

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Greenville County

G Edward Welmaker, Circuit Court Judge

---

**RECEIVED**

MAY 17 2012

**S.C. Supreme Court**

STEVEN COLLINS,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

---

A P P E N D I X

---

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ORIGINAL

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )  
  
STATE OF SOUTH CAROLINA, )  
  
VS )  
STEVEN COLLINS, )  
DEFENDANT )  
\_\_\_\_\_ )

COURT OF GENERAL SESSIONS  
2006-GS-23-1381

TRANSCRIPT OF RECORD

ORIGINAL

September 11, 12, and 13, 2006  
Greenville, South Carolina

B E F O R E

THE HONORABLE EDWARD W MILLER, JUDGE, and a jury

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# I N D E X

(SW) - Denotes State's Witness  
 (DW) - Denotes Defense Witness  
 (IC) - Denotes In Camera

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1 THE COURT Good morning

2 What do we have?

3 MR MOYER This is the State v Steven Collins, Your  
4 Honor It's an armed robbery and possession of a weapon  
5 during the commission of a violent crime The indictment  
6 and witness list should be in front of you

7 THE COURT Yes I've got it

8 MR GIBSON Your Honor, we have a matter that we  
9 would like to address before the Court before we go  
10 forward Specifically, we have a motion for a  
11 continuance

12 If I may approach, Your Honor?

13 THE COURT Yes

14 MR GIBSON I've already given the State a copy of  
15 this My client last night was able to locate a witness  
16 who gives him an alibi

17 And that is a notarized statement from that witness  
18 saying that alibi -- that witness could not be here today  
19 We've been trying to track her down all morning He's  
20 tried to call her I've tried to call her a number of  
21 times The Defendant's mother, who is here, she's also  
22 tried to go over to her house and track her down

23 Apparently, my client did not know this alibi witness  
24 existed until last night He, actually, went to this club  
25 or bar called "Brick" where he was the evening and the

1 morning that this thing happened And he was there,  
2 actually, to try to talk to another guy who he wanted to  
3 call as a witness And in talking to him, he talked to  
4 this witness And she confirmed that he was there The  
5 reason why we're asking for a continuance is in order to  
6 get her here so she can testify on his behalf

7 THE COURT Mr Moyer

8 MR MOYER Your Honor, my response is, under the  
9 rules, I don't think this witness would be able to testify  
10 anyway since this alibi -- we did give notice to be given  
11 information of any alibi witness And this coming up on  
12 the day of trial, certainly, isn't notice

13 So our response is the fact that the witness isn't  
14 here, I don't think matters And the witness, under the  
15 rules, wouldn't be eligible to testify

16 Also, it seems a little odd that the witness isn't  
17 here I noticed it's dated today, which means, I'm  
18 assuming, this alleged statement was given today So I'm  
19 not sure why -- it just seems odd that this witness is not  
20 here if this statement was just taken today

21 MR GIBSON Your Honor, in regards to the rule,  
22 first, the rule is, actually, discretionary as to what the  
23 Court does as far as an alibi witness And given the  
24 circumstances that my client just found out about this  
25 witness --

1 THE COURT Wait a minute

2 How did your client just find out about the witness?

3 MR GIBSON Well, Your Honor, my client was in jail  
4 for a significant period of time And then he was  
5 released on house arrest Based on the house arrest, he  
6 did not feel as though he could properly investigate his  
7 case There was some witnesses he needed to track down  
8 He didn't track them down

9 I met with him yesterday and I explained to him the  
10 house arrest problem is really the least of your worries,  
11 at this point, considering you're looking at life without  
12 parole if you're convicted

13 At that point, he stayed out last night, went to this  
14 club, and talked to these people And it was in talking  
15 to these other people, who he thought were maybe going to  
16 be able to give evidence helpful to him, that he spoke to  
17 this young lady And she said he was there during that  
18 time frame

19 THE COURT How long -- well, how -- what are the  
20 circumstances of this?

21 I mean, this is dated today

22 MR GIBSON Mr Collins, would you, please, tell the  
23 Court the circumstances?

24 Stand up, please

25 DEFENDANT COLLINS My problem was I've been on house

1       arrest    And I've worked two jobs

2               THE COURT   Wait a minute

3               This is dated today

4               So this was obtained today, correct

5               DEFENDANT COLLINS   Yes, sir

6               MR GIBSON    Why is she not here?

7               DEFENDANT COLLINS   My witness -- when I went back to  
8       get my witness, she was gone with her brother on some  
9       family business   What, I don't know   But they told me  
10      she would be back later

11              So my mom went by to see if she could get her   And  
12      she wasn't back home yet   So what I did is I called and  
13      left a message on her answering service and left a message  
14      with the person that she lives with   And they said that  
15      as soon as she comes back that they would let her know  
16      that I'm here in Courtroom #4 and that she would do her  
17      best to get here

18              She told me she didn't have a problem coming to be a  
19      witness on my behalf   And she even wrote out a statement  
20      and had it notarized   A notary signed it and stamped it  
21      this morning

22              THE COURT    Well, she left a cell number on here

23              Did you call the cell number?

24              MR GIBSON    I've called the cell number a number of  
25      times myself, Your Honor

1 THE COURT Well, how long have you been representing  
2 him?

3 MR GIBSON Several months, Your Honor

4 THE COURT Has he ever mentioned this witness to you  
5 before?

6 MR GIBSON He did not

7 But according to my discussion with him this morning,  
8 he did not know that she would be able to confirm that he  
9 was there

10 THE COURT Well, I'm going to deny the motion for a  
11 continuance We're going to go forward

12 You've got a cell number What else can we do to  
13 help you find this witness?

14 She lives at 116 Dobbs Street, Greenville It's  
15 somewhere right downtown because it's an 05 zip code

16 MR GIBSON If it's possible -- certainly, it's the  
17 State's resource that I'd be trying to get into But if  
18 there was any officer or anyone else who could try to  
19 track her down, that would be extremely helpful

20 THE COURT It's Fredrica Waller?

21 MR GIBSON Yes, sir

22 THE COURT That's the cell number

23 THE COURTROOM DEPUTY Can I get a copy of this?

24 THE COURT Yes

25 And then we'll put it in the record



1 All right Anything else?

2 MR GIBSON Not at this juncture, Your Honor

3 MR MOYER Your Honor, I think there will be a  
4 Jackson v Denno and a Neil v Biggers hearing We'll be  
5 happy to draw the jury first and then do the motion

6 THE COURT We're waiting -- I think we're waiting on  
7 a jury strike list

8 How long is this case going to last?

9 MR MOYER Probably until the middle of the day  
10 tomorrow

11 THE COURT Do you all want an alternate?

12 MR GIBSON I'll leave that up to the State, Your  
13 Honor

14 MR MOYER I think it's generally -- since it's  
15 going to be overnight, that would be good, Your Honor

16 THE COURT All right A Jackson v Denno hearing?

17 MR MOYER Yes

18 THE COURT She's going to go ahead and get the  
19 strike list

20 Do you want to go forward with the hearing before the  
21 jury or not?

22 No We'll wait We'll wait

23 Any other matters we can handle before we --

24 MR GIBSON None from the Defense, Your Honor

25 THE COURT I'm going to give y'all five or six

1 minutes to look at that before we bring them up here

2 MR GIBSON Thank you, Your Honor

3 THE COURT All right I guess we'll just be at  
4 ease

5 (WHEREUPON, a break was taken )

6 (WHEREUPON, Court's Exhibit No 1 was marked for  
7 identification and admitted into evidence )

8 THE COURT Mr Gibson, do you have a witness list?

9 MR GIBSON We don't have anybody, at this point,  
10 other than our potential alibi witness

11 THE COURT What's her name?

12 MR GIBSON Fredrica Waller

13 (WHEREUPON, State's Exhibit Nos 1, 2, 3, 4, 5, 6, 7,  
14 8, 9, 10, 11, 12, 13, 14, and 15 were marked for  
15 identification only )

16 THE COURT Any voir dire requests?

17 MR GIBSON Not from me, Your Honor

18 THE COURT Okay

19 MR GIBSON Your Honor, we would ask if anybody has  
20 been convicted of a violent crime

21 THE COURT Okay

22 (WHEREUPON, the jury panel entered the courtroom )

23 THE COURT Ladies and gentlemen, I want to welcome  
24 you all up to Courtroom #4 I appreciate you all being  
25 here today and this week My name is Ned Miller I'm one

1 of your local Circuit Court judges here in Greenville

2 And I am glad to be here with you this week

3 We're holding a term of General Sessions Court, which  
4 is also commonly known as criminal court And we are  
5 about to begin and select a jury in the case under  
6 indictment #06-1381, which is the case of State v Steven  
7 Collins

8 Now, this is a two-count indictment Count one reads  
9 that -- is for armed robbery And it reads that "Steven  
10 Collins did in Greenville County on or about October 13th,  
11 2005, while armed with a deadly weapon, or while alleging  
12 either by actions or words that he was armed, or while  
13 using a representation of a deadly weapon or any object  
14 which a person present during the commission of the  
15 robbery would reasonably have believed to be a deadly  
16 weapon took by means of force or intimidation goods or  
17 money described as cash money belonging to BP gas station  
18 from the person or presence of Dianne Bavelle Giles in  
19 violation of the laws of South Carolina "

20 Count two is for possession of a weapon during the  
21 commission of or the attempt to commit a violent crime  
22 It alleges that Steven Collins did in Greenville County on  
23 or about October 13th of 2005 --

24 Are you okay?

25 JUROR #18, JANICE BUICE (There was no response )

1 THE COURT Is there anything we can do for you?

2 JUROR #18, JANICE BUICE Can I get some fresh air?

3 THE COURT Yes

4 THE BAILIFF What would she like?

5 THE COURT I guess she needs to step out for a  
6 minute You can bring her back here

7 (Brief recess )

8 THE COURT Do we know her name?

9 THE CLERK No, sir

10 Do you want me to go find out?

11 THE BAILIFF Do you want me to go find out?

12 THE COURT Yes

13 We can't really go forward if she's going to make  
14 it back in here I don't want to go over everything  
15 twice

16 So we'll see if she's able to go forward

17 THE BAILIFF It's Janice Buice

18 THE CLERK She is #24

19 MR GIBSON Your Honor, may we approach?

20 THE COURT Yes

21 You all come on up

22 (WHEREUPON, a bench conference was held )

23 THE COURT All right Ladies and gentlemen, we're  
24 just going to go forward We think we have enough jurors  
25 in the pool so we can go forward without Ms Buice

1           The second count --

2           Is she okay?

3           THE BAILIFF   They're taking her downstairs

4           THE COURT    Okay    Count two is possession of a  
5           weapon during the commission of or the attempt to commit a  
6           violent crime   It alleges that "Steven Collins did in  
7           Greenville County on or about the 13th day of October  
8           2005, possess or visibly display a box cutter during the  
9           commission or attempted commission of a violent crime,  
10          that is armed robbery, in violation of the statutes and  
11          laws of the State of South Carolina "

12          Now, I would tell you to these -- what I've just read  
13          to you are allegations   And they are not proof or  
14          evidence of anything whatsoever   They're simply  
15          allegations that have been made in this case   And this  
16          indictment is not evidence and should not be considered by  
17          anyone as evidence in this matter   It's simply the  
18          document which allows these allegations to formally make  
19          its way through the justice system to arrive here in  
20          court

21          I want to also tell you before we go any farther that  
22          every citizen in this county, state, and country is  
23          presumed -- who is charged with a crime is presumed  
24          innocent unless and until the State can prove them guilty  
25          of each and every element of each offense that they are

1 charged with And those are sort of the basic building  
2 blocks -- a couple of the basic building blocks of the  
3 criminal justice system So keep that in mind throughout  
4 the course of these proceedings as well

5 Now, I want to tell you, in addition to that,  
6 Mr Collins, to these allegations, has pled not guilty

7 Now, ladies and gentlemen, before we go any farther,  
8 downstairs you were qualified to serve as jurors for this  
9 term of court this week Now, I've got to qualify you for  
10 this particular case

11 So I want to ask you a few more questions There  
12 aren't too many But I want to make sure everyone would  
13 be qualified to serve in this case Before I do that, I'm  
14 going to ask the attorneys to stand and identify  
15 themselves and their clients

16 Mr Moyer

17 MR MOYER My name is Mark Moyer I'm with the  
18 Solicitor's Office I'm an Assistant Solicitor Seated  
19 at the table with me is Martha Lynch She also works at  
20 the Solicitor's Office And seated next to her is Paul  
21 Silvaggio with the Greenville County Sheriff's Office

22 MR GIBSON I'm Ken Gibson I'm the attorney for  
23 Mr Steven Collins

24 This is Mr Collins

25 THE COURT Thank you very much, gentlemen

JURY QUALIFICATION

1  
2 THE COURT All right Ladies and gentlemen, I want  
3 to ask you, is there any member of the jury panel who is  
4 related by blood or marriage to Mr Steven Collins? If  
5 so, please, stand

6 Ma'am, you're not on the jury panel

7 Thank you

8 Is there any member of the jury panel who has a  
9 business, personal, or social relationship with Mr Steven  
10 Collins? If so, please, stand

11 (There was no response )

12 THE COURT Is there any member of the jury panel who  
13 is related by blood or marriage or has a personal, social,  
14 or business relationship with any of the attorneys  
15 involved in this case or any of the -- or any member of  
16 the Thirteenth Circuit Solicitor's Office? If so, please,  
17 stand

18 (There was no response )

19 THE COURT Is there any member of the jury panel who  
20 has any knowledge about the events alleged in the  
21 indictment or who may have formed or expressed an opinion?  
22 If so, please, stand

23 (There was no response )

24 THE COURT Is there any member of the jury panel, a  
25 family member or friend, who has ever been a victim of or

1 charged with this type or these types of offenses? If so,  
2 please, stand

3 (There was no response )

4 THE COURT Is there any member of the jury panel who  
5 is aware of any bias or prejudice towards either the State  
6 or the Defendant? If so, please, stand

7 (There was no response )

8 THE COURT Is there any member of the jury panel who  
9 is a member of or contributor to a group whose primary  
10 concern is the promotion of law enforcement or victim's  
11 rights such as MADD, SADD or CAVE? If so, please, stand

12 (There was no response )

13 THE COURT Is there any juror who knows of any  
14 reason whatsoever why they should not or could not serve  
15 in this case with particular emphasis on your ability to  
16 be fair and impartial and to follow the law as I give it  
17 to you at the end of the case? If so, please, stand

18 Yes, sir Your name?

19 JUROR #154, THOMAS PELOQUIN Tom Peloquin

20 THE COURT Tom?

21 JUROR #154, THOMAS PELOQUIN Peloquin

22 THE COURT All right Mr Peloquin, I'm going to  
23 ask you to --

24 And your name, sir?

25 JUROR #222, JAMES MEDDERS James Medders



1 THE COURT Yes, sir Your name?

2 JUROR #183, JAMES TAYLOR James Taylor

3 THE COURT All right I'm going to ask you to come  
4 up individually and meet with me up here

5 If you'll line up right here

6 And I'll get the attorneys to come up here

7 (WHEREUPON, a side bar was held with the attorneys  
8 and jurors )

9 THE COURT What's your name, sir?

10 JUROR #183, JAMES TAYLOR James Taylor

11 THE COURT All right Hang on, Mr Taylor

12 JUROR #183, JAMES TAYLOR It's #183

13 THE COURT All right

14 JUROR #183, JAMES TAYLOR My wife was robbed when  
15 she worked at the federal lab And I'm just -- you know,  
16 I might not be as partial as I should be

17 THE COURT All right Well, do you think that you  
18 could put that aside?

19 JUROR #183, JAMES TAYLOR I don't know I mean, you  
20 know, because she was pretty upset

21 THE COURT How long ago was that?

22 JUROR #183, JAMES TAYLOR It's been about 12 years  
23 ago

24 THE COURT Okay

25 JUROR #183, JAMES TAYLOR So, you know

1 THE COURT All right Well, thank you for speaking  
2 up

3 All right Yes, sir

4 JUROR #222, JAMES MEDDERS I'm sorry I'm not  
5 really responding to the last question, but clarification  
6 of an earlier question I was a victim of armed robbery

7 THE COURT Is it "Medders"?

8 JUROR #222, JAMES MEDDERS Yes

9 This was in -- let's see I moved up here in '95, so  
10 it was about '93, '94 timeframe

11 THE COURT Well, the fact that you've been a victim  
12 of armed robbery, would that prevent you from being fair  
13 and impartial in this case?

14 JUROR #222, JAMES MEDDERS No, sir I don't believe  
15 so

16 THE COURT You're going to have to take an oath to  
17 follow the law as I give it to you and be fair and  
18 impartial to both sides Could you do that?

19 JUROR #222, JAMES MEDDERS Yes, sir

20 THE COURT All right Thank you

21 Yes, sir Come on up

22 JUROR #154, THOMAS PELOQUIN Tom Peloquin

23 THE COURT Okay

24 JUROR #154, THOMAS PELOQUIN I operated and owned a  
25 gas station for 28 years and we were broken into at times

1 and robbed And the people there that work at these  
2 locations, they're very vulnerable

3 And I don't think I could be impartial in this case  
4 I feel very strongly about that line of work You meet a  
5 lot of people and it's a tough place to work

6 THE COURT Okay

7 JUROR #154, THOMAS PELOQUIN A lot of people come in  
8 and it can happen there

9 THE COURT Well, I understand that There's been  
10 no --

11 JUROR #154, THOMAS PELOQUIN And I would think if it  
12 got this far, then chances are that's what happened

13 THE COURT Okay Well, I'll tell you, under your  
14 oath, every citizen is presumed innocent unless and until  
15 the State can prove them guilty

16 JUROR #154, THOMAS PELOQUIN I understand

17 THE COURT That's an amount of proof

18 JUROR #154, THOMAS PELOQUIN I don't think in all  
19 cases I don't normally think that way, but since being  
20 in that line of work for a long time and seeing things and  
21 hearing about things and knowing of other businesses in  
22 the same area and hearing what happens, so

23 THE COURT Thank you, Mr Peloquin

24 I appreciate that

25 All right Yes, ma'am Your name?

1 JUROR #107, LYNDA JONES Lynda Jones, #107

2 THE COURT Yes, ma'am

3 JUROR #107, LYNDA JONES I don't know the gentleman  
4 personally, but I do work at the Greenville County  
5 Detention Center And through my work, I know of him I  
6 didn't even know his charges until today But I thought I  
7 needed to let you be aware of that

8 THE COURT What do you do down there?

9 JUROR #107, LYNDA JONES I'm a nurse

10 THE COURT A nurse?

11 JUROR #107, LYNDA JONES Yes, sir

12 THE COURT Okay The fact that you're a nurse,  
13 would that prevent you from being fair and impartial in  
14 this case?

15 JUROR #107, LYNDA JONES (Juror nodded )

16 THE COURT It would?

17 JUROR #107, LYNDA JONES No, it wouldn't I thought  
18 you were telling me

19 THE COURT Could you follow your oath that I would  
20 give to you and follow the law as I would give it to you?

21 JUROR #107, LYNDA JONES Yes, sir

22 THE COURT And listen to the evidence?

23 JUROR #107, LYNDA JONES Yes, sir

24 THE COURT I guess down there you see a lot of  
25 people come in who are guilty, but you've seen people come

1 in that are not guilty

2 Do you understand that?

3 JUROR #107, LYNDA JONES Yes

4 THE COURT Thank you, Ms Jones

5 (WHEREUPON, a sidebar was held with the attorneys )

6 THE COURT All right I'm going to get rid of #154  
7 and #183

8 MR GIBSON That's --

9 THE COURT I'm not getting rid of Mr Medders

10 MR GIBSON Yes, sir

11 THE COURT All right Does that leave us with  
12 enough?

13 I think it does We have to have 31

14 MR MOYER That's how I count it up

15 THE COURT 12 and one alternate is 13 So we have  
16 enough to go

17 (WHEREUPON, the sidebar was concluded )

18 THE COURT Okay Ladies and gentlemen, at this  
19 time, we're going to go forward and strike the jury No  
20 physical touching involved That's just a term of art  
21 that we use up here

22 Okay Caroline

23 JURY SELECTION

24 THE CLERK Ladies and gentlemen, as I call your  
25 names, please, stand

1 #2, Marilyn M Alber

2 (Marilyn M Alber, a white female, stood )

3 THE CLERK What says the State?

4 MR MOYER Please present Ms Alber

5 THE CLERK What says the Defendant?

6 MR GIBSON Please present the juror

7 THE CLERK Come forward, ma'am, and have a seat in  
8 the jury box to my left and your right

9 #92, Elaine F Hartigan

10 (Elaine F Hartigan, a white female, stood )

11 THE CLERK What says the State?

12 MR MOYER Please present Ms Hartigan

13 THE CLERK What says the Defendant?

14 MR GIBSON Please strike Ms Hartigan

15 THE CLERK You may be excused in this case

16 #177, Barbara H Spivey

17 (Barbara H Spivey, a white female, stood )

18 THE CLERK What says the State?

19 MR MOYER Please present Ms Spivey

20 THE CLERK What says the Defendant?

21 MR GIBSON Please excuse Ms Spivey

22 THE CLERK You may be excused in this case

23 #131, Willie C Madden

24 (Willie C Madden, a black male, stood )

25 THE CLERK What says the State?

1 MR MOYER Please present Mr Madden

2 THE CLERK What says the Defendant?

3 MR GIBSON Please present Mr Madden

4 THE CLERK Come forward and have a seat in the jury  
5 box

6 #87, Robin L Grissinger

7 (Robin L Grissinger, a white female, stood )

8 THE CLERK What says the State?

9 MR MOYER Please excuse the juror in this case

10 THE CLERK You may be excused in this case

11 #186, Gina Marie Thomas

12 (Gina Marie Thomas, a white female, stood )

13 THE CLERK What says the State?

14 MR MOYER Please present Ms Thomas

15 THE CLERK What says the Defendant?

16 MR GIBSON Please present Ms Thomas

17 THE CLERK Come forward, ma'am, and take a seat in  
18 the jury box

19 #185, Sundrasian C Terrell

20 (Sundrasian C Terrell, a black female, stood )

21 THE CLERK What says the State?

22 MR MOYER Please present Ms Terrell

23 THE CLERK What says the Defendant?

24 MR GIBSON Please present Ms Terrell

25 THE CLERK Come forward, please, ma'am, and have a

1 seat in the jury box  
2 #107, Lynda Y Jones  
3 (Lynda Y Jones, a black female, stood )  
4 THE CLERK What says the State?  
5 MR MOYER Please excuse the juror in this case  
6 THE CLERK You may be excused in this case  
7 #146, Phillip E Morrow  
8 (Phillip E Morrow, a white male, stood )  
9 THE CLERK What says the State?  
10 MR MOYER Please present Mr Morrow  
11 THE CLERK What says the Defendant?  
12 MR. GIBSON Please present Mr Morrow  
13 THE CLERK Come forward, please, sir  
14 #4, Walter T Allen, III  
15 (Walter T Allen, III, a white male, stood )  
16 THE CLERK What says the State?  
17 MR MOYER Please present Mr Allen  
18 THE CLERK What says the Defendant?  
19 MR GIBSON Please excuse Mr Allen  
20 THE CLERK You may be excused in this case  
21 #106, Vicki B Johnson  
22 (Vicki B Johnson, a white female, stood )  
23 THE CLERK What says the State?  
24 MR MOYER Please present Ms Johnson  
25 THE CLERK What says the Defendant?



1 MR GIBSON Please present Ms Johnson

2 THE CLERK Come forward, please, ma'am

3 #127, Dianne G Lister

4 (Dianne G Lister, a white female, stood )

5 THE CLERK What says the State?

6 MR MOYER Please present Ms Lister

7 THE CLERK What says the Defendant?

8 MR GIBSON Please excuse Ms Lister

9 THE CLERK You may be excused in this case

10 #21, Walter H Butler

11 (Walter H Butler, a black male, stood )

12 THE CLERK What says the State?

13 MR MOYER Please excuse the juror in this case

14 THE CLERK You may be excused in this case

15 #94, James M Haynes

16 (James M Haynes, a white male, stood )

17 THE CLERK What says the State?

18 MR MOYER Please present Mr Haynes

19 THE CLERK What says the Defendant?

20 MR GIBSON Please present Mr Haynes

21 THE CLERK Come forward, please, sir

22 #132, Herry Mansel, Jr

23 (Herry Mansel, Jr , a black male, stood )

24 THE CLERK What says the State?

25 MR MOYER Please present Mr Mansel

1 THE CLERK What says the Defendant?  
2 MR GIBSON Please excuse Mr Mansel  
3 THE CLERK You may be excused in this case  
4 #221, Ronald J Jerina  
5 (Ronald J Jerina, a white male, stood )  
6 THE CLERK What says the State?  
7 MR MOYER Please present Mr Jerina  
8 THE CLERK What says the Defendant?  
9 MR GIBSON Please excuse Mr Jerina  
10 THE CLERK You may be excused in this case  
11 #151, Miriam A Nell  
12 (Miriam A Nell, a white female, stood )  
13 THE CLERK What says the State?  
14 MR MOYER Please present Ms Nell  
15 THE CLERK What says the Defendant?  
16 MR GIBSON Please present Ms Nell  
17 THE CLERK Come forward, please, ma'am  
18 #222, James H Medders  
19 (James H Medders, a white male, stood )  
20 THE CLERK What says the State?  
21 MR MOYER Please present Mr Medders  
22 THE CLERK What says the Defendant?  
23 MR GIBSON Please excuse Mr Medders  
24 THE CLERK You may be excused in this case  
25 #152, Rodrick S Oglesby

1 (Rodrick S Oglesby, a black male, stood )  
2 THE CLERK What says the State?  
3 MR MOYER Please present Mr Oglesby  
4 THE CLERK What says the Defendant?  
5 MR GIBSON Please present Mr Oglesby  
6 THE CLERK Come forward, please, sir  
7 #195, Joel P Vandyke  
8 (Joel P Vandyke, a white male, stood )  
9 THE CLERK What says the State?  
10 MR MOYER Please present Mr Vandyke  
11 THE CLERK What says the Defendant?  
12 MR GIBSON Please excuse Mr Vandyke  
13 THE CLERK You may be excused in this case  
14 #97, Linda G Highfield  
15 (Linda G Highfield, a white female, stood )  
16 THE CLERK What says the State?  
17 MR MOYER Please present Ms Highfield  
18 THE CLERK What says the Defendant?  
19 MR GIBSON Please excuse Ms Highfield  
20 THE CLERK You may be excused in this case  
21 #174, Sylvia F Semones  
22 (Sylvia F Semones, a white female, stood )  
23 THE COURT Did I pronounce that right?  
24 JUROR #174, SYLVIA F SEMONES Semones  
25 THE CLERK Semones

1 Thank you  
2 What says the State?  
3 MR MOYER Please present Ms Semones  
4 THE CLERK What says the Defendant?  
5 MR GIBSON Please excuse Ms Semones  
6 THE CLERK You may be excused in this case  
7 #225, Shaler B Pepper  
8 (Shaler B Pepper, a black female, stood )  
9 THE CLERK What says the State?  
10 MR MOYER Please present Ms Pepper  
11 THE CLERK What says the Defendant for cause?  
12 MR GIBSON Please present Ms Pepper  
13 THE CLERK Come forward, please, ma'am, and have a  
14 seat in the jury box  
15 #69, Patricia C Farmer  
16 (Patricia C Farmer, a white female, stood )  
17 THE CLERK What says the State?  
18 MR MOYER Please present Ms Farmer  
19 THE CLERK What says the Defendant?  
20 MR GIBSON Please present Ms Farmer  
21 THE CLERK Come forward, please, ma'am  
22 #58, Arlene M Donnelly  
23 (Arlene M Donnelly, a white female, stood )  
24 THE CLERK What says the State?  
25 MR MOYER Please excuse the juror in this case

1 THE CLERK You may be excused in this case  
2 #168, Jonathan E Sanderson  
3 (Jonathan E Sanderson, a white male, stood )

4 THE CLERK What says the State?

5 MR MOYER Please present Mr Sanderson

6 THE CLERK What says the Defendant for cause?

7 MR GIBSON Excuse Mr Sanderson

8 MR MOYER Your Honor, may we approach?

9 THE COURT Yes

10 Can I see you all up here for a second?

11 (WHEREUPON, a bench conference was held )

12 THE CLERK Seat Mr Sanderson?

13 THE COURT Yes

14 THE CLERK Come forward, Mr Sanderson

15 THE COURT Two and one

16 THE CLERK #59, Wendy J Dotseth

17 (Wendy J Dotseth, a white female, stood )

18 THE CLERK What says the State?

19 MR MOYER Please present Ms Dotseth

20 THE CLERK What says the Defendant?

21 MR GIBSON Please present Ms Dotseth

22 THE CLERK Come forward, please, ma'am

23 You'll be the alternate in the case

24 THE COURT. All right To the remaining members of  
25 the panel, some of these folks have heard my little joke

1 several times before, but since you all haven't heard it,  
2 I'll say it again

3 One group in here thinks they won the lottery and one  
4 thinks they lost I think I know which group thinks they  
5 won and which thinks they lost But I want to tell you  
6 that I, personally, think this group won the lottery  
7 They get an opportunity to sit and listen and participate  
8 in a trial This is where the rubber meets the road in  
9 our justice system And so I hope -- while I'm going to  
10 ask you all to retire downstairs, I hope you all get an  
11 opportunity to serve on a jury this week And if not this  
12 week, sometime in the future It's an invaluable and very  
13 important responsibility and a privilege to get to do  
14 that

15 So I hope I get to tell you all sometime later in the  
16 week that you're free to go home, but not today I ask  
17 you all to go back downstairs

18 Thank you very much

19 (WHEREUPON, the jury panel exited the courtroom )

20 THE COURT All right Ladies and gentlemen, I'm  
21 sincere about that I really think you all came out  
22 better in this I know it seems like it might be  
23 aggravating and you might not want to do it, but I promise  
24 you it will be a very valuable experience for you One  
25 way or another, I hope you'll come to appreciate the

1 importance of the jury system in this country

2 Now, one thing I neglected to do was to read the  
3 witness list So I need to know whether or not any of you  
4 are related by blood or marriage or have a personal,  
5 social, or business relationship to any of the people  
6 whose names I'm about to read Dianne Giles, Helen McGee,  
7 Donna Collins, Kimberly McConnell, R L Rivera with the  
8 Sheriff's Office, J Moore with the Sheriff's Office, T  
9 Debruyne with the Sheriff's Office, Jimmy Bolt with the  
10 Sheriff's Office, B Barrickman with the Sheriff's Office,  
11 J A Thomas with the Sheriff's Office, Paul Silvaggio with  
12 the Sheriff's Office, Mike Fortner with the Sheriff's  
13 Office, Tammy Patton with the Sheriff's Office, Travis  
14 Graham with the Fountain Inn Police Department, D C  
15 Orlando with Greenville County Forensics, Bill Cromer with  
16 the Greenville County Department of Public Safety, and  
17 Fredrica Waller

18 Is any member of the jury panel related by blood or  
19 marriage or have a close personal, social, or business  
20 relationship with any of those individuals whose name I've  
21 just read?

22 (There was no response )

23 THE COURT Great Thank you

24 INTRODUCTORY REMARKS

25 THE COURT Now, ladies and gentlemen, I want to tell

1       you briefly that we have a dispute about the facts that  
2       requires a jury trial up here   And I want to remind you  
3       that the indictment is not evidence and shouldn't be  
4       considered as evidence by any of you in any fashion  
5       whatsoever   It's just a formal document that allows this  
6       case to get here where we are today

7               I want to remind you that every person charged with  
8       an offense in this country is presumed innocent of those  
9       charges unless and until the State can prove them guilty  
10      beyond any reasonable doubt of each and every element of  
11      each offense that they're charged with   The burden of  
12      proof is always on the State   And it is beyond a  
13      reasonable doubt

14             Now, we're going to start the trial in a few minutes  
15      And just as a general road map, I want to -- you can break  
16      a trial down into as many parts as you like   But I think  
17      there are five general parts that we can break this one  
18      down into, or most any trial into   And that is the first  
19      part would be the opening statements made to the jury  
20      And this is -- what I'm saying to you now is my opening  
21      statement to you   The attorneys, in a few minutes, will  
22      have an opportunity to make their brief opening statements  
23      to you

24             The second part is the meat and potatoes of the  
25      trial   And that is the presentation of the sworn



1 testimony and the evidence presented in the case The  
2 third part of the trial will be the closing arguments of  
3 the attorneys where they argue to you why you should agree  
4 with their position in the case The fourth part will be  
5 my charge to you on the law And the fifth part will be  
6 when you retire to deliberate at the end of the case So  
7 that's sort of a general road map All parts are not of  
8 equal length But it's so you kind of know where we are  
9 throughout the course of the trial I hope that will help  
10 you

11 Now, I'm going to ask you to do three things  
12 throughout the course of the trial The first one is to  
13 keep an open mind Don't come in here with a mindset  
14 about how you're going to make your decision in the case,  
15 or what you think ought to be done, or what ought to be  
16 said Keep an open mind throughout the course of the  
17 trial right up until you're free to go back in there and  
18 deliberate Wait until you hear what the law is as it  
19 applies to these facts Wait until you hear all of the  
20 evidence in the case and the arguments of counsel before  
21 you make your decision Keep an open mind

22 I'm going to ask you, ladies and gentlemen, to pay  
23 attention throughout the course of the trial At the end  
24 of the case when you deliberate, there will be 12 of you  
25 back in there deciding the dispute about these facts And

1 if you're not paying attention and you miss out on  
2 something, it may have a big impact on your decision and  
3 your decision making process So pay attention to the  
4 witnesses, the evidence, and everything else that occurs  
5 throughout the course of the trial

6 Finally, I'm going to ask you not to talk about this  
7 case with anybody until I free you up at the end of the  
8 case to deliberate And the reason for that -- I ask you  
9 not to talk with the bailiffs I ask you, now, when you  
10 go to lunch or if the case lasts into tomorrow, you can't  
11 talk with your people that you'll be with this evening,  
12 family, friends, whoever, or coworkers

13 And the reason for that, ladies and gentlemen, is  
14 that you 12 -- or you 13, throughout the course of the  
15 trial, will be the ones that listen to the evidence in  
16 this case You're the only ones who are -- you're in a  
17 unique position to listen to the evidence and observe the  
18 witnesses and determine what you believe and what you  
19 don't believe And, really, you 12 folks will determine  
20 what the truth is in this case

21 And if you go home and talk about this with someone  
22 you love and trust or someone you don't even like, they  
23 might have an impact on this case It might influence  
24 you -- even an innocent comment on their part might  
25 influence you in some way And that would not be fair to

1       your because it might infect your thinking and it wouldn't  
2       be fair to your fellow jurors   And it, certainly,  
3       wouldn't be fair to the parties involved in this case   So  
4       I ask you not to talk to anybody about this case until  
5       you're free to deliberate at the end   And that's a very  
6       important part of the process

7               I want to tell you, ladies and gentlemen, that you  
8       are the sole judges of the facts in this case   You and  
9       you alone make a decision about who to believe, who not to  
10      believe, and what is true and what is not true   You're  
11      the sole judges of the facts   And as the trial judge, the  
12      law does not allow me to have an opinion about the facts  
13      So don't think by anything I might say or do throughout  
14      the course of the trial that I have an opinion about the  
15      facts, because I don't   And the law doesn't allow me to  
16      have one

17              Now, the same law that makes you all the sole judges  
18      of the facts makes me the sole judge of the law   So if  
19      you have any idea about what you think the law is or what  
20      the law should be and it does not agree with what I tell  
21      you the law is throughout the course of the trial, then  
22      you're swearing an oath in just a moment to put aside your  
23      own beliefs and take the law and apply the law exactly and  
24      precisely as I give it to you

25              Now, a couple of things, I've got -- from time to

1 time throughout the course of the trial, I may have to ask  
2 you all to leave the courtroom and -- which -- because we  
3 may have to discuss legal matters And that might be  
4 about the admissibility of some piece of evidence It  
5 might be about any number of things, ladies and gentlemen  
6 And it wouldn't be appropriate for you all to hear those  
7 discussions We're not trying to hide anything from you  
8 But let's say, for instance, we're talking about a piece  
9 of evidence that is not admissible If you all heard it,  
10 it might impact your thinking And it wouldn't be fair  
11 We're not trying to hide anything from you We just want  
12 you all to hear only the admissible proper evidence in the  
13 case So that's why we might excuse you from time to  
14 time

15 Now, I'm going to, at this time, excuse you all to go  
16 back into your jury room I've got a couple of things  
17 that I need to go over with the attorneys, some issues  
18 that I need to discuss -- actually, let me -- hang on one  
19 second Let's see if we can get this organized

20 Let me see the lawyers up here for a second

21 (WHEREUPON, a bench conference was held )

22 THE COURT Ladies and gentlemen, we've got some --  
23 you all have seen TV, you know that they have pre-trial  
24 motions and things to handle And that's what we're going  
25 to do We have some issues to clean up -- not clean up,

1 clear up some issues so that what you hear is the  
2 appropriate proper evidence in the case

3 So I'm going to excuse you all to go to lunch now  
4 We're going to handle some matters that will take a  
5 certain amount of time I'm going to ask you to be back  
6 in your jury room, let's say, at about 2 20 That gives  
7 you two hours That gives us time to have this hearing  
8 and let everybody get a bite to eat You all be back at  
9 2 20

10 And when you come back, I'm going to ask you all --  
11 we need to have a foreperson One of your members must  
12 serve as foreperson on this jury And so I'm going to ask  
13 you all to see if you can decide and elect your own  
14 foreperson I know it's kind of hard since you just met  
15 each other probably for the first time this morning, but  
16 think about it If you all have a hard time doing that or  
17 you can't decide on it, then I can help you out But I  
18 hope you all, you know, will find -- can make that  
19 decision on your own But don't let it be a worry to you  
20 If it is, I'll, certainly, do it

21 At this time, ladies and gentlemen, let me get you  
22 all to stand and place you under oath

23 THE CLERK Raise your right hands, please

24 The appropriate response after the oath is, "I  
25 will "

1 (WHEREUPON, the jury was sworn at approximately  
2 12:17 p m )

3 THE CLERK Thank you

4 THE COURT All right Ladies and gentlemen, you all  
5 can go to lunch And we will show you where to come back  
6 after lunch You all have a pleasant time And we'll see  
7 you at 2 20

8 Thank you very much

9 (WHEREUPON, the jury was excused from open court at  
10 approximately 12 18 p m )

11 THE COURT Okay In a bench conference, we had a --  
12 I asked the attorneys if there were any objections to the  
13 jury as impaneled And both attorneys indicated that  
14 there was not

15 Is that correct?

16 MR GIBSON That's correct, Your Honor

17 MR MOYER That's correct

18 THE COURT Okay I understand we have some issues  
19 we need to take up

20 MR GIBSON We do, Your Honor

21 THE COURT Okay

22 MR GIBSON We're moving -- there's a statement that  
23 Mr Collins gave to Mr Silvaggio And we're seeking to  
24 suppress that We're also going to be seeking to suppress  
25 a photo identification lineup

1 THE COURT Okay

2 MR MOYER Your Honor, we're ready to call witnesses

3 MR GIBSON Your Honor, with that in mind, I would  
4 ask that the witnesses be sequestered given that --

5 THE COURT Throughout the course of the trial?

6 MR GIBSON Yes, sir

7 THE COURT Any objection to that?

8 MR MOYER Yes, Your Honor, I do

9 I mean, I think the rules for sequestration in state  
10 court are pretty narrow I don't think there's any  
11 showing that any witness would be influenced by any of the  
12 other witnesses The fact that they can overhear each  
13 other's testimony is not grounds for sequestration

14 THE COURT Is there some issue?

15 MR GIBSON Well, Your Honor, there's a lot of  
16 overlapping testimony, particularly of -- more so,  
17 actually, with the officers than even the actual civilian  
18 witnesses And with that in mind, it is our fear that the  
19 witnesses testimony could be influenced from hearing  
20 cross-examination of some of the other witnesses whose  
21 testimony overlaps

22 THE COURT All right I understand this is a life  
23 without parole case?

24 MR MOYER It is

25 MR GIBSON It is, Your Honor

1 THE COURT Just out of an abundance of caution, I'm  
2 going to grant his motion for sequestration

3 MR MOYER And do I understand he's just asking for  
4 officers be sequestered?

5 THE COURT Well, just in case, we're going to ask --  
6 you can have the victim, of course, in here

7 MR MOYER Okay

8 THE COURT I'm going to allow her to be here I  
9 don't know who she is

10 MR MOYER And the case agent, Your Honor?

11 THE COURT Dianne Giles, is that her name?

12 MR MOYER Yes, sir, Your Honor

13 THE COURT Okay

14 MR MOYER And my case agent, also?

15 THE COURT Who's that? Who's you're case agent?

16 MR MOYER Investigator Paul Silvaggio

17 THE COURT Of course

18 MR MOYER Thank you

19 MR GIBSON Thank you, Your Honor

20 THE COURT All right Mr Gibson, I know you'll be  
21 happy to know that our Sheriff's Department has found  
22 Ms Fredrica Waller

23 MR GIBSON Excellent

24 THE COURT She will be here

25 MR GIBSON After lunch?



1 THE COURT I don't know

2 THE COURTROOM DEPUTY She was en route from

3 Simpsonville, Judge She said she would be here

4 MR GIBSON Thank you, Your Honor

5 Just for the record, my client has a cramp in his  
6 leg

7 MR MOYER The State would call Paul Silvaggio

8 THE COURT Hang on one second

9 Let's get him -- he's having a cramp in his right  
10 hamstring area

11 Make sure he's well hydrated, Mr Gibson

12 MR GIBSON I will, Your Honor

13 MR MOYER The State would call Investigator Paul  
14 Silvaggio

15 THE CLERK Place your left hand on the Bible and  
16 raise your right hand

17 WHEREUPON,

18 PAUL ANDREW SILVAGGIO,  
19 after first having been duly sworn, testified as follows

20 THE CLERK State your name for the record, please

21 THE WITNESS Paul Andrew Silvaggio, S-I-L-V-A-G-G-I-O

22 DIRECT EXAMINATION

23 BY MR MOYER

24 Q Investigator Silvaggio, you work for the Greenville  
25 County Sheriff's Office?

1 A Yes, I do

2 Q And what is your position?

3 A Investigator in the homicide unit

4 Q How long have you been with the Sheriff's Office?

5 A 19 years

6 Q All right Now, you worked on this case, State v  
7 Steven Collins?

8 A Yes, I did, sir

9 Q And did you meet with the Defendant at any point  
10 during your investigation?

11 A Yes, I did

12 Q And what was the date that you met with him?

13 A October the 13th, 2005

14 Q And what time of day was it?

15 A I met Mr Collins at approximately 11 50 a m that  
16 morning

17 Q Okay And where was it that you met with the  
18 Defendant?

19 A I met with him at the Greenville County Law  
20 Enforcement Center in the uniform patrol division in the  
21 supervisory area of uniform patrol where I -- that's where  
22 I initially met him and then escorted him to my office in  
23 the criminal investigation division

24 Q Was he in handcuffs at the time?

25 A When I met him, yes

1 Q All right And when you took -- where, specifically,  
2 did you take him for your interview?

3 A To Room 210 of the Greenville County Law Enforcement  
4 Center, which is the violent crimes office It's a  
5 suboffice, if you will, from the main floor of the  
6 criminal investigation division This particular area  
7 houses approximately seven working stations or desks with  
8 a door, windows It's on the second floor of the  
9 Greenville County Law Enforcement Center

10 Q Is that where your office is?

11 A Yes, it is, sir

12 Q Okay Now, was he handcuffed in the room during the  
13 time you met with him?

14 A In the criminal investigation division, no When he  
15 was brought in to my office, he was unhandcuffed

16 Q Okay Now, for how long of a period of time did you  
17 meet with him?

18 A I probably was with him -- I'd say between an hour  
19 and a half and two hours, no more than two hours

20 Q How many people were present during this interview  
21 process?

22 A It would have been myself and Deputy Barrickman

23 Q Were you in uniform?

24 A No, I was not

25 Q Was Deputy Barrickman?

1 A Yes, he was

2 Q During the time you met with him, was he denied  
3 access to any conveniences like the bathroom, something to  
4 drink, anything like that?

5 A No, he was not

6 Q From the time you met with him, did he complain of  
7 any injuries or physical discomfort?

8 A No, he did not, sir

9 Q Did you advise him of his Constitutional rights  
10 pursuant to Miranda?

11 A Yes, I did, sir

12 Q And did you do so using a form?

13 A Yes, I did

14 (WHEREUPON, State's Exhibit No 16 was marked for  
15 identification only )

16 BY MR MOYER

17 Q Let me show you State's Exhibit No 16 Can you  
18 recognize what I just handed you?

19 A Yes

20 Q And how do you recognize that?

21 A This is a photostatic copy of the rights waiver form  
22 that was presented to Mr Steven Collins

23 Q Is that an exact copy?

24 A Yes, it is

25 Q And how do you recognize it?

1 A I recognize it by, one, my handwriting, two, the case  
2 number And I recognize the signature and the format for  
3 which I advise people of their rights as depicted on this  
4 form

5 Q Is it, essentially, in the same condition now as it  
6 was when you used that form back on October the 13th,  
7 2005?

8 A Yes And if I may explain, there's two things about  
9 the rights waiver form that will be seen on the original  
10 as well, it's our records division time stamp, the time  
11 when they receive it

12 Q Okay

13 A And the person in our records division would put  
14 their initials on the document So that's the only two  
15 things that weren't there when Mr Collins and I completed  
16 the waiver form

17 MR MOYER Your Honor, at this time, I would move to  
18 have State's Exhibit No 16 moved into evidence for  
19 purposes of this hearing

20 MR GIBSON May I see it?

21 MR MOYER Yes

22 MR GIBSON No objection

23 THE COURT All right Without objection

24 (WHEREUPON, State's Exhibit No 16 was admitted into  
25 evidence )

1 BY MR MOYER

2 Q Investigator Silvaggio, what time did you go over  
3 that form with Steven Collins?

4 A We began at 12 19 p m

5 Q And when did you finish?

6 A 12 26 p m

7 Q And this form that you have before you now, is that  
8 the list of rights that you informed the Defendant of?

9 A That is correct, yes, sir

10 Q And would you just explain how you went over that  
11 form with the Defendant? And then publish to the Court  
12 what those rights were

13 A Yes, sir I initially -- I write the case number for  
14 the investigation that is being worked at the top  
15 right-hand corner I then, in speaking to the individual,  
16 identify who they are by their own knowledge of their  
17 birth date, full name, address, birth date, social  
18 security number, their educational level, and their home  
19 telephone number

20 I then note the time and date on the form And then  
21 I begin to present them with the rights waiver form I  
22 then -- I turn the form to them We start with the date  
23 and the time They look at the clock indicating that that  
24 is correct I have them place their initials at the end  
25 of each -- the date and the time I then have them put

1       their initials at the beginning and the end of their  
2       particular information that is handwritten by myself and  
3       then -- verifying that that's true and correct  
4       information   And then we begin with the rights

5       Q     Okay   And how do you go over those rights with them?  
6       Do you read those or do you give them to him to read?

7       A     I do    I read them to the individual and then ask  
8       them if they understand   If they indicate, yes, I have  
9       them affix their initials at the end of each one of the  
10      rights form -- I'm sorry, each one of the rights

11           As we go down, there's one that I do different than  
12      that   And that is, You have the right to talk to a lawyer  
13      for advice before we ask you any questions and --

14      Q     Would you stop one minute, please?

15           Thank you

16           Please continue

17      A     And to have him with you during questioning   I have  
18      the individual read that back to me so that I can get some  
19      sense of indication that the person can read   Once they  
20      read that back to me, I have them affix their payroll  
21      signature in that spot, as opposed to their initials   And  
22      then we proceed on with the rights waiver form with their  
23      initials after each one indicating that they understand

24      Q     Okay   Well, would you just publish to the Court what  
25      those rights were that you advised the Defendant of?

1       A     Yes     Before we ask you any questions, you must  
2       understand your rights     It's initialed SC     You have the  
3       right to remain silent, initials SC     Anything you say can  
4       be used against you in court, initials SC     You have the  
5       right to talk to a lawyer for advice before we ask you any  
6       questions and to have him with you during questioning,  
7       signed Steven Collins     If you have no money to pay a  
8       lawyer's fee, the Court will appoint one to represent you  
9       without cost if you wish, initialed SC     If you decide to  
10      answer questions now without a lawyer present, you will  
11      still have the right to stop answering at any time     You  
12      also have the right to stop answering at any time until  
13      you talk to a lawyer, initialed SC

14      Q     Now, when you went over those rights, did the  
15      Defendant appear to you to have any trouble understanding  
16      those rights?

17      A     No, he did not

18      Q     And were you able to determine if he could read and  
19      write?

20      A     Yes, I could

21      Q     And he could?

22      A     He could

23      Q     Now, did his answers to your questions -- and during  
24      your conversation with him, did he appear to be rational  
25      and were his answers responsive to your questions?



1 A Yes, they were

2 Q Now, were there any threats or coercion made in order  
3 to get him to sign that form and give a statement?

4 A No, there were not

5 Q Was there any intimidation?

6 A No, there was not

7 Q Was there any promise or hope of reward held out to  
8 him to get him to speak to you about what happened?

9 A No, there was not

10 Q In your opinion, did he understand those rights?

11 A Yes, he did

12 Q And his waiver of rights was done freely and  
13 voluntarily?

14 A Yes, they were

15 Q Now, after you went over those rights, did he give  
16 you any indication about whether or not he wished to waive  
17 those rights?

18 A He did He wanted to waive his rights and talk to me  
19 with respect to the robbery that took place

20 Q Okay And do you have a place on that form for  
21 somebody who wishes to waive his rights?

22 A Yes

23 Q And did you go over that with the Defendant?

24 A Yes, I did

25 Q And, again, just tell us how you went over that and

1        what he did to indicate to you that he wished to waive  
2        that right

3        A        Yes        On the form in bold print, it's waiver of  
4        rights        I read this to him, I have read this statement of  
5        my rights and understand what my rights are        I am willing  
6        to make a statement and answer questions        I do not want a  
7        lawyer at this time        I understand and know what I am  
8        doing        No promises or threats have been made to me and no  
9        pressure or coercion of any kind has been used against me

10        I then have him circle "coercion "        And with that  
11        being somewhat of an uncommon English term, I ask him if  
12        he understands it and knows that nobody is threatening him  
13        or pressuring him in any way to take something away from  
14        him should he not waive his rights        He initials  
15        "coercion" and he initials the beginning and end of his  
16        waiver of rights and then signs and affixes his signature  
17        to the signature block, Steven Collins

18        I then sign and print my last name        Deputy  
19        Barrickman then signs and prints -- I printed his last  
20        name        And then I write the ending time on the form and  
21        then present that to Mr Collins        He verifies that it is  
22        12 26 p m        and it's initialed SC

23        Q        Okay        Now, during the time you met with him and  
24        spoke to him, did he change his mind and ask to stop the  
25        questioning because he wanted an attorney?

1 A No, he did not

2 Q Okay Now, after he signed that form, you then took  
3 a statement from him?

4 A Yes, I did

5 Q And was it in written form?

6 A Typed form, yes, sir

7 Q Okay Now, how --

8 MR MOYER Well, let me mark this

9 (WHEREUPON, State's Exhibit Nos 17 and 18 were  
10 marked for identification only )

11 BY MR MOYER

12 Q I want to hand you State's Exhibit Nos 17 and 18  
13 And if you would, start with State's Exhibit No 17 And  
14 can you tell the Court what it is I just handed you?

15 A Yes, sir This is an exact photostatic copy of Page  
16 1 of 2 of Mr Collins statement that I took from him on  
17 October the 13th, 2005, with the exception, again, of two  
18 portions on the statement where our records division time  
19 stamps the receiving of the document and -- our records  
20 division on the first floor of the law enforcement  
21 center -- along with that person's initials in the bottom  
22 left-hand corner

23 Q Okay I'm going to hand you State's Exhibit No 18  
24 Can you identify what that is?

25 A Yes Again, this is an exact photostatic copy of

1 Page 2 of 2 of Steven Collins statement to me on October  
2 13th, 2005, with, again, the exception of the time stamp  
3 on the right -- bottom right corner and bottom left corner  
4 the initials, which are inserted by the records division

5 Q Okay Now, can you tell the Court how it is that you  
6 went about taking his statement and putting it into typed  
7 form there on State's Exhibit Nos 17 and 18?

8 A Yes When I first had contact with Mr Collins, I  
9 explained to him the reason that I was involved and why  
10 the investigations was involved in the case, and that we  
11 had an identification of him -- in particularly, him in  
12 this particular robbery of the BP station I explained to  
13 him that he had been identified in a lineup And that  
14 right now -- there was a reason why people commit the  
15 crimes that they're committing And it's important for us  
16 to know what that situation is

17 He told me that he wanted to talk to me, that he  
18 was -- he feared -- the only thing he feared at that  
19 particular point -- he said he was a -- this would be his  
20 third strike and that he would be gone for life I  
21 explained to him that I wasn't aware of his criminal  
22 history I had not run a criminal history on him, so I  
23 couldn't verify whether it was correct or was not

24 At that time, I asked him if he still wanted to give  
25 a statement He said, yes I then asked him -- I began

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1 believe his truck had previously been stolen, but had  
2 since been recovered prior to the robbery And then the  
3 robbery took place He outlines his position in the  
4 robbery And he then outlines his sorrows for committing  
5 the robbery And he then outlines the person that was  
6 with him at the time of the robbery, and then his  
7 clothing

8 And, at that point, I asked him if there was anything  
9 else he wished to add to his statement He says, no I  
10 then put "End of Statement" so nothing can be added to the  
11 bottom of his statement on Page 2 of 2 And then it's  
12 printed

13 He reviews it for clarity and to make sure that it's  
14 accurate Once he does that, I have him initial the  
15 beginning and end of each paragraph I have him sign the  
16 statement form in the respective places at the bottom  
17 right-hand corner of each form And then the statement is  
18 then notarized

19 Q Okay And so you typed it then as he told it to you?

20 A Yes, I did

21 Q And then he initialed each paragraph indicating that  
22 was his statement?

23 A Yes, he did

24 Q And he signed it indicating that was his statement?

25 A Yes, he did

1 MR MOYER Your Honor, I would move to have State's  
2 Exhibit Nos 17 and 18 moved into evidence for the  
3 purposes of this hearing

4 MR GIBSON No objection, Your Honor

5 THE COURT All right Without objection

6 (WHEREUPON, State's Exhibit Nos 17 and 18 were  
7 admitted into evidence )

8 BY MR MOYER

9 Q Let me ask you one other thing Can you just  
10 describe the Defendant's physical characteristics that  
11 day, his height, build?

12 A Yes Black male, 5'9", about 170 pounds He was  
13 very neat in his facial appearance and in his hair He  
14 had a receding hairline -- or it appeared his hair was  
15 receding back He had a moustache He was very well  
16 spoken and very polite, in fact, while seated at my desk

17 Q Was his hair longer than it is today then?

18 A Yes In fact, he had probably -- he probably had a  
19 half-inch to three quarters of an inch of hair on his  
20 head And it was receded up towards the front

21 MR MOYER Okay Please answer any questions the  
22 Defense may have

23 CROSS-EXAMINATION

24 BY MR GIBSON

25 Q Investigator Silvaggio, you say when he came into

1 your office, he already had handcuffs on, right?

2 A Yes, he did

3 Q So he had already been taken into custody at that  
4 time?

5 A Yes, sir

6 Q Do you know when he was taken into custody?

7 A I don't

8 Q Do you have any idea why he was taken into custody?

9 A He was taken into custody as a suspect in this  
10 robbery I know when I was briefed at approximately 6 30  
11 that morning by Sergeant Bolt of the uniform patrol  
12 division, he had directed -- since I was on call, he  
13 directed that I go to the law enforcement center to  
14 interview witnesses and the suspect And when I arrived,  
15 I knew that Mr Collins was in the patrol division and the  
16 other witnesses were out in the foyer standing

17 Q So it's your understanding that as early as 6 30  
18 a m , he had already been taken into custody as a suspect  
19 in this case?

20 A Yes Based on the briefing, they indicated they had  
21 a suspect When I arrived probably at 7 15 at the law  
22 enforcement center, Mr Collins, I believe, was in the  
23 uniform patrol division And the witnesses were in the  
24 CID, criminal investigation division, the foyer

25 Q Are you aware of any probable cause that tied him to



1 this crime as early as 6 30?

2 A I'm not aware of that at this time Firsthand, no

3 Q Were you aware prior to you -- well, let me back up

4 The witness identification, that didn't happen until when?

5 Was it noon?

6 A That, I don't know Investigator Mike Fortner,

7 actually, led the investigation My direction was as a --

8 the on-call homicide investigator I was on call for

9 robberies as well at this time I'm not clear on what the

10 probable cause was to start with I know that they were

11 involved in a police pursuit in a vehicle driven by the

12 Defendant I know that they were -- later located the

13 Defendant at his mother's residence pulling up in the

14 driveway with his wife And, at that point, they took him

15 into custody

16 Q So that's your understanding of the time?

17 A I understood he was in custody

18 Q Okay So --

19 A Laying it out at that particular moment, no They

20 have a man in handcuffs and he's brought to my desk I

21 think it's a safe assumption, to me, to know that he's in

22 custody He, certainly, wasn't free to leave from my

23 office based on being handcuffed when he was brought in

24 And that was the discussion of the matters before I

25 interviewed Mr Collins

1 Q Okay So you're not aware that, in fact, they never  
2 identified the person who was driving that vehicle?

3 A I -- like -- and I'm not sure at what stage you're --  
4 are you referring to from 6 30 in the morning or 5 00 in  
5 the morning until noon when I initially made contact with  
6 Mr Collins?

7 Q I'm talking about at this juncture at any time

8 A Any time?

9 Q Yeah

10 A I don't know, specifically, what the Prosecutor's  
11 Office has to offer the jury I know that when  
12 Mr Collins came to my office, he was in custody

13 Q All right Do you know how long he had been -- well,  
14 you've already established that based on your -- let me  
15 back up and clarify this Based on your understanding, he  
16 was in custody as early as 6 30, is that correct?

17 A When I was briefed, the patrol supervisor named  
18 Mr Collins, but he asked me to come to the law  
19 enforcement center to interview witnesses and the suspect

20 Q Do you have any idea what was going on with  
21 Mr Collins during the time prior to him seeing you?

22 A He was seated in uniform patrol under the guidance,  
23 supervision, and custody of Deputy Barrickman

24 Q So Deputy Barrickman was with him the entire time?

25 A He was with him when I went back there, so I'm

1       presuming that he was    I don't know    There was a shift  
2       change at that particular time to 7 00 in the morning    So  
3       it could have been someone else was relieved by Deputy  
4       Barrickman    But Deputy Barrickman would have to be the  
5       one to answer that

6       Q       Well, let me ask you, when was the first time you met  
7       with Steven Collins?

8       A       Approximately ten minutes to 12 00

9       Q       Okay

10      A       On October the 13th, 2005

11      Q       And is that the first time you saw him that morning  
12      as well?

13      A       He was seated back in -- yes    Because I wanted to  
14      interview the witnesses and the victim first and get them  
15      out of the law enforcement center before I interviewed  
16      Mr Collins

17      Q       Okay    During that interview, did he ever -- did you  
18      ever talk about his drugs use?

19      A       Yes

20      Q       What did he tell you about his drug use?

21      A       He's addicted to crack

22      Q       Did he tell you he had been using crack that morning?

23      A       He indicated that he had used some crack    He had  
24      been at a party, a drug house off of Anderson Road prior  
25      to the robbery, yes

1 Q Okay Did he tell you how much crack he had used?

2 A I don't recall --

3 Q Did you ask --

4 A I don't recall him telling me how much

5 Q Did you ask him how much he had used?

6 A I don't know that I did or not

7 Q Did you take any kind of blood or other medical test  
8 to make sure he was not still under the influence of that  
9 crack?

10 A I didn't use any medical gauge to do that, no

11 Q What, if any, gauge did you use?

12 A Experience, 23 years of interviewing people that have  
13 been under the influence of drugs and those that have not  
14 been under the influence of drugs The questions that I  
15 was asking, in speaking with Mr Collins, he was very  
16 clear and concise He wasn't -- did not appear to be  
17 disoriented, sleepy, drifting He was very a matter of  
18 fact, polite, respectful, and noncombative Truly, you  
19 would think that he was not under the influence, as  
20 opposed to him being under the influence

21 Q Okay Did you tape any of these interviews with  
22 Mr Collins?

23 A No, I did not

24 Q Was there anybody present with you at the time you  
25 interviewed him?

25 | A Because when I first spoke to him in the first

1 paragraph, he indicated that he was not under the  
2 influence of any drugs or alcohol He indicated the  
3 purpose of the robbery was to pay back a drug debt

4 Q And that was this Eric Red Devil character, is that  
5 correct?

6 A Red Devil, yes He just refers to -- in his actual  
7 statement, he refers to being at a location that is a drug  
8 area, which is in a drug area, but does not, specifically,  
9 say what drug he was on

10 Q Okay Now, about this -- did you ever find this Eric  
11 Red Devil fellow?

12 A I looked for this Eric Red Devil I ran a -- he  
13 indicated he was in his 30's I ran an alias scan through  
14 our data base and found one that was in his mid to late  
15 50's, which was not the same The description that  
16 Mr Collins gave me was totally different than the one on  
17 the alias database And from that point, there was  
18 nothing further that I could do to try to locate Red  
19 Devil

20 Q And it's your testimony that at no point during this  
21 conversation did Mr Collins ever ask you or mention to  
22 you that he wanted to talk to an attorney?

23 A He did not

24 MR GIBSON Okay Thank you, Mr Silvaggio

25 MR MOYER I have no further questions for this

1 witness

2 THE COURT All right Thank you, sir

3 You can step down

4 MR MOYER And I have no further witnesses for the  
5 Jackson v Denno So I don't know if you want to argue  
6 this

7 THE COURT Do you have anything you want to put up?

8 MR GIBSON I do, Your Honor

9 But I would like to maybe address an issue that -- I  
10 mean, it's -- my understanding is -- and I know there's  
11 some disconnect between maybe what South Carolina courts  
12 have done and what some federal courts have done But my  
13 understanding is that if an arrest is invalid and a  
14 statement comes from that arrest, at least, in federal  
15 courts or, at least, under the federal Constitution that  
16 the confession is not admissible and should be suppressed

17 It is the State's burden to prove that the arrest --  
18 from my understanding, it's the State's burden to prove  
19 that the arrest was, in fact, valid and legitimate  
20 They've done nothing to show that

21 Now, I may -- you know, I, certainly, leave the  
22 possibility that I may be mistaken about this area of the  
23 law But with that said, given that they've made no  
24 showing that he was validly and legitimately arrested, I  
25 would submit that statement is the fruit of that arrest

1 and, therefore, should be suppressed

2 MR MOYER Your Honor, the only requirements for a  
3 statement are in custody and interrogation And both of  
4 those two prongs have been met

5 MR GIBSON Your Honor, I would move to suppress it,  
6 that it is the fruit of an invalid and illegitimate  
7 arrest

8 THE COURT Okay Denied

9 MR GIBSON Okay Then, Your Honor, I would like to  
10 bring Mr Collins up to the stand

11 THE COURT Come around, Mr Collins

12 THE CLERK Raise your right hand and place your left  
13 hand on the Bible

14 WHEREUPON,

15 STEVEN COLLINS,

16 after first having been duly sworn, testified as follows

17 THE CLERK Thank you

18 Be seated

19 DIRECT EXAMINATION

20 BY MR GIBSON

21 Q Mr Collins, were you arrested on the morning of  
22 October 13, 2005, for the crime that you're here on trial  
23 for today?

24 A I will answer that in two parts One, when they came  
25 to my mom's house, they told me that I was not under



1       arrest    But the guy put cuffs on in front of me    They  
2       took me down to the law enforcement center where I was  
3       there for maybe six hours in cuffs waiting on an  
4       investigator   They told me it was only to speak to an  
5       investigator about the car theft

6               After that -- after I had asked about an attorney  
7       after he gave the rights things and I told him I didn't  
8       have an attorney, he said, well, they would try to get one  
9       or something like that or I would get one later   Then I  
10      was notified --

11     Q       Let me back up just so we're clear   You're talking  
12     about your conversation with Mr   Silvaggio, the guy who  
13     just testified?

14     A       Yeah

15     Q       All right   So you came in and met Mr   Silvaggio, he  
16     read you your rights, you asked about an attorney   Please  
17     go forward from there

18     A       Okay   He told me that I would be appointed one later  
19     if I could not afford one   And I told him I really didn't  
20     want to say anything because I had been drinking and  
21     everything else   And the people that I was with, some of  
22     the stuff we had been smoking had a lot of stuff mixed  
23     into it   At that time, he said, well, I'll type while you  
24     talk

25               And he was, basically, telling me -- well, let me

1 back up, this other guy, Mr Fortner, he came downstairs  
2 and said, well, we know you done it We know that you're  
3 the one we're looking for Then Mr Silvaggio came  
4 Mr Silvaggio took me upstairs and started talking to me  
5 He did the rights thing I informed him that I didn't  
6 have a lawyer and that I would like one And he told me,  
7 he said, well, they'll appoint one to you later

8 After that, he said, while you talk, I'll type And  
9 as he was typing, he made some errors within the typing or  
10 whatever and he backed up But he kept saying, sign here,  
11 sign here, sign here Well, at that time, my mind was on  
12 my mom Because I told them when they came to my mom's  
13 house that my mom had just had heart surgery And she was  
14 complaining that she was having chest pains. And her and  
15 my 12-year-old niece were there So I was telling him  
16 that I wanted to check on my momma I wanted to get back  
17 to my mom

18 At that time, I saw my wife walking down the hallway  
19 They had me sitting with an officer inside a muster room  
20 My wife was walking down the hallway with Investigator  
21 Silvaggio I called her three times She told me -- I  
22 later found out that they said she could not speak to  
23 me -- okay -- at all So she kept walking with them

24 Other than that, I thought that everything was going  
25 to be okay Because they were saying, well, if you come

1 down and give us a statement, you know, you should be able  
2 to get out on bond and you can get back home and check on  
3 your mom and family and all this and that

4 So I went ahead -- and he was saying, you know, sign  
5 here, sign here And so I signed And it was just,  
6 basically, conversation And I was telling him that,  
7 well, I really didn't want to give him a statement  
8 because, like I say, I didn't have all my faculties about  
9 myself So he kept writing and he said, sign here, sign  
10 here I signed it And I was trying to get home That  
11 was my main concern at the time, my mom

12 Q You said earlier that you had been drinking and  
13 taking drugs What exactly had you been drinking and  
14 taking?

15 A We had been drinking everything from butter scotch  
16 rum to Jack Daniels, Tequila There was marijuana  
17 involved, cocaine and crack cocaine But one of the guys  
18 had stuff called ice or something And they mixed it  
19 somehow And when we -- when we smoked it or whatever, it  
20 was like, you know, I just didn't remember too much of  
21 anything

22 Q Okay And about what time were you taking these  
23 drugs?

24 A This was between the hours of 4 30 to about 5 00 a m

25 Q Okay Did you still feel as though you were under

1 the influence of these drugs when you met with  
2 Mr Silvaggio?

3 A Yes, I did I was very sleepy And I was tired at  
4 the same time, also

5 Q Had you slept that night?

6 A No, sir

7 Q And they picked up -- let me back up You said they  
8 told you that you were not under arrest, but they put you  
9 in handcuffs, is that correct?

10 A Right They put the cuffs in front of me

11 Q Did you feel free at that time to leave?

12 A No, sir, I didn't

13 Q What did they do with you after they put you in the  
14 handcuffs?

15 A They put me in the back of a squad car and said that  
16 that was their policy to transport me to the LEC I was  
17 asking them, I said, well, my wife is here, can't my wife  
18 bring me down and, you know, that way I'll have a ride  
19 back? No, we have to put you in the car That's our  
20 policy

21 So when the guy puts the cuffs on in front of me and  
22 had me sit in the back seat, we sat there maybe another 45  
23 minutes And then he, finally, took me to the LEC But  
24 during this whole time, I mean, they had like two dogs,  
25 two K-9 units, one on either side of my house -- of my

1 mom's home, rather, and two or three officers inside my  
2 mom's house Why, I have no idea I mean, if I'm not  
3 under arrest or if I'm not being arrested for something,  
4 why are you in my house -- in my mom's house harassing  
5 her? I'm outside in the yard with an officer

6 Q Okay After they put you in the squad car, what did  
7 they do?

8 A Like I say, the car, I sat there for maybe another  
9 30, 45 minutes And then they took me down to the LEC and  
10 put me in the muster room with an officer, uniformed  
11 officer, and I sat there for maybe four or five hours

12 Q So you sat there Was there a place for you to lay  
13 down and go to sleep, if you wanted?

14 A No

15 Q Nothing like that?

16 A No

17 Q Did you ever try to go to sleep?

18 A I dozed a little here and there And he took me out  
19 and let me smoke a couple of cigarettes and brought me  
20 back in, still handcuffed

21 Q And you sat there for approximately, what, five or  
22 six hours?

23 A Yes, sir, until I seen Investigator Silvaggio

24 Q Now, you said earlier that you had told Mr Silvaggio  
25 that you wanted to have a lawyer?

1 A Yes, sir

2 Q And he, basically -- and you said he, basically,  
3 ignored you, is that correct?

4 A Yes, sir

5 Q Why did you go forward even though, you know, you had  
6 asked for a lawyer? Why did you go forward?

7 A Because, basically, when he was talking to me, it was  
8 like he was telling me about had happened He was giving  
9 me like more or less his version and having me add in this  
10 or add in that or he would add in this or add in that  
11 And he asked me was it correct or not correct, you know  
12 And even if I said, no, you know, he was typing I never  
13 saw this written in front of me And then he brought it  
14 back and said, I need you to sign here and here, initial  
15 here, initial here, and sign your name here

16 So I followed his orders It was my interpretation  
17 that as long as I did what he was asking of me that I  
18 would be home -- back home that morning I even asked him  
19 to let me call my job and notify them because I was late  
20 for work But I'd be back home with my mom to make sure  
21 she was okay

22 Q Okay And is that why you signed the statement?

23 A Yes, sir

24 Q Okay Do you feel that you were competent when you  
25 made the decision to give the statement that you gave?

1 A No, sir

2 Q Okay Do you feel that you freely and voluntarily  
3 gave that statement?

4 A No, sir

5 MR GIBSON Would you, please, answer any questions  
6 that Mr Moyer would have?

7 THE WITNESS Yes, I will

8 CROSS-EXAMINATION

9 BY MR MOYER

10 Q Okay Mr Collins, a few questions There's no  
11 doubt you were in custody, right?

12 A As far as I know, I had handcuffs on the whole time

13 Q You knew you weren't free to leave?

14 A Well, they told me I was not under arrest, that that  
15 was just their policy to take me to the LEC, as they call  
16 it

17 Q But you were in custody, you were being held?

18 A Yeah They had cuffs on in front of me They told  
19 me I was not under arrest Even though the officer that  
20 he had sitting there with me told me I was not under  
21 arrest, that I was just there waiting on an investigator  
22 to come in

23 Q Okay Forget the word "arrest " I'm saying, you  
24 knew you couldn't leave, correct?

25 A Yeah I couldn't just get up and go out the back

1 door They had like an alarm system or button you had to  
2 do

3 Q Okay And you then spoke to Investigator Silvaggio  
4 for a period of about ten minutes going over that form  
5 about waiving your rights?

6 A Well, I can't say it was exactly ten minutes But I  
7 know it was a good while we sat there And he was saying  
8 about the one with my rights And I was telling him,  
9 well, I don't have a lawyer All this just happened right  
10 here at the moment

11 Q Okay But Investigator Silvaggio went over this form  
12 with you, right?

13 A Yeah I remember him reading off of this form

14 Q And these are your initials?

15 A Yes, sir

16 Q And that's your signature?

17 A Yes, sir

18 Q And that's your signature down here at the bottom?

19 A Yes, sir

20 Q So you put your initials after each one of those  
21 rights showing that the rights had been explained to you  
22 and that you understood the rights?

23 A Yeah He said that -- I read each one of these to  
24 you and you understand what I'm saying or something like  
25 that



1 Q And then you signed a form that says, I have read the  
2 statement of my rights I understand what the rights are  
3 I do not want a lawyer at this time?

4 A No The way --

5 Q And you signed that, didn't you?

6 A Yeah I signed it But the way he said it was like  
7 there was no part about I do not have a lawyer at this  
8 time that was gone over with me It was like, you can  
9 do -- you can make a statement And I told him, I said,  
10 well, I don't really feel comfortable making a statement  
11 because I don't have representation It had just  
12 happened And he was explaining to me that they would get  
13 me a lawyer later

14 Q But you signed the form saying that you wanted to go  
15 ahead and talk to him now without a lawyer at that time,  
16 isn't that right?

17 A Yeah Because he said I wasn't admitting to  
18 anything, that we was just talking

19 Q And he even circled the word "coercion," and you  
20 initialed that?

21 A I'm not sure I initialed it, but I don't know if I  
22 circled that or not I don't know if he circled it or I  
23 did But if you'll look at the difference in my signature  
24 and the way that word is circled, that should tell you I  
25 didn't have all my faculties with me at the time

1 Q Okay Well, we'll talk about that in just a minute  
2 This isn't the first time you've spoken to an investigator  
3 in your life, is it?

4 A Actually, it's the first time in over 14 years

5 Q Okay And you -- I mean, you've been arrested for  
6 armed robbery in the past?

7 A Yeah I was arrested for armed robbery in the past

8 Q And you have, what, four or five convictions for  
9 robbery and armed robbery?

10 A I'm not sure

11 Q And you talked to investigators when you did that?

12 A I'm not sure about that I know that, at one time,  
13 there was an -- I got involved in some stuff and there was  
14 an Investigator Christy who, basically, was the  
15 investigator that worked on the case, I guess you call it  
16 And what they told me was they had a lot of cases that  
17 were on the books that were not solved and stuff like  
18 that But those cases, actually, went to my record  
19 because they had me sign some papers that I really wasn't  
20 sure about So they cleared up the case books on me

21 Q All right So back in 1984, you went through this  
22 process with investigators on housebreaking and pointing a  
23 firearm?

24 A Well, actually, it was not -- I didn't go through  
25 anything with the investigators What they did was they

1 give me like probation, or pre-trial, or something like  
2 that But what they did is they, basically, got a  
3 statement and asked somebody else about a statement or  
4 something

5 Q And then in 1985, you had probably, what, four or  
6 five or a half dozen burglary, larceny, and robbery  
7 charges?

8 A Underneath a YOA sentence, something that they --  
9 what they call a YOA sentence I know it was a lot of  
10 charges But what they did was just cleared the books up

11 Q And you went through that whole process then, too,  
12 didn't you?

13 A I'm not sure I don't remember

14 Q And you got out in, what, about 1992?

15 A Yes

16 Q And then in 1993 --

17 A No It was in '87?

18 Q And then in 1993, you went through this whole process  
19 again with armed robberies, two armed robberies, two  
20 common law robberies, and assault with a deadly weapon?

21 A Assault with a deadly weapon, I'm not sure about  
22 But I know that I was with my co-defendant, which was my  
23 cousin, for armed robbery

24 Q Okay And you had a grand larceny and pointing a  
25 firearm, too?

1 A Well, that pointing a firearm, they told me was,  
2 actually, dismissed or something like that Because I  
3 never pled to that one

4 Q And burglary second degree And that was all in  
5 1993 So you went through this whole process then again,  
6 didn't you?

7 A Yeah I guess you could say so

8 Q So you knew the significance of talking to an  
9 investigator about your case?

10 A To a point Because at one point, I mean, it's not  
11 like I was talking to him on the belief that he was going  
12 to say, well, this is what was done and this is not what  
13 was done

14 Q Okay Well, you knew they were investigating an  
15 armed robbery?

16 A No They never informed me what the crime was at the  
17 time

18 Q So you came up with the story about an armed robbery  
19 yourself then?

20 A This was after they told me that I was being arrested  
21 for armed robbery

22 Q Okay And let's talk a little bit You gave a  
23 two-page statement, right?

24 Take a look at that.

25 A That's mine, yeah

1 Q That's your statement It's two pages And you gave  
2 a very detailed statement, didn't you?

3 A Well, all the details were not coming from me The  
4 details were coming from Investigator Silvaggio

5 Q Okay Investigator Silvaggio knew this guy named Red  
6 Devil and Eric?

7 A No That guy, I know

8 Q So you started with this talking about early that  
9 morning And you told the investigator what you did that  
10 night?

11 A We talked about several things I'm not sure exactly  
12 what all we discussed

13 Q And then you talked about details about the actual  
14 robbery itself You told about how you asked her for a  
15 pack of cigarettes and she got out a pack of Newport  
16 cigarettes You told him about that?

17 A I had my own cigarettes I'm not real sure about  
18 that

19 Q Okay And then you talked about taking the VCR And  
20 you even said that when you took the VCR, you took it in  
21 your left hand, right?

22 A He said -- I don't know -- something about a VCR

23 Q And you talked about then going back and picking up  
24 another guy in the truck and you talked about being chased  
25 by the police?

1 A I was -- he was speaking to me about that There was  
2 three people in the truck

3 Q And you talked about where you ran, Hollis Academy  
4 School?

5 A I don't know if it's Academy I just know it's  
6 Hollis Elementary

7 Q So my question for you then is, you gave an awful lot  
8 of details in that statement, didn't you?

9 A Yeah

10 Q So you were able to remember details pretty well at  
11 that time, weren't you?

12 A Some of it Because the guy he brought up -- there  
13 was a guy named "Frank" something I don't remember his  
14 name fully But he was giving a statement or something to  
15 that effect and a lot of that stuff Red Devil and he had  
16 already talked to me about or told me about Because  
17 that's who had my truck

18 MR MOYER I don't have any further questions

19 MR GIBSON Just real quick

20 REDIRECT EXAMINATION

21 BY MR GIBSON

22 Q Did you type this statement?

23 A No I didn't type this statement

24 MR GIBSON Nothing further

25 THE COURT You can step down

1 MR GIBSON Your Honor, real quickly, I'd just like  
2 to recall Investigator Silvaggio

3 THE COURT Sure

4 You're still under oath

5 DIRECT EXAMINATION

6 BY MR GIBSON

7 Q Investigator Silvaggio, what time did you, actually,  
8 arrive at the -- was it the LEC, is that where you  
9 conducted the interview?

10 A Yes, sir

11 Q What time?

12 A It was probably 7 15, 7 30 Because I don't start  
13 the work day until 8 00 in the morning So he would have  
14 called me at home From the time it would take to get  
15 ready and go into the office, it was probably 7 15, 7 30

16 Q What did you do when you got there?

17 A I met with the witnesses and the victim

18 Q Which witnesses did you meet with? What witnesses  
19 did you meet with?

20 A I'd have to refer back to my notes But I  
21 interviewed Ms Collins, which is Steven Collins' wife I  
22 believe her name is Donna I interviewed a lady by the  
23 name of Ms McGee I believe her first name is Helen  
24 And I interviewed -- I believe I interviewed the store  
25 clerk, too I'd have to reflect back on my notes

1 Q Ms Giles?

2 A I believe Investigator Fortner interviewed her

3 Q So you interviewed two witnesses?

4 A Correct

5 Q Ms McGee and -- and those two witnesses took five  
6 hours?

7 A I take care of a lot of matters on my call week  
8 That's the -- there's a lot of things that I'm dealing  
9 with while dealing with this case as well So that is  
10 not -- that's not unusual

11 Q Okay But -- and during all this time, you knew that  
12 Mr Collins was sitting there in custody waiting to talk  
13 to you, right?

14 A Right

15 Q Okay But you decided to let him sit for five hours  
16 and then go see him around --

17 A I didn't decide that It's just time is beyond my  
18 control, and that's the way it worked out He was sitting  
19 there for five hours

20 MR GIBSON Okay Nothing further

21 Thank you

22 MR MOYER I have no follow up

23 THE COURT All right You can step down

24 Thank you

25 Anything else?



1 MR GIBSON Nothing, Your Honor, not as far as the  
2 testimony or evidence

3 THE COURT Well, do you have any law to back up your  
4 position?

5 MR GIBSON Not at present But when we get to the  
6 break, I'll look and see if I can find something But I'm  
7 pretty sure --

8 THE COURT Well, U S v Cruz, 100 Supreme Court  
9 1244, applies to in-court identification And it stands  
10 for the proposition that an illegal arrest does not  
11 require suppression of the victim's in-court  
12 identification I haven't found any cases yet,  
13 specifically, on this point

14 MR GIBSON I'll look as well, Your Honor

15 THE COURT All right

16 MR GIBSON But on other grounds, Your Honor, we  
17 would ask that the statement be suppressed because  
18 Mr Collins was under the influence of drugs at the time  
19 He was placed in a position that was extremely coercive  
20 He was held in custody for six hours in a room with  
21 handcuffs prior to the investigator coming to see him

22 Given all these circumstances, we believe that his --  
23 and from his own testimony on this point, that his giving  
24 of this statement was not voluntary, it was not freely  
25 given And, therefore, it should be suppressed

1 THE COURT All right Anything the State wants to  
2 tell me?

3 MR MOYER Well, Your Honor, as you know, the  
4 standard is whether or not his will is overborne and his  
5 capacity for self-determination was critically impaired  
6 And, Your Honor, Investigator Silvaggio stated that when  
7 he spoke to him, he couldn't tell that he was under the  
8 influence of any alcohol or drugs And if he was, he,  
9 certainly, gave an extremely detailed statement We  
10 didn't publish it to the Court, but it is in evidence, if  
11 Your Honor wishes to review it

12 He goes over times and sequences of the events If  
13 somebody was disoriented and in and out of it as he claims  
14 he was, they wouldn't be able to come up with a detailed  
15 statement Your Honor, his credibility is, certainly,  
16 effected by his lengthy criminal record I think it's  
17 rather unbelievable to say that he -- that with the many  
18 times that he has gone through this process that he would  
19 have signed those documents if he did not wish to waive  
20 his right to have an attorney, as he said he does today

21 MR GIBSON Your Honor, just in brief reply We  
22 point out that it is -- from Mr Collins' testimony, that  
23 it was, in fact, Investigator Silvaggio that gave those  
24 details

25 And also, in rebuttal to the Solicitor's last point,

1 quite frankly, that makes it even more improbable that he  
2 would have freely and voluntarily given such a statement  
3 given the number of times he's been consistent and the  
4 types of consequences that he's had from it You would  
5 think that somebody with that type of experience would  
6 know better

7 THE COURT All right Well, before we go any  
8 further, I think I might have answered your question on  
9 the -- State v Funchess, F-U-N-C-H-E-S-S, 179 SE2d 25, a  
10 1971 case, our Supreme Court held, and I quote, "We  
11 conclude and hold that every statement or confession made  
12 by a person in custody as a result of an illegal arrest is  
13 not involuntary and inadmissible But the facts and  
14 circumstances surrounding such arrest and the in-custody  
15 statement should be considered in determining whether the  
16 statement is voluntary and admissible And voluntariness  
17 remains as the test of admissibility "

18 I'm going to find, as I am required to do under a  
19 preponderance of the evidence, that the State has complied  
20 with the Constitutional and legal requirements with  
21 respect to the voluntariness and intelligent nature of  
22 this statement

23 So I am going to deny your motion

24 MR GIBSON Thank you, Your Honor

25 THE COURT Okay

1 MR MOYER Your Honor, now, moving on to the Neal v  
2 Biggers hearing, the State would to call Dianne Giles to  
3 the stand

4 THE CLERK Raise your right hand and place your left  
5 hand on the Bible  
6 WHEREUPON,

7 DIANNE BAVELLE GILES,  
8 after first having been duly sworn, testified as follows

9 THE CLERK State your name for the record

10 THE WITNESS Dianne Bavelle Giles

11 DIRECT EXAMINATION

12 BY MR MOYER

13 Q Ms Giles, where did you work on October the 13th of  
14 2005?

15 A At the BP at 2208 Anderson Road

16 Q And you were robbed on that day?

17 A Yes, I was

18 Q Around what time did that incident happen?

19 A Around ten after 5 00

20 Q Were you the only person working at the store when  
21 this happened?

22 A Yes, I was

23 Q Were there any customers there?

24 A No, there weren't

25 Q Let me ask you this Did you meet with an

1 investigator to be shown a photographic display or  
2 photographic lineup?

3 A Yes, I did

4 Q Was it the same day as this incident took place?

5 A Yes, it was

6 Q And where did this take place that you were shown and  
7 looked at this photographic lineup?

8 A At the law enforcement center

9 Q And do you remember how many people were present when  
10 you did that?

11 A Not really

12 Q Okay But there was an officer and an investigator  
13 with the Sheriff's Office there that you spoke with  
14 predominantly?

15 A Yes

16 Q All right Now -- and the officer showed you a  
17 photographic lineup?

18 A Yes, he did

19 (WHEREUPON, State's Exhibit No 19 was marked for  
20 identification only )

21 BY MR MOYER

22 Q I'm going to show you what's been marked as State's  
23 Exhibit No 19, and ask you, first off, to look on the  
24 back and both sides of that Can you recognize what that  
25 is?

1 A It's the photo lineup I was shown

2 Q Okay And how do recognize it?

3 A I circled the picture I identified and put my  
4 initials on it I also signed and printed my name and put  
5 the date and the time on it

6 Q Okay And that's on the back?

7 A On the back, sir

8 MR GIBSON Can I see it?

9 BY MR MOYER

10 Q All right Now, when the investigator showed you  
11 this lineup, did he or anyone put any pressure on you to  
12 pick somebody out of that lineup?

13 A No, they didn't

14 Q Did the detective or anyone present suggest to you  
15 which photograph to select?

16 A No, they did not

17 Q Did they influence your decision at all regarding  
18 that?

19 A No, he didn't

20 Q Did he lead you to believe that you had to or you  
21 should pick somebody out of the lineup?

22 A No, he did not

23 Q I'm going to ask you a few questions about the  
24 incident itself Where did it take place?

25 A At the BP

1 Q Was it inside or outside the BP?

2 A Inside the store

3 Q And how close was he to you during the actual  
4 robbery?

5 A On the other side of the counter

6 Q And when the robbery took place, how close to you did  
7 he come?

8 A He came around the counter and he was about half the  
9 distance -- maybe three-fourths the distance between you  
10 and I

11 Q And what was the closest he ever got to you?

12 A I don't know for sure It was pretty close

13 Q Within arms reach?

14 A Possibly I tried to stay out of arms reach

15 Q Okay And did you spend the whole time with him  
16 there at the register and the counter, or did you end up  
17 going anywhere else?

18 A I ended up going into the office

19 Q And did he go with you?

20 A Yes, he did

21 Q And what was the purpose for going back to that  
22 office?

23 A He said he could not be on tape He wanted the tape  
24 out of the VCR and he -- I had to go with him to go get  
25 it

1 Q And how close were you to him back in the office?

2 A About as close as me and the stenographer

3 Q And both of these areas, out by the counter and back  
4 in the office, are they well lighted? Are there plenty of  
5 lights?

6 A Yes, there are

7 Q Did you have any trouble seeing him?

8 A No, I did not

9 Q Did you get a good enough look at him to be able to  
10 identify him?

11 A Yes, I did

12 Q Did he have any mask or bandanna on or anything to  
13 disguise his appearance?

14 A No, he did not

15 Q And what did he look like?

16 A He was a black male I guess he was approximately  
17 5'10", because he was taller than I was

18 Q And you are how tall?

19 A I'm 5'8"

20 Q Okay

21 A He appeared to be between 150 and 175 pounds He had  
22 a broad face with a moustache, a short afro thinning on  
23 top He -- do you want --

24 Q So that's the description of his appearance And did  
25 you give that description to an officer in this case?



1 A I did I also identified his clothing and his manner  
2 of speech

3 Q Okay And how long after the robbery was it that you  
4 gave this description to the officer?

5 A Within five minutes of him getting out the door where  
6 I could lock it

7 Q And then an officer came to you?

8 A Yes

9 Q At the BP?

10 A Yes, at the BP

11 Q Now, when you were shown this photographic lineup,  
12 did you see the person that robbed you displayed in that  
13 lineup?

14 A Yes, I did

15 Q Did you look it over closely?

16 A Yes, I did

17 Q Did you look at each picture carefully?

18 A Yes, I did

19 Q And when you did so, did you tell the detective which  
20 photo you had picked?

21 A Yes, I did

22 Q And after you told the detective that, what took  
23 place? What did you do? Were you asked to do anything to  
24 the actual lineup itself?

25 A To take a permanent marker and circle the picture and

1 initial it

2 Q Okay And did you do so?

3 A Yes, I did

4 Q If you would, take a look at State's Exhibit No 19  
5 Again, is there a circle around one of the -- around one  
6 of those individuals displayed in that lineup?

7 A Yes, there is

8 Q And how would you describe where it is in that photo  
9 lineup?

10 A It's #5

11 Q On the bottom?

12 A On the bottom

13 Q In the middle?

14 A In the middle

15 Q All right Now, do you recall --

16 (WHEREUPON, State's Exhibit No 20 was marked for  
17 identification only )

18 BY MR MOYER

19 Q Let me show you State's Exhibit No 20 Can you just  
20 take a look? Do you recognize that form?

21 A Yes, I do

22 Q And how do you recognize it?

23 A I signed it I put my address on it I put my phone  
24 number, both for home and work, on it And I read it when  
25 I did it

1 Q Okay And was -- did you indicate to the officer on  
2 that form which of the photographs you had picked out?

3 A Yes, I did

4 Q Okay And which one did you indicate on that form  
5 that you had picked out?

6 A I said that I positively identified photograph #5  
7 that was displayed by Mr Fortner

8 Q Okay And did you do that form at the same time you  
9 were shown that photographic lineup?

10 A Yes, I did

11 Q And at the same time you had circled that picture #5  
12 on that lineup?

13 A Yes, immediately after I identified it

14 MR MOYER Please answer any questions the Defense  
15 attorney may have

16 CROSS-EXAMINATION

17 BY MR GIBSON

18 Q Ms Giles, you were arrested in 2002, is that  
19 correct?

20 A I was arrested in 2002?

21 Q For fraudulent checks?

22 A Yes

23 Q Did you go down to the detention center?

24 A I don't remember I could have

25 Q Okay Did they ever put you in an orange jumpsuit?

1 A Again, I don't remember

2 Q Have you ever visited anybody at the detention  
3 center?

4 A Not here

5 Q Okay Are you aware that they put people at the  
6 detention center in orange jumpsuits?

7 A Yes I am aware of that

8 Q Now, you were, actually, shown two photo lineups that  
9 day, weren't you?

10 A I don't recall

11 Q You don't recall?

12 A No It's been a while

13 Q All right Well, let's talk about that lineup that  
14 you saw Can you take a look at it? Do you have it in  
15 front of you?

16 A Yes, I do

17 Q All right There are two pictures -- well, there's  
18 six people in the lineup, is that correct?

19 A Yes That is correct

20 Q And of those six, how many have on orange shirts or  
21 orange jumpsuits?

22 A Two of them

23 Q And that's Mr Collins and the guy right above him,  
24 is that correct?

25 A That's correct

1 Q So of the six, two are dressed in clothing that would  
2 be noted by someone like you that they've been in the  
3 system before, is that correct?

4 A No

5 Q Okay But you're aware that at the detention center,  
6 they wear orange jumpsuits, is that correct?

7 A I am aware Now, I don't recall -- I don't know that  
8 I would have consciously remembered it unless somebody  
9 told me, that I would have been aware --

10 Q I just asked --

11 A -- of that --

12 Q I'm sorry I don't mean to speak over you

13 But I just asked you that and you said, I'm aware  
14 that at the detention center they wear orange jumpsuits?

15 A Yes I am aware of that

16 Q Okay And of these six people, only two have on  
17 orange jumpsuits?

18 A That is correct

19 Q Okay Do you think maybe that could have skewed you  
20 just a little bit?

21 A No, sir

22 Q Okay Now, of those two that have on the orange  
23 jumpsuits, they don't look a whole lot alike, do they?

24 A No, they don't

25 Q And the guy above him really is not -- and you would

1 know this being African-American He's not really dark  
2 skinned at all, is he?

3 A No, he's not

4 Q So the only one in this six-photo lineup that's  
5 dark-skinned and has on an orange jumpsuit is my client,  
6 Mr Collins?

7 A That is correct

8 Q All right Now, you said that you were fairly close  
9 to him, is that correct?

10 A That is correct

11 Q But never in arms reach, is that correct?

12 A I said I don't recall if I was

13 Q Okay Did you ever -- did you tell the police  
14 everything you noticed about him?

15 A As far as I recall

16 Q Okay Did -- and he was dressed in -- tell me again  
17 how he was dressed

18 A He had on a light-colored shirt with something on the  
19 front He had on blue jean shorts I could not recall  
20 what his footwear was like I thought it was some  
21 dark-type shoes He did not have anything else on

22 Q Okay So his forearms would have been exposed, is  
23 that correct?

24 A That is correct

25 Q But, yet, you never made any mention about tattoos on

1 his forearms?

2 A It's not something I noticed

3 Q So you didn't notice any tattoos on the forearms of  
4 the person who robbed you?

5 A Prior to the knife being pulled on me, it was a  
6 superficial -- I noticed him in a very superficial way  
7 At the point the knife was pulled on me, I noticed details  
8 without trying to stare Because that was some of the  
9 training I had received

10 Q Okay But you looked at the knife, right?

11 A I looked at the knife And then I kept my eyes on  
12 his eyes to see if I was irritating him

13 Q So to look at the knife, you would have had to, at  
14 least, peripherally see a forearm, is that correct?

15 A No

16 Q So you looked at the knife, but you didn't see his  
17 arms?

18 A The knife scared me That's what I noticed

19 Q All right Now, based on what you testified to  
20 before, his photo -- or at the time this thing happened,  
21 at least, his hair was very different than it is in this  
22 photo, is that correct?

23 A That is correct

24 Q But yet, even though his hair was different, you  
25 still picked him out?

1 A His facial features and his expression did not change

2 Q His expression?

3 A Yes

4 Q What do you mean "his expression"?

5 A The look in his eyes is the same look he had when he  
6 robbed me

7 Q So you picked him out from the look in his eyes? You  
8 picked the photograph from the look in the eyes?

9 A No I picked him out from his facial features and  
10 the look in his eyes

11 MR GIBSON All right Thank you, Ms Giles

12 MR MOYER Just a couple questions in reply

13 REDIRECT EXAMINATION

14 BY MR MOYER

15 Q Did the color of -- whatever color you see in that  
16 photograph, did that affect your decision when you picked  
17 somebody out of that lineup?

18 A No, it did not

19 MR MOYER Okay Nothing further

20 The State would call Investigator Mike Fortner

21 THE CLERK Put your left hand on the Bible, please,  
22 sir, and raise your right hand

23 WHEREUPON,

24 MIKE FORTNER,

25 after first having been duly sworn, testified as follows



1 THE CLERK State your name for the record, please

2 THE WITNESS Mike Fortner

3 THE CLERK Thank you

4 Be seated

5 DIRECT EXAMINATION

6 BY MR MOYER

7 Q Where do you work, sir?

8 A Greenville County Sheriff's Office

9 Q And how long have you been in law enforcement?

10 A 13 years

11 Q Has it all been with the Sheriff's Office?

12 A Yes, sir

13 Q And what's your position with the Sheriff's Office?

14 A Currently, I work in CID white collar crimes At the  
15 time of this incident, I was working robberies

16 Q Did you conduct a photographic lineup display in this  
17 case?

18 A Yes, sir, I did

19 Q And did you put together that photo lineup?

20 A Yes, sir

21 Q All right Now, how many photographs were displayed?

22 A Six of them altogether

23 Q Was the Defendant included in the lineup?

24 A Yes, sir, he was

25 Q And where was he -- where was his picture in that

1 lineup?

2 A He's in what we refer to as position #5, the one in  
3 the middle, bottom row

4 Q Okay Were the other five persons all similar in  
5 physical description as the Defendant?

6 A Yes, sir

7 Q In what way?

8 A Race, sex, hair style, facial hair, you know,  
9 basically, the same with noses and eyes and the facial  
10 features

11 Q Okay And whom did you show that lineup to?

12 A I showed it to Ms Giles, who was the clerk working  
13 at the time of the robbery

14 Q And what was the date that you showed that to her?

15 A That was on October 13th, 2005

16 Q And around what time was it that you showed that to  
17 her?

18 A It was right about 12 00 in the afternoon

19 Q Okay That would be 12 00 noon?

20 A 12 00 noon, yes, sir

21 Q And where did that take place?

22 A I showed her the photo lineup at my desk at the law  
23 enforcement center

24 Q Okay Now, tell the Court how you, actually,  
25 displayed that photo lineup to Ms Giles and what you said

1 to her?

2 A Right I take the lineup and it's got the six  
3 pictures on there And as I'm showing it to her, I  
4 explain to her that the person responsible for the robbery  
5 may or may not be in the lineup and for her to look at  
6 each picture carefully And that if she does see the  
7 person responsible to point him out, but to be sure that  
8 it is the correct person

9 Q And you told that to Ms Giles?

10 A Yes, sir

11 Q And did you tell her that the person who did this was  
12 definitely in that lineup?

13 A No, sir, I did not

14 Q Did you lead her to believe that she had to or that  
15 she should pick somebody out?

16 A No, sir Like I said, I told her to be sure not to  
17 pick anybody out if she was not sure

18 Q Did you exert any pressure on her to pick somebody  
19 out of the lineup?

20 A No, sir

21 Q Did you make any suggestions or did you suggest in  
22 any way or influence her decision on what photograph to  
23 pick out?

24 A No, sir

25 Q All right And did Ms Giles select a photograph of

1 the person who committed the crime?

2 A Yes, sir She pointed at picture #5

3 Q All right Did she appear to you to be confident in  
4 her choice?

5 A Yes, sir She pretty much picked him out  
6 immediately, just long enough to take time to look at the  
7 pictures And I gave her a black marker and asked her to  
8 circle the picture that she picked And she did that and  
9 placed her initials next to the photo as well

10 Q Did she do so?

11 A Yes, sir

12 Q And which photograph did she circle?

13 A #5, the one in the middle on the bottom, which was  
14 the Defendant

15 Q And that is the Defendant?

16 A Yes, sir

17 Q Okay And that photographic lineup that's before  
18 you -- I don't remember which exhibit it is Is it  
19 State's Exhibit No 16?

20 A State's Exhibit No 19

21 Q State's Exhibit No 19, that is the photo lineup that  
22 you showed her?

23 A Yes, sir

24 Q Is it in substantially the same condition now as it  
25 was back on October 13th, 2005?

1 A Yes, sir

2 Q And you recognize it from --

3 A I recognize it because the number here on the side is  
4 my handwriting, and the way she's got it initialed and  
5 circled And then I always have them sign their name  
6 across the back, print it and date and time it across the  
7 back as well

8 Q Okay And what is the date and time?

9 A October 13th of 2005

10 Q Now, did you have any --

11 MR MOYER Your Honor, at this time, I'd move to  
12 have State's Exhibit No 19 moved into evidence for  
13 purposes of this hearing

14 MR GIBSON For purposes of the hearing, no  
15 objection, Your Honor

16 THE COURT Can I take a look at that, please?

17 (WHEREUPON, State's Exhibit No 19 was admitted into  
18 evidence )

19 BY MR MOYER

20 Q Did you have any other documentation to indicate  
21 which photograph Ms Giles selected in that lineup?

22 A Yes, sir I had her fill out what we refer to as an  
23 Affidavit of Photographic Identification in which she says  
24 she picked photo #5 as being the person who on that date  
25 and time came inside and pulled a knife on her while she

1 was working at the BP station and took about \$200 from  
2 her

3 Q Okay And is that document in front of you right  
4 now?

5 A Yes, sir

6 Q And I believe this is State's Exhibit No 20 Do you  
7 recognize that?

8 A Yes, sir, I do

9 Q How do you recognize it?

10 A Mainly, because it's got my signature down here at  
11 the bottom, across the bottom on the bottom there, as well  
12 as I recognize my handwriting

13 Q Is it dated and timed?

14 A Let's see here Yes, sir, October 13th, 2005, at  
15 12 00 noon, 12 00 hours

16 Q All right Now, that's a -- is that an accurate  
17 copy? Is that an exact copy of the document that was  
18 used?

19 A Yes, sir, it is

20 Q And other than the hole punches on the left-hand  
21 side, are there any other alterations or changes from the  
22 original on that copy?

23 A No, sir

24 MR MOYER Your Honor, at this time, I move to have  
25 State's Exhibit No 20 moved into evidence for purposes of

1 the hearing

2 MR GIBSON Can I see that?

3 MR MOYER Yes

4 MR GIBSON No objection, Your Honor

5 THE COURT Okay

6 (WHEREUPON, State's Exhibit No 20 was admitted into  
7 evidence )

8 MR MOYER Please answer any questions the Defense  
9 may have

10 THE WITNESS Okay

11 CROSS-EXAMINATION

12 BY MR GIBSON

13 Q Detective Fortner, do you have any information in  
14 regards to the other five people in that lineup?

15 A No, sir

16 Q Just for the record, you are not African-American, is  
17 that correct?

18 A No, sir, I'm not

19 Q So were you aware that Ms Giles, when she described  
20 her assailant, she described him as dark complexion or  
21 dark-skinned?

22 A Are you talking about the robber?

23 Q Yes, who she said robbed her Are you aware that she  
24 described him as dark-skinned?

25 A I was under the impression that it was a black male

1 Q So you are not -- are you familiar with the  
2 differences in the African-American community about  
3 dark-skinned, brown-skinned, light skinned?

4 A I understand they do refer to some as being darker  
5 than others, yes, sir

6 Q Now, when you put this lineup together, did you try  
7 to make sure that everybody in that lineup was, in fact,  
8 dark-skinned?

9 A That they're all similar, yes, sir

10 Q If you look at that lineup and you look at #2, he's  
11 significantly lighter than Mr Collins, is that correct?

12 A (There was no response )

13 Q Do you have the picture -- do you have the lineup  
14 with you?

15 A No, sir

16 THE COURT Here it is

17 BY MR GIBSON

18 Q Let's take a look at it Would you agree that number  
19 two is a lighter complexion than Mr Collins?

20 A He might be slighter lighter, yes, sir

21 Q Let me ask you this It's my understanding that  
22 there was another lineup in this case that was shown to  
23 Ms Collins, the wife of Steven Collins?

24 A Okay

25 Q Have you seen that other lineup?



1 A Have I seen that lineup?

2 Q Yes, sir

3 A Just in the case file, yes, sir

4 Q Do you know who put that lineup together?

5 A I'm not sure, possibly, Investigator Silvaggio But  
6 I don't know for sure

7 Q Okay Let me ask you something, on this lineup here,  
8 there's some markings down underneath the neck of the  
9 Defendant, do you see that?

10 A Yes, sir

11 Q Why on earth would somebody put that there?

12 A You'll have to ask Investigator Silvaggio I don't  
13 know

14 Q So you don't have any recollection or any knowledge  
15 or any reason why someone would mark out the bottom of the  
16 neck of the Defendant?

17 A Not than other to maybe try to cover up the clothes  
18 or something

19 Q And why would someone want to cover up the clothes?

20 A I don't know, sir

21 Q Do you think the clothing could be suggestive to the  
22 person making the identification?

23 A I don't see how, no

24 Q Okay What kind of jumpsuits do they wear down at  
25 the detention center?

1 A Various, red, green, orange, striped ones

2 Q Do most inmates down there wear the orange jumpsuits?

3 A It seems to be the most popular, yes, sir

4 Q All right I'm going to -- just a second Did you  
5 take the description from Ms Giles of who the assailant  
6 was?

7 A At the time of the robbery, no, sir

8 Q Did you ever take a description from her?

9 A No

10 MR GIBSON Just a second, please

11 BY MR GIBSON

12 Q Did you ever have any conversations with Mr Collins  
13 prior to him giving any kind of confession?

14 A It does seem like I spoke to him briefly downstairs  
15 in the muster room where he was at the time, yes, sir

16 Q Do you remember what you said to him?

17 A No, sir

18 MR GIBSON Okay Nothing further

19 MR MOYER I have no other questions, Your Honor

20 THE COURT All right Thank you

21 You can step down

22 MR MOYER And I have no other witnesses for  
23 purposes of this hearing

24 MR GIBSON Your Honor, I call Investigator  
25 Silvaggio

1 THE COURT All right You're still under oath  
2 again

3 DIRECT EXAMINATION

4 BY MR GIBSON

5 Q Investigator Silvaggio, I want to show you this same  
6 picture that I showed Mr Fortner

7 A Yes, sir

8 Q Have you ever seen that lineup, the one at the top,  
9 the photo lineup -- that photo lineup?

10 A Yes, sir, in fact, I made this

11 Q You put this lineup together?

12 A I put the top one together, yes

13 Q I see where -- are you the one who marked out the  
14 clothing of the individuals?

15 A Yes, sir

16 Q Why did you do that?

17 A I mark out the clothing because not everybody in the  
18 photograph has consistent clothing on Some may have an  
19 inmate jumpsuit on, some might have civilian clothing So  
20 I mark it out so everybody is the same

21 Q And is that to make sure the witness, who's making  
22 the identification, is not unfairly suggested one person  
23 over another?

24 A That's one reason, yes

25 MR GIBSON Okay Thank you

1 I'd like to admit this as Defendant's Exhibit No 1

2 THE COURT For purposes of the hearing only

3 MR MOYER No objection

4 (WHEREUPON, Defendant's Exhibit No 1 was marked for  
5 identification and admitted into evidence )

6 MR GIBSON Nothing further

7 THE COURT Do you want to cross him?

8 MR MOYER No questions

9 THE COURT All right You may step down  
10 Anything else?

11 MR GIBSON We'd move to suppress the photo lineup,  
12 Your Honor, on the basis that it was unfairly suggestive  
13 in the lineup There are only two individuals that have  
14 on inmate jumpsuits, orange inmate jumpsuits And of  
15 those two individuals, only one is dark-skinned

16 Investigator Silvaggio has testified on the stand  
17 that one of the reasons that he marks those things out is  
18 to make sure that witnesses aren't unfairly -- that one  
19 inmate or one suspect over another is not unfairly  
20 suggested to the witness Clearly, under these  
21 circumstances, given that lineup, it can't be viable and  
22 legitimate enough to go forward

23 MR MOYER And, Your Honor, my response is, as Your  
24 Honor knows, the standard is whether or not the procedure  
25 was impermissibly suggested that gives rise to a very

1 substantial likelihood of misidentification Your Honor,  
2 I just -- there are a multitude of cases where minor  
3 differences in individuals in a lineup has not been deemed  
4 to give rise -- to give rise to a lineup being thrown out

5 And I just looked, for example, State v Stewart,  
6 which is 272 SE2d 628 In that situation, the Defendant  
7 was the only one in the photographic lineup who had a  
8 beard, although four of the other five did support some  
9 kind of facial hair of some kind So that person could  
10 have stood out

11 Your Honor, in this one, there are some differences  
12 in clothing Someone also could say, well, the person  
13 with the blue shirt stood out or the person who had no  
14 shirt showing stood out So just because there were two  
15 that had some type of orangish clothing showing in that  
16 lineup, certainly, doesn't make it stand out any more than  
17 the others

18 Ms Giles was very clear that when she made that --  
19 when she picked the Defendant out of the lineup she did so  
20 because of the facial expression She was cross-examined  
21 pretty hard on that point And she stuck to her guns and  
22 said that it was his facial expression and his eyes that  
23 caused her to pick him out of the lineup She said she's  
24 not even sure if she registered the color of the shirt

25 So, Your Honor, I think she's very clearly picked

1 this Defendant out of the lineup based on his appearance  
2 and not for any other reason And it, certainly, doesn't  
3 give rise to the very high standard for photo lineups

4 THE COURT All right Taken into consideration --  
5 I'm sorry

6 Yes, Mr Gibson

7 MR GIBSON Is it in my interest to stand up?

8 THE COURT I don't know

9 MR GIBSON Let me stand up just in case Your  
10 Honor, I mean, I'm not talking about minor differences in  
11 photos I'm not talking about somebody having a beard and  
12 somebody not having one I'm talking about somebody, my  
13 client, in an orange jumpsuit, which the witness, the one  
14 that made the identification stated that she knows that  
15 people in the detention center wear orange jumpsuits

16 Now, I can't put my finger on it right now, but I'll  
17 find it during the break But I know there's a case out  
18 there that says when lineups are done where individuals  
19 have like -- you know, the information where you book them  
20 in that shows it's a mug shot photo, I know those lineups  
21 have been thrown out And there's cases that say that  
22 I'm talking about a lineup that suggests that my client  
23 has been -- is a criminal That's my major objection to  
24 this lineup

25 MR MOYER And if I could just respond Very

1 clearly, he's making a leap that this witness never said  
2 This witness never said that she looked at that lineup and  
3 she said, oh, I thought he was in jail She never said  
4 that

5 THE COURT Okay

6 MR MOYER She never said that I mean, he said to  
7 her, Do you know that people in jail sometimes have orange  
8 jumpsuits? She said, yes

9 THE COURT Okay

10 MR MOYER He never asked her if she thought he --

11 THE COURT Okay There is a -- I've looked at the  
12 photo lineup And there are two individuals who you can  
13 just see the very top of a yellow collar On a couple  
14 other ones, you can see the top of a green collar If  
15 you're exposed to persons incarcerated at our detention  
16 center, you would know that they wear jumpsuits of those  
17 types But in and of themselves, I don't -- it's not  
18 clear that that's what they're wearing

19 In any event, taking into consideration the witness'  
20 opportunity to view Mr Stevens [sic] at the time of the  
21 event, her degree of attention that she paid, the accuracy  
22 of her prior description of Mr Stevens, her level of  
23 certainty at the confrontation, that is the photo lineup,  
24 and the time between the actual event and the  
25 confrontation or the lineup, I'm going to find that the

1 out-of-court identification process was not unduly  
2 suggestive to the point where it should be thrown out  
3 And even if it was, the identification made by the witness  
4 was so reliable that there really isn't a substantial  
5 likelihood of misidentification

6 I do have some concerns about the admission of this  
7 lineup in evidence in front of a jury, though We're not  
8 going to put his character into issue, so -- and that  
9 hasn't been raised at this point And we're not going to  
10 raise it at this point But if you need to raise it  
11 later, we will

12 I want to give everybody an opportunity to get  
13 something to eat It's five till 2 00 The jury is  
14 coming back in 25 minutes So make sure Mr Stevens gets  
15 something to eat

16 Can we do that?

17 THE COURTROOM DEPUTY Yes

18 THE COURT All right Everybody else just be back  
19 about 2 20 or 2 30, as quickly as you can

20 (WHEREUPON, a lunch break was taken )

21 THE COURT Are you ready to go?

22 MR GIBSON Yes, sir

23 MR MOYER Yes, sir

24 THE COURT The foreperson is Jonathan Sanderson

25 Bring the jury in



1 (WHEREUPON, the jury came into open court at  
2 approximately 2 36 p m )

3 THE COURT All right Mr Foreman, thank you for  
4 agreeing to serve, Mr Sanderson I appreciate that

5 Ladies and gentlemen of the jury, welcome back I'm  
6 sorry we're a little bit behind The hearing took a  
7 little bit longer So we were a little pressed at lunch  
8 But I think everybody has eaten and everybody is ready to  
9 go

10 At this time, I'm going to turn it over to the  
11 attorneys for their brief opening statements

12 OPENING STATEMENT

13 MR MOYER Thank you, Your Honor May it please the  
14 Court?

15 Mr Foreman, ladies and gentlemen of the jury, again,  
16 my name is Mark Moyer I'm an Assistant Solicitor here in  
17 Greenville County What our job to do is we represent the  
18 State in criminal prosecutions And that's what we're  
19 doing here today

20 This Defendant, as you've heard, has been charged  
21 with two criminal offenses that are before you today,  
22 armed robbery and possession of a weapon during the  
23 commission of a violent crime Let me take just a minute  
24 first to talk to you about those charges They're pretty  
25 self-explanatory

1           Let's start off with armed robbery   What is an armed  
2 robbery? Well, it is, actually, a robbery that is  
3 committed while someone is in possession of a weapon  
4 Just to give you an example, let's say, I left my wallet  
5 out here on the table and someone came up and -- I walked  
6 away and someone came up and stole it   That would be a  
7 larceny   That's one kind of stealing   If it were for  
8 sale in a store somewhere and someone stole it, that would  
9 be shoplifting   But if it is taken from my person or my  
10 presence by force or intimidation by somebody, then it is  
11 a robbery   That's what makes it a robbery   It's taking  
12 goods or money from the person or presence of another  
13 through force or intimidation

14           Now, what would make that armed robbery is if the  
15 person is armed with a weapon   Well, what kind of weapon?  
16 Well, the statute tells us that it can be a pistol, a  
17 dirk, a dirk is like a dagger, a sling shot, metal  
18 knuckles, a razor, or other deadly weapon   So it leaves  
19 it broad   It can be one of those five things or it can be  
20 any instrument which is capable of causing death or  
21 serious bodily injury   So if somebody does a robbery  
22 while armed with that weapon, it's armed robbery

23           What is the second charge? Possession of a weapon  
24 during a violent crime   Again, it's very straightforward  
25 Under the law, if somebody commits a violent crime, and an

1 armed robbery is considered a violent crime, while that  
2 person has either a pistol or a knife, then the person is  
3 guilty of that crime as well And knife is defined -- it  
4 is defined in statute as any instrument or tool with a  
5 sharp cutting blade, whether or not it even has a handle  
6 on it But if it is something that is capable of being  
7 able to be used to inflict a cut, or a slash, or a wound,  
8 then it's considered a knife

9 So the law is pretty straightforward The facts  
10 you're going to hear are pretty straightforward as well  
11 The case -- you heard the witness list read to you a  
12 little while ago There were probably 16 names We  
13 probably won't have to call all of them, but it will  
14 probably -- I suspect it will go into about the middle of  
15 the day tomorrow

16 The testimony you're going to hear, ladies and  
17 gentlemen, in this case is that this happened at a  
18 convenience store, a BP convenience store, on Anderson  
19 Road in west Greenville At Anderson Road, the  
20 intersection with Washington -- actually, Washington is  
21 one way and the other way is Farris You go down Farris  
22 and it takes you to the hospital It happened right there  
23 at a BP at that intersection

24 It was October the 13th of 2005, last year It was  
25 in the early morning hours The clerk, who is Dianne

1       Giles, who's going to testify to you in just a moment, she  
2       was working there    She was working alone    There are no  
3       customers in the store    It's about 5 00 in the morning,  
4       probably the least time -- right before daybreak, right  
5       before the day is getting going, and probably about the  
6       least time you would expect something like this to happen

7               And you'll hear that the Defendant arrived in a  
8       pickup truck    And he arrives in a very distinctive  
9       looking pickup truck, an older model in very bad  
10      condition, a lot of rust    And you're going to hear that  
11      he then enters the store

12             And after a very brief conversation with the clerk,  
13      he walks behind the counter and he pulls out a blade that  
14      looks like a knife    We later find out it's a box cutter  
15      with a very long blade on it    It's sharp as a razor    He  
16      pulled out that blade and he demands the money from the  
17      cash register from the clerk    Of course, she obeys    And  
18      the Defendant -- you will hear testimony that the  
19      Defendant tells her what to do    He tells her to open the  
20      cash register and he tells her to take out the money and  
21      hand it to him    And, of course, she does it    But that  
22      wasn't it    The incident goes on longer

23             The Defendant -- you will hear testimony that the  
24      Defendant then tells the victim that he wants the  
25      videotape, that he can't be caught on tape    He can't be

1       seen   And he asks her where it is   Well, you're going to  
2       hear testimony that Ms   Giles points out that it's in the  
3       office on the other side of the store   And you're going  
4       to hear testimony that the Defendant says, well, let's go  
5       get it

6               And he takes her across that store, just him and the  
7       knife across that store into the back room   And you're  
8       going to hear when they get to the back room, she points  
9       out where the video player is, that it's in a cabinet with  
10      a very flimsy door and a very flimsy padlock on it   And  
11      you're going to hear testimony that the Defendant then  
12      just yanks the doors off the cabinet   And when he's  
13      unable to get the videotape out of the video machine that  
14      he grabs the entire video machine itself and rips it from  
15      the wall and then leaves the store

16             You're going to hear testimony that the police get  
17      there very quickly, that Ms   Giles gives out a description  
18      of the man who robbed her and the truck   And that  
19      information is put out on the radio   And you will hear  
20      testimony that an officer hears the description of that  
21      truck and recognizes it   He recognized that he had seen  
22      it earlier that night and that he had gotten the tag  
23      number and gotten information about the truck   And he  
24      puts that information out on the radio

25             And then you will hear testimony that officers spot

1 the truck And you'll hear testimony that a chase ensues  
2 all through west Greenville, finally, ending on Sixth  
3 Avenue -- Sixth Street and Fourth Avenue in the Judson  
4 area of Greenville where the Defendant pulls over the  
5 vehicle without -- before the vehicle is even stopped,  
6 jumps out, the vehicle rolls down a hill into a yard into  
7 a tree And you will hear that he gets out and he runs

8 And the testimony is going to be that he goes a few  
9 blocks away to a friend's house And it's now about 6 00  
10 in the morning And the testimony is going to be that he  
11 knocks on her door and wakes her up and tells her that his  
12 truck has been stolen And it had been stolen at this  
13 location a ways away And you're going to hear testimony  
14 that he asks to call the police And that he calls 911  
15 and says that his truck has been stolen and gives an  
16 address as to where he lives giving his mother's address  
17 And you're going to hear then that he wants a new shirt  
18 And he said he doesn't care if it's clean or dirty, but he  
19 would like a new shirt And his friend gives him this  
20 shirt

21 And you're going to hear testimony that she then  
22 agrees to take him over to his mother's house to talk to  
23 the police about this alleged stolen vehicle And you're  
24 going to hear that they're going down Anderson Road and  
25 the friend says, well, I'm going to stop here at the BP to

1       get some gas    And you're going to hear testimony that he  
2       then says, well, why don't you just let me out here   And  
3       you're going to hear that she pulls over and he gets out  
4       of the truck and runs across the road, almost across the  
5       road from the BP to a trailer park where this Defendant  
6       lived with his wife

7               And you're going to hear that he wakes her up and  
8       tells her also that his truck has been stolen   And you're  
9       going to hear testimony that he then gets on the phone  
10      again, calls the police, arranges to meet the police at  
11      his mother's house on Staunton Bridge Road miles away  
12      And you're going to hear that his wife gets in the car and  
13      takes him over there   And the police are waiting   And  
14      you're going to hear testimony that the Defendant is  
15      arrested   And you're going to hear testimony that he is  
16      taken in and that he is spoken to by the police

17             You're going to hear testimony that a photo lineup  
18      was conducted with the clerk, and that the clerk picks  
19      this Defendant out of the photo lineup   You're going to  
20      hear testimony that the Defendant talks to the police,  
21      that he confessed to doing the crime, that he tells the  
22      officers that he owed money to somebody and for that  
23      reason, he robbed the store and robbed Ms   Giles

24             Thank you

25             THE COURT   Mr   Gibson

1 MR GIBSON Ladies and gentlemen, as I told you  
2 before, my name is Ken Gibson And I have the pleasure  
3 today of representing Steven Collins

4 Ladies and gentlemen, just a little bit for you about  
5 Steve He's 38 years old He's lived his whole life  
6 here He lives with his mother, Lula Collins Cooper He,  
7 currently, works at Huddle House And he also has a  
8 second job at Goglanian Bakery

9 One more thing, Steven Collins didn't do what  
10 Mr Moyer says he did Now, thank God, just because  
11 Mr Moyer says it's so, Mr Moyer can't just come in here  
12 and put Mr Collins in jail. He has to do something,  
13 which if the 12 of you do your job, is extraordinarily  
14 difficult to do He has to prove that he did it beyond a  
15 reasonable doubt The Judge told you before about beyond  
16 a reasonable doubt

17 Now, there's only one thing I'm going to ask of you  
18 at this point, listen to the evidence, pick through it,  
19 and make him do his job by you doing yours

20 Thank you

21 THE COURT All right Mr Moyer

22 MR MOYER The State would call Dianne Giles to the  
23 stand

24 THE CLERK Place your left hand on the Bible and  
25 raise your right hand



1 WHEREUPON,

2 DIANNE BAVELLE GILES,

3 after first having been duly sworn, testified as follows

4 THE CLERK State your name for the record, please

5 THE WITNESS Dianne Bavelle Giles

6 THE CLERK Thank you

7 Be seated

8 DIRECT EXAMINATION

9 BY MR MOYER

10 Q Ms Giles, how old are you?

11 A I'm 49

12 Q Okay And you're a mother?

13 A How old is she?

14 Q You're a mother?

15 A Oh, I'm sorry Yes, I am

16 Q Okay Of two boys?

17 A Yes

18 Q How old are your sons?

19 A 18 and 19

20 Q Okay And where are you employed? Where do you work  
21 right now?

22 A I work at the Boys Home of the South at this time

23 Q What is the Boys Home of the South?

24 A It's a residence home for boys who have been  
25 separated from their families

1 Q Now, where did you work on October the 13th of 2005?

2 A At the BP at the corner of Anderson and Washington

3 Q Let me ask you to move up a little closer to the  
4 microphone to make sure everyone can hear you real well

5 A Sure

6 Q The BP at what intersection?

7 A The corner of Anderson and Washington

8 Q Is that in Greenville County?

9 A Yes, it is

10 Q I want to show you a couple of pictures Let me  
11 start off with State's Exhibit No 1 Have you seen that  
12 photograph before?

13 A Yes, I have

14 Q Okay And what is shown in that photograph?

15 A It's the intersection where Anderson is crossed by  
16 Washington on the right-hand side, and Faris is on the  
17 left -- I mean, where they meet

18 Q Okay Does it show the BP station where you worked?

19 A Yes, it does

20 Q Okay Is that an accurate representation of the  
21 layout of the roads and of the location where you worked  
22 on October 13th?

23 A Yes, it is

24 Q Okay And let me show you State's Exhibit No 2,  
25 also And can you recognize -- have you seen that picture

1 before?

2 A Yes, I have

3 Q Okay And what is that a picture of?

4 A (There was no response )

5 Q Is that an aerial map?

6 A It is an aerial map, yes

7 Q Can you see Anderson Road on there?

8 A Yes

9 Q Does it show the intersection of Washington where the  
10 BP was?

11 A Yes, it does

12 Q And does it show a broader perspective of West  
13 Greenville and that area?

14 A Yes, it does

15 Q Is it an accurate representation of that area?

16 A Yes, it is

17 MR MOYER Your Honor, at this time, I would move to  
18 have State's Exhibit Nos 1 and 2 moved into evidence

19 MR GIBSON Your Honor, I object based on lack of  
20 foundation I don't think it's been established that  
21 she's ever personally seen either of these sites from that  
22 type of view

23 So, accordingly, I don't think she has the expertise  
24 to say that's an accurate description

25 MR MOYER I think she's --

1 THE COURT I'm going to overrule the objection

2 MR GIBSON Thank you, Your Honor

3 (WHEREUPON, State's Exhibit Nos 1 and 2 were

4 admitted into evidence )

5 BY MR MOYER

6 Q This is State's Exhibit No 1 Just for purposes of  
7 the jury, if you would, tell us -- can you tell what road  
8 this is right here that this laser pointer is on?

9 A Me?

10 Q Yes

11 A That's Anderson Road

12 Q And this road here?

13 A That's Washington

14 Q And down here?

15 A That's West Faris

16 Q Okay And what is this that I'm circling the laser  
17 pointer around?

18 A That's the BP station that I used to work at

19 Q Okay And do you know what this building is a little  
20 farther on up the road on Anderson Road?

21 A That should be -- it's either Auto Zone or Auto -- I  
22 can't ever remember which name it is It's an auto parts  
23 store

24 Q Okay Let me show you now State's Exhibit No 2

25 Once again, it may be a little hard to see, but can you

1 tell what this road is coming down this way?

2 A That is still Anderson Road

3 Q And then this road here?

4 A Is Washington, and that is Paris

5 Q And is this the location where you worked at the BP?

6 A Yes, that is the BP

7 Q All right How long had you worked there on October  
8 the 13th of 2005?

9 A I'm not sure I had just come out of training, so it  
10 was less than a month

11 Q Okay What was your position?

12 A Assistant manager

13 Q And what shift were you working?

14 A Third

15 Q Did you work the night of October the 12th and 13th  
16 of 2005?

17 A Yes, I did

18 Q Were you working alone?

19 A Yes, I was

20 Q Let me show you State's Exhibit No 3 Can you  
21 recognize what is shown in that photograph?

22 A Yes It is the BP station showing the door facing  
23 Anderson

24 Q Okay Is that an accurate representation of the way  
25 the BP station looked on October the 13th, 2005?

1 A Yes, it is

2 Q Okay And does it fairly and accurately portray that  
3 BP station then?

4 A Yes, it does

5 MR MOYER Your Honor, I move to have State's  
6 Exhibit No 3 admitted into evidence

7 MR GIBSON No objection, Your Honor

8 THE COURT Okay Without objection

9 (WHEREUPON, State's Exhibit No 3 was admitted into  
10 evidence )

11 BY MR MOYER

12 Q Just real quick, can you just tell the jury what it  
13 is we're seeing in State's Exhibit No 3?

14 A That is the side of the BP where one of the doors is  
15 It's the side facing Anderson Road And what you're  
16 seeing is police tape blocking off the door that the  
17 Defendant came through

18 Q Okay Now, how many doors are there to this gas  
19 station?

20 A There are two, one on each side

21 Q Okay Is this one right here?

22 A Yes, there is

23 Q And the other one is on the other side of the store?

24 A Yes, it is

25 Q Okay Now, what is this that the laser pointer is on

1 right now?

2 A The canopy over the pumps

3 Q And does that extend over both sides?

4 A Yes, it does

5 Q Okay Now, around what time was it that this  
6 incident happened to you?

7 A Around ten after 5 00

8 Q Now, did you notice any vehicles or anything prior to  
9 the person coming into the store?

10 A Yes, I did

11 Q And what did you notice?

12 A I noticed a vehicle pulled down just in eyesight of  
13 the door with its lights on idling They sat there  
14 enough -- long enough for me to -- for it to catch my eye  
15 and think that's kind of odd because no one came to the  
16 window

17 Q And what did it look like?

18 A I couldn't see it until it passed the door I could  
19 tell it was a truck by the way the lights sat And I  
20 could see the outline of the roof of the truck As it  
21 went past, it was a light-colored -- it appeared to be a  
22 cream-colored truck with rust And I saw orange on it I  
23 couldn't say exactly where, but I did see orange in the  
24 color, also

25 Q Did it look like a pretty new truck, or what about

1 the age?

2 A It looked like an older truck

3 Q All right And so when the truck moved, where did it  
4 end up going?

5 A It pulled to the other end of the store And there  
6 were parking spaces behind the store where I cannot --  
7 it's not in eye view So it pulled in one of the parking  
8 spaces where all I could see was the back corner of the  
9 truck

10 Q Just real quickly, for purposes of the jury, let me  
11 see if I can ask you to use this laser pointer here See  
12 that right there?

13 A Okay

14 Q If you could, point out for the jury with that laser  
15 pointer where it was that the truck was when you first saw  
16 it?

17 A When I first saw it, it was right in this area

18 Q Okay.

19 A And when it parked, it was down here

20 Q Okay Thank you

21 A You're welcome

22 Q Now, was there parking in front of the store at the  
23 time?

24 A Yes, there was

25 Q In front of the entrance?



1 A Yes

2 Q When this happened were there any other customers  
3 there?

4 A No, there weren't

5 Q Was there anyone else but you there at the time?

6 A No, there was not

7 Q Could you see inside the truck?

8 A No

9 Q Could you tell how many people were in it?

10 A No, I couldn't

11 Q After the truck parked, did anyone come in the store?

12 A Yes

13 Q And did you see him -- from what direction he came  
14 when he came in the store?

15 A He came around the corner from where the truck was  
16 parked

17 Q And what did he do? Did he enter immediately into  
18 the store or what did he do when he came in?

19 A No He came to the night window

20 Q And what's a night window?

21 A We have a window on either side of the store that  
22 third shift customers have to go to that window to make  
23 the purchases They give the money to us and we get what  
24 they want and put the merchandise in and give them their  
25 change

1 Q And what did he do when he came to that night window?

2 A He stood there At which point, I let him know that  
3 the store was open, because it was supposed to be open at  
4 that point So he came down to the door

5 Q Did he enter the store?

6 A Yes, he did

7 Q What did he do when he entered the store?

8 A He made a comment about the other door not being  
9 unlocked And I explained that we do not unlock that door  
10 until it was full daylight

11 Q Where did he go in the store?

12 A He went to the counter He asked me about the price  
13 of Newport cigarettes At that point, I was behind the  
14 counter when he asked me I told him the price He laid  
15 \$2 down on the counter and started walking toward the  
16 opening that lets you go behind the counter

17 Q Okay What did you do when you saw him walking down  
18 the counter?

19 A I paced along with him to keep an eye Because  
20 sometimes customers will try to come back thinking they  
21 can go to merchandise just at that opening in the back I  
22 let him know that he could not come back there

23 Q As far as you know, had you ever met this man or seen  
24 him before?

25 A No

1 Q What did he do when he went down to the end of the  
2 counter?

3 A When he got to the end of the counter, he started  
4 turning in, so I sped up a little and started saying, you  
5 can't come back here When he came fully around the  
6 corner, he pulled out a knife I backed up with my hands  
7 raised He told me, just stay calm, I'm not going to hurt  
8 you

9 Q Now, what did the knife look like?

10 A It was silver It was long and thin It appeared  
11 rectangular, scared off at the end

12 Q Okay Now, after he said that to you about -- when  
13 he pulled the knife and said that to you, what did you do?

14 A I waited for him to tell me what to do next

15 Q And what did he tell you to do next?

16 A He told me to open the register, to take out the  
17 bills, hand it to him, and to close it back

18 Q Did you do as he said?

19 A Yes, I did

20 Q Did you take money out of the register?

21 A Yes, I did

22 Q Do you know how much money was in there?

23 A I don't know the exact amount I guessed it was  
24 around \$200

25 Q And what denominations was the money?

1 A \$10's, \$5's, and \$1's

2 Q Were there stacks of each of these?

3 A Stacks of \$10's, stacks of 5's, stacks of 1's

4 Q Now, what was going through your mind when you were  
5 giving him the money?

6 A That I didn't want to die

7 Q Did he touch the cash register or the cash drawer?

8 A No, he did not

9 Q What did he do after you gave him the money?

10 A He asked me where the tape was He said that he  
11 could not be seen on tape He wanted the tape

12 Q And what did you tell him when he said that?

13 A I told him it was in the office And he asked me  
14 where the office was And I pointed it out to him

15 Q And where was the office in relation to where you  
16 were?

17 A Along the same wall as the door he came in at the  
18 very back of the store

19 Q Okay So to get there, did you have to go through  
20 the actual store to get there?

21 A Yes

22 Q Okay Well, after you told him where the office was,  
23 what was his response? What did he do?

24 A He turned as if he was going into the office And  
25 then he stopped and told me I had to go in ahead of him

1 Q Did you do what he said?

2 A Yes, I did

3 Q What was going through your mind at this point?

4 A I was afraid I was going to get my throat slit

5 Q So where did you -- did you go first or did he go  
6 first?

7 A I went first He followed after me

8 Q And did you go back to the office?

9 A Yes, I did

10 Q When you got to the office, who opened the door?

11 A He told me to open the door and I did

12 Q Okay And when you went into this back office, what  
13 happened?

14 A He followed me in and asked me where the VCR was I  
15 showed him the cabinet it was in He asked me to unlock  
16 it I told him I didn't have a key He said, that can be  
17 fixed And he grabbed the handle and yanked until one of  
18 the doors came off the hinges

19 Q When he did that, did he see the VCR?

20 A Yes

21 Q And what did he do then?

22 A He told me to get the tape out And I couldn't get  
23 it out He tried to get it out and he couldn't get it  
24 out So when he could not remove the tape, he jerked the  
25 VCR out of the wall And he was between me and the door

1 He went back toward the door and said, don't call the  
2 police And he went out of the office

3 Q Okay Let me show you State's Exhibit Nos 4, 5, and  
4 6 I'll start off with State's Exhibit No 4 Can you  
5 tell the jury what is shown in that photograph?

6 A The door to the office

7 Q Okay Is that an accurate representation of the door  
8 to this office in the BP gas station?

9 A Yes, it is

10 Q Let me show you State's Exhibit No 5 What is shown  
11 in that photograph?

12 A The inside of the office

13 Q Okay Is that an accurate representation of the  
14 inside of that office?

15 A Yes, it is

16 Q And State's Exhibit No 6?

17 A It is the cabinet where the VCR was

18 Q And, once again, is that an accurate representation  
19 of the cabinet where the VCR was on October 13th of  
20 2005?

21 A Yes, it is

22 MR MOYER At this time, I'd move to have State's  
23 Exhibit Nos 4, 5, and 6 admitted into evidence

24 MR GIBSON No objection, Your Honor

25 THE COURT All right

1 (WHEREUPON, State's Exhibit Nos 4, 5, and 6 were  
2 admitted into evidence )

3 BY MR MOYER

4 Q Let me ask you again, ma'am, to use the laser  
5 pointer It's that red button right there

6 A Okay

7 Q All right If you can, just tell the jury, in  
8 State's Exhibit No 4, what is shown in that photograph?

9 A Right here is the wall that fronts Anderson Road  
10 This is the door to the office, which is at the end of the  
11 store

12 Q Okay And State's Exhibit No 5, what is shown in  
13 this photograph?

14 A This is the inside of the office that runs  
15 perpendicular to Anderson

16 Q Okay Can you see the area where the cabinet was  
17 where the VCR was?

18 A The cabinet would be around in this area, either  
19 right before or right up above us I think it's before  
20 you get to this point right here

21 Q And then State's Exhibit No 6?

22 A This is the cabinet that the VCR was in He grabbed  
23 this handle and jerked until it came off The door came  
24 off the hinges right there

25 Q Okay And where was the VCR? Where was it before?

1 A The VCR was inside here

2 Q Okay Now, you mentioned that he told you not to  
3 call the police and left What did you do when he said  
4 that to you?

5 A I waited long enough to make sure he wasn't standing  
6 outside the door, and then I went out of the office to see  
7 if he was leaving the store I watched him go out of the  
8 door And when he was far enough away that he couldn't  
9 come back in before I could lock it, I locked the door  
10 Then I called the police and reported the incident while I  
11 looked out the window to see which way he went

12 Q Now, could you tell which way he went when he left  
13 the store?

14 A I could see every direction but going up Anderson  
15 toward White Horse Road I could see out Faris Road, out  
16 Washington Avenue, and down Anderson going back toward  
17 downtown

18 Q And, actually, when you saw him walk out of the  
19 store, could you tell which way he walked when he left the  
20 store?

21 A Yes He went to the direction where the truck was  
22 parked

23 Q All right Now, did police officers arrive there  
24 quickly?

25 A Yes, they did



1 Q And did you tell an officer what had happened?

2 A Yes, I did

3 Q Did you give a description of him?

4 A Yes, I did

5 Q And what was the description you gave?

6 A That he was a black male, possibly 5'10", that he was  
7 taller than I was

8 Q And you are how tall?

9 A 5'8" That he weighed approximately 150 to 175  
10 pounds He had on a light-colored shirt with a design on  
11 the front, I wasn't sure what, and blue jean shorts I  
12 wasn't sure about his shoes I thought they were dark  
13 That he had a broad face and a short afro that was  
14 thinning on the top And that he appeared to be maybe in  
15 his 40's, early 40's

16 Q Okay

17 A I also said he was well spoken He spoke as if he  
18 had an education

19 Q Now, did you tell the officer about the vehicle you  
20 had seen?

21 A Yes, I did

22 Q Did you describe it?

23 A Yes I said it was an older model pickup truck It  
24 appeared to be cream-colored with rust and that it might  
25 have had some orange to it

1 Q How were you feeling at this time?

2 A Very shook up, very stressed

3 Q Had anything like this ever happened to you before?

4 A No

5 Q Now, while the officers were there, did you have a  
6 conversation with any customers?

7 A Yes, I did

8 Q Okay And do you know that person's name?

9 A Helen something I don't remember

10 Q Did you know her at the time?

11 A No, I did not

12 Q Now, during that conversation with her, did you tell  
13 her what had happened to you?

14 A Yes, I did

15 Q All right And did you talk to her about what the  
16 robber looked like?

17 A Yes, I did

18 Q And did you tell her what the truck looked like?

19 A Yes, I did

20 Q And what caused your attention to be focused on this  
21 customer?

22 A The customer was telling my manager that her friend  
23 had gotten robbed at the BP And he said that he wanted  
24 me to call the police and I wouldn't, and that I gave him  
25 75 cents and told him to go to the pay phone and call

1 And since I knew that had not happened, but somebody had  
2 robbed me that was driving a truck, I went and questioned  
3 her about it

4 Q And while you spoke to her, did she give a  
5 description of the person that -- did she give a  
6 description of the person that she was talking about who  
7 she had given a ride to?

8 A Yes, she did

9 MR GIBSON Objection, hearsay

10 MR MOYER It's not offered for the truth of the  
11 matter asserted And it goes to identity

12 THE COURT All right Don't -- go ahead You can  
13 go with that

14 I'm going to overrule that objection

15 BY MR MOYER

16 Q Did she --

17 A Yes, she did

18 Q And did that description that she gave you match the  
19 description of the person that had robbed you?

20 A Yes

21 Q Now, when you had that conversation, was -- did you  
22 talk to the officers about what you had just heard?

23 A Yes, I did

24 Q And was the officer speaking to that customer?

25 A Yes The officer did speak to that customer

1 Q Did he touch many things while he was in the store?

2 A No

3 Q Okay What do you remember him touching?

4 A The \$2 that he left on the counter, the cabinet door  
5 he jerked open, and the store -- the door to the store as  
6 he went out

7 Q During this incident, did you have anything on your  
8 person that indicated who you are?

9 A My name tag

10 Q Okay Did it have your full name or what did it have  
11 on it?

12 A It just said "Dianne "

13 Q Now, were you then taken anywhere or did you just  
14 stay at the store the whole time and talk to the police?

15 A I went home because I had worked third shift And  
16 they called and said they wanted me to do a police lineup,  
17 if I was able And I said, yes And so I went and met  
18 them down at the law enforcement center

19 Q Okay And did you meet with an investigator?

20 A Yes, I did

21 Q This was the same day, though?

22 A Yes, it was

23 Q Where did this take place?

24 A At the investigator's desk in the law enforcement  
25 center

1 Q Now, let me show you State's Exhibit No 19 and ask  
2 you to take a look at it And tell the jury, can you  
3 recognize what I've just handed you?

4 A It's the photo lineup that I was shown when I went to  
5 the law enforcement center

6 Q Okay And how do you recognize it?

7 A I signed it on the back I printed my name I put  
8 the date and the time I did this I also circled the  
9 person I identified and initialed that photo

10 MR MOYER Your Honor, at this time --

11 BY MR MOYER

12 Q Is that an accurate -- I mean, is that -- are there  
13 any changes or additions that you know of that have been  
14 made to that lineup since you've seen it?

15 A No

16 Q And you recognize it as the lineup that you were  
17 shown on October the 13th of 2005?

18 A Yes

19 MR MOYER Your Honor, at this time, I move to have  
20 this -- State's Exhibit No 19 moved into evidence

21 MR GIBSON Objection, Your Honor, based on the  
22 grounds we discussed previously

23 THE COURT Y'all come up here

24 (WHEREUPON, a bench conference was held )

25 MR MOYER This has already been marked as State's

1 Exhibit No 19 for ID I'll withdraw my motion to enter  
2 it at this time

3 THE COURT Okay

4 BY MR MOYER

5 Q Let me ask you, though -- it's not in evidence, so  
6 don't hold it up to the jury Just take a look at it,  
7 though You already mentioned that's the photo lineup  
8 that you had been shown?

9 A Yes

10 Q Now, when you -- when the investigator showed you  
11 that lineup, did he exert any pressure on you to pick  
12 somebody out of that lineup?

13 A No

14 Q Did the detective or anyone present suggest to you in  
15 any way which person to pick out or influence your  
16 decision at all?

17 A No

18 Q Did you ever feel any pressure like you had to pick  
19 somebody out?

20 A No

21 Q All right Now, when you were shown that  
22 photographic lineup, did you see the person who had robbed  
23 you displayed in that lineup?

24 A Yes

25 Q How many pictures are in the lineup?

1 A Six

2 Q You looked it over closely?

3 A Yes, I did

4 Q You looked at each picture?

5 A Yes, I did

6 Q Did you tell the detective which photograph you had  
7 picked?

8 A Yes, I did

9 Q And which photograph was it?

10 A The one at the bottom in the middle labeled #5

11 Q Okay Now, did you then add any marks to that photo  
12 lineup to indicate which lineup -- which photograph you  
13 had chosen?

14 A I drew a circle around the photo and put my initials  
15 on there

16 Q Okay And you already mentioned that you put some  
17 information on the back of that lineup?

18 A Yes

19 Q And what information did you put on the back of that  
20 lineup?

21 A I signed my name I printed my name I put the date  
22 and the time that I identified it

23 Q Okay Was there any doubt in your mind that that was  
24 the person that had robbed you?

25 A No, there was not And that's because I am an art

1 major I specialize in people and landscapes So I was  
2 looking at the features, the placement of the features,  
3 and the expression

4 Q Okay So it was the person's facial features then is  
5 what triggered you to make that decision?

6 A Yes

7 Q Not anything else about the lineup?

8 A No

9 Q Let me show you what's already been marked just for  
10 identification, at this point, as State's Exhibit No 16  
11 And can you look -- I'm sorry This is State's Exhibit  
12 No 20 And can you look at that document and can you  
13 tell the jury what it is that State's Exhibit No 20 is?

14 A It's a document where I'm saying that I identified  
15 photograph #5 as the person who robbed me at knifepoint  
16 while I was working at the BP station And I signed it,  
17 dated it, and put my address on it

18 Q Okay And that's the form then that you used at that  
19 time?

20 A Yes

21 Q Is it an accurate representation of that form?

22 A Yes, it is

23 THE COURT Ma'am, do you need some water?

24 THE WITNESS I need a cough drop that's in my purse  
25 I'm okay



1 THE COURT Yes Come up and approach with her  
2 pocketbook

3 THE BAILIFF Okay

4 BY MR MOYER

5 Q Let me ask you this Do you see the person who  
6 robbed you here in this courtroom?

7 A Yes

8 Q And can you point him out to the jury?

9 A The Defendant over there

10 Q The man seated on -- with defense counsel next to  
11 Mr Gibson?

12 A Yes

13 Q Is there any doubt about it?

14 A No

15 Q Does he look different now than he did then?

16 A His head is clean-shaven now Before he had a low  
17 cut afro that was thinning on top

18 MR MOYER Okay Thank you

19 Please answer any questions the Defense may have

20 MR GIBSON Just a second, please

21 (Pause )

22 CROSS-EXAMINATION

23 BY MR GIBSON

24 Q Ms Giles, have you ever been convicted of a crime?

25 A Yes

1 Q Would you tell the Court what the crime was?

2 A It was a fraudulent check charge

3 Q And when was that?

4 A I believe you told me that it was 2002 I don't  
5 remember the exact year

6 Q Now, how long had you been working at this BP when  
7 this situation happened?

8 A Less than a month

9 Q Okay Had you received any training?

10 A Yes, I had

11 Q Tell me what that training was in regards to if you  
12 got robbed

13 A To cooperate with the robber in any manner that they  
14 tell you to, to notice as many details as you can about  
15 the robber and anything related to the robbery without,  
16 actually, staring and getting them agitated because they  
17 realize you're trying to memorize them

18 Q Okay What was -- was it lighted in this BP?

19 A Yes

20 Q Okay Did they -- did you get any training about  
21 trying to find like tattoos, markings on the body, stuff  
22 like that, distinctive markings like that?

23 A Yes

24 Q Okay So, now, when this happened, the person who  
25 robbed you, what was he wearing?

1 A I recall a light-colored shirt with some kind of  
2 design on the front, blue jean shorts I wasn't sure of  
3 the shoes or socks I had the impression they were  
4 dark-colored, but I don't recall

5 Q Okay Was he wearing any gloves?

6 A No

7 Q Were his forearms covered or anything like that?

8 A It was a T-shirt, a short-sleeved shirt

9 Q So his forearms were exposed?

10 A Yes

11 Q Now, when you gave your description to the police,  
12 did you mention anything about any tattoos?

13 A No I don't recall seeing any

14 MR GIBSON Would you stand up and extend your  
15 forearms?

16 (WHEREUPON, the Defendant complied )

17 BY MR GIBSON

18 Q So you don't remember seeing any kind of tattoos like  
19 this or anything like that?

20 A Prior to him coming around the counter, there was no  
21 need for me to see the inside of his arms because he  
22 didn't have them like this Once he came around the  
23 counter, he had the knife, and that got my attention  
24 rather than his arm

25 MR GIBSON Sit down

1 BY MR GIBSON

2 Q Well, let's go through this whole thing After -- so  
3 he comes around the counter and he has a knife And he  
4 takes you into the -- he gets the stuff out of the  
5 register, is that correct?

6 A He has me get it out, yes

7 Q He had you get it out Okay And, at that point,  
8 you go back and you get this VCR, is that correct?

9 A He gets the VCR, yes

10 Q He gets the VCR So he's getting this VCR Where  
11 are you at the time he takes the VCR out?

12 A Standing as far back from him as I can

13 Q How far is that?

14 A Probably just out of arms length I don't know

15 Q So out of arms length We're talking maybe two or  
16 three feet?

17 A I don't know

18 Q Okay Was it more than five feet?

19 A I doubt it Because I think the office is only five  
20 feet I'm not sure of the dimensions I know I was  
21 staying as far away as possible without giving him the  
22 idea that I was trying to escape

23 Q So you were close enough that in a well-lighted room,  
24 you could have noticed these tattoos?

25 A Yes, I could have

1 Q Okay Now, when you were talking before about this  
2 truck that pulled up -- and correct me if I'm wrong -- I  
3 believe I heard you say they sat there for a significant  
4 length of time or something to that effect?

5 A Yes, I did

6 Q Do you remember saying they?

7 A Yes

8 Q How many people were in the truck?

9 A I have no idea

10 Q But you used the word "they"?

11 A I usually do that when I talk about a car, unless I  
12 can see that there is only one occupant in the car

13 Q Do you know if there was more than one person in the  
14 car?

15 A I don't know how many people were in the car

16 Q Did you see anybody get out of the car?

17 A No, I did not

18 Q Did you see the person who robbed you get back in the  
19 car?

20 A No, I did not He was parked where I could not see  
21 him get in

22 Q So you don't know whether he got in on the passenger  
23 side or the driver's side, is that correct?

24 A I could not see

25 Q Okay Now, you said that you had never been robbed

1 before, is that correct?

2 A That is correct

3 Q Well, what kind of jobs did you have before that?

4 A I spent 21 years as a telephone operator When I  
5 left there, I worked briefly as a receptionist, in fast  
6 food, and as a salesclerk I worked in a law firm And I  
7 worked at Blockbuster

8 Q Okay Now, at what time did you go on duty that  
9 night?

10 A At 10 45

11 Q And had you gone to sleep before that?

12 A Yes

13 Q When did you wake up?

14 A I think the first time I woke up about 2 00 The  
15 second time would have been about 5 00, 5 30 because I had  
16 to go to my church

17 Q Okay So you were asleep from 2 00 to 5 30?

18 A No I slept from the time I got off that morning of  
19 the 12th from working the night before until around 2 00  
20 I got up briefly I laid back down, yeah, and then  
21 slept -- I'm sorry Yes, from around about -- it was more  
22 like 3 00 to 5 00, maybe 3 00 to 5 30 that I, actually,  
23 slept

24 Q Okay So at the time this thing occurred, you had  
25 been up for approximately 12 hours or so?

1 A Yes

2 Q Now, when did you make this photo ID?

3 A The same day, on the 13th

4 Q Do you remember what time it was?

5 A I believe on the photo ID that it has the time there  
6 at around 11 50

7 Q So roughly noonish the next day?

8 A Right

9 Q So at the time you made the photo identification, you  
10 had been up approximately 17 hours or so, is that right?

11 A Probably

12 Q Now, when you normally get off, when do you normally  
13 go to sleep?

14 A Within an hour to two hours of getting off, unless I  
15 have to do something else

16 Q Okay And what time do you normally get off?

17 A I normally get off between 6 00 and 7 30 It  
18 varies -- or it did vary

19 Q How many days had you been working prior to this  
20 happening?

21 A I don't remember

22 Q More than two, more than three?

23 A I don't remember

24 Q You don't remember Okay But you were normally in  
25 a routine where you would normally go to bed around 7 30,

1 8 00 the next morning, right?

2 A No

3 Q Okay About what time did you normally go to bed?

4 A I would normally be in bed around 10 00

5 Q What time did you get off?

6 A Usually, between 6 00 and 7 30

7 Q And I believe you said earlier that you would  
8 normally go to bed within about an hour, hour and a half  
9 after you got off?

10 A If I didn't have something else to do

11 Q Okay Well -- so every day, your routine was that  
12 you would have something else to do?

13 A Monday through Friday, I had to take my son to  
14 school

15 Q Okay And what time would you take him to school?

16 A He had to be at school at 8 30

17 Q Okay And then what would you do from 8 30 until  
18 10 00 before you would go to bed?

19 A If I did not have anywhere else to go, I would come  
20 home, usually I would get something to eat, and then I  
21 would lay down

22 Q So, in fact, your normal routine was that you would  
23 normally go to bed at 10 00, not within an hour, hour and  
24 a half of when you got off Is that what you're telling  
25 me?



1 A Unless I had -- I said I would go to bed within an  
2 hour to an hour and a half, unless I had something else to  
3 do

4 Q Okay I'm sort of confused So what I'm asking is  
5 this On days -- was it normally the case that you had  
6 something to do or was it not normally the case that you  
7 had something to do?

8 A I did not work Monday through Friday at the BP So  
9 it depended on the day whether or not I went to bed at  
10 that time

11 Q Okay Where did you work on Monday through Friday?

12 A I honestly don't remember It's been a while It's  
13 been over -- it's been a year And I've gone -- from  
14 there, I was switched to three different stores My days  
15 all changed each time I can't recall what days I exactly  
16 worked

17 Q All right Let me just clarify You told me you  
18 didn't work at the BP Monday through Friday?

19 A I said I did not work there only Monday through  
20 Friday

21 Q Okay I got you So you would work there other days  
22 as well?

23 A No I had two days off, but they were not --

24 Q Consecutive?

25 A They were not Saturday and Sunday every week

1 Q I got you Now -- and you're saying that Monday --  
2 when you worked there Monday through Friday, you would  
3 have to take your son to school, is that correct?

4 A If my son had to go to school, I took him

5 Q Okay And was that -- did you normally take him to  
6 school on Monday through Friday?

7 A Yes

8 Q Okay Now, what day of the week was this when this  
9 happened? Do you know?

10 A It was Thursday

11 Q Okay Did you take your son to school the next day?

12 A Are you talking about Thursday?

13 Q Yes

14 A No, because I had gotten robbed

15 Q Okay So you gave them a description of this guy and  
16 then you came and you took this lineup that you talked  
17 about earlier, is that correct?

18 A That's correct

19 Q Okay Now, you described him as being dark-skinned,  
20 is that correct?

21 A I may have I don't recall whether I did or not I  
22 knew he was -- I don't recall if I, actually, said

23 Q Okay Was everyone in your lineup dark-skinned?

24 A One was lighter than the others

25 Q Okay There were also other differences in your

1 lineup, is that not correct, as far as what they were  
2 wearing and the like, is that not also correct?

3 A I didn't notice it at the time You pointed it out  
4 to me

5 Q Okay But there were differences, is that correct?

6 A Yes There were differences

7 Q Okay Now, getting back to where we were Now, you  
8 said this was the first time this had happened to you, is  
9 that correct?

10 A That's correct

11 Q Had you ever been the victim of any other crime  
12 whatsoever?

13 A Could you explain?

14 Q Had you ever been the victim of a crime? Had anybody  
15 ever assaulted you before?

16 A No

17 Q Had anybody ever taken a knife and put it in your  
18 face or threatened you with a knife before?

19 A No

20 Q Had anybody taken a gun and pointed it to your head  
21 or anything like that, any threat whatsoever?

22 A No

23 Q So this was a very new experience for you, was it  
24 not?

25 A Yes, it was

1 Q And you said you were afraid for your life, is that  
2 correct?

3 A That is correct

4 Q Is it reasonable to assume that you were -- that your  
5 mind state was maybe not as calm as it otherwise would  
6 have been?

7 A Yes

8 MR GIBSON Okay Just a second, please

9 (Pause )

10 BY MR GIBSON

11 Q Now, Ms Giles, you had said earlier that you had  
12 never seen my client before, is that correct?

13 A That is true

14 Q Are you sure that he -- you didn't see him in the  
15 store at some point buying stuff at a different time?

16 A If he was a customer, I don't remember him I don't  
17 recall seeing him before that day.

18 Q Are you -- do you remember or have any recollection  
19 about his wife had a wreck up there and him coming up  
20 there on a number of occasions trying to get information  
21 about this wreck?

22 A My understanding is that the wreck happened in  
23 October right after the robbery I was moved to another  
24 store I don't recall the wreck

25 Q And you don't have any recollection of him coming in

1 as a customer?

2 A No, I don't

3 MR GIBSON Thank you, Ms Giles

4 MR MOYER Just one follow-up question

5 REDIRECT EXAMINATION

6 BY MR MOYER

7 Q During this ordeal, what were you focusing on with  
8 your eyes?

9 A Could you repeat the question?

10 Q What were you focusing on during this robbery? What  
11 was it that you were looking at and focusing on?

12 A His features, his eyes, the expression in his eyes

13 Q And what about -- did you look at any part of his  
14 body or his hand, or the knife, or anything like that?

15 A I looked at his body long enough to get a general  
16 impression of his possible height and body weight, what he  
17 was wearing The knife kept preventing me from -- my fear  
18 of the knife kept me from noticing anything further

19 MR MOYER Nothing further

20 Thank you

21 MR GIBSON Your Honor, very briefly

22 RECROSS-EXAMINATION

23 BY MR GIBSON

24 Q So you're saying that all this time, you were focused  
25 on his eyes and his face?



1 detail, didn't you?

2 A It appeared to me silver, long, thin with a  
3 squared-off point I thought it was an odd-looking  
4 knife

5 Q But after all of that, at no point did you notice  
6 these very noticeable tattoos on his arm?

7 A Those tattoos are very close in color to his skin  
8 color And when someone is pointing a knife at me, I'm  
9 not going to recognize a tattoo, because the knife is  
10 between me and his arm

11 Q But you said the place was very well lighted?

12 A True

13 Q And we've seen pictures showing all the lights in  
14 this place?

15 A And the knife picked up the light

16 Q But, nevertheless, despite --

17 MR MOYER Your Honor, I object It's been asked  
18 and answered and is not in response to redirect

19 MR GIBSON Withdrawn, Your Honor

20 THE COURT Thank you, Ms Giles

21 You may step down

22 MR MOYER The State would call Helen McGee

23 THE CLERK Come up here, please, ma'am

24 Put your left hand on the Bible, please, ma'am, and  
25 raise your right hand

1 WHEREUPON,

2 HELEN MCGEE,

3 after first having been duly sworn, testified as follows

4 THE CLERK And what is your name?

5 THE WITNESS Helen McGee

6 THE CLERK Thank you

7 Be seated

8 DIRECT EXAMINATION

9 BY MR MOYER

10 Q Ms McGee, how are you today?

11 A Tired

12 Q Okay Let me ask you to make sure you speak slowly  
13 and speak into that microphone so we can all hear you real  
14 well

15 A Okay

16 Q How old are you?

17 A 44

18 Q Okay And you're from Greenville?

19 A Yes, sir

20 Q How far did you go in school?

21 A A junior in college

22 Q What college did you go to?

23 A Newberry College

24 Q Now, do you know this Defendant, Steven Collins?

25 A Yes, sir



1 Q And what was the nature of your relationship?

2 A Childhood friends

3 Q You met him -- when did you first meet him?

4 A When I was about 15 years old

5 Q Okay Where did you live on October the 13th of  
6 2005?

7 A 32 11th Street, Judson

8 Q Okay Do you remember taking a look at a map and  
9 trying to pick it out on a map?

10 A Yes, sir

11 Q Let me ask you to take a look at State's Exhibit  
12 No 2 And it's kind of small print Take a look real  
13 close and see if you can see the street where you lived on  
14 October 13th of 2005?

15 A Yeah, right here

16 Q Do you see it?

17 A Yes

18 Q Okay We're going to show it on this big screen over  
19 here for a second

20 Are you able to read that, Ms Giles [sic], or is it  
21 a little hard to see?

22 A That's hard to see

23 Q It is? Okay How about now? Can you see it now?

24 A (There was no response )

25 Q Well, let me ask you this, on that map -- where on

1 the map was it?

2 A Right off of Honour Street

3 Q Right off Honour Street?

4 A Honour Street is kind of right there, 11th Street  
5 right there

6 Q Is it near Anderson Road?

7 A Yeah, right off of Anderson Road

8 Q Okay

9 A Right there

10 Q Does that look like 11th Street right there?

11 A Yeah

12 Q Thank you

13 Did you see the Defendant on that day, October the  
14 13th of 2005?

15 A Yes, sir

16 Q And where was it that you saw him?

17 A At my home

18 Q Around what time was it when you saw him?

19 A It was around 6 05 in the morning

20 Q And what were you doing when he got to your house?

21 A I was sleeping

22 Q Okay And how did you wake up?

23 A My daughter came and told me that someone was  
24 knocking on the door

25 Q All right And what did you do when you woke up?

1 A At first, I kind of laid there for a second And  
2 then I got on out of the bed and I proceeded down the hall  
3 to the front door

4 Q Okay And what did you do when you got to the door?

5 A I asked who it was And I peeped out my peephole on  
6 my front door

7 Q Okay And then what did you see and -- did anybody  
8 say anything when you asked who it was?

9 A When I asked who it was, he said, Helen, it's me,  
10 Steve And I could see it was Steve when I peeped out the  
11 peephole So I opened the door

12 Q Okay And then what did you do when you saw him  
13 outside the door?

14 A I opened the front door going to the porch And I  
15 asked him what was the matter And Steve said he had  
16 gotten his truck stolen and he needed to use my telephone  
17 to call the police

18 Q All right And did you -- do you have like a  
19 screened-in front porch?

20 A I have a screened-in front porch He was still on  
21 the outside, not on the porch yet

22 Q So did you let him in on the screened-in porch?

23 A I opened the -- he -- I unlocked the screen And he  
24 came up to the front porch

25 Q And did you talk to him about what he had just told

1       you, that his truck had been stolen?

2       A     We talked briefly   He said he needed to use the  
3       telephone because his truck was stolen   And so --

4       Q     And what did he tell you about how the truck was  
5       stolen?

6       A     He said he had went to the gas station and he had  
7       pumped his truck full of gas   He went inside to pay  
8       When he came out, the truck was leaving without him

9       Q     Did he tell you where it happened?

10      A     He said the Citgo gas station up there across the  
11      street from the trailer park   And I said, do you mean the  
12      BP gas station?   And he said, yes, the BP

13      Q     And that BP gas station, is that far from your house?

14      A     It's about a ten-minute drive from my house

15      Q     Now, did you know where he lived at the time?

16      A     I was under the impression he lived on Staunton  
17      Bridge Road until we started up the road

18      Q     And then what did he --

19      A     He told me that he lived at the trailer park across  
20      the street from the BP

21      Q     So he told you he wanted to use the telephone   Did  
22      you give him a telephone?

23      A     I went inside the house and I got my cell phone   And  
24      when I came back out, I dialed the number, put 911 in, and  
25      I told him all he had to do was hit the green button and

1 the phone would ring And Steve started to -- proceeded  
2 to talk He said, hello, my name is Steven Collins My  
3 truck got stolen -- my truck just got stolen I live at  
4 Staunton Bridge Road And then he said, hello, hello I  
5 asked him what was the matter And he said he got cut  
6 off and he needed to get home before the police got  
7 there

8 Q Now, how was he dressed?

9 A He had on a gray T-shirt It was kind of -- it was  
10 wet looking He had on blue jean shorts, tennis shoes

11 Q All right Now, you said his gray T-shirt was --

12 A It was wet

13 Q Was it raining outside?

14 A It wasn't raining

15 Q How about him, what was appearance like?

16 A Well, he was sweaty, but --

17 Q Okay

18 A And then he asked me for a shirt And I told him I  
19 didn't have -- well, I didn't think I had any clean  
20 shirts He said he didn't care if it was a clean shirt,  
21 dirty shirt, he would buy a shirt from me

22 Q Did you get a shirt?

23 A My daughter went inside and got a shirt for him and  
24 brought it back And I handed it to him It was a white  
25 T-shirt with March of Dimes

1 (WHEREUPON, State's Exhibit No 21 was marked for  
2 identification only )

3 BY MR MOYER

4 Q Ms McGee, I'm going to show you State's Exhibit No  
5 21 I'm going to hold it down here because it's not in  
6 evidence yet Okay I want you to take a look at it and  
7 can you recognize what I'm showing you?

8 A Yes, sir

9 Q What is that?

10 A It's the March of Dimes T-shirt that we gave Steve  
11 MR MOYER Your Honor, at this time, I would move to  
12 have State's Exhibit No 21 moved into evidence

13 MR GIBSON No objection, Your Honor

14 THE COURT Without objection

15 (WHEREUPON, State's Exhibit No 21 was admitted into  
16 evidence )

17 BY MR MOYER

18 Q All right I'm going to hold it up here now for the  
19 jury Is that the T-shirt you gave the Defendant?

20 A Yes, sir

21 Q What did he do with the shirt that he had on?

22 A Immediately, he took the shirt that we handed him  
23 He put on the white shirt and took off his gray shirt  
24 And he asked me if he could leave it at my house and, in  
25 fact, me wash it and he come back and pick it up later

1 Q And what did you tell him?

2 A I told him, no, to take it back with him

3 Q Okay Now, after you gave him the shirt and he used  
4 the telephone, what did he want to do?

5 A He wanted me to give him a ride home And I told him  
6 I didn't have much gas He said, I'll give you gas money  
7 and I'll pay you for the shirt So he reached into his  
8 back pocket and pulled out his wallet and he gave me a \$10  
9 bill

10 Q Did you look in the wallet when he opened the wallet?

11 A Well, I was standing right in front of him so when he  
12 pulled it out, I mean, I could see a large amount of  
13 money

14 Q All right Did you drive him?

15 A Yes, sir, I did

16 Q Okay And did you wonder why he had come all the way  
17 from the BP station to your house to call the police?

18 A Yes, sir, I did wonder --

19 MR GIBSON Your Honor --

20 THE COURT Are you objecting?

21 MR GIBSON I'm going --

22 THE COURT Well, she hasn't --

23 MR GIBSON Not yet, Your Honor

24 THE COURT Go ahead, ma'am

25 THE WITNESS Yeah I mean, I wondered

1 MR GIBSON Objection, relevance, speculation

2 THE COURT Well, she -- all he asked is whether she  
3 wondered She said she wondered She hasn't said what  
4 she wondered

5 MR GIBSON I think she's getting ready to say that

6 THE COURT Well, let's see what happens

7 BY MR MOYER

8 Q Let me ask you this, did you ask him anything about  
9 it?

10 A On the way to the -- when we got in the car, me and  
11 my little girl was sitting in the car, and I asked him, I  
12 said, Steve, why didn't you just go home and use your  
13 telephone? And he said, I just wasn't thinking And I  
14 said, why didn't you use the telephone at the gas station?  
15 He said, they would not let me use the phone at the gas  
16 station In fact, Ms Dianne, gave me 75 cents to use the  
17 telephone

18 Q Okay Now, did -- all right What road did you go  
19 on when you left your house?

20 A Anderson Road

21 Q Does that road go by the BP?

22 A It goes straight up past the BP, right

23 Q What did you do when you got near the BP?

24 A Well, we got almost to the BP and I said, I'm going  
25 to have to stop at the gas station because my car started



1 sputtering like it was about out of gas And I said,  
2 we're going to stop at the BP, then I'll take you on  
3 across the street to the trailer park We got just past  
4 Auto Zone and he said, no, no, stop, stop, let me out  
5 right here And I stopped the car and let him out

6 Q Okay And where did he go?

7 A He crossed the street and he turned up towards the  
8 trailer park

9 Q Okay And where had he -- when you overheard the  
10 conversation on 911 --

11 A He told the person on the phone that he lived on  
12 Staunton Bridge Road

13 Q Well, did you get gas? Did you try to get gas at the  
14 BP?

15 A Yeah I pulled up at the pumps at the gas station  
16 and I went to the window to see if I could get gas and  
17 they told me I couldn't get any gas And then I asked why  
18 I could not get gas, were the computers down? They said,  
19 no, the computers weren't down, they had been robbed

20 And then I made an observation, I said, well, this  
21 must be the morning for robberies, because my friend just  
22 said he got his truck stolen from up here

23 Q All right And then did you have a conversation with  
24 Ms Giles? Do you remember talking to her?

25 A Yeah I was asking -- okay When I said it must be

1 the place for robberies, you know, my friend said he got  
2 his truck stolen --

3 MR GIBSON Objection, hearsay

4 THE COURT Sustained

5 BY MR MOYER

6 Q Okay Let me ask you this Did you have a  
7 conversation with Ms Giles?

8 A Yes, sir, I did

9 Q And during that conversation, did you describe what  
10 your friend looked like?

11 A No She was describing to me what --

12 MR GIBSON Objection, hearsay

13 MR MOYER One thing, it's already been testified  
14 to Another thing, it goes to identity --

15 THE COURT Sustained

16 MR MOYER Okay I'm sorry I didn't know you had  
17 ruled

18 THE COURT Okay

19 BY MR MOYER

20 Q Did you tell her -- at any point during that  
21 conversation, did you describe what your friend looked  
22 like?

23 A Okay I --

24 Q You can't say what Ms Giles --

25 A No I'm not going to say what Ms Giles said Okay

1 I was like -- my friend was like -- in my head, I said, my  
2 friend had on a gray T-shirt and blue jeans shorts and  
3 tennis shoes And it was the same description I had  
4 heard, you know, that --

5 MR GIBSON Objection, hearsay

6 THE COURT Sustained

7 And I'm going to instruct the jury to disregard that  
8 statement

9 Okay Thank you

10 BY MR MOYER

11 Q After you spoke to the clerk, did you speak to  
12 anybody else?

13 A I spoke to the forensic policewoman that was up  
14 there

15 Q And what happened after you -- did you stay there  
16 after you spoke to the forensics lady?

17 A After I spoke to the forensics lady, she called  
18 somebody on the phone The police officer lady came And  
19 then she called somebody on her radio thing in the car  
20 And then I was told I had to come downtown and talk to an  
21 investigator

22 Q And you did that?

23 A Yes

24 MR MOYER Okay Please answer any questions the  
25 Defense may have for you

1 THE WITNESS Yes, sir

2 CROSS-EXAMINATION

3 BY MR GIBSON

4 Q Okay Ms McGee, did Mr Collins ever tell you  
5 anything to the effect that he had robbed this gas  
6 station?

7 A No, sir, he didn't

8 Q Do you have any information -- firsthand information  
9 yourself that he, in fact, robbed this gas station? You  
10 weren't there, were you?

11 A No, sir I never said that Steve robbed a gas  
12 station

13 Q Do you have a criminal record?

14 A Yes, sir

15 Q You have, in fact, what is it, three shoplifting  
16 convictions?

17 A Yes, sir

18 Q From '79 to 93, is that right?

19 A Yes, sir

20 MR GIBSON Thank you, Ms McGee

21 THE WITNESS Thank you

22 MR MOYER No other questions

23 THE COURT All right Thank you, ma'am

24 You can stand down

25 MR MOYER The State would call Donna Collins

1 THE CLERK Come up here, please, ma'am  
2 Put your left hand on the Bible, please, ma'am, and  
3 raise your right hand  
4 WHEREUPON,

5 DONNA COLLINS,  
6 after first having been duly sworn, testified as follows

7 THE CLERK State your name for the record, please

8 THE WITNESS Excuse me

9 THE CLERK What is your name?

10 THE WITNESS Donna Collins

11 THE CLERK Thank you

12 Be seated

13 DIRECT EXAMINATION

14 BY MR MOYER

15 Q All right Ms Collins, how old are you?

16 A I'm 41

17 Q You're married?

18 A Yes

19 Q And who are you married to?

20 A Steven Collins

21 Q Okay Is that the Defendant seated over here?

22 A Yes, sir

23 Q Would you move a little bit closer to the microphone?

24 A Yes, sir

25 Q All right When did you marry?

1 A October 25th, 2002

2 Q Okay So about almost four years ago?

3 A Yes, sir

4 Q All right Now, where was the Defendant living on  
5 October the 13th of 2005?

6 A At my house

7 Q Okay And how long had he been living there with you  
8 at that time?

9 A About a week

10 Q Okay Where had he been living prior to that?

11 A At his mother's house

12 Q And where were you living at the time?

13 A I was living on Anderson Road at Heritage Mobile Home  
14 trailer park, me and my daughter

15 Q I'll let you take a look at what's already in  
16 evidence, State's Exhibit No 1 Can you look at that  
17 photograph and see Heritage Mobile Home Park?

18 A Yes

19 Q Okay Now, are you familiar with the BP gas station?

20 A Yes, sir

21 Q Where is Heritage Mobile Home Park in relation to  
22 that BP gas station?

23 A Right across from it

24 Q We're looking here at State's Exhibit No 1 And do  
25 you see the intersection here of Anderson Road and

1 Washington? Do you know where the BP station is?

2 A Yes It's on the corner of Washington and Anderson  
3 Road

4 Q Is this it right here?

5 A Yes, sir

6 Q And your trailer -- the trailer park where you lived  
7 is across which road?

8 A Right across from the BP

9 Q Okay On what road?

10 A On Anderson Road

11 Q Okay So it would be --

12 A Right there

13 Q Is this it right here?

14 A Yes, sir

15 Q And did you live farther down?

16 A I was the third trailer up on the right

17 Q Okay Now, where was he -- all right Who did you  
18 say he was living with then before he moved in with you?

19 A His mother

20 Q Do you know what kind of vehicle he drove?

21 A He drove a 1976 orange truck

22 Q All right Let me show you State's Exhibit No 8  
23 Can you recognize what is shown in that photograph?

24 A Yes, sir

25 Q And what is it?

1 A That's his truck

2 Q Okay Is that an accurate representation of the way  
3 the truck looked in October of 2005?

4 A (Witness nodded )

5 Q You need to say "yes" or "no "

6 A Yes

7 MR MOYER Your Honor, at this time, we would move  
8 to have State's Exhibit No 8 moved into evidence

9 MR GIBSON No objection, Your Honor

10 THE COURT All right Without objection

11 (WHEREUPON, State's Exhibit No 8 was admitted into  
12 evidence )

13 BY MR MOYER

14 Q For the benefit of the jury, would you tell the jury  
15 what is shown in State's Exhibit No 8?

16 A That's the 1976 truck that he owned

17 Q Okay Was it -- what kind of mechanical shape was it  
18 in?

19 A Bad

20 Q Now, did you see the Defendant on the night of  
21 October the 12th, 2005?

22 A Yes

23 Q And where did you see him?

24 A He come to our trailer, my trailer

25 Q Did he spend the night there?



1 A No

2 Q What time did he leave?

3 A About 9 30 that evening

4 Q In the morning or at night?

5 A Evening, at night

6 Q Did he say where he was going?

7 A He said he was going to his mother's house

8 Q Okay Do you remember around what time you went to

9 bed?

10 A I usually try to get in bed around 11 00

11 Q When did you see him next?

12 A About 6 00, 6 30 the next morning

13 Q What were you doing?

14 A I was getting up getting ready for work

15 Q And how did you wake up?

16 A I heard a noise in the living room And I thought it

17 was my daughter And he said, it's me, Steve

18 Q Okay And did you say anything to him?

19 A I asked him where he had been And he said he had

20 been working

21 Q Okay Now, was his truck there?

22 A No

23 Q And did he say anything about his truck?

24 A He said someone had stole his truck

25 Q Did he tell you any -- about how the truck had been

1 stolen?

2 A He said he was at the Citgo and he went in to get  
3 gas And he said there was two black guys and a white guy  
4 outside And when he come out, his truck was gone

5 Q And where is this Citgo?

6 A White Horse Road

7 Q How far is that from your house?

8 A (There was no response )

9 Q If you were to drive there, about how long would it  
10 take you to drive there?

11 A About five, seven minutes

12 Q All right Now, did he say if he had called the  
13 police?

14 A He said he had tried to call, but he couldn't get  
15 through

16 Q All right Did he do anything about reporting this  
17 while he was at your house?

18 A Yes, sir He called and -- made a phone call to the  
19 police And I heard him telling about his truck being  
20 stolen And he was going to meet them at his mother's  
21 house

22 Q Okay And where is his mother's house?

23 A 715 Staunton Bridge Road

24 Q And is that the address where the truck was  
25 registered to?

1 A Yes, sir

2 Q All right Did he -- after he made the phone call,  
3 what did you do?

4 A I gave him a ride to his mother's house to meet the  
5 police

6 Q Okay Did he go anywhere in the house before you  
7 left?

8 A No When he came in, he went to -- went towards the  
9 bathroom But I couldn't see from where I was sitting  
10 where all he went to

11 Q Okay. Now, is your -- what all is back there?

12 A It was just the restroom and my bedroom

13 Q Okay Did you go back there with him?

14 A No, sir

15 Q So is that where he kept his clothing back there?

16 A Yes, sir

17 Q Now, this -- so did you agree to take him to his  
18 mother's house?

19 A Yes

20 Q And where did she live again?

21 A 715 Staunton Bridge Road

22 Q And how far is that from where you live?

23 A Maybe five minutes, not even that

24 Q Okay What did you see when you arrived there?

25 A Police cars everywhere And his mother was on the

1 porch She looked upset

2 Q Okay And what did y'all do when you pulled up to  
3 the house?

4 A We got out of the car He -- they took him And  
5 then I talked to some other officers And they took me in  
6 for questioning and took me to Detective Silvaggio

7 Q Okay And you spoke to Investigator Silvaggio then?

8 A Yes, sir

9 Q All right And were you asked if officers could  
10 search -- look through your house?

11 A Yes, sir

12 Q What did you say?

13 A I said, yes

14 Q Did you go back to the house when they went in your  
15 house?

16 A Yes, sir

17 Q Did you see them collect some things?

18 A Yes

19 Q Did you see them collect some shorts?

20 A Yes

21 Q Were they the Defendant's shorts?

22 A Yes

23 Q How about some keys?

24 A Yes

25 Q Whose keys were they?

1 A They were his, Steven's

2 Q All right Now, let me -- where did he work at the  
3 time?

4 A Executive Kitchens in Simpsonville

5 Q As part of his job, did he have any particular tools  
6 for the job?

7 A Box cutters

8 Q Have you ever seen his box cutters?

9 A Yes

10 (WHEREUPON, State's Exhibit No 22 was marked for  
11 identification only )

12 BY MR MOYER

13 Q I have what's marked as State's Exhibit No 22 It's  
14 not in evidence, so I want you to hold it down here below  
15 the rail I want you to take a look in there and tell me  
16 if you can -- when you pull it out, hold it down there  
17 Look in there Can you recognize what you see inside that  
18 little envelope?

19 A Yes

20 Q What is it?

21 A Two box cutters

22 Q Okay And do you recognize them?

23 A Yes, I do

24 Q What do you recognize them as?

25 A I had a pair just like that

1 Q From where did you have a pair like that?

2 A In my car when I used to work at that plant

3 Q Okay So did you ever see the box cutters the  
4 Defendant had?

5 A I've seen them in the car that I used to drive

6 Q And how do they compare in appearance to the ones  
7 that are in that envelope?

8 A They're the same ones

9 Q Okay That he would keep in his truck?

10 A Yes

11 MR MOYER Okay Please answer any questions the  
12 Defense may have

13 CROSS-EXAMINATION

14 BY MR GIBSON

15 Q Ms Collins, now, I just want to clear up something  
16 At the time this thing happened, Steve was, basically,  
17 from what my understanding is, in between houses  
18 Sometimes he was living with you and sometimes he was  
19 living with his mother?

20 A He was on house arrest He couldn't move in with  
21 me --

22 MR GIBSON Objection

23 THE COURT Hang on

24 Let me see y'all up here, please

25 (WHEREUPON, a bench conference was held )

1 THE COURT Mr Foreman, and, ladies and gentlemen of  
2 the jury, we've been going at it for a while now We're  
3 going to take an afternoon break We'll be back with you  
4 shortly

5 Please don't discuss the case

6 Thank you

7 (WHEREUPON, the jury was excused from open court at  
8 approximately 4 03 p m )

9 THE COURT All right

10 MR GIBSON Your Honor, for the record, I move for a  
11 mistrial based on the grounds that the statement is so  
12 prejudicial to my client that there's no way this jury is  
13 going to be able to accurately and fairly weigh the  
14 evidence in this case

15 MR MOYER And, Your Honor, they know he was  
16 arrested for an armed robbery charge So they know also,  
17 based on some testimony, that he was out of jail I think  
18 it's not -- it could hardly be prejudicial for them to  
19 know he was on house arrest And --

20 THE COURT Wait a minute

21 MR GIBSON Your Honor, there's been no testimony  
22 he's been out of jail

23 MR MOYER Well, let me back up a minute What was  
24 the -- what time frame was referred to his house arrest,  
25 post -- was she talking about after?

1 MR GIBSON She was talking about at the time this  
2 thing happened

3 THE WITNESS No I'm talking about after

4 THE COURT Are you talking about after the arrest?

5 THE WITNESS When he moved in with me, he was not on  
6 house arrest He couldn't move in with me until he got  
7 off of that

8 THE COURT Well, what was he on house arrest for?

9 MR MOYER He may have been -- I think he was on  
10 parole, Your Honor

11 THE COURT Does he have any other pending charges?

12 MR GIBSON No

13 MR MOYER No, no pending charges

14 THE COURT So the house arrest had to be after --  
15 was it for this case?

16 THE WITNESS No, sir

17 MR MOYER He was on parole, Your Honor I think  
18 she's confusing the term house arrest I think he was  
19 required to stay -- when he first got out of jail on  
20 parole from his armed robbery And she's under the  
21 understanding that he had to stay with his mother because  
22 he was under some sort of restrictions from the parole  
23 board That's what he told her So I think that's what  
24 she's referring to as house arrest

25 MR GIBSON That makes it even worse, Your Honor



1 THE COURT Well, the jury, all they heard is house  
2 arrest They don't know what it's for We're not going  
3 to put his character into evidence

4 MR MOYER Your Honor, I didn't ask --

5 THE COURT I understand that

6 And, Ms Collins, you're not to mention house arrest  
7 again.

8 THE WITNESS I understand

9 THE COURT I'm not going to grant the mistrial  
10 Do you want some kind of curative instruction? Do  
11 you want attention drawn to this or not?

12 MR GIBSON No, Your Honor

13 THE COURT Okay Well, let's just take about ten  
14 minutes

15 And did you ever find your other witness? She was  
16 out in the hallway

17 MR GIBSON I did, Your Honor We're probably not  
18 going to call her She is on call, but we're probably not  
19 going to call her

20 MR MOYER Your Honor, could we put that issue on  
21 the record just for purposes of --

22 THE COURT What issue?

23 MR MOYER The fact that he's not going to call that  
24 witness

25 MR GIBSON No I made that decision I'm saying

1 we're probably not going to call her

2 THE COURT He hasn't tried to call her So your  
3 Rule 5 motion is premature

4 MR MOYER No, no, it's not that, Your Honor  
5 That's not the point The point is, I'm concerned about  
6 this motion for a continuance and the fact that there was  
7 a witness

8 THE COURT All right Well, I think it's on the  
9 record that the Sheriff's Office -- the most efficient  
10 Sheriff's Office that I know -- went out and found this  
11 lady and got her up here to the courthouse Mr Gibson  
12 was given an opportunity to interview her And whether he  
13 puts her up or not or attempts to put her up is totally  
14 within his discretion

15 MR MOYER Thank you

16 THE COURT All right Let's take ten minutes  
17 Ma'am, Ms Collins, you can step down

18 If you need to go down the hallway, you do that But  
19 don't talk about your testimony

20 THE WITNESS I won't I'm sorry I won't

21 THE COURT That's okay Don't worry about it

22 (WHEREUPON, a break was taken )

23 THE COURT Is everybody ready?

24 MR GIBSON Yes, Your Honor

25 THE COURT Bring Ms Stevens [sic] back up here

1 Let's go ahead and bring the jury in

2 Now, before they get here, what's else do you have  
3 today?

4 MR MOYER One real short witness, then we get into  
5 officers I was hoping I could get some of the officers  
6 up They work nights

7 THE COURT Well, we'll just see where we go  
8 (WHEREUPON, the jury came into open court at  
9 approximately 4 33 p m )

10 THE COURT All right Mr Gibson

11 MR GIBSON Thank you, Your Honor

12 CONTINUED CROSS-EXAMINATION

13 BY MR GIBSON

14 Q Now, Ms Collins, when Steve came to see you -- or  
15 when you saw him that next morning and he told you his  
16 truck had been stolen, he told you it had been stolen from  
17 the Citgo station, is that correct?

18 A Yes, sir

19 Q Not the BP station?

20 A No, sir

21 Q Not the BP station where the robbery had occurred?

22 A No

23 Q Now, about these box cutters, you said that you had a  
24 pair as well?

25 A I have my own pair I didn't keep my stuff with his,

1       ours was separate

2       Q     Now, where did you get your set from?

3       A     I got them from Executive Kitchens

4       Q     Executive Kitchens?

5       A     Yes, sir

6       Q     What kind of work did you do that you needed a box  
7       cutter?

8       A     I did sanding    And we'd have to put putty in the  
9       cracks of the cabinet doors    And the box cutter helped  
10      kind of with the chipping a little bit

11      Q     Okay    Did everyone who worked there have a set of  
12      box cutters?

13      A     I don't know

14      Q     Did most of the people who worked there have a set?

15      A     Yes

16      Q     How many people worked there?

17      A     I'm going to say maybe about 30    I'm not sure

18      Q     And did all of those people have that same  
19      similar-type box cutter?

20      A     If they had one, they had one like that one

21      Q     So this wasn't an uncommon box cutter?

22      A     No

23      Q     Do you have any idea where Executive Kitchens got  
24      those box cutters from?

25      A     No, sir, I don't

1 Q But everybody that you knew of who worked there had  
2 that same type of box cutter?

3 A I don't know I didn't talk with everybody I hung  
4 out to myself I didn't, you know --

5 Q What I'm asking is, did you ever see anybody there --  
6 strike that

7 Let me ask you this At the time -- you said you had  
8 taken him back over to his mother's house, which was on  
9 Staunton Bridge Road?

10 A Yes, sir

11 Q And, at that time, did the police put him in  
12 handcuffs or anything like that?

13 A Yes, sir

14 Q And what time of day was that? Do you remember?

15 A It was the morning time, probably about -- this  
16 happened -- he come to my house between 6 00 and 6 30 So  
17 it was probably about 7 00 that morning

18 MR GIBSON Thank you, Ms Collins

19 THE WITNESS You're welcome

20 MR MOYER Nothing else

21 THE COURT You can stand down, ma'am

22 Thank you

23 MR MOYER The State would call Kimberly McConnell

24 THE CLERK Put your left hand on the Bible, please,  
25 ma'am, up here and raise your right hand

1 WHEREUPON,

2 KIMBERLY MCCONNELL,

3 after first having been duly sworn, testified as follows

4 THE CLERK State your name for the record, please

5 What is your name?

6 THE WITNESS Kimberly McConnell

7 THE CLERK Thank you

8 Be seated

9 DIRECT EXAMINATION

10 BY MR MOYER

11 Q Kimberly, let me ask you to make sure you speak into  
12 that microphone real well so we can hear you I just have  
13 a few questions for you

14 Okay How old are you?

15 A 15

16 Q Okay And where do you go to school?

17 A Hillcrest High

18 Q What year are you in at Hillcrest High?

19 A Freshman

20 Q Okay Do you know the Defendant, Steven Collins?

21 A Yes, sir

22 Q He's married to your mother?

23 A Yes, sir

24 Q Let me take you -- do you remember the day of October  
25 the 13th of 2005?

1 A Yes, sir

2 Q Okay Did you see him when he arrived at your house  
3 that morning?

4 A Yes, sir

5 Q Do you remember how he was dressed?

6 A Yes, sir

7 Q How was he dressed?

8 A He had a shirt on It was white And it said  
9 something on it And it was kind of dirty And he had  
10 some blue jean shorts on with like a brown belt

11 Q Okay And do you remember that he left with your  
12 mother at some point?

13 A Yes, sir

14 Q Did he do anything with his clothes before he left  
15 with your mother?

16 A He went in the bedroom and changed

17 MR MOYER Okay Thank you

18 I have no further questions

19 MR GIBSON Thank you

20 Nothing, no questions

21 THE COURT All right. Thank you, ma'am

22 You can step down

23 MR MOYER The State would call Deputy Rivera

24 THE CLERK Put your left hand on the Bible, please,  
25 sir, and raise your right hand

1 WHEREUPON,

2 RAMONE RIVERA,

3 after first having been duly sworn, testified as follows

4 THE CLERK State your name for the record, please

5 THE WITNESS Ramone Rivera

6 THE CLERK Thank you

7 Be seated

8 DIRECT EXAMINATION

9 BY MR MOYER

10 Q Deputy Rivera, where are you employed?

11 A Greenville County Sheriff's Office

12 Q How long have you been in law enforcement?

13 A Two years and about six months now

14 Q Okay Has it all been with the Greenville County  
15 Sheriff's Office?

16 A Yes, sir

17 Q And what is your position?

18 A I'm a deputy

19 Q And what is -- you know, what are your duties as a  
20 deputy?

21 A We answer calls for service, check buildings, and do  
22 some traffic enforcement

23 Q Okay So when you answer calls for service, could  
24 that be any call?

25 A Anything from domestic violence to robberies,



1 burglaries

2 Q So y'all are, basically, the first responders in  
3 situations like that?

4 A Yes, sir

5 Q Were you working the early morning hours of October  
6 the 13th of 2005?

7 A Yes, sir, I was

8 Q Did you respond to a call that morning?

9 A Yes, sir, I did

10 Q And what was the location of the call?

11 A 2008 Anderson Road, the BP station

12 Q Okay That's in Greenville County?

13 A Yes, sir

14 Q And what was the nature of the call?

15 A An armed robbery had just occurred

16 Q What time did you receive the call?

17 A The call came out at approximately 05 16

18 Q Okay And that is -- you just gave us military time  
19 What time is that?

20 A 5 16 in the morning

21 Q Okay 5 16 in the morning And what time did you  
22 arrive there?

23 A Approximately 5 25 in the morning

24 Q Okay Were you the first officer to arrive?

25 A Yes, sir

1 Q Now, when you arrived, did you meet with anybody?

2 A I met with the clerk at the store

3 Q Okay That would be Ms Giles seated back here?

4 A Yes, sir

5 Q All right And where was it you met with her?

6 A At the door next to where the cash drawer is

7 Q And did you talk to her about what had happened to  
8 her?

9 A Yes, sir

10 Q Did you get a description from her of the person who  
11 had robbed her?

12 A Yes, sir

13 Q And what was the description that you received from  
14 her?

15 A She told me that the description -- that it was a  
16 black male approximately 5'10", 150, 175 pounds He had a  
17 black balding close-cut haircut And he was wearing blue  
18 jeans -- blue jean shorts and a light-colored T-shirt with  
19 some sort of circular sign on the front of it And he  
20 left -- he was driving a light-colored rusty truck with  
21 possibly tinted windows

22 Q What did you do with that information?

23 A I went ahead and aired it to dispatch so that the  
24 oncoming units that were responding to the area would know  
25 what to look for

1 Q And was that information relayed out on the radio?

2 A Yes, sir, it was

3 Q Is that what you call a "BOLO"?

4 A Yes, sir

5 Q Be on the lookout?

6 A Yes, sir

7 Q Did you stay there at the scene?

8 A Yes, sir, I did

9 Q And at what point did you leave?

10 A I left after Sergeant Bolt saw the vehicle and he  
11 initiated a chase

12 Q Okay In what direction did you go when you left?

13 A I went on Anderson Road back towards the city limits  
14 And I turned right onto Dunney Street towards the mill I  
15 went around the mill on Henry Street, which is where I  
16 encountered the chase

17 Q Did you ever see this vehicle that Sergeant Bolt was  
18 behind?

19 A I did

20 Q And what were the circumstances of that? How did you  
21 end up seeing it?

22 A When I came around a very sharp turn on Henry Street,  
23 the chase was coming onto me And I had to get off the  
24 side of the road onto the curb to avoid being hit by the  
25 vehicle

1 Q What did you do after the vehicle went past you?

2 A I drove back around the mill trying to get -- you  
3 know, still be in the area when -- if the chase ever ended  
4 or when it did end

5 Q And were you ever able to get back involved in the  
6 pursuit of the vehicle?

7 A No, sir

8 Q What did you do then? Did you hear the pursuit when  
9 the pursuit ended?

10 A Yes

11 Q What did you do at that point?

12 A I responded to the area of Third Avenue in Judson --

13 Q Okay

14 A -- and Sixth Street

15 Q What did you do there?

16 A I went ahead and secured my vehicle and got out of my  
17 vehicle and set up a perimeter

18 Q And did you find anything or see anything?

19 A No, sir

20 MR MOYER Please answer any questions the Defense  
21 may have

22 CROSS-EXAMINATION

23 BY MR GIBSON

24 Q You had talked about the description that Ms Giles  
25 gave you Did she say anything about any tattoos --

1 A No, sir

2 Q -- on the suspect?

3 A No, sir

4 MR GIBSON Okay Nothing further

5 THE COURT Thank you, Officer

6 MR MOYER The State would call Officer Travis

7 Graham

8 THE CLERK Put your left hand on the Bible, please,  
9 and raise your right hand

10 WHEREUPON,

11 ROY TRAVIS GRAHAM,

12 after first having been duly sworn, testified as follows

13 THE CLERK State your name for the record, please

14 THE WITNESS Roy Travis Graham

15 THE CLERK Thank you

16 Be seated

17 DIRECT EXAMINATION

18 BY MR MOYER

19 Q Sir, where are you employed?

20 A I'm employed with the Fountain Inn Police Department

21 Q And did you ever work for the Greenville County  
22 Sheriff's Office?

23 A I did

24 Q When did you work for the Sheriff's Office?

25 A From April of 2004 until June 2006

1 Q How long have you been in law enforcement?

2 A Approximately seven, seven and a half years

3 Q And the times you weren't working for the Sheriff's  
4 Office, where were you working?

5 A I was with the Fountain Inn Police Department prior  
6 to going to the Greenville County Sheriff's Office

7 Q Now, you've gone back to Fountain Inn?

8 A Yes, sir

9 Q Okay What was your position back in October of 2005  
10 with the Sheriff's Office?

11 A I was a deputy two working uniform patrol with  
12 Charlie shift.

13 Q Okay And what shift would that be at the time --  
14 what time of day were you working?

15 A It was night shift We worked from 7 00 p m until  
16 7 00 a m

17 Q Were you working the night of October 12th and 13th  
18 of 2005?

19 A I was

20 Q What area of Greenville County is that?

21 A I was working in west Greenville area seven, which is  
22 most of your mill hills and White Horse Road, Anderson  
23 Road, in that area

24 Q Okay So it does include Anderson Road and White  
25 Horse Road then?

1 A Yes, sir, it does

2 Q Okay When you're not, actually, responding to a  
3 call -- let me back up

4 During that night, did you see any vehicles that  
5 caught your eye?

6 A I did

7 Q And did you see a vehicle that caught your eye that  
8 later played a part in this particular case?

9 A I did

10 Q And what -- give us a description of that vehicle

11 A It was kind of rusted on the back end of the vehicle,  
12 but it was yellow in color, a pickup truck, small cab with  
13 somewhat of a discolored back end where the tailgate was  
14 and the back portion of the pickup truck

15 Q Okay Let me show you State's Exhibit No 8 Can  
16 you recognize what is in that picture?

17 A Yes, sir That's the vehicle that I'm trying to  
18 describe

19 Q Okay That's the vehicle you saw earlier in the  
20 night?

21 A Yes, sir, I did

22 Q Okay Where was it that you saw the vehicle?

23 A I saw it multiple times One time was at a Spinx gas  
24 station on White Horse Road near Tabernacle Baptist  
25 Church I'm not familiar with the address

1 Q Now, when you saw it at this Spinx gas station --  
2 first, let me ask you this How far away is that area  
3 where you saw it from the BP gas station where this  
4 incident took place?

5 A I can only tell you approximately But it's  
6 approximately two miles, maybe two and a half miles

7 Q And when you saw this vehicle, what did you do  
8 concerning the vehicle?

9 A When I pulled into the gas station -- we had been  
10 having multiple armed robberies at different convenience  
11 stores So I pulled into the gas station to check on the  
12 gas station And I saw this vehicle parked to the far  
13 right of the front doors near the car wash

14 Q Okay

15 A So we have a computer in our vehicle that we're able  
16 to run tags and things like that And when I pulled in, I  
17 immediately saw the vehicle and immediately saw two males  
18 that were just hanging around the vehicle So I ran the  
19 tag to see where it came back to

20 Q And did you -- you say you ran the tag Was the tag  
21 clear?

22 A I ran the tag just to see if it would come back clear  
23 and make sure it wasn't stolen or wanted out of any other  
24 areas And it did come back clear

25 Q And when you got that information, what -- well, let



1 me ask you this What information comes up when you run a  
2 tag?

3 A It comes up with the type of vehicle, the year of the  
4 vehicle, the make, the model, when the decal expires, when  
5 the tag expires It comes up with the name of the owner,  
6 the address of the owner, if there's any liens on the  
7 vehicle I'm sure it has a couple more things, but I  
8 can't think of anything else it has But it does have the  
9 name of the owner and the address of the owner

10 Q What did you do with that information?

11 A I left it on my computer to where if I needed to, I  
12 could refer back to it later, which is typically what I  
13 always do, I leave it on there And I went in and checked  
14 on the clerk of the store

15 Q Now, later on that night, were you still working when  
16 the information came out about the robbery at the BP gas  
17 station?

18 A I was still working

19 Q Okay Did you hear the description -- was a  
20 description of the vehicle -- suspected vehicle from that  
21 robbery given out over the radio?

22 A It was given out on the radio

23 Q And when you heard that description, what did it make  
24 you think of?

25 A I immediately thought of the vehicle I saw at the

1 Spinx Because it was pretty distinctive with the  
2 characteristics, the features of it being a yellow in  
3 color vehicle with rust all over, and the rust-colored  
4 back

5 Q Now, when you heard that -- what information did you  
6 give out -- let me ask you this When you made that  
7 connection, what did you do with that information that you  
8 had?

9 A I immediately pulled my computer back up And I  
10 found where I ran that tag And I gave that description  
11 back over the radio to all the deputies that were  
12 responding to the scene

13 Q Okay And did you have any other information on the  
14 truck?

15 A I gave the name of the owner, the address of the  
16 owner of the vehicle, and I resaid over the radio what  
17 type of vehicle it was -- or what it looked like

18 Q Okay Did you have a tag number?

19 A I did

20 Q Did you give that information out?

21 A I gave that information out, also

22 Q All right Did you participate in the automobile  
23 chase at all?

24 A I did I caught up with the sergeant who was in the  
25 chase at the very end of the chase And my role in that

1 was when I, finally, caught up to him, the vehicle had  
2 already stopped And I set up -- I helped set up a  
3 perimeter

4 Q Okay Did you find anybody, arrest anyone, or do  
5 anything when you did that perimeter?

6 A No, sir

7 MR MOYER All right Please answer any questions  
8 the Defense may have

9 THE WITNESS Thank you

10 CROSS-EXAMINATION

11 BY MR GIBSON

12 Q Officer Graham, you said that you saw this vehicle at  
13 the Spinx station, is that correct?

14 A Yes, sir

15 Q Now, where is that in relation to the BP?

16 A The BP is on Anderson and, I believe, West  
17 Washington And the Spinx that I'm referring to is on  
18 White Horse Road I'm not sure of the street near it, but  
19 it's right by Tabernacle Baptist Church, which is near  
20 White Horse and -- probably about a while from White Horse  
21 and Anderson

22 Q So how far away is that?

23 A Between the Spinx and the BP?

24 Q Between the Spinx and the BP, yes, sir

25 A I don't know I'd have to guess, maybe two and a

1 half, three miles

2 Q Is there a Citgo station around there anywhere, too,  
3 around the BP station, say, within a half mile?

4 A I'm not familiar with one There may be

5 Q Now, you said there were two males hanging around  
6 this vehicle?

7 A Yes, sir

8 Q Did you write down any kind of a description of these  
9 people?

10 A I didn't write down any description, no, sir

11 Q Do you recall any description of these two males?

12 A Over the radio?

13 Q No What I'm asking is this Do you recall what  
14 these two black men looked like?

15 A No, sir

16 MR GIBSON Okay Thank you

17 MR MOYER Nothing further

18 THE COURT All right You can step down

19 MR MOYER The State calls Sergeant Bolt

20 THE CLERK Put your left hand on the Bible, please,  
21 sir, and raise your right hand

22 WHEREUPON,

23 JIMMY BOLT,

24 after first having been duly sworn, testified as follows

25 THE CLERK State your name for the record, please

1 THE WITNESS Jimmy Bolt

2 THE CLERK Thank you

3 Be seated

4 DIRECT EXAMINATION

5 BY MR MOYER

6 Q Where are you employed?

7 A Greenville County Sheriff's Office

8 Q What is your position with the Sheriff's Office?

9 A I'm a sergeant in the uniform patrol division

10 Q And how long have you been in law enforcement?

11 A October will be 18 years

12 Q Has it all been with the Sheriff's Office?

13 A Yes, sir

14 Q And how long have you been a sergeant with uniform  
15 patrol?

16 A March of this year was four years

17 Q Now, were you working the morning hours of October  
18 the 13th of 2005?

19 A Yes, sir, I was

20 Q Did you hear the call for the armed robbery that came  
21 out that morning?

22 A Yes, sir, I did

23 Q Where were you when you got the call?

24 A I was in the uniform patrol office finishing up on  
25 our nightly paperwork

1 Q And that's here downtown at the law enforcement  
2 center?

3 A Yes, sir, right below the Bi-Lo Center

4 Q Okay Now, where -- when you heard the call, what  
5 did you do?

6 A Once the call was dispatched and the deputy was en  
7 route, I proceeded out to my patrol car and responded to  
8 the scene myself

9 Q Okay Now, did you have any radio contact or hear  
10 any radio contact with Officer Graham -- Deputy Graham?

11 A On my way to the scene, the dispatch had put out what  
12 we refer to as a BOLO It's a general description of the  
13 suspect and the vehicle that was used Once that  
14 description was given out, Deputy Graham came across the  
15 radio and said that he had saw a vehicle similar matching  
16 that description at a couple of convenience stores  
17 earlier And I proceeded on to the scene at that time.

18 Q Okay Now, when you arrived there at the scene --  
19 you went to the BP station then?

20 A Yes, sir, I did

21 Q And was there officers already there?

22 A Deputy Rivera was the only deputy on the scene

23 Q And did you remain there for -- do you remember about  
24 how long you stayed there at the BP?

25 A Probably less than ten minutes, anywhere from five to

1 ten minutes

2 Q Now, when you left there, what was your intention?

3 Where were you headed?

4 A I was going back to the law enforcement center to  
5 finish out my nightly paperwork

6 Q And what route did you take when you left the BP?

7 A I left out on Washington Avenue proceeding towards  
8 the hospital My intentions were to go up and hit Mills  
9 Avenue and go in downtown that way

10 Q Okay Now, while -- what, if anything, did you  
11 observe while you were heading down Washington?

12 A As I was going down Washington Avenue, as I  
13 approached the old GBS Lumber there on the left near the  
14 railroad tracks, I heard a siren and looked up in my  
15 rearview mirror and saw red lights coming up behind me  
16 It was an EMS unit I was in the far right-hand lane I  
17 had slowed my patrol car down to not a stop, but almost to  
18 a stop I was barely moving so as to let the EMS unit  
19 proceed past me I noticed there was another vehicle to  
20 my left as we were approaching the intersection of Allen  
21 Street where the Spinx station is

22 As I looked over at that vehicle to see where EMS  
23 was, at that time, I saw a small -- I call it a cream  
24 color, but I don't know exactly what color it was But it  
25 was a small pickup truck with a lot of rust all over it,

1 which was a similar description of what had been aired on  
2 the radio earlier He was getting in the left turn lane  
3 to turn onto Allen Street I had to wait until the EMS  
4 unit went by me And when the EMS unit got by me, I then  
5 switched lanes over to turn onto Allen Street to catch up  
6 with the pickup truck

7 Q Okay Now, how close was that vehicle to you when it  
8 passed?

9 A He was in the lane right beside me

10 Q So right in the lane next to you?

11 A Yeah

12 Q Okay Now, so were you able to catch up with that  
13 vehicle?

14 A Yes, sir, on Allen Street

15 Q And when you caught up to it, what did you do?

16 A I radioed Deputy Graham and asked him what the tag  
17 number was on the vehicle that he had seen at the  
18 convenience stores earlier He gave me the tag number  
19 And it matched the vehicle I was now behind

20 Q Okay Now, what did this vehicle do when you got  
21 behind it?

22 A I just proceeded behind the vehicle I didn't  
23 activate my blue lights or anything I was waiting on  
24 another unit to get there with me I could tell there  
25 was, at least, two occupants in the truck I was waiting



1 on the backup unit to get to me I just followed behind  
2 it down to Allen Street As we came up to the four-way  
3 stop, we made a right-hand turn When we made the  
4 right-hand turn, we turned then left onto Blake Street,  
5 which is pretty much just a residential neighborhood, a  
6 lot of parking on the side of the road and so forth

7 As we turned onto Blake Street, the vehicle then  
8 pulled to the left-hand curbing and stopped I still did  
9 not have on my blue lights or anything At this time, I  
10 was not attempting to stop the vehicle I was just  
11 following behind it waiting on the backup unit

12 Q When it stopped, what did you do?

13 A At that time, I knew that I was going to have to make  
14 contact with the driver of the vehicle I activated my  
15 blue lights and notified dispatch where I was I stepped  
16 out of my car and stayed in the apex of the door And I  
17 started giving verbal commands to the occupants of the  
18 vehicle to put their hands up where I could see them

19 Q Did they do so?

20 A The passenger immediately put his hands out of the  
21 window and kept his hands outside the window the whole  
22 time The driver, I instructed him to cut the vehicle  
23 off He reached back inside and the vehicle cut off I  
24 told him to put his hands back out of the vehicle He did  
25 and then he pulled them back inside I had to give verbal

1 commands a couple of times trying to tell the guy to keep  
2 his hands outside the window where I could see them

3 At that time, I could hear someone from the inside of  
4 the vehicle And I took it that it was the driver was  
5 saying something about brakes And, at that time, the  
6 vehicle began to roll off down the hill

7 Q What did you do when the vehicle started rolling down  
8 the hill?

9 A I got back in my patrol car and notified dispatch  
10 that the vehicle was leaving the scene again At this  
11 time, I could see Deputy Debruyn coming up behind me with  
12 his blue lights on We were at a pretty slow pace going  
13 downhill down Blake Street

14 As we got to the bottom of the hill, I made a left  
15 turn on -- I think it's Hail Street We made a left turn  
16 and the vehicle almost came to a complete stop again At  
17 that time, I could hear the engine firing up And when  
18 the engine fired up, he took off And that's when the  
19 chase started

20 Q Okay And where did the chase lead you?

21 A We went out Hail, crossed over Allen Street onto  
22 Henry, I believe it is As we went up Henry -- Henry is a  
23 real small street -- we met a deputy there He had to run  
24 off to the right shoulder of the road to keep from getting  
25 hit As you go down Henry, there's a sharp left-hand

1 turn And then you go a short distance and then there's a  
2 sharp left-hand turn again

3 As we rounded that second turn, the vehicle -- for a  
4 lack of better term -- spun out and went up into a yard  
5 At that time, the passenger side door came open The  
6 passenger got out and put his hands straight up into the  
7 air I radioed Deputy Debruyn, which was the unit behind  
8 me, to get that subject Deputy Debruyn then exited his  
9 vehicle as the truck pulled off And I continued the  
10 pursuit out to Dunearn Creek and turned right onto Anderson  
11 Road As we went out Anderson Road, right before you get  
12 to Valentine Street, which is a street that you would turn  
13 to go to Saint Francis Hospital, I was met by another  
14 deputy there, Deputy Jason Moore He turned around and  
15 joined the pursuit at that time

16 We turned onto Martin Road, crossed over Averill, and  
17 went through some streets in the Sterling community And  
18 then we crossed back over Valentine on Sixth Street in  
19 Judson and went through the Judson community And the  
20 chase, finally, ended at Sixth and Fourth where the  
21 subject bailed out of the driver's seat and let the car  
22 roll into a tree And he fled on foot

23 Q Okay And we'll get back to that in just a minute  
24 Let me show you what's marked as State's Exhibit No 2  
25 Can you see the area where this -- first, where you first

1 located the suspect and then where the chase ended?

2 A Give me just a minute

3 Yes, sir Down in this area here right prior to the  
4 railroad tracks is where I first saw the vehicle And  
5 this is the Dunean Community where I followed him  
6 and this is the area over in here where the chase went  
7 on

8 Q And do you see the exact -- does that photograph show  
9 the exact area, Sixth Street and Fourth Avenue?

10 A Let me find it on here

11 Yes, sir It's up here in the top left-hand corner

12 Q Okay So just for the benefit of the jury, I'm going  
13 to give you a laser pointer And I just want you to point  
14 out for the jury that area This red button here is the  
15 button And to see it -- well, you may have to step a  
16 little bit out in the courtroom

17 First off, if you would, if you could point out to  
18 the jury where -- can you see where the BP is? And if it  
19 would help you to look at the map over here, you can do  
20 that as well

21 A This is the area here where the BP is, I believe

22 THE COURT We need you to speak up We can't hear  
23 you

24 THE WITNESS I'm sorry

25 This is the area right here where the BP station is

1 BY MR MOYER

2 Q Okay And the area where you first saw the vehicle?

3 A It would be right close to the railroad tracks right  
4 down here before we turn onto Marue and Allen Street right  
5 there

6 Q Okay And then, if you can, point out the area where  
7 the chase ended?

8 A At this intersection right here at Sixth and Fourth  
9 Avenue

10 Q Okay Thank you

11 Take your seat

12 All right Now, you say you saw somebody jump out of  
13 the truck Was the truck at a complete stop when the  
14 person jumped out?

15 A No, sir It continued to roll

16 Q Okay And how far did it roll before it stopped?

17 A I'd estimate 10 to 15 feet

18 Q How close were you to the vehicle when the person got  
19 out?

20 A Probably 25 feet, 30 feet, something like that, just  
21 a guesstimate

22 Q And what observations or -- what did you see about  
23 the appearance of the driver who got out and, as you  
24 described, ran?

25 A I could tell that it was a black male wearing shorts

1       that appeared to come down to around the knee area and a  
2       light-colored shirt

3       Q     Were you able to get a look at his face?

4       A     No, sir

5       Q     I'm going to hand you some photographs that have been  
6       marked as exhibits     First off, let me show you State's  
7       Exhibit No 13     Can you recognize what is shown in that  
8       photograph?

9       A     This is a picture close to the intersection there  
10      You can see the truck barely in the right-hand corner  
11      And you can see what appears to be two knives laying in  
12      the roadway

13      Q     Okay     Let me show you State's Exhibit No 12     What  
14      is depicted in that photograph?

15      A     That's also -- you can see the truck and also two  
16      knives laying in the road, just a little closer view of  
17      it

18      Q     All right     State's Exhibit No 10?

19      A     This is the pickup truck that I pursued

20      Q     Okay     State's Exhibit Nos 14 and 15?

21      A     Two pictures of the knives that were laying on the  
22      pavement right outside where the truck stopped

23      Q     Now, each of these photographs, are they accurate  
24      representations of what you just described in the early  
25      morning hours of October the 13th of 2005?

1 A Yes, sir, they are

2 Q Do they fairly and accurately represent what you just  
3 described on that morning?

4 A Yes, sir

5 MR MOYER Your Honor, at this time, I move to have  
6 State's Exhibit Nos 13, 12, 10, 15, and 14 moved into  
7 evidence

8 MR GIBSON No objection, Your Honor

9 THE COURT No objection?

10 MR GIBSON No objection

11 THE COURT Okay

12 (WHEREUPON, State's Exhibit Nos 10, 12, 13, 14, and  
13 15 were admitted into evidence )

14 BY MR MOYER

15 Q I'm going to start with an exhibit already in  
16 evidence, State's Exhibit No 8 Would you explain to the  
17 jury, what is that we see in State's Exhibit No 8?

18 A That's the pickup truck that I pursued And that's  
19 at its final resting point where it rolled and stopped

20 Q Okay And can you see what I'm putting the laser  
21 pointer on?

22 A Yes

23 Q What does that depict right there?

24 A I believe that's a tree, a small sapling

25 Q That the truck came to rest against?

1 A Yes, sir

2 Q All right Let me show you State's Exhibit No 13

3 What is depicted in that picture?

4 A That's a picture from the intersection facing back  
5 towards where the knives were laying in the roadway

6 Q Okay And what is depicted over in this corner?

7 A That's the front end of the pickup truck on the  
8 driver's side

9 Q Now, when the person got out -- let me let you use  
10 the laser pointer again Does this picture show the area  
11 in which the driver got out and ran?

12 A When I saw the subject running, he was running from  
13 the driver's side back across There's a row of houses on  
14 that street that's facing down this way There's a row of  
15 houses there to the left And the last time I saw him, he  
16 was running toward that row of houses

17 Q Okay And so the roadway that we see right here, did  
18 the Defendant run by this way?

19 A Yes, sir That would have been the direction he was  
20 going

21 Q And did you ever take a close look at the roadway  
22 right here?

23 A I walked by it, yes, sir

24 Q And what, if anything, did you observe in that  
25 roadway?



1 A I saw the two knives that were laying there

2 Q Okay And did you all pick those -- what you  
3 described as knives, did you pick them up?

4 A No, sir, we did not That was collected by our  
5 forensic unit

6 Q Do you remember who the forensic unit was?

7 A I'm trying to remember her name

8 Q It's a female?

9 A It's Dianne

10 Q Is it Dianne Orlando?

11 A That's right That's correct

12 Q And did you all point those out to her?

13 A To my recollection, Deputy Moore done that I did  
14 not do it

15 Q All right Let me show you State's Exhibit No 10  
16 What is depicted in State's Exhibit No 10?

17 A That's the back of the truck that I pursued

18 Q Okay And does that portray the license number  
19 that -- the information you were given by the license  
20 number?

21 A Yes, sir, it does

22 Q Let me show you State's Exhibit No 12 It's a  
23 little dark here, but do you recall what is up in this  
24 corner of the photograph?

25 A That's the pickup truck that I pursued

1 Q Okay And on the roadway here?

2 A Two knives

3 Q State's Exhibit No 14, what is depicted here?

4 A That's just a closer view of the knife -- one of the  
5 two knives that was laying there

6 Q And State's Exhibit No 15?

7 A That, I would assume, to be the other knife

8 Q All right Now, after this person got out and ran,  
9 what did you do?

10 A I -- there was several units in the area because of  
11 the active pursuit I started instructing them to set up  
12 a perimeter Because I was calling out our tracking team,  
13 which is our K-9's that does tracking for suspects

14 Q Okay And they came out there, the tracking team?

15 A They did

16 Q Was anybody located, arrested, or apprehended?

17 A Not at the scene, no, sir

18 Q At any point, did you speak to Investigator Paul  
19 Silvaggio?

20 A Yes, sir, I did

21 Q And do you recall when that was?

22 A I believe I called him after we received a phone call  
23 concerning the gentlemen reporting his truck stolen

24 Q And when that phone call came out, what did y'all do  
25 with any -- with that information?

1 A We sent a couple deputies to the house to meet with  
2 him to find out what was going on And then those  
3 deputies -- a deputy, I'm not sure which one, then  
4 transported him to the law enforcement center

5 Q Okay And what information -- or what was the  
6 purpose for speaking to Investigator Silvaggio?

7 A Well, we had the passenger that was in the vehicle  
8 Deputy Debruyne had him I may have called Investigator  
9 Silvaggio prior to the call on Staunton Bridge Road I  
10 can't remember But we had the passenger that was in the  
11 vehicle during the pursuit And then we had this  
12 information coming in about the car being -- or the truck  
13 being reported stolen

14 Q And you gave all that information to Investigator  
15 Silvaggio?

16 A Yes, sir He was at home, but he came into work  
17 MR MOYER All right Please answer any questions  
18 the Defense may have

19 CROSS-EXAMINATION

20 BY MR GIBSON

21 Q Sergeant Bolt, do you normally patrol that area?

22 A I'm a supervisor, sir And we rotate on a frequent  
23 basis On this evening that we're talking about here, I  
24 was assigned as supervisor for the west side

25 Q Are you familiar with the Tabernacle Church in that

1 area?

2 A Tabernacle Baptist Church?

3 Q Yes, sir

4 A On White Horse and Easley Bridge?

5 Q I believe so, yes, sir

6 A Yes, sir

7 Q Is there a gas station across from that?

8 A Not across the street There's one right down the  
9 street from it There's a Spinx station at White Horse  
10 and Welcome, which is just a couple blocks or so down the  
11 road from the church

12 Q Okay Now, is that the Spinx station that you  
13 understand that Officer Graham saw this vehicle earlier?

14 A I don't know that he ever told me the stores that he  
15 saw it -- saw them at I don't recall

16 Q Okay Now, you said that when you first saw this  
17 vehicle, it was like in the next lane, is that correct?

18 A Yes, sir It would have been to my left I was in  
19 the far outside lane and he was on the inside lane

20 Q Okay So -- and he was to your left?

21 A Yes, sir

22 Q Okay Did you -- and despite that, you didn't make  
23 any positive identification of Mr Collins being in that  
24 vehicle, is that correct?

25 A No, sir The windows are slightly tinted out, so --

1 and due to the time of morning, it was dark I couldn't  
2 see inside I could tell when I was behind it that there  
3 was two individuals -- at least, two individuals in the  
4 truck But I couldn't make any identification, no, sir

5 Q Now, did you ever make a positive identification of  
6 Mr Collins being in that truck?

7 A No, sir, I did not

8 Q Now, you said there was another individual in that  
9 car That was, in fact, Mr Franklin Henry, is that  
10 correct?

11 A I don't know his name Deputy Debruyne took care of  
12 him, along with Investigator Silvaggio

13 Q But you saw him exit the vehicle, is that correct?

14 A I saw a black male exit the vehicle and put his hands  
15 up in the air But I did not get a good look at him  
16 because I was still concentrating on the vehicle as it was  
17 leaving the scene

18 Q What did Mr Henry have on?

19 A I don't know

20 Q Okay Now, was Mr Henry ever charged with this  
21 crime?

22 A Not to my knowledge

23 Q So he -- strike that

24 Now, so when you got the call about the car being  
25 stolen, you immediately called Investigator Silvaggio, is

1 that correct?

2 A I would not say immediately, but at some point in  
3 time There was a lot of things going on at the scene  
4 with the tracking team and stuff I cannot give you a  
5 time line how long it was after that that I notified  
6 Investigator Silvaggio, but I did contact him But I  
7 wouldn't say immediately

8 Q All right Did you go -- were you present when --  
9 let me back up Were you one of the officers who went to  
10 Mr Collins mother's residence?

11 A No, sir, I was not

12 MR GIBSON Okay Thank you, Officer Bolt

13 MR MOYER Nothing else

14 THE COURT All right Thank you, sir

15 You can step down

16 MR MOYER The State would call Deputy Debruyn

17 THE COURT Well, how long is this witness going to  
18 be?

19 MR MOYER I would think ten minutes, maybe five to  
20 ten minutes

21 THE COURT All right

22 MR GIBSON I'm going to cross him, Your Honor

23 MR MOYER Well --

24 THE COURT I'll tell you what Let's just -- it's  
25 almost 5 30 We'll let the jury go home

1 Ladies and gentlemen, we're going to break for the  
2 evening And, of course, would y'all rather have me  
3 sequester you for the night and put you up in a motel?

4 (Jurors laughed )

5 THE COURT I didn't think so We're probably too  
6 cheap up here to pay for it anyway But we're going to  
7 let y'all go home tonight

8 And please remember what I instructed you, don't talk  
9 about it It's got to be very tempting And I know the  
10 folks, your friends, your family, are going to want to  
11 talk to you about it and ask you about it These are your  
12 rights you're protecting every time you protect any of  
13 these rights I talk about in this case They belong to  
14 all citizens So make sure you just don't talk about  
15 Wait And then you can talk about it until they're sick  
16 of it after it's over

17 Also, don't do any research Don't go visit the  
18 scene Just everything you need to know about this case  
19 for you all to make your decision ought to come from this  
20 courtroom subject to Constitutional protections

21 Y'all have a pleasant evening And we'll see you  
22 back at 9 30 in the morning

23 (WHEREUPON, the jury was excused from open court at  
24 approximately 5 20 p m )

25 THE COURT Anything before we break for the evening?

1 MR MOYER Not from the State, Your Honor

2 MR GIBSON No, Your Honor

3 THE COURT All right We'll see you back at 9 30 in  
4 the morning

5 (Pause )

6 MR GIBSON Your Honor --

7 THE COURT Do you need this on the record?

8 MR GIBSON No, not necessarily

9 THE COURT Yes Put it on the record

10 MR GIBSON My client, Your Honor, he has an  
11 electronic monitor on He is not a flight risk He helps  
12 take care of his mother

13 THE COURT Well, I'm sorry We're going off his  
14 bond once we start the trial

15 I'm sorry I didn't realize that, Mr Gibson  
16 (WHEREUPON, the proceedings were concluded at  
17 approximately 5 22 p m , to be reconvened on  
18 Tuesday, September 12, 2006 )

19

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TUESDAY, SEPTEMBER 12, 2006

(WHEREUPON, State's Exhibit Nos 23 and 24 were  
marked for identification only )

THE COURT Any breaking developments today?

MR GIBSON. Not that I'm aware of, Your Honor The  
State, with all their resources, may have a few

THE COURT All right

MR GIBSON Your Honor, there's one issue I want to  
address Because he was held in jail last night, they put  
the little band on him I would ask that it be cut off to  
remove any tape

THE COURT Yes

Are we ready to go?

MR MOYER Before we bring the jury in, are we going  
to address the issue of the lineup?

I think it's still an unresolved issue, as I  
understand it, about whether the actual physical lineup --  
I know it hasn't been suppressed, the information But as  
far as the physical lineup being entered, I think there  
was some concern about a number along the side And the  
testimony would be that all that is is just a photograph  
number given to everybody in the database

MR GIBSON Your Honor, I might be able to short  
circuit this Based on the Court's ruling that the

1 information regarding the lineup comes in, we would  
2 withdraw our objection to the entrance of the photograph

3 THE COURT Okay There you go It's coming in

4 I don't -- you know, out of the database of the law  
5 enforcement center, I mean --

6 MR MOYER He would further testify -- well, he  
7 could testify that those photographs are derived from a  
8 multitude of resources, including county employees and the  
9 Department of Motor Vehicles That testimony could be  
10 given

11 If this is going in without objection, I would,  
12 certainly, just --

13 THE COURT Yes

14 Just for purposes of discussion, I think it's  
15 something that might ought to be considered in the future

16 MR MOYER As far as that line of testimony?

17 THE COURT No, about getting the numbers off of  
18 those lineups

19 MR MOYER I see what you're saying

20 THE COURT Maybe somebody at the Sheriff's  
21 Department could think about it

22 MR PAUL SILVAGGIO Yes, sir

23 THE COURT Yes, sir

24 I mean, it's just sort of --

25 MR PAUL SILVAGGIO They come with and without

1 THE COURT All right Other than that, are we ready  
2 to roll?

3 MR MOYER The State is ready, Your Honor

4 MR GIBSON Yes, sir

5 THE COURT All right Bring the jury in  
6 (WHEREUPON, the jury came into open court at  
7 approximately 9 40 a m )

8 THE COURT Mr Foreman, and ladies and gentlemen of  
9 the jury, welcome back We're ready to resume the trial  
10 Mr Moyer

11 MR MOYER The State would call Deputy Debruyn

12 THE CLERK Please place your left hand on the Bible  
13 and raise your right hand  
14 WHEREUPON,

15 TIMOTHY DEBRUYN,  
16 after first having been duly sworn, testified as follows

17 THE CLERK Thank you

18 Please be seated

19 And state your full name for the record

20 THE WITNESS Timothy Debruyn

21 THE CLERK Thank you

22 DIRECT EXAMINATION

23 BY MR MOYER

24 Q You work for the Greenville County Sheriff's Office?

25 A Yes, sir

25 Q Okay And what did you see when you got to Henry

1 Street?

2 A As I started pulling up behind Sergeant Bolt, I saw  
3 that he had his blue lights on and was trying to stop a  
4 car that was moving away from him I pulled in behind  
5 him And just as I was getting right up behind his car,  
6 the truck took off and went left And we began to chase  
7 the vehicle

8 Q And what happened when the truck left?

9 A He went down -- across and down Henry Street and  
10 continued on We were chasing the vehicle with our lights  
11 and sirens on He went across Allen Street We continued  
12 chasing him We passed Deputy Rivera coming the other  
13 way And then he turned -- he went through a hard left  
14 turn And the truck stopped And the passenger got out  
15 of the truck

16 Q What did you do when the passenger got out of the  
17 truck?

18 A The truck kept going and Sergeant Bolt continued to  
19 chase the truck I got out and challenged the passenger,  
20 placed him in handcuffs and stayed with him

21 Q Did the passenger run or anything when he got out of  
22 the truck?

23 A No He got out of the truck and he raised his hands  
24 And I challenged him, gave him verbal commands He did  
25 what I told him to And I was able to secure him He

1 didn't fight or anything

2 Q And what was his name?

3 A Franklin Thomas Henry

4 Q And what did you end up doing with him?

5 A I stayed there until the chase concluded And then  
6 Sergeant Bolt directed me to take him up to our uniform  
7 patrol and turn him over to our investigators

8 MR MOYER Okay I have no further questions for  
9 this witness

10 CROSS-EXAMINATION

11 BY MR GIBSON

12 Q Officer Debruyne, do you remember what Franklin Thomas  
13 Henry was wearing that night?

14 A He had a lighter-colored T-shirt on, some shorts, and  
15 tennis shoes

16 Q Blue jean shorts?

17 A They were a dark color They might have been blue  
18 jeans.

19 Q Okay And Franklin Thomas Henry, he's a dark-skinned  
20 black male, is that not also correct?

21 A He's a black male, yes, sir

22 Q Okay Now, did you do any further research regarding  
23 Mr Henry and his record?

24 A No, sir, I didn't I turned him over to  
25 investigations up at our uniform patrol

1 Q But you did not just let him go?

2 A No, sir, I did not

3 MR GIBSON Okay Thank you, Officer Debruyne

4 REDIRECT EXAMINATION

5 BY MR MOYER

6 Q What is his physical appearance, size?

7 A He's around six foot, 230 to 240 pounds, in his 30's

8 Q In relation to the Defendant here, is he similar  
9 looking?

10 A He was bigger than the Defendant

11 Q Okay How about age-wise?

12 A Younger

13 Q Okay What about his hair?

14 A The night in question, he had a -- he didn't have  
15 long hair, but he had a full head of hair

16 Q Was he thinning or balding or anything on top?

17 A Not that I remember

18 MR MOYER Nothing further

19 RECROSS-EXAMINATION

20 BY MR GIBSON

21 Q Do you remember his approximate height?

22 A Around six feet

23 Q Six foot?

24 A Yeah I'm six feet and he was the same height as me

25 MR GIBSON Thank you

1 THE COURT All right Thank you, Officer

2 You can stand down

3 MR MOYER The State would call Deputy Barrickman

4 THE CLERK Please place your left hand on the Bible  
5 and raise your right hand

6 WHEREUPON,

7 BRIAN BARRICKMAN,

8 after first having been duly sworn, testified as follows

9 THE CLERK Thank you

10 Please be seated

11 Please state your full name for the record

12 THE WITNESS Deputy Brian Barrickman

13 THE CLERK Thank you

14 DIRECT EXAMINATION

15 BY MR MOYER

16 Q And where do you work?

17 A Greenville County Sheriff's Office

18 Q How long have you worked for the Greenville County  
19 Sheriff's Office?

20 A Approximately three years, sir

21 Q Were you working on the morning of October the 13th  
22 of 2005?

23 A Yes, sir, I was

24 Q Okay Were you dispatched to a location on that  
25 morning in relation to this case?



1 A Yes, sir, I was

2 Q And where was that?

3 A 715 Staunton Bridge Road

4 Q And for what reason?

5 A To try to make contact with the Defendant, sir

6 Q I'm sorry Speak up, please

7 A To try to make contact with the Defendant

8 Q Okay And what -- why that location?

9 A I was dispatched to that location because we had  
10 reason to believe the Defendant would be coming back  
11 there

12 Q And what reason was that?

13 A They were able to obtain a license plate of the  
14 Defendant If I remember correctly, that was the address  
15 the plate came back to

16 Q Okay And were you the only officer to go to that  
17 location?

18 A No, sir, I wasn't Upon my arrival, Deputy K-9  
19 Handler Jumper was there And approximately five minutes  
20 after our arrival, Master Deputy Dave Mindy was there and  
21 other unidentified K-9 units

22 Q Okay Now, had you participated in the pursuit of  
23 the vehicle?

24 A No, sir, I did not

25 Q Okay What time did your shift come on?

1 A 7 00 in the morning, sir

2 Q Okay Were you aware of what had taken place with  
3 the vehicle?

4 A Somewhat

5 Q Now, around what time was it that you went to the  
6 location, 715 Staunton Bridge Road?

7 A It would have been right around 7 00 a m If I  
8 remember correctly, they pulled myself and another unit  
9 out of roll call to go ahead and respond to that location  
10 since it was near a shift change

11 Q Okay And, in fact, you made note of the time you,  
12 actually, left the location in your report?

13 A Yes, sir When I left the Defendant's home, it was  
14 7 16 in the morning

15 Q Okay Now, what time -- or when you arrived at the  
16 location, what did you find? What was there?

17 A At that point, it was just his family members at that  
18 location The Defendant was not there at that time

19 Q Okay And did he show up?

20 A About five to ten minutes after our arrival, he  
21 showed up, if I remember correctly

22 Q Was he alone or --

23 A He arrived with his wife, if I remember correctly

24 Q Okay And then what did you do in relation to him  
25 when he arrived?

1 A Since we had reason to believe that he was the person  
2 who had committed the crime, he was immediately placed  
3 into investigative detention until we could make sure he  
4 was, actually, the person we were looking for And then,  
5 at that point, he was transported to the law enforcement  
6 center

7 Q Okay And then when you got to the law enforcement  
8 center, did you stay with him?

9 A Yes, I did

10 Q And then what did you end up doing with him?

11 A I sat with him for probably an hour or so, at least,  
12 until the investigators were able to meet with him

13 Q And do you remember who the investigator was?

14 A Investigator Silvaggio

15 Q This investigator right here?

16 A Yes, sir

17 MR MOYER All right Please answer any questions  
18 the Defense may have

19 CROSS-EXAMINATION

20 BY MR GIBSON

21 Q Other than what you just testified to, you don't have  
22 any information that would tend to prove that Steven  
23 Collins, in fact, committed this armed robbery, is that  
24 correct?

25 A Well, sir, I was sitting there when he gave a

1 verbal --

2 Q No, no I'm not talking about a confession at this  
3 point --

4 A Okay

5 Q -- or the alleged confession at this point

6 A Okay

7 Q Anything up to that point, did you see him commit the  
8 crime?

9 A No, sir, I did not

10 Q All right Thank you

11 Let's talk about when you arrested him

12 A Yes, sir

13 Q You say you took him into investigative custody, is  
14 that correct?

15 A Uh-huh

16 Q Did you put handcuffs on him?

17 A Yes, sir, I did

18 Q So you put him in handcuffs and put him in the back  
19 of your car, is that correct?

20 A Yes, sir, it is

21 Q Was he free to go at that time?

22 A No, sir, he was not

23 Q Okay Now, my understanding is that that was around  
24 7 00 a m ?

25 A Approximately, sir

1 Q Okay And my understanding is that you sat with him  
2 until an investigator was able to talk with him, is that  
3 correct?

4 A Yes, sir

5 Q So you never let him out of your sight or anything  
6 like that?

7 A No, sir

8 Q You stayed in the room with him the entire time?

9 A Yes, sir

10 Q Was he in handcuffs?

11 A Yes, sir

12 Q So he was in handcuffs the entire time My  
13 understanding is the investigator didn't, actually, get  
14 down there to talk to him until noon?

15 A I don't recall the time, sir I can't say how long  
16 we were down there

17 Q So you can't say one way or another whether or not  
18 that's the case?

19 A I can't say how long I sat there with him

20 Q Okay

21 A But I know it was a little while

22 Q Okay So if I'm correct and you picked him up at  
23 7 00 and the investigator didn't get with him until 12 00,  
24 he had been sitting there in custody with you in handcuffs  
25 for five hours?

1 A If you're timeline is correct, sir, then, yes

2 MR GIBSON Thank you

3 MR MOYER One follow-up question

4 REDIRECT EXAMINATION

5 BY MR MOYER

6 Q Was it your decision to place him in custody or was  
7 that directed to you by a supervisor?

8 A It was directed to me by higher, sir

9 MR MOYER Okay Thank you

10 RECROSS-EXAMINATION

11 BY MR GIBSON

12 Q Who directed you to put him in custody?

13 A There were officers there that were senior to me at  
14 the time And I was going under what they were advising  
15 me to go ahead and do

16 Q Who?

17 A Sir, I can't recall That's been too long ago  
18 Everybody at the scene was a veteran officer And I had a  
19 little over a year with Greenville County at that time, so  
20 I was doing as directed

21 Q But at the time you put him into arrest, you were not  
22 aware of any probable cause to arrest him, is that  
23 correct?

24 A When I was coming into work that morning, sir, I had  
25 listened to the radio, as I do every morning on the way

1 into work And I was catching bits and pieces of what  
2 had happened prior to me coming on shift I was  
3 aware --

4 Q But, at the time, you were not -- you did not have  
5 probable cause to arrest him?

6 MR MOYER Your Honor --

7 MR GIBSON Withdrawn

8 THE COURT All right Thank you

9 Thank you, Officer

10 You can step down

11 THE WITNESS Yes, sir

12 MR MOYER The State would call Investigator Tammy  
13 Patton

14 THE COURT I'm sorry What was his name?

15 MR MOYER It's a she, Tammy Patton

16 THE CLERK Please place your left hand on the Bible  
17 and raise your right hand  
18 WHEREUPON,

19 TAMMY PATTON,

20 after first having been duly sworn, testified as follows

21 THE CLERK Thank you

22 Please be seated

23 Please state your full name for the record

24 THE WITNESS Tammy Patton

25 THE CLERK Thank you

1

DIRECT EXAMINATION

2

BY MR MOYER

3

Q All right Would you, please, tell the jury where it  
4 is that you're employed?

5

A I'm employed with the Greenville County Sheriff's  
6 Office

7

Q Okay How long have you been with Greenville County  
8 Sheriff's Office?

9

A I've been with the Sheriff's Office seven years

10

Q Okay What is your position with the Sheriff's  
11 Office?

12

A My position at the Sheriff's Office, I'm a violent  
13 crimes investigator I normally do robberies

14

Q Okay Did you become involved in any way in the case  
15 against the Defendant, Steven Collins?

16

A Yes, sir

17

Q Okay Did you collect any evidence in the case?

18

A Yes, sir

19

Q And from what location?

20

A It was at Heritage Mobile Home Park, Lot #16, in  
21 Greenville County

22

Q Okay Was any resident of the trailer there while  
23 you went into that residence and did a search?

24

A Yes, sir

25

Q Okay And who was it?



1 A The spouse of the Defendant, Donna Collins

2 Q Okay And while you were -- okay I want to show  
3 you what is marked as State's Exhibit No 24 And if you  
4 could just take a look at those -- and hold them below the  
5 bar since they're not in evidence But could you  
6 recognize what it is that I'm showing you?

7 A Yes, sir

8 Q What is that?

9 A Denim shorts with a brown leather belt

10 Q And how do you -- what do you recognize those shorts  
11 as?

12 A These are the shorts that I collected on October  
13 13th

14 Q Okay And where is it that you collected them?

15 A From the rear bedroom of the trailer at Lot #16

16 Q Okay This bedroom, do you know whose bedroom it  
17 was?

18 A It belonged to Donna Collins and the Defendant

19 MR MOYER Your Honor, at this time, we would  
20 move to have State's Exhibit No 24 entered into  
21 evidence

22 MR GIBSON No objection, Your Honor

23 THE COURT All right Without objection

24 (WHEREUPON, State's Exhibit No 24 was admitted into  
25 evidence )

1 BY MR MOYER

2 Q I neglected -- if you would -- since they're now in  
3 evidence, would you hold up the shorts for the jury to  
4 see And describe what it is that you collected

5 A These are light blue denim shorts with a brown  
6 leather belt contained in the belt loops

7 MR MOYER All right Please answer any questions  
8 the Defense may have

9 MR GIBSON No questions, Your Honor

10 THE COURT All right Thank you, ma'am  
11 You may step down

12 MR MOYER We would ask that she be excused

13 THE COURT Any objection?

14 MR GIBSON Can I have just a second, Your Honor?

15 THE COURT Yes

16 (Pause )

17 THE COURT Ms Patton, you can just wait outside  
18 We'll let you know if you can stay or not

19 Call your next witness

20 MR MOYER The State would call Dianne Orlando

21 THE CLERK Please place your left hand on the Bible  
22 and raise your right hand

23 WHEREUPON,

24 DIANNE CLAIRE ORLANDO,

25 after first having been duly sworn, testified as follows

1 THE CLERK Thank you

2 Please be seated

3 Please state your full name for the record

4 THE WITNESS Dianne Claire Orlando

5 THE CLERK Thank you

6 DIRECT EXAMINATION

7 BY MR MOYER

8 Q Where are you employed?

9 A Greenville County Forensics Division

10 Q And how long have you been with Greenville County  
11 Forensics Division?

12 A A little over two and a half years

13 Q And is that the extent of your law enforcement  
14 experience or do you have other experience?

15 A No, it's not I have other experience

16 Q And what is that?

17 A After I graduated college, I worked for the  
18 Greenville County Detention Center for two and a half  
19 years And then I worked for the Greenville City Police  
20 Department for a little over two years

21 Q Now, what are your duties and responsibilities in  
22 forensics for Greenville County?

23 A We respond to crime scenes for purposes of processing  
24 and collecting evidence We'll collect evidence, if it  
25 can be processed at a later time, or DNA evidence, and

1 documentation of crime scenes

2 Q Okay And documentation via?

3 A Photographs, videotape We have several methods we  
4 use, depending on what the situation is

5 Q Okay Did you do any work in relation to the robbery  
6 of the BP gas station on October the 13th of 2005?

7 A I did

8 Q Okay And where is it that you first responded?

9 A I responded first to the gas station, which is at  
10 2008 Anderson Road in Greenville

11 Q Okay And what time was it that you arrived at that  
12 location?

13 A I arrived at the scene at 5 39 And I received the  
14 call at 5 27 in the morning

15 Q Okay Did you take the photographs that we have seen  
16 in this case that have been entered?

17 A I did

18 Q You took all the photographs in the case?

19 A Yeah I took the photographs of the crime scene and  
20 then the second location that I went to

21 Q All right Now, did you attempt to process the scene  
22 there for fingerprints?

23 A I did

24 Q Okay And how did you do that? What steps did you  
25 take to try to get fingerprints?

1 A Well, first, I -- when I responded to the location,  
2 it was secure Usually, officers will put barrier tape  
3 around it You'll process the front door and then speak  
4 to the complainant or whoever was robbed and see if the  
5 person handled stuff Sometimes they don't touch  
6 anything Sometimes the clerk will be able to tell you  
7 exactly what they touched

8 Q Okay And did you attempt to get any fingerprints  
9 from any locations there at that BP gas station?

10 A I did I processed the entire scene I spoke to the  
11 complainant I processed the interior and exterior of the  
12 door that the suspect came into I did the back room  
13 where he had asked her to take him where the videotape was  
14 and processed the doors on it.

15 Q Okay And were you able to lift any fingerprints?

16 A No, I wasn't

17 Q Now, did you attempt to get any fingerprints from any  
18 money?

19 A No, I didn't

20 Q And did you see some money there?

21 A There was money on the counter

22 Q Okay And can you tell us why that was not  
23 attempted?

24 A Because our division doesn't have the technology,  
25 honestly, to process money Any type of paper that we

1 collect, we dip it in ninhydrin And what it does is it  
2 turns any images on there a purple color When you dip  
3 money, the whole thing just turns purple Plus, we're not  
4 allowed to collect any money or drugs, just the packaging,  
5 if there is any

6 Q While you were there, did you have any contact with  
7 anyone other than the clerk?

8 A Well, I had spoken to the officer when I had gotten  
9 there And then later on, when the officers left the  
10 scene, I was still processing and the clerk was there  
11 And then another witness came over just -- I think she was  
12 a customer originally

13 Q Okay And I'm not asking you what she said, but did  
14 you overhear a conversation with that person and the  
15 clerk?

16 A I did, yeah

17 Q Okay And after hearing that conversation, what did  
18 you do?

19 A I notified the officers on the radio And I also --  
20 I believe I called dispatch to let them know what was  
21 going on, but didn't really air anything I just asked  
22 them to send a unit back to the location

23 Q Now, after you did that, where did you go?

24 A I then went to the second location where they had  
25 recovered the vehicle that they thought the suspect was

1 driving

2 Q Okay And what did you do at that location?

3 A Once they decided that they were going to have the  
4 vehicle towed, I did not process that car Because we'll  
5 just do it the correct way in a controlled environment  
6 after it's towed But there were two box cutters in the  
7 roadway, and I went ahead and secured them

8 Q Okay And let me hand you what's been marked as  
9 State's Exhibit No 12 Can you take a look at that  
10 photograph? Does that photograph indicate the location of  
11 the box cutters that you collected?

12 A Yes, it does

13 Q Okay Is that where they were when you collected  
14 them?

15 A I left them right where they were And then I  
16 documented them in their position And then I went ahead  
17 and collected them.

18 Q So when you say you "documented them," you took the  
19 photograph?

20 A Uh-huh

21 Q Before you moved them?

22 A Yes

23 Q All right And did you collect those box cutters?

24 A Yes, I did

25 Q I want to show you State's Exhibit No 22 If you

1 would, just take a look at it It's not in evidence yet,  
2 so hold it -- if you would, hold it down below the bar  
3 And just take a look at that and tell us if you can  
4 identify what is there?

5 A They're the two box cutters that I collected from the  
6 scene

7 MR MOYER Your Honor, at this time, I would move to  
8 have State's Exhibit No 22 moved into evidence

9 MR GIBSON No objection, Your Honor

10 THE COURT All right Without objection

11 (WHEREUPON, State's Exhibit No 22 was admitted into  
12 evidence )

13 BY MR MOYER

14 Q All right Now, would you hold those up now for the  
15 jury?

16 THE COURT Let's get them marked first, please  
17 Have you already marked then?

18 THE COURT REPORTER Yes, sir

19 MR MOYER Just for the record, the box cutters are  
20 marked The envelope is marked and the envelope, State's  
21 Exhibit No 22, contains two box cutters

22 THE COURT Okay Thank you

23 BY MR MOYER

24 Q Now, what did you do with the box cutters after you  
25 collected them?



1       A     I brought them back to the office so I could process  
2       them at a later time    You can do some things on the  
3       scene, but you're kind of limited to what you can do on  
4       the scene    So I just went ahead and took them back to the  
5       office

6       Q     And when you took them back to your office, you said  
7       you tried to process them   Tell us about that process,  
8       what you did with those box cutters to try to --

9       A     First, I used cyanoacrylate   It's, basically, a  
10      super glue   We have what looks like a huge fish tank and  
11      there's a heating element and another element which heats  
12      up that you put water on   And then after you put the  
13      super glue on the heating element, it then fumes and  
14      creates what looks like smoke   And then it adheres to any  
15      type of oil deposits or residue

16           And then I went ahead and used fingerprint powder and  
17      then put the tape down on it and lifted the image up off  
18      of that   The super glue kind of just captures it  
19      Fingerprints are really hard to work with, even if you're  
20      processing them using powder, because they can rub real  
21      easily   And the super glue kind of just sets it

22      Q     Okay   Now, were you able to locate any prints or  
23      partial prints off those box cutters?

24      A     Yes, I did

25      Q     And --

1 MR GIBSON Objection, Your Honor

2 May we approach?

3 THE COURT All right

4 (WHEREUPON, a bench conference was held )

5 BY MR MOYER

6 Q Now, do you do the actual comparison of fingerprints  
7 there?

8 A No, I don't I just left any of the evidence and it  
9 goes forward to a latent examiner

10 Q And that's someone who specializes in doing the  
11 fingerprint analysis?

12 A Yes

13 Q Now, did you do anything with the truck then?

14 A I processed it the next day for fingerprints

15 Q And where did you process it?

16 A I processed it at our location We have a bay at our  
17 division where you can process a vehicle

18 Q Okay And were you able to locate any fingerprints  
19 in it?

20 A Yes, I was

21 (WHEREUPON, State's Exhibit No 25 was marked for  
22 identification only )

23 BY MR MOYER

24 Q Where was the fingerprint you lifted on the truck?

25 Where was it?

1 A It was on the driver's side exterior windshield

2 Q Let me hand you State's Exhibit No 25 And if you  
3 could, take a look at that And can you recognize what I  
4 just handed you?

5 A Yes

6 Q What is it?

7 A It's one of the latent cards that I sent to the  
8 latent division where I drew a little diagram of where the  
9 fingerprint I lifted was And then it says that I got it  
10 from the exterior windshield on the driver's side And it  
11 has the vehicle information on the bottom

12 Q Okay And is that the latent fingerprint card that  
13 you used for the truck that you processed on October the  
14 14th?

15 A Yes

16 Q Okay And what is on the other side of that card?

17 A The other side is an image which has the tape and the  
18 latent image on it And then -- that's the way it was  
19 when I sent it up And there's been things done to it  
20 since then

21 Q And how do you get that image on the card, the image  
22 of the fingerprint?

23 A You use the fingerprint powder This is on the  
24 actual truck that I did And I used the fingerprint  
25 powder And I then adhered a piece of tape to it and then

1 peeled it off and then affixed it on the back of the card

2 Q And what sort of information do you put on the card  
3 then when you finish putting the fingerprint on the card?

4 A On the front of the card, I just fill out the case  
5 number, the date, the incident type, which in this case  
6 was a robbery, where I did the processing, which is our  
7 location at the forensics division, and then where I  
8 lifted the print, and then the vehicle information on the  
9 bottom

10 Q Okay And then what do you do with that card once  
11 you finish filling out all that information and affixing  
12 the print to it?

13 A We type up an envelope with all the information on  
14 it And then we put the cards, any cards that we've got,  
15 any latent images, we put them in the envelope And  
16 then we drop them in a drop box And it gets forwarded to  
17 the latent division One of the latent examiners,  
18 actually, comes and picks them up every day on the  
19 weekdays

20 MR MOYER Okay Please answer any questions the  
21 Defense may have

22 CROSS-EXAMINATION

23 BY MR GIBSON

24 Q Let's talk about the box cutter that you processed  
25 You said you found a print off of that thing?

1 A Yes

2 Q Did it match the Defendant's?

3 A I can't say that A latent examiner would have to  
4 say that I pulled an image and I sent it up So I don't  
5 know if it matched the image, because I'm not a latent  
6 examiner

7 Q Are you aware there was a VCR that was at issue in  
8 this case?

9 A Yes

10 Q Did you process that VCR?

11 A The VCR was gone from the location

12 Q Okay So the VCR was never located under your  
13 understanding, to your understanding?

14 A No

15 Q How about -- I just want to back up and clarify  
16 everything you said You said you processed the scene at  
17 the BP?

18 A Sure Yes, sir

19 Q And I imagine you checked the doors, the glass doors?

20 A Yes, I did

21 Q The counter tops?

22 A Yes

23 Q The cash register?

24 A Yes Normally, I get an idea from the victim, and  
25 sometimes they don't have them touch anything, sometimes

1       they have them hand them all the money   And I don't  
2       remember what the situation was, but I go according to  
3       that, according to what they touched

4       Q     How about the cabinet where the VCR was initially  
5       located?

6       A     I did process that

7       Q     Did you find any prints there?

8       A     No    It was not a good surface    It was a wood grain  
9       surface

10      Q     So the only prints that you found in this case was  
11      the latents you took off the truck?

12      A     Yes

13      Q     And the print you took off the box cutter?

14      A     Yes

15           MR GIBSON    Okay    Thank you

16           THE WITNESS   You're welcome

17           THE COURT    All right   You can step down  
18           Thank you

19           MR MOYER    The State would call Bill Cromer

20           May this witness be excused?

21           MR GIBSON    Your Honor, no objection

22           And I have no objection to Ms Patton being excused

23           THE COURT    Okay    Thank you

24           THE CLERK    Please place your left hand on the Bible  
25           and raise your right hand

1 WHEREUPON,

2 WILLIAM CROMER,

3 after first having been duly sworn, testified as follows

4 THE CLERK Thank you

5 Please be seated

6 Please state your full name for the record

7 THE WITNESS My name is William Cromer The  
8 spelling of the last name is C-R-O-M-E-R

9 THE CLERK Thank you

10 DIRECT EXAMINATION

11 BY MR. MOYER

12 Q Where are you employed, sir?

13 A I'm employed by the Greenville County Department of  
14 Public Safety Forensics Division

15 Q What is your position there?

16 A My position with the forensics division, I'm a  
17 principle criminalist in the latent fingerprint section

18 Q What are your duties in that position?

19 A In that particular position, my duties daily are to  
20 evaluate any fingerprints that come in from crime scenes  
21 I believe you just heard from crime scene technician

22 Dianne Orlando Any fingerprints they send up from crime  
23 scenes, I would evaluate those and compare those to any  
24 possible suspects that might be developed in a case

25 Q Okay Now, how -- and how long did you say you've

1       been doing this?

2       A     I've been active in latent prints since 1999 full  
3       time    I've been in law enforcement for 30 years, 25 of  
4       which have been in the area of forensics

5       Q     Okay   And what training and education have you had?

6       A     Specifically to fingerprints, I've received a 40-hour  
7       course in 1978 on fingerprints   Again, a 40-hour course  
8       in 1984, at the South Carolina Criminal Justice Academy,  
9       both of those classes   And in 1987, I attended a 40-hour  
10      course taught by the FBI in advanced fingerprint  
11      identification techniques   And I --

12     Q     And have you -- I'm sorry

13     A     And I currently receive ongoing training through the  
14     International Association for Identification and the state  
15     division of that chapter, also, of that same organization,  
16     which is the International Group of Forensic  
17     Practitioners

18     Q     Now, have you been certified in court as an expert in  
19     fingerprint identification?

20     A     Yes, I have

21     Q     And how many times?

22     A     Probably a dozen or more

23           MR MOYER   Your Honor, at this time, I would move to  
24     have Bill Cromer as an expert in fingerprint  
25     identification



1 MR GIBSON No objection, Your Honor

2 THE COURT All right Without objection

3 BY MR MOYER

4 Q Let me first ask you this Are fingerprints always  
5 left behind when somebody may touch something?

6 A Not all the time It depends a lot on the individual  
7 themselves Some people do not even leave fingerprints  
8 even if they touch something A lot of the -- whether or  
9 not a fingerprint will be left behind might also depend  
10 upon the condition of a person's hands Perhaps, they've  
11 had their hands in their pockets and they take their hands  
12 out and they've been rubbing their hands and then they  
13 touch something They have, basically, wiped away those  
14 oils and acids that are left behind on the fingers and  
15 palms that would leave those prints on a surface

16 A lot of it, also, depends upon the condition of the  
17 surface itself The best surfaces, of course, are going  
18 to be your clean surfaces, things of that nature Dirty  
19 surfaces and rough textured surfaces are going to be  
20 harder to obtain fingerprints off of

21 Q Okay Now, did you have occasion to make an  
22 examination of fingerprints for this case?

23 A Yes, I did

24 Q All right Now, how many fingerprint cards were you  
25 given?

1 A I was submitted by -- Forensic Investigator Dianne  
2 Orlando submitted three fingerprint lift cards in this  
3 particular case

4 Q Okay And did you have a known fingerprint to match  
5 or to analyze those fingerprint cards against?

6 A Yes, I did I had the known fingerprints of a Steven  
7 Antonio Collins to compare against these latent or unknown  
8 lifts from the crime scene

9 Q And where did you get the unknown prints for those  
10 cards?

11 A The cards were provided by Investigator Dianne  
12 Orlando

13 Q Okay Now, let me hand you what's been marked as  
14 State's Exhibit No 25 And I'll ask you to take a look  
15 at that and see if you can identify what I just handed  
16 you?

17 A Yes, sir, I can

18 Q Okay And what is it and how can you identify it?

19 A This is one of the three fingerprint lift cards that  
20 were submitted by Investigator Dianne Orlando On the  
21 back side of the card, it has case information such as a  
22 case number, which is specific and unique to each  
23 individual case, that is the particular case number that  
24 was assigned in this individual incident Also, it has  
25 the date that she lifted the latents, what the incident

1 type was, location, and also where the latent came from,  
2 and also a vehicle description Also, it has down here at  
3 the bottom her name And it also has latent #2 of 3,  
4 meaning this is lift #2 and there were three cards

5 On the reverse side, this is a piece of fingerprint  
6 lifting tape This is, typically, where the crime scene  
7 technician investigator would go out and use some type of  
8 powder to process or dust a surface They would put the  
9 tape down over it and they would adhere to the surface  
10 They would lift the tape off and then place it on one of  
11 these cards And that's the condition it was sent up to  
12 me

13 In addition to that, I have made notation on the  
14 front side of this card as to the fingers that I was able  
15 to identify and the individual I was able to identify  
16 those fingers to as having come from

17 Q Okay Now, were you able to make a match with that  
18 particular fingerprint card?

19 A Yes, I was

20 Q Okay And tell -- well, tell us the results of your  
21 examination

22 A The results of my examination, I was able to  
23 determine the fingerprints on this particular latent lift  
24 card came from the left middle and left ring finger of  
25 Steven Antonio Collins

1 Q Okay Now, is that card now in substantially the  
2 same condition now as it was back when you filled that  
3 out?

4 A Yes, sir This card has been in our custody until we  
5 came to court today It's been in the custody of the  
6 latent print section, in my custody The only alteration  
7 that was made is where I made the notation on there as to  
8 who I matched and what fingers I matched

9 Q You brought that card to court today?

10 A Yes I brought them in and provided them to you  
11 today

12 MR MOYER Your Honor, at this time, I would move to  
13 have State's Exhibit No 25 moved into evidence

14 MR GIBSON No objection, Your Honor

15 THE COURT All right

16 (WHEREUPON, State's Exhibit No 25 was admitted into  
17 evidence )

18 BY MR MOYER

19 Q Now, the other two fingerprints that you were  
20 provided, were you able make any matches with them?

21 A The other two fingerprint lifts that were submitted,  
22 I examined those, evaluated those, and they were  
23 determined not to be comparable

24 Q What does that mean?

25 A They were not sufficient quality to compare to an

1 individual or source Basically, what we're using for  
2 identification purposes, if you'll look at your fingers,  
3 the second and third digits as well as the palms of your  
4 hands, even on the bottoms of your feet and toes, under  
5 magnification, you can see little ridges and valleys in  
6 your fingers The characteristics of those ridges, the  
7 raised portion are what we use to make an identification  
8 or effective comparison in a fingerprint case But in  
9 those two particular cases or two lifts, we were unable to  
10 make an identification It lacked any sufficient  
11 characteristic to make any type of identification

12 When we do an identification, we're looking not only  
13 at the overall characteristics where those lines may end  
14 or divide, things of that nature, we also look at the  
15 placement of pores along those ridges, as well the shape  
16 of the ridges themselves

17 MR MOYER Okay Thank you

18 Please answer any questions the Defense may have

19 CROSS-EXAMINATION

20 BY MR GIBSON

21 Q You said three cards were submitted to you, is that  
22 correct?

23 A That's correct, sir

24 Q Now, of the cards, the ones you were able to identify  
25 and the one that was just moved into evidence, from what

1 location was that card taken?

2 A That card was identified in writing by Investigator  
3 Orlando as having come from the exterior windshield on the  
4 driver's side of a Ford bearing the tag number of 796 T,  
5 Tango, Z, Zulo, D, Delta

6 Q Now, as an expert in fingerprint analysis, you  
7 should, certainly, be able to answer this question Can  
8 you tell from a print when it was, in fact, left?

9 A I cannot tell There's no scientific basis to tell  
10 the length of time that a print has been left on a  
11 surface However, based on my experience and training,  
12 one would have to look at that, look at the overall  
13 surface, the conditions that that print was left in If  
14 it was left on the outside of the vehicle, potentially, if  
15 you have a vehicle washed, it could have been washed off,  
16 along with road dirt, grime Things of that nature would  
17 make it more detrimental as far as being able to lift a  
18 fingerprint I can utilize those type of things to  
19 determine that it may have been fairly recent However,  
20 there is no scientific basis behind that

21 Q Okay So you're not aware of anything regarding this  
22 truck as far as when it was driven or anything like that,  
23 is that correct?

24 A No, sir I don't have any details from the truck  
25 other than the fact that this fingerprint --

1 Q And you're not aware if it was washed at any time  
2 during this time frame or when it had ever been washed, is  
3 that correct?

4 A I have no idea, no, sir

5 Q And you were not aware of any conditions of the type  
6 you talked about that would degrade a fingerprint in the  
7 way you said it could degrade?

8 A I have no other information on the case

9 Q So based on what you know, there's no way that you  
10 can tell when this fingerprint was left?

11 A No, sir There's no scientific basis to tell the  
12 exact age of a print

13 Q Okay Now, if a truck belongs to someone, is it  
14 uncommon for the owner's print to be on the truck?

15 A No, sir, it's not

16 Q Okay And these other two cards that you were given,  
17 where were those prints taken from?

18 A I would have to refer to those two lift cards

19 Q Okay Do you have them in the courtroom?

20 A They are The Solicitor has them

21 Q I'm going to provide you what was just for the first  
22 time provided to me.

23 A One of these lift cards, latent lift #1 is labeled by  
24 Investigator Dianne Orlando as having coming from the edge  
25 of a box cutter

1 Q Okay

2 A Latent lift #3 is identified as coming from the same  
3 Ford truck as I previously mentioned as having made the  
4 fingerprint match from It says, on the exterior  
5 windshield driver's side

6 Q Okay And neither one of these prints, based on your  
7 analysis, could be tied to Mr Collins, is that correct?

8 A Mr Collins nor anyone else They were deemed not  
9 comparable

10 Q Okay Do you create a written report when you come  
11 up with a negative result?

12 A What I do is create a report as to the match  
13 information If I make a match, I create a report  
14 detailing the match itself

15 Q Do you keep notes as to whether or not if you look  
16 at -- let me back up As far as these two prints are  
17 concerned, the ones that you say are non-comparable, did  
18 you make any written notification whatsoever in relation  
19 to your finding?

20 A I did not make any written notification other than  
21 the fact of looking at that I had my supervisor, the  
22 senior examiner, look at that and confirm the fact that  
23 they were not comparable And I reviewed this case prior  
24 to court back last week

25 Q You say you reviewed this case prior to last week



1 Did you have notes that said these were non-comparable or  
2 you just --

3 A I looked at the latent prints again, as opposed to  
4 the prints of Mr Collins And I also looked at the  
5 prints as far as their overall comparability

6 Q So I want to make sure You don't make any kind of  
7 notation whatsoever, whether it's for your own personal  
8 use or whatever, when you find a print that doesn't match  
9 a suspect?

10 A We make a notation on the in-house system if the  
11 comparison is totally negative But as far as a notation  
12 of each individual fingerprint lift, we do not

13 Q What about a non-comparable, do you do that in-house  
14 as well on your in-house system?

15 A If -- I don't believe I understand fully Are you  
16 speaking of if all the prints in the case are not  
17 comparable or if certain individual prints might not be  
18 comparable?

19 Q If certain individual prints may not be comparable,  
20 do you make a notation on your in-house system as to that  
21 fact?

22 A Sometimes we do, sometimes we don't

23 Q Did you do so in this case?

24 A I did not make a notation of that

25 Q Okay So -- I just want to get this straight You

1 were tasked with looking at three prints, correct?

2 A That's correct

3 Q One of those prints you found is positive And on  
4 the other two prints that you found non-comparable, you  
5 deemed them to be non-comparable, you didn't make any  
6 written notification whatsoever?

7 A No, sir, I did not

8 Q But on the print that you found positive, you created  
9 a rather detailed report, is that correct?

10 A I created a report detailing the latent print that I  
11 had, who that was compared to, and the fact that it was  
12 matched to which fingers or which area of the individual  
13 it was matched to

14 MR GIBSON Okay Thank you

15 MR MOYER I have nothing further

16 THE COURT All right Thanks

17 Please step down

18 MR MOYER May we approach, Your Honor?

19 THE COURT Yes

20 Do you want to cut this witness loose?

21 MR GIBSON No objection, Your Honor

22 THE COURT All right Thank you

23 (WHEREUPON, a bench conference was held )

24 THE COURT Mr Foreman, and, ladies and gentlemen of  
25 the jury, we have been going almost an hour this morning

1 Usually, we try to break in the morning We've got an  
2 issue we need to talk about So let's take a break now  
3 Y'all retire to your jury room and, please, do not  
4 discuss the case

5 Thank you very much

6 (WHEREUPON, the jury was excused from open court at  
7 approximately 10 28 a m )

8 THE COURT Mr Moyer

9 MR GIBSON Thank you, Your Honor -- oh, Mr Moyer  
10 Oh, go ahead

11 MR MOYER Well, I think it's Mr Gibson's motion

12 MR GIBSON It will be

13 THE COURT Well, you asked for the bench conference  
14 I didn't know if there was something you wanted --

15 MR MOYER Oh, okay I would just like to put on  
16 the record, I think, in response to what I believe  
17 Mr. Gibson is going to say, but it would probably be --

18 THE COURT Okay Go ahead, Mr Gibson Tell me  
19 what it is

20 MR GIBSON Well, Your Honor, apparently -- I made a  
21 motion in this case very early on for Brady material, as  
22 well as any discovery Apparently, there were, at least,  
23 two prints that do not indicate my client was there And  
24 there was, at least, two latent cards that I was never  
25 provided information about Under my interpretation and

1 understanding, this should have constituted Brady  
2 material And, therefore, on that basis, I'm requesting a  
3 mistrial

4 MR MOYER Well, Your Honor, my response is several  
5 fold First off, Mr Gibson was invited on, at least,  
6 three or four occasions to come look at the evidence,  
7 which would include print cards And he never did He  
8 never came to look at any of the evidence So he was  
9 invited, given the opportunity to just call us and we'd  
10 let him come look at the evidence So he had the  
11 opportunity to look at it

12 We do this in all cases We don't provide -- we  
13 don't take evidence to the attorneys to allow them to view  
14 it We give them everything else But as far as the  
15 evidence that is in the law enforcement center, we invite  
16 them to come back with us

17 Secondly, Your Honor --

18 THE COURT Mr Moyer, is this exculpatory  
19 information?

20 MR MOYER Well, Your Honor, that would lead me to  
21 my next point

22 THE COURT Well, that's --

23 MR MOYER Yes It's exculpatory

24 THE COURT What's your next point?

25 MR MOYER The next point is that Dianne Orlando

1 wrote a report in which she said she found fingerprints on  
2 the box cutters So he has that information And  
3 Investigator Cromer's report says he found -- he had a  
4 fingerprint match to the truck

5 So, I mean, that's not taking a grand leap to say  
6 that if Orlando found fingerprints on the truck and the  
7 box cutters and the examiner found fingerprints on just  
8 the truck that the other two were not comparable or, you  
9 know, did not match his client

10 So I would argue that he has had both constructive  
11 and actual notice Actual based on the report And  
12 constructive based on the fact he was invited to come look  
13 at the cars and --

14 THE COURT Mr Gibson, assuming that your argument  
15 is violative -- the conduct of the State was violative of  
16 Brady, what's your prejudice?

17 MR GIBSON My prejudice, Your Honor, is that I  
18 should have been allowed an opportunity to better prepare  
19 for this witness I mean, if I had been given this  
20 information, there's a number of issues that I may have  
21 looked at that I otherwise would not have

22 And he says that he gave me a report from her saying  
23 that they found latents The only report that I have from  
24 her -- the only latents that I see on this report are  
25 latents that they picked up off the vehicle And it says

1 that those were with positive results He then gave me a  
2 report stating that, you know, there was a latent that had  
3 a positive result, and that was from the vehicle There  
4 was no mention of any latents picked up off of any box  
5 cutters

6 Quite frankly, Your Honor, I'm left here with what  
7 he's telling me to, basically, take what Mr Cromer says  
8 for granted I mean, he's coming up here and he's saying  
9 they're non-comparable If I had been given this  
10 information, I, in all likelihood, may have gone to the  
11 State or probably would have gone to Indigent Defense and  
12 gotten funds for somebody to come and take a look at those  
13 prints and see if they really were non-comparable I  
14 mean, there are a number of things I could have done to  
15 bolster my case if I had been given this information And  
16 I was not I was left with the impression that there was  
17 one latent print that was taken, and that was the latent  
18 off the outside of the car

19 MR MOYER And, if I could, just for the record, on  
20 Dianne Orlando's forensic report, she wrote on 10-14-05,  
21 the vehicle was processed for latent fingerprints with  
22 positive results The items under D C 01, which is the  
23 box cutters, were processed for latent fingerprints with  
24 positive results So she did make a notation in her  
25 report that there were prints taken from both

1 THE COURT All right Well, I'm going to deny the  
2 motion for a mistrial I would caution the State that the  
3 best practice is to disclose exculpatory information in a  
4 clear manner and -- but I'm not going to find that this  
5 situation warrants a mistrial

6 Okay Let's take about ten minutes

7 (WHEREUPON, a break was taken )

8 THE COURT Are we ready?

9 MR MOYER The State is ready, Your Honor

10 THE COURT All right Let's bring the jury in

11 (WHEREUPON, the jury came into open court at  
12 approximately 10 49 a m )

13 THE COURT Mr Moyer

14 MR MOYER The State would call Investigator Mike  
15 Fortner

16 THE COURT Who?

17 MR MOYER Mike Fortner

18 THE CLERK Please place your left hand on the Bible  
19 and raise your right hand

20 WHEREUPON,

21 MICHAEL FORTNER,

22 after first having been duly sworn, testified as follows

23 THE CLERK Thank you

24 Please be seated

25 Please state your full name for the record

1 THE WITNESS Michael Fortner

2 THE CLERK Thank you

3 DIRECT EXAMINATION

4 BY MR MOYER

5 Q Where are you employed?

6 A The Greenville County Sheriff's Office

7 Q How long have you been with the Sheriff's Office?

8 A I've been with the Sheriff's Office for 13 years

9 Q What is your position with the Sheriff's Office?

10 A Currently, I work in white collar crimes At the  
11 time of this case, I was working in robberies

12 Q And doing what? When you say in robberies, in white  
13 collar, what -- you're an investigator?

14 A Investigator, yes

15 Q Now, did you participate in the investigation of the  
16 robbery of the BP gas station on October 13th, 2005?

17 A Yes, sir, I did

18 Q Did you ever have occasion to meet with the victim in  
19 the case, Dianne Giles?

20 A Yes, sir, I did

21 Q And what was the date that you met with her?

22 A October 13th, 2005

23 Q And what time?

24 A It was sometime before noon

25 Q Okay And how do you -- where do you come up with



1 the time frame of noon?

2 A From the paperwork I filled out with her on the  
3 photographs that I showed her

4 Q Okay And what time did you show the photographs to  
5 her?

6 A About noon, 12 00 in the afternoon

7 Q Okay Now, where did this take place?

8 A It took place at my desk at the law enforcement  
9 center

10 Q Okay And tell us what -- do you display a photo  
11 lineup to her?

12 A What I do?

13 Q Did you display a photo lineup up to her?

14 A Yes, sir, I did

15 Q And did you put together the photo lineup?

16 A Yes, sir, I did

17 Q How many photographs were displayed in the lineup?

18 A There's six pictures in the lineup

19 Q Was the Defendant included in that lineup --

20 A Yes, sir, he was

21 Q -- the photograph of the Defendant Were the other  
22 five persons all similar in physical description?

23 A Yes, sir

24 Q In what way?

25 A Age, sex, race, similar facial features, hair, any

1 type of facial hair that might be on the Defendant

2 Q Okay And whom did you show the lineup to?

3 A I showed it to Dianne Giles, who was the clerk at the  
4 BP station at the time of the robbery

5 Q Okay And how did you present the lineup to her?

6 A The lineup is six pictures on a card about the size  
7 of a post card And before I show it to her, I explain to  
8 her that the person responsible for the robbery may or may  
9 not be in the lineup and for her to take her time and look  
10 at each picture carefully And that if she was to see the  
11 Defendant or see the person responsible for the robbery in  
12 the lineup to point him out to me

13 Q All right Did you lead her to believe that she had  
14 to or that she should pick somebody out of the lineup?

15 A No, sir Like I said, I told her to be sure that it  
16 was the right person And if she was not sure not to  
17 point anyone out

18 Q Okay Did you suggest to her in any way which person  
19 to pick out of the lineup or was there any influence over  
20 her in that way?

21 A No, sir,

22 Q Now, did Ms Giles -- when you showed her that  
23 lineup, did she select the photograph of the person that  
24 committed the crime?

25 A Yes, sir She pointed to photograph #5, which was

1 the Defendant

2 Q Okay Did she hesitate?

3 A No, sir She was pretty sure about her answer

4 Q So she appeared confident then to you?

5 A Yes, sir

6 Q Did she -- did you ask her to make any marks on that  
7 photo lineup after she indicated to you?

8 A Yes, sir After they point the person out to me, I  
9 give them a black marker and ask them to circle the photo  
10 that they've picked And then I asked her to put her  
11 initials next to the photo that she's picked And then on  
12 the back side of the photo, I have them sign their name  
13 and date it as well

14 Q Let me hand you State's Exhibit No 19, and ask --  
15 just take a look over that Can you recognize what I just  
16 handed you?

17 A Yes, sir This is the lineup I showed to Dianne  
18 Giles on that day

19 Q How do you recognize it?

20 A I recognize my handwriting from the case number that  
21 I write here on the side here, the fact that it's been  
22 circled, and I always have them put their initials there  
23 And, like I said, I always have them sign their name And  
24 in this case, she printed her name and dated it and put  
25 the time on the back of it

1 Q Is that substantially in the same condition now as it  
2 was back on October the 13th?

3 A Yes, sir, it is

4 MR MOYER Your Honor, at this time, I would move to  
5 have State's Exhibit No 19 entered into evidence

6 MR GIBSON Your Honor, given the Court's pre-trial  
7 ruling, we have no objection

8 THE COURT Okay

9 (WHEREUPON, State's Exhibit No 19 was admitted into  
10 evidence )

11 BY MR MOYER

12 Q After you conducted the -- showed her the lineup and  
13 had her make a marking on it, did you fill out any  
14 paperwork with regard to her choice?

15 A Yes, sir I filled out what we refer to as an  
16 Affidavit of Photograph Identification

17 Q Let me hand you State's Exhibit No 20 Can you  
18 recognize what that is?

19 A Yes, sir This is the Affidavit of Photograph  
20 Identification that I filled out with Ms Giles after she  
21 identified the Defendant in the lineup

22 Q Okay And how do you recognize it?

23 A Mainly, by my signature down here as the witness, as  
24 well as the rest of it, the handwriting on it is my  
25 handwriting, and my name is up here, as well as being the

1 one who displayed the photo lineup

2 Q Okay Is that in substantially the same condition as  
3 the original on October -- from October the 13th of 2005?

4 A Yes, sir, it is

5 Q Other than the holes punched in the side, do you know  
6 of any other changes, deletions, or modifications?

7 A No, sir It appears to be the same as it was that  
8 day

9 Q Okay And the purpose of that affidavit is to  
10 document what now?

11 A Just to document the fact that in this case, Dianne  
12 Giles, the clerk, identified a photo in a photographic  
13 lineup And I just wrote in the part down here as to how  
14 she identified this as being the person who robbed her  
15 while she was working at the BP station

16 Q And what number photograph did she put down that she  
17 picked out?

18 A Photograph #5, which is the middle photograph on the  
19 bottom line of photographs

20 Q And that's whose picture?

21 A That's the Defendant's picture

22 MR MOYER Your Honor, at this time, I would move to  
23 have State's Exhibit No 20 moved into evidence

24 MR GIBSON May I see it?

25 MR MOYER Yes

1 MR GIBSON I object to this as hearsay, Your Honor  
2 THE COURT Sustained

3 (WHEREUPON, State's Exhibit No 20 was admitted into  
4 evidence )

5 MR MOYER I have no further questions Please  
6 answer any questions the Defense may have

7 THE WITNESS Yes, sir

8 CROSS-EXAMINATION

9 BY MR GIBSON

10 Q Okay Now, this photo identification, you said she  
11 picked this picture out, no hesitation?

12 A That's correct

13 Q Immediately?

14 A Yes, sir

15 Q As if she were drawn to it?

16 A No, not as if she was drawn to it She put it down,  
17 she looked at the photographs, and then pointed him out

18 Q Okay Let me see Do you have that photo with you?

19 A No, sir

20 MR MOYER Ken, it's over there

21 BY MR GIBSON

22 Q Let's talk about how you picked those six people to  
23 go into that lineup and how you organized it

24 A Okay

25 Q Without going into the details of any prior charges

1       that my client had, did you, in fact, get his photo from a  
2       prior arrest?

3       A     Yes, sir

4       Q     Okay   And he, in that arrest -- or in that photo, he  
5       has on an orange jumpsuit, is that correct?

6       A     That's correct

7       Q     Now, those orange jumpsuits, they're issued to people  
8       down at the detention center, is that not correct?

9       A     That's correct

10      Q     Are you aware that Ms   Giles has been arrested on a  
11      prior offense?

12      A     Ms   Giles?   No, sir    I was not aware of that

13      Q     But if she had been arrested and taken down to the  
14      detention center, she would, in all likelihood, have been  
15      issued one of those orange jumpsuits herself, would she  
16      not?

17      A     Correct, yes, sir

18      Q     All right   Now, on this photo, there's two people in  
19      orange jumpsuits, is that not also correct?

20      A     Yes, sir

21      Q     And their position is right in the center of that  
22      photo?

23      A     Yes, sir

24      Q     Do you think that maybe the position of those two  
25      people would have created a focal point for someone who's

1 an art major like Ms Giles?

2 A I don't know about that, sir

3 Q Do you think it maybe could have drawn her attention  
4 to the two individuals right in the middle of your  
5 photographic lineup?

6 A I mean, I guess there's always a possibility, sure

7 Q Now, those two people who are in the middle of that  
8 photographic lineup is my client, who's a dark-skinned  
9 black male?

10 A Yes, sir

11 Q And then there's a guy above him who is significantly  
12 lighter, is that not also correct?

13 A Slightly lighter, yes, sir

14 Q Okay And she described the person as a dark-skinned  
15 black male?

16 A Correct

17 Q Okay Now, did you have any dealings with Franklin  
18 Henry Thomas?

19 A I don't believe I spoke to him too much, no, sir

20 Q Okay When you say not "too much," did you talk to  
21 him at all?

22 A I may have spoke to him briefly

23 Q Did you investigate him?

24 A No, sir Another one of the investigators  
25 interviewed him and everything



1 Q Was he charged in any way with this crime?

2 A No, sir

3 Q Now, has it ever been suggested to you that maybe you  
4 should cover up what people are wearing in these  
5 photographic lineups?

6 A I know of some investigators that do that, yes, sir

7 Q Okay And have they told you the reason why they do  
8 that?

9 A Because of the outfits But in this case, they all  
10 have jail outfits on, just a couple of them have orange  
11 ones on The rest of them have the green ones on

12 Q Okay Well, let's talk about -- you say they all  
13 have jail outfits on So there's two -- actually, let's  
14 look at the photo There are two people who have on dark  
15 jumpsuits, is that not correct?

16 A That you can tell, yes, sir

17 Q And those are all to the far right of the photograph,  
18 is that correct?

19 A Yes, sir

20 Q And then the two people who have on the orange  
21 jumpsuits are right in the middle?

22 A In the middle, yes, sir

23 Q And the two to the far left, you can't tell if they  
24 have on jumpsuits or not, is that correct?

25 A Well, this one here, you can tell he's got a green

1 one on at the top You see a little bit of it

2 Q Okay So a dark jumpsuit, that's not immediately  
3 noticeable by the photograph?

4 A Yes, sir

5 Q And these are all, other than the guy right above  
6 him, fairly dark-skinned individuals, is that not also  
7 correct?

8 A Well, I consider the guy up above to be relatively  
9 dark myself, yes, sir

10 Q But the jumpsuits tend to blend into the skin color  
11 of the other individuals, isn't that also correct?

12 A I guess so

13 Q Now, when women normally go down to the detention  
14 center, they're more likely than not to be given an orange  
15 jumpsuit, is that not also correct?

16 A My understanding -- I guess it depends on the -- I  
17 don't know -- the seriousness of the crime what color  
18 jumpsuits they get into

19 Q Fraudulent check?

20 A Oh, yeah You get an orange one for that, sure

21 Q An orange jumpsuit Okay And are you aware that  
22 that is, in fact, what Ms Giles was arrested and  
23 ultimately convicted on?

24 A No, sir I was not aware of that

25 Q When did you guys let Franklin Thomas Henry go?

1 A Exactly what time, I'm not aware of Because, like I  
2 said, I did not interview him or speak to him too much at  
3 that time But, at some point, during the afternoon, he  
4 was allowed to leave

5 Q So the same day?

6 A Oh, yes, sir, the same day

7 Q Did you ever do any follow-up investigation to see if  
8 he was involved?

9 A No, sir, not after that day

10 MR GIBSON Okay Thank you, Officer

11 Nothing further

12 THE WITNESS Yes, sir

13 MR MOYER Nothing else

14 THE COURT All right Thank you, Officer

15 You can step down

16 MR MOYER The State would call Investigator Paul  
17 Silvaggio

18 THE CLERK Place your left hand on the Bible and  
19 raise your right hand

20 WHEREUPON,

21 PAUL ANDREW SILVAGGIO,

22 after first having been duly sworn, testified as follows

23 MR GIBSON Your Honor, may we approach for just a  
24 second?

25 THE COURT All right

1 (WHEREUPON, a bench conference was held )

2 THE CLERK Please state your full name for the  
3 record

4 THE WITNESS Paul Andrew Silvaggio,  
5 S-I-L-V-A-G-G-I-O

6 THE CLERK Thank you

7 THE COURT Mr Foreman, and ladies and gentlemen of  
8 the jury, I need to discuss a legal issue with the  
9 attorneys So if you all would retire to your jury room  
10 Please don't discuss the case

11 We'll get back with you as quickly as we can

12 (WHEREUPON, the jury was excused from open court at  
13 approximately 11 05 a m )

14 THE COURT All right Mr Gibson

15 MR GIBSON Thank you, Your Honor

16 As we discussed at the bench, I wanted to revisit the  
17 issue in regards to the Jackson v Denno hearing in  
18 relation to my client's confession in this case

19 My understanding from yesterday, the Court had based  
20 its ruling -- well, I made the objection that the  
21 confession should not come in because at the time that he  
22 was arrested, there was not sufficient probable cause to  
23 arrest him It was, therefore, an illegal arrest They  
24 kept him for five hours and then questioned him The  
25 Court, based on State v Funchess, said that based on

1     State v Funchess, the mere fact that there's an illegal  
2     arrest that that is not sufficient to throw out a  
3     confession

4             As I explained to the Court at the bench, during the  
5     overnight, I did some more research     I looked at Brown v  
6     Illinois and, particularly, Dunaway v New York, both  
7     Supreme Court cases decided subsequent to Funchess where  
8     the Court said that in order for the Prosecution to use a  
9     confession which has been granted after an illegal arrest  
10    or an arrest without probable cause, they have to show --  
11    I'm looking exactly at that language in the syllabus  
12    "They must show not only that the State has met the Fifth  
13    Amendment voluntariness standard, but also the causal  
14    connection between the statements and the illegal arrest  
15    is broken sufficiently to purge the primary taint of the  
16    illegal arrest in light of the distinct policies and  
17    interest of the Fourth Amendment "

18            It is the State's burden

19            THE COURT     So you're going from the Fifth Amendment  
20    to the Fourth Amendment, right? This is a Fourth  
21    Amendment argument, right?

22            MR GIBSON     Yes, Your Honor

23            THE COURT     Okay

24            MR GIBSON     So based on that, Your Honor, and given  
25    that the State has not proven -- and, particularly, when

1 we had the hearing, the Jackson v Denno hearing, the only  
2 witness that they called was Mr Silvaggio He was not  
3 aware of sufficient probable cause to arrest him at the  
4 time that he was arrested He was clearly under arrest  
5 He had been placed in handcuffs He was not free to  
6 leave So under any totality of the circumstances --

7 THE COURT Wait a minute

8 Just because this officer wasn't aware of the  
9 probable cause for the arrest doesn't mean that probable  
10 cause did not exist

11 So -- correct?

12 MR GIBSON That is correct, Your Honor

13 But with that said, it is their burden to prove  
14 during the hearing that fact And they did not do that

15 THE COURT Well, all right

16 Mr Moyer, what do you want to say?

17 MR MOYER Well, in -- I'm looking at it now, Your  
18 Honor And so, first off, we need to analyze it in terms  
19 of the evidence that's in the record now

20 First, if we do talk about what Investigator  
21 Silvaggio knew, at the time Investigator Silvaggio took  
22 the statement, the Defendant had been picked out of a  
23 photo lineup Investigator Silvaggio, regardless of  
24 whether or not he needed to be aware of it, but he was  
25 aware of it, so that had been established at that point

1 And there was, certainly, plenty of probable cause for the  
2 Defendant's seizure at about 7 00 on October the 13th of  
3 2005

4 THE COURT Would you enumerate that for the record,  
5 please?

6 MR MOYER And that being, the truck was described  
7 leaving at the scene of the robbery An officer was able  
8 to see that truck, along with a license plate tag that had  
9 been also seen by an officer earlier in the evening He  
10 was able to get behind the truck The truck made evasive  
11 maneuvers, stopped, and then went on a chase taking him  
12 through stop signs and so forth A person got out and  
13 ran The person that got out and ran matched the  
14 description of the robber The tag came back to the  
15 Defendant, to the address where the Defendant lived

16 And there was also information at that time from  
17 Ms Helen McGee Ms Helen McGee is the person who drove  
18 this Defendant from her house over to the BP station that  
19 morning after he told her that his truck had been stolen  
20 That information was gleaned, certainly, prior to the time  
21 that this arrest was made And so the officers had that  
22 information as well

23 So based on all that, there was, certainly, probable  
24 cause for a seizure at that time

25 THE COURT Mr Gibson

1 MR GIBSON Your Honor, again, I'm going back to the  
2 purpose of the hearing And they did not meet that burden  
3 at the time of the hearing

4 THE COURT Okay Well, I'm not -- I mean, maybe  
5 assuming you're correct that that's true, even though I  
6 believe he testified that he knew about that, he had been  
7 picked out of a photo lineup

8 MR GIBSON Your Honor --

9 THE COURT What about now?

10 MR GIBSON Your Honor, with respect --

11 THE COURT It's not at the time of the hearing  
12 It's at the time when they took the confession

13 MR GIBSON It's at the time of the arrest And he  
14 was arrested at 7 00 a m The lineup didn't happen until  
15 12 00, five hours later And he was arrested --

16 THE COURT What was illegal about the arrest?

17 He was in a truck that was identified at the scene of  
18 the robbery He fit the description given by the victim  
19 He ran as evidence of flight

20 I mean, what more probable cause do you need?

21 MR GIBSON Your Honor, with respect to what you're  
22 talking about, what they had was that a truck that  
23 belonged to him that he had reported stolen had left the  
24 scene of a crime At no point at that time had anybody  
25 identified him as the suspect or assailant in this crime



1 Nobody --

2 THE COURT Did they not have a physical description?

3 MR GIBSON They had a physical description in --

4 THE COURT Does your client not -- does he not meet  
5 that physical description?

6 MR GIBSON So does Franklin Thomas Henry So  
7 does --

8 THE COURT I heard Franklin Thomas Henry weighed 230  
9 pounds and was six feet tall That's the testimony that's  
10 been presented in this Court I've never seen him

11 MR GIBSON Franklin Thomas Henry, actually, weighs  
12 about 200 pounds

13 THE COURT Well, that's not in evidence

14 MR GIBSON Well, like I said, with all that said,  
15 the description they had was a description that matches  
16 probably seven out of 12 deacons at my church Okay  
17 We're not talking about some uncommon description We're  
18 talking about a dark-skinned black male who's 5'10",  
19 average height, average weight Okay

20 THE COURT Driving this distinguishable pickup  
21 truck

22 MR GIBSON That my client had reported as stolen

23 THE COURT Well, I mean, that's a jury argument  
24 The police out on the street had a -- I believe they had  
25 probable cause I'm going to find they had probable cause

1 to take him into custody at 7 00 in the morning

2 MR GIBSON Okay Thank you, Your Honor

3 THE COURT Other than that, is there any other --

4 MR GIBSON No, Your Honor

5 THE COURT I've already found that it doesn't  
6 violate the Fifth Amendment So -- and I'm going to find  
7 that it doesn't violate the Fourth Amendment either

8 MR MOYER Your Honor, one other issue, it looks  
9 like we're going down the road towards third-party guilt  
10 And I would argue that there is absolutely no foundation  
11 laid in this trial for any type of third-party guilt  
12 argument to be made

13 THE COURT Well, what's your basis for that? I  
14 don't know if he's going there or not

15 MR MOYER Well, based on what he just said about  
16 this matching -- he claims it matched Franklin Thomas  
17 Henry, which it doesn't, but -- as far as that  
18 description But there is, certainly, no evidence  
19 anywhere in this trial that points to anyone other than  
20 this Defendant And for the Defense to try to make a  
21 third-party guilt argument would certainly -- is,  
22 certainly, no foundation -- there's nothing in the record  
23 that would support it

24 MR GIBSON I would strongly deny what he's saying  
25 and disagree with what he's saying

1           Officer Graham testified that prior to this thing  
2           happening, he saw two black males around this truck  
3           Okay   They captured a car and there's two black males in  
4           the truck   One gets out, he's got on a light-colored  
5           shirt and dark shorts, which according to the officer  
6           could have been blue jean shorts   The exact -- it's  
7           pretty much the exact same description   He's six feet  
8           tall, which is only about an inch and a half taller than  
9           the guy she describes   He's a dark-skinned black male  
10          There is more than sufficient evidence to suggest that  
11          this guy was guilty

12          THE COURT   Well, wait a minute

13          I think we're putting the cart before the horse   I  
14          don't know if he's going to put up any evidence or not

15          Do you want me to tell him he can't argue that?

16          MR MOYER   I do, Your Honor

17          THE COURT   You're familiar with the United States  
18          Supreme Court decision that came out in May of this year?

19          MR MOYER   Yes   I am familiar with that case

20          THE COURT   Holmes v South Carolina

21          MR MOYER   And I don't have it with me, Your Honor  
22          But -- and I read it very closely when it first came out  
23          But that case, certainly, does not -- all that case did  
24          was said that South Carolina's approach to third-party  
25          guilt was too expansive   It, certainly, didn't cut it

1 out It just said that the -- and I can't remember the  
2 name of the cases, but there were cases establishing  
3 third-party guilt

4 And then there was another case that came down from  
5 our Supreme Court that essentially expanded the concept of  
6 third-party guilt And the U S Supreme Court said that  
7 that expansion is what was improper

8 THE COURT Well, what is it you want me to limit --  
9 I mean, he hasn't done anything yet

10 What is it you want me to limit?

11 MR MOYER Well, at the point he starts asking  
12 questions about it -- well, first off, I would ask that  
13 he -- there's, certainly, nothing in the record now for  
14 him to be able to argue it So if the case ended now --  
15 and it will very shortly, and when we go to closing  
16 argument that this can't be argued I also would ask that  
17 there is no grounds for him to be able to start exploring  
18 that Because once he starts going down that road, then  
19 he's planting this issue in the jury's mind, which is what  
20 I object to

21 MR GIBSON I just want to clarify, is he saying  
22 that I can't tell the jury that a gentleman that had the  
23 exact same type of clothing that the suspect had on who  
24 got out of the truck that was seen at the crime, that --  
25 and, possibly, had been seen with this truck prior to this

1 incident occurring, could not be, in fact, the guilty  
2 party?

3 MR MOYER I, certainly, do And because in just a  
4 few moments, his statement is going to come into evidence,  
5 which says that that person had nothing to do with it I  
6 mean, he completely exonerates the man

7 And so --

8 THE COURT Well, I'm not sure where he's going with  
9 it And I'm not sure how far he can take it But I'm not  
10 going to limit his cross-examination to non-relevant -- I  
11 mean, to relevant matter I mean, this guy who was  
12 arrested with him is relevant Okay

13 MR MOYER And what -- I mean, the only way --

14 THE COURT It's part of the investigation

15 MR MOYER The only way he wants to make it relevant  
16 is by trying to say --

17 THE COURT I don't know that yet He hasn't --

18 MR MOYER Okay

19 THE COURT -- given a sworn affidavit He can  
20 explore what this officer did in his investigation He  
21 was --

22 Are you the chief case officer?

23 MR PAUL SILVAGGIO No, Investigator Fortner is,  
24 sir

25 THE COURT Okay Well, he can explore whatever this

1 officer knows about the case And then we'll -- I mean,  
2 I'm not going to violate his right to confrontation  
3 because you're worried about third-party guilt Whether  
4 he gets to go that far in his argument or presentation of  
5 evidence, we'll just have to see when we get there

6 MR MOYER Well, I, certainly, agree that -- I would  
7 just say that his confrontation rights are not being  
8 violated if he's allowed to go into areas that are not  
9 relevant to the trial And third-party guilt, when it  
10 just becomes speculative, just because someone else  
11 happened to match this -- maybe somehow happened to be  
12 similar in appearance that that person is a guilty party  
13 I mean, that is, specifically, what our prohibition  
14 against third party guilt That is still --

15 THE COURT Well, the United States Supreme Court  
16 said look at the converse Because, let's say we had a  
17 pre-trial hearing at which the Defense put up evidence  
18 that another guy matched this description --

19 MR MOYER Well, that would be completely different

20 THE COURT Would then I be required to prevent the  
21 State from putting in evidence that the Defendant matched  
22 the description as well?

23 MR MOYER No

24 THE COURT. That is, specifically, what the Supreme  
25 Court talked about, the United States Supreme Court talked

1 about And let's --

2 MR MOYER Okay

3 THE COURT No anticipatory rulings

4 MR MOYER Yes, sir

5 THE COURT All right Are we ready?

6 MR GIBSON Yes, Your Honor

7 THE COURT Okay Bring the jury in

8 (WHEREUPON, the jury came into open court at  
9 approximately 11 20 a m )

10 THE COURT Ladies and gentlemen, thank you for your  
11 patience And I promise you that by asking you to step  
12 out for these few minutes, we have disposed of matters  
13 that will shorten the case in the long run

14 Thank you for your patience

15 Mr Moyer

16 DIRECT EXAMINATION

17 BY MR MOYER

18 Q Would you, please, state your name for the record?

19 A Paul Andrew Silvaggio

20 Q Where are you employed, sir?

21 A I'm employed with the Greenville County Sheriff's  
22 Office

23 Q What is your position with the Sheriff's Office?

24 A I'm an investigator in the violent crimes unit and  
25 assigned to homicide

1 Q How long have you been with the Sheriff's Office?

2 A 19 and a half years

3 Q How long have you been an investigator?

4 A I've been an investigator 12 and a half of those,  
5 plus three years with the United States Army as a criminal  
6 investigator

7 Q Now, let me take you back to October the 13th of  
8 2005 Did you become involved in the case against Steven  
9 Collins for the robbery at the BP gas station?

10 A Yes, I did

11 Q Did you meet the Defendant at any point in your  
12 investigation?

13 A Yes, I did

14 Q And what was the date?

15 A October the 13th, 2005

16 Q And what was the time frame that you met with him?

17 A I met with him at approximately 11:45 a m on the  
18 morning of the 13th of 2005

19 Q Okay And tell us his appearance and physical  
20 characteristics when you met with him that day?

21 A Yes When I first met with the Defendant, Mr Steven  
22 Collins, he was a -- he's a black male I noted him to  
23 have -- his hair was approximately three-quarter inches in  
24 length, receding in the front He appeared to be well  
25 kept in his physical appearance, well trimmed moustache



1 He was approximately 5'9", 170, 175 pounds He was  
2 wearing a blue T-shirt and a blue pair of shorts I don't  
3 recall his foot wear that he was wearing at the time, but  
4 I believe he was wearing sneakers He had several tattoos  
5 about his body, on his arms He was very well spoken and  
6 very well oriented

7 Q And where did you come in contact with him first?

8 A I, initially, had contact with him at the Greenville  
9 County Sheriff's Office as I was there addressing other  
10 matters with witnesses related to this case

11 Q Okay Was he in handcuffs at the time you met with  
12 him?

13 A Yes, he was

14 Q And where did -- where was it that you ended up  
15 speaking to him and talking to him?

16 A I had -- Deputy Barrickman had him in custody And I  
17 asked him to escort him to my office, which is on the  
18 second floor of the Greenville Law Enforcement Center,  
19 Room #210, which is just beyond the main foyer area of the  
20 criminal investigation division

21 My office encompasses approximately seven desks,  
22 which are individual workstations for each investigator  
23 assigned to the violent crimes unit With that in mind,  
24 my desk is the second one to the left as you enter the  
25 doorway The door is closed off to some 20 to 30 other

1 investigators which are on the main foyer area of the  
2 criminal investigation division, which they handle  
3 supervision, then auto theft, white collar crime, and sex  
4 crimes

5 Once he was brought into my office, there's windows  
6 in my office on the second story that are solid windows  
7 They're not accessible to open The environment is just  
8 as I explained, it's a very small work area

9 Q Okay Now, how many people were present during the  
10 period of time that you spoke to him?

11 A Actually, three of us It was myself, Deputy  
12 Barrickman, and the Defendant, Steven Collins

13 Q Now, during the time that you met with him and spoke  
14 to him, was he denied access to any conveniences like  
15 bathroom breaks, drinks, if he needed it, or anything like  
16 that?

17 A No In fact, any time I make contact with somebody,  
18 I always treat them the way I would want to be treated as  
19 I've been raised Mr Collins was afforded any  
20 opportunities that he wanted to outside of leaving He,  
21 certainly, was not free to leave But he was, certainly,  
22 if he needed to use the bathroom, if he was hungry -- I  
23 did allow him to smoke outside of the building during the  
24 business hours And I offered him something to drink, if  
25 he needed it or wanted it I addressed those issues and

1 made sure that he had them

2 Q Now, during the time that you met with him, did he  
3 complain of any injuries or physical discomfort?

4 A No, he did not

5 Q And what about his mental state, did you have any  
6 impressions about his mental state from the time that you  
7 spoke to him?

8 A From my experience of interviewing various parties of  
9 the community and -- within the community and throughout  
10 the country, he exhibited behavior that, one, enabled me  
11 to make a conscious decision to have him completely  
12 unhandcuffed, which happened within moments of him being  
13 in my office

14 The second was his behavior He was very conscious,  
15 alert, very attentive to me, very polite, respectful to  
16 me He had all his -- certainly, appeared to me to have  
17 all his faculties about him And, again, he's a very well  
18 spoken individual Should I detect any type of substance  
19 use or abuse at that particular time in respect to being  
20 under the influence, I would have picked up on that and  
21 detected that through the various interviews that I have  
22 done in my career and would have ceased the interview  
23 process right then That, in fact, did not take place,  
24 which enabled me to proceed forward with the interview  
25 process

1 Q So you've met with people under the influence of  
2 drugs or alcohol?

3 A Many times And with that, I will not interview  
4 them Even -- they may be adamant for me to interview  
5 them and the interview may be a big part of my particular  
6 case, but I will not interview them should they be under  
7 the influence And I will address that issue later once I  
8 feel confident they've sobered up Again, that wasn't the  
9 case in this matter here

10 Q Now, did you advise the Defendant, Steven Collins, of  
11 his Constitutional rights pursuant to Miranda?

12 A Yes, I did

13 Q And how did you do so?

14 A I initially write his information on the Rights  
15 Waiver form I asked him directly what his name is, his  
16 address, his education level, his phone number, his --  
17 obviously, his race and sex, I pick up on that myself and  
18 I write that in there And then his birth date and  
19 social, I have him provide that to me verbally And I  
20 write it onto the waiver form I then put the date and  
21 the time

22 I put the case number at the top right-hand corner of  
23 the waiver form addressing that waiver form, specifically,  
24 to where I could locate the original document should I  
25 need it in the future, addressing that and putting the

1 case number In this particular case, I believe I wrote  
2 1-05-137131 And that's a unique number to this case and  
3 one that would never be duplicated for another  
4 investigation

5 I then present him with the Rights Waiver form And  
6 as I'm reading to him, I have him initial the beginning  
7 and end of his particulars, his name, birth date, social,  
8 et cetera I have him initial the beginning and end of  
9 that to confirm that that's correct I have him initial  
10 the date I have him initial the time as there's a clock  
11 right above my -- would be above my right shoulder And I  
12 would point to the clock And, historically, I've always  
13 done that to address the time that we started And then  
14 we proceed with the -- actually, the rights waiver And I  
15 read him the rights one by one

16 Q Okay I'm going to hand you State's Exhibit No 16  
17 And can you recognize what I just handed you?

18 A Yes

19 Q Okay And what is it?

20 A This is the Rights Waiver form, specifically, for  
21 Steven Collins, the Defendant

22 Q And how do you recognize it?

23 A I recognize it to be a true and accurate copy of the  
24 original that I just mentioned There is an exception --  
25 there's three exceptions on this And that is, a records

1 management notation that's made on all of our documents  
2 when they're submitted to our Greenville County records  
3 division at the law enforcement center here in Greenville

4 The records clerk, once they are in receipt of the  
5 document, they'll put their initials at the bottom  
6 left-hand corner of the document They'll time stamp the  
7 document, which you'll find on the right bottom side of  
8 this document And then, of course, there's the State's  
9 Exhibit No 16 on the front of this

10 Q Okay Now, other than those three variations that  
11 you just mentioned, is that an accurate copy of the  
12 original you took on October the 13th of 2005?

13 A Yes, it is

14 MR MOYER At this time, I would move to have  
15 State's Exhibit No 16 entered into evidence

16 MR GIBSON And we reassert all our previous  
17 objections

18 THE COURT Subject to all previous objections  
19 (WHEREUPON, State's Exhibit No 16 was admitted into  
20 evidence )

21 BY MR MOYER

22 Q So does that form then -- you mentioned it lists the  
23 time that you began going over the rights with the  
24 Defendant?

25 A Yes, it does

1 Q And what time did you begin going over the rights?

2 A 12 19 p m

3 Q And after you took the time -- wrote the time on the  
4 form, you started going over those particular rights that  
5 are listed on the form?

6 A That's correct

7 Q Would you tell the jury how you go over those  
8 rights -- how you went over the rights with the Defendant  
9 and what those rights are?

10 A Yes After we initialed the beginning and end of his  
11 particulars and the date and the time that we started, I  
12 then proceed with -- I hold the form -- he's to my left,  
13 he's seated to the left side of my desk I lay the form  
14 in front of him on the desk And then he's -- I observe  
15 the individual, as with Mr Collins, reading the form  
16 along with me I'll read aloud and have him -- I'll ask  
17 him if you understand this particular right, I need you to  
18 affix your initials at the end of that right And then we  
19 proceed with, before we ask you any questions, you must  
20 understand your rights Do you understand? He says, yes  
21 And then he places his initials at the end of that, SC  
22 You have the right to remain silent Do you understand?  
23 He initials, SC, after affirming yes Anything you say  
24 can be used against you in court Do you understand?  
25 Yes And I have him put his initials, SC, next to that

1 I then read to him, you have the right to talk to a  
2 lawyer for advice before we ask you any questions and to  
3 have him with you during questioning I ask him if he  
4 understands that, he said, yes I tell him, don't initial  
5 that just yet, we'll come back to that particular right

6 At that point, we proceed on If you have no money  
7 to pay for a lawyer's fees, the Court will appoint one  
8 without costs, if you wish Do you understand? Yes And  
9 I have him place his initials, SC, at the end of that  
10 particular right If you decide to answer questions  
11 without a lawyer present, you will still have the right to  
12 stop answering at any time You also have the right to  
13 stop answering at any time until you talk to a lawyer Do  
14 you understand? He says, yes I have him affix his  
15 initials, SC, at the end of that particular right

16 We then go back to, you have the right to talk to a  
17 lawyer for advice before we ask you any questions and to  
18 have him with you during questioning When we go back to  
19 that, I ask him to read that back to me That way, I can  
20 get a gauge as to whether he can read So I have him read  
21 that to me He read it very clearly and concisely without  
22 stutter or hesitation I then have him affix his payroll  
23 signature to that particular right

24 The signature is an indication to me, one, that he  
25 can read And it was very clear and concise And, two,



1       when I go back later for courtroom testimony, I can tell  
2       that that was a particular right that was chosen on that  
3       particular interview for the individual to read back to me  
4       by virtue of his payroll signature being next to that  
5       particular right

6       Q     Okay    So you went over each of those rights    And in  
7       your opinion, did he appear to understand all of those  
8       rights?

9       A     Yes, he did

10      Q     And after you informed him of those rights, did he  
11      let you know whether or not he wished to talk to you about  
12      what had happened?

13      A     Yes    In fact, we proceeded forward with the Waiver  
14      of Rights    And I read the Waiver of Rights to him, which  
15      states, I have read this statement of my rights and I  
16      understand what my rights are    I am willing to make a  
17      statement and answer questions    I do not want a lawyer at  
18      this time    I understand and know what I am doing    No  
19      promises or threats have been made to me and no pressure  
20      or coercion of any kind has been used against me

21            I have him circle the word "coercion," because it's  
22      an uncommon term that's used in the general public    So  
23      then I explain it to him that nobody has threatened him to  
24      take something away from him in exchange for his  
25      cooperation and to waive his rights to come forward and

1 speak to me regarding the case He circles that I ask  
2 him to circle the word And then he places his initials  
3 by it that it was explained to him

4 I then have him place the initials at the beginning  
5 and end of the Waiver of Rights portion indicating that he  
6 understands that Waiver of Rights And then he affixes  
7 his signature to the signature block on the form, signed  
8 Steven Collins I then sign it I then have the deputy,  
9 Deputy Barrickman, who was present, sign it and look at  
10 the clock It's 12 26 p m He makes the same notation  
11 I write 12 26 p m He concurs and affixes his initials,  
12 SC, at the end and time We then proceed with the  
13 interview

14 Q So were there any threats or was there any coercion  
15 made in order to get him to sign the form or the  
16 statement?

17 A No, there was not

18 Q Any intimidation or any hope of reward or promises?

19 A No, there was not

20 Q Now, after signing that, did you proceed to take a  
21 statement from him?

22 A I did

23 Q Let me hand you State's Exhibit Nos 17 and 18 And,  
24 if you would, take a look at them and signify whether or  
25 not you recognize those documents?

1       A     Yes, I do     These are true and accurate copies of the  
2       original statement that was taken from Steven Collins  
3       The only variation, again, is the entry of documents into  
4       our records division at the Greenville Law Enforcement  
5       Center     The records clerk on each document will affix  
6       their initials to the bottom left-hand corner and time  
7       stamp the bottom right side corner when they receive the  
8       documents

9             MR MOYER     Your Honor, at this time, I would move to  
10       have State's Exhibit Nos 17 and 18 entered into evidence

11            MR GIBSON     We assert our prior objection

12            THE COURT     Same ruling

13               (WHEREUPON, State's Exhibit Nos 17 and 18 were  
14       admitted into evidence )

15       BY MR MOYER

16       Q     Now, would you tell the jury how it is that you,  
17       actually, go about taking a statement from a person and  
18       getting it on paper?

19       A     Yes     I first begin -- the top portion of the  
20       statement is a preprinted format that, again, advises the  
21       individual of their rights     I insert their name into the  
22       space provided     I insert my name     If there's somebody  
23       with me at the time of the interview, I will assert their  
24       name as well     I then ask the person their age, their home  
25       address, any associated phone numbers for later contact of

1 that individual, and then their educational level, and  
2 then can you read and write

3 I then proceed with the interview process The first  
4 paragraph I type is, actually, typed by me to identify  
5 several things One, it identifies the individual by  
6 their birth date and their social security number I want  
7 to know their education level so that I can support one  
8 way or another whether they can read and write and truly  
9 understand what I'm doing I want to make sure that they  
10 understand it Because if they don't, then it's truly  
11 pointless to me in my heart, my mind, and ethically to  
12 proceed with an interview if someone, clearly, doesn't  
13 understand what I'm talking about

14 In this particular case, I identify the education  
15 level I identify whether or not the person is under the  
16 influence of drugs And I, specifically, ask them if they  
17 are And then I ask them if I may have their permission  
18 to type their statement for them as they tell me the  
19 account

20 Now, what I do is, once we get through that portion  
21 of it, I then go into the statement portion of it And I  
22 tell the individual, so you don't have to continually  
23 regurgitate this over and over and over again, just  
24 formulate in your mind from the start to finish and  
25 verbalize to me exactly what took place I'll type as

1       you're talking

2               Now, I only type with two fingers, but I try to be  
3       pretty quick about it   And I try to keep up with the way  
4       people are talking to me   I, generally, don't have any  
5       problems with that   If we do, I ask them to slow down  
6       And I did ask Mr Collins to slow down, I'll catch up and  
7       then ask him to proceed

8               Once the individual is then to the point or a pausing  
9       point, then I may interject some questions as to what  
10      was -- what would be to come   And I -- what was next, and  
11      then they would proceed from there   I then -- at the  
12      later part of the statement, I ask them what they were  
13      wearing   I, specifically, would ask that

14              And in this particular case, I did ask Mr Collins  
15      what he was wearing at the time of the robbery   And he  
16      provided me with that information   He did seem like he  
17      was somewhat remorseful for what took place and was sorry  
18      for what had happened inside the store between him and the  
19      store clerk   And he did want that incorporated in his  
20      statement   And I, certainly, made sure that was part of  
21      his statement as well

22              I print the statement, have him review it, and he  
23      reads the statement to himself   And then at the end when  
24      he's finished, he'll tell me   And then I have him go and  
25      initial the beginning and end of various portions

1 throughout the statement as to him understanding the  
2 statement that's true and correct

3 And then I signed it and Deputy Barrickman signed it  
4 And then we have it notarized before a notary of South  
5 Carolina, which happened to be, in this particular  
6 venture, Michael McNamara, who's also with the Greenville  
7 County Sheriff's Office

8 Q Okay Now, when you have them read it, what if there  
9 are any things that they want to change as they read it?  
10 Do you have them mark anything on the form?

11 A Yes In fact, as they're reading it, if anything is  
12 incorrect within the content of the statement, they take  
13 the pen and will, actually, make the correction  
14 themselves And I direct the corrections to be made by  
15 them

16 In this particular case, the words "got out" were not  
17 of -- were not on the second page, so he wanted to  
18 incorporate that

19 MR GIBSON Objection, Your Honor

20 The statement speaks for itself I would submit that  
21 it should not be published to the jury as provided to them  
22 for their own review

23 MR MOYER Well, Your Honor, it's in evidence I  
24 think we have the right to --

25 THE COURT Yes I'm going to allow him to publish

1 it

2 BY MR MOYER

3 Q So that was handwritten in there?

4 A Yes It was handwritten in there and initialed that  
5 there was a change in the statement, initialed by the  
6 Defendant

7 Q And is there any other places that you see on there?

8 A Yes, there is

9 Q Let me ask you this, Investigator Silvaggio, I'm  
10 going to ask you to publish that statement now to the  
11 jury And when you get to a place where anything was  
12 handwritten in, if you'll make the jury aware of the fact  
13 that that was handwritten in

14 A Yes, sir

15 Q Okay Would you, please, publish the statement to  
16 the jury?

17 A Yes, sir On the second page, the Rights Waiver is  
18 repeated, on the second page at the top as it is on the  
19 first page

20 Do you want me to publish that as well?

21 Q No, not on the second page

22 A The date is 10-13-05/05-SC, 1-05-137131

23 "I, Steven NMN Collins, do hereby give freely and  
24 voluntarily this statement to Investigator Paul A  
25 Silvaggio and Deputy Brian Barrickman, who have identified

1 themselves to be deputies of the Greenville County  
2 Sheriff's Office, Greenville, South Carolina I have been  
3 advised that I do not have to make this or any other  
4 statement and that what I say can be used against me in a  
5 court of law I have been advised that I have the right  
6 to counsel with an attorney of my choice, that if I am  
7 financially unable to obtain an attorney, the Court will  
8 appoint an attorney to represent me I have not been  
9 threatened or promised any reward to make this statement "

10 "I am 38 years old And I reside at 715 Staunton  
11 Bridge Road, Greenville, SC, 29611/(h)  
12 864-295-4889/864-220-9105 I have a 10th+GED grade  
13 education I can read and write "

14 "Additional particulars on statementee DOB  
15 02-26-67/SSN 247-47-7362/I can read and write, I went  
16 through the tenth grade at Wade Hampton High School and  
17 then later received my GED I am not under the influence  
18 of any drugs nor alcohol and I know what I am doing I  
19 have given you, Investigator Silvaggio, my permission to  
20 type my statement for me as I tell you and Deputy  
21 Barrickman my story "

22 "I don't remember the exact time that I called, but I  
23 called five times to report my truck story You guys are  
24 saying that my truck wasn't stolen, but at the same time,  
25 there is the actual theft "



1 "I want to tell you the truth about what really  
2 happened Earlier this morning, I had left from down in  
3 Security Drive area at a house which is a drug area I  
4 was sitting around with some guys that I knew and some I  
5 didn't know so well And he didn't have nothing to do  
6 with this, so I would rather leave him out of it  
7 altogether "

8 "From there, I went to the store, which was the one  
9 at White Horse and Anderson Road with the store being  
10 white with red lettering At that time, I was by myself  
11 with one other person, which I only know him on sight and  
12 not by name I think they call him Eric or Red Devil At  
13 the Citgo, I paid for gas and bought a pack of cigarettes  
14 And when I come out, he was gone I thought then that I  
15 needed to call the truck in, but I then walked back to  
16 Security Park and spotted him, being Red Devil, in my  
17 truck He was sweating over some money and wanted some  
18 crack Red Devil had previously loaned me some money and  
19 I had to pay him back Basically, I hooked up with him  
20 and I was complaining to him about taking my truck That  
21 didn't seem like that was a big issue to him at the time "

22 "We both are in the truck and he started driving  
23 because the switch on the truck, you had to pop the clutch  
24 to make it run He pulled into the BP parking lot at  
25 Washington and Anderson Roads and pulled around to the

1 back of the store He said that he would stay behind the  
2 wheel of the truck and I was to go inside and get the  
3 money cause she gonna give it to you just like that "

4 "The only thing I had with me was a box cutter from  
5 work that I cut cardboard with I pulled the box cutter  
6 out of my right shorts pocket, extended the blade where  
7 the tip was exposed from the front of the rectangular case  
8 it's in I walked to the right side of the store from the  
9 back of the store and walked in that side door "

10 "There was just this one lady working in there and  
11 she was a black lady, but I really didn't pay attention to  
12 her I knew I wasn't going to put the knife to her neck  
13 cause I wasn't gonna do a whole lot of time The lady was  
14 washing windows when I walked in There were no customers  
15 in the store "

16 "I asked for a pack of cigarettes and she got a pack  
17 of Newport cigarettes off the shelf above the counter and  
18 laid the pack on the counter I had money in my hand,  
19 which was \$3 in my right hand and asked her how much  
20 cigarettes cost at their station I put the money back in  
21 my pocket and I pulled out the box cutter and raised my  
22 right hand up towards the air and told her that nobody was  
23 going to get hurt, just give me the money She seemed  
24 comforted somewhat with me saying that no one was going to  
25 get hurt, like asking her for something with a box cutter

1 in my hand and then telling her at the same time that she  
2 wasn't going to get hurt "

3 "I then walked to the corner of the counter where she  
4 had walked through from washing the windows to originally  
5 get my pack of cigarettes She opened the drawer and  
6 stepped back and told me to go ahead and get it I  
7 stepped two or three steps I remember correctly that she  
8 gave me what was in the drawer and asked if I wanted  
9 anything from her purse and she [sic] said no "

10 "After I got the money, I asked her where the tape  
11 was at and she took me to this back room and she said 'in  
12 that room' and opened the door I walked into the room  
13 and I pulled the door open to the cabinet and I took the  
14 whole VCR out of the cabinet and took it with me I  
15 walked out of the store carrying the VCR in my left hand  
16 I made no verbal threats to her I told her not to turn  
17 on any alarms and I told her that I was leaving her "

18 "I walked to the back of the store where Red Devil  
19 was waiting in my truck I got in the passenger side of  
20 the truck and we drove off We went to a crack house down  
21 in Security Park We both got out of the truck "

22 And right there where it says "got out" is where it's  
23 handwritten in there to place it in the front of that  
24 sentence

25 "Got out of the truck because he, actually, knew the

1 people and I didn't We left the VCR in the bed of my  
2 truck When we came out, he took the VCR out of the bed  
3 of my truck and put it in the front because he said that  
4 he was going to sell it "

5 "When we left out of Security Drive, there was now  
6 three of us in the truck Red Devil was driving I was  
7 sitting in the middle And the guy that is up here now  
8 was sitting in the right front passenger seat of the  
9 truck I gave Red Devil the money and told him that he  
10 was now paid and not to bother me any more "

11 "The next thing I know is what I call Green Avenue  
12 and I saw a police car behind us with no blue lights on  
13 cruising behind us Red Devil couldn't stop because the  
14 brakes were giving out in the truck He stopped as much  
15 as he could and then made the right-hand turn I told him  
16 that he had to watch his driving or we were going to get  
17 stopped The guy that said to you guys earlier that he  
18 merely got a ride from this guy and wasn't a party to the  
19 robbery was telling you guys the truth "

20 "He started hauling ass and the police were chasing  
21 us Red Devil was yelling out the truck to the police  
22 that the brakes were no good and he couldn't stop Red  
23 Devil was slipping down the hill and the other guy that  
24 was sitting next to me said the police were going to  
25 shoot, they're gonna shoot The guy that jumped out of

1 the truck is the guy that we picked up at Security Drive  
2 after the robbery at BP "

3 "So this guy jumps out and Red Devil then floored the  
4 truck and sped off I was ducked down in the truck when  
5 the guy jumped out The VCR went flying out the right  
6 passenger door because the door was broke The VCR is on  
7 the ground somewhere in Dunearn, I don't know for sure the  
8 street This was about the same time that the guy jumped  
9 out of the truck "

10 "We cut through Dunearn and passed maybe two or three  
11 police cars Red Devil went down through a light and  
12 turned right and hauled ass The next thing that I knew  
13 was Red Devil jumped out and hauled ass and I knew that I  
14 couldn't stay in the truck, so I jumped out and I ran I  
15 ran down by Hollis Academy School and the police were all  
16 in the area I didn't want to go to jail I kept running  
17 until I got up to the brick club and went in my trailer at  
18 Heritage Park and called the cops again The cops told me  
19 that they would meet me at my mother's on Staunton Bridge  
20 Road "

21 "Before I got to my trailer, I went to Helen's house,  
22 where she's been a friend of mine for years She gave me  
23 a T-shirt to change into after I asked her for one because  
24 the one I had on caught on the door of the truck when I  
25 jumped out I gave her \$10 for gas and the T-shirt that

1 she gave me She drove me down Anderson Road and let me  
2 out at the Auto Zone where I got out and walked to my  
3 trailer My wife, Donna Collins, then woke up when I went  
4 into our trailer and gave me a ride to my mother's house "

5 "When I got to my mother's, the police were there and  
6 asked me to come down to the law enforcement center to  
7 give a statement to the auto theft division They  
8 handcuffed me and Deputy Barrickman took me to the law  
9 enforcement center "

10 "I hate that this lady at the BP went through this  
11 stuff It was not my intentions to hurt her or scare her  
12 I just wanted her to give me" --

13 It was "her" and then he wanted it changed to "the "

14 "I just wanted her to give me the money and I would  
15 just leave I needed to pay back a drug debt I had with  
16 Red Devil I'm sorry for causing this lady any pain Red  
17 Devil is Eric who lives there on Staunton Bridge Road  
18 area He's red-boned or light-skinned He's about 5'10"  
19 and weighs, I guess, about 190, if that much I don't  
20 know his family He should be in his 30's At the time  
21 of the robbery, I had on blue jean shorts, gray T-shirt  
22 with no writing on it, to my knowledge, the gray sneakers  
23 that I have on now, no gloves, no hat I was wearing the  
24 watch that I have on my right wrist at the time of the  
25 robbery at BP " End of statement

1           At that point, we go back to the first page   He  
2           initials the beginning and end of each paragraph of the  
3           statement, initials the date, signs page 1 of 2 in both  
4           places   One, affirming that he'll receive a copy, the  
5           other that it's true and correct

6           And on the second page, he does the same thing,  
7           initials the beginning and ending of each paragraph and  
8           then signs in two places on the statement form   One,  
9           indicating he'll receive a copy, the second, that it is  
10          true and correct and this is his statement   And then it's  
11          notarized with McNamara being right there during the  
12          notary process   He is then -- a photo copy of his  
13          statement is then made   And it's provided to Mr   Steven  
14          Collins and was provided to Mr   Steven Collins following  
15          the interview   He was then turned over to Investigator  
16          Fortner

17       Q     Okay   Now, on the second page of the statement, in  
18       one place, he refers to one of the passengers in the truck  
19       and he calls him the guy up here now   Who was -- do you  
20       know who he's referring to when he says that?

21       A     May I reflect on my notes?

22            Because I do know who he's talking about because  
23       there was only one guy up at our law enforcement center  
24       He's referring to the law enforcement center -- we're  
25       talking at the law enforcement center, he says the guy up

1       here    And I -- it was safe for me to believe and know  
2       that he was talking about this guy that we had at the law  
3       enforcement center up here    And I'll be able to -- if I  
4       can reflect on my notes, I can tell you who that person  
5       is

6       Q     If it would refresh your memory, I would ask you to  
7       look at your notes

8       A     Thank you

9       His name is Franklin Thomas Henry

10      Q     Okay   Now, there's mention of a VCR, did you -- were  
11      any efforts made to try to look for this VCR?

12      A     Yes, there were   Several members of the uniform  
13      patrol division were directed to go back to this area,  
14      which did encompass a large area considering the incident  
15      location and two mill villages, if you will, of the  
16      pursuit   So it was an expanded area   I asked them to go  
17      back and check the area for the VCR   It was reported back  
18      to me that the VCR could not be located

19      Q     Did you ever do anything to try to attempt to  
20      determine who this person he referred to as Red Devil was?

21      A     Yes, I did   In the -- when I interviewed the  
22      Defendant, Mr Collins, he gave a specific description of  
23      this Red Devil individual   I then went into what we call  
24      a master global system   What we can do is take a partial  
25      name or we could take an alias name, like Red Devil, and



1 incorporate that into the system It then purges through  
2 all the records, the thousands of records that we have in  
3 this database, and then comes up with potential Red  
4 Devils

5 Well, in this particular case, it came up with one  
6 And it turned out that this particular individual did not  
7 live on Staunton Bridge Road, was not in his 30's, in  
8 fact, was in his late 50's, and there was a considerable  
9 difference in the description that was given by  
10 Mr Collins

11 So, therefore, it was the only Red Devil in our  
12 system Not to say that our system is 100 percent It's  
13 only as good as the data that's entered into it But our  
14 system only had one Red Devil that purged and came up

15 Q Let me hand you what's been marked as State's Exhibit  
16 No 23 Can you take a look at that and tell me whether  
17 or not you can identify what I've just handed you?

18 A Yes State's Exhibit No 23 is a -- I can identify  
19 it

20 Q Okay And what is it?

21 A It's a key, which is attached to an off-white colored  
22 shoelace, a sneaker-type shoelace The green is a -- the  
23 key has a green handle on it And it is a two-sided key

24 Q Okay And was that ever in your possession or use?

25 A Yes, it was The clothing that has been entered into

1 evidence, the blue jean shorts, in the blue jean shorts  
2 was a series of paperwork and keys And this key was by  
3 itself within the shorts as well The paperwork in the  
4 name of the Defendant, Steven Collins, was shifted to the  
5 side

6 This key here, I was trying to identify a key to the  
7 truck that was impounded In doing that, I signed out the  
8 keys from the property and evidence room and went to the  
9 Greenville County Vehicle Service Center right here on  
10 Keith Drive near Krispy Kreme Donuts I went to a secured  
11 impoundment lot that we have there that has barbed wire  
12 around the perimeter and went in there and tried this key  
13 on that particular vehicle that was there The vehicle  
14 that you have photographs of here in court is impounded  
15 out there and has remained in police custody the whole  
16 time

17 In doing that, this key was tried on the doors, the  
18 passenger door and the driver's door of this truck, and  
19 does, in fact, work on the driver's door and the passenger  
20 door on locking and unlocking the vehicle The doors are  
21 very -- the truck is a very flimsy truck You open the  
22 doors and the doors drop But the key does, in fact, work  
23 in those key switches The ignition key was, in fact, in  
24 the ignition when I went to the service center to check  
25 this

1 Q Is that the key -- what did you do with the key after  
2 you finished with it?

3 A I then took it back to the Greenville Law Enforcement  
4 Center, entered it back into property and evidence where  
5 it's secured in a vault until trial

6 Q Did you bring it to trial yourself?

7 A I did, sir

8 Q Is it in substantially the same condition now as it  
9 was back when you initially saw it?

10 A The same condition, yes, sir

11 MR MOYER Your Honor, I would move to have State's  
12 Exhibit No 23 entered into evidence

13 MR GIBSON No objection

14 THE COURT All right Without objection

15 (WHEREUPON, State's Exhibit No 23 was admitted into  
16 evidence )

17 MR MOYER Please answer any questions the Defense  
18 may have

19 CROSS-EXAMINATION

20 BY MR GIBSON

21 Q Detective Silvaggio, you said you had been an  
22 investigator, including your CID time, for over 15 years,  
23 is that correct?

24 A Over 15, that's correct

25 Q And during that time frame, what kind of training

1 have you had, particularly, in terms of interrogations and  
2 such?

3 A Yes The United States Government sent us to -- our  
4 unit to several interview and interrogation schools One  
5 of which, it was a two-month school that I attended and  
6 it's two months straight in Fort McClellan, Alabama, which  
7 is no longer there, not because of the school But I went  
8 to a series of FBI training agents, experts in interview  
9 and interrogation I've attended several seminars and  
10 have several hundred hours of training in interview and  
11 interrogation and schooling throughout the country

12 Q And over this time frame of these 15 years,  
13 approximately, how many interrogations have you done?

14 A Very few interrogations, thousands of interviews

15 Q Okay What's the difference?

16 A There's a big difference An interrogation is more  
17 hostile, more confrontational An interview is a more  
18 pleasant setting when you're interviewing an individual  
19 Interviews and interrogations, as the investigator -- and  
20 when I interview people, whether they're witnesses,  
21 victims, or suspects, they're not always full of  
22 pleasantries in either of those categories And an  
23 interview can change into an interrogation and turn  
24 hostile fairly quick

25 My posture when I interview somebody, I'm nice to

1       them    And if I need to raise that level, I'll raise that  
2       level    But the person dictates the behavior of the  
3       interview in the course of the interview

4             In this particular case, the interview was just that,  
5       an interview, as opposed to a confrontation   It was,  
6       actually, non-confrontational

7       Q       And the purpose when you interview a suspect, is it,  
8       generally, to try to get a confession?

9       A       To obtain their side of the story, i e , in a  
10      confession form

11      Q       All right   And the training you got, was that,  
12      generally, designed to teach you techniques, tactics, and  
13      whatever to get confessions out of suspects?

14      A       Yes, sir

15      Q       Tell me about when you met with -- well, tell me  
16      about when you first got called onto this case

17      A       When I was first called, I was at home   I was on  
18      call this particular week of October the 13th, 2005   It  
19      was approximately 6 30 in the morning   I was notified at  
20      home by Sergeant Jimmy Bolt of the Greenville Sheriff's  
21      Office that they had a robbery that had just occurred at  
22      the BP station   And he indicated that he had witnesses  
23      and a suspect -- excuse me, a suspect at the law  
24      enforcement center for me to interview

25             Being on call, you're responsible for -- my primary

1 responsibility is death investigations But the call week  
2 that you're on, you also incorporate robbery  
3 investigations as well that happen after hours, which  
4 would be at 4 30 at night

5 This particular case, being so close to the beginning  
6 of the business day, I responded to the law enforcement  
7 center about 7 20, 7 30 is about the time I was able to  
8 leave my house and get to the law enforcement center,  
9 which is about 15 minutes from my house And I, actually,  
10 directed and turned the case over to Investigator Fortner  
11 Because at that particular time, he was the robbery  
12 coordinator at the Sheriff's Office

13 Q Okay Did you make any kind of directive to bring  
14 Mr Collins into custody, or bring him down for  
15 questioning, or anything like that prior to you arriving  
16 at the detention center?

17 A No He was, actually, in custody at the time that I  
18 arrived at the law enforcement center I didn't make that  
19 decision

20 Q So this is about 7 20?

21 A About 7 20 I recall that the call was about 6 30  
22 And reflecting on my notes prior to testimony, it was  
23 about 6 30 It would take me about 30 minutes to get  
24 ready and respond to the law enforcement center

25 Q And you, actually, started talking to him, based on

1 your waiver form, around, what, 12 10, 10 after 12 00?

2 A Actually, probably about 11 45, 11 50

3 Q Okay Now, you've heard -- you've been able, unlike  
4 pretty much any other witness, to sit here and listen to  
5 all the testimony that's going on, is that correct?

6 A I have

7 Q And I believe it was Officer Barrickman who testified  
8 that during this time frame from when he was brought down  
9 to the detention center until you, actually, started  
10 interviewing him, he had been kept in a room in handcuffs  
11 Do you have any reason to disbelieve that and think that  
12 was not the case?

13 A No Because when I first met with Mr Collins at  
14 approximately 11 45, 11 50, he was in handcuffs And  
15 there's no reason for me to believe that he was not  
16 unhandcuffed prior to meeting him

17 Q Okay Prior to you meeting him, you talked about  
18 how, you know, when he came into your office, he would  
19 have been free to smoke a cigarette or something like that  
20 or get something to drink Did you make any other kind of  
21 arrangements like that while he was waiting from 7 20,  
22 when you arrived, until 11 45 when you, finally, met with  
23 him?

24 A He was not in my care and custody from the time I  
25 responded until the time that I met him He was in other

1 law enforcement officers care and control So whatever  
2 juncture that they took with Mr Collins, that was  
3 between -- that was the relationship that they had I was  
4 entertaining witnesses of this case and interviewing them  
5 and focusing on taking independent statements and  
6 interviews with witnesses

7 Q Okay Now, when were you notified of Investigator  
8 Fortner and Dianne Giles picking Mr Collins out of this  
9 lineup?

10 A It would have been right up to the point prior to the  
11 waiver form I remember that Mr Collins and I were,  
12 actually, outside with Deputy Barrickman once I finished  
13 the interviews with witnesses We were at the back door  
14 of the law enforcement center And he was handcuffed in  
15 the front and was smoking a cigarette out there In fact,  
16 I was smoking a cigarette with him And I believe  
17 Investigator Fortner confronted him and told him that he  
18 had identified him in a photo lineup with the store clerk  
19 In fact, I know that's what happened at the back door

20 Q Okay So you found out about it at the same time he  
21 found out about it?

22 A Yes

23 Q All right Well, you said you started -- well, let's  
24 talk about this lineup I'm going to hand you a copy --  
25 actually, let's not do that Let me use this one



1 I'm going to hand you a copy of this photo lineup,  
2 which has already been admitted as State's Exhibit No 19  
3 Okay

4 A Yes, sir

5 Q All right Now, you heard me talk to Investigator  
6 Fortner about that interview when he testified, is that  
7 correct?

8 A Yes, sir

9 Q And we talked about the fact that there are two  
10 individuals in that photo, two in the middle who have on  
11 orange jumpsuits, is that correct?

12 A Yes, sir

13 Q Now, is it your policy to allow that type of clothing  
14 or do you do something to the photograph to make sure that  
15 you can't see those jumpsuits in the light?

16 A I don't have a policy In fact, I don't write policy  
17 for the Sheriff's Office I'm just one of the blue collar  
18 workers up there

19 But when I do a lineup, I black out their clothes  
20 with a marker And I make sure the design of the black  
21 marker -- I don't alter anything on the face It's just  
22 from the neck over And all of them -- each picture would  
23 have the same design in blacked out So there's no way  
24 one way or the other as to favoring one picture to the  
25 other picture

1 Q Okay And isn't it -- in fact, you do that just to  
2 make sure, just like you said, that the clothing does not  
3 inappropriately influence the witness in regards to the  
4 lineup, is that correct?

5 A Yes That's correct

6 Q Now, you did a lineup in this case yourself, did you  
7 not?

8 A Yes, I did

9 Q One that included Mr Franklin Thomas Henry?

10 A Yes, it did

11 Q And you did that lineup for Ms Collins, is that  
12 correct?

13 A Yes, I did

14 Q Okay Now, did you follow your practice in regards  
15 to that lineup? Did you mark through clothing and stuff  
16 like that?

17 A Yes, I did

18 Q And you did that to make sure, what, there was no  
19 connection between Mr Henry and Mr Collins, is that  
20 correct?

21 A In respect to presenting the lineup to her?

22 Q Yes

23 A Yes I wanted to know if she was aware -- since she  
24 was his wife, if she was aware of any relationship or  
25 association between Mr Franklin [sic] and Mr Collins I

1       showed her the lineup   And she had never saw any of the  
2       individuals in the photographs -- in the six pictures  
3       before

4       Q     Okay   Now, you said you started meeting with him  
5       around 11 40, 11 45, is that right?

6       A     11 45, 11 50

7       Q     I'm sorry   11 45, 11 50?

8       A     Yes, sir

9       Q     Tell me what happened when you first walked into the  
10      room

11      A     He was handcuffed   I told him why I wanted to  
12      interview him, the purpose of me being there in the room

13      Q     What did you say?   Why did you tell him you wanted to  
14      interview him?

15      A     I told him that I wanted to interview him in respect  
16      to the robbery at the BP station   We talked about some  
17      family issues that he was having in respect to his mother  
18      and in respect to his wife   We spoke about -- we then  
19      went outside and I asked him if he wanted to have a  
20      cigarette   He said, yes   We went outside   We smoked a  
21      cigarette together and probably smoked two cigarettes

22           And then I told him that, you know, we need to go  
23      upstairs and move this forward and get his side of the  
24      story, if that's what he wanted to do

25      Q     Okay   Well, when did -- and in the meantime, when

1 did -- in that time period, when did Investigator Fortner  
2 come and confront him?

3 A While we were outside smoking a cigarette.

4 Q Okay So I just want to get the time frame So  
5 you're outside smoking a cigarette?

6 A I would say before 12 00 It was before 12 00 or a  
7 few minutes after 12 00

8 Q Okay You're outside smoking a cigarette with  
9 Mr Collins, Investigator Fortner comes up and tells  
10 you -- tells him, confronts him, says, we -- someone  
11 picked you out of the lineup?

12 A Correct

13 Q And then what did you do?

14 A At that point, we continued on outside We were  
15 having a conversation He heard the same thing I heard  
16 And it was time to go up to my office And so we went up  
17 to my office And, at that point in time, that's when I  
18 filled out the waiver form and advised him of his legal  
19 rights

20 Q Okay Now, what were you guys talking about when you  
21 were outside having a cigarette?

22 A In part, like I said, we were talking about his wife  
23 We were talking about he indicated there were some  
24 difficulties in their marriage We talked about his  
25 mother, who he's very close to And we talked about -- a

1 little bit about his past and such as that

2 Q Okay Now, what did he tell you about his mother?

3 A That she's sick She's an older female and that he  
4 cares for his mother

5 Q Did he tell you he, actually -- when you say "cares,"  
6 did he tell you he, actually, takes care of his mother?

7 A That's what he told me, yes

8 Q And did he express to you his concern that he  
9 wanted --

10 MR MOYER Your Honor, objection, relevancy

11 MR GIBSON It goes to what I consider the motive  
12 for him giving this statement

13 THE COURT I'm going to allow it

14 Go ahead

15 BY MR GIBSON

16 Q And did he tell you that he was concerned about  
17 trying to get back to his mother so he could take care of  
18 her?

19 A He was concerned And he told me, specifically, he  
20 was concerned because of the implication of him in this  
21 robbery and that he wouldn't be able to get back to take  
22 care of his mother

23 Q Okay And did you make any statement in response to  
24 that?

25 A I told him -- he was concerned --

1 MR MOYER Your Honor, may we approach?

2 THE COURT All right

3 (WHEREUPON, a bench conference was held )

4 BY MR GIBSON

5 Q Okay I think we were talking -- or you were telling  
6 us what you said in response to him about his concern  
7 about him not being able to get back to take care of his  
8 mother?

9 A Yes I told him that the decision wasn't up to me  
10 But, historically, if he would just provide law  
11 enforcement with information on crimes that he knew about,  
12 that he was a witness to or heard people talking about,  
13 that that would be taken into consideration by the  
14 Solicitor's Office, not by what percentage it would be  
15 taken into consideration But any cooperation and any  
16 help he offered law enforcement related to other victims  
17 of crime as a witness that that would be taken into  
18 consideration by the prosecutor's office

19 Q Did he provide you with such --

20 MR MOYER Objection, Your Honor, relevancy

21 THE COURT Come here and let me see you

22 (WHEREUPON, a bench conference was held )

23 BY MR GIBSON

24 Q So you told him that And then what happened? What  
25 did you guys talk about then? Did he say anything --

1 well, without going into whether he gave you any  
2 information or not, did he say anything in response to  
3 that?

4 A He said, okay, I'll do my very best

5 Q Okay And then what happened?

6 A We then went up to my office We didn't discuss  
7 anything related to what he knew about other matters We  
8 stuck with the robbery itself at the BP station and  
9 proceeded on with the interview, as I've testified to He  
10 then submitted the statement, approved the statement,  
11 signed, and initialed the statement I then turned him  
12 over to the custody of Mike Fortner And that was the  
13 degree of my involvement

14 Q Okay Well, let me ask you this Let's go back  
15 still in time You all go upstairs --

16 A Yes, sir

17 Q -- and go in the room Did you say anything to him  
18 to get him to start talking or what did you say to him to  
19 get to the point where you started talking about the  
20 waiver?

21 A Well, actually, we were having a pleasant  
22 conversation I mean, it wasn't hostile We were  
23 speaking man to man respectfully He was very respectful  
24 to me, very polite And, actually, he wasn't -- I didn't  
25 feel like he was a risk to me at the time he was up in my

1 office He was very pleasant to be with, well spoken,  
2 well mannered He wasn't out of control like I've seen in  
3 my office before with other people He was, actually, a  
4 pleasure and a person with a difficulty that I was to talk  
5 to So we were just having general conversation of no  
6 real significance

7 And then I said, well, let's do the waiver form and  
8 let's talk about the waiver Let's get past that before  
9 we do anything else And that's when I advised him of his  
10 rights And he told me very clearly that he wanted to  
11 speak with me, that he didn't want a lawyer

12 Q Did he tell you about his crack use that day?

13 A He told me about association in the drug world He  
14 didn't, specifically, say that day Earlier in the  
15 morning, there was some indication that he had smoked  
16 crack with some guys over on Staunton Bridge Road -- I'm  
17 sorry, Security Drive But that was not highlighted by  
18 him during the course of the interview

19 Q Did he tell you that he had used crack that morning?

20 A After the interview, he did When I interviewed him  
21 and took his statement, he stated he was not under the  
22 influence of any drugs or alcohol And, clearly, his  
23 condition and his posture was truly that of somebody that  
24 was not under the influence of any drugs or alcohol

25 Q So you're saying he told you this after the



1 interview, is that correct?

2 A Yes

3 Q How long were you with him total?

4 A I was with the Defendant, Mr Collins, for  
5 approximately two hours and 15 minutes The interview  
6 process truly does not take extremely that long So two  
7 hours was a pretty reasonable period of time for an  
8 interview of this magnitude

9 Q Okay So after you read him his rights, did he ever  
10 mention to you that he wanted to get a lawyer, that he  
11 didn't have a lawyer or anything like that?

12 A No, he did not

13 Q At no time?

14 A No I would have stopped

15 In fact, if I may finish my answer

16 Q I'm sorry

17 A Respectfully, if a person -- when I'm interviewing an  
18 individual, they may waive their rights at any point in  
19 time and say, you know, I want to talk to you But at any  
20 point in time, they can say, you know what, I want to  
21 stop I don't want to talk to you anymore I want a  
22 lawyer And I honor that

23 And under the Constitution, I must honor that And  
24 that's exactly what I do My work ethic and my profession  
25 and my reputation is much more important than a confession

1 from a defendant any day And I take that clearly into  
2 consideration And I take that with high regard

3 Q Did he -- okay While he did not -- let me ask you  
4 this Let's pick up from after you finished the waiver  
5 form What happened next or who said what next?

6 A At that point -- may I reflect on it?

7 Q Yes, please, please At any point, if I ask you  
8 anything and you have some notes or something that will  
9 refresh your recollection, please do so, sir

10 A Thank you

11 Once the waiver form is complete, I set that to the  
12 side I then start on my laptop computer These forms  
13 are already in the laptop in a program form So I just  
14 fill in the blanks with respect to the name and such as  
15 that I then go into the first paragraph just to kind of  
16 get the interview started with his birth date, his  
17 particulars, his education level again And then we start  
18 the interview

19 I then -- I tell him right at the onset,  
20 particularly, in this case here, he was pretty adamant  
21 that his truck was stolen And, in fact, his truck, at  
22 one point in time through the evening, was stolen, as he  
23 described it later in the interview So in the first  
24 paragraph, he talks about that And I stopped him there  
25 and said, we're talking about the robbery now I

1 understand about your truck being stolen from the Citgo  
2 station But we're talking about the BP station after you  
3 recovered your stolen truck

4 And at that point, then we began talking about the  
5 robbery And I asked him, I said, you just have to  
6 regurgitate it one time I don't want you to have to keep  
7 reliving this over and over and over again I could tell  
8 the robbery was troublesome to him I could tell that he  
9 was very remorseful about the robbery because of what took  
10 place with the female victim inside and the fear that he  
11 knew that he placed on her, that he felt like he placed on  
12 her And he was very sincere in his interview and in his  
13 statement to me

14 Q Okay So let me get this straight So you meet with  
15 him about 11 45, 11 50, is that right?

16 A Yes

17 Q You guys go downstairs, start smoking a cigarette,  
18 having casual talk Investigator Fortner comes and  
19 confronts him and tells him that this Ms Giles has picked  
20 him out of a lineup You take him upstairs and read him  
21 his rights And then almost immediately, he starts  
22 confessing?

23 A Yes Because I would have done the same thing if you  
24 took Investigator Fortner out of the equation My intent,  
25 after he finished his cigarette, was to take him upstairs

1 and interview him anyway So truly, Investigator Fortner  
2 coming to the back door and telling him that was really  
3 not part of the equation of the interview process that I  
4 would have addressed with him

5 But because Fortner did come and tell him about the  
6 lineup, it, actually, just enhanced the ability for my  
7 interview process since I had limited information about  
8 how the robbery happened It just enhanced my ability to  
9 interview him and do a better interview

10 Q Okay Let me -- you just said you had limited  
11 information What did you do between 7 20 when you first  
12 arrived and 11 45 when you, finally, ended up talking to  
13 Mr Collins?

14 A Being on homicide call, we're flooded with various  
15 amounts of criminal investigations during our call week,  
16 namely, death investigations So during this period of  
17 time, I'm interviewing witnesses, i e , the wife of the  
18 Defendant and the friend of the Defendant, Ms McGee In  
19 interviewing them, I'm taking care of other matters  
20 throughout that period of time These two people that I  
21 interviewed were significant witnesses in the  
22 investigation, but were not there at the BP station at the  
23 time of the robbery

24 So I didn't know anything in respect to the robbery  
25 but very minute details, that it was robbed by an

1 individual with a box cutter and they pursued the truck  
2 later And I would rather keep it that way when I  
3 interview somebody I would rather be able to take that  
4 statement and give it to the lead investigator and let him  
5 make the determination as to whether the person is telling  
6 the truth or not.

7 MR GIBSON Just a second, please

8 BY MR GIBSON

9 Q Mr Silvaggio, did you make any statement to him  
10 about whether you liked Mr Fortner or not?

11 A Say that again

12 Q Did you make any statement to Mr Collins about  
13 whether or not you liked Mr Fortner? I mean, did you say  
14 anything like when Mr Fortner came down, like he's too  
15 hostile, I don't really like him, don't worry about it,  
16 I'm going to be doing your interview?

17 A I probably did say that

18 Q Do you, in fact, not like Mr Fortner?

19 A No, no I like Mr Fortner But if I see another  
20 investigator interject in a relationship that I'm having  
21 with a witness, victim, or suspect without giving me some  
22 kind of notice to that, it catches me off guard

23 So in respect to that, I saw that Fortner's approach  
24 to Mr Collins was troublesome to Mr Collins So am I  
25 going to -- in order to have an effective interview, am I

1 going to sway towards the other law enforcement or am I  
2 going to sway towards Mr Collins? I would sway  
3 towards -- and I did towards Mr Collins

4 If I'm going to gain anything, I'm going to sway  
5 towards his consideration and his feelings towards that  
6 approach, as opposed to going towards Fortner's thing  
7 And it's an investigative tool It's a technique And if  
8 Fortner is going to be hostile towards him and it upsets  
9 him, Fortner walks away, then if I'm hostile towards him,  
10 I already see what kind of response law enforcement is  
11 going to get from Mr Collins with that type of behavior  
12 So I'm nice to him And by being nice to him, I'm more  
13 successful being nice, just like in life, than I am being  
14 hostile

15 Q Okay And that's a technique, a tactic?

16 A To me, it's a life experience Plus, it's an  
17 investigative tool to be successful in the interview  
18 process

19 MR GIBSON Just a second, please

20 BY MR GIBSON

21 Q All right Did you make any comment to him regarding  
22 what bond he might be able to get if he cooperated with  
23 you?

24 A No And I never make any recommendation about a high  
25 recommendation before a magistrate

1 Q No I'm not asking about that What I'm asking is  
2 this Did you ever tell him anything like -- or didn't  
3 you, in fact, tell him that, well, if you cooperate, we'll  
4 get you a low bond and we'll get you back home to your  
5 mother?

6 A No, we didn't -- No, I didn't Let me say that  
7 Specifically to me, no, I did not

8 Q All right Did you guys try to -- strike that one  
9 MR GIBSON Nothing further

10 Thank you

11 MR MOYER Nothing further

12 THE COURT All right Officer, you can step down  
13 Thank you

14 MR MOYER If I could have one moment, Your Honor

15 THE COURT All right

16 (Pause )

17 MR MOYER Your Honor, at this time, the State  
18 rests

19 THE COURT Let me see the lawyers up here, please  
20 (WHEREUPON, a bench conference was held )

21 THE COURT All right Ladies and gentlemen, we're  
22 going to break for lunch now So I'll ask y'all to be  
23 back in your jury room at 2 15, if you would Have a  
24 pleasant break

25 Please don't discuss the case or do any research or

1 anything like that

2 Thank you

3 (WHEREUPON, the jury was excused from open court at  
4 approximately 12 28 p m )

5 MOTIONS

6 THE COURT Any motions?

7 MR GIBSON We, of course, would move for a directed  
8 verdict, Your Honor

9 THE COURT On what grounds?

10 MR GIBSON On the grounds that they have not  
11 sufficiently proved the elements of the crimes

12 THE COURT All right I'm going to deny your motion  
13 on both counts of the indictment

14 MR GIBSON Thank you, Your Honor

15 THE COURT I find they have produced enough  
16 evidence

17 All right Do you know whether or not your client  
18 intends to take the stand?

19 MR GIBSON I do not at this time, Your Honor I  
20 would like to take the break to discuss that with him It  
21 may be helpful if we go ahead and talk about what parts of  
22 his record may come in, if he decides to take the stand

23 THE COURT Okay What would you intend to impeach  
24 him with?

25 MR MOYER He has convictions in 1993 for which he



1 got 25-year sentences and was not released until April the  
2 4th of 2005

3 THE COURT What are they?

4 MR MOYER Okay These are within the ten years  
5 So it's two counts of armed robbery, attempted burglary,  
6 pointing a firearm, grand larceny, three counts of  
7 burglary second degree, and strong armed robbery And  
8 they would be the ones that we would seek to --

9 THE COURT All at the same time?

10 MR MOYER He was convicted of all at the same time,  
11 yes, sir It was February the 4th of 1993

12 THE COURT All right

13 MR GIBSON Could I have just a second, Your Honor,  
14 to discuss that with him to see if he's testing the  
15 validity of these?

16 THE COURT Yes Go ahead

17 He's probably got certified indictments, I would  
18 think

19 Do you, Mr Moyer?

20 MR MOYER I do, Your Honor If he wants to review  
21 those --

22 MR GIBSON May I, please?

23 MR MOYER Yes

24 (Pause )

25 MR GIBSON Your Honor, we are -- I'm asking that it

1 all be kept out, that it's more prejudicial than  
2 probative Particularly, with regard to the armed  
3 robbery, strong armed robbery, and pointing and presenting  
4 a firearm, they are extremely similar to the allegations  
5 which we are talking about today and would be way more  
6 prejudicial than probative

7 MR MOYER And, Your Honor, my response is, the  
8 armed robbery, the strong armed robbery, and the grand  
9 larceny, none of those are subject to the balancing test  
10 Under Rule 609(a)(2), they are crimes of dishonesty and  
11 false statement So there is no balancing test that is  
12 done on those charges

13 There would be a balancing test under the burglaries  
14 second Under the case of the State v Al-Amin, which is  
15 a 2003 case, the Court, specifically, looked at robbery to  
16 determine whether or not it's a crime of dishonesty In  
17 that case, the Court said, yes, robberies are crimes of  
18 dishonesty and are not subject to the balancing test So  
19 they would be impeachable

20 I could pass up the case if Your Honor --

21 THE COURT Well, what was the case? I'm going to  
22 limit what you can put in

23 What was the case that -- I think it was Henry Floyd  
24 that got reversed

25 What was that case, Mr Moyer?

1 MR MOYER This case -- I'm not sure

2 Oh, that was a burglary second charge, Your Honor

3 That was a complete --

4 THE COURT Similar convictions

5 MR MOYER But they were not being put in for

6 impeachment They were being put in to prove an element

7 of the crime, which is burglary second degree -- I mean,

8 burglary first degree

9 In that case, it was a burglary first And the State  
10 put in a whole bunch of prior -- of convictions for

11 burglary as an element of the crime, which is --

12 THE COURT Well, they limited it to two, instead of  
13 allowing the seven or something like that

14 MR MOYER Yes, Your Honor

15 But that --

16 THE COURT I believe -- you know, you want to  
17 impeach his credibility because he's got convictions for  
18 offenses involving dishonesty where the punishment is more  
19 than a year

20 Why is it appropriate -- why does 403 not come into  
21 play when you're talking about somebody charged with armed  
22 robbery and he's got two prior armed robbery convictions?

23 MR MOYER Your Honor, the rule, I think, is very  
24 clear Under 609(a)(1), that is subject to Rule 403 and  
25 the balancing test But under (a)(2), if it's a crime of

1       dishonesty, there is not a balancing test

2               And if I could ask Your Honor maybe over the break,  
3       if I could pass up this case of Al-Amin

4               THE COURT    Yes, you can hand it to me

5               MR MOYER    I mean, it, specifically, says there's  
6       not a balancing test for those crimes

7               THE COURT    What was he on trial for in that case?

8               MR MOYER    Murder and --

9               THE COURT    A different type of offense

10              MR MOYER    But the Court said that's not an issue  
11       You look at it on crimes of --

12              THE COURT    Well, I'll take a look at your case, but  
13       it's an issue for me

14              All right    Mr Collins, stand up, will you, please,  
15       and raise your right hand

16       WHEREUPON,

17                           STEVEN COLLINS,  
18       after first having been duly sworn, testified as follows

19              THE COURT    All right    You can put your hand down

20              It's come to the point in the trial where you have to  
21       make a decision about whether or not you're going to  
22       present a defense, whether or not you're going to testify

23              Okay    I know -- have you talked with your attorney  
24       about this?

25              DEFENDANT COLLINS    We briefly spoke of it, but we

1 didn't get a chance to discuss it

2 THE COURT Okay Well, you understand -- he's  
3 spoken with you before about your right to testify, hasn't  
4 he?

5 DEFENDANT COLLINS Yeah

6 THE COURT All right And you -- I mean, you've met  
7 with him You've met with him as often as you've needed  
8 to, is that right?

9 DEFENDANT COLLINS Well, not really

10 THE COURT Okay I'm going to give you time over  
11 lunch to talk to him and to meet with him But you  
12 understand that you have an absolute Constitutional right  
13 to testify in this case and present whatever relevant and  
14 competent evidence that you and your attorney want to put  
15 up

16 Okay You also have an absolute Constitutional right  
17 not to testify in this case And if you decide to do  
18 that, I will instruct the jury, if you want me to, that  
19 they in no way, manner, shape, or form can consider that  
20 in their deliberations under their oath So I will give  
21 them a strong instruction about your failure -- or the  
22 fact that you did not testify

23 Now, your attorney can talk to you about the various  
24 strategic advantages specific to this case that would be  
25 gained from either your testimony or your failure to

1       testify, if I can use that word   And -- including closing  
2       arguments and whatever might be gained or lost as a result  
3       of your testimony

4               I will tell you that part or all of your prior  
5       criminal history may come out for impeachment so the jury  
6       can know something about your background and character  
7       when they make a determination about whether or not to  
8       believe you   It's solely for impeachment purposes

9               DEFENDANT COLLINS   Does that include like YOA  
10      sentence or something like that, juvenile sentences?

11              THE COURT   No   They have listed the ones they're  
12      going to talk about.   Your attorney wrote it down and  
13      you've reviewed those indictments

14              So I'm going to, over the lunch hour, let you all  
15      decide whether or not -- if that's what you want to do or  
16      not   But when you come back, you need to be prepared to  
17      go

18              Okay   See you all at 2 15

19              (WHEREUPON, a lunch break was taken )

20              THE COURT   Mr   Gibson, I understand that your client  
21      wants to testify

22              MR   GIBSON   Yes, sir, Your Honor, he does

23              THE COURT   Mr   Collins, do you have any questions  
24      you want to ask me about your rights with respect to your  
25      testimony -- your ability -- your right not to testify?

1 DEFENDANT COLLINS No, sir

2 THE COURT Do you understand -- and I'm sure -- have  
3 you had enough time to talk to your lawyer about it?

4 DEFENDANT COLLINS Yes, sir

5 THE COURT Okay And you understand that if you  
6 present a case and present evidence, then you give up your  
7 right to have the last argument

8 Do you understand that?

9 DEFENDANT COLLINS Yes, sir

10 THE COURT Okay And do you have any other  
11 questions you need to ask your attorney before you make  
12 this decision?

13 DEFENDANT COLLINS No, sir

14 THE COURT We haven't even talked about what we're  
15 going to allow him to impeach you with

16 MR GIBSON We've talked about what charges he  
17 wants, but we just need to make the decision

18 THE COURT Well, I read this Court of Appeals case  
19 that came out and was heard on January 14th, '03 It was  
20 filed March 3rd, '03 And I read this Supreme Court case  
21 that was, interestingly, heard three days after that case  
22 was filed and decided April 7th, '03, State v Dunlap

23 Are you familiar with that?

24 MR MOYER I don't recognize the name of the case

25 THE COURT The very last paragraph, Justice

1 Pleicones says further, "We agree with Judge Shuler that  
2 when a prior offense is similar to the offense for which  
3 the Defendant is on trial, the danger of unfair prejudice  
4 to the Defendant from impeachment by that prior offense  
5 weighs against its admission "

6 MR MOYER And, Your Honor, I don't have that case  
7 in front of me But was that talking about a 609(2)?

8 THE COURT He doesn't really distinguish that I'm  
9 not sure what it is And I'm sort of torn with limiting  
10 how you do it and letting it come in Because this  
11 Al-Amin case is so definitive about taking away all the  
12 trial court's discretion that maybe it's an issue that  
13 ought to be resolved by the Supreme Court

14 Do you have anything you want to discuss about that,  
15 Mr Gibson?

16 MR GIBSON Just for the record, Your Honor, I'm  
17 making my motion that it be kept out And if the Court  
18 decides otherwise and the Appeal Court decides  
19 differently --

20 THE COURT Well, I'm having difficulty -- the Dunlap  
21 case, that paragraph is really dicta And I'm not sure if  
22 it applies to the (a)(1) or (a)(2)

23 In discussing (a)(1) earlier --

24 MR MOYER May it please the Court?

25 Your Honor, I looked at some notes I had on the



1 Dunlap case and given that -- I don't have the case in  
2 front of me But my notes I wrote down, I thought it was  
3 concerning 609(a)(1)

4 THE COURT Well, the paragraph before that, I  
5 couldn't tell if they meant as an extension of the  
6 discussion of (a)(1) or if they were just in general  
7 saying that

8 But I'm going to let it all come in and then -- maybe  
9 I'm misinterpreting it But the language in that Al-Amin  
10 case is pretty definitive

11 Does he still want to testify?

12 MR GIBSON He still wants to testify, Your Honor

13 THE COURT Okay Anything else before we bring the  
14 jury in?

15 MR. GIBSON Did you want to discuss that other  
16 matter now?

17 MR MOYER Okay

18 MR GIBSON Well, Your Honor, there is another  
19 matter Mr Moyer has informed me that he is -- if you'll  
20 remember, Your Honor, we had the situation where we had  
21 the statement from Ms Waller, the potential alibi  
22 witness

23 THE COURT Yes

24 MR GIBSON Well, Mr Moyer has talked to her -- or  
25 his office has talked to her And they intend to

1 cross-examine Mr Collins with that situation My  
2 position is it's not relevant We're not submitting the  
3 statement

4 THE COURT I don't know what it is

5 MR MOYER I can give you a quick run down

6 Investigator Silvaggio last night went and spoke to  
7 the woman that had given the alibi -- supposed alibi  
8 statement He talked to her roommate, who was also there,  
9 and he talked to the person who signed the notary And  
10 according to that witness, Ms Waller, she said in her  
11 statement that she gave to Investigator Silvaggio that she  
12 had never seen the Defendant before, that he showed up at  
13 her house yesterday morning about 6 30 in the morning,  
14 came in with a piece of paper and a pen, and told her what  
15 to write

16 And then she said she didn't even start working at  
17 this bar where he, supposedly, was until a month later, so  
18 it couldn't have been So Investigator Silvaggio also  
19 then went and spoke to the notary who admitted that this  
20 witness was not even present when she notarized it She  
21 did it just because she was a friend of his and signed it  
22 under his assertion that it was valid

23 Your Honor, under 608(b), specific incidents of  
24 conduct, we think that he could be questioned on that  
25 Because it goes to his credibility and so -- specific

1 instances of conduct for prior bad acts that he could be  
2 questioned about that

3 MR GIBSON I would assume prior bad acts would be  
4 prior to this happening, first of all

5 Second of all, I'm not exactly sure how this would be  
6 relevant to that And just as a minor thing, I think  
7 the -- from my review of the notary statement, she's  
8 saying she signed it based on the mother's assertion that  
9 it was legitimate, not Mr Collins

10 THE COURT We don't have the woman here?

11 MR MOYER Actually, she is

12 THE COURT Oh, are you going --

13 MR GIBSON I'm not going to call her or introduce  
14 her statement But I believe it's the State's intention  
15 that once he testifies, they're going to cross-examine him  
16 on it and then, potentially, call her as a rebuttal  
17 witness

18 MR MOYER And, again, that would be in the Court's  
19 discretion I mean, under 608(b), it can't be proven by  
20 extrinsic evidence However, under the rule, he can be  
21 questioned if it's something that goes to truthfulness or  
22 untruthfulness

23 Our argument to you, Your Honor, would be that going  
24 to a witness or an individual and trying to get that  
25 person to file a false affidavit is -- goes to someone's

1 truthfulness or untruthfulness For that reason -- that  
2 would be the reason we would request to question her about  
3 it

4 THE COURT Well, you said she wasn't even there when  
5 it was notarized, right?

6 MR MOYER She wasn't there when it was notarized,  
7 but she --

8 THE COURT So she didn't know it was an affidavit  
9 given under oath She didn't give it under oath

10 MR MOYER But he, Your Honor -- the implication --

11 THE COURT Yes I'm not going to let you do it  
12 That's just -- you know, it's right on the cutting  
13 edge of things

14 MR MOYER Okay

15 THE COURT I'm just not going to let you do it  
16 Anything else?

17 MR GIBSON No, Your Honor, nothing further

18 THE COURT All right Bring the jury in  
19 (WHEREUPON, the jury came into open court at  
20 approximately 2 58 p m )

21 THE COURT Mr Foreman, and, ladies and gentlemen of  
22 the jury, thank you for your patience

23 Once again, we were able to handle a couple of other  
24 matters not related to this case So I imposed upon your  
25 patience and good nature to do that But we're now ready

1 to resume the case

2 Thank you

3 Mr Gibson

4 MR GIBSON Your Honor, we would call Steven  
5 Collins

6 THE COURT All right Come around and be sworn

7 THE CLERK Put your left hand on the Bible, please,  
8 sir, and raise your right hand

9 WHEREUPON,

10 STEVEN COLLINS,

11 after first having been duly sworn, testified as follows

12 THE CLERK State your name for the record, please

13 THE WITNESS Steven Collins

14 THE CLERK Thank you

15 Be seated

16 DIRECT EXAMINATION

17 BY MR GIBSON

18 Q All right Mr Collins, how old are you?

19 A 38

20 Q And have you been a resident of Greenville for -- are  
21 you a resident of Greenville?

22 A Yes, sir, my entire life

23 Q And is that your mother?

24 A Yes, sir

25 Q Who's with you today and your brother next to her,

1 correct?

2 A Yes, sir

3 Q Do you currently work?

4 A Yes, sir

5 Q Where do you work?

6 A I work full-time at Huddle House And I work  
7 part-time on the weekend at Goglanian's Bakery in Fountain  
8 Inn

9 Q Now, you understand you're here today on the State's  
10 allegation that you committed an armed robbery on the  
11 night of October 13th, 2005?

12 A Yes, sir

13 Q Tell us what happened, what, in fact, happened that  
14 night

15 A Basically, I remember I was out partying And I had  
16 been drinking And, yeah, I had been smoking some  
17 marijuana and some other drugs with some, supposedly,  
18 friends of mine I left to get gas It was like maybe, I  
19 guess, 5 00, 4 30, 4 45, somewhere along in there

20 I pull up to the gas station I go in and I pay for  
21 my gas The first individual I had with me, as I went  
22 into the store and paid for my gas, when I come back, he  
23 was gone with my truck Okay I come back outside, he's  
24 gone I go back inside and ask if I can use the phone  
25 She gave me change for a dollar I used the pay phone I

1       called the Sheriff's Department   And I got a recording to  
2       dial another number   And they put me on hold

3               So I walked back to the place where I was earlier  
4       with this person, which was down Security Park Drive  
5       It's a trailer park   I went there   I saw my truck   It  
6       was parked in someone's yard   I went to this person's  
7       home   Me and the person that drove off in my truck, we  
8       got into a little scuffle about it because he had driven  
9       off and left me   I, again, tried to call the police   I,  
10      again, got a recording   I didn't know that you get a  
11      recording with 911, but I got one

12              So I take off   I went ahead and I said, well, I'm  
13      going to go down by the club for awhile   I went down to  
14      the club   I was down there, I figure, at least, until  
15      5 30   And my truck was already gone   There was nothing  
16      else I could do about it, you know   I had called   I  
17      couldn't get the officers there on time or get them there  
18      where I was   So I went ahead and had my wife take me to  
19      my mom's home to where my other car was

20              I got to my mom's home   The officers had met me  
21      there, as they said they would, to speak to an auto theft  
22      investigator   When I got there, there were like maybe 13  
23      cars of cops at my mom's residence   They were up and down  
24      the sidewalk, on the sides of the house, within the house  
25      I'm standing in the yard   My wife pulls up

1           I get out   And I ask what's going on   I was only  
2   supposed to meet with an investigator   And this other  
3   officer is standing there and he's telling me that I need  
4   to come down to the Law Enforcement Division and speak  
5   with an investigator   He's telling me the full time I'm  
6   not under arrest, you're not under arrest   This is just  
7   our policy of having you come down   We're going to  
8   transport you there   You have to ride with us   We're  
9   going to put the cuffs in front of you   I'm telling them,  
10   well, my wife is right here, can't she bring me down  
11   behind you guys?   We can follow you, she can come on down  
12   He tells me, no, you have to ride with us

13           So, therefore, my mom, she's on the porch   She's  
14   come to the door at the time because officers are in and  
15   out of the house   And she just had heart surgery   And  
16   she said her chest was hurting   So to alleviate the  
17   stress she was going through, I told them, I said, well,  
18   I'll go   I got in the car with them -- I let them cuff me  
19   and put me in the car   I went ahead down to the police  
20   station

21           As I got to the police station, they had me sit in  
22   what's called the muster room for like maybe five or six  
23   hours   I'm not sure which   But I know it was a very long  
24   time   I was handcuffed   The guy took me out to smoke  
25   maybe one or two cigarettes and brought me back to this



1 room It was cold, you know It had been drizzling that  
2 morning And I sat there And I waited on the  
3 investigator to get there

4 I guess it was maybe about 11 30, maybe 12 00,  
5 Investigator Silvaggio shows up There was another  
6 person, I think his name was Investigator Fortner or  
7 something like that We're down at the back door smoking  
8 And this Investigator Fortner comes and he says, we know  
9 you did it, we've got your truck, we know you're guilty

10 So I'm looking at him like who is this And so  
11 Investigator Silvaggio says, don't pay it no mind, you  
12 know, I'm going to investigate this I'm going to be the  
13 one that talks to you He carries me upstairs We go  
14 upstairs And he asks me about the incidents of the, you  
15 know, previous night and stuff and that morning that I had  
16 been through and what happened and so forth

17 Then, as I explained to him, I don't have an  
18 attorney Because right now, this just happened, you  
19 know, I don't have an attorney on hand He's saying,  
20 well, you don't have to worry about that right now, it's  
21 nothing like that, we'll get you one later So while  
22 talking to him, he starts talking to me and he's like, I  
23 guess, trying to calm me down or something And he's  
24 telling me if I go ahead and say, well, this part of this  
25 case -- did I know this part of the case that it could

1 possibly help me get a lower bond so I can get back home  
2 to my mom

3 Well, at that time, he began telling me about what  
4 was said to have happened about the lady being robbed, the  
5 lady being robbed with a knife He didn't say box cutter,  
6 he said knife And, at that point, it was like, well,  
7 wait a minute, if the lady was robbed with a knife, you  
8 would be able to see my tattoos Because although I'm a  
9 dark complexion man, these tattoos are, basically, in blue  
10 and black ink, they're visible She said that --  
11 remembering her statement, she said we were in a very  
12 lighted place

13 So I talked with him And, finally, he took me down  
14 to the night judge and had me arraigned And the bond  
15 they set on me was \$15,000 So he was saying -- the night  
16 judge was saying, well, that's kind of low for an armed  
17 robbery But what I didn't know is they, actually --  
18 well, you're being charged with a weapon --

19 MR MOYER Your Honor, may we approach?

20 THE COURT Yes

21 (WHEREUPON, a bench conference was held )

22 THE COURT Mr Foreman, and, ladies and gentlemen,  
23 you all look very tired You've been there for a long  
24 time I'm just kidding I need y'all to stand, stretch,  
25 walk through the hallway And probably by the time you

1 get all that done, we can bring you back

2 So don't get too comfortable We'll be right back  
3 with you

4 (WHEREUPON, the jury was excused from open court at  
5 approximately 3 07 p m )

6 THE COURT Mr Collins, the State, I guess,  
7 objected, interrupted the testimony and we had a bench  
8 conference It was his impression that you were about to  
9 mention the fact that you were facing life without parole  
10 I will tell you now and I caution you that that is  
11 inappropriate for this jury to hear And you are not to  
12 mention that You are not to mention the potential  
13 punishments you are facing as a result of this offense

14 Okay Is that clear?

15 DEFENDANT COLLINS (Defendant Collins nodded )

16 THE COURT You have to speak

17 DEFENDANT COLLINS Yes That's fine That's not  
18 where I was headed

19 THE COURT Okay Well, good I didn't think so,  
20 but just out of an abundance of caution

21 Let's try and limit the anticipatory objections

22 Okay

23 MR GIBSON Yes, sir

24 MR MOYER Yes, sir

25 THE COURT All right Do you need some water or

1 something? Are you okay?

2 DEFENDANT COLLINS Yeah, I forgot where I was at

3 MR GIBSON I remember You had just come down to  
4 talk to the Judge, the magistrate

5 THE COURT Bring the jury in

6 (WHEREUPON, the jury came into open court at  
7 approximately 3 10 p m )

8 THE COURT All right Ladies and gentlemen, thank  
9 you very much

10 All right Mr Gibson, you may resume

11 CONTINUED DIRECT EXAMINATION

12 BY MR GIBSON

13 Q Mr Collins, I think when we broke, you were just  
14 talking about the point where you had had a bond I think  
15 it was around \$15,000 And the magistrate had some  
16 concerns about that bond

17 A Yes, sir

18 Q Okay Would you pick up about what happened from  
19 that point?

20 A Yes, sir At that point, I didn't know it, but it  
21 was like they had two charges that they were using  
22 Instead of just the armed robbery, they were setting a  
23 \$15,000 bond for -- there was also a charge of possession  
24 of a weapon that was also a \$15,000 bond Okay And the  
25 way they done it, they did it so I would not understand

1 that the amount would be doubled

2 Okay Now, after I made that bond, it took me 11  
3 months -- I sat in jail for 11 months to make this bond  
4 I used my income taxes to get out --

5 MR MOYER Your Honor, I would object to relevancy

6 THE COURT Yes

7 Where are we going with this?

8 MR GIBSON Withdrawn

9 THE COURT I'll sustain it

10 BY MR GIBSON

11 Q Let's go back to what happened the night this thing  
12 occurred Okay And let's -- for the purposes of this --  
13 let's go back to that point

14 Okay You said that your truck was stolen?

15 A Yes, sir

16 Q And where was your truck stolen from?

17 A From the Citgo gas station on White Horse Road

18 Q Did you see any individuals hanging around your truck  
19 at the time it was stolen?

20 A The individual that was in the truck with me and one  
21 more individual was outside

22 Q So there were two males?

23 A Yes, sir

24 Q Do you remember what color they were?

25 A Two black males

1 Q Okay Now, your truck was stolen and then, I  
2 believe, you said that you saw your truck again later on?

3 A Yes, sir

4 Q What time did you see your truck again?

5 A It was maybe 5 20, 5 25, somewhere along in there

6 Q And where were you up until that point?

7 A Up until that point, I had to come from White Horse  
8 Road all the way down to Security Park Drive After I got  
9 down to Security Park Drive, I got my wife to take me to  
10 my mom's

11 But -- and before that, there was like -- I got a  
12 ride from Helen McGee, who was supposed to be a family  
13 friend of mine She took me up to Anderson Road to the  
14 Auto Zone across from the trailer park where my wife was  
15 living And after I -- because I was going to get the  
16 keys to my other car But after she dropped me off, I  
17 mean, we saw this police car in the parking lot at the  
18 store over here with a yellow tape around it, you know I  
19 didn't think nothing of it

20 She dropped me off and went home Where she went, I  
21 have no idea But later, it was told to me by, I think  
22 Investigator Silvaggio or someone within the office over  
23 here that she, actually, went to the store, this gas  
24 station And she gave a statement of something that  
25 brought my name up into it or something

1 Q This was the BP gas station?

2 A Yeah

3 Q Had you been to the BP gas station that night?

4 A That night, no But earlier that day, yes

5 Q Okay What kind of business did you have there  
6 earlier that day?

7 A Well, myself, my wife, and my stepdaughter, we kind  
8 of frequently went to that BP because we, basically, get  
9 sodas and cigarettes But my wife had had a wreck up  
10 there It was like maybe, I guess, two days prior And  
11 the guy that ran into her -- they were right there in the  
12 BP parking lot And the guy that ran into her had a  
13 girlfriend or something or an aunt that worked inside the  
14 store

15 So they were, basically, coming out and saying whose  
16 fault it was and what had occurred And so I, actually,  
17 that day, I took my mom -- I took my mom home, come back  
18 in my car, and allowed my wife and my daughter to go to  
19 the hospital to be checked out to the emergency room But  
20 this whole time that I was there, these people that work  
21 at BP or with BP, it was like maybe four or five women,  
22 were in and outside, you know, with this guy and his  
23 girlfriend So like I say, I frequent the place, so

24 Q Okay Prior to that day, had you seen Ms Giles?

25 A I --

1 Q At any point?

2 A I don't think I've ever seen her I've never,  
3 actually, saw this lady I didn't know her

4 Q Okay At some point, though, you talked -- you said  
5 you had gotten, for all intense purposes, arrested and  
6 brought down to the station for questioning?

7 A Yes, sir

8 Q And that's when you met with Investigator Silvaggio,  
9 is that correct?

10 A Well, after maybe about six hours, yes, sir, that's  
11 when I met Investigator Silvaggio

12 Q Okay Did -- during your discussions with him, did  
13 you tell him you had used any type of drugs that evening?

14 A Yes, I did I told him I was under the influence of  
15 alcohol, marijuana, and crack cocaine

16 Q And you, in fact, used those drugs that evening?

17 A Yes, sir

18 Q Tell us about that

19 A I had been down at Security Park with a few guys and  
20 I had been drinking earlier And these guys smoked  
21 marijuana So I was sitting there smoking what's called a  
22 blunt with these guys And the other guy, Richard, he  
23 rolled one of these blunts, but he placed inside of it  
24 crack cocaine But at my knowledge -- at the time, I  
25 didn't have any knowledge that it was there



1           Okay    So I smoked it with him    After I found out  
2   that crack cocaine was in it, yeah, we smoked another one  
3   Because I had never tried this drug before    We smoked it  
4   And it was like -- it had me somewhat delirious or  
5   whatever    But I never, you know, bothered it anymore

6   Q    Okay    When you went down to the station, did you  
7   talk to Investigator Silvaggio about your circumstances  
8   with your mother?

9   A    Yes, I did

10   Q   Did you tell him that you took care of your mother?

11   A    Yes, I did

12   Q    Tell us about that

13   A    I explained to him that my mom -- you know,  
14   basically, my mom had just went through a divorce    She  
15   had had heart surgery and that she had stints in her  
16   heart    And at the time -- well, she's still an insulin  
17   diabetic    And I, basically, cared for my mom because my  
18   mom is unable to work

19           So in telling him this, it was like he, basically, I  
20   guess -- how would you say -- used it as like a sympathy  
21   or something like that to -- I guess, to try to coax me  
22   into saying, well, how do you feel about this or that?  
23   Because he asked me, he said, well, if you're taking care  
24   of your mom, how did you get into this?   And why are you  
25   hanging out?   And I just explained to him that I was just

1 out celebrating with the guys, you know, when all this  
2 come about

3 Q Okay Now, did you have any discussions with him  
4 about your desire for a lawyer?

5 A Yes, I did

6 Q Can you tell us about that?

7 A He was reading one of the forms to me And it said  
8 something -- it mentioned something about an attorney  
9 And I told him, well, I don't have an attorney because you  
10 guys just locked me up I didn't retain an attorney I  
11 don't have that kind of money I'm not wealthy And he  
12 was saying, well, you're not really going to need one  
13 This is just between you and me And if you need one  
14 later, we can get you one later You'll be appointed one

15 But I was like, well, I don't really want to try to  
16 give you a statement saying that, you know, what's  
17 happened when I really don't know And I didn't feel  
18 comfortable not having an attorney And I explained that  
19 to him

20 Q Is there anything about your past which would make  
21 you more knowledgeable than others about the need for an  
22 attorney?

23 A Yes, sir I've been convicted before of a crime

24 Q And, in fact, in 1993, you pled guilty to two armed  
25 robberies, two burglaries, a grand larceny, strong armed

1 robbery, and pointing and presenting a firearm, is that  
2 not correct?

3 A That's correct, sir

4 Q And based on that experience, I believe you said that  
5 heightened your desire for an attorney?

6 A Yes

7 Q Did you discuss any of this with Mr Silvaggio?

8 A Yeah They pulled my prior record And they told me  
9 that they knew I had been arrested for armed robbery  
10 before And that's one of the reasons they picked me up  
11 But me explaining to him that I wanted an attorney because  
12 I wasn't comfortable, he was saying, well, you're not --  
13 nobody is accusing you of anything yet You haven't been  
14 arrested Why do you need an attorney?

15 Q Okay So after you got past that and you signed the  
16 waiver form, when did -- how did you end up writing this  
17 confession?

18 A Well, I didn't write anything What it was is that I  
19 sat there and, basically, Mr Silvaggio -- you know, he  
20 was kind about it He was nice He was cordial But at  
21 the time, it was like he was telling me what had happened  
22 And he was asking me if I was the person that did this,  
23 how would I go about doing it? Okay And I was telling  
24 him, well, I couldn't tell you how that would be But if  
25 this is going to get me out of here to go back and check

1 on my mom, I'll sign whatever you want me to, just let me  
2 go back to my mom My mom isn't well She's having heart  
3 problems

4 As he talked to me, he told me about some of the  
5 particulars of it, about a knife being used, about what  
6 the guy was wearing, that the clerk said the guy was,  
7 typically, going bald or whatever, you know It was like,  
8 basically, how you say you give information and ask  
9 somebody to describe it to you in their own way

10 But he typed this up And he asked me -- he wanted  
11 me to initial here that he read it, you know, or that --  
12 initial it that my name was, actually, Steven Collins, and  
13 that my social security number was correct, and stuff like  
14 that And I signed it, you know Like I say, I was  
15 inebriated, but I signed it

16 Q You signed all the other little paragraphs as well,  
17 is that correct?

18 A Yes, sir

19 Q Was that at Mr Silvaggio's urging?

20 A That was him telling me that I needed to sign on  
21 these different pages

22 Q But you knew at the time you made this confession  
23 that it was not accurate?

24 A Yes, sir

25 Q And, yet, you still signed this confession?

1 A Yes, sir He told me once I signed this, I could go  
2 ahead and get arraigned and get home

3 Q Let's talk about these tattoos on your arm How long  
4 have they been there?

5 A These tattoos have been on my arms for over 12 years

6 Q Where did you get them?

7 A I got them while I was in prison

8 Q All right Now, let me ask you this, and this is  
9 important Did you, in fact, commit this armed robbery?

10 A No, sir, I did not

11 MR GIBSON Would you, please, answer any questions  
12 Mr Moyer will have

13 THE WITNESS Yes, I will

14 CROSS-EXAMINATION

15 BY MR MOYER

16 Q So you're telling us then that Investigator Silvaggio  
17 made up all the facts, everything that's written in that  
18 statement?

19 A Sir, I don't know if he made up these facts or not  
20 But I know he led me to believe these were the facts that  
21 were being stated

22 Q But you're telling us that they were his words, not  
23 yours?

24 A Correct He told me that this place was robbed and  
25 it was robbed with a knife He never said box cutter, he

1       said knife    So once he told me that, he asked me, well,  
2       if you would have done it -- which I explained to him, I  
3       wouldn't rob a place with a knife because the person would  
4       probably blow you away

5       Q       So you've never met Investigator Silvaggio before,  
6       have you?

7       A       No, sir

8       Q       You never had any bad run-ins with him, any bad  
9       dealings with him?

10      A       No, sir

11      Q       And you had a very cordial time with him, isn't that  
12      right?

13      A       Well, it was -- well, once -- when I first met him --  
14      it was like the other investigator they were speaking of,  
15      he came down screaming   And he seemed to be the type that  
16      he was like, well, you don't have to deal with that   I'll  
17      talk to you   I'll interview you and stuff like that   He  
18      was calm about it

19      Q       Okay   Well, let's talk a minute about, you said you  
20      gave this statement and you, actually, wanted a lawyer  
21      present   But you, actually, signed a document saying you  
22      waived your right to have a lawyer, didn't you?

23      A       I think I did, sir

24      Q       Can you take this, State's Exhibit No 16? Can you  
25      take a look at that?

1 A Yes, sir

2 Q Isn't that your signature on the document?

3 A Yes, sir

4 Q And you, actually, put your -- there's -- those are  
5 your initials, too, after every line on that document,  
6 aren't there?

7 A Yes, sir

8 Q And you put your initials after every single one of  
9 the rights that Investigator Silvaggio read to you, didn't  
10 you?

11 A Sir, before he even read some of this, it was like I  
12 was going to have to initial And if you'll notice the  
13 initials on it, the difference in my writing This one, I  
14 was calm. These, I weren't [sic]

15 Q Okay My question is, those are your initials,  
16 aren't they?

17 A Yes, sir

18 Q And you put your initials before and after each one  
19 of those rights, isn't that true?

20 A Yes, sir That's my writing

21 Q And one of the rights he talked to you about is your  
22 right to have a lawyer, if you want to have a lawyer?

23 A Yes, sir

24 Q And you signed, in fact, your name right after that?

25 A Yes, sir But that was signed later Because he

1 told me that at that point, I didn't have to worry about  
2 having a lawyer It was like just him and I talking

3 Q Okay And how many times did you sign that document?

4 A (There was no response )

5 Q Is it on there three times?

6 A Sir, I'm misunderstanding you

7 Q How many times is your signature on that document?  
8 How many places?

9 A My signature is on here twice

10 Q Right here and then down at the bottom?

11 A And right here

12 Q How many times did you initial that? Count up how  
13 many times your initials appear on that document

14 A Eleven times, sir

15 Q So 11 times, you put your initials on there saying  
16 you understood these rights And then you, actually --

17 A Sir, we were going pretty fast And he was saying,  
18 you need to sign here, sign here And as I was writing, I  
19 was trying to do my best to give him what he would take as  
20 a pass so I could get home

21 Q And you signed this document This is your -- this  
22 is the statement that was taken, isn't it?

23 A Yes, sir

24 Q And you signed the bottom of each one of the pages?

25 A Yes, sir



1 Q And, once again, you put your initials before and  
2 after all over that document?

3 A Yes, sir

4 Q Before and after every paragraph?

5 A Just about, yes, sir

6 Q Would it surprise you to know there are maybe 30  
7 times your initials appear on those two pages?

8 A It surprises me that it's that amount, sir I've  
9 never counted

10 Q Well, taking a look at it, does it look like there's  
11 a number of them?

12 A It's 29, 30, yes, sir

13 Q And your rights are listed on this document as well,  
14 aren't they?

15 A I'm not sure I didn't read it just now

16 Q So you're telling us now that it was your belief  
17 that -- you read this document, didn't you?

18 A I read it a couple of days ago, I believe, sir

19 Q You read it what?

20 A A couple of days ago

21 Q So you're telling us you never read this on the day?

22 A He showed it to me, but I never really just read it

23 Q So you didn't know what he was writing?

24 A No He was typing it

25 Q And where was he getting this information?

1 A He was sitting there -- like I say, he was sitting  
2 there Basically, what had happened -- he was asking me  
3 how I would go about doing it Then he asked me about my  
4 truck situation I tried to explain that to him And  
5 that's where it came from

6 Q So he came up with this -- he came up with Security  
7 Drive?

8 A No That was somewhere -- I told him that I had been  
9 at Security Drive

10 Q You told him that part Did he come up with this Red  
11 Devil or Eric person?

12 A No He asked me who had been at Security Drive with  
13 me or who was with me earlier And I told him

14 Q So that's where he got that?

15 A That's where he got Eric

16 Q Did he make up that Red Devil had loaned you money  
17 and that you had to pay him back for crack?

18 A It was not for crack It was a money loan But --

19 Q Well, okay So the part about that you owed him for  
20 crack, that was not true?

21 A No, sir, it's not

22 Q And so you're telling us he made up then the part --  
23 he put in there about the clerk seemed comforted when you  
24 told her you weren't going to hurt her?

25 A When he told me about this clerk, I told him I felt

1 for the lady, that I was sorry she had been through such  
2 trauma, that she had been through this ordeal But I  
3 wasn't the guy that he was looking for

4 Q So he put that part in there?

5 A I don't know what you're implying by saying he put  
6 that part in there But he did the typing, sir So I  
7 would have to say, yes

8 Q And what about the apology? What about the apology  
9 saying you're sorry, I am sorry for causing this lady  
10 pain? Are you saying he put that in there, too?

11 A I don't know how he would word it But I told him I  
12 was sorry that this lady went through this experience  
13 But he had the wrong person

14 Q And so you knew it was an armed robbery that they  
15 were talking about?

16 A Not when they first took me down Because nobody  
17 would tell me what they were trying to charge me with  
18 The only thing they were telling me was that I had to talk  
19 to the auto theft investigator after I talked to  
20 Investigator Silvaggio

21 Then Mr Fortner came down while we were smoking a  
22 cigarette, he said, we know you did it, we know you're  
23 involved Then that's when it was told to me what the  
24 crime was, which was armed robbery

25 Q So that was before you gave the statement So you

1 knew this whole issue was about an armed robbery?

2 A That was, actually, like during -- a little bit  
3 before the statement, yeah

4 Q Because you were down there smoking a cigarette with  
5 Investigator Silvaggio So my question is, when you were  
6 in the room with Investigator Silvaggio and he's taking  
7 this statement, you knew that this was an investigation  
8 into an armed robbery, isn't that right?

9 A Yeah He, finally, told me it was for armed robbery

10 Q And you -- I mean, you know the significance of an  
11 armed robbery? You know that it's a serious charge, don't  
12 you?

13 A Yes, I do now

14 Q And you know that it can get you in a lot of trouble  
15 and put you away for a lot of time, don't you?

16 A Yes, sir

17 Q And so you're telling us now that you thought it was  
18 in your best interest to sign something saying you did an  
19 armed robbery, that would help you to spend some more time  
20 with your mother Is that what you're saying?

21 A Sir, I'm saying I was under the influence of  
22 different drugs And when he asked me to sign, I signed  
23 without really thinking about -- or not being able to  
24 think about what he was asking me to sign

25 Q Well, sir, maybe I'm mistaken, but didn't you testify

1 a few minutes ago that the reason you signed this is  
2 because you wanted to get home and you wanted to spend  
3 time with your mother? Isn't that what you said?

4 A Because I was concerned about my mother My mother  
5 was having chest pains And I wanted to get back to my  
6 mother is what I said, sir

7 Q So signing a document like this, you think that's  
8 going to help you be able to spend time and help your  
9 mother?

10 A Actually, I'm not going to say signing a document  
11 like that -- but what the intention was was to try to give  
12 him whatever he needed to release me

13 Q You know the significance of signing a statement,  
14 right?

15 A Sir, there's a point to where you sign a statement  
16 and you're -- say, like -- how do they say it? You sign a  
17 statement and they show you what's called, I guess, a  
18 leniency or something like that or you're like -- I don't  
19 know All I can say is that when I was asking him about  
20 an attorney, he kept telling me that I wasn't going to  
21 need one And it didn't seem --

22 Q All right I'm not asking you about that right now  
23 I'm asking you about this statement

24 A When I signed the statement, sir, I signed it so that  
25 I could get out of there

1 Q But you knew it was saying that you committed an  
2 armed robbery, didn't you?

3 A Well, I didn't know exactly that it was saying that I  
4 committed it It was saying that I was involved in an  
5 armed robbery, that my vehicle was involved

6 Q Let me ask you a few questions about that You tell  
7 us -- you testified here that you started off the night  
8 and -- you started off the night and you were partying and  
9 smoking some marijuana somewhere, is that right?

10 A Yes, sir

11 Q Okay And then that ended up taking you -- you ended  
12 up going to a gas station where your truck was stolen?

13 A Yes, sir

14 Q Where was this gas station?

15 A On White Horse Road, sir

16 Q What -- and it's what kind of gas station?

17 A Citgo

18 Q Is there any question this is your truck?

19 A That's my truck

20 Q And where were you working at the time?

21 A Executive Kitchens in Simpsonville

22 Q Okay And people who work at Executive Kitchens get  
23 box cutters, don't they?

24 A To my knowledge, everybody that works there has one

25 Q And this is the box cutter you had at Executive

1 Kitchens, isn't it?

2 A I can't say that's the exact one I've had several

3 Q Take a closer look at it I mean, is that what they  
4 look like?

5 A That's what they look like, yes

6 Q Do you see any differences between this one and the  
7 ones that you've had?

8 A There's a hole in the end of that one

9 Q Yours didn't have a hole? So you're saying this is  
10 not your box cutter?

11 A I'm saying that one does not resemble the one that  
12 I -- it doesn't exactly look like the one that I had

13 Q So did somebody else drop a box cutter -- just happen  
14 to drop a box cutter that looked similar to yours by your  
15 truck?

16 A Sir, I don't know I know that I had my work tools  
17 inside my truck

18 Q Okay And they included box cutters, didn't they?

19 A Yes, sir

20 Q Just like this one?

21 A Yes, sir, similar to that one

22 Q And they have long blades just like this, don't they?

23 A I guess, yes, sir

24 Q And this is the key to your truck?

25 A Well, actually, that was the key to the switch -- one

1 of the switches that was in my truck That key does not  
2 open -- it does not work the switch in my truck Because  
3 I had a universal switch placed in it because that switch  
4 was broken

5 Q Okay But it is a key to your truck?

6 A Yes, sir

7 Q And these are your shorts?

8 A Yes, sir

9 Q And this is the shirt you got from Helen?

10 A Yes, sir I think that's the shirt she gave me

11 Q Okay And isn't it true that you ended up at Helen's  
12 about 6 00 in the morning?

13 A I think it was, actually, more like 5 30 Because  
14 she had me standing outside waiting until she came back to  
15 the door Her boyfriend that was there at the time -- her  
16 daughter came to the door And her boyfriend came behind  
17 her And it was close, I would say 5 30 or maybe 5 45

18 Q Where is this bar called the "Red Brick"?

19 A It's located on Anderson Road

20 Q Where on Anderson Road?

21 A Right next to Auto Zone -- no, not right next to Auto  
22 Zone It's maybe two or three blocks down from Auto Zone

23 Q And you're telling us then -- so the first thing you  
24 think to do of is to go to her house?

25 A Pardon?



1 Q And you went to Helen McGee's house, which is on 11th  
2 Street?

3 A Yes, sir

4 Q The Red Brick then is right near the Auto Zone, which  
5 is about a block from where you live?

6 A From where I live, it's maybe two or three blocks

7 Q Two or three blocks But a lot closer than Helen's  
8 house?

9 A Yes But that's not the first place I was, sir I'm  
10 not trying to guess ahead of you as to what you're  
11 question is, but you're going to say, how did I get to  
12 Helen's instead of going to my trailer, to my wife's  
13 trailer I, actually --

14 Q That's a logical question, isn't it?

15 A Pardon me?

16 Q It's a logical question, isn't it?

17 A Yes Actually, after I found out that my truck had  
18 been seen going in a certain direction, I used to live in  
19 Judson Yes, I went towards Judson

20 Q How did you find out your truck had been seen?

21 A It was, basically, told to me by one of the guys at  
22 Security Park that this is where the guy was headed So  
23 I, basically, had an idea as to where my truck was going  
24 So by the time I got over into Judson, they, basically,  
25 said -- what was it -- that my truck had been left

1 Q Well, who is this person who told you where your  
2 truck was going?

3 A Well, this one person was one of the people that you  
4 got that they had in custody, this Frank Henry something  
5 I didn't know him by that name at the time, I just knew  
6 him because I had met him through another individual named  
7 Richard And that's where that information came from

8 Q Okay So your testimony is that you're at Security  
9 Drive and you hear your truck has been stolen and is  
10 heading over toward 11th Street in Judson and so -- or 4th  
11 Street in Judson And you decide to start walking over  
12 there, is that your testimony?

13 A No, sir That's not what I'm saying What I'm  
14 saying is, as the events rolled on that night, I found out  
15 that my truck was, supposedly, headed towards Judson So  
16 I went towards Judson Okay The -- there was an officer  
17 when I talked to on the -- I tried to call the Sheriff's  
18 Department And they said they believed my truck had been  
19 used in an armed robbery is what they told me So I went  
20 to where they were telling me the truck was

21 Q Okay So you knew pretty early then -- contrary to  
22 what you told us earlier, you knew pretty early then that  
23 this was an armed robbery?

24 A No This is after they brought me back

25 Q After who brought you back where?

1       A     When my wife dropped me off at my mom's home, the  
2       officer that was there that put the cuffs on me and said I  
3       wasn't under arrest, that I was only going to talk to the  
4       investigator about the auto theft     They told me that my  
5       truck had been located in Judson

6             Okay     Prior to that, yes, I had one person tell me  
7       that my truck was headed towards Judson     But they didn't  
8       tell me, you know, that it was in any kind of crime or  
9       anything

10      Q     All right     And you're telling us you tried to call  
11      911 and you got a -- you couldn't get through?

12      A     It's like -- it's a recording like it tells you that  
13      you can -- if it's an emergency, you can dial this number  
14      If it's not an emergency, this number is available

15      Q     Well, you know --

16      A     But I got a recording is what I got

17      Q     Well, do you not know that 911 doesn't have  
18      recordings, that there's always a live person answering?

19      A     Sir, when I called, it was a recording that I got  
20      It was like -- what's the number 467-5300 or something  
21      like that at the Sheriff's Department     That's where I was  
22      trying to call

23      Q     All right     Well, you showed up at Helen McGee's  
24      house and you were sweating and tired when you got there,  
25      weren't you?

1 A I wasn't tired, but yes, I was sweating

2 Q And you called 911 from her house, right?

3 A It was the Sheriff's Department Again, it wasn't  
4 911

5 Q So she didn't dial the phone and hand it to you and  
6 hit the green button?

7 A I don't remember even her dialing the number All I  
8 remember is I asked her could I use her phone

9 Q And you reported the truck stolen, right?

10 A Yes, sir I reported it again

11 Q And that's when you told the officers to meet you at  
12 your mother's house?

13 A No, sir

14 Q Okay Why --

15 A When she dropped me off in front of Auto Zone to go  
16 to my wife's trailer -- when I got to my wife's trailer, I  
17 used the phone again And I explained to the person that  
18 was on the other end of the phone at the police department  
19 that I had tried to contact them several times before, at  
20 least, five times, and that I couldn't get anybody And  
21 when I, finally, got them, I told them that I had -- not  
22 only my wife, but my mother also called And my truck was  
23 registered to my mother's address, because that's where I  
24 had been living And I was going to my mother's address  
25 They told me that an investigator would meet me there

1 Q So your testimony is that you didn't -- while you  
2 were at Helen McGee's house, you didn't tell the officers  
3 to meet you at your mother's house on Staunton Bridge  
4 Road?

5 A What I'm telling you is that statement was made while  
6 I was at my wife's trailer, that I asked the officers to  
7 meet me at my mom's address at Staunton Bridge Road

8 Q And when you left -- you left with Helen McGee And  
9 before you left, you, actually, got that shirt from her,  
10 right?

11 A She asked me -- she told me that my shirt was wet I  
12 told her, I said, well, do you have a spare shirt? I'll  
13 bring it back tomorrow or you could wash it or whatever,  
14 or I'll buy it from you So she gave me this shirt It  
15 was dark So I really couldn't see what exactly it looked  
16 like or what it had on it She just gave me a dry shirt  
17 And she took me to the top of Anderson Road to the front  
18 of Auto Zone, which she let me out to go home at the  
19 trailer park

20 Q Okay Don't get ahead of me now But she gave you  
21 that shirt And your testimony is she was the one who  
22 volunteered to give you the shirt, you didn't ask for it,  
23 is that what you're saying?

24 A She asked me -- she told me, she said, are you wet?  
25 And I said, yeah, I'm sweating I said, I've been trying

1 to find my truck I said, if you've got a dry shirt, I'd  
2 appreciate it She told me that she had a truck -- I  
3 mean, a shirt and she would get one out of the house I  
4 think it was from her boyfriend or maybe one of her  
5 brothers had left it behind

6 Q Okay And you got in -- you got over to -- on  
7 Anderson Road and she told you she was going to stop for  
8 gas, right?

9 A No She told me that she was going to let me out --  
10 she asked me where did I want to get out at I said, I  
11 live right here in Heritage Park across the street from  
12 Auto Zone You can let me out right here But when she  
13 pulls up -- when she pulls and stops in the middle of the  
14 highway where she let me out at, we see the police car  
15 with the lights on We see the police tape around the  
16 door of the gas station over there I went on to the  
17 trailer I don't know where she went

18 Q Okay Because you didn't want to go up to the BP  
19 station because you knew you had just committed a robbery  
20 there Isn't that why you didn't want to go up there?

21 A It didn't bother me about going to the BP What I'm  
22 saying is, when she let me out, there was a police car  
23 there with lights on, blue lights flashing, with police  
24 around the door I don't know where she went If she had  
25 asked me to go with her and pump gas, I would have pumped

1 the gas for her

2 Q And you told her that, actually, this happened at the  
3 BP station across from where -- across from the mobile  
4 home park, didn't you?

5 A That what happened, sir?

6 Q That your truck -- you told her that your truck was  
7 stolen from across the road from the mobile home park,  
8 didn't you?

9 A No, sir, I did not

10 Q And didn't you tell her that you asked the clerk to  
11 use the phone and you called her, Ms Dianne, isn't that  
12 true?

13 A No, sir I've never known this lady by her name  
14 I've never known this lady

15 Q And she had -- they wear name tags there at that BP,  
16 don't they?

17 A I couldn't tell you that I couldn't tell you

18 Q I thought you told us you go there all the time?

19 A I go and buy cigarettes or gas or sodas, or I send my  
20 daughter in to get sodas or whatever

21 Q Okay And when you got to your wife's house, then  
22 you change your shorts?

23 A I was going to work, sir I was getting ready to go  
24 to work

25 Q And what do you wear to work?

1 A I can wear shorts to work

2 Q But you were wearing shorts, weren't you?

3 A Shorts from the previous work day, sir

4 Q What kind of shorts did you change into?

5 A I had like a -- have you ever seen like gym shorts,  
6 coaching shorts, nylon? It's like -- how do you say it?  
7 It's not a mesh, just a straight like nylon blue That's  
8 what I put on

9 Q So you were up all night then?

10 A Yeah

11 Q And your truck had been stolen And it was your plan  
12 to go to work?

13 A I went -- I still had to go to work, regardless of my  
14 vehicle being stolen The officers were supposed to have  
15 been meeting me at my mom's house so they could take a  
16 statement about that My other car was at my mom's house

17 Q And you -- but there's no doubt you changed your  
18 shorts then and you changed your shirt when you were at  
19 your wife's house, isn't it -- isn't that true?

20 A No, sir Ms McGee gave me that shirt when I was on  
21 her front porch That was when that shirt was changed I  
22 didn't change my shorts until I got home to get my stuff  
23 for work

24 Q That was my question And you took your shorts and  
25 that shirt off at Donna's house, didn't you?



1 A Yes, sir

2 MR MOYER Okay I have nothing further

3 MR GIBSON Nothing further, Your Honor

4 THE COURT All right You can step down

5 Thank you

6 MR GIBSON We have nothing further, Your Honor

7 THE COURT All right Let me see you up here for a

8 second

9 (WHEREUPON, a bench conference was held )

10 MR MOYER There's nothing further from the State,

11 Your Honor

12 THE COURT All right Mr Foreman, and, ladies and

13 gentlemen, remember, I told you -- I gave you a little

14 road map There were five parts to a trial We've now

15 completed the second part So all the testimony and all

16 the evidence has been presented that you're going to hear

17 in this case

18 It's ten until 4 00 And we're not going to argue

19 and charge at this time because we -- it would take --

20 what we have left to do is the closing arguments of the

21 attorneys, my charge to you on the law, and then you all

22 have to make a decision about the outcome of the case So

23 we're not going to start I wouldn't give it to you at

24 this late of a time

25 What I'm going to ask you to do is come back and be

1 in the jury room at 9 15 in the morning And we'll argue  
2 and charge in the morning

3 Again, let me remind you, don't talk about the case  
4 You're getting down to it, real close You're going to  
5 make the decision Don't let anyone influence you And  
6 we'll see you back at 9 15 in the morning

7 Thank you

8 (WHEREUPON, the jury was excused from open court at  
9 approximately 3 50 p m )

10 MOTIONS

11 THE COURT All right Do you have any motions?

12 MR GIBSON For the record, Your Honor, I renew my  
13 motion for a directed verdict

14 THE COURT Same ruling

15 MR GIBSON Thank you, Your Honor

16 THE COURT Do you want to talk about the charge? Do  
17 you have any special jury charges?

18 MR GIBSON I would ask for identification charge

19 THE COURT All right Here is what I've got  
20 Duties of the Judge and jury The charge, arrest, and  
21 indictment are not evidence I might say something about  
22 multiple charges, credibility of the witnesses, prior  
23 record of the Defendant is limited for impeachment

24 Do you want something on expert witnesses?

25 MR MOYER I don't see any need, Your Honor

1 MR GIBSON I don't, Your Honor

2 THE COURT All right Presumption of innocence,  
3 reasonable doubt, statement of the Defendant,  
4 identification, armed robbery, and possession of a weapon  
5 during a violent crime

6 Anything else?

7 MR GIBSON Your Honor, for the record, I would ask  
8 for any lesser included offenses, including strong armed  
9 robbery

10 THE COURT I don't think there's any -- either it  
11 was done with a knife or it wasn't

12 There hasn't been any evidence that there wasn't an  
13 armed robbery, right?

14 MR GIBSON I'm just making my record, Your Honor

15 THE COURT All right Anything else?

16 MR MOYER Not from the State

17 THE COURT All right See y'all at 9 15

18 (WHEREUPON, the proceedings were concluded at  
19 approximately 3 55 p m , to be reconvened on  
20 Wednesday, September 13, 2006 )

21

22

23

24

25

WEDNESDAY, SEPTEMBER 13, 2006

THE COURT Do we have anything before we bring in the jury?

MR MOYER Not from the State, Your Honor

MR GIBSON Nothing from the Defense, Your Honor

THE COURT How long are y'all going to argue?

MR GIBSON Probably about 20, 30 minutes, Your Honor, if that

MR MOYER I was going to say 15, 20 minutes

THE COURT All right Bring the jury in  
(WHEREUPON, the jury came into open court at approximately 9 24 a m )

THE COURT Mr Foreman, and, ladies and gentlemen, welcome back I hope you all had a pleasant evening I hope you didn't get too wet on the way to the courthouse this morning

As I've told you, we've completed the first two parts of the trial So the next thing we're going to move to are the closing arguments of the attorneys When they're finished, I will give the charge on the law and the case will belong to you

At this time, I'll turn it over to the attorneys

CLOSING ARGUMENT

MR GIBSON Good morning, ladies and gentlemen

1           As I told you -- let me back up   We've been here for  
2   two days now   We're in our third day   We've heard a lot  
3   of testimony and a lot of legal wrangling and a whole lot  
4   of other stuff   And in the midst of that, it's very easy  
5   to forget why we're here   I just want to take a second to  
6   remind you the reason why we're here is because we're here  
7   to decide a man's life, a man's freedom, Steven Collins's  
8   life, Steven Collins's freedom   The State wants to take  
9   away his freedom   And, as I told you before, just because  
10   they want to do that doesn't mean that they can   They  
11   have to do what is -- if you do your jobs is an  
12   extraordinary difficult thing to do

13           They have to prove that he did the elements of both  
14   of these crimes beyond a reasonable doubt   What does that  
15   mean?   Now, later on, the Judge is going to give you a  
16   definition of that   And he's going to tell you what it  
17   means   But what I found out is that -- I've put into some  
18   sort of context as to what our other burdens of proof are  
19   Beyond a reasonable doubt is the most stringent burden of  
20   proof that we have in our criminal justice system   In our  
21   civil judicial system anywhere, it is the absolute hardest  
22   thing to do

23           We start off with the preponderance of the evidence  
24   The preponderance of the evidence means it is more likely  
25   than not that somebody did something that the Plaintiff is

1       saying that they did   For instance, if you're in a  
2       traffic accident and you go to court and sue for damages,  
3       all you have to do is prove your case by a preponderance  
4       of the evidence   All you have to do is prove that it is  
5       more likely than not that what you, in fact, happened

6               The next burden of proof along the chain is clear and  
7       convincing   You have to -- in that case or the context  
8       that normally comes in, let's say, for instance, you're,  
9       again, in a civil situation and you're trying to get  
10      punitive damages against someone   You have to prove it by  
11      a standard of proof that is higher than the preponderance  
12      of the evidence, that is clear and convincing   You have  
13      to prove that they clearly and convincingly did what you  
14      claim they did

15             When we get beyond a reasonable doubt, it's harder  
16      than all of it   Just because something -- just because  
17      you believe that it's more likely than not something  
18      happened, just because that you believe that the State may  
19      have clearly and convincingly proved something happened,  
20      that's not enough   You have to believe beyond that   You  
21      have to believe that they did it beyond a reasonable  
22      doubt   And in order to convict Steven Collins on these  
23      crimes, it's not enough to say, well, you know, it's more  
24      likely than not that he did it   He probably did it   And  
25      it's not enough to say, well, it's clear to me, I'm

1 convinced he did it You have to believe he did it beyond  
2 a reasonable doubt

3 Now, why do we have that burden of proof? Why do we  
4 make it so hard to take away someone's freedom? We do it  
5 because of the history of our country We're based on  
6 freedom I mean, that's what we're all about Our  
7 history from back in the 1600's, the early 1700's, we were  
8 under the rule of an English king and English monarchy  
9 And under that system, if they wanted to send someone to  
10 jail, all they had to do was pick them up off the street  
11 and put them in jail And they'd leave them there for  
12 months, years, before ever giving them a trial And when  
13 we had the America Revolution and we came to form another  
14 government, our forefathers, men like Ben Franklin and  
15 Thomas Jefferson, George Washington, said, no, never  
16 again, not in this country We're going to create a  
17 system which makes sure that no innocent man ever goes to  
18 jail We're going to make a system where it is better  
19 that 100 guilty men go free than for one innocent man to  
20 go to jail

21 Now, the question that you have to decide is whether  
22 or not the State has met their burden, whether or not they  
23 have proved the elements of this crime against Steven  
24 Collins beyond a reasonable doubt I submit to you that  
25 they have not In fact, I argue to you that they have

1 not

2 Mr Collins got on the stand and he testified He  
3 testified credibly that he did not do this crime He  
4 explained that his truck had been stolen the night -- that  
5 night He explained he had tried to call this in by  
6 calling the Sheriff's Office at 467-5300 He even called  
7 the number numerous times to try to report this crime He  
8 explained that once he, finally, got through and he,  
9 finally, was able to talk to somebody, they put him in  
10 cuffs and took him down to the station

11 He explained that after they arrested him, they kept  
12 him handcuffed in a room with a deputy for five hours with  
13 no food, no arrest, no nothing They let him sit there  
14 and they let him suffer He had been up the entire night  
15 before It's now 12 00 the next day and he's sat in a  
16 room for all this time

17 At that point, he tells you -- he credibly testified  
18 that he met Investigator Silvaggio, that Investigator  
19 Silvaggio played the good cop role and that he came in and  
20 tried to act like he was his friend and he was trying to  
21 help And, basically, Investigator Silvaggio sat there  
22 and typed this statement and got him to sign it And he  
23 testified credibly that the reason why he signed it and  
24 the only reason why he signed it was because he was  
25 worried about his mother, who has heart problems, and that



1 he wanted to get home to try to take care of her That's  
2 what he testified to He credibly testified to that fact

3 Now, the State's case comes down to really two  
4 things, this alleged confession and the alleged  
5 identification of the victim, Ms Dianne Giles Let's  
6 talk about the identification first Now, Ms Giles first  
7 picked Mr Collins out of a six photo lineup But, ladies  
8 and gentlemen, that lineup was rigged It was rigged to  
9 make sure that she picked Mr Collins out of that lineup  
10 As I discussed with Mr Fortner, he left my client and one  
11 other individual, who was significantly lighter than him,  
12 in orange jumpsuits

13 Now, Ms Giles testified that she had been arrested  
14 before and that she had been convicted of fraudulent  
15 checks Mr Fortner testified that in all likelihood, she  
16 had been in an orange jumpsuit So she knew the  
17 significance of that orange jumpsuit He created a  
18 situation where she effectively only had to pick between  
19 two people, one significantly lighter than the other

20 Now -- and for some of you jurors who are  
21 non-African-American -- let me back up There's a saying  
22 in the black community that all white people are white in  
23 the white community, all black people are black In some  
24 sense, that's true And the reason why is because cross  
25 racial identification is one of the most difficult things

1 to do If you are not around a particular race of people  
2 for a significant period of time, you can't tell the  
3 differing things and the differing features about those  
4 people And things that may seem extremely minor to you  
5 because of the experience of someone who's been around  
6 that type of person is magnified

7 Now, Ms Giles is African-American So when she saw  
8 these two photos, one significantly darker than the other,  
9 she knew it couldn't be him And the only other person  
10 who's indicated from this photograph that had a criminal  
11 background was my client, Steven Collins

12 Now, Detective Fortner testified he could have marked  
13 through that stuff He could have crossed all that stuff  
14 out And, in fact, when Investigator Silvaggio did his  
15 lineup with the wife, Ms Collins, that's exactly what he  
16 did He marked through all of those things

17 The question is, why didn't Investigator Fortner do  
18 that? He was aware that there was a possibility she would  
19 be swayed by that, but he left it in I submit to you  
20 that he left it in for a reason He left it in to make  
21 sure that she would be swayed by it He left it in to  
22 make sure that she would pick him out of that lineup

23 And why Steven Collins? Ladies and gentlemen, I  
24 believe from very early on, they identified him as the  
25 suspect in this truck They saw it was his truck They

1 looked at his background They saw he had an armed  
2 robbery in his background And they zeroed in on him  
3 Now, despite the fact that another individual jumped out  
4 of that truck, a black male with a light gray T-shirt,  
5 dark shorts, which could have been blue jean shorts,  
6 jumped out as well, they focused on Steven Collins. So  
7 when Investigator Silvaggio comes in and he tells you --  
8 let me back up

9 Now, the other question I have regarding this lineup  
10 or regarding Ms Giles picking Mr Collins as a suspect in  
11 this case is, if he was, in fact, the one, why didn't she  
12 see or make any note of the tattoos on his arms? Now,  
13 they're in an extremely well lighted facility as you can  
14 see from the photos And you'll have them back there I  
15 mean, this is not a place -- the inside of this BP station  
16 is not a place that's dark And she's with him for a  
17 considerable amount of time

18 She says that he comes into the store and looks  
19 around the store for a little while She says that he  
20 then comes up and gives her some money to pay for some  
21 cigarettes Then she says that he comes around the corner  
22 to go behind the thing She says that he holds this knife  
23 out She says that he demanded that she take the money  
24 out of the register

25 She says he then went back and demanded that she tell

1 him where the VCR is She then says she goes back there  
2 with him while she tries to take the VCR tape She can't  
3 do it And then, eventually, he has to take it out  
4 During all this time, the suspect in this case -- the  
5 alleged suspect has on a gray T-shirt with forearms  
6 exposed But at no time does an art major notice the  
7 significantly large tattoos on his forearms It doesn't  
8 make sense

9 Now, she did come into court and she picked him out  
10 from the stand She pointed to him right there and said,  
11 that's him Ladies and gentlemen, you know, there's a law  
12 of physics called inertia that says a body of rest stays  
13 at rest, a body in motion stays in motion It's the same  
14 with a mistake Once you make a mistake, it's extremely  
15 difficult to go back and say, I was wrong Okay She  
16 comes in court and sees him in the Defendant's chair,  
17 exactly where a Defendant should be, what else is she  
18 going to say?

19 Let's talk about this confession, which is,  
20 basically, the only other part of this case which,  
21 actually, ties him to this crime Because there's no  
22 fingerprints There's no fingerprints at any of these  
23 places There's no fingerprint on the door There's no  
24 fingerprints anywhere in this BP station, on the VCR  
25 cabinet, anywhere which ties him to this crime They

1 never recovered, apparently, the VCR that was, supposedly,  
2 taken, none of those things So there's no fingerprint  
3 analysis There's nothing hard and fast that ties him to  
4 this crime, nothing, except her identification and his  
5 alleged confession Okay

6 So, now, with that said, let's talk about the  
7 confession As I said before, they have him come down  
8 there They arrest him at about 7 00 a m He sits there  
9 until close to 12 00 in handcuffs in a room with an  
10 officer present He's not able to go to sleep He's not  
11 able to have anything to eat He's not able to do any of  
12 those things Okay

13 And then after that, Investigator Silvaggio comes  
14 down and he says, oh, you know, I just -- I didn't really  
15 want to interrogate him I just wanted to get his side of  
16 the story So he comes in And they go out and smoke a  
17 cigarette And just by happenstance, Investigator Fortner  
18 comes by and says, we've got you, we've got you by a  
19 lineup Just by coincidence, somehow by coincidence that  
20 happens

21 Now, let's reconstruct that for just a moment  
22 Investigator Silvaggio has 15-plus years as an  
23 investigator During that time, he's taken hundreds of  
24 interviews of suspects During that time, he's had  
25 hundreds of hours of training that he said himself was,

1 specifically, designed to get suspects to make  
2 confessions And, yet, he claims that, no, despite all  
3 this training, despite all my experience, I really wasn't  
4 trying to get him to confess All I was trying to do was  
5 get his side of the store I just wanted him to tell me  
6 his side of the story And that's all I really wanted  
7 That doesn't make sense

8 He claims -- also claims that the guy with the  
9 background of Steven Collins, two armed robberies, you  
10 heard about it all, strong armed robbery, all of those  
11 things, never even mentions the prospect of a lawyer  
12 Now, that's just incredible Anybody who's done time on  
13 those kind of crimes that doesn't even mention a lawyer  
14 anywhere, that's just not credible He also claims that  
15 when he took this interview, he didn't have all the  
16 evidence And he wanted to make sure he didn't have all  
17 the evidence because he just wanted to get his side of the  
18 story

19 Now, ladies and gentlemen, this is quite possibly  
20 their one and only chance to get a story from someone who  
21 is, clearly, their prime suspect in this case Is it  
22 really feasible that Investigator Silvaggio, with over 15  
23 years of experience, hundreds of interviews with his  
24 experience, and also hundreds of hours of training,  
25 doesn't try to get every piece of ammunition that he can

1 get before he goes into that room? That's just not  
2 credible

3 Now, he did testify, though And he admitted that he  
4 was, in fact, the one who typed that statement He typed  
5 it, not Steven Collins Steven Collins testified that,  
6 basically, the details from that were coming from  
7 Investigator Silvaggio And he credibly testified to that  
8 fact Now, the question is, do you know beyond a  
9 reasonable doubt that what Steven Collins said didn't  
10 happen?

11 Now, I know some of you bring your prejudice into  
12 this case, into this deliberation And you say, I just  
13 can't believe him There's no way that an officer of the  
14 law would rig a confession in that way That just can't  
15 happen And I understand your desire and your need to  
16 believe that We need to believe that We want to  
17 believe that because we want to believe that it can't  
18 happen to us We have to believe that to believe that it  
19 can't happen to us Ladies and gentlemen, you don't know  
20 Investigator Silvaggio You don't know what he's capable  
21 of And it does happen

22 Now, I want to back up and talk about these box  
23 cutters just for a second They claim -- the State claims  
24 that these box cutters -- or one of them, at least, is the  
25 weapon that the suspect used in this crime Now, you're

1 going to be able to take a look at the box cutters  
2 There's a couple of things that I want you to remember  
3 about these box cutters These are extremely common  
4 items His own wife -- Steven Collins own wife has a set  
5 of them Everybody who works at that job has a set of  
6 them This is not some specially made box cutter The  
7 other thing is this, they didn't even prove that that was,  
8 in fact, the weapon At no point did they show Ms Giles  
9 those box cutters

10 Now, you would think if that was, in fact, the box  
11 cutter that she saw -- and she said in her testimony,  
12 well, I saw two things, I saw a knife and I saw his face  
13 I saw a knife, I saw his face If she really saw that  
14 knife, why didn't they ever ask about it? Why didn't they  
15 ask her about it? Why didn't they take it up to her on  
16 the stand and say, Ms Giles, is this the weapon that the  
17 suspect used? I would submit to you they did not ask that  
18 question because the answer would not have been helpful to  
19 them And a lot of times in these cases, it comes down to  
20 not only what evidence is brought out, but why evidence is  
21 not brought out What evidence do they hide? And,  
22 generally, if they hide it from you, it's because it's not  
23 helpful

24 Now, the final question that we have in this case is,  
25 what about Franklin Thomas Henry? Okay Here is a man



1 who jumps out of the truck that is the supposed vehicle  
2 used in the crime He's a dark-skinned black male He's  
3 got on a light T-shirt and dark shorts, which are probably  
4 in all likelihood blue jean shorts

5 Officer Graham, I believe it was, testified that  
6 prior to this thing happening, there were two black males  
7 around this truck at another gas station across town But  
8 for whatever reason, he's not charged at all Not as an  
9 accessory, not as an accomplice, not as nothing Now,  
10 they're going to claim, well, the reason that he was  
11 cleared is because Steven Collins cleared him in his  
12 so-called confession

13 Ladies and gentlemen, if that's the case -- let's  
14 say, for instance, that they're right, that Franklin  
15 Thomas Henry didn't have anything to do with that Why  
16 wasn't he called as a witness for the State? Here is a  
17 guy who is in the truck with the guy who has, supposedly,  
18 done this crime, who is, supposedly, running from the  
19 police, who can sit here on that stand and tell you, point  
20 blank, I was in the truck Steven Collins was the guy I  
21 was in the truck with He's the one But they don't call  
22 him

23 They've got all the resources in the world They  
24 could have subpoenaed him They could have brought him  
25 here and made him testify, but they didn't Why not? Why

1 didn't they have him testify? Why didn't they have him  
2 come in here and testify that Steven Collins was in that  
3 truck? I submit to you the reason why they didn't is  
4 because it was, in fact, just as Steven Collins said it  
5 happened, he wasn't in that truck Some guy stole his  
6 truck that morning to commit this crime and now everybody  
7 is trying to pin it on him

8 Bear with me just a second, please

9 Ladies and gentlemen, in closing, I just want you to  
10 do what I asked you to do at the very beginning, your job  
11 Look through this evidence and pick it apart That's your  
12 job Don't accept what they tell you on face value Ask  
13 the questions that you need to ask And I submit to you,  
14 there are a lot of questions in this case There are a  
15 lot of things that they kept from you, that they did not  
16 bring up here and show you And the reason why is they  
17 prove that Steven Collins did not do this crime He  
18 should not be convicted of this crime and his freedom  
19 should not be taken away

20 Thank you

21 THE COURT Mr Moyer

22 MR MOYER May it please the Court?

23 THE COURT Yes, sir

24 MR MOYER Mr Foreman, and, ladies and gentlemen of  
25 the jury, this case was not a real long case I think the

1 total testimony -- we took testimony on Monday afternoon,  
2 maybe two and a half hours Maybe another four or five  
3 hours of testimony yesterday, including breaks, maybe  
4 about seven hours It wasn't a very long trial But, you  
5 know, this case could have been a lot shorter This case  
6 could have been much shorter And I want you to think  
7 about what if the State did not present the whole picture  
8 to you What if this case had come down to just some  
9 parts of the testimony that came out

10 And let's start with this What if the case had just  
11 been about the road deputies? What if this case had just  
12 been about what Ms Giles saw in the store when she was  
13 robbed, the description that was given out of the truck,  
14 and then the officer who saw that truck that matched the  
15 description exactly going from that scene in the same  
16 area, this very distinctive-looking truck -- this very  
17 distinctive-looking truck that fled from the scene and  
18 ends up in Judson? What would we know?

19 Well, we would know it was this Defendant's truck  
20 We would know that this Defendant's fingerprints were on  
21 that truck in a place that's very significant, right on  
22 the outside of the driver's side windshield That's right  
23 where one would expect someone that's getting out of a  
24 truck that's rolling would reach to steady himself as he's  
25 about to get out of that truck and run Remember, it is

1 the two middle fingers on the left hand are the  
2 fingerprints that were left on that windshield

3 We would know that his box cutters were on the ground  
4 beside it I don't know Have you ever seen a box cutter  
5 like this? I don't think they're that common His wife  
6 had one because she worked at the same place for a while  
7 Have you ever seen a box cutter like this? It's very  
8 unique looking He worked at a place where he had box  
9 cutters

10 How did Ms Giles describe what she called as the  
11 weapon that was used in this crime? She said -- she  
12 described it as a knife She said it was very unique  
13 looking It was silver It was squared off at the end  
14 It was thin and had a thin blade What else could it be  
15 but this? This was the box cutter This is the weapon  
16 that was used in that crime

17 What else would we know? We would know that in just  
18 a few minutes after that truck lands in that front yard  
19 and the person got out and ran, we would know that this  
20 Defendant shows up just a few blocks away at the home of a  
21 friend And Ms Helen McGee told you that she was awoken  
22 up by him at 6 05 in the morning And he is standing  
23 there

24 What is he doing at her house at 6 05 in the morning,  
25 just a few blocks away from where this truck ended up

1       stopping in the yard? What else would we know about him?  
2       We would know that he shows up breathing hard He is wet  
3       from sweat He has been running We would know that he  
4       looks like the robber He has the same description that  
5       was given by Ms Giles, sex, race, hair The man is bald  
6       today The man then had hair, according to Investigator  
7       Silvaggio who saw him that morning, about three-quarters  
8       of an inch long and thinning and balding on top He had  
9       clothes He was wearing clothes that he wanted to get out  
10      of He had on blue jean shorts, knee length, and a light  
11      gray shirt He wanted to get out of them

12             And what is the first thing he does at Ms McGee's  
13      house that morning? In addition to starting his story  
14      about the truck being stolen, he wanted to get out of  
15      those clothes He got a shirt there And as soon as he  
16      got to his house, he got rid of the pants We would know  
17      all that if that's all this case were about That right  
18      there, ladies and gentlemen, would be enough for you to  
19      find that Defendant guilty beyond any reasonable doubt  
20      That part of the case alone

21             Well, what else do we have? What if we switched?  
22      What if this case had been a two-witness case and it had  
23      been Investigator Fortner and Ms Giles And Ms Giles's  
24      testimony, how just several hours after this incident took  
25      place, she went to the law enforcement center and she met

1 with Investigator Fortner and she was shown a photo  
2 lineup And she picked the robber out of the photo  
3 lineup

4 I want you to think for just a moment, first, when  
5 you get a chance to look at this, I want you to see if  
6 this looks like it's been rigged I want you to think if  
7 a responsible mature person who has just been through an  
8 ordeal like this, who wants the person who did this  
9 caught, not the wrong person, someone understanding the  
10 significance of what just happened, the significance of  
11 what her decision is going to be, a responsible mature  
12 person -- and you had a chance to see Ms Giles on the  
13 stand And you had a chance to hear her speak and to  
14 observe her demeanor And you know whether or not she is  
15 that kind of person She's the kind of person who is  
16 employed at an orphanage for young boys

17 I want you to think about this What if she was  
18 shown one photograph? Do you think a person would be  
19 able, just several hours after going through an incident  
20 like this, to take one photograph and look at that one  
21 photograph and say, yes, this is the person that robbed me  
22 or, no, that's not the person who robbed me? I understand  
23 the significance of this I don't want to send the wrong  
24 guy away And I don't want the real man to get away  
25 That's not the person Or, you know, I'm really not sure

1 Don't you think a single photograph would be able to do  
2 that?

3 And now, take the situation where there are six  
4 photographs given here, six photographs Do you think the  
5 fact that Ms Giles wrote a bad check a number of years  
6 ago is going to sway her to pick out someone just because  
7 somebody has an orange-colored shirt? I mean, how do you  
8 even know that's a jumpsuit? And why does he stand out  
9 more than anybody else? She very clearly said to you in  
10 her testimony, I looked at this lineup I looked at his  
11 facial features I looked at his eyes I was not swayed  
12 by anything else And when I looked at that, I knew that  
13 that is the man who robbed me She wasn't being swayed  
14 She knew So it could have been a two-witness case

15 You know what? This could have been a one-witness  
16 case This case could have been over Monday morning I  
17 say Monday morning, you, actually, didn't start until  
18 Monday afternoon It could have been over Monday  
19 afternoon when Ms Giles testified about 2 00 in the  
20 afternoon She laid out all the elements of this crime  
21 It was an armed robbery that happened to her at that BP  
22 gas station And then when she finished her testimony,  
23 once again, she turned and she looked at that man and she  
24 said, that is the man who robbed me It could have been a  
25 one-witness case That right there would have been enough

1 to convince you, to prove to you beyond any reasonable  
2 doubt that that man is guilty

3 Finally, this could have been a case involving just  
4 Ms Giles and Investigator Silvaggio right here There  
5 was a confession in this case, a confession, a signed  
6 confession There were initials all the way through No  
7 doubt that this person knew what was being signed And  
8 you examine it and see how many times his initials appear  
9 on this And you see how many times his initials appear  
10 on this waiver of rights where he said, I want to go ahead  
11 and talk to you right now and give you my version of  
12 events He signed this document saying this is what  
13 happened Now, that right there would be evidence beyond  
14 a reasonable doubt

15 Now, the Defendant, yesterday, tried to distance  
16 himself from that statement, understandably,  
17 understandably because it is such damning evidence And  
18 he told you he's been framed He told you that he -- that  
19 there was a false confession He said this investigator,  
20 Investigator Silvaggio, told him that, what I want you to  
21 do is I want you to imagine that you had done it and then  
22 tell me what you would have done if you had done it And  
23 he says that he did that because he wanted to go home

24 Now, first off, let's just think about the logic of  
25 that You want to go home and spend time with your mother



1 and you are going to confess to an armed robbery The  
2 logic of that is just beyond appeal to think that you're  
3 going to tell an officer that you committed an armed  
4 robbery and you're going to be able to go home And I  
5 want you to believe -- and in order to believe that,  
6 ladies and gentlemen, you would have to believe that this  
7 investigator lied You would have to believe that this  
8 investigator started a conspiracy, along with the other  
9 investigators, along with the other officers, along with  
10 the witnesses started a conspiracy to frame this man  
11 This man who had, supposedly, nothing else happen to him  
12 other than having a car stolen

13 Now, let's not take that lightly I want you to  
14 consider the shocking and alarming nature of that  
15 allegation This man, whose job it is to catch violent  
16 criminals in the homicide division, to think that he  
17 would, first off, damage his reputation and risk his  
18 reputation over this, to think that this man, whose job it  
19 is to put violent criminals behind bars, would say, you  
20 know what, I'm going to let the real guy go and we're  
21 going to call off the investigation and we're going to  
22 frame this innocent man You would have to believe that's  
23 what he did You would have to believe that he somehow  
24 hated that man so much that he is going to frame him  
25 He's been around for 19 years He's not trying to earn

1 his stripes by getting a confession, ladies and gentlemen  
2 He's doing his job

3 People don't confess to things they don't do I want  
4 you to think about that What would it take -- what would  
5 it take to get you to put your signature on that document?  
6 An officer being nice to you? An officer saying, oh, I  
7 don't like that other officer, yeah let's go out and have  
8 a smoke break? Would it take that? Is that all it would  
9 take to get you to sign a document that you committed an  
10 armed robbery?

11 You know what people do, they confess when they are  
12 caught They confess when they are caught because of  
13 this, none of us -- nobody wants to look like a bad guy  
14 Face it, a person who will take a knife, a razor, and hold  
15 it to a 49-year-old woman working in a BP gas station  
16 trying to make ends meet for her two teenage boys, well,  
17 it doesn't look real good And when you're caught, what  
18 you want to do is you want to explain, I'm not a bad guy  
19 Let me tell you why it happened Yes, it happened, you  
20 caught me Let me tell you why It's because of this Red  
21 Devil, this supposed person It's because of drugs It's  
22 because I owed a debt It's because this guy was sweating  
23 over money There's a reason why this happened It's not  
24 because I'm a bad guy It's because of these reasons

25 And then the officer goes through -- and you can

1 notice, he doesn't name another person, other than Helen  
2 McGee and Donna, because he's also saving his honor by  
3 keeping everyone out -- everyone else out of it When he  
4 talks about -- when he says the drug house at Security  
5 Drive, well, I'm not going to tell you about those people  
6 And when he talks about Red Devil, it's his general  
7 description and his nickname And when he talks about  
8 Henry Thomas -- Henry -- Franklin Thomas Henry, whatever  
9 his name is, he had nothing to do with this He was just  
10 there He's saving his honor that way as well

11 He wants you to believe that he was so high on drugs  
12 that he just signed this document Despite the fact that  
13 Investigator Silvaggio, who has done this for so many  
14 years, said, yeah, he sat in front of me We had a lucid  
15 conversation If he had been high at any point, he was  
16 sober by the time I spoke with him

17 And for someone, who on the stand says he was so high  
18 and so out of it, he sure remembered the details of that  
19 night pretty well He was able to give you detail after  
20 detail of what he did to maintain his alibi For someone  
21 who was so high and out of it, think of all he did that  
22 night, according to his testimony He was able to talk to  
23 the police, call 911, and try to tell -- and allege his  
24 truck had been stolen He's able to talk to this supposed  
25 person who told him he saw his truck going across town

1 He's able to run across town himself and go over there  
2 looking for his truck He then shows up at Helen McGee's  
3 house without alarming her He wasn't some crazed man at  
4 the door No, it was Steven That's the guy I've known  
5 since childhood He's able to go home to his wife without  
6 alarming her and having her drive him over to his mother's  
7 house to meet with the police He wasn't that high

8 Now, any one of those pieces of evidence, Ms Giles  
9 alone, Ms Giles and Detective Fortner, Investigator  
10 Silvaggio, the uniform officer, any one of those four  
11 pieces of evidence alone would be enough for you to say,  
12 he's guilty beyond a reasonable doubt And when you  
13 factor that in this case we have all four, plus we have  
14 Helen McGee's testimony, plus there was Donna Collins  
15 testimony, and there's the forensic officer who testified,  
16 when you consider all of that, there is more than -- the  
17 evidence is beyond a reasonable doubt There is no doubt  
18 as to his guilt

19 Think through the time line of what happened This  
20 incident happened at 5 00 in the morning at the gas  
21 station at Anderson Road He pulls up and stops in front  
22 of the gas station very briefly, just enough time for him  
23 to look inside and make sure that there's no one in there  
24 That's why he's waiting there

25 He then pulls to the back He then comes in the

1 store, commits the robbery, and takes the VCR Ms Giles  
2 is able to call the police The police arrive quickly and  
3 she describes the Defendant to them And she describes  
4 him to a T She has down his hair, his sex, his race  
5 She knows his facial characteristics She knows what he's  
6 wearing

7 And, yes, she didn't say tattoos Because she didn't  
8 see the tattoos And I want you to ask yourself if you  
9 were even able to notice them when he stood right out  
10 there in front I was sitting right there and Ms Giles  
11 was sitting right there And Ms Giles said that they're  
12 not even much darker than his skin And I want you to  
13 think about this, when someone is holding a knife to you,  
14 are you going to be -- are you going to be able to observe  
15 every single little detail about that person? And I want  
16 you to think about this, Ms Giles testified that the only  
17 way you'd be able to see those tattoos was if you'd been  
18 standing like this They're right -- they're on his  
19 forearm, maybe one forearm They weren't visible enough  
20 for me to notice them She didn't see them And let's  
21 not hold that against Ms Giles She described him to a  
22 T

23 The information goes out on the radio And you know  
24 about the chase And you know how when he, finally, gets  
25 to 6th Avenue and 4th Street how he jumps out, leaving

1 behind the box cutters as he runs away And where does he  
2 go? He goes to Helen McGee's house, again, just a few  
3 blocks away And what does he do there? It is 6 05 in  
4 the morning then Well, he has some explaining to do So  
5 it's time to start spin control

6 First, ne's got to explain to his friend why he's  
7 there at 6 00 in the morning That's not real common on a  
8 work day All right And he's got some explaining to do  
9 about his truck This truck that's just been in an armed  
10 robbery He knows the police are behind him There's  
11 fingerprints There's a box cutter there He knows it's  
12 registered to him We've got some explaining to do What  
13 are you going to say? Well, you can't say someone  
14 borrowed the truck Because then you have to start naming  
15 people and you get other people involved All right It  
16 was stolen That's when he starts the story there And  
17 he tells Helen that it was stolen at the Citgo across from  
18 the mobile home park He doesn't have all the details  
19 down yet

20 And Ms McGee is like, wait a minute, that's a BP  
21 across from the mobile home park And he goes, yeah,  
22 yeah, that's a BP And she's thinking, wait a minute,  
23 that's way down Anderson Road What are you doing here at  
24 my house? And she asks him Oh, you know, I asked  
25 Ms Dianne if I could use the phone How does he know the

1 name Dianne? Because Dianne Giles had a name tag on I  
2 asked Ms Dianne if I could use the phone She said, no  
3 But she said she would give me 75 cents Well, didn't you  
4 go home? You know, I just didn't think of it You didn't  
5 think of it? You lived right across the road You're  
6 going to run all the way across town, you're going to run  
7 all the way to Judson?

8 He also wants a shirt He wants to start getting out  
9 of the clothes He also -- he wants it so badly that he  
10 pays her money for it And he opens up his wallet and  
11 gives her \$10 And there's another wad of money in that  
12 wallet It's the money from the robbery Helen is  
13 driving down the road and she's supposed to be taking him  
14 to Staunton Bridge Road where his mother lives And as  
15 she gets close to the BP, what does she say, you know, I  
16 need to stop and get gas What happens then? What's  
17 going through the Defendant's mind? I can't go to the BP  
18 That's where I just robbed I can't go to the scene of  
19 the crime Let me out here I think I'm going to just  
20 run home instead

21 So before they get to the BP, which is right across  
22 the road from where he lives, he has her stop and he jumps  
23 out and he goes home He goes home And he, once again,  
24 gets out of his clothes And he, once again, calls 911  
25 He gets out of his clothes, meaning he gets out of his

1 shorts, which he was not able to do at Helen McGee's house  
2 because the only two people living there are two women  
3 He was only able to get a shirt At home, he can change  
4 his pants So he gets out of that He calls 911, again,  
5 says he will meet them at his mother's house Again, he  
6 doesn't want to be near the scene of the crime, let's do  
7 it where my mother lives And his wife takes him across  
8 town where he is arrested and taken to the law enforcement  
9 center where he gives the confession and where Dianne  
10 Giles identifies him

11 In closing, ladies and gentlemen, he's given you an  
12 alternative version in his testimony yesterday And I  
13 want you to consider really quickly the staggering number  
14 of coincidences that would have to align for that to be  
15 true First, you would have to believe that somebody  
16 would want to steal this truck, this truck Now, I'm not  
17 trying to be flippant, but this is not exactly the kind of  
18 vehicle that's in the top of that survey of the top ten  
19 vehicles that are stolen This truck, somebody wants to  
20 steal it? Okay

21 And that person who steals it has to be able to drive  
22 this truck This truck that is difficult to start, this  
23 truck that you have to jump start that's in such rough  
24 shape So that person has to be able to do that as well  
25 This person would have to be his twin so much so that



1 Ms Giles would misidentify him not once, but twice Not  
2 Franklin Henry Thomas, who's younger, bigger, and has a  
3 full head of hair

4 He would have to be well spoken like him And you  
5 heard the Defendant on the stand yesterday And you heard  
6 Ms Giles testify that this man was well spoken He  
7 sounded like he was educated This person who stole the  
8 truck would have to have a box cutter like this He would  
9 have to be lucky enough to leave no fingerprints on or in  
10 the truck

11 The 911 call the Defendant, supposedly, was trying to  
12 make would have had to have been unavailable for him just  
13 coincidentally until after the truck was stolen For some  
14 reason, 911 just wouldn't work until after the truck is  
15 stolen when, all of a sudden, it worked This person  
16 would have had to have seen this other person --  
17 supposedly, would have had to seen his truck driving  
18 towards Judson and would somehow have to know that just  
19 because he's driving that way, he's going past Judson or  
20 not going around there, but is going to Judson And then  
21 this person would have had to happen to see his stolen  
22 truck and would have to end up at the same bar that this  
23 Defendant happened to go to and this person would happen  
24 to tell him that, I saw your truck That coincidence  
25 would have to be

1           No one at the bar would have been able to give him a  
2       ride or call 911   He wouldn't want to go home to his own  
3       home and get a ride over towards Judson to go get his  
4       truck   Instead, he decides to go over there himself  
5       Ms Giles, who doesn't even know him, would have to be in  
6       on this conspiracy to frame him   Helen McGee, his  
7       childhood friend, would have to be in on this so-called  
8       conspiracy to frame him   How many other coincidence would  
9       have to align in order for that story to be true? I would  
10      ask you, think to yourself, does this story, perhaps, not  
11      sound like the way he wished things would have turned out,  
12      as opposed to the way they have?

13           Ladies and gentlemen, finally, all I'm doing here is  
14      simply asking you to hold this man responsible for what he  
15      did   We're responsible for our choices   When choices are  
16      made, especially those that hurt and terrorize other  
17      people, people have to be held responsible for them  
18      Because he did terrorize another person   Things like this  
19      are not supposed to happen to a 49-year-old woman working  
20      hard to make ends meet at the BP station   They shouldn't  
21      happen to anybody   They shouldn't happen to her   She was  
22      threatened with a razor sharp box cutter

23           And I want you to think what that would be like   If  
24      you're like Ms Giles, you're thinking, this might be the  
25      end, especially when he tells you to talk to that back

1 room and to go in there with him And she's thinking,  
2 this is where he could cut my throat And for a few  
3 terrorizing moments having to think to yourself, this  
4 might be the end in a convenience store all alone at 5 00  
5 in the morning all over a couple hundred dollars

6 You all are the judges of the facts, as you've heard  
7 Some people don't like to judge other people And that's  
8 understandable Your sworn duty requires you not to judge  
9 another person, not to judge this Defendant, but to judge  
10 the facts The evidence in this case, the facts in this  
11 case, supports -- overwhelmingly supports a verdict of  
12 guilty And I ask you, in just a few moments when you go  
13 back to that room, to so find

14 Thank you

15 CHARGE ON THE LAW

16 THE COURT All right Ladies and gentlemen of the  
17 jury, during this trial, you and I have certain duties to  
18 perform As the trial judge, it is my responsibility to  
19 preside over the trial of the case and to rule on the  
20 admissibility of the evidence which is offered during the  
21 trial It is also my duty to charge you the law  
22 applicable to the case And it is your duty, as jurors,  
23 to accept and apply the law as I now state it to you And  
24 if you think you have any idea as to what the law is or  
25 what the law ought to be and it does not agree with what I

1 tell you the law is, you have sworn an oath to set aside  
2 your own ideas and apply the law precisely as I state it  
3 to you

4 I remind you again that in every case tried in this  
5 Court before a jury, the jury is the sole and exclusive  
6 judges of the facts And, as the trial judge, I cannot  
7 comment on or make any statement about the facts in a  
8 case

9 I instruct you that the fact that the Defendant was  
10 arrested, charged, and indicted in this case is not  
11 evidence of guilt, nor does it create any presumption or  
12 inference of guilt This document -- or these documents  
13 are simply the formal written instruments which contain  
14 the charges made against a defendant And they serve as  
15 the formal documents by which this case is processed and  
16 brought into court

17 The indictment in this case alleges two separate  
18 offenses against the Defendant And those offenses are  
19 armed robbery, and the second offense is possession of a  
20 weapon during the commission or attempt to commit a  
21 violent crime Each count of this indictment charges a  
22 separate and distinct offense And you must decide each  
23 count separately on the evidence and the law applicable to  
24 it uninfluenced by your decision as to any other count  
25 The Defendant may be convicted or acquitted on any or all

1 of the offenses charged And you'll be asked to write a  
2 separate verdict of guilty or not guilty for each count

3 Now, necessarily, your job as jurors, you must  
4 determine the credibility or believability of the  
5 witnesses who have testified And it becomes your duty,  
6 as jurors, to evaluate the evidence and determine which  
7 evidence convinces you it is true

8 In determining the believability of the witnesses,  
9 you may believe one witness over several or several over  
10 one You may believe a part of the testimony of a witness  
11 and reject the remaining part You may believe the  
12 testimony of a witness in its entirety or reject that same  
13 testimony in its entirety You may consider whether the  
14 witness has an interest in the result of the trial,  
15 whether the witness is prejudiced towards either the State  
16 or the Defendant, the opportunity for the witness to have  
17 seen the matters and things about which that witness has  
18 testified, and the way the witness acts on the witness  
19 stand or what we call a witness' demeanor

20 You have also heard evidence that the Defendant was  
21 convicted of a crime other than the one for which he is  
22 now on trial This evidence may be considered by you if  
23 you conclude it is true only in deciding whether the  
24 Defendant's testimony is believable and for no other  
25 purpose You must not consider the Defendant's prior

1 record as any evidence of his guilt of the charge that we  
2 are trying today

3 And also, another witness has testified who has a  
4 past criminal record And a person who has a past  
5 criminal record is competent to testify during a trial A  
6 past record does not effect the ability of that witness to  
7 testify The past record may be considered by you, if at  
8 all, in determining that witness' believability  
9 Remember, you are the sole judges of the facts in this  
10 case and also of the believability of any and all of the  
11 witnesses

12 Now, the Defendant has pled not guilty to this  
13 indictment And that plea puts the burden on the State to  
14 prove the Defendant guilty A person charged with  
15 committing a criminal offense in South Carolina is never  
16 required to prove themselves innocent

17 I charge you that it is a cardinal and important rule  
18 of the law that the Defendant in a criminal trial will  
19 always be presumed to be innocent of the crime for which  
20 the indictment has issued unless guilt has been proven by  
21 evidence satisfying you of guilt beyond a reasonable  
22 doubt

23 The presumption of innocence is not mere legal  
24 theory It is not just a legal phrase It is a  
25 substantial right to which every citizen is entitled

1 unless you, the jury, are satisfied from the evidence of  
2 guilt beyond a reasonable doubt

3 Now, what is a reasonable doubt? A reasonable doubt  
4 is the kind of doubt which would cause a reasonable person  
5 to hesitate to act A reasonable doubt may arise from the  
6 evidence which is in the case or from the lack or absence  
7 of evidence in a case And you, the jury, must determine  
8 whether or not reasonable doubt exists as to the guilt of  
9 this Defendant

10 The State has the burden of proving each and every  
11 element of a crime beyond a reasonable doubt And any  
12 reasonable doubt that you may have in your deliberations  
13 should be resolved in favor of the Defendant If you have  
14 a reasonable doubt as to the guilt of the Defendant, he is  
15 entitled to that doubt and would be entitled to an  
16 acquittal

17 Now, a statement alleged to have been made by the  
18 Defendant has been admitted into evidence in this case  
19 And while the Court has determined that the statement is  
20 admissible, I instruct you that you make the ultimate  
21 decision of whether or not the Defendant, actually, made  
22 the statement If the Defendant -- if you find that the  
23 Defendant did make the statement, you must then determine  
24 whether the statement was made by the Defendant  
25 voluntarily and of his own free will This means that the

1 statement was not caused by pressure, force, fear,  
2 threats, coercion, or intimidation, or by hope or a  
3 promise of leniency or for a reward of any kind

4 And in determining whether the statement was  
5 voluntary, you should consider both the characteristics of  
6 the Defendant and the details of the questioning Some of  
7 the factors that you must consider are the age of the  
8 Defendant, the Defendant's education or lack of education,  
9 the Defendant's mental ability or capacity, the  
10 Defendant's IQ or intelligence, the Defendant's background  
11 and environment, the place and length of the detention,  
12 the nature of the questioning, and the advice or lack  
13 thereof to the Defendant of his Constitutional rights  
14 including, but not limited to, the right to remain silent,  
15 that any statement could be used against him in a court of  
16 law, the right to have a lawyer present, that if he could  
17 not afford an attorney, an attorney would be appointed to  
18 represent him without any cost, and that he could stop  
19 making a statement at any time

20 You must carefully consider all of the surrounding  
21 circumstances before you give any weight to an alleged  
22 statement The State has the burden of proving beyond a  
23 reasonable doubt that the alleged statement was voluntary  
24 And if you determine it was, you may give the statement  
25 any further consideration that you deem proper You must



1       decide what weight, if any, should be given to the alleged  
2       statement   And if you determine the alleged statement was  
3       not the free and voluntary statement of the Defendant, you  
4       should not consider the statement at all

5               Now, an issue in this case is the identification of  
6       the Defendant as the person who committed the crimes  
7       charged   The State has the burden of proving identity  
8       beyond a reasonable doubt   And you must be satisfied  
9       beyond a reasonable doubt of the accuracy of the  
10      identification of the Defendant before you may convict the  
11      Defendant

12              Identification testimony is an expression or belief  
13      or impression by a witness   You must determine the  
14      accuracy of the identification of the Defendant   You must  
15      consider the believability of each identification witness  
16      in the same way as any other witness   You may consider  
17      whether the witness had an adequate opportunity to observe  
18      the offender at the time of the offense   This will be  
19      effected by things like how long or short of a time was  
20      available, how far or close the witness was, the lighting  
21      conditions, and whether the witness had the chance to see  
22      or know the person in the past

23              Once again, I instruct you, the burden of proof on  
24      the State extends to every element of the crime charged  
25      And this, specifically, includes the burden of proving

1 beyond a reasonable doubt the identity of the Defendant as  
2 the person who committed this crime or these crimes And  
3 if after examining the testimony, you have a reasonable  
4 doubt as to the accuracy of the identification, you must  
5 find the Defendant not guilty

6 I would further tell you that voluntary intoxication  
7 is not a defense to a crime A person who voluntarily  
8 becomes intoxicated is just as responsible for the acts  
9 committed while intoxicated as when that person is not  
10 intoxicated

11 Now, the Defendant is charged in count one with armed  
12 robbery In order to prove this offense, the State must  
13 prove beyond a reasonable doubt that the Defendant took  
14 personal property from the person or presence of another  
15 person Property is in the presence of a person if it is  
16 within the person's reach, inspection, observation, or  
17 control so that the person could, if not overcome with  
18 violence or presented by fear, keep possession of the  
19 property

20 The State must also prove beyond a reasonable doubt  
21 that the Defendant carried the property away intending to  
22 permanently deprive the owner of the property and to keep  
23 the property for the Defendant's own use The slightest  
24 removal of the property or the complete possession of the  
25 property even by an instant by the Defendant is sufficient

1 to show a taking and carrying away of the property The  
2 taking and carrying away of the property must have been  
3 done with violence or by putting the owner of the property  
4 in fear of violence

5 Finally, the State must prove beyond a reasonable  
6 doubt that the Defendant was armed with a deadly weapon  
7 during the robbery And a deadly weapon is any article,  
8 instrument, or substance which is likely to cause death or  
9 great bodily harm And whether an instrument has been  
10 used as a deadly weapon depends on the facts and  
11 circumstances of each case

12 Now, the Defendant is also charged with possession of  
13 a weapon during the commission of or attempt to commit a  
14 violent crime The State must prove beyond a reasonable  
15 doubt that the Defendant visibly displayed a knife during  
16 the commission of a violent crime A knife means an  
17 instrument or tool with a sharp cutting blade whether or  
18 not fastened to a handle which can be used to inflict a  
19 cut, slash, or wound

20 And in order to find the Defendant guilty of  
21 possession of a weapon during the commission of a violent  
22 crime, you must first find the Defendant guilty of either  
23 committing a violent crime or attempting to commit a  
24 violent crime Under the laws and statutes of the State  
25 of South Carolina, armed robbery is a violent crime

1           Now, ladies and gentlemen, there are two possible  
2 verdicts on each count of the indictment   And there is no  
3 importance whatsoever in the order in which I state those  
4 verdicts   One's got to be stated first   They are guilty  
5 or not guilty   And it's on each offense, guilty or not  
6 guilty of armed robbery, guilty or not guilty of  
7 possession of a weapon during the commission of a violent  
8 crime

9           I would tell you, ladies and gentlemen, that your  
10 verdict must be unanimous   All 12 of you must agree   You  
11 should consider the evidence calmly and with measured  
12 reason without passion, prejudice, bias, or emotion   You  
13 have no friends to reward and no enemies to punish

14           Now, Mr Foreperson, we have prepared a verdict form  
15 for you to take back in the jury room with you   I think  
16 it's self-explanatory   But if you have any questions,  
17 I'll be happy to answer them, if you need me to

18           But the first, up here on the charge of armed  
19 robbery, "Not Guilty" or "Guilty "   On the charge of  
20 possession of a weapon or a firearm during the commission  
21 or attempt to commit a violent crime, "Not Guilty" or  
22 "Guilty "   There is a place for you to date it and sign it  
23 when the jury has unanimously agreed on what those  
24 verdicts are

25           At this time, I'm going to ask you to retire to your

1 jury room I'm going to ask you not to begin deliberating  
2 just yet I need to go over my charge on the law with the  
3 attorneys and make sure I have not misstated something or  
4 omitted something

5 So if you'll retire, we'll get with you very soon  
6 As soon as the verdict form comes with all the evidence,  
7 then you can begin your deliberations

8 I'm going to tell you, I may try and -- for your own  
9 protection and safety do something about the blade in that  
10 box cutter I don't want somebody to accidentally get  
11 injured back there So we may tape it off for you But I  
12 think you've seen it demonstratively shown in the  
13 courtroom during testimony and closing arguments If I do  
14 tape it off and you all, at some point, want me to untape  
15 it so y'all can take a look at it, then I'll be happy to  
16 have a bailiff come in and do that

17 Does anybody disagree with that?

18 (There was no response )

19 THE COURT Does anybody need it wide open?

20 (There was no response )

21 THE COURT If you do, just let me know

22 If you'll retire to your jury room

23 Thank you

24 (WHEREUPON, the jury was excused from open court at  
25 approximately 10 25 a m )

1 THE COURT All right Any exceptions or objections  
2 to the charge?

3 MR MOYER Not from the State, Your Honor

4 MR GIBSON None from the Defense, Your Honor

5 THE COURT I'm going to ask the attorneys to look at  
6 the evidence and make sure it's all together

7 I've got some tape

8 Do you have any kind of heavy tape, packing tape?

9 THE CLERK I don't have any right here

10 THE COURT I have some back in my office I'll go  
11 get it and we'll tape it up

12 We need to get the alternate out of the jury room

13 Would you get Ms Dotseth

14 THE BAILIFF Yes, sir

15 (Pause )

16 THE COURT Ms Dotseth, is that right?

17 JUROR #59, WENDY J DOTSETH Yes, sir

18 THE COURT Ma'am, I wish I could leave you in there  
19 to deliberate You sat through the whole trial You got  
20 to hear everything everybody else heard Your input is  
21 just as valuable as anybody else's, but the law only  
22 allows 12 people to deliberate And since this case span  
23 really over three days, it was necessary to have an  
24 alternate I really appreciate you sitting through the  
25 trial I'm sorry you can't deliberate

1           We have to ask you -- and, unfortunately, I can't  
2           tell you that you can go home   We have to ask you to go  
3           back down to the jury assembly room

4           JUROR #59, WENDY J DOTSETH   Okay

5           THE COURT   Thank you so much

6           We'll be at ease

7           (WHEREUPON, the proceedings were recessed at  
8           approximately 10 35 a m )

9           THE COURT   I'm sorry to get y'all over here, but I  
10          don't think we can do anything without letting you know  
11          The jury has requested that we remove the protective  
12          sheath that we put over the knife   So I'm doing that and  
13          I'm going to send it back to them right now   Okay

14          MR MOYER   Okay

15          MR GIBSON   Okay   Thank you, Your Honor

16          THE COURT   Thank you very much

17          I'm sorry to bring you over

18          (WHEREUPON, the proceedings were recessed at  
19          approximately 12 07 a m )

20          THE COURT   I wanted to put on the record that  
21          Mr Cannon, the bailiff -- apparently, there was no  
22          written note requesting the removal of the cover on the  
23          knife

24          So do you all want me to put Mr Cannon under oath  
25          before the jury comes back and find out what was said?

1 MR GIBSON Actually, yes, Your Honor Let's go  
2 ahead

3 THE COURT Okay Let's get Mr Cannon in here  
4 (Pause )

5 THE COURT Mr Cannon

6 THE BAILIFF Yes, sir

7 THE COURT Would you raise your right hand for me  
8 WHEREUPON,

9 JACK CANNON,  
10 after first having been duly sworn, testified as follows

11 THE COURT All right What's your name, sir?

12 THE BAILIFF Jack Cannon

13 THE COURT All right Mr Cannon, you're serving as  
14 bailiff in the case of the State --

15 Wait

16 We need to get Mr Collins out here

17 (Pause )

18 THE COURT All right Everybody is here in the  
19 courtroom

20 And, Mr Cannon, you're under oath and you are the  
21 bailiff in the State v Steven Collins, is that right?

22 THE BAILIFF Yes, sir

23 THE COURT All right Now, would you just tell me  
24 real quickly what -- the jury in that case asked that the  
25 protective cover I put on the box cutter be removed, is



1       that correct?

2           THE BAILIFF   That's correct

3           THE COURT    Do you recall exactly how that occurred?

4           THE BAILIFF   One of my -- well, we had a red light  
5       and I went in to check it   And one of my jurors wanted to  
6       see how long the knife was and how long the blade was  
7       The Judge told us if we needed to do that, to come back  
8       and he'd do it   They did do that and I brought it back to  
9       the panel

10          THE COURT    All right   And did they -- there was no  
11       written note or anything?   They didn't write a note  
12       asking, they did it verbally?

13          THE BAILIFF   Yes, sir

14          THE COURT    And any other conversation other than  
15       that?

16          THE BAILIFF   No, sir

17          THE COURT    All right   Are there any questions  
18       anybody wants to ask?

19          MR GIBSON    No, Your Honor

20          MR MOYER    No

21          THE COURT    Thank you, Mr Cannon

22       Now, if you all would, bring in the jury

23       (WHEREUPON, the jury came into open court at  
24       approximately 12 39 p m )

25          THE COURT    All right   Mr Foreman, I understand the

1 jury has reached a verdict, is that correct?

2 JUROR #168, JONATHAN E SANDERSON Yes, sir

3 THE COURT Would you please hand it to the bailiff  
4 for me, please?

5 All right Madam Clerk, would you publish that,  
6 please?

7 VERDICT

8 THE CLERK Your Honor, case number 2006-GS-23-1381,  
9 the State of South Carolina v Steven Collins, as to the  
10 charge of armed robbery, we, the jury, find the Defendant  
11 guilty

12 As to the charge of possession of a weapon during the  
13 commission of or the attempt to commit a violent crime,  
14 we, the jury, find the Defendant guilty, signed Jonathan  
15 E Sanderson, Foreman

16 If these are your verdicts, please, raise your right  
17 hand

18 (All jurors raised their hands )

19 THE COURT Okay All jurors have indicated by  
20 raising their right hands

21 Anything further of this jury from the State?

22 MR MOYER Not from the State

23 THE COURT From the Defense?

24 MR GIBSON No, Your Honor

25 THE COURT All right Caroline, what do I tell

1       them?

2               THE CLERK    They're to come back at 9 30 in the  
3       morning

4               THE COURT   All right   Mr Foreman, and, ladies and  
5       gentlemen of the jury, thank you very much for your  
6       service in this case

7               And I am happy to tell you on this rainy afternoon  
8       that you're free to go until tomorrow morning at 9 30   We  
9       appreciate your service   As I said earlier, it's an  
10      awesome responsibility and a real privilege to do it

11              We thank you so much for your service on behalf of  
12      the people of the State of South Carolina and the County  
13      of Greenville

14              Mr Sanderson, we need you to just sign one document  
15      as the Foreperson

16              The rest of you are free to leave

17              Thank you very much

18              Again, we'll see you tomorrow at 9 30

19              (WHEREUPON, the jury was excused at approximately  
20      12 41 p m )

21              THE COURT   All right   Mr Moyer, do you have some  
22      sentencing sheets?

23              MR MOYER    Yes, Your Honor

24              May it please the Court?

25              I'll also pass up some documents for the -- that show

1       that notice of intent to seek life without parole was  
2       served on both the Defendant and his attorney

3               THE COURT    I'll take a look at those and we'll  
4       introduce those into the record

5               Mr Collins, if you'll come around

6               I see these are clocked copies    But just for  
7       purposes of this proceeding, I'm going to make them a  
8       Court's Exhibit

9               (WHEREUPON, Court's Exhibit No 2 was marked for  
10       identification and admitted into evidence )

11              THE COURT    All right    Mr Moyer, anything you need  
12       to tell me?

13              MR MOYER    No, Your Honor

14              THE COURT    All right    Mr Gibson

15              MR GIBSON    Thank you, Your Honor

16              I'm not sure if you have a whole lot of discretion on  
17       this based on the notices that you were just given

18              But in mitigation, Your Honor, Mr Collins is 38  
19       years old    He was working at the time of this thing  
20       He's working now and has been working regularly    His  
21       mother and brother are here with him    They're both fully  
22       supportive of him    He takes care of his mother

23              Like I say, Your Honor, I'm not exactly sure about  
24       how much discretion you have    But I request to the extent  
25       you have that you be as lenient as possible

1 THE COURT Mr Collins, anything you want to say?

2 DEFENDANT COLLINS Sir, I still stand upon what I  
3 said I'm sorry this happened to that lady But I'm not  
4 the man that should be going down for this I didn't do  
5 this crime

6 SENTENCE

7 THE COURT Well, Mr Collins, based on -- I have no  
8 discretion with respect to the sentence on the armed  
9 robbery I'm going to give you life in prison pursuant to  
10 South Carolina Code of Law Section 17-25-45 Five years  
11 on the other case Credit for any time he's entitled to

12 And do you understand you have ten days from today to  
13 file a notice of intent to appeal?

14 Do you understand that?

15 DEFENDANT COLLINS Yes, sir

16 THE COURT All right I wish you the best of luck

17 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*  
18  
19  
20  
21  
22  
23  
24  
25

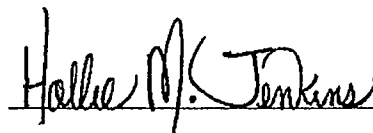
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA       )  
COUNTY OF GREENVILLE       )

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 11th, 12th, and 13th days of September, 2006

I do further certify that I am neither of kin, counsel, nor interest to any party hereto

March 23, 2007



Hollie M Jenkins, Court Reporter

My Commission Expires 11-17-10

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Steven Collins, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true

- (1) I am the applicant in this action and I believe I am entitled to redress
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof

Steven Collins #141257  
Applicant

SWORN or affirmed to and subscribed before me this

20 day of October 2009

Joyce L Young  
Notary Public

My Commission Expires 8 28 2011

WITNESSES

Michael Fortner - *MAXWELL* *19*

Greenville County Sheriffs Office

10/13/2005

ARREST WARRANT NUMBER

1469530 1469531

ACTION OF GRAND JURY

**TRUE BILL**

*Buddy L. Reynolds*

OREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Count 1 Guilty*

*Count 2 Guilty*

*Sam*  
Foreperson of Petit Jury

*9/13/06*  
Date

DOCKET NO 2006-GS-23- 001381

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

February TERM 2006

THE STATE

vs

*Guilty*

STEVEN COLLINS

0139  
0549

Indictment for

ARMED ROBBERY AND POSSESSION OF A  
WEAPON DURING THE COMMISSION OF OR  
THE ATTEMPT TO COMMIT A VIOLENT CRIME  
VIOLATION § 16 11-0330  
§ 16-23-490

713



STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF GREENVILLE     )

INDICTMENT FOR  
ARMED ROBBERY

At a Court of General Sessions, convened on     February 21, 2006     the Grand Jurors of Greenville  
County present upon their oath

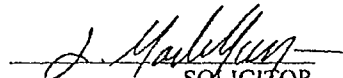
**COUNT ONE – ARMED ROBBERY**

That STEVEN COLLINS did in Greenville County, on or about the 13th day of October, 2005 while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably have believed to be a deadly weapon, take by means of force or intimidation goods or monies described as cash money belonging to BP Gas Station from the person or presence of Dianne Bavelle Giles This is in violation of §16-11 0330 of the South Carolina Code of Laws (1976) as amended

**COUNT TWO – POSSESSION OF A WEAPON DURING THE COMMISSION OF OR THE  
ATTEMPTED TO COMMIT A VIOLENT CRIME**

That STEVEN COLLINS did in Greenville County, on or about the 13th day of October, 2005, possess or visibly display a box cutter during the commission or attempted commission of a violent crime, to wit Armed Robbery This is in violation of § 16-23-490 of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided

  
SOLICITOR

## STATE OF SOUTH CAROLINA

COUNTY OF GreenvilleSTATE VSSteven Collins

CA

Race        Sex        Age       DOB       Address       DL#       SID#       

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2006GS2301381A/W# 1469530Date of Offense 10-13-2005S C Code § 16-11 0330(A)CDR Code # 0139☐ CASE RESTORED  
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS  
TO Armed Robberyin violation of § 16-11-0330(A) of the S C Code of Laws, bearing CDR Code # 0139☐ NON VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☒ 17 25 45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury  
The plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State  
ATTEST[Signature]  
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed        years  
and/or to pay a fine of \$       , provided that upon the service of        days/months/years and/or payment  
of \$       , plus costs and assessments as applicable\*, the balance is suspended with probation for         
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by referenceCONCURRENT or ☐ CONSECUTIVE to sentence on       ☒ The Defendant is to be given credit for time served pursuant to S C Code § 24 13 40 to be calculated and applied  
by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code § 17 25 135

## SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard, ☐ Waived ☐ OrderedTotal \$        plus 20% fee \$       Payment Terms       ☐ set by SCDPPPS       Recipient       

\*Fine

|                                        |         |               |
|----------------------------------------|---------|---------------|
| § 14 1 206 (Assessments 107.5 %)       | \$      |               |
| § 14 1-211(A)(1) (Conv Surcharge)      | \$100   | \$ <u>100</u> |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$            |
| § 56 5-2995 (DUI Assessment)           | \$12    | \$            |
| § 35 13 (Public Def/Prob)              | \$500   | \$            |
| § 73 3 1B TP (Law Enforce Funding)     | \$25    | \$ <u>25</u>  |
| § 33 7 1B TP (Drug Court Surcharge)    | \$100   | \$            |
| § 50 21 114(BUI Breath Test Fee)       | \$50    | \$            |
| § 56 5 2942(J) (Vehicle Assessment)    | \$40/ea | \$            |
| 3% to County (if paid in installments) | \$      | \$            |

TOTAL

[Signature]  
Clerk of Court/ Deputy ClerkCourt Reporter [Signature]PTUP              days/hours Public Service EmploymentObtain GED       Attend Voc Rehab or Job Corp       May serve W/E beginning       Substance Abuse Counseling       Random Drug/Alcohol testing       

Fine may be pd in equal, consecutive weekly/monthly

pmts of \$        beginning       \$        paid to Public Defender FundOther       ☐ Appointed PD or appointed other counsel, §35 13 TP  
Requires \$500 be paid to Clerk during probationPRESIDING JUDGE [Signature]Judge Code 21 11 310Sentence Date 9-13-06

## STATE OF SOUTH CAROLINA

COUNTY OF GreenvilleSTATE VSSteven Collins

CA

Race D Sex \_\_\_\_\_ Age \_\_\_\_\_DOB \_\_\_\_\_ SS# \_\_\_\_\_Address \_\_\_\_\_DL# \_\_\_\_\_D# \_\_\_\_\_

## IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2006GS2301381A/W# 1469531Date of Offense 10 13 2005S C Code § 16-23 0490CDR Code # 0549☐ CASE RESTORED  
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS  
TO Poss weapon during violent crimein violation of § 16 23 0490 of the S C Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25 45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence ☐ Recommendation by the State

ATTEST

  
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by referenceCONCURRENT or ☐ CONSECUTIVE to sentence on \_\_\_\_\_☒ The Defendant is to be given credit for time served pursuant to S C Code § 24 13-40 to be calculated and applied  
by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code § 17 25 135

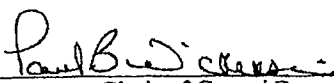
## SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard ☐ Waived, ☐ OrderedTotal \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_Payment Terms \_\_\_\_\_☐ set by SCDPPPS \_\_\_\_\_Recipient \_\_\_\_\_

\*Fine

|                                        |         |               |
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| § 14 1-211(A)(1) (Conv Surcharge)      | \$100   | \$            |
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| § 56 5 2995 (DUI Assessment)           | \$12    | \$            |
| § 35 13 (Public Def/Prob)              | \$500   | \$            |
| § 73 3, 1B TP (Law Enforce Funding)    | \$25    | \$ <u>25</u>  |
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| § 56 5-2942(J) (Vehicle Assessment)    | \$40/ea | \$            |
| 3% to County (if paid in installments) | \$      | \$            |

FAL



Clerk of Court/ Deputy Clerk

Court Reporter H. JenkinsPTUP \_\_\_\_\_\_\_\_\_\_ days/hours Public Service EmploymentObtain GED \_\_\_\_\_Attend Voc Rehab or Job Corp \_\_\_\_\_May serve W/E beginning \_\_\_\_\_Substance Abuse Counseling \_\_\_\_\_Random Drug/Alcohol testing \_\_\_\_\_

Fine may be pd in equal, consecutive weekly/monthly

pmts of \$ \_\_\_\_\_ beginning \_\_\_\_\_\$ \_\_\_\_\_ paid to Public Defender FundOther \_\_\_\_\_☐ Appointed PD or appointed other counsel, §35 13 TP

Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE SCC (U) MCOJudge Code 21 11 310Sentence Date 9-13 06

SCCA/217 (2/2006)

STATE OF SOUTH CAROLINA )

County of Greenville )

IN THE COURT OF COMMON PLEAS

**2009-CP-23- 10469**Steven Collins 141257 )

Full name and prison number (if any) of Applicant )

v )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

7PM9 DEC 10 PM 51  
 FILED CLERK OF COURT  
 GREENVILLE

**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- 1 Place of detention Greenville County Detention Center
- 2 Name and location of Court which imposed sentence Greenville County Courthouse,  
General Sessions
- 3 Name(s) of co-defendant(s) (if any) NONE
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed  
(a) Firearm Provision No. GS 23-1381 Arson Robbery No. GS-23-3181

- (b) \_\_\_\_\_  
(c) \_\_\_\_\_
- 5 The date upon which sentence was imposed and the terms of the sentence  
(a) 09-11-06  
(b) \_\_\_\_\_  
(c) \_\_\_\_\_
- 6 Check whether a finding of guilty was made  
(a) after a plea of guilty \_\_\_\_\_  
(b) after a plea of not guilty Yes  
(c) after a plea of nolo contendere \_\_\_\_\_
- 7 Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes
- 8 If you answered Ayes@ to (7), list  
(a) the name of each Court to which you appealed  
I South Carolina Court of Appeals  
II \_\_\_\_\_  
III \_\_\_\_\_  
(b) the result in each such Court to which you appealed  
I Appeal Dismissed  
II \_\_\_\_\_  
III \_\_\_\_\_  
(c) the date of each such result  
I October 14, 2009  
II \_\_\_\_\_  
III \_\_\_\_\_  
(d) if known, citations of any written opinion or orders entered pursuant to such results  
I Unpublished Opinion No 2009-UP-479 Submitted 10-01-09  
II Filed 10-14-09  
III \_\_\_\_\_
- 9 If you answered Ano@ to (7), state your reasons for not so appealing  
(a) \_\_\_\_\_

- ( )
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
- 10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) Ineffective assistance of Counsel
- (b) Prosecutorial Misconduct
- (c) Violation of due process
- 11 State concisely and in the same order the facts which support each of the grounds set out in (10)
- (a) Failure to Conduct proper investigation
- (b) Prosecutor lied
- (c) Suggestive photos were used
- 12 Prior to this application have you filed with respect to this conviction Yes
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
- 13 If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application Yes
- (a) the specific nature thereof
- I Filed appeal with the South Carolina Appellate defense Office
- II \_\_\_\_\_
- III \_\_\_\_\_
- IV \_\_\_\_\_
- (b) the name and location of the Court in which each was filed
- I South Carolina Court of Appeals PO Box 11629 Columbia S.C 29211
- II \_\_\_\_\_
- III \_\_\_\_\_

IV \_\_\_\_\_

(c) the disposition thereof

I Appeal Dismissed

II \_\_\_\_\_

III \_\_\_\_\_

IV \_\_\_\_\_

(d) the date of each such disposition

I 10-14-09

II \_\_\_\_\_

III \_\_\_\_\_

IV \_\_\_\_\_

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition

I Need better interpretation of question

II \_\_\_\_\_

III \_\_\_\_\_

IV \_\_\_\_\_

14 Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? Yes,

these grounds were presented on Prose motion of appeal

15 If you answered "yes" to (14) identify

(a) which grounds have been presented

I Ineffective assistance of counsel

II Prosecutorial Misconduct

III Violation of due process

(b) the proceedings in which each ground was raised

I Direct Appeal

II Direct Appeal

III Direct Appeal

- 16 If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented
- (a) Appellate Defender Kathrine H Hudgins didn't present but  
 (b) issue.  
 (c) \_\_\_\_\_
- 17 Were you represented by an attorney at any time during the course of
- (a) your arraignment and plea? \_\_\_\_\_  
 (b) your trial, if any? Yes,  
 (c) your sentencing? Yes  
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_  
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_
- 18 If you answered Ayes@ to one or more parts of (17), list
- (a) the name and address of each attorney who represented you
- i Mr. Kenneth C Gibson, Public Defender  
 \_\_\_\_\_  
 \_\_\_\_\_
- ii Ms. Kathrine H. Hudgins, Appellate Defender South Carolina Commission on Indigen  
PO Box 11589 Columbia South Carolina 29211  
 \_\_\_\_\_  
 \_\_\_\_\_
- iii \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you
- i Greenville County General Sessions trial  
 \_\_\_\_\_  
 \_\_\_\_\_
- ii South Carolina Court of Appeals  
 \_\_\_\_\_  
 \_\_\_\_\_
- iii \_\_\_\_\_



19 State clearly the relief you seek in filing this application

Vacate Conviction

20 Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of McCormick )

VERIFICATION

I, Steven Collins #141257, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application, that I know the contents thereof, that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application, and that the matters and allegations therein set forth are true

Steven Collins #141257

SWORN to and subscribed before me this 20  
day of October, 2009

Joyce R Young (L.S.)  
Notary Public

My Commission Expires 8-28-2011

|                          |   |                              |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |
|                          | ) | C A No 2009-CP-23-10469      |
| COUNTY OF GREENVILLE     | ) |                              |
|                          | ) |                              |
| Steven Collins,          | ) |                              |
| S C D C No 141257,       | ) |                              |
|                          | ) |                              |
| Applicant,               | ) |                              |
|                          | ) | <b>RETURN</b>                |
| v                        | ) |                              |
|                          | ) |                              |
| State of South Carolina, | ) |                              |
|                          | ) |                              |
| Respondent               | ) |                              |
| _____                    | ) |                              |

In response to the post-conviction relief application filed December 10, 2009, the Respondent would show this Court

I

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the February 2006 term of General Sessions for armed robbery (2006-GS-23-1381, count 1) and possession of a weapon during commission of a violent crime (2006-GS-23-1381, count 2). Kenneth C Gibson, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On September 13, 2006, the Honorable Edward W Miller sentenced the Applicant to concurrent terms of life imprisonment without parole for armed robbery and five (5) years for the weapons charge.

A notice of appeal was filed at the South Carolina Court of Appeals. Kathrine H Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the

form of an Anders<sup>1</sup> brief The Court of Appeals dismissed the appeal State v Collins, Op No 2009-UP-479 (S C Ct App filed October 14, 2009)

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records

## II

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel,
  - a Failure to conduct a proper investigation
- 2 Prosecutorial misconduct
  - a "Prosecutor lied "
- 3 Violation of due process
  - a "Suggestive photos were used "

## III

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result " Strickland v Washington, 466 U S 668, 686, 104 S Ct 2052, 2064 (1984), Butler v State, 286 S C 441,

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<sup>1</sup> Anders v California, 386 U S 738, 87 S Ct 1396, 18 L Ed 2d 493 (1967)

442, 334 S E 2d 813, 814 (1985)

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U S at 690, 104 S Ct at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v State, 300 S C 115, 118, 386 S E 2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v State, 300 S C at 117, 386 S E 2d at 625 (quoting Strickland, 466 U S at 688, 104 S Ct at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S C at 117-18, 386 S E 2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland v Washington, 466 U S 668, 104 S Ct 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v State, 279 S C 264, 265, 305 S E 2d 247, 248 (1983) (citing Norman v State, 276 S C 278, 277 S E 2d 707 (1981)).

## IV

The Respondent denies each allegation not expressly admitted, qualified or explained

## V

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant

Respectfully submitted,

HENRY DARGAN McMASTER  
Attorney General

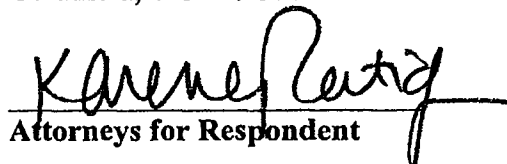
JOHN W McINTOSH  
Chief Deputy Attorney General

SALLEY W ELLIOTT  
Assistant Deputy Attorney General

KAREN C RATIGAN  
Assistant Attorney General

P O Box 11549  
Columbia, S C 29211

By

  
Attorneys for Respondent

April 21, 2010

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

COURT OF COMMON PLEAS

2009-CP-23-10469

STEVEN COLLINS )

APPLICANT )

vs )

STATE OF SOUTH CAROLINA )

RESPONDENT )

**ORIGINAL**

TRANSCRIPT OF RECORD

May 12, 2011

Greenville, South Carolina

B E F O R E

THE HONORABLE EDWARD WELMAKER, Judge

A P P E A R A N C E S

CAROLINE HORLBECK, ESQ  
Attorney for the Applicant

KAREN C RATIGAN, ESQ  
Attorney for the Respondent

APRIL HERRON  
Official Court Reporter

## INDEX OF WITNESSES

STEVEN COLLINS

Direct By Ms Horlbeck 5

Cross By Ms Ratigan 18

KEN GIBSON

Direct By Ms Ratigan 21

Cross By Ms Horlbeck 27

» &gt; o &lt; «

Certificate of Reporter 29

1           THE COURT   All right, you may proceed with the  
2   State's next case

3           MS   RATIGAN   Thank you, Your Honor, may it  
4   please the Court   The last case today is Steven Collins  
5   vs   The State of South Carolina   The docket number is  
6   2009-CP-23-10469   Mr   Collins was indicted for armed  
7   robbery and possession of a weapon during the commission  
8   of a violent crime   He was represented on these charges  
9   by Mr   Gibson   The case was brought to trial before Judge  
10   Miller in September 2006   He was found guilty of the  
11   charges on September 13th, 2006   Judge Miller sentenced  
12   him to concurrent terms of life without parole for armed  
13   robbery and five years for the weapons charge   He did  
14   file an appeal   It was perfected in the nature of a  
15   Anders brief at the Court of Appeals   That Court then  
16   dismissed the matter in October of 2009   And the State is  
17   ready to proceed

18           THE COURT   Ms   Horlbeck, you may call your  
19   first witness

20           MS   HORLBECK   Your Honor, we could call Steven  
21   Collins

22           THE COURT   Mr   Collins, come around to be  
23   sworn, please

24           THE CLERK   Place your left hand on the Bible,  
25   raise your right hand



1 STEVEN COLLINS, after being duly sworn,  
2 testified as follows

3 THE CLERK Thank you, you may be seated State  
4 your name for the record

5 THE WITNESS Steven Collins

6 DIRECT EXAMINATION

7 BY MS HORLBECK

8 Q Mr Collins, did Ken Gibson represent you in this  
9 case?

10 A Yes, ma'am

11 Q And did you -- your case went to trial, correct?

12 A Correct

13 Q All right What charges of yours actually went to a  
14 jury trial?

15 A Just armed robbery and possession of a weapon

16 Q All right Were you convicted by the jury?

17 A Yes

18 Q And your sentence?

19 A Life of five without parole

20 Q Okay All right And as a result of that you filed  
21 this petition for post-conviction relief, is that  
22 right?

23 A Yes

24 Q Okay And one of your allegations concerns the  
25 enhancement of your sentence, correct?

1 A Yes, correct

2 Q All right Let's talk a little bit about that You  
3 do have a prior record, is that correct?

4 A Correct

5 Q And is your prior record from 1993?

6 A '92, '93, yes

7 Q What charges -- to your knowledge, what charges did  
8 the State use to enhance your penalty after you went  
9 to trial?

10 A Okay, they used the charge of armed robbery, burglary  
11 and strong armed robbery

12 Q All right And you were convicted of those offenses  
13 in 1992, 1993?

14 A Yes

15 Q Around one of those two years, is that correct?

16 A Yes

17 Q All right And at that point, back in '92 and '93,  
18 was your armed robbery, do you know what the  
19 classification was at that time?

20 A What the classification was of the armed robbery, I  
21 think they just had started sentencing them as  
22 violent but everything else was unclassified

23 Q Okay Was it -- do you know if it was classified at  
24 that point as most serious or serious?

25 A It was serious It was not most serious, it was

1           serious

2       Q     Okay    Are you sure?   Was there any classification at  
3           that point?   And I'm talking about --

4       A     Not really but what they did was the State did a  
5           requate [sic] system that they did in the Department  
6           of Corrections to determine whether they were serious  
7           or not

8       Q     Uh-huh

9       A     And they just told me it was a serious offense

10      Q     Okay    Who told you that?

11      A     Department of Corrections    I came back to court here  
12           in Greenville County on a PCR and--

13      Q     For your convictions in '92, '93?

14      A     Correct

15      Q     And one of the convictions you're talking about  
16           specifically is your armed robbery?

17      A     Correct

18      Q     Okay

19      A     And they swore me in and as they swore me in, Arthur  
20           Houston from Columbia from South Carolina Department  
21           of Corrections, he called and told them that if I  
22           would dismiss the PCR, that they would go ahead and  
23           give me my A custody so I could go    And what they  
24           did was they told me that my -- the only serious  
25           offense that I had was armed robbery    Everything was

1 unclassified

2 Q Okay So--

3 A That would be my only violent offense

4 Q All right So your position is -- at that point in  
5 time you went to this jury trial that the only  
6 serious offense you had on your record was this armed  
7 robbery, correct?

8 A Correct

9 Q And you feel like there were no most serious  
10 convictions on your record?

11 A Correct

12 Q Okay And it is your argument today that when you  
13 got convicted at your trial, before Judge Miller,  
14 that the State improperly relied on your prior record  
15 to enhance your sentence to life without parole?

16 A Yes

17 Q Okay All right Have you filed an ex post facto  
18 action or anything like that?

19 A I filed a PCR but I haven't done a ex post facto

20 Q Okay All right And did you and Mr Gibson discuss  
21 the State's position to seek life without parole?

22 A Well, he told me before they revoked my bond and  
23 brought me to the detention center, he told me they  
24 were seeking life and that if I was found guilty I  
25 would receive life

1 Q Okay All right And at what point in the case did  
2 you find out that the State was seeking life without  
3 parole if you got convicted?

4 A We had, I think--

5 Q Was it at the beginning--

6 A Second, maybe third day

7 Q What do you mean second, maybe third day of what?

8 A He mentioned it to me but then after we picked the  
9 jury it was like maybe the third day that they --  
10 that Mr Moyer said something about seeking a life  
11 sentence on me That they served notice of intent

12 Q Are you saying that the notice of intent was never  
13 served on you?

14 A It was one given to me down at the detention center

15 Q Okay How far in advance of your trial were you  
16 served with that LWOP notice?

17 A I really don't remember I think it was like a  
18 matter of maybe 20, 30 days or so

19 Q Okay All right And before that, before you  
20 received that LWOP notice, did you and Mr Gibson  
21 discuss life without parole, the possibility that you  
22 could face life without parole?

23 A Yeah, I went to his office on, I think, on a Saturday  
24 or Sunday after work They had me on house arrest,  
25 basically on home monitor And I wasn't allowed to

1 go anywhere But he told me that I needed to go  
2 ahead and try to find somebody to advocate where I  
3 was at what time Because they had me on house  
4 arrest, I couldn't find anybody Everybody that I  
5 knew was either out of -- out at night or at  
6 nightclubs or whatever and I wasn't allowed to go in  
7 that environment anymore

8 Q Okay, I'm just trying to find out when you understood  
9 you faced life without parole?

10 A It was actually that Saturday that I spoke with him  
11 in his office

12 Q Okay What date was that Saturday, was it a week  
13 before your trial, 10 days before your trial?

14 A It was like maybe three days Because it went that  
15 following Monday

16 Q And that Saturday, three days before your trial is  
17 the first time you and Mr Gibson discussed life  
18 without parole?

19 A Yes

20 Q What was the plea offer that the State gave you?

21 A They offered me 30 years, 85 percent

22 Q Okay When did they make that offer to you?

23 A When they came with the -- when they said they were  
24 going to seek life without parole, they said if I  
25 didn't take the 30 years, 85 percent, that's what

1           they were going to give me

2       Q     Okay    Did you discuss that with Mr   Gibson?

3       A     Well we never did discuss as far as taking the 30  
4           year plea, no

5       Q     Did he advise you to take the plea or to turn the  
6           plea down?

7       A     No

8       Q     What did he advise you to do, anything?

9       A     He didn't advise me to turn the plea down    He waited  
10          to see whether I wanted to testify on my own behalf  
11          After I took -- testified on my own behalf -- well  
12          the way he said it, we were looking for a favorable  
13          outcome    This was at the trial    And afterwards they  
14          said life without parole, they found me guilty, so

15      Q     How many times did you and Mr   Gibson discuss the 30  
16          year offer?

17      A     Just once

18      Q     Okay --

19      A     That once

20      Q     What was his advice?

21      A     He told me that I need to find the people to be my  
22          alibi, I need to find those people that I had said  
23          was going to be my alibi

24      Q     Did he advise you take the 30 year plea offer?

25      A     No

1 Q All right Did you know at that point when you  
2 turned down the 30 years, did you know that you faced  
3 life without parole?

4 A I didn't know that they weren't going to give me an  
5 opportunity to change my plea or they weren't going  
6 to give me an opportunity to go and find people to  
7 help me with my trial

8 Q Okay If you'd known that you wouldn't have the  
9 opportunity to change your plea and take the 30 year  
10 offer, what would you have done differently?

11 A I would have took the 30 year offer

12 Q Okay All right Did Mr Gibson explain to you that  
13 you would only have that opportunity? That your  
14 opportunity to take the 30 year offer wouldn't last  
15 forever?

16 A No

17 Q Did you and Mr Gibson talk about a plea expiration  
18 date?

19 A No

20 Q Did you know that your plea offer ever expired?

21 A No The only thing I knew was that when I came to  
22 trial that was it

23 Q Okay All right Now, during the case or during the  
24 trial, there were some fingerprints that were  
25 discussed that came into evidence, is that correct?



1 A Correct

2 Q Okay And two of the fingerprints -- it is true that  
3 two of the fingerprints didn't match you at all?

4 A Correct

5 Q Okay Did you and Mr Gibson discuss those two  
6 fingerprints before your trial?

7 A No

8 Q All right Did Mr Gibson go and see those two  
9 fingerprints before your trial started?

10 A To my knowledge no

11 Q To your knowledge, when did Mr Gibson find out about  
12 those two fingerprints?

13 A When we were here in trial

14 Q All right If you had known about those two  
15 fingerprints, what would you have asked Mr Gibson to  
16 do?

17 A I mean, I would have asked Mr Gibson where did they  
18 get those prints from to begin with But he had  
19 already stated that he would have asked Indigent  
20 Defense or somebody to send somebody to investigate  
21 them to see if they could match them to me at all  
22 Which they were incompatible or not a match So I  
23 mean, my understanding of that was that I didn't  
24 think they could even -- once they said they didn't  
25 match me, I figured that would be thrown out

1 Q And if Mr Gibson had tried to hire an expert to  
2 analyze those two fingerprints that didn't match you,  
3 would you have supported his decision?

4 A I would have encouraged him

5 Q All right All right And do you believe that the  
6 that outcome of your trial would have been different  
7 if you had an expert to --

8 A Yes --

9 Q -- analyze those two fingerprints?

10 A Yes

11 Q Okay All right Now you also alleged prosecutorial  
12 misconduct

13 A Yes

14 Q All right And the basis for that is that the  
15 fingerprint that was collected off of the truck, your  
16 truck?

17 A Yes

18 Q Okay Okay And tell the Court the basis of your  
19 argument

20 A Basically with the fingerprints from the truck, from  
21 the vehicle, it was said that the print was taken  
22 from the windshield, the exterior windshield of my  
23 vehicle Okay But in that essence my vehicle was  
24 not the crime scene The crime scene was the place  
25 of business that was robbed So in order for them to

1 say that they took the fingerprint from the  
2 windshield of my vehicle, they should have got  
3 fingerprints from the entire vehicle Because I used  
4 it every day as a work truck

5 Q All right Is your position that that was a  
6 improper -- that the State's argument that your truck  
7 was the crime scene, that that was an improper  
8 argument?

9 A Yes

10 Q Did Mr Gibson object to that argument?

11 A He objected to the fingerprints because he said that  
12 they never told him about them

13 Q But he did specifically object to that argument?

14 A No

15 Q Did he ask for a mistrial or anything?

16 A He did ask for mistrial

17 Q But specifically did he ask for a mistrial when that  
18 argument was made? I know he asked for a mistrial on  
19 the prints and him not finding out about the prints

20 A No, I don't think he did

21 Q Okay All right And do you think that the outcome  
22 of your trial could have been different?

23 A Yes

24 Q If he'd made that prosecutorial misconduct argument?

25 A Yes

1 Q Okay All right And you testified in this case?

2 A Yes, ma'am

3 Q All right And did you and Mr Gibson discuss your  
4 testimony?

5 A He told me that I could testify on my own behalf  
6 And after I testified he told me that I done -- he  
7 thought I'd done a good job

8 Q All right And did he advise you to change your plea  
9 to guilty at that point?

10 A No

11 Q And do you think that he should have advised you to  
12 do that?

13 A Yeah, I think he should have If he had I'd  
14 certainly took his advice

15 Q Why is that? Why do you think he should have advised  
16 you to do that?

17 A Because he himself, you know, they said that they  
18 called him I think maybe two or three times to come  
19 and view the evidence that they had as far as a Brady  
20 motion But Mr Moyer said that he never came You  
21 know, so that in lieu gave me -- I filed ineffective  
22 assistance of counsel and I filed for the  
23 prostitute -- prosecutorial misconduct

24 Q Okay You've also alleged that Mr Gibson should  
25 have done some extra investigation maybe into alibi

1 witnesses, do you recall that allegation?

2 A Yes

3 Q All right And what would like to tell the Court  
4 about that?

5 A Well there were several people that could have been  
6 checked out I had one person in particular that was  
7 down at the detention center And at the time he was  
8 serving, I think, for child support And I gave his  
9 name to Mr Gibson and asked him if he could speak to  
10 the guy Because he was telling him that he knew  
11 about this robbery And when I asked Mr Gibson if  
12 he could check into it, he said he checked into a  
13 data base that they have and couldn't find the guy  
14 Or couldn't find anything on him But this guy was  
15 inside the jailhouse working So I'm like, well how  
16 can you not find him when he's here working? And he  
17 asked me to get his name I got his name and his ID  
18 number at that time And nothing ever came of it

19 Q Any other witnesses that you wanted him to check out  
20 that he didn't?

21 A Well there was one female but I didn't know how to  
22 actually get in contact with her because she's a  
23 person of the night

24 Q Okay I don't have any further questions -- well  
25 actually let me back up a little bit This your day

1 in court, if you have any other allegations to make,  
2 now's the time to make them Have I covered  
3 everything that I need to cover?

4 A You covered just about everything, yes

5 Q Okay You don't have anything you'd like to add?

6 A Not that I can think of right now

7 MS HORLBECK All right, please answer any  
8 questions Ms Ratigan may have for you

9 CROSS-EXAMINATION

10 BY MS RATIGAN

11 Q So would it be fair to say that you had several  
12 meetings with Mr Gibson about your case before the  
13 trial?

14 A No

15 Q Okay, well how many did you have?

16 A One in his office and I think two at the detention  
17 center

18 Q You never had any meetings with him at the  
19 courthouse?

20 A No

21 Q And when you met with him did you discuss the charges  
22 against you?

23 A Yes

24 Q Did you discuss what the State's evidence against you  
25 was?

1 A He told me that they had a video -- that he had a  
2 video surveillance from the place that was robbed and  
3 I wasn't in any of that And he said that they had a  
4 dash cam video and I wasn't in that, so

5 Q Did you discuss like police reports or witness  
6 statements or anything of that nature?

7 A Family friend or use to be family friend, Ms McGee  
8 He advised me that she had called and had Greenville  
9 County to say that she felt threatened that I was  
10 released or whatever And he actually told me maybe  
11 I shouldn't contact her at all

12 Q And did you tell Mr Gibson kind of your side of the  
13 story?

14 A Yes

15 Q Okay And the State at some point made a 30 year  
16 plea offer, is that correct?

17 A Yes, ma'am

18 Q And your testimony is that you really didn't talk  
19 about it that much with Mr Gibson, whether or not  
20 you should take it?

21 A Correct Actually we never -- after we talked the  
22 one time he said they were going to seek life without  
23 parole if they found me guilty, we never discussed it  
24 again

25 Q So you decided not to take that offer, is that

1 correct?

2 A Well we were going to trial with it so no, I hadn't  
3 accepted it

4 Q And your testimony was that you received the notice  
5 of life without parole at the jail about 20 days  
6 before trial, is that correct?

7 A Yes I think it was about 20 days, yes

8 Q And your testimony was that you never really  
9 discussed that notice with Mr Gibson until about  
10 three days before trial, is that correct?

11 A That's correct

12 Q So you knew by the time you were going to trial, the  
13 State was going to seek life without parole?

14 A Yes, ma'am

15 MS RATIGAN That's all I have, Your Honor

16 MS HORLBECK Judge, that's all I have

17 THE COURT Okay, thank you, sir, you may step  
18 down

19 MS HORLBECK And we would rest

20 MS RATIGAN The State would call Mr Gibson,  
21 Your Honor

22 THE CLERK Place your left hand on the Bible,  
23 raise your right hand

24 KEN GIBSON, after being duly sworn, testified as  
25 follows



1 THE CLERK Thank you, you may be seated State  
2 your name for the record

3 THE WITNESS Kenneth Clifton Gibson

4 DIRECT EXAMINATION

5 BY MS RATIGAN

6 Q Do you remember representing Mr Collins on these  
7 charges?

8 A I do

9 Q Were you appointed or retained?

10 A Appointed

11 Q Did you file the usual discovery motions?

12 A Yes, ma'am

13 Q Did you review those materials with your client?

14 A Yes, ma'am

15 Q Do you recall what it is you received from the State  
16 discovery?

17 A I received a copy of a statement from Mr Collins  
18 basically saying that he was involved in this I  
19 received incident reports I received fingerprint  
20 reports I received -- I think ultimately received  
21 video from them regarding the dash cam and from the  
22 store And the video from the store was such poor  
23 quality you couldn't tell what was on it And I  
24 think that's why they didn't admit it at trial

25 Q And your testimony is that you reviewed all these

1 items with him as you received them?

2 A Yes I don't think I actually showed him the video  
3 But the rest of the stuff we talked about and he knew  
4 what they had

5 Q Did you receive a copy of Mr Collins' NCIC from the  
6 State?

7 A Yes

8 Q At what point did they inform you, the State inform  
9 you, that they were going to seek life without  
10 parole

11 A Probably about four months after I was appointed  
12 And the way that happened was Mark Moyer was  
13 prosecuting the case We talked about some kind of  
14 plea offer Mark said, You know, we'll let him do,  
15 if he wants to plead, he's going to have to plea and  
16 accept 30 years And he said, You know, if we have  
17 to go to trial we're going to be seeking life without  
18 the possibility of parole And I explained that to  
19 Mr Collins a number of times, well prior to the  
20 point where he said that we first talked about it  
21 Because we tried to get him a better deal a number of  
22 times and Mark wouldn't budge it But he understood  
23 that his options were 30 years or go to trial and  
24 take his chances on life without parole

25 Q And clearly Mr Collins didn't take that 30 year

1 offer?

2 A No, he did not

3 Q Okay And in your opinion, after looking through the  
4 NCIC, could the State had properly enhanced it to a  
5 LWOP?

6 A Yes

7 Q And did you explain to Mr Collins how that  
8 enhancement came about? Just based on those priors

9 A Yeah, I mean, I don't think we talked specific code  
10 sections and stuff like that but I did explain to him  
11 that based upon his prior record that he was eligible  
12 for LWOP status

13 Q Mr Collins testified that at trial y'all were  
14 surprised with evidence that two of the fingerprints  
15 did not match him Can you discuss that a little?

16 A What Mark gave me was two fingerprint reports and one  
17 of them was regarding a box cutter And there was a  
18 notation on the report that said we processed it with  
19 positive results But there was nothing that said  
20 that those results were Mr Collins Now the  
21 notation that was on the report was very small or  
22 whatever So based upon that I did not make the  
23 connection that there were some fingerprints on the  
24 box cutter that did not match Mr Collins And I  
25 don't think that I realized that until we were

1           actually in the middle of trial    I raised issue with  
2           the Judge and Judge Miller said that, you know, he  
3           thought the State needed to be more clear about when  
4           they were providing exculpatory evidence    I asked  
5           for a mistrial based upon that and he did not believe  
6           that it rose to that level

7    Q    Mr Collins testified he gave you the name of a  
8           witness at the detention center to contact, do you  
9           recall that?

10   A    No, I don't recall that

11   Q    If Mr Collins gave you the name of a witness to  
12           contact, would you have attempted to contact that  
13           person?

14   A    Either I or somebody because at the time I was  
15           working under contract with the Indigent Defense and  
16           we would have had Jaycee or one of the other  
17           investigators to go down and talk to them

18   Q    You also testified that there was a potential female  
19           witness, did he tell you about that person?

20   A    He gave me the day before or the day of trial the  
21           name of an alibi witness    And I can't remember her  
22           name but it was -- it's in the record    But basically  
23           he came to court the day of trial and he had a  
24           notarized statement from her saying basically that he  
25           was at this club with her, that she was working at

1           this club during this time frame and that, you know,  
2           she was his alibi. I presented that to the Court and  
3           asked for a continuance based upon that so that we  
4           could locate her. The Court said, You know, we're  
5           going to go forward. I asked the Court's help in  
6           getting some of the deputies to locate her. And  
7           that's what the Court did.

8           In the meantime, Mark Moyer also went to talk to  
9           her. And they presented me a binder of statements  
10          from her and two or three -- two people who lived  
11          with her that said that that morning, the morning  
12          before trial, around 6 30, Steve had come to their  
13          house, had basically presented her with a piece of  
14          paper, told her what to write, had her sign it. But  
15          all the stuff that was in there was not true, that  
16          she was not in that club that night. That even  
17          though she worked there, she didn't start working  
18          there until a month after this thing happened. So  
19          based upon that we did not call her.

20       Q     Okay. And the last thing is about Mr. Collins  
21             testifying at trial. Did y'all go over prior to his  
22             testimony the risks and possible advantages of his  
23             testimony?

24       A     We did. And he wanted to testify. I mean, he asked  
25             to testify. The Judge went over those risks with him.

1 as well But he wanted to testify And quite  
2 frankly, he did a good job on the stand And the  
3 Judge even told me, Judge Miller even told me he did  
4 a good job on the stand So that's why I relayed  
5 that to him But, you know, in the end the jury  
6 didn't believe him

7 Q Obviously, this is kind of a Monday morning  
8 quarterback type of question, but can you think of  
9 anything that you wish you had done that you did not  
10 do in preparation for trial?

11 A I guess in hindsight I wish I would have caught the  
12 discrepancy about the fingerprints more Quite  
13 frankly, I really had forgotten about that But with  
14 that said, you know, the problem that we had with  
15 Steve's case was that they had a confession, they had  
16 an eye witness testimony from the lady who was  
17 robbed, they had an eye witness identification from  
18 the lady that was robbed, they had his vehicle there,  
19 they had him shortly after the incident being seen in  
20 the exact same clothing that the assailant was in,  
21 they had the weapon of choice being a box cutter with  
22 evidence that he worked at place where they gave out  
23 box cutters as part of his work I mean, it was just  
24 one of those situations where, you know, we were in a  
25 tough bind Mark knew he had a good case and he

1           wouldn't deal with us

2       Q     And you explained to Mr Collins the strength of the  
3           State's case against him?

4       A     Yes    I think -- I'm sure I told him that if we went  
5           to trial that it was extremely likely that he would  
6           be convicted

7           MS RATIGAN   That's all I have, Your Honor

8           MS HORLBECK   Just briefly

9                       CROSS-EXAMINATION

10       BY MS HORLBECK

11       Q     Mr Gibson, while you were testifying about maybe  
12           possibly wishing you'd caught the prints, do you wish  
13           that you'd caught that print because it was  
14           exculpatory and didn't match Mr Collins?

15       A     Yeah    Now with that said, I'm not sure what -- given  
16           all the other evidence, I don't know how it would  
17           have helped us    I guess maybe we could have -- I  
18           mean, what I said to the Court and what I still think  
19           now, if we could have done a match and ran it through  
20           some kind of fingerprint data base or something and  
21           found somebody else, then that might have helped  
22           But like I say the problem we had was all the other  
23           stuff

24       Q     Sure    And certainly if you had -- if there had been  
25           a match to somebody else that might have helped or

1           maybe the outcome of the trial could have been  
2           different?

3       A     Yeah     Depending on who that person was and depending  
4           on whether or not we could build a case that, you  
5           know, that there could have been some kind of mistake  
6           in identity from Steve

7       Q     Okay    And the print we're talking about was  
8           important because it was a print that was found on  
9           the box cutter, correct?

10      A     Yes

11      Q     Okay    All right    And the box cutter was something  
12           that the clerk claimed that the assailant held,  
13           correct?

14      A     Yes, they claimed that, yes

15      Q     Okay    All right

16           MS   HORLBECK   That's all I have, thank you

17           MS   RATIGAN    I have nothing further for

18   Mr   Gibson, Your Honor   And the State would rest

19           THE COURT   You may step down, Mr   Gibson

20           MR   GIBSON    Thank you, Your Honor

21           THE COURT    Anything in reply?

22           MS   HORLBECK   No, Your Honor

23           THE COURT    All right, obviously it's a  
24           voluminous transcript that I'll need to review and need to  
25           review the pleadings, review my notes   And I'll do my



1 very best to issue an Order in the next 30 days

2 Wish you the best

3 MS RATIGAN Thank you, Judge

4 MS HORLBECK Thank you, Your Honor

5 (WHEREUPON, the proceedings were concluded )

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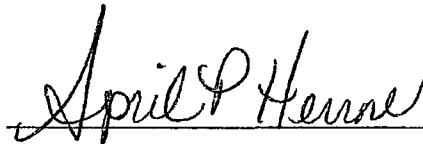
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

I, APRIL P HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 12th day of May, 2011

I do further certify that I am neither of kin, counsel nor interest to any party hereto

December 6, 2011

A handwritten signature in cursive script, reading "April P Herron", is written over a horizontal line.

APRIL P HERRON, Court Reporter

|                          |   |                              |  |
|--------------------------|---|------------------------------|--|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS |  |
|                          | ) | C A No 2009-CP-23-10469      |  |
| COUNTY OF GREENVILLE     | ) |                              |  |
|                          | ) |                              |  |
| Steven Collins,          | ) |                              |  |
| S C D C No 141257,       | ) |                              |  |
|                          | ) |                              |  |
| Applicant,               | ) |                              |  |
|                          | ) | <b>ORDER OF DISMISSAL</b>    |  |
| v                        | ) |                              |  |
|                          | ) |                              |  |
| State of South Carolina, | ) |                              |  |
|                          | ) |                              |  |
| Respondent               | ) |                              |  |
|                          | ) |                              |  |

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 10, 2009. The Respondent made its return on April 21, 2010. An evidentiary hearing into the matter was convened on May 12, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Kenneth C. Gibson, Esquire. The Court had before it the trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the Respondent's return, and the appellate records.

#### PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the February 2006 term of the Greenville County Grand Jury for armed robbery.

1 1 1

(2006-GS-23-1381, count 1) and possession of a weapon during commission of a violent crime (2006-GS-23-1381, count 2) He was represented by Kenneth C Gibson, Esquire

After the State called the case to trial, the Applicant was found guilty On September 13, 2006, the Honorable Edward W Miller sentenced the Applicant to concurrent terms of life imprisonment without parole for armed robbery and five (5) years for the weapons charge

A notice of appeal was filed at the South Carolina Court of Appeals Kathrine H Hudgins, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an Anders<sup>1</sup> brief The Court of Appeals dismissed the appeal State v Collins, Op No 2009-UP-479 (S C Ct App filed October 14, 2009)

### **ALLEGATIONS**

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel,
  - a Failure to conduct a proper investigation
- 2 Prosecutorial misconduct
  - a "Prosecutor lied "
- 3 Violation of due process
  - a "Suggestive photos were used "

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility This Court has weighed the testimony accordingly

Set forth below are the relevant findings of fact and conclusions of law as required by

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<sup>1</sup> Anders v California, 386 U S 738, 87 S Ct 1396, 18 L Ed 2d 493 (1967)

S C Code Ann § 17-27-80 (2003)

**Ineffective Assistance of Counsel**

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S C 385, 389, 570 S E 2d 172, 174 (2002)

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U S 668, 104 S Ct 2052 (1984), Porter v. State, 368 S C 378, 383, 629 S E 2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S C 115, 117-18, 386 S E 2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland v. Washington, 466 U S 668, 104 S Ct 2052).

The Applicant stated he had three (3) meetings with his attorney before trial. The Applicant stated he and trial counsel reviewed the charges, the evidence, the videotapes, statements, and his version of events. The Applicant stated this armed robbery charge was improperly enhanced to be eligible for a sentence of life without parole (LWOP). The Applicant stated that, while he received the State’s notice of intent to seek LWOP at the jail twenty (20) or thirty (30) days before trial, he first discussed it with trial counsel three (3) days before trial. The Applicant stated the solicitor made a plea offer for a thirty (30) year sentence in this case but that trial counsel did not advise him to accept the offer. The Applicant stated he told trial counsel

about several alibi witnesses but that counsel did not locate them. The Applicant stated trial counsel should have made a more specific objection to the fingerprint evidence at trial.

Trial counsel testified he filed discovery motions and reviewed those materials with the Applicant. Trial counsel testified they reviewed the Applicant's statement, incident reports, fingerprint reports, videotapes, and the Applicant's prior criminal history. Trial counsel testified the State properly enhanced the Applicant's offense to be eligible for an LWOP sentence, and that he explained this to the Applicant. Trial counsel testified he was served with the notice of intent to seek LWOP four (4) months after he was appointed. Trial counsel testified the State made a plea offer for a thirty (30) year sentence and that they would pursue LWOP if the offer was rejected. Trial counsel testified he explained this to the Applicant numerous times, but that the Applicant rejected the plea offer. Trial counsel testified he did not recall one of the alibi witnesses mentioned by the Applicant (the detention center employee) but stated he did recall the name of the female witness. Trial counsel testified the Applicant presented him with a statement from this witness on the day of trial but that, after he found her and spoke to her, the female witness recanted that statement. Trial counsel testified that, while he had received a fingerprint report before trial, he was surprised with how the evidence was presented at trial and moved for a mistrial. Trial counsel testified that, even without the fingerprint evidence, the State had a very strong case against the Applicant.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel should

have better challenged the State's notice to seek an LWOP sentence. Trial counsel testified that as part of the discovery packet he received from the State, he received a copy of the Applicant's prior criminal record. Trial counsel testified he reviewed that record and concluded the LWOP notice was proper. This Court finds the Applicant has failed to present any credible evidence that the State improperly enhanced his sentence in order to seek an LWOP sentence.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have told him to accept the thirty (30) year plea offer. Trial counsel satisfied his obligation to relay the plea offer to his client and discuss it. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance). The decision to enter a guilty plea, however, must be made by a defendant alone and counsel cannot be deemed ineffective for failing to tell his client to take a plea offer. Both the Applicant and trial counsel testified the Applicant was aware the State would seek an LWOP sentence if he rejected the offer, but that the Applicant chose to proceed to a jury trial.

This Court finds the Applicant failed to meet his burden of proving trial counsel should have investigated his alibi witnesses. This Court notes trial counsel's testimony that the female witness he spoke to recanted her statement and would not have aided the defense. This Court notes this purported alibi witness would have had serious credibility problems. Regardless, as neither of the Applicant's alleged alibi witnesses testified at the evidentiary hearing, any discussion regarding what they would have testified about at trial is purely speculative. See Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (the South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in

order to establish prejudice from the witness' failure to testify at trial ") (emphasis in original)

This Court finds the Applicant failed to meet his burden of proving trial counsel did not properly challenge the introduction of fingerprint evidence from his truck (instead of the crime scene) The Applicant argues trial counsel failed to articulate the proper grounds when he moved for a mistrial While trial counsel did testify that he could have done more with the fingerprint issue, a review of the record shows that there was overwhelming evidence of the Applicant's guilt Therefore, this Court finds the Applicant cannot prove there was a reasonable probability that the outcome of the proceedings would have been different if trial counsel had successfully excluded the fingerprint evidence from his truck See Franklin v. Catoe, 346 S C 563, 570 n 3, 552 S E 2d 718, 722 n 3 (2001) (finding overwhelming evidence of guilt negated any claim that counsel's deficient performance could have reasonably affected the result of defendant's trial), Geter v. State, 305 S C 365, 367, 409 S E 2d 344, 346 (1991) (concluding reasonable probability of a different result does not exist when there is overwhelming evidence of guilt)

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance See Frasier v. State, 351 S C at 389, 570 S E 2d at 174

#### **All Other Allegations**

As to any and all allegations that were raised in the application or at the hearing in this



matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

### CONCLUSION

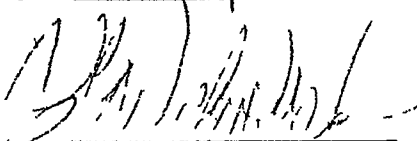
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

### **IT IS THEREFORE ORDERED:**

- 1 That the application for post-conviction relief be denied and dismissed with prejudice, and
- 2 That the Applicant be remanded to the custody of the Respondent

**AND IT IS SO ORDERED** this 8<sup>th</sup> day of July, 2011



G Edward Welmaker  
Resident Judge  
Thirteenth Judicial Circuit

Greenville, South Carolina