paper has that
9 time on it.

10 Q Okay. Thank you.

11 And that time is 9:30?

12 A Yes, ma'am.

13 Q And the time on the statement is 13:25, correct?

14 A Yes, ma'am.

15 Q And for -- that means 1:25 in the afternoon?

16 A Yes, ma'am.

17 Q So, about 45 minutes away?

18 A Okay.

19 Q Right?

20 A Correct.

21 Q We agree that that's four hours?

22 A Sure.

23 Q Okay. And during this interrogation, Kenneth was
24 crying?

25 A He did cry in a portion of his interview.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q He told you he was scared?

2 A Yes, ma'am.

3 Q He said he didn't want himself or his family in danger?

4 A Correct.

5 Q And during the time, during this four hours, was he
6 free to leave?

7 A No, ma'am.

8 Q If he had told you he wanted to go home, you wouldn't
9 have let him go, would you?

10 A No, ma'am.

11 Q I know we've gone a little bit over the lineup.
12 You asked for a lineup from the jail?

13 A Yes, ma'am.

14 Q You asked for a lineup that contained Cleveland Major?

15 A Yes, ma'am.

16 Q And that lineup you knew for sure had Cleveland Major
17 in it?

18 A Yes, ma'am.

19 Q And five filler folks?

20 A Yes, ma'am.

21 Q Now, you didn't present the lineup yourself because
22 it's suppose to be a blind presentation, correct?

23 A Correct.

24 Q And blind means the guy who's showing the witness or
25 the defendant the lineup doesn't know who is suppose to be

Justin Hembree - Cross-examination
by Ms. Penn

1 picked out, correct?

2 A Correct.

3 Q And the point is that that way the officer showing the
4 lineup can't indicate to the defendant or to the witness by
5 physical cues or even nonverbal just kind of accidental
6 cues, is that right?

7 A Uh-huh. (Affirmative).

8 Q The idea that it's kind of hard to have a poker face if
9 you know what you're looking for, right?

10 A If, if the administrator knows who they're looking for
11 or the --?

12 Q Yes, sir.

13 A Okay.

14 Q And this lineup was first shown to Kenneth at 12:19, is
15 that right?

16 A I would have to look at the --

17 Q Okay.

18 A -- information.

19 MS. PENN: Court's indulgence, Your Honor.

20 THE COURT: Yes, ma'am.

21 (Pause.)

22 MS. PENN: Your Honor, we have a matter of law.

23 THE COURT: All right. Madam Forelady, ladies and
24 gentlemen of the jury, perhaps now would be a good time for
25 y'all to take your luncheon recess. If you would leave your

Justin Hembree - Cross-examination
by Ms. Penn

1 Murray, three times and it wasn't until the third time that
2 Mr. Murray picks Cleveland Major out of the lineup. I would
3 like to get into that because I think right now the jury
4 thinks that Kenneth Murray saw the lineup once and just
5 picked him and that was that and that's not the case.

6 THE COURT: All right.

7 SOLICITOR SHEALY: Your Honor, if I could handle this
8 motion?

9 THE COURT: All right. Yes.

10 SOLICITOR SHEALY: Judge, what happened was they were
11 interviewing him both about the Piggly wiggly and about the
12 Pizza Hut, and it wasn't Sergeant Hembree that showed him
13 the lineup. It was Chris Helms, an independent person, and
14 in that Helms knew nothing about what was being discussed.
15 He was showing Mr. Murray lineups. Mr. Murray -- there was
16 some confusion because Mr. Murray believed that some lineup
17 that he was being asked to identify people in the Piggly
18 wiggly and Cleveland Major wasn't involved in the Piggly
19 wiggly.

20 So, for her to start bringing up previous lineups that
21 contained Cleveland Major's picture and Mr. Murray not
22 identifying him in the other, the two prior ones, would
23 necessitate our going into why there was some confusion
24 because he was not directly asked which crime he was being
25 asked to identify whether or not someone was a participant

Justin Hembree - Cross-examination
by Ms. Penn

1 in because Mr. Major was not a participant in the Piggly
2 wiggly.

3 So, that's my concern about her doing that because
4 we -- otherwise it looks like he doesn't say it, he doesn't
5 say it, and then for some reason he says it.

6 THE COURT: It looks like to me like he's scared to say
7 it, scared to say it, and then he finally said it. Looks
8 like to me it's whether or not you're cutting your throat
9 left to right or right to left.

10 Be that as it may, is Mr. Major's picture in every
11 lineup?

12 SOLICITOR SHEALY: They're a series of -- no, not every
13 lineup that he was shown. There are a series of lineups.

14 THE COURT: Okay.

15 SOLICITOR SHEALY: But there are -- his, his picture
16 was in three lineups.

17 THE COURT: All right.

18 SOLICITOR SHEALY: And then when he was focused as to
19 we're talking about the Pizza Hut, he identifies Mr. Major.

20 THE COURT: All right. So, the -- I, I believe the
21 term used by the sergeant was the administrator?

22 THE WITNESS: Yes, sir.

23 THE COURT: He's the individual -- that's the label
24 they give the individual that shows the lineup?

25 SOLICITOR SHEALY: That label he gives him, yes.

Justin Hembree - Cross-examination
by Ms. Penn

1 THE COURT: Is that right?

2 THE WITNESS: (Witness nods affirmatively.)

3 THE COURT: So, Sergeant or Inspector or whatever,
4 Chris Helms is the officer that showed the lineup?

5 SOLICITOR SHEALY: That's correct, but, judge, what
6 happens also, just so I can give you kind of a full picture,
7 Sergeant Hembree is interviewing Murray. You know, so he
8 sends out I need -- he asked someone else to get a lineup
9 with Cleveland Major's picture in it. But he's also asking
10 get a lineup with Danta Smalls picture in it. So, there are
11 a series of lineups that are shown to Mr. Murray.

12 When Sergeant Helms comes back and says he doesn't
13 identify Cleveland Major, then -- and we may need to get
14 this directly from Sergeant Hembree, but he then says does
15 he understand this is on the Pizza Hut. We got to tell him
16 this is about the Pizza Hut. He has to give some
17 clarification to Mr. Helms as to which person he's trying to
18 identify, which crime he's trying to identify.

19 My concern is absent that, absent an explanation, it
20 looks like, if it can be perceived by the jury that they're
21 relentless, and not until he identifies Cleveland Major did
22 they end the process, which I think is inaccurate.

23 THE COURT: And how does this prejudice the State from
24 Cleveland Major is pled guilty to the armed robbery and been
25 sentenced?

Justin Hembree - Cross-examination
by Ms. Penn

1 How is the State---

2 SOLICITOR SHEALY: Well, the concern--

3 THE COURT: ---prejudiced?

4 SOLICITOR SHEALY: I'm sorry.

5 THE COURT: No, go right ahead. I was---

6 SOLICITOR SHEALY: The concern could be, cause you just
7 don't know how that may affect the jury. The jury could
8 find it so distasteful that they hold it against the State,
9 if they feel like they were bearing down his will until he
10 identifies someone.

11 You know, I don't know which way Ms. Penn may try to
12 summarize it for purposes of a closing argument, but the
13 concern would be the potential unfairness to the State if
14 the jury believed in anyway that they, that Mr. Murray was
15 being treated unfairly and that could obviously then spill
16 over to the voluntariness of his statement, and they may
17 then think the statement was not voluntarily --.

18 THE COURT: Well, I would -- I think I would -- I don't
19 question you at all, but -- solicitor, or Ms. Penn.

20 Do you care to respond, Ms. Penn?

21 MS. PENN: Your Honor, I think it would be unfair for
22 the jury to think that this was the only lineup, that this
23 is the guy he picked cause that's just not the case. He was
24 shown it three times. Sergeant Hembree's role is that he's
25 the one telling Helms go back in there, show it to him

Justin Hembree - Cross-examination
by MS. Penn

1 again. That's just -- that's the facts of the case, Your
2 Honor, and I think the jury's entitled to know that. I mean
3 I think it goes to the overall issue of whether or not the
4 statement is voluntary.

5 THE COURT: Well, the facts of the case are that
6 Sergeant Hembree tells Detective Helms to go back in there
7 and show it to him again and specify it's the Pizza Hut
8 armed robbery. That's, that's the facts of the case.

9 SOLICITOR SHEALY: That's correct.

10 THE COURT: I mean that's, that's -- you know, in my --
11 I'm just, I'm just buying it like y'all are selling it. I
12 haven't heard from Detective Helms, and, again, I say that
13 by saying I believe exactly what y'all tell me. It's not
14 that I question y'all's credibility. But if Detective Helms
15 testifies differently in that, that I showed him the photo
16 lineup three times and said the Pizza Hut three times or
17 something of that nature, then I think that would change,
18 change, would change the focus of it. But I think I have to
19 hear more in camera either both from, A, this witness and,
20 B, from Detective Helms to make that, to make that
21 determination.

22 So, if, if, if the first one or the second one is being
23 shown and presented to, to Mr. Murray, and saying all right,
24 let's talk about the Piggly Wiggly robbery, is any of the,
25 is any individuals in this photographic lineup involved in

Justin Hembree - Cross-examination
by Ms. Penn

1 the Piggly Wiggly robbery, and he says no, then that,
2 that -- one of those is not -- is Mr. Major or whoever it
3 was, then that's not relevant. That's not relevant that he,
4 he didn't pick out Mr. Major, that Mr. Major---

5 SOLICITOR SHEALY: If it was---

6 THE COURT: -- in this case.

7 SOLICITOR SHEALY: Right.

8 THE COURT: Mr. Major wasn't involved in the Piggly
9 Wiggly case or whatever. I don't know.

10 SOLICITOR SHEALY: It may be safest if we can handle
11 that in camera so just we can -- none of us get surprised.

12 THE COURT: If you object to what I'm ruling on---

13 SOLICITOR SHEALY: Right.

14 THE COURT: I certainly understand the potential
15 position if he's shown three different lineups, and it's not
16 until the third time that that makes it relevant. But then
17 again, it may not be relevant if he's shown a lineup as to
18 all right, if you were involved in the Piggly Wiggly
19 robbery, see anyone in here you recognize that was with you,
20 and he says no, that's not relevant in this case. That's,
21 that's not relevant that Mr. Major was not involved in --
22 with him in the Piggly Wiggly case.

23 MS. PENN: Right. And I think it's probably gonna be
24 somewhere in-between that he's not given any direction as to
25 which crime he's talking about, Mr. Helms, and then -- but

Justin Hembree - Cross-examination
by Ms. Penn

1 we can -- I might be better to hear it directly from him
2 because I'm not sure that I can characterize it completely.

3 THE COURT: All right.

4 SOLICITOR SHEALY: Judge, there's one other matter that
5 I think she's opened the door to.

6 THE COURT: Okay.

7 SOLICITOR SHEALY: She asked Sergeant Hembree whether
8 or not Mr. Major was free to leave.

9 THE COURT: Yes, ma'am.

10 SOLICITOR SHEALY: It's been established he had not
11 been arrested for the armed robbery. I think that that then
12 entitles us to explain to the jury the reason he wasn't free
13 to leave was because he was already arrested on a different
14 matter.

15 THE COURT: All right. Ms., Ms. Penn.

16 MS. PENN: Your Honor, I asked that question because
17 the State asked if Mr. Murray was under arrest at that time
18 for this case, and the answer is he wasn't, but he's still
19 in custody, and I think the fact that he's in custody is an
20 issue for the jury that goes towards voluntariness.

21 SOLICITOR SHEALY: But he's in custody, he was in
22 custody, judge, because like if -- let's just say Piggly
23 wiggly hadn't happened and he wasn't arrested, and he calls
24 Sergeant Hembree and says I'd like to talk to you, he -- it
25 would not have been custodial. The reason he was in custody

Justin Hembree - Cross-examination
by Ms. Penn

1 is because he was in custody on the Piggly Wiggly.

2 THE COURT: Well, Ms., Ms. Penn, you, you were -- do
3 you concede that Mr. Murray was in custody on August 2nd,
4 2011?

5 MS. PENN: I do, Your Honor.

6 THE COURT: In valid custody?

7 MS. PENN: Yes, sir.

8 THE COURT: All right. Just, just ask that. I don't
9 want to get into the other things.

10 SOLICITOR SHEALY: Well, give me some guidance as to
11 how I can distinguish that they -- he comes in. I don't
12 want the jury to believe he comes in and starts talking.
13 All of a sudden he's lost his freedom because that's not
14 what happened.

15 THE COURT: He was -- I mean --.

16 MS. PENN: We would have no objection to the State
17 saying he was under arrest at this time. Not for this case.

18 THE COURT: He was already in custody and sent word to
19 the detective that he wanted to talk to him. I mean I don't
20 and I give, I give you -- if you're requesting, I'll
21 consider a limited instruction in that regard, the fact that
22 he was in custody on whatever other matter, but not relevant
23 and may of been another matter. It's not relevant to as
24 whether or not he's guilty or not guilty in this case.

25 SOLICITOR SHEALY: I don't know if you -- I don't know

Justin Hembree - Cross-examination
by MS. Penn

1 if you heard what her suggestion was and that may remedy it.
2 She -- say it again.

3 MS. PENN: I would, I would have no objection to the
4 State saying and clarifying that my client was in custody at
5 the time for something different, and then, with the Court's
6 limiting instruction, that that's not to be considered with
7 this case.

8 THE COURT: All right. All right.

9 SOLICITOR SHEALY: Not to belabor it, but if that is
10 allowed, then I would like for Mr. Ziegler to be able to ask
11 Mr. Hembree regarding the initiation of this interview, did
12 you send someone to bring him in. We're trying to shy away
13 from that before she opened, what I consider opened the door
14 to it. But I don't want the, the jury to be confused about
15 how he could call if he's in jail. They may not understand
16 that that ability exists.

17 MS. PENN: Your Honor, I, I just don't think that's
18 necessary. I think that -- I don't believe that's
19 necessary. Once the State gets out he's in custody I think
20 the jury can figure it out that -- and I don't think that
21 needs to be considered at all.

22 SOLICITOR SHEALY: Our concern though is just that it
23 all goes to voluntariness, and I don't want them to be
24 confused if they now hear that he was in custody on another
25 matter and what we've elicited thus far from Sergeant

Justin Hembree - Cross-examination
by Ms. Penn

1 Hembree is just -- I'm not sure how you asked it.

2 Do you remember?

3 That he had requested to see -- I'm not sure exactly
4 how you asked it. Did he leave a message. So, I don't want
5 the jury to be going well, now, wait a minute, how could he
6 leave a message if he was in custody.

7 THE COURT: well, I never saw the prejudice to him or
8 the State as far as saying that he got -- the officer got a
9 message from the detention center and sent for him. I mean
10 it's the same thing when you have a, a homicide in the
11 Department of Corrections. You can't say well, you can't
12 make up some location where the homicide---

13 SOLICITOR SHEALY: Right.

14 THE COURT: ---happened. But everybody knows that it's
15 in the Department of Corrections, and, you know, that's a
16 fact that he was in custody and he received a message from
17 an officer and made arrangements to have him, have him
18 brought over.

19 well, let me, let me see how it unfolds, and I'll, I'll
20 do some type of limiting instruction and present it to you
21 before, before we start back.

22 All right.

23 MS. PENN: Thank you, Your Honor.

24 THE COURT: what time did I tell the jury?

25 THE CLERK: 2:15.

Justin Hembree - Cross-examination
by Ms. Penn

1 THE COURT: 2:15.

2 All right. Anything further, solicitor?

3 I'm sorry. I cut you off.

4 SOLICITOR SHEALY: No.

5 Are we gonna resume the in camera after lunch or did
6 you want to do that now?

7 THE COURT: Yes.

8 SOLICITOR SHEALY: Okay.

9 THE COURT: You may step down, sergeant. You're under
10 oath subject to continued cross.

11 SOLICITOR SHEALY: Well, yes, he is.

12 THE COURT: And redirect, perhaps recross. So, if you
13 would not discuss your testimony with anyone.

14 Thank you.

15 Thank you very much.

16 SOLICITOR SHEALY: May we approach the bench just for
17 one short matter?

18 (WHEREUPON, a bench conference was held at this time.)

19 (Whereupon, Court was in recess for the lunch hour.)

20 THE COURT: All right. Solicitor, do you want to
21 examine Sergeant Hembree in camera?

22 SOLICITOR ZIEGLER: Yes, Your Honor. I'll continue
23 with the examination --

24 THE COURT: All right.

25 SOLICITOR ZIEGLER: -- of Sergeant Hembree.

Justin Hembree - Cross-examination
by Ms. Penn

1 SOLICITOR SHEALY: Your Honor, may I step outside for
2 just a second while y'all are handling that?

3 Is that okay?

4 THE COURT: Ma'am?

5 SOLICITOR SHEALY: May I step outside for just a
6 second?

7 THE COURT: Oh, yes, ma'am. Uh-huh. (Affirmative).

8 Yes, ma'am.

9 SOLICITOR ZIEGLER: Your Honor, did you want the State
10 to determine the details about the lineups presented to, to
11 the defendant?

12 THE COURT: I want the State to do whatever the State
13 thinks they need to do --

14 SOLICITOR ZIEGLER: Okay.

15 THE COURT: -- as far as the motion is concerned. It
16 just, just all depends on the lineups.

17 DIRECT EXAMINATION

18 BY SOLICITOR ZIEGLER:

19 Q Sergeant Hembree, when Kenneth Murray gave you the name
20 of Bootsie in his statement, did he do that to procure
21 lineups to be presented to him containing Cleveland Major?

22 A I did.

23 Q And how many lineups were procured?

24 How many, how many sets of lineups?

25 A One set that contained Cleveland Major, and one set

Justin Hembree - Direct examination
by Solicitor Hembree

1 that contained another suspect from another incident.

2 Q And was he shown both of those lineups?

3 Was Kenneth Murray shown both of those lineups by --
4 was he shown them?

5 A Yes.

6 Q Who showed them?

7 A Sergeant Helms. Chris Helms.

8 Q Did he identify anyone in either of those lineups --

9 A Yes.

10 Q -- at that time?

11 A Yes.

12 Q The first time.

13 A Initially, initially, no. I believe -- can I refer to
14 my notes, my, my police report?

15 Q Yes.

16 A Okay. On the lineup that contained Cleveland Major, he
17 was not able to make an identification or did, did not make
18 an identification on the first two attempts, and on the
19 third attempt he did make an identification, and then the --
20 he, he was able to identify another subject in a separate
21 robbery.

22 Q So, on the, the first attempt, looking at both of those
23 sets of six packs --

24 A Yes, sir.

25 Q -- he did not -- did he identify anyone on either of

Justin Hembree - Direct examination
by Solicitor Hembree

1 those lineups?

2 A I'm reading Sergeant Helms supplemental to refresh my
3 memory, and I, I can tell you that it appears that he was
4 able to identify the subject from the Piggly Wiggly robbery.
5 Not -- and did not identify the other subject.

6 Q Are you sure that -- was, was that on the first set of
7 lineups shown or --?

8 A I don't believe -- I'm, I'm just going from memory
9 here. Sergeant Helms could speak better to that.

10 Q Okay.

11 A I wasn't in the room.

12 Q Well, was there any confusion on Mr. Murray's part in
13 the first set of lineups shown to him as to which, which
14 crime it was related to?

15 A Yes, I had explained, in the verbal interview portion,
16 that, of our talk, that, that I was going to ask him to look
17 at lineups that contained suspects from the Piggly Wiggly
18 robbery and from the Pizza Hut robbery. It was my
19 understanding, as it was relayed by Sergeant Helms, that he
20 did not, he did not understand and, and thought that he was
21 looking for only suspects in the Piggly Wiggly robbery,
22 which Cleveland Major was not involved with.

23 Q Okay. Now, did you show him the lineup?

24 Did you have Sergeant or Inspector Helms show him the
25 lineups a second time?

Justin Hembree - Direct examination
by Solicitor Hembree

1 A I did.

2 Q Did you clarify anything before that was, before that
3 was shown?

4 A Yes, I explained that, that I -- I wanted to -- let me
5 find it specifically. I confirmed with him that he, that it
6 was specifically for the Pizza Hut robbery, the one lineup
7 that he was looking at. They weren't shown the exact same
8 time. It was, it was, as I recall, I believe it was Major
9 first and then the other subject was next. But, but I did
10 clarify that the, that the one that I had given to Sergeant
11 Helms that had Major in it was only for the Pizza Hut
12 robbery.

13 Q And so did you then direct Inspector Helms to show him
14 both lineups the second, the second time?

15 A Yes, sir.

16 Q Did Inspector Helms do that?

17 A Yes, sir.

18 Q To the best of your knowledge, did Mr. Murray identify
19 anyone in either of those sets of lineups the second time he
20 looked at them?

21 A I don't recall offhand if he identified the lineup that
22 contained Danta Smalls on that attempt or if it was another
23 one cause I wasn't in the room, but I know he identified
24 him. Major, it was, it was the third attempt I believe.

25 Q Okay. So, did you, did you make any clarifications

Justin Hembree - Direct examination
by Solicitor Hembree

1 after the second attempt?

2 A Yes. So, I, I like to again refer to my notes to see
3 exactly what the conversation was. It's actually Sergeant
4 Helms report as a witness.

5 MS. PENN: Your Honor, I'd like to object to Detective
6 Hembree's use of somebody else's report to refresh his
7 memory.

8 THE COURT: Well, y'all, y'all asked him this about,
9 about the lineup and you cross-examined him about the
10 lineup. All of it is hearsay. If y'all don't want it, then
11 we'll just move on and I'm gonna strike it all from the
12 record and move on. I mean if you're in for a penny, you're
13 in for a pound.

14 I'll overrule the objection.

15 Go right ahead, solicitor.

16 Q Could you make any clarifications?

17 A Yes, I won't refer to the report, but I remember that
18 Mr. Major hung his head. I remember that he was crying. I
19 wouldn't say sobbing, but he was teary eyed and he made some
20 reference to being concerned for his family, for his safety,
21 and I asked him if he was able to identify anybody from the,
22 from the photographs and he said that he was -- he indicated
23 that he was, and I asked him if he'd be willing to look at
24 them again and he indicated that he would. I stepped back
25 out of the room and Sergeant Helms showed the lineup the

Justin Hembree - Direct examination
by Solicitor Hembree

1 third time.

2 Q And, and on that, on that third administration, did he
3 identify anyone?

4 A Yes, sir.

5 SOLICITOR ZIEGLER: Court's indulgence please, Your
6 Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 SOLICITOR ZIEGLER: No further questions for the
10 witness for the in camera hearing, Your Honor.

11 THE COURT: Thank you.

12 Thank you very much.

13 Ms. Penn.

14 MS. PENN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. PENN:

17 Q Detective Hembree, there are two different six packs,
18 correct?

19 A Yes, ma'am.

20 Q One six pack has Cleveland Major in it?

21 A Correct.

22 Q And he is the suspect for this case in the Pizza Hut
23 robbery?

24 A Correct.

25 Q The other six pack has Danta Smalls in it, right?

Justin Hembree - Cross-examination
by Ms. Penn

1 A Yes, ma'am.

2 Q And he is the suspect for the Piggly wiggly robbery?

3 A Yes, ma'am.

4 Q Now, I know you said that the two lineups are not
5 literally shown to Mr. Murray at the same time, correct?

6 A Correct.

7 Q But they're shown -- first he is shown the one with
8 Cleveland Major on it, right?

9 A Yes.

10 Q And then he gets shown the one with Danta Smalls on it?

11 A I wasn't in there. So, I don't know which one was
12 first. If it was Smalls first and then Major or vice versa.

13 Q Okay.

14 A But he---

15 Q Sure.

16 A Sequentially, yes.

17 Q Okay. So, one with one suspect for one robbery, and
18 one with one suspect from another robbery?

19 A Correct.

20 Q And after the first time he doesn't identify anybody
21 from either robbery?

22 A I don't recall specifically and he---

23 Q Sure.

24 A ---and you'd have to get Inspector Helms---

25 Q I think he's next.

Justin Hembree - Cross-examination
by Ms. Penn

1 A ---to talk to him. He'd know.

2 Q But in any case, Helms tells you he's done and he --
3 you say are you sure you knew that you were looking for the
4 Pizza Hut armed robbery, not the Piggly wiggly robbery,
5 right?

6 A Right.

7 Q And Helms shows them, in whatever order, both of the
8 lineups with a different suspect a second time, right?

9 A I believe that he -- this is a question for Helms.

10 Q Okay.

11 A I believe that he showed just the one that contained
12 Major in it.

13 Q I'll check with Helms, but in any case, my client does
14 not identify Cleveland Major at that time either?

15 A The second time?

16 Q Yes, sir.

17 A No, ma'am.

18 Q Okay. And then Helms shows him the same two lineups --
19 oh, no.

20 Helms shows him one lineup a third time with Cleveland
21 Major in it?

22 A Uh-huh. (Affirmative).

23 Q And that time my client identifies him --

24 A Correct.

25 Q -- is that correct?

Justin Hembree - Cross-examination
by Ms. Penn

1 Okay. Thank you. I have no further questions.

2 THE COURT: All right. Anything in redirect,
3 solicitor?

4 SOLICITOR ZIEGLER: No redirect, Your Honor.

5 THE COURT: All right.

6 All right. Solicitor, you want to offer any other
7 evidence or testimony in camera?

8 SOLICITOR ZIEGLER: Yes, Your Honor. I'd like to call
9 Inspector Chris Helms.

10 THE COURT: All right. You may call him.

11 SOLICITOR ZIEGLER: State calls Inspector Chris Helms.

12 THE COURT: You may step down, sergeant.

13 CHRIS HELMS, having been first duly
14 sworn, testified as follows:

15 THE CLERK: Would you please take a seat and state your
16 name spelling your last name for the record?

17 THE WITNESS: My name is Christopher Dale Helms. The
18 spelling of my last name is H-E-L-M-S.

19 THE COURT: All right. Solicitor.

20 DIRECT EXAMINATION

21 BY SOLICITOR ZIEGLER:

22 Q Inspector Helms, please state your name and spell your
23 last name for us

24 A It's Christopher Helms. Last name is H-E-L-M-S.

25 Q Where are you employed, Inspector Helms?

Chris Helms - Direct examination
by Solicitor Ziegler

1 A The Mount Pleasant Police Department.

2 Q How long have you been employed there?

3 A Approximately 18 years.

4 Q What is your current position?

5 A Currently I'm an inspector assigned to the internal
6 affairs division.

7 Q And, briefly, what are your, what are your duties and
8 responsibilities in that position?

9 A So I handle our accreditation files for the department
10 and I conduct internal audits and inspections on the
11 officers as well as public information officer and deal with
12 the media.

13 Q Was that, was that your position in July 2011?

14 A No, sir, I was the training sergeant.

15 Q In your capacity as, as a training sergeant with Mount
16 Pleasant Police Department, did you present the photo
17 lineups to Kenneth Murray on August 2nd, 2011?

18 A I did, sir.

19 Q Who requested that you present those lineups?

20 A Sergeant Justin Hembree.

21 Q Did you have any knowledge of the case previously to
22 which the lineups were related?

23 A No, sir.

24 SOLICITOR ZIEGLER: Your Honor, I'm gonna show defense
25 counsel quickly an exhibit that I intend to introduce.

Chris Helms - Direct examination
by Solicitor Ziegler

1 THE COURT: All right.

2 (Pause.)

3 Q Inspector Helms, I'm gonna show you a document.

4 Can you identify this document?

5 A Yes, sir, it's the lineup that I initially saw.

6 Q How are you familiar with it?

7 A That's one of our routine forms.

8 SOLICITOR ZIEGLER: Your Honor, the State moves to

9 admit the Court's Exhibit at this time.

10 THE COURT: All right. For purposes of this hearing,
11 that will be Court's 6.

12 COURT REPORTER: Yes.

13 THE COURT: Court's 6.

14 (WHEREUPON, the lineup was marked as Court's Exhibit
15 No. 6 and received into evidence for purposes of this
16 hearing only at this time.)

17 Q Let me give you this document for your reference,
18 Inspector Helms.

19 A Okay.

20 Q Did you, did you present -- what time did you present
21 this lineup to Mr. Murray?

22 A At 12:19PM on August 2nd, 2011.

23 Q And on that, on that particular lineup, do you remember
24 who was -- what suspect was included in that lineup?

25 A I, I have no way to know that, sir.

Chris Helms - Direct examination
by Solicitor Ziegler

1 Q Okay. And, again, you weren't familiar with the case
2 before?

3 A No, no idea what the case was.

4 Q Where was, where was that lineup shown?

5 A It was in Room 551, which is in the investigation
6 suites in the interview room.

7 Q And was Mr. Murray given any instructions prior to the
8 lineup?

9 A He was, sir.

10 Q What, what were those instructions?

11 A Reading from my report. You're going to be asked to
12 view a set of photographs. The perpetrator may or may not
13 be present or presented in the lineup. The photographs may
14 not only always show the true complexion of an individual,
15 and may be lighter or darker than the photograph.

16 Hairstyles, beards, and mustaches can easily be changed.

17 The lineup administrator does not know the suspect's
18 identity. You are not compelled to make an identification.
19 It is just as important to exclude innocent persons as it is
20 to identify the perpetrator and the investigation will
21 continue whether or not an identification is made. And I
22 explained to him that I was the administrator, the lineup
23 administrator.

24 Q Did he indicate that he understood those instructions?

25 A Yes, sir, he did.

Chris Helms - Direct examination
by Solicitor Ziegler

1 Q How did he do that?

2 A Specifically I'm gonna refer back to my report. I
3 asked him do you understand the instructions you have been
4 given, he said yes, and then he signed his name next to the
5 word, or his initials, next to the word yes indicating he
6 understood the instructions.

7 Q Was he able -- in that particular photo lineup, was he
8 able to make any identification?

9 A Let's see. Refer back.

10 After initialing and after all the photographs were
11 shown, he indicated he was not able to identify and he
12 circled was not able to make an identification.

13 Q Thank you.

14 Did he sign his signature in the bottom of that page?

15 A He did. I signed my signature as the lineup
16 administrator and he signed his as well as dating it 8/2/11.

17 Q Thank you.

18 Your Honor, may I approach the witness?

19 THE COURT: Yes, sir.

20 Q I'm showing you another four.

21 Can you identify this?

22 A Yes, sir, photograph, lineup admonition form. Same as
23 the---

24 Q Okay. And are you familiar with it the same way with
25 that, that last one?

Chris Helms - Direct examination
by Solicitor Ziegler

1 A I am, sir.

2 SOLICITOR ZIEGLER: State moves to admit Court's
3 Exhibit.

4 THE COURT: All right. In evidence for the purposes of
5 this hearing. Court's evidence.

6 (WHEREUPON, the lineup was marked as Court's Exhibit
7 No. 7 and received into evidence for purposes of this
8 hearing only at this time.)

9 Q Present this to you for your review.

10 A Thank you, sir.

11 SOLICITOR ZIEGLER: Court's indulgence please, Your
12 Honor.

13 (Pause.)

14 Q Inspector Helms, in this Court's Exhibit, is this, is
15 this similar to the one that I've just previously shown you?

16 A Yes, sir.

17 Q And what is the timeline on this particular exhibit?

18 A It's -- the time is 12:23PM.

19 Q And did you give him the same warnings as the previous?

20 A I did. I gave him the same exact instructions.

21 Q Was he able to make any identification in that lineup
22 presentation?

23 A He was not and circled was not able to make an
24 identification.

25 Q And did he similarly sign in the bottom of that page?

Chris Helms - Direct examination
by Solicitor Ziegler

1 A He did, sir. He signed his name and dated it 8/2/11.

2 SOLICITOR ZIEGLER: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes, sir.

5 Q I'm now showing you another form.

6 Can you identify this?

7 A These are photograph lineup admonition form.

8 Q Are you familiar with it in the same way that you're
9 familiar with the first two we've --?

10 A Yes, sir.

11 Q Okay.

12 SOLICITOR ZIEGLER: Your Honor, the State moves to
13 introduce the next Court's Exhibit.

14 THE COURT: Court's 8, Court's Exhibit for purposes of
15 this hearing.

16 (WHEREUPON, the lineup was marked as Court's Exhibit
17 No. 8 and received into evidence for purposes of this
18 hearing only at this time.)

19 Q Court's Exhibit 8 for your review.

20 Inspector Helms, can you tell us what time this
21 administration was given?

22 A At 12:31PM on August 2nd, 2011.

23 Q Did you give Mr. Murray similar warnings to the
24 previous admonition forms we've gone over?

25 A I did.

Chris Helms - Direct examination
by Solicitor Ziegler

1 Q Did Mr. Murray make any identification in this
2 particular lineup presentation?

3 A He had circled was not. Initially it looked like he
4 circled was and then circled around was not and then put his
5 initials just above the circle, and he indicated to me, by
6 way of my report, he said was not able to make an
7 identification from this photographic lineup to indicate
8 this fact I have in the admonition sheet.

9 Q Thank you.

10 Did he sign the bottom of that particular paper?

11 A He did, sir.

12 Q Thank you.

13 Your Honor, may I approach the witness?

14 THE COURT: Yes, sir.

15 Q Showing you another form, can you identify this form?

16 A It's our photographic lineup admonition form.

17 Q Is it very similar to the ones that I've just shown
18 you?

19 A It's the exact same.

20 SOLICITOR ZIEGLER: State moves to admit Court's
21 Exhibit 9.

22 THE COURT: Court's 9 is in evidence for purposes of
23 this hearing.

24 (WHEREUPON, the lineup form was marked as Court's
25 Exhibit No. 9 and received into evidence for purposes of

Chris Helms - Direct examination
by Solicitor Ziegler

1 this hearing only at this time.)

2 Q Thank you, sir.

3 Inspector Helms, what is the time that this particular
4 lineup administration was given?

5 A 12:35PM August 2nd, 2011.

6 SOLICITOR ZIEGLER: May I approach the witness, Your
7 Honor?

8 THE COURT: Yes, sir.

9 Q I'm now showing you a set of six photos.
10 Are you familiar with these photos?

11 A Yes, sir.

12 Q How are you familiar with those?

13 A They are the photos that coincided with this particular
14 lineup admonition.

15 Q Okay.

16 Your Honor, the State moves to admit Court's Exhibit
17 10.

18 THE COURT: All right. Court's Exhibit 10 in evidence
19 for purposes of this hearing.

20 (WHEREUPON, the lineup was marked as Court's Exhibit
21 No. 10 and received into evidence for purposes of this
22 hearing only.)

23 Q Inspector Helms, does that particular lineup coincide
24 with the admonition form that I've just presented to you?

25 A It appears so, yes, sir.

Chris Helms - Direct examination
by Solicitor Ziegler

1 Q What is the time on that admonition form again please?

2 A It's 12:35PM.

3 Q Did you give all the same warnings that you gave in the
4 previous admonitions that we discussed?

5 A Yes, sir.

6 Q And was Mr. Murray able to make an identification in
7 this lineup?

8 A He, he was, sir. According to my report, the subject
9 indicated immediately by stating, quote, "that's the guy"
10 when I turned over Photo Number 3. He then drew a circle
11 around Photograph Number 3, which circle here, and then put
12 his initials next to the photograph.

13 Q And that, that was Number 3 you said?

14 A That, that was Number 3.

15 Q Did he sign at the bottom of that lineup form, the
16 admonition form?

17 A He did, sir.

18 SOLICITOR ZIEGLER: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes, sir.

21 Q Showing you another form.

22 Can you identify this form?

23 A Yes, sir, it's the photographic lineup admonition form.
24 It's the same as before.

25 SOLICITOR ZIEGLER: State moves to admit Court's

Chris Helms - Direct examination
by Solicitor Ziegler

1 Exhibit No. 11 or 12, Your Honor.

2 THE COURT: Eleven?

3 SOLICITOR ZIEGLER: It's 12.

4 COURT REPORTER: It's 11.

5 SOLICITOR ZIEGLER: It's 11. Sorry.

6 THE COURT: Court's 11.

7 All right. In evidence for purposes of this hearing
8 only.

9 (WHEREUPON, the photo lineup admonition form was marked
10 as Court's Exhibit No. 11 and received into evidence for
11 purposes of this hearing only at this time.)

12 Q Inspector Helms, on Court's Exhibit 11, what is the
13 time that the lineup was given according to that admonition
14 form?

15 A 12:57PM. August 2nd, 2011.

16 Q Prior to the administration of that lineup, was
17 Mr. Murray given all the instructions that he was given in
18 these previous administrations?

19 A Yes, sir.

20 Q In this particular lineup, the 12:57PM, did Mr. Murray
21 make any identification in the lineup?

22 A Yes, he indicates I was and circled he was on the
23 sheet. He indicates Photo Number 2.

24 Q And how did he indicate he knew the person from Photo
25 Number 2?

Chris Helms - Direct examination
by Solicitor Ziegler

1 A Let me refer back to this. I asked him, in reference
2 to the confidence statement, I asked him how he knew him and
3 initially he wrote on the line I know him and then I asked
4 do you know his name. He scratched out the words I know him
5 and then he wrote from my neighborhood.

6 Q Okay. Is Mr. Murray's signature written at the
7 bottom---

8 A Yes, sir.

9 Q ---of this document?

10 May I approach the witness, Your Honor?

11 THE COURT: Yeah. Yes, sir.

12 Q I'm now showing you a set of six photos.

13 Can you identify these photos?

14 A Yes, I do.

15 Q How are you familiar with those?

16 A From the admonition that I---

17 THE COURT: I can't quite hear.

18 THE WITNESS: Oh, they coincide with this photo lineup
19 admonition, Your Honor.

20 SOLICITOR ZIEGLER: State moves to admit Court's
21 Exhibit 12, Your Honor.

22 THE COURT: In evidence for purposes of this hearing.

23 (WHEREUPON, the photographs were marked as Court's
24 Exhibit No. 12 and received into evidence for purposes of
25 this hearing only at this time.)

Chris Helms - Direct examination
by Solicitor Ziegler

1 Q Inspector Helms, in that particular set of photos, did
2 Mr. Murray identify any one of those photos as someone he's
3 familiar with?

4 A In the Court Exhibit 12?

5 Q Yes.

6 A Yes, sir, he circled number two.

7 Q And does that correspond with the admonition form given
8 at 12:57PM?

9 A It does, sir, yes.

10 Q Thank you, Inspector Helms.

11 Now, after you showed Mr. Murray two lineups, the first
12 two lineups that we've, that we've just introduced as a
13 Court Exhibit, did he identify anyone in either of those?

14 A No, sir.

15 Q And when he, when you saw that he did not identify
16 anyone in either of those, what did you do?

17 A Well, after each lineup I spoke to Detective Hembree
18 and said we were finished with the lineup and indicated what
19 the result was.

20 Q And what, what happened?

21 A He just---

22 Q What happened after you, after you told that to Justin,
23 to Sergeant Hembree?

24 A So, the interaction, he appeared to be confused about
25 what they were talking about, and so he was given additional

Chris Helms - Direct examination
by solicitor Ziegler

1 admonition forms and the lineup so that he could make a,
2 take, take a look at the photographs.

3 Q Please clarify how do you mean he was confused about,
4 about the lineups.

5 Did he, did he, did he know, did he not know which
6 crime he was suppose to be referring to?

7 A Correct, sir. In particular, in particular, he was
8 confused of whether or not they were talking about the Pizza
9 Hut robbery, and so they had to explain that this was, in
10 fact, for the Pizza Hut robbery.

11 Q Okay.

12 A And once it was clarified, he then said or indicated
13 that he would look at the lineup again.

14 Q And -- well, did, did Sergeant Hembree then present the
15 lineups to you again and ask you to re-present them to the,
16 to Mr. Murray?

17 A He did. Sergeant Hembree came into the room and asked,
18 after the first two times, the first admonition was given,
19 and he was not able to make an identification. And after
20 the second where he wasn't able to make an identification,
21 he asked him, in particular, did they know who -- they were
22 talking about the Pizza Hut robbery and asked him if he was
23 being truthful, and, at that time, the person sitting in the
24 room, now I know the defendant, hung his head low and shook
25 his head and indicated that he had not been truthful up

Chris Helms - Direct examination
by Solicitor Ziegler

1 until that point.

2 Q And are you referring to the time after this second
3 presentation of both lineups --

4 A Yes.

5 Q -- for both six packs?

6 A Yes.

7 Q Okay. That's what happened after that second
8 presentation of both six packs?

9 A Yes.

10 Q In that second presentation of the six packs, did he
11 identify anyone?

12 A He did.

13 Q Who did he identify in that?

14 A So, after the second presentation, and this is
15 referring after the conversation where he or Sergeant
16 Hembree clarified that it was for the Pizza Hut robberies,
17 asked him if he was being truthful, and asked him if he
18 would look again and be truthful, he looked at the
19 photographs, and when I turned over Photograph Number 2, he
20 drew a circle around it and initialed his name on the sheet.

21 At that point I asked him how or why he recognized
22 Photograph Number 2. He said I know him and then I asked do
23 you know his name. He scratched out the words I know him on
24 the confidence line and wrote from my neighborhood.

25 Q So, are you -- which administration are you referring

Chris Helms - Direct examination
by Solicitor Ziegler

1 to there, the last---

2 A The last.

3 Q The final one?

4 A The final, yes, sir.

5 Q Now, on this, on this last administration, did you show
6 Mr. Murray both, both sets of lineups again or---

7 A No, sir.

8 Q Did you show him one set?

9 A Just one set.

10 SOLICITOR ZIEGLER: Okay. Court's indulgence please,
11 Your Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q Inspector Helms, I want to clarify which, which sets of
15 lineups were provided with each of these five admonitions
16 that we've gone through.

17 A Okay.

18 Q The -- Inspector Helms, in the set of six pack photos
19 where number three has been circled, how many times was, was
20 that particular set of photos presented?

21 A So, the photo lineups were shown the initial time, and
22 he indicated that he could not make or was not able to make
23 an identification for the initial showing, and then he
24 appeared -- there appeared to be some confusion about which
25 crime they were referring to. Once it was clarified, a

Chris Helms - Direct examination
by Solicitor Ziegler

1 second set was shown, and in that set, as I did each of the
2 lineups, I showed the photographs one at a time for ten
3 seconds each, and when the subject immediately stated
4 verbally that's the guy when I turned over Photograph Number
5 3, he circled the Photograph Number 3, signed his initials,
6 and then I continued to show the rest of the photographs for
7 ten seconds each and we completed that.

8 Q So, so, this photo lineup where number three is circled
9 --

10 A Yes, sir.

11 Q -- how many times was that one presented, that
12 particular lineup?

13 A So that was the -- twice.

14 Q Okay.

15 A The first time, and he indicated that he didn't
16 recognize anyone, and then the second time when he, he
17 apparently was no longer confused about which crime he was
18 being asked, and then he picked number three.

19 Q And then the other lineup where number two, the number
20 two photo is circled --

21 A Yes, sir.

22 Q -- and identified by Mr. Gray, how many times was that
23 shown?

24 A So that was three times.

25 Q Okay. And I did miss one part of this, Inspector

Chris Helms - Direct examination
by Solicitor Ziegler

1 Helms.

2 When you were showing these lineups to Mr. Murray, can
3 you explain the method you used to show those lineups?

4 A Sir, I presented the lineups, I turned each photograph
5 over and explained that I would show the photographs for ten
6 seconds each. I had a watch on similar to the watch I'm
7 wearing today, and I turned the photograph over, I looked at
8 my watch, and when the ten seconds was up, I would turn the
9 next photograph over, and we proceeded through that each
10 time for the admonition.

11 The only time that would be interrupted is if he was
12 able to make an identification at which point, in the, the
13 first time he made an identification, he circled it, signed
14 his initials, and once he was finished, once he made an
15 identification, I continued to proceed through the rest of
16 the packet showing the photographs for ten seconds each
17 until the entire lineup was completed.

18 SOLICITOR ZIEGLER: Okay. Court's indulgence please,
19 Your Honor.

20 (Pause.)

21 SOLICITOR ZIEGLER: No further questions for the
22 witness, Your Honor.

23 THE COURT: Thank you.

24 MS. Penn.

25 MS. PENN: Thank you, Your Honor.

Chris Helms - Cross-examination
by Mr. Penn

1 CROSS-EXAMINATION

2 BY MR. PENN:

3 Q Inspector Helms, there are two different lineups for
4 two different cases, is that right?

5 A I'm only aware of the Pizza Hut case.

6 Q Okay. Well, let me direct you to the photographic
7 lineup admonition forms that I believe the, you have in
8 front of you --

9 A Okay.

10 Q -- and on these forms, on all of the forms, it says
11 case number on it, is that correct?

12 A It does.

13 Q And the case number for the form timed at or the
14 admonition form where the time is 12:19PM, that case number
15 is 2011P09029, is that correct?

16 A Yes, ma'am.

17 Q And that indicates it's for that case, that case
18 number, right?

19 A It does.

20 Q And there is another admonition form where the time is
21 12:31PM, correct?

22 A Yes.

23 Q And that case number is also the same case number.
24 It's 2011P09029, correct?

25 A Yes.

Chris Helms - Cross-examination
by Mr. Penn

1 Q Okay. And there's one more admonition form, and that
2 one, the time on it is 12:57?

3 A There's actually two, but 12:57. I'm looking at it.

4 Q Okay. And the case number on the one for 12:57 is the
5 same case number as before. It's 2011P09029.

6 Correct?

7 A I'm sorry. One second.

8 Q I don't mean to rush you.

9 A That's all right. 12:57. I apologize.

10 Q That's okay. So, the add---

11 A It's 90 -- yes, ma'am.

12 Q Okay. There are three admonition forms. One from
13 12:19, 12:31, and 12:57, and they're all for the same case.

14 Correct?

15 A You said 12:19, 12:31, and -- yes.

16 Q And 12:57.

17 A Yes.

18 Q Okay. And no identification is made of the 12:19
19 point, correct?

20 A Correct.

21 Q No identification is made of 12:31 point, correct?

22 A Correct.

23 Q And the last one, the 12:57 one, that's when the person
24 identified is number two, correct?

25 A Correct.

Chris Helms - Cross-examination
by Mr. Penn

1 Q And that's the from my neighborhood?

2 A Correct.

3 Q Okay. Okay. And that's that set.

4 Now, there is another set of two admonition sheets.

5 The first one the time is 12:23PM.

6 Can I direct your attention to that one where the time
7 is 12:23?

8 A Yes.

9 Q And that case number is different, right?

10 A It is.

11 Q That case number is 2011P09173?

12 A Yes.

13 Q Okay. And for that one, for 12:23, there's no
14 identification?

15 A Correct.

16 Q And there is another admonition form where the time is
17 12:35?

18 A Correct.

19 Q And the case number for that one is the same as we just
20 talked about, right?

21 A Yes.

22 Q And that case number again is 2011P09173?

23 A Yes.

24 Q And on that one, number three is identified and number
25 three is Danta, right?

Chris Helms - Cross-examination
by Mr. Penn

- 1 A Yes, it says I know him, Danta.
- 2 Q So, would you agree with me that there are two separate
3 cases?
- 4 A There's two separate case numbers, yes.
- 5 Q All right. Now, I'm gonna back up a little bit.
- 6 A Okay.
- 7 Q You first show -- when you show -- you showed him two
8 lineups at a time, correct?
- 9 A Yes.
- 10 Q And you don't show him the same six pack twice because
11 that would make no sense?
- 12 A So, in this case he was shown photographs more than
13 once.
- 14 Q Yes.
- 15 My, my -- let me rephrase.
- 16 A Okay. I'm sorry.
- 17 Q The, the first time you were brought in to show him the
18 lineups --
- 19 A Yes.
- 20 Q -- you showed him one lineup from one case?
- 21 A Uh-huh. (Affirmative).
- 22 Q And one lineup from the other case?
- 23 A But I have no knowledge of that.
- 24 Q Sure.
- 25 But the time on the lineup is 12:19?

Chris Helms - Cross-examination
by Mr. Penn

1 A Okay. Yes, there was one shown at 12:19.

2 Q And the number on that one is -- let me just, to be
3 sure, it's 09029, right?

4 A Okay.

5 Q And the time on the one closest to that is 12:23 or let
6 me do it this way.

7 The next lineup you show is dated---

8 A I see.

9 Q ---is timed at 12:23, right?

10 A Okay.

11 Q And as the case number in that one is different from
12 the first one?

13 A Okay.

14 Q Okay. So---

15 A Yes.

16 Q Okay. So, the two lineups you show, you show him at
17 first are from two separate cases?

18 A Yes.

19 Q Okay. Thank you.

20 Now, he doesn't identify anybody during that, those
21 first two lineups, right?

22 A He does, he does not.

23 Q And---

24 A It wasn't---

25 Q When you are finished, you tell Sergeant Hembree that

Chris Helms - Cross-examination
by Mr. Penn

1 you are finished?

2 A Yes.

3 Q And Hembree asked Mr. Murray if he understood that the
4 lineups were for the Pizza Hut?

5 A Okay.

6 Q So, you showed him the two lineups a second time?

7 A Yes.

8 Q Okay. And this time he doesn't pick anybody out of the
9 first lineup from 12:31?

10 A Yes.

11 Q But he does pick out number three from the second
12 lineup at 12:35?

13 A Yes.

14 Q And he says that guy's name is Danta?

15 A Yes.

16 Q Okay. Now, when you -- when he does that, you go
17 outside and tell Hembree he's finished, right?

18 A Yes.

19 Q And Hembree asked my client to identify the person he
20 knows again, right?

21 A I'm sorry, ma'am?

22 Q After the second time --

23 A Uh-huh. (Affirmative).

24 Q -- he's not done, right?

25 A Yes. After the second time where he was able to pick

Chris Helms - Cross-examination
by Mr. Penn

1 number three, I spoke to Detective Hembree. He said -- I
2 told him -- I said he is finished. He was able to make an
3 identification and he did choose one of the photographs.

4 Q Okay. And you're not done at that point?

5 A Right.

6 Q Right.

7 You still go back in for another round, correct?

8 A I don't, I don't know that we're finished at that
9 point. What happens is Sergeant Hembree came to the room
10 and asked the defendant if he was sure what he was looking
11 at, and if he was, I'm gonna refer to my notes, please the
12 Court, he asked Kenneth if he was -- I'm sorry. If he was
13 clear about what he was telling him, and asking him if he
14 would look at the lineups again understanding that the two
15 packets were specific to the Pizza Hut robbers. Kenneth
16 said yes. He gave him two photographic admonition sheets
17 and explained again to Kenneth that I had no knowledge and
18 excused himself, and it was at this time that he -- I'm
19 sorry. This is for the 12:31. I apologize.

20 Q That's okay. We are now on the 12:57.

21 A I apologize. So, for the 12:57 he asked him if he
22 understood the lineups were related to the Pizza Hut
23 robberies, he said yes, and then Sergeant Hembree asked, in
24 my presence, Kenneth, if he had been completely truthful
25 while looking at the lineups, and that's when I observed

Chris Helms - Cross-examination
by Mr. Penn

1 Kenneth hang his head low, shake it side to side indicating
2 he had not been truthful and said that he was scared. He
3 didn't want his family or himself in danger.

4 I observed Kenneth begin to cry, and then Sergeant
5 Hembree asked Kenneth if he recognized any other subjects in
6 the photographic lineup. At that point Kenneth said yeah,
7 but I'm scared for my family, and that there was someone
8 else he knew in the lineup. It was at that time Sergeant
9 Hembree asked him would you be willing to look at this and
10 tell the truth, be truthful, and Kenneth said he would look
11 again, and, at that point, he gave new photographic
12 admonition sheet and present the lineup once more from the
13 beginning. Although this time, instead of both, we just
14 went through the last one where he said he was not, and
15 that's when he -- when I turned over Photograph Number 2.
16 He circled it and signed his initials on the sheet and said
17 I know him.

18 Q And at this point he had already identified somebody
19 from the other case, right?

20 He already identified somebody from the -- a case
21 number that's different from the Pizza Hut case?

22 A He did make a previous identification of another
23 individual.

24 Q Of Danta?

25 A Of Danta?

Chris Helms - Cross-examination
by Mr. Penn

1 MS. PENN: Okay. Court's indulgence, Your Honor.

2 (Pause.)

3 MS. PENN: Thank you, Your Honor. I have no further
4 questions.

5 THE COURT: Redirect, solicitor.

6 SOLICITOR ZIEGLER: Thank you, Your Honor.

7 REDIRECT EXAMINATION

8 BY SOLICITOR ZIEGLER:

9 Q Inspector Helms?

10 A Yes, sir.

11 Q Inspector Helms, when you present a lineup, do you have
12 any knowledge of the cases to which, related to which you're
13 presenting a lineup?

14 A No, sir.

15 Q Would you have any knowledge of what the case numbers
16 apply to which, which case the case number applied to?

17 A I, I have no idea.

18 Q Okay.

19 A When -- just by looking at a case number, I have no
20 idea what it pertains to. Specifically the only thing that
21 I'm gonna run in on this when I come in there is a date and
22 a time and my signature just to show that I'm completely
23 unbiased.

24 Q And would you -- when you're presenting a lineup, would
25 you tell the person you're presenting it to what the case

Chris Helms - Redirect examination
by Solicitor Ziegler

1 number is that's on there, that's on the admonition form?

2 A No, sir, I have no, I have no way to know that.

3 Q Okay.

4 A And if, by chance I were to know the case number, then
5 that would bias the lineup.

6 Q Uh-huh. (Affirmative).

7 A So, for that reason, I don't know the case numbers and
8 not familiar with it and do not tell anybody.

9 SOLICITOR ZIEGLER: Okay. No further questions, Your
10 Honor.

11 THE COURT: Recross.

12 MS. PENN: Thank you, Your Honor.

13 RECROSS EXAMINATION

14 BY MS. PENN:

15 Q Inspector Helms, would it make sense to you if I told
16 you that different numbers indicate different cases?

17 A Yes.

18 Q Okay. Thank you.

19 No further questions.

20 THE COURT: Thank you very much, inspector. You may
21 step down.

22 THE WITNESS: Thank you. I'll give you the exhibits.

23 THE COURT: All right. I believe this was the State's
24 objection.

25 Any other witnesses in this regard?

Justin Hembree - Cross-examination
by Ms. Penn

1 CONTINUED CROSS-EXAMINATION

2 BY MS. PENN:

3 Q Sergeant Hembree, I think where we left off, we were on
4 the first admonition form and that first lineup starts at
5 12:19, is that correct?

6 A I believe so, yes, ma'am.

7 Q And you weren't in the room with Ken and Sergeant
8 Helms?

9 A No, ma'am.

10 Q So, you don't know what happened in there?

11 A No, ma'am.

12 Q But you do know that, after that first lineup is shown,
13 Sergeant Helms comes back out and tells you that Kenneth is
14 done, correct?

15 A Correct.

16 Q And that he hadn't picked anyone out, correct?

17 A Correct.

18 Q And when he didn't pick anyone out, you didn't say
19 okay, that's it, we're done, right?

20 A Right.

21 Q You told him to do it again?

22 A Correct.

23 Q And he did?

24 A (Witness nods affirmatively.)

25 Q Sergeant Helms showed Kenneth the same lineup, this

Justin Hembree - Cross-examination
by Ms. Penn

1 time at 12:31, correct?

2 A I'll agree with you that around 12:31. I don't
3 remember the exact times. I'm sorry.

4 Q Do you need me to, to refresh your recollection with
5 the exhibits?

6 A 12:31 sounds correct.

7 Q Thank you, sir.

8 And he didn't pick Cleveland Major out of that lineup
9 at 12:41 either, right?

10 A No, ma'am.

11 Q Okay. And after that you didn't say we're done, right?

12 A Correct.

13 Q You said let's do it again, right?

14 A Well, what I said was knowing that it's not uncommon
15 for individuals to purposely not pick a suspect when they
16 know the suspect, I went into the room and I confirmed
17 verbally, in the presence of Inspector Helms with
18 Mr. Murray, that he knew that we were, in fact, looking for
19 the subject in the Pizza Hut armed robbery.

20 Q Sure.

21 And at this time it's 12:30 -- 12:57, right?

22 A Sounds correct.

23 Q And this is the third time he's been shown the same
24 lineup?

25 A Yes, ma'am.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q Right?

2 And this time he picks out number two, correct?

3 A Yes, ma'am.

4 Q And number two is Cleveland Major?

5 A So I believe that he, Inspector Helms, showed the
6 lineup. Mr. Murray didn't identify, I believe, based on the
7 investigative process and the efforts we had put, put
8 forward, in, in, in addition to what Mr. Murray had told me,
9 the detail of this Bootsie, that we had the right person.
10 Therefore, I believe that he was either fearful or not being
11 honest.

12 I asked him if he was being truthful. He hung his
13 head, he, as I referenced earlier, I believe he teared up a
14 little bit, and he said that he was -- indicated the exact
15 phrase, but he was concerned for his safety and the safety
16 of his family. I asked him if he could make an
17 identification. He indicated that he could. I left the
18 room, and then I believe he was able to make that
19 identification with Inspector Helms.

20 Q And after the third time when he picks out Cleveland
21 Major, you interview Cleveland Major?

22 A Later that evening, yes, ma'am.

23 Q And Cleveland started off as pretty cooperative.
24 Would that be fair to say?

25 A Yes, ma'am.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q And then, once you started hitting him with some of
2 these facts, he immediately became pretty defensive and said
3 I don't know nothing, right?

4 A Correct.

5 Q And you spoke to him for about three and a half hours.
6 Does that sound right about to---

7 A Sounds right.

8 Q And during that time Cleveland Major was given three
9 smoke breaks?

10 A Uh-huh. (Affirmative).

11 SOLICITOR ZIEGLER: Objection, Your Honor.

12 THE COURT: What was the question, during that time?

13 MS. PENN: During that time Cleveland Major was given
14 three smoke breaks.

15 THE COURT: What's the basis of your objection?
16 what rule?

17 SOLICITOR ZIEGLER: Rule 801, Your Honor.

18 THE COURT: I overrule your objection on 801.

19 MS. PENN: May I continue, Your Honor?

20 THE COURT: The question is, during that time, was he
21 given three smoke breaks?

22 A Yes, ma'am, I believe it was three.

23 Q And two bathroom breaks?

24 A May I look at the statement to refresh my memory?

25 THE COURT: What breaks?

Justin Hembree - Cross-examination
by Ms. Penn

1 I'm sorry. I didn't quite understand.

2 MS. PENN: Two bathroom breaks, Your Honor.

3 SOLICITOR ZIEGLER: Objection, Your Honor, to
4 relevancy.

5 THE COURT: Sustained.

6 You may ask your next question, Ms. Penn.

7 MS. PENN: I'm sorry, Your Honor.

8 Can you please repeat what you just said?

9 THE COURT: Ma'am?

10 MS. PENN: What, what did you just say, Your Honor?

11 I didn't, I didn't hear you.

12 THE COURT: I said I sustain his objection --

13 MS. PENN: Okay.

14 THE COURT: -- based on 401.

15 MS. PENN: Thank you, Your Honor.

16 Q Was your impression of Cleveland that he was lying or
17 that he was telling the truth?

18 SOLICITOR ZIEGLER: Objection, Your Honor. Relevancy.

19 THE COURT: Sustained.

20 Q You know that Cleveland pled guilty to robbing the
21 Pizza Hut, right?

22 A Yes, ma'am.

23 Q Let me go now to a completely different topic.

24 None of Mr. Murray's time at Mount Pleasant is
25 videotaped, correct?

Justin Hembree - Cross-examination
by Ms. Penn

1 A No, ma'am, we currently don't have that capability.

2 Q When you say we don't have that capability, you mean
3 there is no say camera installed in the room, right?

4 A There is a camera in our interview room that is
5 merely -- it doesn't record. It doesn't have audio
6 capabilities. It's for officer safety. It's just a -- sent
7 to a screen like that one so that the officer on the outside
8 can make sure that they're not gonna get attacked in the
9 interview room.

10 Q Okay. But there is no camera in the room specifically
11 for the purposes of recording what is said in that room,
12 right?

13 A No, ma'am.

14 Q And there is no say hand held video camera that you can
15 move from room to room in Mount Pleasant, is that right?

16 A That's not a practice that we use, no, ma'am.

17 Q Okay. And there is no tape recorder that y'all
18 normally take with you when you do interviews of witnesses
19 and defendants, is that correct?

20 A Correct.

21 Q But Mount Pleasant does videotape certain things,
22 right?

23 A Yes, ma'am.

24 Q For example, it does videotape DUI's?

25 A Yes, sir.

Justin Hembree - Cross-examination
by Ms. Penn

1 Q And DUI's are driving under the influence cases, right?

2 A Right.

3 Q Mount Pleasant is actually required to have cameras in
4 its patrol cars for these cases, right?

5 A I believe so, yes, ma'am.

6 Q But it's not required to have cameras in its room when
7 it's interrogating witnesses, interrogating defendants, is
8 that correct?

9 A It's not required.

10 Q Okay. And not only is it not required, but it doesn't
11 exist, right?

12 A It's a -- with respect to why we don't have it, you
13 have to ask your chief of police. I think it's a budgetary
14 issue item that I don't have control over. If we had them I
15 would love it.

16 Q Sure.

17 A We just don't have them right now.

18 Q Well, do y'all have iPhones?

19 A Some of us.

20 Q Do most of you have smart phones?

21 A I believe so.

22 Q Okay.

23 A There would be a variety of issues in us using our own
24 phones to obtain evidence and interviews.

25 Q Do y'all never videotape anything for a case?

Justin Hembree - Cross-examination
by Ms. Penn

1 A It depends on what kind of case. It's, it's possible.

2 Q Would it be possible to say if you went out to a murder
3 investigation you might want to take a video camera and
4 videotape the scene?

5 Is that possible?

6 A That's something that our forensic folks would do.

7 Q Okay. But that didn't happen in this case, right?

8 A We, we were not at the scene. We were in our interview
9 room and---

10 Q Sure.

11 A ---and, again, our standard practice is that we don't
12 currently record interviews.

13 MS. PENN: Okay. Court's indulgence.

14 THE COURT: Yes, ma'am.

15 (Pause.)

16 MS. PENN: No further questions. Thank you.

17 THE COURT: Redirect, solicitor?

18 SOLICITOR ZIEGLER: Your Honor, can we approach?

19 THE COURT: Yes, sir, certainly.

20 (WHEREUPON, a bench conference was held out of the
21 hearing of the jury at this time.)

22 REDIRECT EXAMINATION

23 BY SOLICITOR ZIEGLER:

24 Q Sergeant Hembree, were you ever presented with a copy
25 of the lineup that was presented to Kenneth Murray?

Justin Hembree - Redirect examination
by Solicitor Ziegler

1 A I was presented with the lineups, yes, sir.

2 SOLICITOR ZIEGLER: Okay. Your Honor, may I approach
3 the witness?

4 THE COURT: Yes, sir.

5 Q I'm showing you a photo.

6 Are you able to identify this photo?

7 A I am. That's the accomplice in the Pizza Hut robbery,
8 Cleveland Major, Clarence Cleveland Major.

9 Q Do you know where this photo came from or do you know
10 what this document is from?

11 A Yeah, I believe it's from the lineup that Mr. Murray
12 was shown.

13 SOLICITOR ZIEGLER: Your Honor, it's -- State would
14 like to have marked for identification purposes the
15 following photo.

16 THE COURT: All right, sir. Any objections?

17 MS. PENN: No, Your Honor.

18 THE COURT: All right. That will be State's --?

19 COURT REPORTER: Sixteen.

20 THE COURT: Sixteen.

21 (WHEREUPON, the photograph was marked as State's
22 Exhibit No. 16 for identification purposes only at this
23 time.)

24 Q Sergeant Hembree, between, between Cleveland and
25 Major -- between Cleveland Major and Kenneth Murray, do you

Justin Hembree - Redirect examination
by Solicitor Ziegler

1 know who is slimmer and who is taller?

2 A Cleveland Major is a shorter stockier build. Kenneth
3 Murray is taller and more slim than Kenneth -- than
4 Cleveland. Excuse me.

5 MS. PENN: Your Honor, objection.

6 THE COURT: Overruled.

7 Q Sergeant Hembree, I want to backtrack a little bit to
8 your earlier testimony.

9 Do you remember when Ms. Penn asked you whether Kenneth
10 Murray was free to go when you were speaking with him?

11 A Yes, sir.

12 Q And you said he was not free to go?

13 A That's correct.

14 Q Was he in custody in the jail on a different matter
15 when you were speaking to him?

16 A Yes.

17 Q And is that why he wasn't free to go at anytime?

18 A Yes.

19 Q All right.

20 THE COURT: Let me stop you this very momentarily,
21 solicitor.

22 Madam Forelady, ladies and gentlemen of the jury, the
23 fact that the defendant was in custody on a non-related
24 matter when he contacted Sergeant Hembree is not evidence
25 that the defendant committed the crime which is before the

Justin Hembree - Redirect examination
by Solicitor Ziegler

1 Court today. That'd be a surrounding factor or
2 circumstance, but the fact that he may of been in jail on a
3 non-related matter is not evidence of guilt that he
4 committed the crime of armed robbery of the Pizza Hut on
5 July 22nd of 2011.

6 Thank you, solicitor.

7 You may proceed.

8 SOLICITOR ZIEGLER: Thank you, Your Honor.

9 Q Sergeant Hembree, in your experience as a law
10 enforcement officer, are you, are you aware -- can someone
11 who's in the jail make a phone call?

12 A Yes, sir.

13 Q How, how -- now, before Kenneth Murray gave you his
14 statement and that was reduced to writing, did you have any
15 idea that Cleveland Major was involved in the armed robbery
16 of the Pizza Hut?

17 A No, sir.

18 Q And based on Kenneth Murray's statement in that regard,
19 did you arrest Kenneth or did you arrest Cleveland Major for
20 the armed robbery of the Pizza Hut?

21 A Yes, sir.

22 Q And did Cleveland Major subsequently plead guilty to
23 the armed robbery at the Pizza Hut?

24 A Yes, sir.

25 SOLICITOR ZIEGLER: Have no further questions, Your

Chris Helms - Direct examination
by Solicitor Ziegler

1 time.)

2 THE COURT: All right. Thank you.

3 Thank you very much.

4 Inspector, you may come back around.

5 (Witness returns to the stand.)

6 THE COURT: All right. Solicitor, you may proceed.

7 SOLICITOR ZIEGLER: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR ZIEGLER:

10 Q Inspector Helms, please state your name and spell your
11 last name.

12 A My name is Christopher Dale Helms, and the spelling of
13 the last name is H-E-L-M-S.

14 Q And where are you employed?

15 A Mount Pleasant Police Department.

16 Q How long have you worked there?

17 A Approximately 18 years.

18 Q What is your current position?

19 A I'm currently an inspector assigned to internal
20 affairs.

21 Q Was that your position in July of 2011?

22 A No, sir, I was a training sergeant.

23 Q What were your duties and responsibilities in that
24 position?

25 A I was in charge of making sure that all sworn officers

Chris Helms - Direct examination
by Solicitor Ziegler

1 with Mount Pleasant Police Department had their mandated
2 training as well as preparing our new hires for the police
3 academy.

4 Q And in your capacity with the Mount Pleasant Police
5 Department, did you present a photo lineup to Kenneth Murray
6 on August 2nd, 2011?

7 A I did, sir.

8 Q And who requested that you present that lineup?

9 A Sergeant Hembree.

10 Q Did, did you have any knowledge of the case to which
11 the lineup was related?

12 A I did not.

13 SOLICITOR ZIEGLER: May I approach the witness, Your
14 Honor?

15 THE COURT: Yes, sir.

16 Q Inspector Helms, how many times did you, did you show
17 the lineup to him?

18 A Three times.

19 Q Thank you.

20 I'm gonna show you -- I'm showing you a form here.

21 Can you identify this form?

22 A Yes, sir, it's our photographic lineup admonition form.

23 Q Okay. And how are you familiar with that form?

24 A It's a standard form we use when we show photo lineups.

25 Q What is the time on this particular form?

Chris Helms - Direct examination
by Solicitor Ziegler

1 A 12:19PM.

2 SOLICITOR ZIEGLER: Your Honor, the State moves to
3 admit photographic lineup admonition for 12:19PM into
4 evidence as State's -- as a State's Exhibit.

5 MS. PENN: No objection, Your Honor.

6 THE COURT: All right. That will be 17, is that
7 correct?

8 COURT REPORTER: Yes, sir.

9 THE COURT: And that's 12:19, solicitor?

10 SOLICITOR ZIEGLER: That's correct, Your Honor.

11 (WHEREUPON, the photographic lineup admonition was
12 marked as State's Exhibit No. 17 and received into evidence
13 at this time.)

14 Q I present this for your review, Inspector Helms.

15 A Thank you, sir.

16 Q Inspector Helms, I'm showing you another form.
17 What is this form?

18 A Photographic lineup admonition. Same as the last one.

19 Q And how are you familiar with this form, same, same way
20 as the last one?

21 A Standardized form for showing photo lineups.

22 Q What is the time on this form?

23 A 12:31PM.

24 Q Would this reflect the second time that you showed the
25 lineup?

Chris Helms - Direct examination
by Solicitor Ziegler

1 A Yes, sir.

2 SOLICITOR ZIEGLER: Your Honor, the State moves to
3 exhibit, moves to admit State's Exhibit 14 into evidence.

4 MS. PENN: No objection, Your Honor.

5 THE COURT: I thought we already had a 14.
6 We don't?

7 COURT REPORTER: Eighteen. It will be 18.

8 SOLICITOR ZIEGLER: Excuse me, Your Honor.

9 THE COURT: State's 18.

10 That's the 12:31 form?

11 SOLICITOR ZIEGLER: That's correct.

12 THE COURT: The time, 12:31?

13 SOLICITOR ZIEGLER: Yes, the time on that is 12:31.

14 THE COURT: Thank you.

15 (WHEREUPON, the photographic admonition form was marked
16 as State's Exhibit No. 18 and received into evidence at this
17 time.)

18 Q And can you identify this form, Inspector Helms?

19 A I can. It's the photographic lineup admonition form.
20 Same as the last.

21 Q And are you familiar with it in the same way as the
22 other two?

23 A I am, sir. It means---

24 Q What is, what is the time on this form?

25 A 12:57PM.

Chris Helms - Direct examination
by Solicitor Ziegler

1 Q And would this reflect the third time that you
2 presented the photo lineup --

3 A That's correct.

4 Q -- to Mr. Murray?

5 A Yes, sir.

6 SOLICITOR ZIEGLER: State moves to exhibit, moves to
7 admit State's Exhibit 19 into evidence.

8 MS. PENN: No objection, Your Honor.

9 THE COURT: State's 19 is in evidence without
10 objection.

11 (WHEREUPON, the photograph admonition form was marked
12 as State's Exhibit No. 19 and received into evidence at this
13 time.)

14 SOLICITOR ZIEGLER: Thank you.

15 Inspector Helms, I'm going to show you a series of
16 photos and I'd like to know if you can identify these
17 photos. I'll just show them all to you at one time.

18 A Yes, sir.

19 Q Are you familiar with these photos?

20 A I am, sir. They coincide with the photo lineup that I
21 presented to the defendant.

22 Q So, these are, these are the photos from the photo
23 lineup that you presented?

24 A Yes, sir, pictures.

25 SOLICITOR ZIEGLER: State moves to admit State's

Chris Helms - Direct examination
by Solicitor Ziegler

1 Exhibit 20 into evidence.

2 MS. PENN: No objection, Your Honor.

3 THE COURT: State's 20 is in evidence without
4 objection.

5 (WHEREUPON, the photographs were marked as State's
6 Exhibit No. 20 and received into evidence at this time.)

7 Q Inspector Helms, I'd like to go through those
8 admonition forms that you've been presented.

9 A Yes, sir.

10 Q Was Mr. Murray given any instructions prior to being
11 presented with the photo lineup?

12 A He, he was, sir.

13 Q And can you, can you read through those instructions
14 for the jury, please?

15 A I can, sir. It states the independent administrator
16 will read the following admonishment to all witnesses as
17 part of viewing the photographic lineup:

18 One. You're going to be asked to view a set of
19 photographs.

20 Two. The perpetrator may or may not be presented in
21 the lineup.

22 Three. The photographs may not always show the true
23 complexion of an individual. It may be lighter or darker
24 than the photograph.

25 Four. Hair styles, beards, mustaches can easily be

Chris Helms - Direct examination
by Solicitor Ziegler

1 changed or can be easily changed. Excuse me.

2 Five. The lineup administrator does not know the
3 suspect's identity.

4 Six. You are not compelled to make an identification.

5 Seven. It's just as important to exclude innocent
6 persons as it is to identify the perpetrator.

7 Eight. The investigation will continue whether or not
8 an identification is made.

9 Q Thank you, Inspector Helms.

10 A Yes, sir.

11 Q Did Mr. Murray indicate that he understood those
12 instructions?

13 A He did, sir.

14 Q How did he do that?

15 A He -- I asked him a question, do you understand the
16 instructions you have been given and he wrote his initials
17 next to the word yes after indicating yes that he understood
18 the instructions.

19 Q And how many photos were shown to Mr. Murray?

20 A I showed him six photos, and the way that I showed the
21 photos were one at the time for ten seconds each. So, I
22 would show the photo, would look at my watch similar to the
23 ones that I have on now. I would wait ten seconds, and then
24 when I was finished I would turn to the next photo.

25 Q Did you, did you or anyone in your presence influence

Chris Helms - Direct examination
by Solicitor Ziegler

1 or suggest to Mr. Murray which photo to select?

2 A No, sir.

3 Q And on the first administration of the lineup, did
4 Mr. Murray select any, any photo in that lineup for which he
5 was familiar with?

6 A He did not.

7 Q After, after he failed to choose someone, did you
8 inform Justin -- Sergeant Hembree of that?

9 A I did, sir.

10 Q Did Sergeant Hembree speak with Mr., Mr. Murray after
11 that?

12 A Yes, sir, he did.

13 Q Okay. Was, was it then requested that you show
14 Mr. Murray the lineup a second time?

15 A Yes, sir, there was.

16 Q And just to, just to clarify with you, Inspector Helms,
17 what time was that first lineup shown?

18 A The first lineup was shown at 12:19PM on August 2nd,
19 2011.

20 Q And, Inspector Helms, what time was that second lineup
21 showing please?

22 A The second lineup was shown on the same date at
23 12:31PM.

24 Q And did Mr. Murray identify any photo in that second
25 lineup?

Chris Helms - Direct examination
by Solicitor Ziegler

1 A No, sir, he did not.

2 Q Did you inform Sergeant Hembree of that?

3 A Yes, sir, I did..

4 Q And did Sergeant Hembree speak with Mr. Murray again
5 after that?

6 A He, he did, sir.

7 Q And did you show Mr. Murray the lineup once more a
8 third time?

9 A I did, sir.

10 Q And what time was that showing?

11 A 12:57PM on August 7th, 2011.

12 Q Did he select -- on that, on that third showing, did he
13 select a photo in the lineup?

14 A He did, sir. Let me refer to my notes. At the
15 12:57 showing, the subject pointed to the face of the
16 subject when I turned over Photo Number 2. He then drew a
17 circle around the photograph and put his initials on the
18 sheet, and then I continued to show the rest of the
19 photographic lineup showing each picture for ten seconds.

20 Subsequently, he was asked to, after he circled whether
21 he was or he was not, he circled I was able to make an
22 identification. The number two was put on the line. The
23 person I identified as the perpetrator showing the second
24 photograph, and then there's a confident statement, and I
25 asked him how or why he recognized Photograph Number 2.

Chris Helms - Direct examination
by Solicitor Ziegler

1 Initially he said I know him, and then wrote it on the line,
2 and then I asked do you know his name, and then he scratched
3 out the words I knew him on the confidence statement, and
4 then he wrote next to it, from my neighborhood.

5 At that time I asked him if there was anything else he
6 wanted to say and he said -- or anything else he wanted to
7 add to the confidence line. He said no.

8 Q Thank you, Inspector Helms.

9 A Yes, sir.

10 Q Did Mr., did Mr. Murray sign the signature line on
11 that, on that admonition form?

12 A Yes, sir, he did.

13 Q Okay. And is your signature on that document as the
14 lineup administrator?

15 A Yes, sir, it is.

16 Q I'm gonna collect those documents from you, Inspector
17 Helms.

18 A 17, 18 and 19.

19 Q Thank you, sir. Thank you.

20 And we've already gone through this, Inspector Helms,
21 but what is, what is this photo?

22 A That photo is the second photograph that was shown in
23 the photographic lineup where he, when I turned the
24 photograph over, he said that, that he was able to identify
25 him and made, made the circle and then put his initials on

Chris Helms - Direct examination
by Solicitor Ziegler

1 it and the date.

2 Q Who circled that photo?

3 A The defendant.

4 Q And are you -- are those his initials on that photo---

5 A Yes, sir.

6 Q ---under that photo?

7 A Yes, sir.

8 SOLICITOR ZIEGLER: Court's indulgence please, Your
9 Honor.

10 THE COURT: Certainly.

11 (Pause.)

12 SOLICITOR ZIEGLER: No further questions, Your Honor.

13 THE COURT: Thank you.

14 Thank you very much, solicitor.

15 Ms., Ms. Penn.

16 MS. PENN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. PENN:

19 Q Inspector Helms, your involvement with my client is
20 limited to the lineups, is that correct?

21 A Yes, ma'am.

22 Q Starting at around say 12:19?

23 A Yes, ma'am.

24 Q And ending at 12:57?

25 A Yes, ma'am.

Chris Helms - Cross-examination
by Ms. Penn

1 Q And during that time he is shown the same lineup three
2 times?

3 A Yes, ma'am.

4 Q And the first time he says he doesn't pick anybody,
5 right?

6 A Correct.

7 Q And after that Hembree talks to him, right?

8 A Yes, ma'am.

9 Q And a second time, the same thing happens?

10 A Yes, ma'am.

11 Q The third time, after he's spoken to Hembree, he picks
12 somebody?

13 A Correct.

14 Q And that person's Cleveland Major?

15 A Correct.

16 Q Is there a fourth showing of the same lineup?

17 A When you say Cleveland Major, he picked someone.

18 Q I'm sorry.

19 He picked number three?

20 A Yes, ma'am.

21 Q And after he picked number three, does he get shown the
22 lineup a fourth time?

23 A I'm sorry. I think he picked number two, ma'am.

24 Q My mistake.

25 A It's okay. That happens.

Chris Helms - Cross-examination
by Ms. Penn

- 1 Q After -- it does.
2 After he picks somebody out of the lineup?
3 A Uh-huh. (Affirmative).
4 Q Is he shown a lineup a fourth time?
5 A Can you tell me which time you're referring to?
6 Q There is no lineup shown to him after 12:57?
7 A Yes, there is no lineup shown after 12:57.
8 Q Okay.
9 A So, so, there's no lineup after that, correct.
10 Q And during the time you saw my client, you heard him
11 say he was scared?
12 A Yes.
13 Q And you saw him cry?
14 A Yes, that is correct?
15 MS. PENN: Thank you, Your Honor. I have no further
16 questions.
17 THE COURT: Redirect, solicitor?
18 SOLICITOR ZIEGLER: Nothing further, Your Honor.
19 THE COURT: Inspector, thank you. Thank you very much.
20 THE WITNESS: Thank you, Your Honor.
21 THE COURT: Thank you very much. You may step down.
22 Any objection to the inspector being excused?
23 MS. PENN: No, Your Honor.
24 SOLICITOR ZIEGLER: None, Your Honor.
25 THE COURT: All right. Thank you.

Ray Haupt - Direct examination
by Solicitor Ziegler

1 THE COURT: Is, is any ammunition with it?

2 UNIDENTIFIED PERSON: No, sir.

3 THE COURT: All right. Thank you.

4 Thank you very much.

5 You may proceed.

6 DIRECT EXAMINATION

7 BY SOLICITOR ZIEGLER:

8 Q Mr. Haupt, please state your name and spell the last
9 name for the record please?

10 A Ray Haupt. Last name is H-A-U-P as in Paul, T as in
11 Tom.

12 Q And where are you employed?

13 A Mount Pleasant Police Department, Mount Pleasant, South
14 Carolina.

15 Q How long have you been employed there?

16 A Ten years.

17 Q What is your current position?

18 A Police officer, crime scene investigator, and evidence
19 technician.

20 Q And what was your position in two thousand and -- in
21 July of 2011?

22 A The same.

23 Q What are your duties and responsibilities in that
24 position?

25 A I respond to crime scenes when requested and to

Ray Haupt - Direct examination
by Solicitor Ziegler

1 photograph, collect, and preserve all the evidence and then
2 to log it in evidence at the police department later.

3 Q And in your capacity as a crime scene investigator with
4 the Mount Pleasant Police Department, did you participate in
5 the execution of the lawful search warrant at 2627 Linnen
6 Lane on July 28th, 2011?

7 A Yes.

8 Q Did you locate any guns in the course of executing that
9 search warrant?

10 A I did.

11 Q Where on the premises did you -- where on the premises
12 did you find that gun?

13 A It was underneath one of the mattresses in a bed in the
14 room that the bed was located was the front left bedroom.

15 Q What type -- and what kind of gun was that that you
16 found?

17 A Black in color, Powerline BB pistol.

18 Q And did you find anything -- in the, in the room where
19 you found the gun, the BB gun, did you find anything in that
20 room identifying Kenneth Murray?

21 A Yes, I did.

22 Q Was it -- what -- was it paperwork?

23 A It was paperwork, yes.

24 MS. PENN: Your Honor, I'd like to object based on
25 previous motions.

Ray Haupt - Direct examination
by Solicitor Ziegler

1 THE COURT: Okay. All right. You may continue,
2 solicitor, subject to previous motions heard and ruled on by
3 the Court.

4 SOLICITOR ZIEGLER: Your Honor, the State request the
5 photographs be marked for identification purposes.

6 THE COURT: All right.

7 (WHEREUPON, the photograph was marked as State's
8 Exhibit No. 21 for identification purposes only at this
9 time.)

10 Q Are you familiar with this photograph?

11 A Yes, sir.

12 Q What is, what is it a photo of?

13 A It shows the, the BB pistol found underneath the
14 mattress of the residence.

15 Q How are you familiar with it?

16 A I'm the one that photographed it.

17 SOLICITOR ZIEGLER: Your Honor, the State moves to
18 admit State's Exhibit into evidence.

19 THE COURT: And this will be 21?

20 COURT REPORTER: Yes.

21 SOLICITOR ZIEGLER: Yes, sir.

22 MS. PENN: Just subject to our---

23 THE COURT: All right. State's 21 is in evidence
24 subject to our previous objections.

25 (WHEREUPON, State's Exhibit No. 21 was received into

Ray Haupt - Direct examination
by Solicitor Ziegler

1 evidence at this time.)

2 Q Did you collect that BB gun?

3 A Yes, I did.

4 Q Did, did you log it into evidence at the Mount Pleasant
5 Police Department?

6 A I did.

7 SOLICITOR ZIEGLER: Your Honor, I request to have the
8 BB gun marked for identification purposes.

9 THE COURT: All right, sir.

10 (WHEREUPON, the BB gun was marked as State's Exhibit
11 No. 22 for identification purposes only at this time.)

12 Q Mr. Haupt, are you familiar with this?

13 A Yes.

14 Q What is this?

15 A It's the BB pistol found in the picture that I
16 collected at the residence.

17 Q So, you're familiar with it because you are the one
18 that collected it?

19 A Yes.

20 SOLICITOR ZIEGLER: Your Honor, the State moves to
21 admit this BB gun into evidence as State's Exhibit 22.

22 MS. PENN: We would just like to renew our prior
23 objections, Your Honor.

24 THE COURT: All right. State's 22 is in evidence
25 subject to previous objections.

Ray Haupt - Direct examination
by Solicitor Ziegler

1 (WHEREUPON, State's Exhibit No. 22 was received into
2 evidence at this time.)

3 Q I collect that photo from you, Mr. Haupt.

4 A Sure.

5 Q Officer Haupt, what is this photo?

6 Can you please explain that to the jury?

7 A It's the mattress that was; the BB pistol was found
8 underneath in the residence at 2627 Linnen Lane.

9 Q Okay. And is that how it appeared when you found it?

10 A Yes.

11 Q Is this weapon the same weapon that's identified in
12 that photo?

13 A Yes.

14 SOLICITOR ZIEGLER: Court's indulgence please, Your
15 Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 Q In inspecting this weapon, is there anything on the
19 outside of this weapon that would indicate that this is a BB
20 gun and not a real gun?

21 A Can I?

22 Q Sure.

23 MS. PENN: Objection, Your Honor.

24 THE COURT: What's the basis of your objection?

25 MS. PENN: Relevance.

Ray Haupt - Direct examination
by Solicitor Ziegler

1 THE COURT: Ma'am?

2 MS. PENN: Relevance. Asked and answered.

3 THE COURT: I would deny that motion.

4 A What was the question?

5 I'm sorry.

6 Q Are there any -- is there anything identifying that as
7 a BB gun on the outside that's readily visible to, to
8 someone who is, if it was pointed at someone, or it was in
9 their presence?

10 MS. PENN: Objection.

11 THE COURT: And your basis?

12 MS. PENN: Leading.

13 THE COURT: Rephrase your question.

14 Q Would anything on that weapon, on the outside of it in
15 its appearance, would anything on it indicate that it is not
16 a BB gun or that it is a BB gun?

17 Excuse me.

18 A It has BB written in very small writing.

19 Q Okay.

20 A That's pretty much it.

21 Q Okay. Thank you.

22 Can you show us and show the jury where on this weapon
23 it says BB?

24 A Two little Bs. You can see it. It's right above my
25 finger. Right there.

Ray Haupt - Direct examination
by Solicitor Ziegler

1 Q Is it difficult to see?

2 A Yes.

3 Q Even if, even if you're looking closely at it, is it
4 difficult to see?

5 A I mean I can, I can see it, but it's -- I mean I'm
6 right up on it. So --.

7 Q Thank you.

8 State has no further questions, Your Honor.

9 THE COURT: Thank you, solicitor.

10 Ms. Penn.

11 MS. PENN: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. PENN:

14 Q Mr. Haupt, what is your -- how do I refer to you in
15 this?

16 Is it sergeant, technician or --?

17 A No, sir, just investigator.

18 Q Investigator. Thank you.

19 Investigator Haupt, you do crime scene and evidence
20 work, is that correct?

21 A That's correct.

22 Q And in the course of your work with Mount Pleasant
23 Police Department, do y'all ever use video cameras?

24 A We do.

25 Q What kinds of things do you use video cameras for?

Ray Haupt - Cross-examination
by Ms. Penn

1 A Mainly for death scenes.

2 Q Okay. So, for a -- really important cases.

3 Is that fair to say?

4 A I mean it's usually like a death investigation is what
5 it is.

6 Q And how many video cameras do you think you have in the
7 department?

8 A I can't answer that. It's---

9 Q I'm sorry.

10 What was that?

11 A I can't answer that. I don't, I don't know how many we
12 have in our department.

13 Q Do you think it's more than ten?

14 A Like I said, I can't answer that.

15 MS. PENN: Okay. I have no further questions, Your
16 Honor.

17 THE COURT: Redirect, solicitor.

18 SOLICITOR ZIEGLER: Nothing further, Your Honor.

19 THE COURT: Thank you.

20 Thank you very much for being with us today,
21 investigator. You may step down.

22 THE WITNESS: Thank you.

23 THE COURT: Any objection to the officer being excused?

24 SOLICITOR ZIEGLER: None, Your Honor.

25 MS. PENN: No, Your Honor.

1 Friday, November 1st, 2013

2

3 THE COURT: All right. Solicitor, anything before we
4 bring in our jury?

5 SOLICITOR ZIEGLER: Your Honor, the State intends to
6 rest when the jury enters.

7 THE COURT: All right. So, the State does not intend
8 to present any additional evidence or testimony in its case
9 in chief?

10 SOLICITOR ZIEGLER: That's correct, Your Honor. No
11 additional evidence or testimony.

12 THE COURT: All right. Thank you.

13 Thank you very much.

14 MS., Ms. Penn, do you object if I hear the, any motions
15 you may have now?

16 MS. PENN: No, Your Honor. I do not object.

17 THE COURT: All right. Do you have any motions?

18 MS. PENN: Yes, Your Honor.

19 We have a motion for a directed verdict based on the
20 Rule 19. There is no identification of my client. There's
21 no evidence linking him to the scene other than the
22 statement, and pursuant to our previous objections about the
23 statement, we believe that the State is not proven its case
24 at this time.

25 Thank you.

1 THE COURT: All right. Thank you.

2 I would respectfully deny the motion. I think there's
3 an abundance direct and substantial circumstantial evidence.
4 Obviously the State has proven the corpus delicti of the
5 crime. Once they prove the corpus delicti of a crime, the
6 statement can come in as proof of that, and he would not be
7 convicted on the basis of his statement alone.

8 They have the testimony of Mr. Ellington that there
9 were two individuals involved. They have the testimony of
10 Ms. Son on the videotape. They have the testimony of
11 Mr. Mitchell that is direct as to one, circumstantially as
12 to others. There were two people. They also have the
13 recovery of a weapon used in the armed robbery discovered in
14 a room which had self-identifying documents as to the
15 defendant.

16 So, I respectfully deny that motion.

17 Ms. Penn, do you wish me to interview your client at
18 this time concerning his right to testify or not testify?

19 MS. PENN: Yes, please, Your Honor.

20 THE COURT: All right.

21 Mr. Murray, would you, would you please stand?

22 (Defendant complies.)

23 THE COURT: Would you raise your right-hand?

24 (WHEREUPON, the defendant was placed under oath at this
25 time.)

1 THE COURT: All right. Thank you.

2 Speak up where I can hear you.

3 Okay?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Mr., Mr. Murray, I need to go over some
6 things with you. I do this with everyone who is on trial
7 and I have to have those responses under oath. That's why I
8 place you under oath.

9 Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Tell me your full name.

12 THE DEFENDANT: Kenneth Murray.

13 THE COURT: Do you have a middle name?

14 THE DEFENDANT: Oredell Kenneth -- Oredell Murray.

15 THE COURT: And how old are you?

16 THE DEFENDANT: Twenty-nine.

17 THE COURT: And how much education do you have?

18 How far did you go in school?

19 THE DEFENDANT: Twelfth grade.

20 THE COURT: All right. Now, we've reached the stage of
21 the trial where you've heard the State has rested. In your
22 side, the defense now has the opportunity to present
23 evidence for the jury to consider.

24 Do you understand where we're at in a trial?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: In that regard, through your attorney, you
2 may call witnesses to testify on your behalf. If you choose
3 to testify yourself, you may do so.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: No one can force you to testify,
7 Mr. Murray. You have the absolute right to remain silent,
8 and if you choose not to testify, I will tell this jury that
9 they can not hold your silence against you in anyway. I
10 will tell them that they are not to even discuss that in the
11 jury room during their deliberations.

12 Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If your side offers no evidence at all --
15 and I believe there's been no exhibits introduced, is that
16 correct?

17 MS. PENN: That's correct, Your Honor.

18 THE COURT: In other words, if neither you nor anyone
19 on your behalf testifies or offers any exhibits, then your
20 attorney will get to make the last argument to the jury.
21 Otherwise, the prosecutor gets to make the last argument.

22 Do you understand?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Ms. Penn, solicitor, does the defendant
25 have a criminal history that would subject him to

1 impeachment under Rule 609?

2 SOLICITOR SHEALY: I'm sorry, judge. You asked for his
3 prior record. I was speaking to Mr. Ziegler. I apologize.

4 THE COURT: All right.

5 SOLICITOR SHEALY: Yes, I can go over that with you.

6 THE COURT: All right. And what would that be?

7 SOLICITOR SHEALY: He has a criminal sexual conduct in
8 the third degree.

9 THE COURT: And when was that?

10 SOLICITOR SHEALY: That was in 2003.

11 THE COURT: All right.

12 SOLICITOR SHEALY: He has a possession with intent to
13 distribute cocaine in 2005, and he has a malicious,
14 malicious injury to personal property from 2005.

15 THE COURT: All right. And the State would intend to
16 use those as impeachable offenses?

17 SOLICITOR SHEALY: Yes, Your Honor.

18 THE COURT: All right. Now, what does criminal sexual
19 conduct in the third degree carry?

20 MS. KEHRLICH: Up to ten years.

21 THE COURT: And what does possession with intent to
22 distribute cocaine?

23 MS. KEHRLICH: Up to 15 if it's a first offense.

24 THE COURT: And malicious injury to personal property?

25 MS. KEHRLICH: I believe it would depend on the value

1 of the property, but it's usually zero to five.

2 THE COURT: Ms. Penn, do you agree with that, that
3 those are -- that this is his prior criminal history, and
4 that those are impeachable offenses under 609?

5 MS. PENN: I do, Your Honor.

6 THE COURT: All right. And what that means,
7 Mr. Murray, if you do testify, the law allows the prosecutor
8 to ask you, in front of the jury, about whether you have
9 been convicted of certain offenses in the past. They can,
10 they can not go into the details, details of the prior
11 offenses, but they can ask you if you have been convicted of
12 criminal sexual conduct in the third degree in 2003,
13 possession with intent to distribute cocaine in 2005, and
14 malicious injury to personal property in 2005.

15 If that were to happen, if you were to testify and they
16 were to ask you those questions, I would then tell the jury
17 that they can only consider that evidence against you, if
18 they consider it against you at all, on the issue of whether
19 your testimony is believable or not and for no other
20 purpose.

21 Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: The decision about whether you testify or
24 not, Mr. Murray, is your decision to make and yours alone.
25 I expect that you have conferred with your attorneys or with

1 others perhaps whose opinions you value on important
2 decisions. But the decision about whether you testify or
3 not is your decision to make. It's your call.

4 Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anyone exercised any undue influence
7 over you to get you to choose to testify or not to testify?

8 THE DEFENDANT: No, sir.

9 THE COURT: Today are you under the influence of any
10 medication, drugs, alcohol, or anything that negatively
11 affects your thinking ability?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you suffer from any physical, mental, or
14 emotional problem that affects your thinking about---

15 THE DEFENDANT: Not, not as of right now, sir.

16 THE COURT: Say that again.

17 THE DEFENDANT: Not right now, sir.

18 THE COURT: All right. Do you need any more time to
19 talk with your attorney about your right to testify or not
20 testify?

21 THE DEFENDANT: No, sir.

22 THE COURT: Do you have any questions you would like to
23 ask me about your right to testify or not to testify?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you made your decision about whether

1 to testify or not to testify?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is whatever decision you have made of your
4 own free will and your accord?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And what is your decision?

7 THE DEFENDANT: I will not.

8 THE COURT: You will not testify?

9 THE DEFENDANT: (Nods negatively.)

10 THE COURT: And that is your decision, Mr. Murray?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Thank you.

13 Thank you, Your Honor.

14 The defendant is made a decision not to testify, is
15 it -- you may be seated. It is his own decision made
16 freely, knowingly, intelligently, and voluntarily.

17 Ms., Ms. Penn, does the defense intend to present any
18 evidence or any testimony?

19 THE DEFENDANT: The defense does not, Your Honor.

20 THE COURT: All right. Normally, normally what I do is
21 normally, of course, the State would rest formally in front
22 of the jury first when they come out, and then I tell the
23 jury just a few things about where we're at very very
24 briefly in the trial of the case concerning presumption of
25 innocence and the burden of proof, and that a defendant does

1 not have to prove himself or herself innocent, has no burden
2 whatsoever, but may present evidence and testimony if the
3 defendant chooses to do so, and I said so then we will
4 direct our attention to the defense, and ask you, Ms., Ms.
5 Penn, does the defendant intend to present any evidence or
6 testimony. If you then say no, the defense rests, I then
7 tell them you've heard all the evidence, all the testimony
8 you're going to hear in the case, and we will now -- of
9 course, you can renew your motions for the record and we're
10 now at the stage of the closing arguments by the attorneys,
11 the procedure we follow, the State goes first followed by
12 Ms. Penn or Ms. Kehrllich on behalf of the defendant.

13 Do y'all want any time between when I tell them that
14 and y'all's closings?

15 SOLICITOR ZIEGLER: We think we do not need any time,
16 Your Honor.

17 MS. PENN: We don't either, Your Honor.

18 THE COURT: All right. Very well.

19 Before I bring them out then, are there any specific
20 request to charge from the State?

21 SOLICITOR ZIEGLER: Your Honor, the State requests the
22 hand of one hand of all charge.

23 THE COURT: All right. Ms. Penn.

24 MS. KEHRLICH: Your Honor, I'm gonna handle the jury
25 charges for us.

1 THE COURT: All right. Certainly. Yes, Ms. Kehrlich,
2 I apologize. I wasn't looking up. I was looking for my
3 charge.

4 THE COURT: All right.

5 MS. KEHRLICH: Your Honor, I don't think that we really
6 object to the hand of one hand of all charge.

7 THE COURT: All right.

8 MS. KEHRLICH: I mean I think the testimony so far has
9 been that they're alleging he had no weapons. I don't know
10 that it's that important, but I don't think we object to it.
11 We do have the new circumstantial evidence charge.

12 THE COURT: I give a circumstantial evidence charge.
13 Not the new case. I have not yet given one.

14 MS. KEHRLICH: I have that, Your Honor.

15 THE COURT: All right. Yes, ma'am, I'll be glad to,
16 I'll be glad to look at that.

17 What's the name of that case, Ms. Kehrlich?

18 MS. KEHRLICH: It State v. Clarence Logan.

19 THE COURT: Is that a case from Charleston County?

20 MS. KEHRLICH: I can not remember, Your Honor, if it's
21 Charleston County or not.

22 SOLICITOR SHEALY: I believe it is. I think Ms. Butler
23 tried it.

24 THE COURT: I thought it was one of the smart judge's
25 cases. So, I thought it was Judge Young quite frankly, but

1 I'm not, I'm not sure. I meant smart by intelligent---

2 MS. KEHRLICH: Yes, sir.

3 THE COURT: ---and that's why we get that, that law on
4 it.

5 Let me, let me show y'all the circumstantial charge
6 I'm, I typically give. Let me, let me show y'all both
7 the -- make a copy of that -- give them both a copy of that,
8 Madam Clerk.

9 Let them look at that and I'll --.

10 SOLICITOR SHEALY: Judge, while we're waiting, could we
11 address another issue maybe or do you want to wait and
12 get---

13 THE COURT: I'd rather get my mind---

14 SOLICITOR SHEALY: Okay.

15 THE COURT: ---compartmentalized.

16 SOLICITOR SHEALY: That sounds fine.

17 THE COURT: I had thought about that and then I thought
18 I'd rather get my mind compartmentalized.

19 SOLICITOR SHEALY: Okay.

20 THE COURT: That is -- what the clerk and I handed you
21 is the charge I normally give by -- on both direct and
22 circumstantial evidence.

23 (Pause.)

24 THE COURT: All right. Solicitor, do you have any
25 position on the request to charge under the circumstantial

1 evidence charge proposed?

2 SOLICITOR SHEALY: Your Honor, from reading the case,
3 the language that they have submitted is the language that's
4 set out in the case as the appropriate charge. But the case
5 also indicates that the trial, that this holding does not
6 prevent the Trial Court from issuing the circumstantial
7 evidence charge provided in Gripson and Cherry. However,
8 the Trial Courts may not exclusively rely on that charge
9 over a defendant's objection.

10 So, it's my understanding they are objecting to the
11 pure reliance on that charge, and I was just going through
12 your charge, which is very similar in nature, but I was
13 trying to determine what is in your charge that may need to
14 be added to what they requested.

15 THE COURT: And I, I always thought this second
16 paragraph that had previously been frowned upon, and that's
17 why we ended up in Gripson quite frankly. But, of course,
18 I'm looking at Logan, but I haven't, I haven't -- I know
19 Logan didn't overrule Gripson.

20 SOLICITOR SHEALY: It, it appears that it's a, a hybrid
21 that's allowed.

22 THE COURT: Yes. Yes, ma'am.

23 Well, look, looking at that, Ms., Ms. Kehrlich, is
24 there -- you want all of this circumstantial evidence charge
25 that you've requested charged?

1 MS. KEHRLICH: I, I would, Your Honor. I don't -- the
2 State's direct evidence is pretty strong in this case.

3 THE COURT: I'm sorry.

4 MS. KEHRLICH: I feel like their direct evidence is so
5 strong in the case that they're not, in anyway, prejudiced
6 by the new charge.

7 THE COURT: All right. And I think, I think your first
8 paragraph of your new charge -- actually I think I cover
9 that -- I think that -- all of that is covered except for
10 the word deduction, of course, is covered cause I talk about
11 direct evidence being testimony of a person who claims to
12 have actual knowledge of a fact. I think I expound on that
13 a little bit more, and so I could go to your Paragraph 2,
14 and then I do think I, you know, I, I do put on Page 2 --
15 I'll charge, I'll charge your Paragraph 2 and 3.

16 MS. KEHRLICH: Thank you, Your Honor.

17 THE COURT: I think your Paragraph 1 is charged or more
18 fully charged perhaps in my, in my direct and circumstantial
19 charge.

20 MS. KEHRLICH: Yes, sir.

21 THE COURT: All right.

22 MS. KEHRLICH: Yes, sir.

23 THE COURT: All right. Solicitor.

24 SOLICITOR SHEALY: Yes, sir.

25 THE COURT: All right. And now you have another

1 request, Ms. Kehrlich?

2 MS. KEHRLICH: Your Honor, I think we would ask the
3 Court to consider expoliation of evidence charge because of
4 the lost video from the dry cleaners.

5 THE COURT: I would deny that, but I would allow you,
6 of course, to argue that.

7 MS. KEHRLICH: Your Honor, our position would be just
8 that there was potential evidence that was on the video.
9 The testimony from Ms. Son was, I think, that at her, her
10 video footage was from 11:00, but it was two and a half
11 years ago. She didn't have her notes.

12 We don't know exactly what was on the video. It's
13 possible that the video could of shown more details about
14 the individuals going by and what time it actually happened,
15 and I think, you know, potentially it could of been
16 exculpatory evidence for us.

17 THE COURT: And, and as I said, I will allow you to
18 argue that. I take expoliation of evidence similar to
19 flight. It's -- it can be argued, but I don't charge it.
20 In the State versus Cheeseboro that I referred to
21 previously, although I can't specifically remember if they
22 requested a charge of expoliation, the murder weapon had
23 been melted by the police prior to trial. Ballistics still
24 came in. Of course, y'all can make all those factual
25 arguments.

1 Do you have a position on that, solicitor?

2 SOLICITOR SHEALY: We were looking -- do you have a
3 exploitation charge I can look at?

4 THE COURT: Well, I didn't prepare---

5 SOLICITOR SHEALY: Right.

6 THE COURT: I, I can---

7 SOLICITOR SHEALY: I don't know. I didn't know if
8 there was a standard one for it. We can look up -- we can
9 look up -- the Charleston Bar site has jury charges in their
10 sample jury charges.

11 THE COURT: Yes, ma'am.

12 SOLICITOR SHEALY: And if they have a proposed one I'd
13 like to take a look at it.

14 THE COURT: Do you, do you have a proposed charge, Ms.
15 Kehrlich?

16 MS. KEHRLICH: Your Honor, I have one that our office
17 has.

18 May I approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 There's no case cite on this?

21 MS. KEHRLICH: No, Your Honor.

22 SOLICITOR SHEALY: Your Honor, our position will be the
23 charge would be inappropriate.

24 THE COURT: Let me look up, let me look a little bit
25 closer at Cheeseboro. See if they requested it in

1 Cheeseboro.

2 (Pause.)

3 THE COURT: Yeah, Chess, Cheeseboro indicates the State
4 does not have an absolute duty to preserve potential useful
5 evidence that might exonerate a defendant. Of course, that
6 was a death penalty trial also.

7 To establish a due process violation based on
8 destruction of evidence, the defendant must demonstrate that
9 the State destroyed the evidence in bad faith or that the
10 evidence possessed an exculpatory value apparent before the
11 evidence is destroyed, and the defendant can not obtain
12 other evidence of comparable value by other means.

13 So, I, again, I would, I would deny the motion for
14 expoliation of evidence charge. You, you may certainly,
15 certainly argue that to the jury in that.

16 All right. Any others?

17 MS. KEHRLICH: Your Honor, I don't believe that we have
18 any other different charges that we wanted to propose. I
19 think Ms. Penn just wanted to make sure that we -- the jury
20 was instructed regarding his statement.

21 THE COURT: Yes, ma'am, I have the statement charge and
22 I also have a charge. I don't entitle it failure to
23 testify, but I, of course, cover that fact---

24 MS. KEHRLICH: Yes, sir.

25 THE COURT: ---that he does not testify.

1 MS. KEHRLICH: I don't believe that we have any other
2 unusual requests. Our other requests were gonna be for if
3 the codefendant testified was the third one.

4 THE COURT: Yes, I have the statement of defendant
5 charge, intent, armed robbery, hand of one, hand of all, and
6 then, you know, the standard charges, charge and arrest,
7 presumption of innocence, burden of proof. I charge both
8 Manning and Victor versus Nebraska.

9 MS. KEHRLICH: Yes, sir.

10 THE COURT: All right.

11 MS. KEHRLICH: We don't have any other requests.

12 THE COURT: All right. Thank you.

13 Thank you very much.

14 Are we ready for our jury?

15 SOLICITOR ZIEGLER: Yes, Your Honor.

16 MS. PENN: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 SOLICITOR ZIEGLER: State rests.

21 THE COURT: All right. Thank you.

22 Thank you very much, solicitor.

23 THE COURT: Motions noted, Ms. Penn?

24 MS. PENN: Just subject to all prior and previous
25 motions and objections.

1 Thank you.

2 THE COURT: All right. Thank you, and I would reaffirm
3 all my prior rulings throughout the trial of the case.

4 Ladies and gentlemen, you now heard that the State has
5 rested. That means you've heard all the evidence and all
6 the testimony that you're going to hear from the State in
7 its case in chief. The defendant may now present evidence
8 or testimony if the defendant chooses to do so.

9 As you've heard me say before, the criminal defendant,
10 in South Carolina, is presumed to be innocent and has no
11 burden whatsoever of proving himself or herself innocent.
12 The State always bares the burden of proving a defendant
13 guilty beyond a reasonable doubt. However, a defendant may
14 present evidence and testimony if the defendant chooses to
15 do so.

16 So, we will now direct our attention to Ms. Penn and
17 ask, Ms. Penn, does the defendant intend to present any
18 evidence or testimony?

19 MS. PENN: The defendant does not. The defense rests.

20 THE COURT: All right. Thank you.

21 Thank you very much, Ms. Penn.

22 The -- you've now heard all the evidence and all the
23 testimony that you're going to hear in the trial of this
24 case. The State -- the stage we're at now is the stage of
25 the closing arguments by the attorneys. The procedure we

1 follow is the State, the party bearing the burden of proof
2 beyond a reasonable doubt, will present its closing argument
3 to you first. Thereafter it will be your -- followed by the
4 closing argument by Ms., Ms. Penn.

5 Is that, is that correct?

6 MS. PENN: Yes, Your Honor. That's correct.

7 THE COURT: By Ms. Penn on behalf of Mr. Murray. After
8 the closing arguments by the attorneys, I will then instruct
9 you on the law that applies that you must apply to the facts
10 of the case as you find them to be, and the case will then
11 be submitted to you for your deliberations.

12 Your, your motions are again noted for the record, Ms.
13 Penn.

14 MS. PENN: Thank you, Your Honor.

15 THE COURT: All right. I would ask you to please give
16 the parties your complete and undivided attention as they
17 address you. It's the last opportunity attorneys have to
18 address the jury.

19 I would advise those observing in the courtroom, I do
20 not allow any movement in and out during the time in which
21 an attorney is addressing the jury. You may leave, if you
22 wish, between the solicitor's closing argument and before
23 Ms. Penn begins her closing argument. You may certainly
24 leave after the closing arguments and before my instructions
25 to the jury. But I do not allow any movement about -- in or

1 but now we don't?

2 Is it enough for them not to show you things that link
3 that defendant to that spot?

4 No, it's not. It's not enough.

5 Find Kenneth Murray not guilty. Find Kenneth innocent.

6 THE COURT: Thank you.

7 Thank you very much, Mr. Bailiff.

8 Madam Forelady, ladies and gentlemen of the jury, if
9 you would please now give me your complete and undivided
10 attention. I'm going to charge you the law that you must
11 apply to the facts of the case as you find them to be.

12 The way I charge or instruct a jury is I charge the
13 general criminal law that applies to all cases in South
14 Carolina first, and thereafter I will charge the law as to
15 the specific charge in the indictment of armed robbery. I
16 will then charge hand of one, hand of all, and, finally, the
17 form of the verdict.

18 Generally, when I move from one topic to the next
19 topic, I will give you a, a outline of what I'm fixing or a
20 caption so to speak of the area of the law I'm fixing to
21 cover.

22 Charge, arrest, indictment, not evidence.

23 The indictment charges the defendant with armed
24 robbery. I remind you that the fact the defendant was
25 arrested, charged, and indicted in this case is not evidence

1 in the case, and can not be considered by you as evidence of
2 guilt in this case nor does it create any presumption or
3 inference of guilt. This document, this indictment, is
4 simply the formal written instrument which contains the
5 charge made against the defendant. It is the formal
6 document by which this case is brought into Court.

7 Presumption of innocence.

8 The, the defendant has pled not guilty to this
9 indictment, and that plea puts the burden on the State to
10 prove the defendant guilty.

11 A person charged with committing a criminal offense in
12 South Carolina is never required to prove himself innocent.
13 I charge you that it is an important rule of the law that
14 the defendant, in a criminal trial, no matter what the
15 seriousness of the charge may be, will always be presumed to
16 be innocent of the crime for which the indictment was issued
17 unless guilt has been proven by evidence satisfying you of
18 that guilt beyond a reasonable doubt.

19 The presumption of innocence does not end when you
20 begin your deliberations, but it accompanies the defendant
21 throughout the trial until you reach a verdict of guilt
22 based on evidence satisfying you of that guilt beyond a
23 reasonable doubt. The presumption of innocence has been
24 said to be like a robe of righteousness placed about the
25 shoulders of a defendant which remains with the defendant

1 until it has been stripped from the defendant by evidence
2 satisfying you of the defendant's guilt beyond a reasonable
3 doubt.

4 The presumption of innocence is not a mere legal
5 theory. It is not just a legal phrase. It is a substantial
6 doubt (sic) to which every defendant is entitled unless you,
7 the jury, are satisfied from the evidence of the defendant's
8 guilt beyond a reasonable doubt.

9 what is a reasonable doubt?

10 A reasonable doubt is the kind of doubt that would
11 cause a reasonable person to hesitate to act. The State has
12 the burden of proving the defendant guilty beyond a
13 reasonable doubt. Some of you may have served as jurors in
14 civil cases before where you were told that it is only
15 necessary to prove that a fact is more likely true than not
16 true such as by the greater weight or the preponderance of
17 the evidence.

18 In criminal cases, the State's proof must be more
19 powerful than that. It must be beyond a reasonable doubt.
20 Proof beyond a reasonable doubt is proof that leaves you
21 firmly convinced of the defendant's guilt.

22 There are very few things we know -- there are very few
23 things in this world that we know with absolute certainty
24 and, in criminal cases, the law, our law does not require
25 proof that overcomes every possible doubt. Based on your

1 consideration of the evidence, if you are convinced that the
2 defendant is guilty of the crime charged, you must find the
3 defendant guilty. If, on the other hand, you think there is
4 a real possibility that the defendant is not guilty, you
5 must give the defendant the benefit of the doubt and find
6 him not guilty.

7 Duties of trial jury and trial judge.

8 I remind you that, during this trial, you and I have
9 certain distinct duties to perform. As the trial judge, it
10 is my responsibility to preside over the trial of this case.
11 I also have the additional duty to rule on the admissibility
12 of evidence offered during the trial.

13 You are to consider only the competent evidence before
14 you. If there was any testimony ordered stricken from the
15 record in this case during the trial, you must disregard
16 that testimony. You are to consider only the testimony
17 which has been presented from this witness stand, any
18 exhibit, and any exhibits that have been made part of the
19 record in this case.

20 I have the additional duty to charge you the law that
21 applies to this case. As the presiding judge, I am the sole
22 judge of the law of this case. It is your -- and it is your
23 duty, as jurors, to accept and to apply the law as I now
24 state it to you. If you already have any idea as to what
25 the law is or what the law should be or ought to be, and it

1 does not agree with what I now tell you the law is, you must
2 abandon your idea because you are sworn, you have taken an
3 oath to accept the law and apply the law exactly as I state
4 it to you.

5 In every case tried in this court before a jury, the
6 jury becomes the sole and exclusive judge of the facts in a
7 case. A trial judge can not intimate, state, comment on, or
8 make any statement to a trial jury about the facts in a
9 case. Since you, the jury, are the sole judges of the facts
10 in this case, you are not to infer from what I have said
11 during the progress of the trial in ruling upon the
12 admissibility of evidence or otherwise or anything that I
13 say now during the course of this instruction to you that I
14 have any opinion about the facts in this case.

15 The law does not allow me to have an opinion about the
16 facts in this case. This is a matter solely for you, the
17 jury, to determine. As jurors, it is your duty to determine
18 the effect, the value, the weight, and the truth of the
19 evidence that has been presented during this trial.

20 Now direct and circumstantial evidence.

21 There are two types of evidence which are generally
22 presented during a trial, direct evidence and circumstantial
23 evidence.

24 Direct evidence is the testimony of a person who claims
25 to have actual knowledge of a fact such as an eye witness or

1 an ear witness. It is evidence which immediately
2 establishes the main fact to be proved.

3 Circumstantial evidence is proof of a chain of facts
4 and circumstances indicating the existence of a fact. It is
5 evidence which immediately establishes a collateral fact
6 from which the main fact may be inferred. Circumstantial
7 evidence is based on inference and not on personal knowledge
8 or observation. Crimes may be proven by circumstantial
9 evidence.

10 The law makes no distinction between the weight or
11 value to be given to either direct or circumstantial
12 evidence. However, to the extent the State relies on
13 circumstantial evidence, all of the circumstances must be
14 consistent with each other, and when taken together, point
15 conclusively to the guilt of the accused beyond a reasonable
16 doubt. If these circumstances merely portray, portray a
17 defendant's behavior as suspicious, the proof has failed.
18 The law makes absolutely no distinction between the weight
19 or value to be given to either direct or circumstantial
20 evidence nor is a greater degree of certainty required of
21 circumstantial evidence than of direct evidence.

22 The State has the burden of proving the defendant
23 guilty beyond a reasonable doubt. This burden rests with
24 the State regardless of whether the State relies on direct
25 evidence, circumstantial evidence, or some combination of

1 the two.

2 You should weigh all of the evidence in the case.

3 After weighing all of the evidence, if you're not convinced
4 of the guilt of the defendant beyond a reasonable doubt, you
5 must find the defendant not guilty.

6 Credibility of witnesses.

7 Necessarily, you, the jury, must determine the
8 credibility of the witnesses who have testified in this
9 case. Credibility, as you all know, simply means
10 believability. It becomes your duty, as jurors, in using
11 your good judgment and your common sense, to analyze and to
12 evaluate the evidence and determine which evidence convinces
13 you of its truth.

14 In determining the believability of the witnesses who
15 have testified in this case, you may believe one over
16 several or several over one. You may believe a part of the
17 testimony of a witness and reject the remaining part of the
18 testimony of that same witness. You may believe the
19 testimony of a witness in its entirety or reject the
20 testimony of any witness in its entirety. You may consider
21 whether any witness had exhibited to you any interest, bias,
22 prejudice or other motive in this case. You may also
23 consider the demeanor, the appearance, and the manner of a
24 witness while on the witness stand.

25 I instruct you and emphasize that the fact that the

1 defendant did not testify is not a factor to be considered
2 by you in anyway in your deliberation and in your
3 consideration on the question of the guilt or the innocence
4 of the defendant. It must not be considered by you in any
5 manner whatsoever. A defendant has the constitutional right
6 to remain silent and the assertion of this right must not be
7 considered by you in your deliberations.

8 I repeat, under your oath, you are to draw no
9 conclusion whatsoever from the fact that the defendant in
10 this case did not testify. The fact that this defendant did
11 not testify should not even be discussed in the jury room.
12 The burden of proof, as I've stated to you, is on the State.
13 The defendant is not required to prove his innocence. The
14 burden of proof remains on the State to prove guilt beyond a
15 reasonable doubt.

16 Statement of the defendant.

17 A statement alleged to have been made by the defendant
18 has been admitted into evidence in this case. While the
19 court has determined that the statement is admissible, I
20 instruct you that you make the ultimate decision of whether
21 or not the defendant made the statement. If the defendant
22 did make the statement, you must determine whether the
23 statement was made by the defendant voluntarily and of his
24 own free will. This means that the statement was not caused
25 by pressure, force, fear, threats, coercion, or

1 intimidation, or by hope or promise of leniency or a reward
2 of any kind.

3 In determining whether the statement was voluntary, you
4 should consider both the characteristics of the defendant
5 and the details of the questioning. Some of the factors
6 that you must consider are the age of the defendant, the
7 defendant's education or lack of education, the defendant's
8 mental ability or capacity, the defendant's IQ or
9 intelligence, the defendant's background and environment,
10 the place and length of the detention, the nature of the
11 questioning, and the advice or lack thereof to the defendant
12 of his Constitutional rights, including but not limited to
13 the right to remain silent, that any statement could be used
14 against him in a Court of law, the right to have a lawyer
15 present, that if he could not afford a lawyer, a lawyer
16 would be appointed to represent him without any cost, and
17 that he could stop making a statement at anytime.

18 You must carefully consider all of the surrounding
19 circumstances before you give any weight to any alleged
20 statement. The State has the burden of proving, beyond a
21 reasonable doubt, that the alleged statement was voluntary.
22 If you determine that the alleged statement was voluntary,
23 you may give the statement any further consideration that
24 you deem proper. You must decide what weight, if any,
25 should be given to the alleged statement. If you determine

1 that the alleged statement was not the free and voluntary
2 statement of the defendant, you should not consider the
3 statement at all.

4 Ladies and gentlemen, that covers the general criminal
5 law that applies to all cases in South Carolina. I am now
6 going to cover the law of armed robbery and hand of one hand
7 of all. If you would please continue to give me your
8 complete and undivided attention. I assure you the end of
9 my instructions to you is in sight.

10 Armed robbery.

11 The defendant is charged with armed robbery. In order
12 to prove this offense, the State must first prove, beyond a
13 reasonable doubt, that the defendant took personal property
14 from the person or presence of another person. Property is
15 in the presence of a person if it is within the person's
16 reach, inspection, observation, or control so that the
17 person could, if not overcome with violence or prevented by
18 fear, keep possession of the property.

19 The State must also prove, beyond a reasonable doubt,
20 that the defendant carried the property away intending to
21 permanently deprive the owner of the property and to keep
22 the property for the defendant's own use. The slightest
23 removal of the property or the complete possession of the
24 property, even for an instance by the defendant, is
25 sufficient to show a taking and carrying away of the

1 property. The taking and carrying away of the property must
2 have been done with violence or putting the possessor of the
3 property in fear of violence.

4 Finally, the State must prove, beyond a reasonable
5 doubt, that the defendant was armed with a deadly weapon
6 during the robbery. A deadly weapon is any article,
7 instrument, or substance which is likely to cause death, or
8 great bodily injury, or great bodily harm. Whether an
9 instrument has been used as a deadly weapon depends on the
10 facts and circumstances of each case.

11 The following are examples of instruments which may be
12 deadly weapons:

13 A pistol, a shotgun, a rifle, a dirk, a dagger, a
14 knife, a slingshot, metal knuckles, a razor, gasoline, a
15 fire bomb, or Molotov cocktail, lighter fluid. A gun may be
16 a deadly weapon even if it is not operating. A BB gun may
17 be a deadly weapon is a factual question to be determined by
18 you, the jury.

19 That is the charge of armed robbery. Incapsulated
20 within that charge of armed robbery is the law or the theory
21 of the hand of one is the hand of all. If a crime is
22 committed by two or more people who are acting together in
23 committing a crime, the act of one is the act of all. A
24 person who joins with another to commit an unlawful act is
25 criminally responsible for everything done by the other

1 person which happens as a probable or natural consequence of
2 the act done in carrying out the common plan and purpose.

3 For example, two people can be guilty of killing
4 another person when only one of the two had a gun, there was
5 only one bullet and only one of the two fired the shot that
6 caused the death. If two or more people are together,
7 acting together, assisting each other in the commission of
8 an offense, the act of one is the act of all. As it is
9 sometimes stated, the hand of one is the hand of all.

10 Prior knowledge that a crime is going to be committed
11 without more is not sufficient to make a person guilty of
12 that crime. Mere knowledge that another person is going to
13 commit a crime, even if the defendant is present when the
14 crime is committed, is not sufficient to prove, to convict
15 the defendant as a principal. Guilt as a principal is shown
16 by actual or constructive presence at the scene as a result
17 of prior arrangement.

18 Therefore, a finding of a prior arranged plan or common
19 scheme is necessary for a finding of guilt as a principal.
20 The State must prove, beyond a reasonable doubt, by
21 competent evidence, the theory of the hand of one is the
22 hand of all. A principle in a crime is one who either
23 actually commits the crime or who is present aiding,
24 abetting, or assisting in the commission of the crime.

25 When a person does an act in the presence of and with

1 the assistance of another, the act is done by both. where
2 two or more, acting with a common plan or intent, are
3 present at the commission of a crime, it does not act -- it
4 does not matter who actually commits the crime. All are
5 guilty. The hand of one is the hand of all. Presence at
6 the commission of a crime means to be sufficiently near to
7 aid and abet and assist in the commission of a crime.
8 However, mere presence at the scene of a crime is not
9 sufficient to convict one as a principle on the theory of
10 aiding and abetting.

11 Intent is also a necessary element for there must have
12 been a common design or intent to commit the crime and the
13 crime must have been committed pursuant thereto with a
14 person aiding and abetting by some overt act. Intent means
15 intending the result which actually occurred. Not
16 accidentally or involuntary. Intent may be shown by acts
17 and conduct of the defendant and other circumstances
18 surrounding the event from which you may naturally and
19 reasonably infer intent. The State must prove these
20 elements beyond a reasonable doubt.

21 In conclusion, ladies and gentlemen, as to your jury
22 verdict, there are two possible verdicts which you may find
23 in this case, guilty of armed robbery or not guilty. There
24 is no significance whatsoever in the order in which I just
25 stated those possible verdicts. It is simply that one must

1 be stated first.

2 Madam Forelady, along with the exhibits that have been
3 introduced you will also have the verdict, this verdict form
4 in the courtroom with you. It is very self-explanatory. It
5 indicates, as to the charge of armed robbery, we, the jury,
6 unanimously find the defendant guilty of armed robbery or
7 not guilty, sign and date.

8 Once the jury has determined the facts, the reasonable
9 inferences to be drawn from the facts, and applied those
10 facts as you have found them to the law as I indicated the
11 law is, to that standard, if you find that the State has met
12 its burden of proving the case beyond a reasonable doubt,
13 then your verdict would be guilty of armed robbery.

14 Madam Forelady, I would ask you to check to the word --
15 left of the word guilty of armed robbery, circle both your
16 check mark, and those words, sign and date it today's date.

17 If, on the other hand, after your deliberations and
18 your considerations and your determination of the facts, and
19 the inferences to be drawn from the facts, apply them to the
20 law as I told you the law is. If you find the State has
21 failed to meet its burden of proof, and you then
22 unanimously -- and you find unanimously that verdict, not
23 guilty, I would ask you to check at the left of two words
24 not guilty, circle the check mark, and those two words, sign
25 and date the verdict.

1 As you have heard me say, ladies and gentlemen, your
2 verdict must be one of the two. It must be a unanimous
3 verdict. All 12 of you must agree.

4 Your verdict must not be based on passion, prejudice,
5 emotion, bias, or any other consideration not in evidence in
6 this case.

7 Once, Madam Forelady, your jury has reached that
8 unanimous verdict, if you -- and you have signed and dated
9 it, if you would then knock on the jury room door, inform
10 the bailiff that you have reached a verdict, at that time I
11 will receive you -- we will receive you back into the
12 courtroom.

13 I'm going to ask you momentarily to return to your jury
14 room. Do not begin your deliberations until you're
15 instructed to do so. I may have to -- I have to confer with
16 the attorneys one final time outside of your presence. Do
17 not have to bring you back out. The evidence will be
18 reviewed to make sure the proper exhibits are presented to
19 you. The evidence would be presented to you. The verdict
20 form.

21 Our two -- everybody looks great today even after the
22 Halloween party and all. The two alternates will come out
23 of the jury room. You will then be instructed by the clerk
24 to begin your deliberations with your fellow jurors.

25 You may take your notes now. Do not begin your

1 deliberations until you're instructed to do so.

2 Thank you very much for your patience with the Court.

3 You may go with your bailiff.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: Any exceptions, additions, deletions, from
7 the State, solicitor?

8 SOLICITOR SHEALY: Yes, Your Honor.

9 THE COURT: All right.

10 SOLICITOR SHEALY: We would ask that you read the
11 language of the statute. That being the language found in
12 16-11-330. A person who commits robbery while armed with a
13 pistol, dirk, slingshot, metal knuckles, razor, or other
14 deadly weapon, or while alleging, either by action or words,
15 he was armed while using a representation of a deadly
16 weapon, or any object which a person present during the
17 commission of the robbery reasonably believed to be a deadly
18 weapon.

19 THE COURT: Ms. Penn.

20 MS. PENN: We have no objection, Your Honor.

21 THE COURT: All right.

22 THE COURT: Any other exceptions?

23 SOLICITOR SHEALY: No, Your Honor.

24 THE COURT: Any exceptions from the defense?

25 MS. KEHRLICH: Your Honor, we would just renew our

1 prior requests that you already denied.

2 THE COURT: Expoliation?

3 MS. KEHRLICH: Yes, sir.

4 THE COURT: I can't say that word. Spoiled evidence.

5 MS. KEHRLICH: Yes, sir, spoiled evidence.

6 THE COURT: Thank you very much, and I would renew my
7 ruling on that.

8 (Pause.)

9 THE COURT: Bring me the jury please.

10 And you want me to start with Subsection A, a person
11 who commits robbery?

12 SOLICITOR SHEALY: while I think you've already covered
13 that initial clause, the part that I was most concerned
14 about was making sure they also understood start with the or
15 while alleging. But it may make sense to start over with it
16 and just read it up until the point where it's guilty of a
17 felony.

18 THE COURT: All right. Thank you.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: Thank you.

22 Madam Forelady, ladies and gentlemen of the jury, I
23 would like to address one further issue concerning the
24 instruction as to armed robbery.

25 Under 16-11-330, which is the Code of Laws in South

MOUNT PLEASANT POLICE DEPARTMENT

PAGE 1 OF 2DATE: 08/14/11OCA #: 2011-09023TIME: 13:25

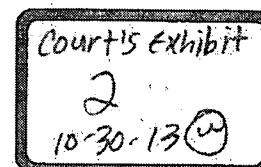
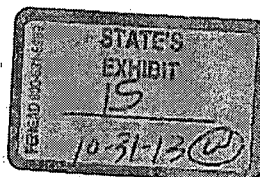
Statement of: Kenneth Credell Murray
 ADDRESS: 2629 Linen Lane, Mt. Pleasant, SC Phone #: (843) 303-2822
 PLACE OF EMPLOYMENT: N/A Phone #:
 RACE: B SEX: M BIRTH DATE: 05/15/84

This is the written statement of Kenneth Credell Murray, written by Sgt. Justin Heinbre. In the robbery of Pizza Hut at six mile Road on 17, I had a b.b. gun, that y'all found under my mattress. Bootsie had a 9mm gun. Bootsie was around the neighborhood and asked me if I wanted to go with him on it. We went to Pizza Hut, I think there was about three people inside. We robbed them, and left. We got like \$200. We were parked on the side of the building in a blue mitsubishi, a newer model. Bootsie drove us away after the robbery. We were parked at the dealership next door. We left there and went back to my house on Linen Lane.

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: Justin Heinbre

WITNESSES:

[Signature]
[Signature]



I have received a copy of the above statement: Justin Heinbre

1004 4/07

RULE 5 JKS:00045



Mount Pleasant Police Department Photographic Lineup Admonition

INDEPENDENT ADMINISTRATOR WILL READ THE FOLLOWING
ADMONISHMENT TO ALL WITNESSES PRIOR TO VIEWING ANY
PHOTOGRAPHIC LINEUP

1. You are going to be asked to view a set of photographs.
2. The perpetrator may or may not be presented in the lineup.
3. The photographs may not always show the true complexion of an individual and may be lighter or darker than the photograph.
4. Hairstyles, beards, and moustaches can be easily changed.
5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Km Yes No

CASE Number: 2011-P-09029 DATE: 8-2-2011 TIME: 12:19 pm

Chris Helms
Lineup Administrator Signature

Kenneth Murray
Witness Signature

I was was not able to make an identification from this photographic lineup.

The person I identified as the perpetrator was: _____

Confidence Statement (To be completed in the witness' own words):

Chris Helms
Lineup Administrator Signature

Kenneth Murray 8/2/11
Witness Signature and Date





Mount Pleasant Police Department Photographic Lineup Admonition

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6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Yes Yes ___ No

CASE Number: 2011-P-09029 DATE: 8-2-2011 TIME: 12:31 PM

Chris Helms
Lineup Administrator Signature

Yannet My
Witness Signature

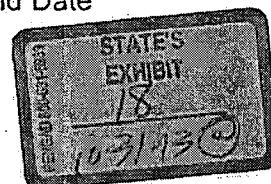
I was not able to make an identification from this photographic lineup.

The person I identified as the perpetrator was: _____

Confidence Statement (To be completed in the witness' own words):

Chris Helms
Lineup Administrator Signature

Yannet My 8/2/11
Witness Signature and Date





Mount Pleasant Police Department Photographic Lineup Admonition

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5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Yes Yes ___ No

CASE Number: 2011-P-09089 DATE: 8-7-2011 TIME: 12:57 PM

Chris Helms
Lineup Administrator Signature

Kenneth Perry
Witness Signature

I was was not able to make an identification from this photographic lineup.

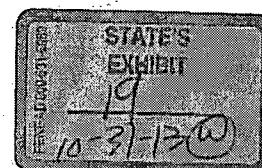
The person I identified as the perpetrator was: #2

Confidence Statement (To be completed in the witness' own words):

Don't know him From my Neighborhood

Chris Helms
Lineup Administrator Signature

Kenneth Perry 8/2/11
Witness Signature and Date





Mount Pleasant Police Department Photographic Lineup Admonition

INDEPENDENT ADMINISTRATOR WILL READ THE FOLLOWING
ADMONISHMENT TO ALL WITNESSES PRIOR TO VIEWING ANY
PHOTOGRAPHIC LINEUP

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3. The photographs may not always show the true complexion of an individual and may be lighter or darker than the photograph.
4. Hairstyles, beards, and moustaches can be easily changed.
5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Yes ☒ Yes ☐ No

CASE Number: 2011-P-09173 DATE: 8/2/11 TIME: 0930

R. J. Druggen
Lineup Administrator Signature

Kenneth Murray
Witness Signature

Kim
I was/was not able to make an identification from this photographic lineup.

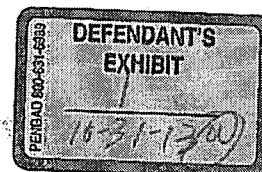
The person I identified as the perpetrator was: H3

Confidence Statement (To be completed in the witness' own words):

Yes

R. J. Druggen
Lineup Administrator Signature

Kenneth Murray 8/2/11
Witness Signature and Date



PAGE _____ OF _____

OCA# 2011-P-09029

MOUNT PLEASANT POLICE DEPARTMENT

ADVISEMENT OF RIGHTS

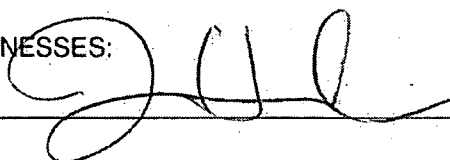
NAME: Kenneth O. Murray
 ADDRESS: 2687 Lippert Lane CITY: Mount Pleasant STATE: S.C.
 RACE: B SEX: M DOB: 05/15/84 PHONE # (843) 303-2822

Sgt. Justin Hembree has advised me that he is a member of the Mount Pleasant Police Department and has further advised me ...

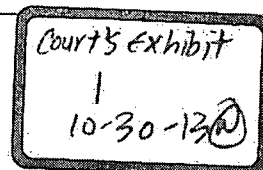
- Kn 1. That I have the absolute right to remain silent and do not have to answer any question or give a statement and this fact cannot be used against me.
Kn 2. That if I do answer questions or give a statement, anything I say can and will be used against me in a Court of Law.
Kn 3. That I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned.
Kn 4. That if I wish to talk to a lawyer or have him present, but am unable to afford to hire a lawyer, one will be appointed to represent me free of charge.
Kn 5. That if I decide to answer questions or give a statement without having a lawyer present representing me, I have the absolute right during this interview to stop answering questions and to remain silent.

I FULLY UNDERSTAND EACH OF THESE RIGHTS WHICH HAVE BEEN EXPLAINED TO ME.

WITNESSES:



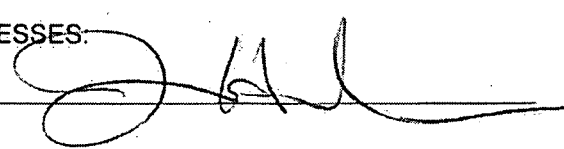
Kenneth Murray
 DATE 08/2/11



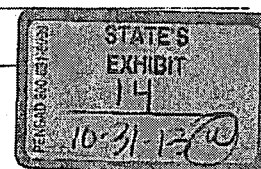
WAIVER OF RIGHTS

I fully understand each of these rights which have been explained to me, and having these in mind, I wish to waive these rights. No threats, force or promises of any kind have been made to me by anyone to induce or cause me to waive these rights and answer questions.

WITNESSES:



Kenneth Murray
 DATE 08/2/11



WHITE - EVIDENCE

YELLOW - ATTACH TO REPORT

PINK - SUSPECT

MOUNT PLEASANT POLICE DEPARTMENT

PAGE 1 OF DATE: 07/28/11JCA #: 2011-209173/TIME: 23:15Statement of: Kenneth Oredell MurrayADDRESS: 2627 Linnen LanePhone #: 213PLACE OF EMPLOYMENT: 213Phone #: (813) 557-249581RACE: BSEX: MBIRTH DATE: 05/15/84

This is the statement of Kenneth Oredell Murray, taken by Sgt. Justin Hembree of the Mount Pleasant Police Dept. I offered Mr. Murray a Pepsi, and he accepted it at 23:25. I was just the lookout in the Piggly Wiggly robbery, and I had a 22 revolver.

Q: What Piggly Wiggly are you referring to?

A: Piggly Wiggly at the TOP Connector.

Q: How much money did you get?

A: Five hundred dollars.

Q: Is the Piggly Wiggly robbery the only robbery that you have committed?

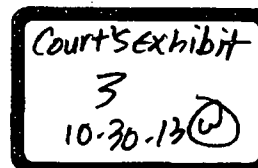
A: Yes

Q: What clothes were you wearing during the robbery?

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: Kenneth Murray

WITNESSES:

[Signature]
[Signature]



I have received a copy of the above statement: Kenneth Murray

MOUNT PLEASANT POLICE DEPARTMENT

PAGE 2 OF 2

DATE: 07/28/11

JCA #: 2011-P-09173

TIME: 09:15

Statement of:

ADDRESS: 2627 Linden Lane

Phone #: N/A

PLACE OF EMPLOYMENT: N/A

Phone #: (843) 557-9581

RACE: B SEX: M BIRTH DATE: 05/15/84

A: Black pants, Black short sleeved shirt, and white long sleeve shirt.

Q: What did you do with the clothes from the robbery that you were wearing?

A: I threw them out in the woods in Hamlin.

I apologize.

I have read (Had read to me) the foregoing statement which has been freely and voluntarily made by me and it is true and correct to the best of my knowledge: Kenneth Murray

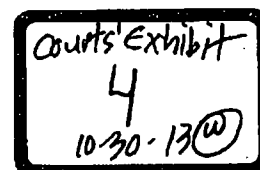
WITNESSES:

[Signature]
[Signature]

I have received a copy of the above statement: Kenneth Murray

PAGE 1 OF 1OCA# 2011-P-09173

**MOUNT PLEASANT POLICE DEPARTMENT
ADVISEMENT OF RIGHTS**



NAME: MURRAY Kenneth Orde II
 ADDRESS: 2627 Linsen Ln. CITY: Mt. Pleasant STATE: SC
 RACE: B SEX: M DOB: 5-15-1984 PHONE # _____

Det. Brewer has advised me that he is a member of the Mount Pleasant Police Department and has further advised me ...

- ✓ 1. That I have the absolute right to remain silent and do not have to answer any question or give a statement and this fact cannot be used against me.
- ✓ 2. That if I do answer questions or give a statement, anything I say can and will be used against me in a Court of Law.
- ✓ 3. That I have the right to consult with a lawyer of my choice before I answer questions or give a statement and also to have him present while I am being questioned.
- ✓ 4. That if I wish to talk to a lawyer or have him present, but am unable to afford to hire a lawyer, one will be appointed to represent me free of charge.
- ✓ 5. That if I decide to answer questions or give a statement without having a lawyer present representing me, I have the absolute right during this interview to stop answering questions and to remain silent.

I FULLY UNDERSTAND EACH OF THESE RIGHTS WHICH HAVE BEEN EXPLAINED TO ME.

WITNESSES:

[Signature]

x Kenneth Murray
 DATE 7/24/11

WAIVER OF RIGHTS

I fully understand each of these rights which have been explained to me, and having these in mind, I wish to waive these rights. No threats, force or promises of any kind have been made to me by anyone to induce or cause me to waive these rights and answer questions.

WITNESSES:

[Signature]

x Kenneth Murray
 DATE 7-25-11

WHITE - EVIDENCE

YELLOW - ATTACH TO REPORT

PINK - SUSPECT

RULE 5 JKS: 00030

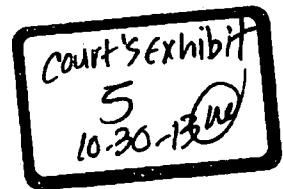
Jarret Strickland

STATE OF SOUTH CAROLINA

County of Charleston

SEARCH WARRANT

July 28, 2011
Detective M. Bacon



2011-P-06415

STATE OF SOUTH CAROLINA }

AFFIDAVIT

COUNTY OF CHARLESTON }

Personally appeared before me, one Det. M. Bacon who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

The property sought is described as any instrumentalities of the crime of Armed Robbery to include but not limited to: any clothing i.e. camouflage clothing, mask, glasses, gloves, shoes, shirt, pants, white socks, guns, BB&T currency bags, U.S. currency, notes, ledgers, credit card receipts, and phones used and taken during the commission of this crime.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

The premise to be searched is located at 2627 Linnen Lane, located in the jurisdiction of Mount Pleasant, County of Charleston, State of South Carolina. If traveling Highway 17 North in Mount Pleasant, SC; one would pass Old Georgetown Highway on the right side of the roadway, one would continue traveling north. One would pass McKnight Road on the right side of the roadway and travel approximately .21 miles on Hamlin Road and then make a right turn onto Linnen Lane. One would travel approximately .05 miles on Linnen Lane and the dwelling to be searched will be the first residence on the left side of the roadway. The residence is further described as being a one story dwelling with grayish color siding and a dark in colored shingled roof. The dwelling is further described as having dark in color shutters around the front windows of the residence and white paneling around the bottom of the residence. The residence has an attached front porch with four columns and a white front entry door that opens inward and a glass storm door. The residence is further described as having a chain link fence running from the left side of the residence extending to the front of the residence. The search is to include any outbuildings and/or appurtenances and any vehicles owned or operated by subjects at the location, cellular phones, computers, and any persons located on the property.

2011-P-06415

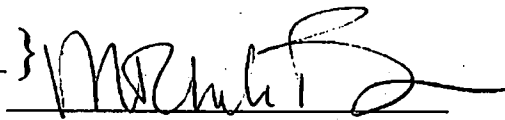
**REASON FOR AFFIANT'S BELIEF THAT THE PROPERTY SOUGHT IS ON
THE SUBJECT PREMISES**

That on May 27, 2011 the victims, Xiu Zhu Li, Fu Liu, and Zhi Feng Liu (owners of Golden Bowl Chinese Restaurant), reported to the Mt. Pleasant Police Department that two unknown black males with their faces covered entered the restaurant through the back door. One of the males was armed with a black pistol and the other male was carrying a bag. The suspects obtained cash from the register and fled the restaurant out of the back door.

That on July 26, 2011 Denzel Lamar Moultrie gave Det. Bacon, Det. Cpl. Harris, and Cpl. Buncum a post-Miranda written statement admitting to his involvement in the robbery as being the "lookout" and implicated Jarrett Graddick and Keenan Coakley as being the two individuals who entered the business and committed the robbery. Denzel Moultrie gave specific; corroborating information relative to the robbery.

In that Detectives received information from a credible source that guns were seen at Jarrett Graddick's listed residence, 2627 Linnen Lane, Mt. Pleasant, SC.

SWORN to before me this 28th
Day of July, 2011

} 
Affiant

 (L.S.) }
Signature of Judge

100 Ann Edwards Lane
Mount Pleasant S.C. 29464
843-884-4176

STATE OF SOUTH CAROLINA }**SEARCH WARRANT****COUNTY OF CHARLESTON** }

**TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY
OR OF THE MUNICIPALITY OF MOUNT PLEASANT:**

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

**DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE
SEARCHED**

The premise to be searched is located at 2627 Linnen Lane, located in the jurisdiction of Mount Pleasant, County of Charleston, State of South Carolina. If traveling Highway 17 North in Mount Pleasant, SC; one would pass Old Georgetown Highway on the right side of the roadway, one would continue traveling north. One would pass McKnight Road on the right side of the roadway and travel approximately .21 miles on Hamlin Road and then make a right turn onto Linnen Lane. One would travel approximately .05 miles on Linnen Lane and the dwelling to be searched will be the first residence on the left side of the roadway. The residence is further described as being a one story dwelling with grayish color siding and a dark in colored shingled roof. The dwelling is further described as having dark in color shutters around the front windows of the residence and white paneling around the bottom of the residence. The residence has an attached front porch with four columns and a white front entry door that opens inward and a glass storm door. The residence is further described as having a chain link fence running from the left side of the residence extending to the front of the residence. The search is to include any outbuildings and/or appurtenances and any vehicles owned or operated by subjects at the location, cellular phones, computers, and any persons located on the property.

DESCRIPTION OF PROPERTY SOUGHT

The property sought is described as any instrumentalities of the crime of Armed Robbery to include but not limited to any clothing i.e. camouflage clothing, mask, glasses, gloves, shoes, shirt, pants, white socks, guns, BB&T currency bags, U.S. currency, notes, ledgers, credit card receipts, and phones used and taken during the commission of this crime.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to be made to issuing Magistrate within ten days from the date of this warrant and such inventory to be signed by the officer executing this warrant.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises. An inventory of such items will be left at the premises searched.

Mount Pleasant, S.C.
July 28, 2011

Thomas J. Ryan (L.S.)
Signature of Judge

RETURN

I received the attached Search Warrant _____, and have executed it as follows:

On July 28, 2011 at 1:45 pm o'clock _____, I searched (the person) described in the warrant and the (premises)

I left a copy of the warrant with _____
Name of person or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of the property taken pursuant to the warrant:

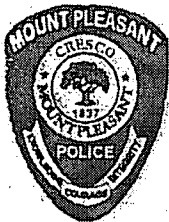
- Black Powerline BR Gun pistol 201 serial #1620108172354 (under bed in 1st bedroom)
- 1 black Uniden walkie serial #892A34371911 (top left dresser on left)
- 1 unspent .22 cal round (clothes basket) drawer
- Inmate property sheet (Kenneth Murray) (top left dresser drawer)
- Inmate property sheet (Jarret Graddick)
- Letter from Jarret Graddick } top right dresser drawer
- Tax return for Jarret Graddick
- 1 pair camo pants (closet)
- black pouch containing plastic bag w/ white powder substance } end table
- 5 spent .22 casings
- 2 plastic bags containing white powder material (chest of drawers)
- 1 unspent .22 long casing (found under bottom right drawer of dresser)
- silver AWS scale (back porch)
- 1 7.62 x 39 round unspent (found under moped seat on front porch)

This inventory was made in the presence of CST Hays
AND Det. Chene

I swear that this inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 3rd }
Day of August, 2011 }
J. Chene
(Signature of Officer Executing Warrant)

Thomas J. Ryan (L.S.) }
Signature of Judge



Mount Pleasant Police Department Photographic Lineup Admonition

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5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? KH Yes No

CASE Number: 2011-P-09029 DATE: 8-2-2011 TIME: 12:19 pm

Chris Helms
Lineup Administrator Signature

Kenneth Murray
Witness Signature

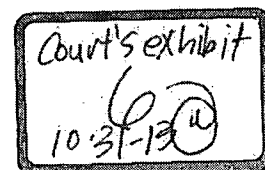
I was was not able to make an identification from this photographic lineup.

The person I identified as the perpetrator was: _____

Confidence Statement (To be completed in the witness' own words):

Chris Helms
Lineup Administrator Signature

Kenneth Murray 8/2/11
Witness Signature and Date





Mount Pleasant Police Department Photographic Lineup Admonition

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5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Yes Yes ___ No

CASE Number: 2011-P-09173 DATE: 8-2-2011 TIME: 12:23 pm

Chris Helms
Lineup Administrator Signature

Kenneth Murray
Witness Signature

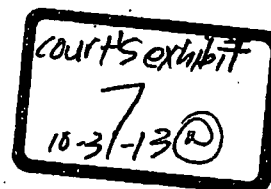
I was was not able to make an identification from this photographic lineup.

The person I identified as the perpetrator was: _____

Confidence Statement (To be completed in the witness' own words):

Chris Helms
Lineup Administrator Signature

Kenneth Murray 8/2/11
Witness Signature and Date





Mount Pleasant Police Department Photographic Lineup Admonition

INDEPENDENT ADMINISTRATOR WILL READ THE FOLLOWING
ADMONISHMENT TO ALL WITNESSES PRIOR TO VIEWING ANY
PHOTOGRAPHIC LINEUP

1. You are going to be asked to view a set of photographs.
2. The perpetrator may or may not be presented in the lineup.
3. The photographs may not always show the true complexion of an individual and may be lighter or darker than the photograph.
4. Hairstyles, beards, and moustaches can be easily changed.
5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Yes Yes ___ No

CASE Number: 2011-P-09029 DATE: 8-2-2011 TIME: 12:31 PM

Chris Helms
Lineup Administrator Signature

Yannick py
Witness Signature

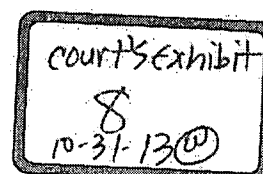
I was not able to make an identification from this photographic lineup.

The person I identified as the perpetrator was: _____

Confidence Statement (To be completed in the witness' own words):

Chris Helms
Lineup Administrator Signature

Yannick py 8/2/11
Witness Signature and Date





Mount Pleasant Police Department Photographic Lineup Admonition

INDEPENDENT ADMINISTRATOR WILL READ THE FOLLOWING
ADMONISHMENT TO ALL WITNESSES PRIOR TO VIEWING ANY
PHOTOGRAPHIC LINEUP

1. You are going to be asked to view a set of photographs.
2. The perpetrator may or may not be presented in the lineup.
3. The photographs may not always show the true complexion of an individual and may be lighter or darker than the photograph.
4. Hairstyles, beards, and moustaches can be easily changed.
5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Yes Yes ___ No ___

CASE Number: 2011-P-09173 DATE: 8-2-2011 TIME: 12:35 PM

Chris Helms

Lineup Administrator Signature

Kimberly Murray

Witness Signature

I was was not able to make an identification from this photographic lineup.

The person I identified as the perpetrator was: #3

Confidence Statement (To be completed in the witness' own words):

I know him

Doubt

Chris Helms

Lineup Administrator Signature

Kimberly Murray

Witness Signature and Date

Court Exhibit
9
10.31.13



Mount Pleasant Police Department Photographic Lineup Admonition

INDEPENDENT ADMINISTRATOR WILL READ THE FOLLOWING
ADMONISHMENT TO ALL WITNESSES PRIOR TO VIEWING ANY
PHOTOGRAPHIC LINEUP

1. You are going to be asked to view a set of photographs.
2. The perpetrator may or may not be presented in the lineup.
3. The photographs may not always show the true complexion of an individual and may be lighter or darker than the photograph.
4. Hairstyles, beards, and moustaches can be easily changed.
5. The lineup administrator does not know the suspect's identity.
6. You are not compelled to make an identification.
7. It is just as important to exclude innocent persons as it is to identify the perpetrator.
8. The investigation will continue whether or not an identification is made.

Do you understand the instructions you have been given? Yes Yes ___ No

CASE Number: 2011-P-09029 DATE: 8-2-2011 TIME: 12:57 PM

Chris Helms Kenneth Perry
Lineup Administrator Signature Witness Signature

I was was not able to make an identification from this photographic lineup.

The person I identified as the perpetrator was: #2

Confidence Statement (To be completed in the witness' own words):

Identified from my Neighborhood

Chris Helms Kenneth Perry 8/2/11
Lineup Administrator Signature Witness Signature and Date

Court's Exhibit
16-31-13 (u)

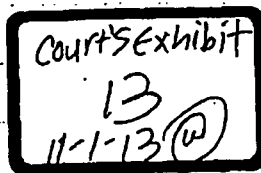
May we have the transcription
or recording of Sgt. Det. Hembry's
~~the~~ testimony?

Petra Sheutter 238

A transcript is not available.
I can make arrangement for
the Court Reporter to play back
any part of the testimony presented
in the case. You would have to
listen to the recording in the
Courtroom. I will await further
instructions.

Thank you, Judge

Yes, please. We would like to
hear Sgt. Det. Hembry's testimony
again.



11-1-11
HI
Court's exhibit

Petra Shear 238

testimony.

We are ready
to listen to the

Court's exhibit
15
11-1-13 @

Retha Shewell 238

"reasonable doubt?"

Can we have a copy
of the definition of

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED

2013 NOV -8 PM 1:41

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

JULIE J. ARMSTRONG
CLERK OF COURT Indentment No.: 2012-GS-10-02229
Case No.: 1112192

Plaintiff,

vs.

KENNETH ORDELL MURRAY,

Defendant.

MOTION FOR RECONSIDERATION OF
SENTENCE

PLEASE TAKE NOTICE that Kenneth Murray, by and through Alicia Penn, moves this Honorable Court for a reconsideration of the sentence imposed upon Kenneth on November 1, 2013, pursuant to the charge of armed robbery.

The within motion will be made upon the grounds that the sentence is disproportionate to that received by his more culpable codefendant, and that the sentence is unnecessarily severe under the circumstances.

Facts

Kenneth Murray was tried on October 30, 2013 for the armed robbery of a Pizza Hut. On November 1, 2013 the jury found him guilty. The charge of armed robbery carries a minimum ten years and a maximum thirty years. He was sentenced to twenty-eight years. The prior offenses on Kenneth's record that were published to the Court were a criminal sexual conduct 3rd degree, for which he received a YOA sentence, a possession with intent to distribute cocaine, and a malicious injury to personal property.

The State's theory at trial was that the robbery was committed by two robbers, Kenneth and his codefendant, Cleveland Major. Major had already pled, before Kenneth's

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By [Signature]
DEPUTY CLERK

trial, to multiple charges. These charges were the armed robbery charge,¹ a charge of burglary second non-violent (reduced from violent, which he was arrested for after posting bond on the armed robbery charge),² and a criminal domestic violence second charge.³ The State dismissed against Major a possession of cocaine⁴ and an unlawful possession of a stolen pistol.⁵ Major's prior offenses included possession of cocaine, contributing to the delinquency of a minor (reduced from a criminal sexual conduct with a minor 2nd), and numerous magistrate offenses. His sentence was a negotiated ten years. Major appealed this sentence, but the appeal was denied.⁶ During Kenneth's sentencing, the State argued that Major had accepted responsibility for his actions as justification for his negotiated ten year sentence.

During Kenneth's trial a BB gun was introduced. The State told the jury that this gun belonged to Kenneth. Kenneth's statement,⁷ which was also introduced at his trial, said that Major had had a nine millimeter gun during the commission of the robbery, and that the robbery was Major's idea.

Not introduced at trial or otherwise brought to the courts' attention were jail recordings of Major's phone conversations. During these calls Major stated that he wished he had not robbed the Pizza Hut, that he was going to get Kenneth to write a statement claiming that Kenneth forced Major to commit the robbery (which Kenneth did and mailed

¹ Exhibit A

² Exhibit B

³ Exhibit C

⁴ Exhibit D

⁵ Exhibit E

⁶ Exhibit F

⁷ Exhibit G

to the solicitor's office),⁸ bragging about how he would get his case dismissed, and that Major was going to assault Kenneth.

Kenneth's school records show that he had an IQ of 75. He is described as a sweet child who was easily led by others. During a pre-trial hearing, Kenneth testified that he had been in special education classes starting in the seventh grade, that he had trouble with reading comprehension, and his last job had been doing plasterwork with his father.

Argument

- I. Kenneth's imposed twenty-eight year sentence for one charge is disproportionately harsh in comparison to Major's negotiated ten year sentence for three charges.

Kenneth's sentence should not be almost three times as long as Major's, because according to the State's theory at trial he was the least dangerous, he was found guilty of fewer charges, and his record is similar to Major's. A codefendant's sentence may be considered in the sentencing of a defendant. "The sentence imposed upon a codefendant for the same offense and upon others for similar offenses are among a wide variety of factors which may be properly considered in determining a proper punishment." *State v. Brewington*, 267 S.C. 97 (S.C. 1976).

A sentence that treats defendants this disparately harms not just Kenneth but society—"grievous inequities in sentences destroy a prisoner's sense of having been justly dealt with, as well as the public's confidence in the even-handed justice of our system." *State v. Roach*, 167 N.J. 565 (N.J. 2001). A defendant's sentence should be somewhat predictable in the interests of fairness and justice and "should not depend on chance or the luck of the judicial draw." *State v. Roach*, 167 N.J. 565 (N.J. 2001).

⁸ Exhibit H

In *State v. Roach*, a New Jersey Supreme Court case from 2001, the court found that the sentencing of one codefendant in a felony murder case with a sentence twice as long as the codefendant, by a different judge, was an unjustified "paradigmatic example of non-uniformity." *Id.* at 568. The Court acknowledged that "there was nothing intrinsically wrong" *Id.* at 567, with the longer sentence given to Roach, but that the trial court should have given serious consideration to the codefendant to avoid excessive disparity.

In the present case, consideration of the case facts as presented by the State support a lesser sentence for Kenneth. Of the two codefendants, the gun presented by the State as belonging to Kenneth was a fake gun. The State relied heavily on a statement signed by Kenneth that stated that Major had a nine millimeter gun with him. In addition to having a weapon that was actually dangerous, Major manipulated Kenneth into writing a statement that purports to absolve Major from guilt while placing all the blame on Kenneth. Major did not truly accept responsibility for his actions as was represented by the State to the Court. Instead, he filed a motion to appeal his sentence. Major is the more frightening and blameworthy of the two.

In addition to his actions regarding the Pizza Hut armed robbery, Major's prior record is similar to Kenneth's prior record. Major was originally charged with a criminal sexual conduct 2nd degree, which carries up to twenty years. Kenneth pled to criminal sexual conduct 3rd, which carries up to ten years, but received a sentence under the Youthful Offender's Act.

Furthermore, Major pled to more charges, and he received a significantly shorter sentence. Including the armed robbery Kenneth was found guilty of, Major resolved six cases with the Solicitor's office with his negotiated sentence. Major was originally charged

with the armed robbery of Pizza Hut, the violent burglary of the Golden Bowl Chinese Restaurant, criminal domestic violence second or subsequent, unlawful possession of a stolen pistol, and possession of cocaine. He could have received a sentence of up to fifty years. Instead, the State let him plead to the armed robbery and criminal domestic violence charge, reduced the burglary charge to a non-violent burglary, and dismissed his other charges.

In light of Major's record, the charges Major was charged with and pled to, and Major's role in the robbery, Kenneth's sentence is unjustifiably disproportionate.

II. Kenneth's sentence is unnecessarily severe.

Kenneth is now twenty-nine years old. He has been in special education classes since the seventh grade, and struggles with reading comprehension. His last job was doing plasterwork with his father. The South Carolina Department of Corrections estimates that his release date will be in the year 2037.⁹ He will be fifty-three years old. His incarceration for this period of time does not serve the interests of justice, fairness, or rehabilitation.

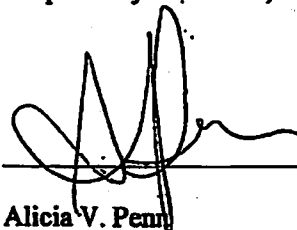
He was sentenced only two years shy of the maximum penalty when no one was physically harmed, the weapon that the state alleges was his was not a real gun, and according to the statement the State used at trial the robbery was Major's idea. Major's sentence is also relevant to the severity of Kenneth's sentence. The State was satisfied with a ten year sentence for Major, even though the State's theory was that he had the real gun and planned the robbery. In light of the facts of this case, and the alleged roles of Major and Kenneth, Kenneth's nearly three times as long sentence is unnecessarily severe for the crime he was found guilty of.

⁹ Exhibit I

Conclusion

Based on the above arguments, the Defendant respectfully requests the Court reconsider the sentence imposed.

Respectfully submitted,



Alicia V. Penn
Charleston County Public Defender's Office
101 Meeting Street, Fifth Floor
Charleston, South Carolina
ATTORNEY FOR Kenneth Ordell Murray

Charleston, South Carolina

November 7, 2013

FILED
2013 NOV - 8 PM 1:41
JULIE M. SIMPSON
CLERK OF COURT
BY 

JKS20110805168

DOCKET NO. 2012GS002229

WITNESSES

Mt. Pleasant Police Department

AGENCY CASE NUMBER

2011P09029

ARREST WARRANT NUMBER

1112192

DATE OF ARREST

August 2, 2011

FOREPERSON OF GRAND JURY

JULIE A. RUE

Foreperson of Grand Jury

Date: 11-1-13

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2012

THE STATE

vs.

KENNETH OREDELL MURRAY

DOB: 1984-05-15

B/M

Indictment for

Armed Robbery

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

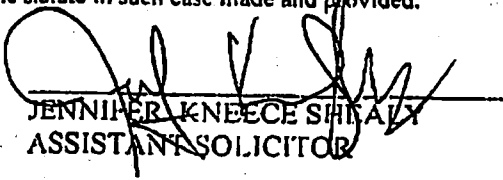
INDICTMENT

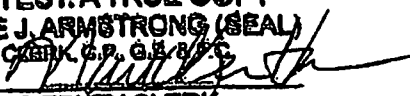
At a Court of General Sessions, convened on April 9, 2012 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about July 22, 2011, in Charleston County, South Carolina, the Defendant, KENNETH OREDELL MURRAY, while at 2161-C Hwy 17 North, Mount Pleasant, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Desmonde Ellington with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

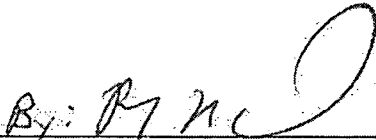

 JENNIFER KNEECE SHIVELY
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P. & J.C.
 By 
 DEPUTY CLERK

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 5th, 2015



Leah B. Moody, Esquire
235 E. Main Street, Suite 115
Post Office Box 1015
Rock Hill, South Carolina 29731

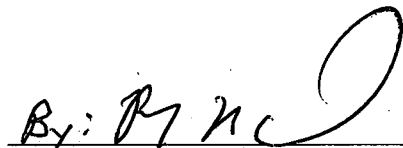
Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEYS FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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August 5th, 2015

By: 

Leah B. Moody, Esquire
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AUG 05 2015

SC Court of Appeals

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ATTORNEYS FOR APPELLANT