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SC SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

MICHAEL D. JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000012

APPENDIX

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1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3 STATE,)
4 -V-) TRANSCRIPT OF
5) RECORD
6 MICHAEL DAVID JACKSON,) 2007-GS-40-1683
7)
8 DEFENDANT.)

9

10 JUNE 22, 23 AND 25, 2009

11 RICHLAND, SOUTH CAROLINA

12

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

14 HONORABLE L. CAYCE MANNING, JUDGE; AND A JURY

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

16 FOR THE PLAINTIFF:

17 KATHRYN LUCK CAMPBELL, ESQ.

18 JOANNA MCDUFFIE, ESQ.

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20 CAROL MCCURRY, ESQ.

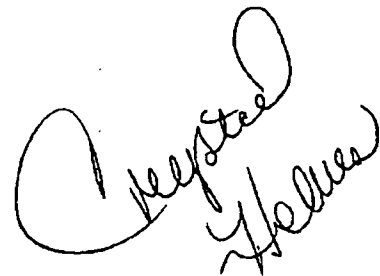
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24

25

1 (The following proceedings were
2 held on June 22, 2009.)

3 THE COURT: Well, I do hope this Monday morning
4 finds y'all well, if not happy. I'm sure I echo the same
5 sentiments, expressed by Judge Barber earlier this morning
6 in the court remember next door when he qualified you all.
7 I thank you for your patriotic participation in this
8 process, okay.

9 Is that good enough?

10 (Attorneys nodded heads.)

11 THE COURT: Now, at this time we will selected a
12 jury in the case of The State of State -- this is The State
13 of South Carolina versus Michael Jackson. Now, this is an
14 armed robbery case, ladies and gentlemen.

15 And first I asked that Mr. Michael Jackson, he's
16 the defendant, the accused in this case.

17 Mr. Michael Jackson, would you stand up and face
18 the jury panel, please, sir. Just turn around.

19 This is Mr. Michael Jackson, he's the defendant,
20 in this case.

21 Thank you, Mr. Jackson, you may take your seat,
22 sir.

23 And at this time, members of the panel, I need to
24 ask this question, any member of the jury panel related by
25 blood or connected by marriage or employment or are you a

1 close personal acquaintance of Mr. Michael Jackson who just
2 stood you, if so please.

3 (There was no response.)

4 THE COURT: Anybody out there know Michael
5 Jackson, live near Michael Jackson, work with Michael
6 Jackson, know anything about him, if so please respond.

7 (There was no response.)

8 THE COURT: Now, members of the jury panel, I have
9 a list of potential witnesses in this case, it doesn't
10 necessarily mean all of these witnesses will testify, but I
11 need to ask you the same question about any potential
12 witness that may testify in this case, and it's a rather
13 long list probably about 15 names. I'll ask the question,
14 repeat the names and I'll repeat the names again for you so
15 I ask that you listen carefully.

16 First of all, and I might have trouble pronouncing
17 some of these names it's the first time I've looked at them
18 so bear with me. The state intends to call as some
19 potential witnesses in this case Catherine is that Piersol,
20 Piersol.

21 MS. CAMPBELL: Yes, sir.

22 THE COURT: Piersol.

23 MS. CAMPBELL: Piersol.

24 THE COURT: And she's a fact witness or?

25 MS. CAMPBELL: Fact witness.

1 THE COURT: Fact witness. Catherine Piersol,
2 Michael Jaffrey Vasquez, Brandon Dupont, Rocky Murray, Keith
3 is that Wevmore?

4 MS. CAMPBELL: Wevmore.

5 THE COURT: Wevmore, W-E-V-M-O-R-E, Melissa
6 Waddell, Deputy Gerald Blackwell from Richland County
7 Sheriff's Department, Investigator David Goff of the
8 Richland County Sheriff's Department, Corporal Norman Fisher
9 of the Richland County Sheriff's Department, Sergeant Scott
10 McDonald of the Richland County Sheriff's Department,
11 Sergeant Stephen Scott Faust, F-A-U-S-T of the Richland
12 County Sheriff's Department.

13 This is Captain Faust. Captain James Stanley
14 Smith of the Richland County Sheriff's Department.

15 Is it James Stanley or James?

16 MR. SMITH: Standin, S-T-A-N-D-I-N, Your Honor.

17 THE COURT: Standy?

18 MR. SMITH: Standin.

19 THE COURT: Standin?

20 MR.: Yes, Your Honor.

21 THE COURT: Okay. James Stadin Smith of the
22 Richland County Sheriff's Department. Sergeant Kevin
23 Isenhoward of the Richland County Sheriff's Department,
24 Investigator Christopher Linder of the Richland County
25 Sheriff's Department, Sergeant Joe Ewing, I'm sorry, John

1 Ewing of the Richland County Sheriff's Department,
2 Investigator Brian Metz of the Richland County Sheriff's
3 Department, M-E-T-Z, Deputy Pearson of the Richland County
4 Sheriff's Department, Deputy Rafael Gonzalez of the Richland
5 County Sheriff's Department, Forensic Investigator Billy
6 Allen of the Richland County Sheriff's Department, Deputy
7 Robert Snuffer, S-N-U-F-F-E-R of the Richland County
8 Sheriff's Department, Deputy Mims of the Richland County
9 Sheriff's Department, Deputy David Lucas of the Richland
10 County Sheriff's Department, Captain B. Redmond, ASGDC, what
11 does that stand for?

12 MS. CAMPBELL: Alvin S. Gleen Detention Center.

13 THE COURT: All right. The Alvin S. Gleen
14 Detention Center, Officer Joli Rish of the Alven S. Gleen
15 Detention Center, Investigator Stan Richards of the Richland
16 County Sheriff's Department, now, as to all of those names
17 and I'll repeat them one more time and ask that you listen
18 carefully on the second go round.

19 Are you related by blood or connected by marriage
20 or are you -- or related by -- related by blood connected by
21 marriage or employment or are you a close personal
22 acquaintance of any of those names I just called out and I
23 will repeat them for you and I will ask that you listen
24 again and that's the question, do you know these people, are
25 you related to them, do you work with them, do you live on

1 the same street, go to church with them, that sort of thing.
2 Once again Catherine Piersol, Michael Jaffrey Vasquez,
3 Brandon Dupont, Rocky Murray, Keith Wevmore, Melissa
4 Waddell, Deputy Gerald Blackwell, Investigator David Goff,
5 Corporal Norman Fisher, Sergeant Scott McDonald, sergeant
6 Stephen Scott Faust, Captain James Stan Smith, Captain --
7 I'm sorry, Investigator Christopher Linder, sergeant Kevin
8 Isenhoward, Sergeant John Ewing, Investigator Brian Metz,
9 Deputy Pearson of the Richland County Sheriff's Department,
10 Deputy Rafael Gonzalez of the Richland County Sheriff's
11 Department, Investigator -- Forensic Investigator Billy
12 Allen of the Richland County Sheriff's Department, Deputy
13 Robert Snuffer of the Richland County Sheriff's Department,
14 Deputy Mims of the Richland County Sheriff's Department,
15 Deputy David Lucas of the Richland County Sheriff's
16 Department, Captain B. Redmond of the Alvin S. Gleen
17 Detention Center, officer Joli Rish of the Alvin S. Gleen
18 Center and Investigator Stan Richards of the Richland County
19 Sheriff's Department. And once again, are you related by
20 blood or connected by marriage or employment, are you a
21 close personal acquaintance of any of those names? You do
22 know any of these people, do you think you know any of these
23 people if so please stand.

24 (There was no response.)

25 THE COURT: You don't know any of these people?

1 That's probably a good thing.

2 (There was no response.)

3 THE COURT: Now, has any member of the jury panel
4 been a member of the grand jury here in Richland County for
5 that last two or three years, if so please stand. Any of
6 all served as grand jurors?

7 (There was on response.)

8 THE COURT: All right. Has any member of this
9 jury panel form or expressed any opinion about this case or
10 as to the guilt or innocence of Mr. Michael Jackson, if so
11 please stand.

12 (There was no response.)

13 THE COURT: Any member of this jury panel aware of
14 any bias or prejudice in connection with this case or any of
15 the parties thereto, of course, the parties will be Michael
16 David Jackson his full name and the Richland County
17 Sheriff's Department, the victims in this case, if so please
18 stand.

19 (Juror stands.)

20 THE COURT: Yes, ma'am.

21 PROSPECTIVE JUROR: You said this --

22 THE COURT: Your name please.

23 PROSPECTIVE JUROR: My name is Jose, juror number
24 eight.

25 THE COURT: Yes, sir.

1 PROSPECTIVE JUROR: And did you say this was a
2 robbery?

3 THE COURT: This is an armed robbery.

4 PROSPECTIVE JUROR: Okay. I don't think I could
5 be objective to this because I've worked in -- and I have
6 been robbed serval times.

7 THE COURT: That's fine.

8 PROSPECTIVE JUROR: So I --

9 THE COURT: Go take a seat in the back.

10 PROSPECTIVE JUROR: Thank you.

11 THE COURT: Juror number eight, right?

12 (There was no response.)

13 THE COURT: Now, I didn't read you the allegations
14 out of this and I'm sorry about that. It's an armed robbery
15 case, and what the indictment says -- and the indictment is
16 not evidence. An indictment is the way to put the defendant
17 or any citizen on notice as to specifically what they are
18 charged with.

19 And the indictment reads, That Michael Jackson did
20 in Richland County on or about February 5th of 2007 commit
21 robbery by feloniously taking from the person or presence of
22 Michael Vasquez an employee of This Is It Video and that's
23 located on Broad River Road I do believe by means of force
24 or intimidation goods or monies of This Is It Video, such
25 goods or monies being described as United States currency

1 and or credit card receipts with the intent to deprive the
2 owner permanently of such property while armed with a weapon
3 either a gun or knife or some other weapon. And y'all
4 understand what armed robbery is. Those are the specific
5 allegation that Michael Jackson is accused of robbing This
6 Is It Video located on Broad River Road I do believe back on
7 February 5th of 2007. Now, have any of y'all heard
8 anything about this particular alleged armed robbery, if so
9 please stand.

10 (There was no response.)

11 THE COURT: Now, and once again, you don't know
12 any of these potential witnesses whose names I called out,
13 is that so?

14 (There was no response.)

15 THE COURT: Okay. And do you know of any
16 reason -- juror number eight actually said he didn't think
17 he could be a fair juror in a armed robbery case, so I need
18 to ask y'all generally, other members of the panel, is there
19 any reason that you feel you can not give both the state and
20 the defendant, Mr. Jackson, a fair and impartial trial based
21 on the law and the evidence to be presented, any reason you
22 don't think you could be a fair juror, I advised you it was
23 an armed robbery case, if so please stand.

24 (There was no response.)

25 THE COURT: All right. All right, now, I have a

1 series of questions I need to ask. And once again, members
2 of the panel, I ask this question so that we can select a
3 fair and impartial jury. The jury needs to be fair to the
4 state, they need to be fair to, Mr. Jackson, the defendant
5 in this case. If there's any reason you would feel
6 uncomfortable or uneasy about sitting on this or any other
7 similar case -- on this case in particular, of course,
8 please just stand up, I mean, there's no right or wrong
9 answer, just a fair one. We want to be fair to be fair to
10 the state and we want to be fair to Mr. Jackson. So I have
11 to ask these questions in an effort to select a fair jury.
12 And I'm sure you all understand that, do you not?

13 (Jurors nodded head.)

14 THE COURT: All right, that's good. Let's see.
15 Now, is there any member of the jury panel related by blood
16 or marriage, has a family member or a close personal friend
17 with anyone employed by the Fifth Circuit Solicitor's Office
18 or the attorney general's office? Let me explain this, let
19 me do think first, the state in this case, the state in this
20 case, is being represented by Ms. Kathryn Luck Campbell.

21 (Ms. Campbell stands.)

22 THE COURT: Ms. Campbell is with the Fifth Circuit
23 Solicitor's Office and she will be assisted by Ms. Joanna
24 McDuffie from the Fifth Circuit Solicitor's Office.

25 (Ms. McDuffie stands.)

1 THE COURT: And our Fifth Circuit Solicitor is the
2 Honorable Barney Giese. So I need to ask you this question,
3 do any of y'all know Ms. McDuffie or Ms. Campbell, do you go
4 to church with them, do you work with them, have you ever
5 seen them before, have you ever been a victim of a case
6 where they were prosecuting the case, if so please stand.

7 (Jurors stand and raise their
8 hands.)

9 THE COURT: You raised your hand, your name please
10 and number.

11 PROSPECTIVE JUROR: Emilie Bartlett.

12 THE COURT: Emilie?

13 PROSPECTIVE JUROR: Bartlett, number 12.

14 THE COURT: Bartlett, number 12, yes, ma'am.

15 PROSPECTIVE JUROR: I know Luck Campbell.

16 THE COURT: Well, that could be a good thing or a
17 bad thing.

18 (Laughter)

19 THE COURT: Let me ask you this, in what capacity
20 do you know Ms. Campbell?

21 PROSPECTIVE JUROR: She's married to a friend of
22 mine.

23 THE COURT: A doctor, huh?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay. And how long have you known the

1 doctor and Ms. Campbell?

2 PROSPECTIVE JUROR: The doctor --

3 THE COURT: Don't tell me you ride horses.

4 PROSPECTIVE JUROR: No, don't ride horses.

5 THE COURT: Okay. Go ahead.

6 PROSPECTIVE JUROR: I've known her husband for 10
7 years, 11 years.

8 THE COURT: Okay. The fact that you know her
9 husband for years and Ms. Campbell through the relationship
10 with her husband I guess, would that or could that affect
11 your ability to be a fair and impartial juror in the trial
12 of this case?

13 PROSPECTIVE JUROR: I don't think.

14 THE COURT: You sure about that?

15 PROSPECTIVE JUROR: (Juror nodded head.)

16 THE COURT: Now, what's your number again?

17 PROSPECTIVE JUROR: Twelve.

18 THE COURT: Okay. Thank you, ma'am.

19 Yes, sir, your name and number please.

20 PROSPECTIVE JUROR: Raymond Foster, my number --

21 THE COURT: Foster.

22 PROSPECTIVE JUROR: Foster.

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR: Number is 79.

25 THE COURT: Yes, sir.

1 PROSPECTIVE JUROR: And my wife is employed in the
2 AG's office.

3 THE COURT: Your wife works with Henry McMaster is
4 what you're telling me?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Okay. That's all right. How long has
7 she's been employed there? I use to work there years ago,
8 so.

9 PROSPECTIVE JUROR: About four years.

10 THE COURT: Four years. The fact that your wife
11 is employed with the South Carolina Attorney's General
12 Office would that or could that affect your ability to be a
13 fair and impartial juror in the trial of this case?

14 PROSPECTIVE JUROR: I don't think so.

15 THE COURT: You sure about that?

16 PROSPECTIVE JUROR: I think so.

17 THE COURT: Thank you, sir.

18 Yes, ma'am, your name and number?

19 PROSPECTIVE JUROR: Kristen Moorman, 178.

20 THE COURT: Presten?

21 PROSPECTIVE JUROR: Kirsten.

22 THE COURT: Kirsten. Kirsten? Help me out, what
23 sort of name is Kirsten.

24 PROSPECTIVE JUROR: What kind of name?

25 THE COURT: Yeah, it's an unusual name I know that

1 much.

2 PROSPECTIVE JUROR: Scandinavin.

3 THE COURT: Ma'am?

4 PROSPECTIVE JUROR: Scandinavin.

5 THE COURT: Okay, okay. And what's your number
6 please?

7 PROSPECTIVE JUROR: 178.

8 THE COURT: Yes, ma'am, you know who?

9 PROSPECTIVE JUROR: I know Ms. Campbell but it's
10 been a long time through school.

11 THE COURT: What?

12 PROSPECTIVE JUROR: Through school.

13 THE COURT: You went to the College of Charleston.

14 PROSPECTIVE JUROR: No, I just know of her.

15 THE COURT: Okay.

16 PROSPECTIVE JUROR: But it's been awhile.

17 THE COURT: I think it was the College of
18 Charleston, I don't remember.

19 MS. CAMPBELL: Huh-hum, USC.

20 THE COURT: Oh, I'm sorry, USC. Don't --

21 So you went to Carolina too, is that right?

22 PROSPECTIVE JUROR: (The prospective juror nodded
23 head.)

24 THE COURT: So you've known her since college?

25 PROSPECTIVE JUROR: Excuse me?

1 THE COURT: You've known Ms. Campbell since
2 college?

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: All right. Would that or could that
5 affect your ability to be a fair and impartial juror in the
6 trial of this case?

7 PROSPECTIVE JUROR: I don't think so.

8 THE COURT: You sure about that?

9 PROSPECTIVE JUROR: I think so.

10 THE COURT: All right.

11 PROSPECTIVE JUROR: I'm sure.

12 THE COURT: All right. And your number again is
13 what?

14 PROSPECTIVE JUROR: 178.

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

16 I apologize, for some reason I was thinking the
17 College of Charleston, somebody else. USC, okay.

18 Now, Mr. Jackson is being represented in this case
19 by Ms. Carol McCurry.

20 Ms. McCurry.

21 (Ms. McCurry stands.)

22 THE COURT: She's the defense lawyer here.

23 Thank you, Ms. McCurry.

24 And I need to ask you, are you related to Ms.

25 McCurry, do you know her, ever worked with her, lived on the

1 same street, go to church with her or something like that,
2 if so please stand. Any of y'all know Ms. Carol McCurry, if
3 so please stand.

4 (There was no response.)

5 THE COURT: And one question I need to ask is a
6 follow up, is any member of this jury panel or a member of
7 your immediate family ever been represented by Ms. Carol
8 McCurry, if so please stand.

9 (There was no response.)

10 THE COURT: And likewise, I think I might have
11 asked this question earlier but I'll back up a little bit if
12 I didn't, any member of this jury panel or any member of
13 your immediate family ever been represented by the Fifth
14 Circuit Solicitor's Office, that means, have you ever been a
15 victim of or a member of your family ever been a victim
16 where Fifth Circuit Solicitor's Office prosecuted the case,
17 if so please stand.

18 (There was no response.)

19 THE COURT: All right. Now, this case is being
20 handled or was investigated by the Richland County Sheriff's
21 Department, that's sort of obvious. I need to ask you this
22 question, any member of this jury panel related by blood or
23 marriage, have a family member or close personal friends
24 with anyone employee by any state, local, federal or
25 military law enforcement agency, if so please stand. Do you

1 know anybody that works with SLED or highway patrol or
2 something like that or city police or FBI.

3 (Jurors stand.)

4 THE COURT: Or the CIA or anything, if so please
5 stand.

6 And yes, ma'am, on the front row with the red
7 shirt, your name and number please.

8 PROSPECTIVE JUROR: Janice Lord, 154. My
9 son-in-law is a Richland County deputy.

10 THE COURT: Your son-in-law is what?

11 PROSPECTIVE JUROR: A Richland County deputy.

12 THE COURT: A Richland County deputy sheriff's?

13 PROSPECTIVE JUROR: Uh-hum.

14 THE COURT: And how long has he worked there?

15 PROSPECTIVE JUROR: Eighteen months.

16 THE COURT: Eighteen months. The fact that -- you
17 said your son-in-law, right?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Is a deputy for the Richland County
20 Sheriff's Department for the last 18 months, would that or
21 could that affect your ability to be a fair and impartial
22 juror of the trial of this case?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: You sure about that?

25 PROSPECTIVE JUROR: Yes, sir.

1 THE COURT: You love your daughter?

2 PROSPECTIVE JUROR: Oh, yes.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR: I love him too but hey, you
5 know.

6 THE COURT: But you can be fair in this case?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Okay. Thank you ma'am.

9 Yes, sir. Your name and number please?

10 PROSPECTIVE JUROR: John Mastrovito, number 161.

11 THE COURT: Mastrovito?

12 PROSPECTIVE JUROR: Correct.

13 THE COURT: All right. And who's related?

14 PROSPECTIVE JUROR: Not related, I just work
15 with -- at the school, I work with school resource officers
16 basically.

17 THE COURT: At what school is this.

18 PROSPECTIVE JUROR: Kershaw County.

19 THE COURT: Okay. Oh with the Kershaw County
20 Sheriff's Department?

21 PROSPECTIVE JUROR: What?

22 THE COURT: As a school -- you said you worked
23 with the school resource officers over in Kershaw County?

24 PROSPECTIVE JUROR: Right.

25 THE COURT: And that would be Kershaw County

1 Sheriff's Department?

2 PROSPECTIVE JUROR: Right.

3 THE COURT: How far along, I mean, you've done
4 this?

5 PROSPECTIVE JUROR: Ten years.

6 THE COURT: Ten years. Would that or could that
7 affect your ability to be a fair juror in this case.

8 PROSPECTIVE JUROR: No, I don't think so.

9 THE COURT: You sure about that?

10 PROSPECTIVE JUROR: (The prospective juror nodded
11 head.)

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

13 Your name and number please, ma'am.

14 PROSPECTIVE JUROR: Lisa Olander.

15 THE COURT: Lisa what?

16 PROSPECTIVE JUROR: Olander.

17 THE COURT: Orlando?

18 PROSPECTIVE JUROR: Olander.

19 THE COURT: Olander?

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: What's your number please, Ms.

22 Olander?

23 PROSPECTIVE JUROR: Pardon?

24 THE COURT: Your juror number.

25 PROSPECTIVE JUROR: 189.

1 THE COURT: And who do you know in law
2 enforcement.

3 PROSPECTIVE JUROR: I have several friends.

4 THE COURT: Ma'am?

5 PROSPECTIVE JUROR: Several friends that are
6 police officers.

7 THE COURT: Where?

8 PROSPECTIVE JUROR: Different states.

9 THE COURT: Where?

10 PROSPECTIVE JUROR: Different states and here as
11 well.

12 THE COURT: Okay. How about let's, let's, start
13 with South Carolina, the sheriff's department, SLED or?

14 PROSPECTIVE JUROR: Not the sheriff's -- well, I'm
15 not sure what county they work for.

16 THE COURT: All right.

17 PROSPECTIVE JUROR: But they're somewhere in
18 Richland County?

19 THE COURT: Oh, somewhere in Richland County?

20 PROSPECTIVE JUROR: I think so.

21 THE COURT: You grew up with these friends or?

22 PROSPECTIVE JUROR: No. They're just college
23 friends.

24 THE COURT: Okay. College friends. And where did
25 you go to college?

1 PROSPECTIVE JUROR: Columbia International --

2 THE COURT: All right. Your relationship with
3 some of your friends you went to college with now work in
4 law enforcement, would that or could that affect your
5 ability to be a fair juror in the trial of this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: You sure about that?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: All right. Thank you, ma'am.
10 Yes, sir, your name and number.

11 PROSPECTIVE JUROR: My name is Chris Macdougall
12 and I'm number 158.

13 THE COURT: Yes, sir.

14 PROSPECTIVE JUROR: And both my mom and dad work
15 with the CIA.

16 THE COURT: Okay. Well, we don't want to know
17 what they do, okay.

18 (Laughter)

19 THE COURT: The fact that your mother and father
20 are employed by the Central Intelligence Agency, would that
21 or could that affect your ability to be a fair and impartial
22 juror in this case?

23 PROSPECTIVE JUROR: No, sir.

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

25 Yes, sir.

1 PROSPECTIVE JUROR: Sarah Peninger, 204.

2 THE COURT: Yes, ma'am.

3 PROSPECTIVE JUROR: I teach private school lessons
4 and one of my student's fathers is a South Carolina Highway
5 Patrolman.

6 THE COURT: One of your students that you teach
7 piano to is a South Carolina Highway Patrolman.

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Okay. That's all right. Would that
10 or could that affect your ability to be a fair juror in this
11 case?

12 PROSPECTIVE JUROR: No, no, not at all.

13 THE COURT: All right. Thank you, ma'am.
14 Yes, sir, your name and number please?

15 PROSPECTIVE JUROR: Daniel Wells, juror number
16 286.

17 THE COURT: Daniel Web?

18 PROSPECTIVE JUROR: Wells, W-E-L-L-S.

19 THE COURT: All right, junior. And who do you
20 know in law enforcement?

21 PROSPECTIVE JUROR: I am a member, I am a sergeant
22 in the national guards state law enforcement, sir.

23 THE COURT: Well, I need you to back up and slow
24 down a little bit. What did you just say?

25 PROSPECTIVE JUROR: The question you asked was

1 there armed forces.

2 THE COURT: Yeah.

3 PROSPECTIVE JUROR: Yeah, I am a member.

4 THE COURT: Of what?

5 PROSPECTIVE JUROR: The armed forces.

6 THE COURT: Okay, the armed forces. Were you an
7 MP or something like that?

8 PROSPECTIVE JUROR: No, sir. In the national
9 guards. We had to ride with several different agencies
10 and -- in various avenues.

11 THE COURT: All right. Well, your connection with
12 the armed forces, would that or could that affect your
13 ability to be a fair juror in this trial?

14 PROSPECTIVE JUROR: No, sir.

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

16 PROSPECTIVE JUROR: Thank you.

17 THE COURT: All right. You don't need to stand up
18 again.

19 But has any member of the jury panel ever been
20 employed by any state, local, federal or military law
21 enforcement agency, if so please stand. Anybody been an MP
22 or something like that?

23 (Jurors stands.)

24 THE COURT: Yes, sir, your name and number please.

25 PROSPECTIVE JUROR: Juror 108, Aaron Hayes. I

1 worked for six months in -- County in the 16th Circuit
2 Solicitor's Office.

3 THE COURT: Really?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Who was the solicitor then?

6 PROSPECTIVE JUROR: Tommy Pope was the solicitor
7 then.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: That was a couple years ago.

10 THE COURT: Yeah, I, I, know Tommy. I remember
11 his father was the sheriff's over there.

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: All right. Would having work there
14 for six months with Tommy Pope in York County and what
15 circuit is that?

16 PROSPECTIVE JUROR: That the sixteenth.

17 THE COURT: Yeah, would that or could that affect
18 your ability to be a fair juror in this case?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: Are you sure about that?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right, thank you, sir.

23 Yes, ma'am, your name and number?

24 PROSPECTIVE JUROR: Your Honor, I am juror number
25 176 and I previously worked as an assistant solicitor in

1 Horry County.

2 THE COURT: I remember you. You know Ralf Wilson?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: All right. How long ago did you work
5 there?

6 PROSPECTIVE JUROR: I left there in '96.

7 THE COURT: All right. And you were a prosecutor?

8 PROSPECTIVE JUROR: I was then.

9 THE COURT: Okay. And you left in '96, you were
10 what -- five years, ten years, how long?

11 PROSPECTIVE JUROR: I was there approximately four
12 years or so.

13 THE COURT: All right. Would that connection that
14 work relationship down in Horry County affect your ability
15 to be a fair and impartial juror in the trial of this case.

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Are you sure about that?

18 PROSPECTIVE JUROR: I'm sure.

19 THE COURT: All right, thank you.

20 Now, any member of the jury panel or member of
21 your immediate family a contributor to any organization that
22 has as it's primary purpose the prevention of crime or
23 advocacy as such as MAD, SAD, KAVE or KADRE, if so please
24 stand, that makes sense? You want me to repeat that
25 question?

1 (Jurors laugh.)

2 THE COURT: Some of y'all look stumped. Let me
3 repeat it. Any member of the jury panel or a member of your
4 immediate family, a contributor to, do you give money to
5 SAD, MAD, KADRE, that sort of thing, to any organization
6 that has as its primary purpose the prevention of crime or
7 advocacy of victim's right such as MAD, SAD, KAVE or KADRE,
8 if please stand.

9 (Jurors stand.)

10 THE COURT: That's all right. Yes, ma'am, your
11 name and number please, ma'am.

12 PROSPECTIVE JUROR: I'm Rebecca Clark, I'm number
13 42.

14 THE COURT: Yes, Ms. Clark.

15 PROSPECTIVE JUROR: I was employed with mothers
16 against drunk drivers back in 1991.

17 THE COURT: What Law Hudson still there?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Okay. All right. Would that or could
20 that affect your ability to be a fair juror in this case?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: All right. Thank you.

23 Yes, ma'am, your name and number?

24 PROSPECTIVE JUROR: Juror 2-7-9, Karen Tucker. I
25 have given money in the past to MAD I just --

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: Thought --

3 THE COURT: I won't ask you how much, but how long
4 ago was it?

5 PROSPECTIVE JUROR: I don't know, in the past few
6 years.

7 THE COURT: Okay. Would that or could that affect
8 be ability to be a fair juror in this case?

9 PROSPECTIVE JUROR: No.

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

11 Now, does any member of this jury panel or a
12 member of your immediate family have any ownership interest
13 in This Is It Video located at 2838 Broad River Road or,
14 excuse me, and I'll back up. Is any member of this jury
15 panel a member or a member of your immediate family have any
16 interest in This Is It Video located at 2831 Broad River
17 Road Columbia or any or This Is It franchise, if so please
18 stand. Anybody have any stock or any ownership interest in
19 This Is It Video, if so please stand.

20 (There was no response.)

21 THE COURT: Do you have any business relationship
22 with This Is It Video located on Broad River Road or any of
23 your family members, if so please stand.

24 (There was no response.)

25 THE COURT: Any member of this jury panel or

1 member of your immediate family do y'all do business with
2 This Is It Video located on Broad River Road, have you ever
3 done business or rented any video from out there, if so
4 please stand.

5 (There was no response.)

6 THE COURT: Now, this -- some questions are
7 sensitive and I don't know any other ways to answer them or
8 ask them. As any number of this jury panel or member of
9 your immediate family ever been accused of an armed robbery
10 or armed robbery of a video store or magic mart or something
11 like that, if so please stand. And if you have to stand up
12 you can come down and talk to me privately, if somebody you
13 know or family member has been arrested or convicted of such
14 an offense, if so please stand, all right.

15 (Jurors stand.)

16 THE COURT: Come on down here.

17 (Whereupon the following bench
18 conference with the court,
19 counsel, and the juror is
20 reported.)

21 THE COURT: How are you doing? Come on up and
22 your name and number.

23 PROSPECTIVE JUROR: Tameka Davis.

24 THE COURT: And Ms. Davis --

25 THE CLERK: Juror 61.

1 THE COURT: And what happened?

2 PROSPECTIVE JUROR: Back in the '90's my brother
3 was convicted of -- robbery.

4 THE COURT: Okay, what --

5 PROSPECTIVE JUROR: Breaking and entering.

6 THE COURT: Okay. Was it here or some place else?

7 PROSPECTIVE JUROR: It was here in Columbia,
8 Richland County.

9 THE COURT: All right. And what is your number?

10 PROSPECTIVE JUROR: 61.

11 THE COURT: All right. Would that or could that
12 prevent you from being a fair juror in this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Okay.

15 Y'all get that?

16 (Counsel nodded heads.)

17 THE COURT: Okay. Thank you.

18 (The bench conference was
19 concluded.)

20 I want y'all to relax. I'm going to pick a jury,
21 I'm then going to send y'all to eat, so don't, don't worry
22 about it. You're going to get you lunch in just a little
23 bit.

24 Now, is member of this jury panel or any member of
25 your immediate family ever been a witness in an armed

1 robbery case where somebody was robbed or carjacking or
2 something like that, if so please stand.

3 (There was no response.)

4 THE COURT: No, okay. Any member of the jury
5 panel or member of your immediate family involved in any
6 capacity with any case currently pending in criminal court
7 here in Richland County, if so please stand. Are you a
8 victim or has a member of your family been accused of
9 anything, if so please respond.

10 (There was no response.)

11 THE COURT: Has any member of the jury panel heard
12 anything about this case other than what I've told you this
13 morning, if so please respond.

14 (There was no response.)

15 COURT: Any member of this jury panel would tend
16 to believe a witness for the state over a witness for the
17 defense for any particular reason, if so please stand. Will
18 you be more inclined to believe a witness called by the
19 state over a witness called by the defense in this case, if
20 so please respond.

21 (There was no response.)

22 THE COURT: Okay. Now, has any member of jury the
23 panel or a member of your immediate family ever been
24 employed as a cashier at a store, in particular a video
25 place but any store where a robbery might have occurred, if

1 so please stand.

2 (Juror stands.)

3 THE COURT: Yes, ma'am. Do you need to come down
4 to talk with me privately?

5 PROSPECTIVE JUROR: Years and years ago my parents
6 owned a liquor store in Charleston and they were robbed.

7 THE COURT: Okay. How long ago would you said 20
8 years ago, ten years ago?

9 PROSPECTIVE JUROR: At least 25.

10 THE COURT: Okay. And that's before you were
11 born. I should not ask that question.

12 PROSPECTIVE JUROR: No, but thank you.

13 THE COURT: Would that or could that affect your
14 ability to be a fair juror in this case?

15 PROSPECTIVE JUROR: No.

16 THE COURT: All right. And what's your number
17 again?

18 PROSPECTIVE JUROR: I'm sorry, 279.

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

20 I might have already asked this sort of but I'll
21 ask this question, has any member of the jury panel or
22 member of their family ever been a victim of a crime of
23 violence like a robbery, an assault or something like that,
24 if so please stand.

25 (Juror stands.)

1 THE COURT: And you may come down and talk with me
2 privately, ma'am. Anybody else, if so please stand.

3 (There was no response.)

4 THE COURT: All right.

5 (Whereupon the following bench
6 conference with the court,
7 counsel, and the juror is
8 reported.)

9 PROSPECTIVE JUROR: How you doing?

10 THE COURT: Good afternoon, I would say morning.

11 PROSPECTIVE JUROR: Good afternoon, Your Honor,
12 how are you? I'm Vinnie Richardson.

13 THE COURT: Ms. Richardson.

14 PROSPECTIVE JUROR: Number 227.

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR: I have a bother that --

17 THE COURT: A brother --

18 PROSPECTIVE JUROR: Was murdered at -- in August
19 of 2004.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: He was a murdered victim and I
22 also had a niece that was murder in 2003, a 18 month old
23 Lakeisha -- I'm sorry.

24 THE COURT: That's all right.

25 PROSPECTIVE JUROR: Lakeisha Hickman. So I do

1 have two murdered victims.

2 THE COURT: Now, these terrible experiences, would
3 if effect your ability to be a fair juror? This is an armed
4 robbery case.

5 PROSPECTIVE JUROR: I don't, I don't, think it
6 will affect me.

7 THE COURT: All right. Y'all got enough?

8 MS. MCDUFFIE: Can you, can you, just ask if our
9 office handled the offenses.

10 THE COURT: Huh?

11 MS. MCDUFFIE: If your office handled those.

12 THE COURT: Did the Fifth Circuit Solicitor's
13 Office handle --

14 PROSPECTIVE JUROR: I -- yes, as a matter of fact,
15 it's still ongoing due to the fact that one of the guys that
16 murdered my brother is doing time down in Florida, and it's
17 still a pending case.

18 THE COURT: Oh, yeah, okay. All right, thank you.

19 PROSPECTIVE JUROR: Okay.

20 THE COURT: All right. If she's actually picked I
21 would suggest that you make a motion for cause and we'll
22 take it up a little later.

23 MS. MCCURRY: Okay. Don't go anywhere.

24 Yes, ma'am. And your name and number please.

25 PROSPECTIVE JUROR: My name is Sharon Murray --

1 y'all.

2 THE COURT: Come on up.

3 PROSPECTIVE JUROR: 184.

4 THE COURT: Yes, ma'am.

5 PROSPECTIVE JUROR: I was robbed at gun point --

6 THE COURT: You have a what?

7 PROSPECTIVE JUROR: Me and my mother.

8 THE COURT: You and your mother?

9 PROSPECTIVE JUROR: Uh-huh.

10 THE COURT: How long ago was it?

11 PROSPECTIVE JUROR: Maybe, a year and a half.

12 THE COURT: Year and a half, is it still pending,
13 has it been resolved?

14 PROSPECTIVE JUROR: I don't think they ever caught
15 the person.

16 THE COURT: And it happened here in Richland
17 County?

18 PROSPECTIVE JUROR: Uh-huh.

19 THE COURT: Okay.

20 MS. MCCURRY: What was her number again?

21 THE COURT: 184.

22 Would that experience affect your ability to be a
23 fair juror in this case?

24 PROSPECTIVE JUROR: Huh-uh.

25 THE COURT: Are you sure about that?

1 PROSPECTIVE JUROR: (The prospective juror nodded
2 head.)

3 THE COURT: Thank you.

4 PROSPECTIVE JUROR: Okay.

5 THE COURT: Yes. Hey, how you doing? Come on up.
6 Your name and number please. Come on up a little closer.

7 PROSPECTIVE JUROR: Lisa Olander.

8 THE COURT: Yes, ma'am.

9 PROSPECTIVE JUROR: 189, my mom was carjacked.

10 THE COURT: Uh-huh.

11 PROSPECTIVE JUROR: And then we've been stolen
12 from before.

13 THE COURT: Okay. How long ago did your mother
14 get carjacked?

15 PROSPECTIVE JUROR: Umm...

16 THE COURT: Two years ago, five years ago?

17 PROSPECTIVE JUROR: It was --

18 THE COURT: Huh?

19 PROSPECTIVE JUROR: No, it was like seven.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: And it was, it was, in another
22 country.

23 THE COURT: In what country?

24 PROSPECTIVE JUROR: Kenya.

25 THE COURT: Kenya?

1 MS. MCDUFFIE: Uh-hum.

2 THE COURT: Okay. Would that or could that affect
3 your ability to be a fair juror in this case?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Are you sure about that?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: All right, thank you.

8 Good morning or afternoon, I'm sorry.

9 PROSPECTIVE JUROR: Number 204.

10 THE COURT: Yes, ma'am.

11 PROSPECTIVE JUROR: Vigrina Peninger. When I was
12 in ninth grade my grandmother was attacked in her back yard
13 in Gainesville, Florida and was murdered.

14 THE COURT: Sorry to hear that.

15 PROSPECTIVE JUROR: So --

16 THE COURT: -- County.

17 PROSPECTIVE JUROR: Right.

18 THE COURT: Would that or could that affect your
19 ability --

20 PROSPECTIVE JUROR: No --

21 THE COURT: To be a fair juror in this armed
22 robbery case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: I'm sorry about your grandmother.

25 PROSPECTIVE JUROR: Thank you.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR: Uh-huh.

3 THE COURT: Did y'all get that?

4 MS. MCDUFFIE: Uh-huh.

5 MS. MCCURRY: Uh-huh.

6 THE COURT: Come on up, good afternoon.

7 PROSPECTIVE JUROR: Number 236, Bonnie Rye. My --

8 I'm sorry, my husband's cousin was accused of murder.

9 THE COURT: Was accused of murder.

10 PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: How long ago was that?

12 PROSPECTIVE JUROR: Four years, five years.

13 THE COURT: Okay. And the case -- is it over
14 with, the case?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Okay. It's still pending?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. Would that affect your ability
19 to be a fair juror in this case?

20 PROSPECTIVE JUROR: No.

21 THE COURT: You sure about that?

22 PROSPECTIVE JUROR: I'm almost positive, yes.

23 THE COURT: Okay. All right, thank you. You're
24 one?

25 PROSPECTIVE JUROR: 236.

1 THE COURT: 236, thank you, ma'am.

2 PROSPECTIVE JUROR: Thank you.

3 THE COURT: Yes, sir, Billy.

4 Hey, come on up.

5 PROSPECTIVE JUROR: I was --

6 THE COURT: Your name and number.

7 PROSPECTIVE JUROR: Christin Bradshaw.

8 THE COURT: Yes, Ms. Bradshaw.

9 PROSPECTIVE JUROR: Number 22. I was engaged to
10 someone who killed himself in my driveway and they had to
11 compensate my weapon to make sure --

12 THE COURT: Okay.

13 PROSPECTIVE JUROR: I wasn't involved because --

14 THE COURT: So your boyfriend committed suicide?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: I'm sorry to hear that.

17 PROSPECTIVE JUROR: It's okay.

18 THE COURT: How long ago was it?

19 PROSPECTIVE JUROR: 2004.

20 THE COURT: Okay. And would that experience
21 affect your ability to be a fair juror in this case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Okay. All right, thank you.

24 (The bench conference was
25 concluded.)

1 THE COURT: All right. I might have always asked
2 this question but I will ask it, is any member of the jury
3 panel or a member of their family ever been charged or
4 convicted in a crime of violence, I think I might have
5 covered that, have I?

6 (There was no response.)

7 THE COURT: If so please stand, anybody?

8 (There was no response.)

9 THE COURT: All right. I think I've asked number
10 three probable I think, about Ms. McCurry, anybody been
11 represented by her?

12 (There was no response.)

13 THE COURT: And I think I covered number four too.
14 Is that fair enough, Ms. McDuffie, you looked.

15 MS. MCDUFFIE: Yes, Your Honor.

16 THE COURT: All right. Any other voir dire on
17 behalf of Mr. Jackson, Ms. McCurry?

18 MS. MCCURRY: None, Your Honor.

19 THE COURT: Any on behalf of the state?

20 MS. CAMPBELL: No, sir.

21 THE COURT: All right. You may give us the jury.

22 THE CLERK: Ladies and gentlemen of the jury
23 panel, as I call your name please come to the microphone
24 located here at the center of the courtroom. At the
25 microphone please state your name and place of occupation.

1 Juror number 22, Christin Bradshaw (white male).

2 PROSPECTIVE JUROR: My name is Christin Bradshaw,

3 I'm a GE instructor at Fort Jackson, South Carolina.

4 THE CLERK: What says the state?

5 MS. CAMPBELL: Please present the juror.

6 THE CLERK: What says the defense?

7 MS. MCCURRY: Please swear the juror.

8 THE CLERK: Please have a seat in the jury box.

9 Juror number 12, Emilie Bartlett (white female).

10 PROSPECTIVE JUROR: Emilie Bartlett Palmetto

11 Patricians, I'm a patrician.

12 THE COURT: What says the state?

13 MS. CAMPBELL: Please present the juror.

14 THE CLERK: What says the defense?

15 MS. MCCURRY: Please strike this juror.

16 THE CLERK: Please return to the back of the

17 courtroom.

18 Jury number 42, Rebecca Clark.

19 THE COURT: 42?

20 THE CLERK: 42.

21 PROSPECTIVE JUROR: Rebecca Clark Health and Human

22 Services (white female).

23 THE COURT: What says the state?

24 MS. CAMPBELL: Please present the juror.

25 THE CLERK: What says the defense?

1 MS. MCCURRY: Please strike this juror.

2 THE CLERK: Please return to the back of the
3 courtroom.

4 Jury number 279, Karen Tucker (white female).

5 PROSPECTIVE JUROR: Karen Tucker, St. Josephe's
6 Catholic School.

7 THE CLERK: What says the state?

8 MS. CAMPBELL: Please present the jury.

9 THE CLERK: What says the defense?

10 MS. MCCURRY: Please strike this juror.

11 THE CLERK: Please return to the back of the
12 courtroom.

13 Jury number 204, Sarah Peninger (white female).

14 PROSPECTIVE JUROR: I'm Sarah Vigrina Peninger and
15 I'm employed by the University of South Carolina, School of
16 Business.

17 THE CLERK: What says the state?

18 MS. CAMPBELL: Please present the juror.

19 CLERK: What says the defense?

20 MS. MCCURRY: Please strike this juror.

21 THE CLERK: Please return to the back of the
22 courtroom.

23 Juror number 139, Tracie Jones (black female).

24 PROSPECTIVE JUROR: I'm Tracie Jones and I clerk
25 -- coordinator and we have our own business.

1 THE CLERK: What says the state?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MS. MCCURRY: Please swear the juror.

5 THE CLERK: Please have a seat in the jury box.

6 Jury number 138, Lizbeth Jones (white female).

7 PROSPECTIVE JUROR: My name is Lizbeth Jones, I'm
8 a prekindergarten teacher at Hammon School.

9 THE COURT: What says the state?

10 MS. CAMPBELL: Please present the juror.

11 THE CLERK: What says the defense?

12 MS. MCCURRY: Please swear the juror.

13 THE CLERK: Please have a seat in the jury box.

14 Jury number 284, Gloria Washington (black female).

15 PROSPECTIVE JUROR: My name is Gloria Washington,
16 and I work for AT&T services.

17 THE CLERK: What says the state?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MS. MCCURRY: Please swear this juror.

21 THE CLERK: Have a seat in the jury box.

22 Jury number 292, Myles Williams (white male).

23 PROSPECTIVE JUROR: I'm Myles Williams, and I work
24 at Central Carolina Technical College in Sumter.

25 THE CLERK: What says the state?

1 MS. CAMPBELL: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. MCCURRY: Please swear this juror.

4 THE CLERK: Please have a seat in the jury box.

5 Jury number 161, John Mastrovito (white male).

6 PROSPECTIVE JUROR: John Mastrovito Assistant
7 Principle Kershaw County Schools.

8 THE CLERK: What says the state?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: What says the defense?

11 MS. MCCURRY: Please swear the juror.

12 CLERK: Please have a seat in the jury box.

13 Jury number 65, Angela Duffie (white female).

14 PROSPECTIVE JUROR: Angela Duffie, I work at the
15 Control General's Office State of South Carolina.

16 THE CLERK: What says the state?

17 MS. CAMPBELL: Please present the juror.

18 THE CLERK: What says the defense?

19 MS. MCCURRY: Please strike this juror.

20 THE CLERK: Please return to the back of the
21 courtroom.

22 Jury number 199, Rhonda Paschal (white female).

23 PROSPECTIVE JUROR: Yes, I'm Rhonda Paschal. I'm
24 employed at AC Flora High School as a music teacher in
25 Richland District One.

1 THE CLERK: What says the state?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MS. MCCURRY: Your Honor, move to strike her for
5 cause.

6 THE COURT: Y'all approach.

7 (Whereupon, a bench conference
8 was held off the record, in the
9 presence of the jury, but out of
10 the hearing of the jury.)

11 THE COURT: It's all right.

12 MS. MCCURRY: Please strike this juror.

13 THE COURT: All right.

14 THE CLERK: Please return to the back of the
15 courtroom.

16 Jury number 130, Lorren Jackson (white male).

17 PROSPECTIVE JUROR: My name is Lorren Jackson, I'm
18 retired military and retired from Richland School District
19 One.

20 THE CLERK: What says the state?

21 MS. CAMPBELL: Please present the juror.

22 THE CLERK: What says the defense?

23 (pause).

24 MS. MCCURRY: Please strike this juror.

25 THE CLERK: Please return to the back of the

1 courtroom.

2 Jury number 184, Sharon Murray (black female).

3 PROSPECTIVE JUROR: Sharon Murraray, Senior --

4 Specialest at Colonial Life Insurance Company.

5 THE CLERK: What says the state?

6 MS. CAMPBELL: Please present the juror.

7 THE CLERK: What says the defense?

8 MS. MCCURRY: Please strike this juror.

9 THE CLERK: Please return to the back of the
10 courtroom.

11 Jury number 291, Monica Williams (white female).

12 PROSPECTIVE JUROR: Monica Williams, I'm a teacher
13 at Irmo High School.

14 THE CLERK: What says the state?

15 MS. CAMPBELL: Please present the juror.

16 THE CLERK: What says the defense?

17 MS. MCCURRY: Please swear this juror.

18 THE CLERK: Please have a seat in the jury box.

19 Jury number 289, Joel Williams (black female).

20 PROSPECTIVE JUROR: I'm Joel Williams, and I work
21 a Palmetto Health Baptist and I'm a health information
22 specialist.

23 THE CLERK: What says the state?

24 MS. CAMPBELL: Please present the juror.

25 THE CLERK: What says the defense?

1 MS. MCCURRY: Please swear this juror.

2 THE CLERK: Please have a seat in the jury box.

3 Jury number 43, Christine Clements (white female).

4 PROSPECTIVE JUROR: Christine Clements, homemaker.

5 THE CLERK: What says the state?

6 MS. CAMPBELL: Please present the juror.

7 THE CLERK: What says the defense?

8 MS. MCCURRY: Please swear this juror.

9 THE COURT: Please have a seat in the jury box.

10 Juror number 270, Stephen Taylor (white male).

11 PROSPECTIVE JUROR: Stephen Taylor, I just

12 graduated from Clemson University.

13 THE COURT: What?

14 PROSPECTIVE JUROR: I just graduated from Clemson

15 University.

16 THE COURT: Okay, go ahead.

17 (Laughter.)

18 THE CLERK: What says the state?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the defense?

21 MS. MCCURRY: Please strike this juror.

22 THE CLERK: Please return to the back of the

23 courtroom.

24 Juror number 154, Janice Lord (white female).

25 PROSPECTIVE JUROR: Janice Lord, I'm a teaching

1 assistant in Richland Two.

2 THE CLERK: What says the state?

3 MS. CAMPBELL: Please excuse the juror.

4 THE CLERK: Please return to the back of the
5 courtroom.

6 Juror number 264, Robert Stutts (white male).

7 PROSPECTIVE JUROR: Robert, excuse me, Robert
8 Stutts, I teach in Richland School District two.

9 THE CLERK: What says the state?

10 MS. CAMPBELL: Please present the juror.

11 THE CLERK: What says the defense?

12 MS. MCCURRY: Please seat this juror.

13 THE CLERK: Please have a seat in the jury box.

14 Juror number 255, Michelle Smith (white female).

15 PROSPECTIVE JUROR: Michelle Smith and currently a
16 student.

17 THE CLERK: What says the state?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MS. MCCURRY: Please present this juror.

21 THE CLERK: Please have a seat in the jury box.

22 Juror number 165, Carol Megarry (white female).

23 PROSPECTIVE JUROR: Carol Megarry, Sandhills
24 Middle School.

25 THE CLERK: What says the state?

1 MS. CAMPBELL: Please present the juror.

2 THE CLERK: What says the defense?

3 MS. MCCURRY: Please seat this juror.

4 THE CLERK: Please have a seat in the jury box.

5 THE COURT: We'll take one, two and one.

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE CLERK: Juror number 176 Celeste Moore (black
8 male).

9 PROSPECTIVE JUROR: I'm Celeste Moore I'm an
10 attorney with the office of -- general counsel, DSS.

11 THE CLERK: What says the state?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MS. MCCURRY: Please strike the juror.

15 CLERK: Please return to the back of the
16 courtroom.

17 Juror number 286, Daniel Wells (black male).

18 PROSPECTIVE JUROR: Daniel Wells, truck driver
19 with City of Columbia, I work at the distribution for
20 Wal-Mart and national guards.

21 THE CLERK: What says the state?

22 MS. CAMPBELL: Please present the juror.

23 THE CLERK: What says the defense?

24 MS. MCCURRY: Please strike this juror.

25 THE COURT: Please return to the back of court

1 room.

2 Juror number 120, Jessica Horne (white female).

3 PROSPECTIVE JUROR: Jessica Horne, third grade
4 teacher Richland School District Two.

5 THE CLERK: What says the state?

6 MS. CAMPBELL: Please present the juror.

7 THE CLERK: Does the defense challenge for cause?

8 MS. MCCURRY: No.

9 THE CLERK: Please have a seat in the jury box.

10 THE COURT: All right. Any matters need to be
11 taken up at this time in connection with the selection of
12 the jury, anything from the state?

13 MS. CAMPBELL: Beg the Court's indulgence.

14 THE COURT: All right.

15 MS. CAMPBELL: Nothing from the state, Your Honor.

16 THE COURT: Anything from the defense?

17 MS. MCCURRY: Nothing from the defense, Your
18 Honor.

19 MS. CAMPBELL: All right. To the remaining
20 members of the jury panel I'd like to take this opportunity
21 to thank you myself. I'm sure Judge Barber did this morning
22 for your patriotic service as jurors. You know, a
23 government of the people, by the people and for the people
24 cannot exist without the people.

25 Now, I even mean people that went to Clemson, son,

1 by the way.

2 (Laughter)

3 MS. CAMPBELL: I want to thank you all. You
4 probably going to be free to go for the rest of the day, I'm
5 guessing. We only have two judges here this -- today and
6 this week. Judge Barber picked a jury already in a civil
7 case so I think y'all will be allowed to go home today, I'm
8 not sure but I think you will be able to leave for the rest
9 of the day.

10 Where's Jim, is he here.

11 MR. TRUITT: That's true.

12 THE COURT: Will they be allowed to go home for
13 the rest of the day, Jim, yes or no?

14 MR. TRUITT: Call in the morning.

15 THE COURT: All right.

16 MR. TRUITT: Yes, sir.

17 THE COURT: So thank you all so very much, I wish
18 you a very pleasant evening, thank you. Yeah, you got to go
19 to the jury room first.

20 (The remaining jury plane
21 retires from the courtroom at
22 1:50 p.m.)

23 THE COURT: All right. To the members of this
24 particular jury, I got good news and I got bad news for you,
25 what would you like to hear first?

1 PROSPECTIVE JUROR: Bad.

2 THE COURT: There's never any bad news. All
3 right. But we have enough pretrial matters, that is matters
4 I've got to hear regarding the law before we can get started
5 with this trial, it will take us to the rest of the day,
6 it's already 2 o'clock. By the time I send you to lunch for
7 an hour, hour and a half, you know, the day will be almost
8 over with.

9 So I've got to tell you this at the beginning of
10 this trial, and this you will hear me say the same thing
11 throughout the course of this trial, please don't talk about
12 this case in anyway shape or form, I could you know very
13 little if anything about it at this particular time. But
14 it's important for the State of South Carolina and for
15 Mr. Michael Jackson, the defendant, that you not discuss
16 this case in anyway shape or form. The time to do so will
17 be at the very end, once you've heard all of the evidence,
18 once you've heard the arguments from the lawyers, the state
19 as well as Ms. McCurry. And I say Ms. McCurry, it is
20 McCurry.

21 MS. MCCURRY: Yes, sir, that's correct.

22 THE COURT: Yeah. On behalf of Mr. Jackson. And
23 I tell you what the law is that applies to this particular
24 matter. Until then it will be unfair for you to talk about
25 it among yourselves as well as with other people, your

1 relatives, friends, anybody you might be living with. So
2 that's our system and so I'd ask that you abide by those
3 rules that we all abide, don't talk about it in anyway shape
4 or form.

5 Now, what I'm going to ask you to do is I'm going
6 to send you home for the rest of the day and ask that you be
7 back at 9 o'clock in the morning. And when you come back at
8 9 o'clock in the morning you need to come back to this jury
9 room that the bailiff, Mr. Gillyard, will show you that
10 you'll use for the rest of this trial.

11 Now, I anticipate it might take two and a half or
12 three days, we will probably go all day tomorrow, Tuesday,
13 no, no, I'm sorry, we go to Tuesday. I anticipate going
14 until about two, maybe, three, probable 2 o'clock. There's
15 a good chance we might work through lunch. We want work at
16 all Wednesday because of an prior engagement that I'm, I
17 mean, it has nothing to do with y'all, the lawyers. It has
18 everything to do with me. I won't be here Wednesday and so
19 we think we can get a lot of it in tomorrow and we should
20 finish it we'll have a good chance to finish it Thursday
21 evening, I might want to go a little bit late Thursday. I'm
22 trying to give y'all a heads up. I can't tell you exactly
23 what's going to happen but we have enough pretrial matters
24 to take us through the rest of the day so I'm going to send
25 you home. We'll probably work start at nine and probably

1 work through lunch, go to about one or two then I'll stop
2 for the day. And then we'll resume Thursday morning when we
3 hope to finish most of everything Thursday sometime but
4 there's a chance we may not, I don't know. But it's going
5 to be close as to whether or not we can finish this case by
6 Thursday evening or so Thursday afternoon, late Thursday
7 afternoon. Are y'all with me so far? And if we don't we'll
8 finish it up Friday sometimes, but it's not a very long case
9 because of prior commitments it's going to be a little bit
10 disjointed. So I'm going to asked for your patience and
11 understanding at the very beginning.

12 The main thing now, is go home, relax forget about
13 everything that happened this morning and come back tomorrow
14 morning. Be in the jury room at 9 o'clock, I'm going to
15 start everything then, okay. Thank you all so very much,
16 the bailiffs will show you have to get in and how to get out
17 and how to get back in the morning, good luck to you.

18 (The jury retires from the
19 courtroom at 1:52 p.m.)

20 THE COURT: And if I fail to ask this every time,
21 you know, any exceptions or additions, y'all every time we
22 brake remember that in the back of your mind if there's
23 something I forget to tell them or I need to tell them, just
24 let me know. Let's take about an hour, let's come back at 3
25 o'clock. I know y'all kind of tired and it's been a strange

1 morning so let's come back at 3 o'clock.

2 (Whereupon a luncheon recess was
3 held.)

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: May it please the court, Your
6 Honor. One thing came to my attention over lunch, my law
7 clerk, Justin, after the jury had been seated he recognized
8 one of the jurors, the young lady in the middle of the front
9 row. He has a swim team he teaches in the evenings and
10 apparently, two of her children are on -- recently joined
11 his swim team, he has talked to her before. I turned that
12 over to the defense. I'm going to make sure he's not in
13 here anymore when the jury is here. I don't even think
14 she's seen him yet or has anything -- and she wouldn't know
15 necessarily that he works here because he's just the swim
16 team coach.

17 THE COURT: Well, we'll talk it up tomorrow
18 morning with the juror if we have to so. I'm going to let
19 you think about it, talk with Mr. Jackson about it. And I
20 can sort of you know anybody here, you sure? You know, I
21 could mention the name, we'll see. It's probably innocuous
22 but we'll make sure for his benefit that nothing --

23 MS. CAMPBELL: But just for the record too, he
24 does have swim team practice tonight.

25 THE COURT: Okay. And she's got two children on

1 the swim team?

2 MS. CAMPBELL: Apparently they just started about
3 two weeks ago.

4 THE COURT: Well, we got an alternate. We'll see
5 what happens.

6 MS. CAMPBELL: Yeah, and plus I don't think she
7 even knows he works here.

8 THE COURT: All right.

9 MS. CAMPBELL: I don't --

10 THE COURT: Well, I'll ask did she see anybody
11 that she -- go ahead.

12 MS. MCCURRY: I just want can you tell me which
13 juror it is?

14 MS. CAMPBELL: Ms. Jones.

15 MS. MCCURRY: Okay.

16 THE COURT: And that's why you always get an
17 alternate, if something comes up. I'll talk to her, you
18 know, we'll revisit this in the morning. We can talk to
19 him, cover the record and then they have any motions they
20 want to make I'll entertain them.

21 All right, y'all ready?

22 MS. CAMPBELL: Yes, Your Honor. I think just for
23 the record we would like to put on -- we did discuss in
24 chambers some of the issues that were going to come up, I
25 believe we made an indication of a Lyle issue.

1 THE COURT: I'm going to let you all make your
2 record but I'm not going --

3 MS. CAMPBELL: Just make a record.

4 THE COURT: Okay. I'm not going to let it in but,
5 you know, I doubt I'll change my mind. But I'm going to let
6 you make your record --

7 MS. CAMPBELL: We can just incorporate it --

8 THE COURT: What you would like to present.

9 MS. CAMPBELL: We could just make it a Court's
10 Exhibit.

11 THE COURT: Okay, that's good, that's good.

12 MS. CAMPBELL: And that would take care of that.

13 THE COURT: All right.

14 MS. CAMPBELL: Of course, if they open up the door
15 to anything.

16 THE COURT: If he takes the stand and anything
17 comes up, of course, but unless it does.

18 MS. CAMPBELL: Your Honor, the next issue is the
19 identification. However, we do need to put up evidence
20 about the confession.

21 THE COURT: All right.

22 MS. CAMPBELL: Did I misstate anything?

23 MS. MCCURRY: No.

24 That's correct, Your Honor.

25 THE COURT: All right. What I'll do, I'll make --

JAMES SMITH DIRECT BY MS. CAMPBELL

1 it should be in the file but I'll have the court report mark
2 your motion of opposition of Lyle as well as there -- I'll
3 just make it all part of the record.

4 Standin, is it? Spell that for you again.

5 MR. SMITH: S-T-A-N-D-I-N.

6 THE COURT: D-I-N?

7 MR. SMITH: Yes.

8 THE CLERK: Raise your right hand.

9 THEREUPON,

10 JAMES STANDIN SMITH,
11 after having been duly sworn, testified as follows:

12 MR. SMITH: James Standin Smith, S-T-A-N-D-I-N.

13 DIRECT EXAMINATION

14 BY MS. CAMPBELL:

15 Q Captain Smith, where are you employed?

16 A Richland County Sheriff's Department.

17 Q What do you do there, sir?

18 A I'm in the criminal investigative division. I have the
19 rank of captain and I'm pretty much over all the major
20 crimes murders and armed robberies.

21 Q Back in February of 2007 did you participate in the
22 investigation for purposes of this hearing when we
23 refer to everything an investigation of a series of
24 armed robberies out on the Broad River Road area?

25 A I did.

JAMES SMITH DIRECT BY MS. CAMPBELL

1 Q And specifically did you become familiar with the
2 investigation involving a crime that occurred at the
3 This Is It Video Store on Broad River Road on
4 February 5th, 2007?

5 A I did.

6 Q Tell the judge briefly how you become involved?

7 A Your Honor, we had a series of armed robberies that had
8 the same MO or circumstances. Two of them were
9 convenience store and one of them was the This Is It,
10 they were all in the same geographic area. We actually
11 by the ninth which was the day I become involved in the
12 This Is It robbery, and we made the decision to release
13 that video, pretty good surveillance video to the
14 media. We did that. I was involved in that process.
15 Over the course of that weekend we did get a tip as to
16 the identity of the person.

17 Q And specifically was that a crime stopper's tip?

18 A It was a crime stoppers related tip I don't know that
19 it officially came through crimes stoppers but it was a
20 tip of an individual who wanted to remain anonymous.

21 Q And based on that information when you returned to work
22 on that Monday, did you get certain information about a
23 Michael Jackson?

24 A Yes. That -- my weekend Detective David Goff actually
25 fielded the tip. He had done a good bit of computer

JAMES SMITH DIRECT BY MS. CAMPBELL

1 research, background research. He consulted with then
2 Sergeant McDonald, he was one of my supervisors about
3 Michael Jackson, McDonald was familiar with Michael
4 Jackson from a previous case.

5 Q And was it known to you or your department at that
6 point that Mr. Jackson was known to frequent the broad
7 river road area?

8 A Yes.

9 Q And, in fact, as recently did you get information that
10 y'all got from the crime stopper's tip put him in that
11 area in the recent past right before this --

12 A Yes --

13 Q Information was reported?

14 A The individual indicated that he had seen him recently
15 and that he had actual facial hair similar to the type
16 that he saw in the surveillance video.

17 Q Based on that information, did you then develop a photo
18 lineup?

19 A Lieutenant McDonald me and Sergeant McDonald developed
20 a similar photo lineup, yes, ma'am.

21 Q And what did y'all do with the photo lineup?

22 A Again we had three different robberies that we were
23 interested in. We felt like were linked by suspect
24 description and geographical proximity. I joined
25 Lieutenant McDonald and went to two of the locations.

JAMES SMITH DIRECT BY MS. CAMPBELL

1 When we got a positive identification of Michael
2 Jackson and third location was at This Is It Video that
3 I personally showed that lineup at 4 o'clock that
4 afternoon and I got a positive identification from that
5 lineup.

6 Q And that was on February 12th I believe?

7 A That was on February 12th, yes.

8 Q And that was from the victim from the This Is It Video
9 Store?

10 A Yes.

11 Q And what was his name?

12 A Michael Vasquez.

13 Q Once you were able to get a positive identification in
14 all three of the armed robberies that you felt like
15 were related, what did you do?

16 A We had Sergeant Ewing was one of my sergeants at the
17 time, he prepared a warrant affidavits, we actually
18 obtained the arrest warrant for armed robbery. I'm not
19 sure which case he actually got the warrant on, one of
20 the three.

21 Q Okay. And did you make any attempt to locate the
22 defendant?

23 A Yes, on the following morning on the 13th, knowing
24 the proximity again where Mr. Jackson was frequenting
25 specifically the Zemer Crest Drive area which is in

JAMES SMITH DIRECT BY MS. CAMPBELL

1 close proximity to This Is It Video as well.

2 Q Just behind it?

3 A Yes. We set up surveillance in that, in that, area
4 which Zemer Crest runs from Broad River to Fernandina
5 Road there is a large number of apartment complexes on
6 that road, it's pretty highly residential area. We set
7 up surveillance in that area.

8 Q And in fact, did you make contact with Michael Jackson
9 that morning?

10 A Yes, he was arrested, he was seen actually walking in
11 the Zemer Crest Drive area. And he was taken into
12 custody around 10 o'clock that morning. Sergeant Ewing
13 was present, Investigator Metz and several other
14 uniformed officers that we had gotten to help us with
15 the detail.

16 Q And you actually entered up there when he was being
17 arrest as well?

18 A Yes.

19 Q And what happened to Mr. Jackson once he was placed
20 under arrest?

21 A He actually -- I requested that he be placed in my
22 vehicle. My lead investigator on the case Sergeant
23 Faust, Investigator Faust was tied up in a general
24 sessions matter. So we had to sort of step in his
25 stead. So that is my I was so directly involved in it.

JAMES SMITH DIRECT BY MS. CAMPBELL

1 I instructed the deputies to put him in my vehicle.

2 Q Once he was in your vehicle what happened?

3 A I verbally advised him of his Miranda Rights.

4 Q For the record, what rights were those?

5 A I advised him he had the remain to remain silent that
6 anything he said could be used against in court, that
7 he had a right to talk to a lawyer for advise and have
8 one with him during questioning and if he could not
9 afford one would be appointed for any question that he
10 wished. And if he decided to answer questions he could
11 stop at anytime, he could also stop anytime he wanted
12 to talk to an attorney.

13 Q And when you advised him of his rights did he seem to
14 comprehend what you were saying?

15 A Yes. Mr. Jackson I knew he had experience within the
16 criminal justice system he understood what his Miranda
17 Rights were.

18 MS. CAMPBELL: We won't say that in font of the
19 jury.

20 THE COURT: Okay. I know this is nonjury so.

21 MR. SMITH: Yes, sir.

22 THE COURT: Clean up a little bit.

23 MS. CAMPBELL: We'll be cleaning up a lot, Your
24 Honor.

25 THE COURT: I know.

JAMES SMITH DIRECT BY MS. CAMPBELL

1 MS. CAMPBELL: In reference to the others and
2 everything else.

3 THE COURT: All right.

4 BY MS. CAMPBELL:

5 Q Did he seem to understand what his rights were?

6 A Yes, he did.

7 Q Once you advised him of his rights, did he indicate
8 whether or not he understood what his rights were?

9 A He did.

10 Q And did he indicate whether not he wish to speak to
11 you?

12 A He did.

13 Q And tell the judge how that happened?

14 A Immediately, Your Honor, sort of without specifics said
15 that he was tired, he knew it was over, he indicated
16 that that basically drugs were to blame for what had
17 taken place over the last several days. I had some of
18 the surveillance stills with me, in my automobile at
19 that time, from the This Is It robbery, I actually
20 showed those to him. And he indicated that those were
21 enough for him, in other words, the evidence against
22 him was pretty overwhelming, pretty clear, pretty
23 clear, photographs.

24 He then pointed out a place where he was staying
25 the night before in a trailer which was in close

JAMES SMITH DIRECT BY MS. CAMPBELL

- 1 proximity to where he was arrested, that become
2 important because he indicated to us later that some of
3 the items he had worn were used in the robbery may be
4 at that trailer.
- 5 Q You mentioned that you showed a number of stills from
6 the video and this video, is that the same video that
7 had been aired over the weekend?
- 8 A Yes.
- 9 Q And so anyone that would have been watching TV
10 specifically what stations was it?
- 11 A It was released to all the stations, I don't know which
12 one the tipster actually saw it on.
- 13 Q But you are aware that it was shown over the weekend?
- 14 A Yes.
- 15 Q And that was the information, that's what the tipster
16 was acting on, correct?
- 17 A That's correct.
- 18 Q So I show you a number of stills, are those some of the
19 ones you actually showed him?
- 20 A Yes, ma'am.
- 21 Q That clearly show his face?
- 22 A Yes, ma'am.
- 23 Q And those are the ones -- are those the ones that were
24 shown to him at the time?
- 25 A That's correct.

JAMES SMITH DIRECT BY MS. CAMPBELL

1 Q And that's what he acknowledge that --

2 A That was enough for him. We didn't go into specifics
3 at the time about the robbery.

4 MS. CAMPBELL: Your Honor, may I approach?

5 THE COURT: Yes.

6 BY MS. CAMPBELL:

7 Q Was the defendant then transported back to
8 headquarters?

9 A He was taken back to headquarters to the criminal
10 investigative division to my office?

11 THE COURT: This is a model and not a woman,
12 right?

13 MR. SMITH: That's a mannequin on the right.

14 THE COURT: Okay.

15 MR. SMITH: Yes, sir.

16 THE COURT: Continue, I'm sorry.

17 BY MS. CAMPBELL:

18 Q And basically, the rest of the way, I mean, once he
19 acknowledged it was him did you talk any more about the
20 specifics of the case once he appointed out the trailer
21 to you?

22 A Once he sort of had to make that initial acknowledgment
23 on the way in we just sort of had the small talk.

24 Q Okay. Once you got to headquarters, where did you take
25 him?

JAMES SMITH DIRECT BY MS. CAMPBELL

1 A To my office in the criminal investigative division
2 again, at that point in time we -- I did a Miranda the
3 advise again the written from. Once again Mr. Jackson
4 fully waived his rights agreed to continue talking to
5 me. At present for that was also Sergeant Faust he had
6 gotten a break from general sessions court and was able
7 to join us at that point in time.

8 MS. CAMPBELL: Your Honor, may I mark some items?

9 (State's Exhibit 1, 2 and 3
10 marked for identification.)

11 BY MS. CAMPBELL:

12 Q I'm going to show you state's Exhibit Number 2 for
13 identification, and again this interview is taking
14 place where?

15 A In my office in CID.

16 Q Was the defendant still under arrest?

17 A Yes.

18 Q And was he handcuffed?

19 A Not at that point in time, no.

20 Q And who was present with you when you Marandized him?

21 A Again then Investigator Faust was present by that point
22 in time.

23 Q And I -- State's Exhibit Number 2 that I just showed
24 you is that the actual advise of rights you used with
25 him that morning when you reminded him of his rights?

JAMES SMITH DIRECT BY MS. CAMPBELL

1 A Yes, ma'am, it's the original.

2 Q And proximately what time was it when you started going
3 over his rights yet again?

4 A 10:20.

5 Q And can you tell the judge specifically referring to
6 State's Exhibit 2 how you advised him of his rights
7 once you were there at headquarters?

8 A Virtually the same fashion except in this case there's
9 a place to check, to tick each right off. We went
10 through the rights much in the same fashion has I had
11 done previously just ticking them off.

12 Q Okay. For the record you got to go through them.

13 A Yeah. I advise Mr. Jackson that before we asked him
14 any questions he must understood his rights. He had
15 the right to remain silent. Anything that he said
16 could be used against him in court. He had a right to
17 talk to a lawyer for advise before we asked him any
18 question have could have a lawyer with him during
19 questioning, that if you cannot afford a lawyer one
20 will be appointed to him before any questioning if he
21 wished. And if he decided to answer questions now
22 without a lawyer present he would have the right to
23 stop answering at any time. He also had the right to
24 stop answering any time until he talked to a lawyer.
25 And on our form there's a little square for each one to

JAMES SMITH DIRECT BY MS. CAMPBELL

- 1 be again checked off. We did that.
- 2 Q And you went through each of those rights with him?
- 3 A Yes.
- 4 Q And you checked them all?
- 5 A Yes.
- 6 Q And did he acknowledge that he understood his rights?
- 7 A He did.
- 8 Q And did he acknowledge verbally as well as in written
- 9 form?
- 10 A Yes.
- 11 Q And did he actually sign off and that he understood
- 12 what his rights were?
- 13 A He did.
- 14 Q And then the second half of that page State's Exhibit 2
- 15 is what we call the waiver of rights?
- 16 A Yes, it's the bottom half of the form.
- 17 Q And did you explain that to him?
- 18 A Yes. And I read it again to him that he is read the
- 19 statement of his rights and understanding what his
- 20 rights are he is willing to talk and answer questions,
- 21 he understanding and know what he's doing, no promises
- 22 have been made to him, no pressure, coercion of any
- 23 kind have been used against him and again there's
- 24 another place for him to sign and a place for witnesses
- 25 to the left side.

JAMES SMITH DIRECT BY MS. CAMPBELL

- 1 Q And Investigator Faust was or Sergeant Faust, excuse
2 me, was also present when you were advising him of
3 these rights?
- 4 A He was.
- 5 Q And once he indicated -- did he indicate whether or not
6 he wished to waive his rights and speak to you?
- 7 A He did.
- 8 Q And did he acknowledge that by signing off?
- 9 A Yes.
- 10 Q And that was witnessed by whom?
- 11 A Investigator Faust.
- 12 Q And you?
- 13 A Yes.
- 14 Q At any time when you were talking to him up -- starting
15 from the first moment you made contact with him through
16 final statement you took with him, did you promise him
17 anything to make him talk to you?
- 18 A No, ma'am.
- 19 Q Did you threaten him in anyway?
- 20 A No, ma'am.
- 21 Q Did you use anything to try to coerce him?
- 22 A No, ma'am.
- 23 Q Did you deprive him of any preacher conference?
- 24 A No, ma'am.
- 25 Q At any point did he indicate he wanted a lawyer?

JAMES SMITH DIRECT BY MS. CAMPBELL

- 1 A No, ma'am.
- 2 Q At any point did he indicate that he didn't want to
3 talk to you?
- 4 A No.
- 5 Q And, in fact, was his -- you indicated you talked to
6 him in the car, you had small talk, did he appear
7 coherent?
- 8 A He was coherent and very cooperative.
- 9 Q At any time did he indicate he didn't want to talk to
10 you?
- 11 A No, ma'am.
- 12 Q And at anytime did you promise him anything to make him
13 talk to you?
- 14 A No, ma'am.
- 15 Q Once he signed the waiver of rights, did you then start
16 taking what we refer to as written statement?
- 17 A Yes, ma'am.
- 18 Q And how did that process occur, sir?
- 19 A I actually typed out -- it's our policy at the Richland
20 County Sheriff's Department that the interviewer does
21 the statement, in this case in most cases we use a
22 templet off of the computer and I actually typed the
23 statement. It was a question answer type of statement
24 where I generated the direct question and typed his
25 exact response.

JAMES SMITH DIRECT BY MS. CAMPBELL

- 1 Q Okay. You mentioned that the advise of rights you gave
2 him was around 10:20?
- 3 A Yes, ma'am.
- 4 Q And you initiated the actual written statement around
5 10:40?
- 6 A 20 minutes later during the middle of that would have
7 been again reducing the details down that we were going
8 to cover in the written statement, going through the
9 details.
- 10 Q Okay. And so first he kind of verbally told you what
11 happened.
- 12 A Yes.
- 13 Q And then you reduced it into -- and the questions on
14 here are who, whose words?
- 15 A My words.
- 16 Q And the answers are from whom?
- 17 A Michael Jackson.
- 18 Q And any time during the time period -- and
19 approximately how long was it that y'all were in there
20 taking the statement, do you know?
- 21 A From the time of the written Miranda to the end of the
22 statement I would guess a little bit less than an hour,
23 it's not a very lengthy statement.
- 24 Q And did he give you for the purpose of this hearing
25 information about all three robberies?

JAMES SMITH DIRECT BY MS. CAMPBELL

- 1 A He decided.
- 2 Q Did he indicate it was he who had actually done all
3 three armed robberies?
- 4 A Yes.
- 5 Q Once you typed this up and everything was he given the
6 opportunity to review the statement prior to signing
7 it?
- 8 A Yes, it was read back to him in its entity. He was
9 afforded the opportunity to make any changes or do
10 whatever he wished. He signed each statement form one
11 section indicating it was freely and voluntarily made
12 and the bottom section the number of pages involved and
13 the fact that a copy was going to be provided to him.
14 Investigator Faust did make a copy then provided him
15 with a copy.
- 16 Q Okay. And was Investigator Faust there for the entire
17 taking of the statement?
- 18 A He was in and out. He was there for the entire verbal
19 rendition as I recall.
- 20 Q Uh-huh.
- 21 A And once we started reducing it to writing nothing
22 substantially changed. He went to tend to some other
23 matters then he come back and forth. He was there at
24 the time the statement was signed and I believe he
25 actually notarized the statement.

JAMES SMITH DIRECT BY MS. CAMPBELL

1 Q At any time you were taking the statement or any time
2 Michael Jackson was with you that day, did he ever ask
3 for a lawyer?

4 A No, ma'am.

5 Q Did ever indicate he didn't want to talk to you
6 anymore?

7 A No, ma'am.

8 Q And in your opinion -- how long have you been in
9 investigations?

10 A I promoted to investigator in June of 1987.

11 Q And in your opinion, was he talking to you freely and
12 voluntarily?

13 A He was.

14 Q And the information that's included on State's Exhibit
15 Number 3 was the information he gave you?

16 A That's correct.

17 MS. CAMPBELL: Your Honor, at this time may I
18 approach?

19 THE COURT: Yes, ma'am.

20 MS. CAMPBELL: Judge, I was not planning on going
21 into the substance of this statement for the purpose of this
22 hearing on voluntariness.

23 THE COURT: All right.

24 MS. CAMPBELL: Okay.

25 BY MS. CAMPBELL:

JAMES SMITH CROSS BY MS. MCCURRY

1 Q Once he gave you a statement, did y'all then collect
2 some clothing from him?

3 A Yes. I believe the cap he had on and a hooded jacket,
4 maybe.

5 Q And then was he transported to the Alvin S. Gleen
6 Detention Center?

7 A He ultimately was, yes.

8 Q In fact, during the course of time when you were
9 actually meeting with him did he indicate that he
10 wished to go smoke a cigarette?

11 A I believe at some point in time he did and I
12 facilitated that.

13 Q And did he also ask you to do anything else regarding
14 his family members?

15 A He wanted to call his mother. He actually asked that I
16 call his mother to tell her that he was in custody but
17 he was okay.

18 Q And did you, in fact, do that?

19 A I did. I had met, I had met, her previously.

20 Q And those were things you did at his request?

21 A Yes, ma'am.

22 MS. CAMPBELL: That's all I, Your Honor.

23 THE COURT: All right, Ms. McCurry.

24 MS. MCCURRY: Thank you, Your Honor.

25 CROSS-EXAMINATION

JAMES SMITH CROSS BY MS. MCCURRY

1 BY MS. MCCURRY:

2 Q Good afternoon, Captain.

3 A Good afternoon.

4 Q How are you?

5 A Fine.

6 Q In the course of your investigation you stated that
7 there was a similar MO between these robberies in the
8 area?

9 A Yes, ma'am.

10 Q Okay. And what exactly was the same M.O.?

11 A It was the, first of all, it was the same physical
12 description, that -- we consider that -- as far as the
13 modus operandi the M.O. it was to go in and present a
14 weapon or act as if he had a weapon and the clerk was
15 usually by themselves. I think the stores were all
16 either 24 hours or stayed open real later and were all
17 in the same geographic proximity and only one defendant
18 was involved in each one. I believe some of the
19 demands were similar in each one. We knew that they
20 were related by virtue of the physical description, the
21 proximity.

22 Q And you say that the -- you released a video from This
23 Is It to the media?

24 A Yes.

25 Q Okay. And after the video was released then you

JAMES SMITH CROSS BY MS. MCCURRY

1 received an anonymous tip?

2 A A tipster called in that weekend, yes, ma'am.

3 Q Okay.

4 A And spoke to one of my detectives that was on duty that
5 weekends.

6 Q Okay. As a result of that tip, did you at any point or
7 anyone working with you in the investigation contact
8 Michael Jackson's mother?

9 A I, myself, went to her apartment with my Lieutenant
10 Scott McDonald, yes, ma'am.

11 Q And how did you know where his mother lived?

12 A We were able to do again through some of the computer
13 research with his background that type of thing we were
14 able to locate his address. I wasn't involved in that
15 portion of it, I believe Investigator Goff ran some
16 stuff over the weekend and possibly McDonald, we were
17 able to pinpoint the address. The tipster may have
18 also provided so general information about the
19 location.

20 Q Was the tipster his employer?

21 A I do not know.

22 Q But were you given a phone number for his mother as
23 well?

24 A I could have been, I don't recall that. Again I don't
25 recall -- I wasn't involved in that research and I

JAMES SMITH CROSS BY MS. MCCURRY

1 don't think it was any real difficult piece of
2 information to obtain that his mother lived in that
3 area.

4 Q But Mr. Jackson wasn't readily identifiable from the
5 actually video, correct?

6 A It, it, looked pretty close to me, yes, ma'am. It was
7 a pretty good surveillance video. I deal with a lot of
8 surveillance video and it was, it was, pretty good.

9 Q Okay. Well, then let me ask you a question, if you, if
10 you, said you had some familiarity Mr. Jackson and the
11 video was that clear why did you need you even release
12 it to the media? Why didn't you yourself or somebody
13 else in your office already know that it was
14 Mr. Jackson?

15 A Well, the tip came in over the weekend.

16 Q Okay.

17 A And, and, my familiar -- I didn't say I was familiar
18 fail with the defendant, Michael Jackson, one of my
19 investigators who worked a previous case with
20 Mr. Jackson and at that helped corroborate the tip
21 actually because the robbery was recommitted in the
22 same geographical area. So it wasn't just a tip
23 involving this person looks like such-and-such, it was
24 a tip that involved another incident a couple years
25 back that was a robbery in the same area I believe on

JAMES SMITH CROSS BY MS. MCCURRY

1 Bush River Road sometime. So that helped substantiate
2 or corroborate the tip to some degree. At that point
3 in time we're still going to show photographic lines to
4 the victims because we weren't present when the crime
5 was committed; the victims have to make the
6 identification.

7 Q But was it actually somebody that worked with you that
8 was pretty certain that it was Michael Jackson from
9 having that prior relationship with him?

10 A I can't testify to that. I can't testify to that. I
11 can say that I believe that when that individual it was
12 Scott McDonald that actually worked that case, he might
13 have indicated that yes it did appear to be Michael
14 Jackson but, maybe, he didn't know that when he first
15 viewed the surveillance video, he would have to testify
16 to that.

17 Q And how did you know where Michael was going to be the
18 morning that you arrested him?

19 A We got specific information that he would be in that
20 Zemer Crest Drive area.

21 Q Where did you get this specific information?

22 A I believe some of that may have come from the tipster.
23 And also he was in close proximity to the robberies,
24 specifically This Is It robbery.

25 Q The morning that -- then when you arrested him and you,

JAMES SMITH CROSS BY MS. MCCURRY

1 you, said that you placed him in your vehicle?

2 A Yes, ma'am.

3 Q Was his Miranda Warnings given to him immediately like
4 in the middle of the street when he was arrested or not
5 until he was in your vehicle?

6 A I actually -- it was when he was put in my vehicles.
7 The officers I believe apprehended him as I instructed
8 them to bring him to my vehicle.

9 Q And so then you were -- it was just you and Mr. Jackson
10 alone in your vehicle where you did the initial --

11 A I believe that's correct, yes, ma'am.

12 Q Okay. At that point you state that Michael showed you
13 this trailer that belonged to somebody named Crazy Mike
14 is, that right?

15 A After he made the initial acknowledgments and saw the
16 video surveillance, you know, he was cooperating he
17 wanted to point out this trailer.

18 Q Excuse me, back up. What, what, do you mean that he
19 saw the video surveillance, you then showed him a
20 videotape --

21 A The stills from the video surveillance.

22 Q So the pictures?

23 A If I misstated that.

24 Q Okay.

25 A We had stills from the surveillance video.

JAMES SMITH CROSS BY MS. MCCURRY

- 1 Q Okay.
- 2 A Which we frozen. Obviously I didn't have the video
- 3 with me in my car.
- 4 Q I just was trying to be clear.
- 5 A Yes, ma'am.
- 6 Q Okay.
- 7 A But the stills and they were again that's the ones that
- 8 were just the judge just looked at, pretty clear.
- 9 Q All right. And at that point he then took you to show
- 10 you where Crazy Mike lived?
- 11 A Yes, ma'am. It was right by where we arrested him,
- 12 literally.
- 13 Q Okay. And you stated that you had just small talk with
- 14 him when you were in the car?
- 15 A After those initial acknowledgments, if you will, were
- 16 made.
- 17 Q Uh-huh.
- 18 A After he looked at the surveillance video stills on the
- 19 way to the office which would be the Broad River Road
- 20 and I-20 area to Two Notch Road, that's where we did
- 21 the small talk.
- 22 Q Do you, do you, recall if Mr. Jackson was wearing
- 23 glasses at the time he was arrested?
- 24 A I don't recall that.
- 25 Q All right. When you were in the vehicle and you were

JAMES SMITH CROSS BY MS. MCCURRY

- 1 engaging in the, in the, small talk I want to direct
2 you to some things I want to ask you.
- 3 A Sure.
- 4 Q Do you remember talking about these things with him?
- 5 A Okay.
- 6 Q Do you remember talking about the fact that he worked
7 for a landscaper?
- 8 A He could have --
- 9 Q And what --
- 10 A I didn't remember, if I didn't annotate it in my notes,
11 you know, it could be, I just don't remember.
- 12 Q Okay. Did you know that he had been staying on and off
13 with his mother?
- 14 A I believe we learned that from his mother.
- 15 Q Uh-huh.
- 16 A Already.
- 17 Q Okay.
- 18 A He may have acknowledged that too.
- 19 Q And you, and you, already said you had gone there to
20 look for him, and not you personally to look?
- 21 A Yes, I went there personally to --
- 22 Q You did?
- 23 A Yeah. And to actually show, I think, we -- to show his
24 family member the surveillance stills.
- 25 Q Were you aware or did Michael talk to you about the

JAMES SMITH CROSS BY MS. MCCURRY

- 1 fact that he had a serious drug problem?
- 2 A Yes, ma'am.
- 3 Q Okay. Did you know that he also had hepatitis C?
- 4 A I can't testify to that, I don't know.
- 5 Q Did he tell you that at any point that he had been
- 6 exposed t HIV?
- 7 A I don't recall that, and I believe I would.
- 8 Q Did he tell you that he had started smoking crack
- 9 cocaine on Friday that was February the second I
- 10 believe?
- 11 A I do recall that, yes, ma'am. And I believe that's in
- 12 my notes.
- 13 Q And that he had --
- 14 A Or in the statement, I'm sorry.
- 15 Q And that at the time of his arrest he had been smoking
- 16 crack for several days?
- 17 A Well, yes, ma'am.
- 18 Q Did he tell you -- or were you aware that at the time
- 19 of his arrest that he had been smoking crack all night
- 20 and all morning long?
- 21 A I don't know that I recall that specify detail. He
- 22 was, he was, coherent and, you know, understood what he
- 23 was saying in my opinion. I've interviewed a lot of
- 24 people that have smoking crack and taken a lot of
- 25 statements of people that have smoked crack and it

JAMES SMITH CROSS BY MS. MCCURRY

- 1 appeared to me he knew what he was saying and he was
2 coherent.
- 3 Q But he did tell you he was -- that he was tired?
- 4 A Yes, ma'am. And what he said is basically I took that
5 to mean that he was tired.
- 6 Q Did he tell you that he had been up for eight days?
- 7 A I don't recall that, no.
- 8 Q That he was hungry?
- 9 A I don't recall that. If he indicated he was hungry we
10 would have done something about that I'm sure.
- 11 Q Okay. Did you, did you, notice whether or not he had
12 any physical injuries?
- 13 A Did I don't recall that any physical injuries.
- 14 Q All right. You don't recall anything?
- 15 A No, ma'am.
- 16 Q Did you, did you, have any idea as to his level of
17 education?
- 18 A I don't know that I asked him that question. Again he
19 could -- the exchanges were coherent, you know, he
20 understood his rights, he was explaining things clearly
21 to me. I was satisfied that he knew what was going on.
22 Again I wouldn't say this obviously in front of the
23 jury, but I knew he had experience within the system
24 and understood, you know, the nature of the Miranda and
25 the nature of providing a statement.

JAMES SMITH CROSS BY MS. MCCURRY

- 1 Q I believe the Waiver Of Rights Advisement of Rights
2 Form itself was State's Exhibit Number 2?
- 3 A I don't have it with me, I'll take your word for it.
- 4 Q (Attorney provided witness with exhibit.)
- 5 A Yes, ma'am, two.
- 6 Q Did the check marks in the boxes, beside each of the
7 individual rights, did Michael make that check mark or
8 did you make those check marks?
- 9 A I did.
- 10 Q You made that check marks?
- 11 A Yes, ma'am.
- 12 Q Okay. Did you make the check mark at the bottom of the
13 page that's the section for the waiver of rights?
- 14 A I did.
- 15 Q You made that one as well?
- 16 A Yes.
- 17 Q And, and, given the fact that you have alluded to a
18 couple of times Michael's familiarity with the with,
19 the, criminal justice system, did you, did you, talk to
20 him at all about at this point that he was facing life
21 without parole?
- 22 A I don't know that I discussed that with him. I
23 remember at some point in time he might have brought,
24 brought, that up. He knew, that he, you know, that he
25 had been arrested for serious felonies at least twice

JAMES SMITH CROSS BY MS. MCCURRY

1 before. But that's not something I openly discussed
2 with him. But I believe at some point in time he
3 brought that up.

4 Q Do you recall whether or not Investigator Faust
5 mentioned that he was facing life without parole?

6 A I cannot testify to that, no, ma'am.

7 Q Did at any, did at any, point you tell Michael that you
8 would talk to the solicitor's office and see what you
9 could do to help him out?

10 A No, ma'am. But at a point in time later there was some
11 discussion. Michael began calling me about wanting to
12 do some things. And to try to get keep this things
13 from being a life -- not be a life without parole
14 situation. He called me from the jail collect on a
15 number of occasions and each time he would do that I
16 would direct him back to you in the from of a proffer
17 if, indeed, he did have some things. And during some
18 of those discussions that that possibly may have been
19 discussed. It was well after the taking of the
20 statement.

21 Q So you're, you're, saying at that time during the
22 statement or shortly after the statement at any point
23 in time of the statement you never mentioned anything
24 about helping him out?

25 A Not, not, when we were taking his statement, no, ma'am.

JAMES SMITH CROSS BY MS. MCCURRY

1 Q Okay. And are you aware as to whether or not
2 Investigator Faust did when he was speaking with him?

3 A I don't think he did, again Faust would have to testify
4 to that. He was with me most of the time. Anytime
5 Faust would have been with him I would have also been
6 present.

7 Q I believe you testified that you typed up the
8 questions, you asked the questions, and he gave you
9 answers and you typed up the four page statement is
10 that correct?

11 A Yes, ma'am.

12 Q Now, and you stated that he had the opportunity to
13 review this?

14 A Yes, ma'am.

15 Q And to make any changes or corrections it?

16 A Yes, ma'am.

17 Q Did he have glasses with him at that point in time?

18 A I don't recall whether he had glasses.

19 Q Okay. If he, if he, was not able to read without
20 having reading glasses, it would be fair to say he
21 wasn't able to read the statement at that point?

22 A I read the statement back to him which is my habit.

23 Q But was that before or after you, you, asked him if
24 there's any changes he wanted to make to it?

25 A That's, that's, part of the acknowledgment of the

JAMES SMITH REDIRECT BY MS. CAMPBELL

1 statement, in which he made. And after I read the
2 statement back to him, and he actually indicates that
3 at the bottom of the statement.

4 Q But did you hand the statement to him and say, here,
5 read this and let me --

6 A I --

7 Q Let, me, know if you want to change anything?

8 A I don't recall -- I recall reading it to him.

9 Q Thank you. I don't have any further questions.

10 A You're welcome.

11 THE COURT: Anything further from the state?

12 REDIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q She asked you about the drug use, did he appear to be
15 coherent when you were talking to him?

16 A He did.

17 Q And, in fact, in his statement, he indicates that he
18 had taken a break from smoking crack cocaine over the
19 weekend?

20 A I don't have his statement in front of me.

21 Q Whatever he told you is in the statement?

22 A Yes, ma'am. But there is reference in the statement to
23 the drug use.

24 Q And if you had any concern about his ability to
25 understand what was going on or if he was too

JAMES SMITH REDIRECT BY MS. CAMPBELL

1 intoxicated or anything of that nature would you have
2 sease questioning him?

3 A We have actually done that in several cases.

4 Q And in this case is there was indication that he was
5 anything but lucid and coherent?

6 A He seemed to be very understanding and coherent of what
7 was going on. The exchanges, you know, made sense to
8 me, they were right on point. We discussed the details
9 of the robberies, they were consistent with what had
10 been reported. I had no reason to disbelieve that he
11 was anything other than coherent.

12 Q Thank you.

13 MS. CAMPBELL: I don't have anything further.

14 THE COURT: Anything further from defense?

15 MS. MCCURRY: Your Honor, we just would ask that
16 you suppress the statement, that it's not -- obviously not
17 voluntarily and knowingly and intelligently waived.

18 THE COURT: Considering the totality of the
19 circumstances, the testimony of the witness I respectfully
20 deny your request. I'm not going to suppress it, it's
21 coming in.

22 MS. CAMPBELL: Your Honor, we just need to reenter
23 the redact and we're fine. I don't -- I'm sorry I don't
24 know of anything else.

25 MS. MCCURRY: Me either, Your Honor.

1 THE COURT: This is redacting the statement you
2 send up to me where he admitted to two other robberies?

3 MS. CAMPBELL: Yes, we're just going to redact out
4 any reference to any other robberies unless the court rules
5 otherwise.

6 MS. MCCURRY: Your Honor, I did a proposed
7 redaction that I --

8 THE COURT: I think, you know, at first I thought
9 you were talking about lying in robberies from a previous
10 year, not something he confessed to. I don't know whether I
11 need to redact anything. I mean, I can't keep him from
12 telling on himself. Let me take a look at it again. I
13 don't know whether I'm going to redact anything. I mean, I
14 will have to give a cautionary instruction, he's not charged
15 with that, you'll have to disregard it. I mean, you know,
16 he says what he says.

17 MS. MCCURRY: Okay. Thank you, Your Honor.

18 THE COURT: I mean, I'm going to listen to your
19 motions and everything but after I, after I, read this, you
20 know, yeah I robbed A and I robbed B and C too, I mean, what
21 am I suppose to do about that? You help me out, give me a
22 reason to redact that -- those statements.

23 MS. MCCURRY: Your Honor, there are -- they are
24 subsequent bad acts that aren't admissible under State
25 versus Lyle, under 404(b).

1 THE COURT: They're confessions. He confessed.
2 Not only did I kill A but I killed B and C too. He's only
3 charged with killing A but he confesses to B and C too, what
4 am I suppose to do?

5 MS. MCCURRY: Well, Your Honor --

6 THE COURT: Help me out.

7 MS. MCCURRY: Okay. The fact -- the very fact
8 that these are, are, identical crimes that they're asking
9 to, to, introduce in the course of this trial, this trial,
10 is extremely --

11 THE COURT: Well, this, this, is something he's
12 hasn't been charged with. This is something he confessed
13 to.

14 MS. MCCURRY: That's true.

15 THE COURT: All right.

16 MS. MCCURRY: And the fact of the matter is it's,
17 it's, not -- to anything that's in issue with this case.
18 They don't need any information whatsoever about the
19 additional robberies to prosecute this particular case.
20 That he has not been convicted for those things and though
21 he did talk about these in the, in the, investigation and
22 with Captain Smith they're still, they're still, identical
23 crimes.

24 THE COURT: Well, let he see your proposed
25 redaction, after reading it I don't know if I'm going to

1 redact anything or not to be honest with you, I mean.

2 MS. MCCURRY: But the prejudicial --

3 THE COURT: Let me see your proposed redaction
4 please. He can't save him from himself, Ms. McCurry,
5 neither can you, I mean, how am I suppose to do it?

6 (Ms. McCurry hands the Court her
7 proposed redaction.)

8 THE COURT: What happened, what happened, to page
9 two?

10 MS. CAMPBELL: She's retyped the entire statement.
11 If you notice, your Honor, it's in a different font than the
12 fist paragraph. She's just retyped in the questions she
13 wants --

14 THE COURT: Oh, were you. Okay, were you, were
15 you, armed during the robberies?

16 On the video store I had a box cutter without the
17 blade in it. I'll let you look at it but I think I would
18 redact a little bit differently, I mean, you leave too much
19 out. And then the problem is, if I, I, will not allow the
20 redaction as is to go in, okay. I think it's, I think it's
21 self serving and I think it's unfair to the state the way
22 you've done it.

23 I'm not yelling at you, I don't blame you, I would
24 do the same thing. But I think you -- I think it slices
25 things a little too much.

1 I'll invite you to look at it again. I invite
2 Ms. Campbell to look at it and I'll look at it myself. I
3 don't necessarily -- I'm not convinced I should keep
4 anything out, it's his own statement. I, I, you got him on
5 video, he's got a confession, I mean, it is prejudicial I
6 don't know what probative value it has but it shows the
7 overall scheme. I'm going to think about -- you know,
8 there's some things -- there's a better way to redact than
9 what you've submitted to me.

10 MS. MCCURRY: Your Honor, I apologize.

11 THE COURT: That's -- I'm not yelling at you. If
12 I were you I would probably do the same thing but --

13 MS. MCCURRY: I'm just trying to take out --

14 THE COURT: You're trying to do the best you can
15 for your client --

16 MS. MCCURRY: Well --

17 THE COURT: I would agree.

18 MS. MCCURRY: Well, it made it -- just trying to
19 focus on one and take out things that were clearly --

20 THE COURT: Well, let me just show you what I
21 mean. On your page two, look at page two, were you armed
22 during a robbery, instead of robberies. On the video store
23 I had a box cutter, all right, I don't want to leave that
24 out.

25 MS. MCCURRY: Yes, Your Honor, I changed robberies

1 to robbery because we're --

2 THE COURT: I don't see robberies on yours, on
3 yours I don't see -- you stole --

4 MS. MCCURRY: It's on, on --

5 THE COURT: Let me finish. Please, let me finish.
6 I'm going to let you talk, but let me finish. We can't talk
7 at same time.

8 Now, I'm looking at the top of page two that you
9 have submitted to me as your proposed redaction. The first
10 question on the original statement were you armed during the
11 robberies? You got where's the clothing? That's what I'm
12 talking about.

13 Were you armed during a robbery? On a video store
14 I had a box cutter. I'm going to let that in. I'm not, you
15 know, how am I going to keep that out? On the other two I
16 would redact, I stuck it in my pants pocket I would redact.
17 I have shown you the surveillance video, is that correct?

18 Yes, sir. I mean, why did you take that out is
19 what I'm asking you. And then you -- then on your proposed
20 redaction you skip all the way down to the third paragraph,
21 where's the clothing? Look, I'll redact this much, you
22 know, I'm not yelling at you, you're doing your job, nothing
23 it's personal.

24 MS. MCCURRY: Your Honor, may it please the Court?

25 THE COURT: Go ahead.

1 MS. MCCURRY: As you mentioned they're all on my
2 first page.

3 THE COURT: What?

4 MS. MCCURRY: They're on my page one.

5 THE COURT: I don't see it.

6 Do you see them, Brad? I can't see very well.

7 MS. MCCURRY: I just changed were you armed during
8 the robberies to robbery.

9 THE COURT: I tell you what, relax. Let me take a
10 look at it. And we'll visit this first thing in the
11 morning. Just relax a bit. I'm either going to let it all
12 in or I'm going to try to re -- I'm not going to take out
13 something that should be in related to the video store,
14 that's all I'm saying. And, maybe, I need to read a little
15 bit more closely. So I'm not yelling at you and if I were
16 you're doing your job. So I'm not upset with you. You're
17 obligated to do the best you can.

18 But look at -- we'll revisit it. Let me take time
19 to look at it really carefully line-by-line and see -- but I
20 don't, don't, want anything -- any, any, reference -- I
21 might be yelling at you prematurely, okay. Relax. In fact,
22 I'll go look at it now. If you want to hang around a little
23 bit I'll come back. Y'all don't have to hang around. We'll
24 just do this in the morning, y'all want to?

25 MS. CAMPBELL: Yes sir?

1 MS. MCCURRY: Whatever you like, Your Honor.

2 THE COURT: Okay. And it's nothing personal. You
3 know, I got to be fair to the state, I got to be fair to
4 him. Sometimes the balance is lost in between, that's all I
5 want -- so we're good to go on everything else?

6 MS. CAMPBELL: 9 o'clock?

7 THE COURT: Yes, ma'am.

8 MS. CAMPBELL: 9 o'clock in the morning?

9 THE COURT: Oh, yeah, 9 o'clock, 9 o'clock. Which
10 means we'll probably get started at 9:15 or so. We have
11 plenty of time to get this squared away.

12 MS. CAMPBELL: Thank you, Your Honor.

13 THE COURT: Let me read more carefully. You might
14 have put in something I meant so far. All right. Y'all
15 have a good night. Thank you.

16 (The proceedings were concluded
17 for June 22, 2009.)

18 (The following proceedings were
19 held on June 23, 2009.)

20 THE COURT: All right, is everybody ready?

21 (There was no response.)

22 THE COURT: What do we need to take up before the
23 jury comes in? Is it the redaction, do we need to do that
24 now?

25 MS. CAMPBELL: Yes, Your Honor, I would hand up a

1 proposed --

2 THE COURT: And, and, yesterday, Ms. McCurry, I
3 mean, my objection -- you didn't change the content just the
4 page that made it a little bit --

5 MS. MCCURRY: Yes, sir.

6 THE COURT: All right. Let me take a look at
7 this. I left a message with -- have you seen their
8 redaction?

9 MS. MCCURRY: Yes, sir. I just went through it.

10 THE COURT: Okay. You have any objection to it?

11 MS. MCCURRY: Yes, I do.

12 THE COURT: What, what, is your objection?

13 MS. MCCURRY: My objection is that in their
14 version they have a lot of information that deals with a
15 fellow by the name of Brian Hendricks that has, that has,
16 nothing to do with this particular incident other than the
17 fact that my client states he got the coat from him.

18 THE COURT: Okay.

19 MS. MCCURRY: The issue that they add deals with,
20 and as you've read the statement, you see the issue of a
21 drill, the drill had nothing to do with the This is it
22 video. So we object to everything that goes beyond talking
23 about that he got a coat from that guy Brian Hendricks.

24 THE COURT: Do they mention any other robberies or
25 any or criminal offenses that he is -- that he admitted to

1 in his statement, that's the only concern that I have. I
2 mean, I'm going to have to explain to the jury this has been
3 redacted because I decided as a matter of law as a judge
4 that certain things are not relevant and are not to remain
5 and they've got to ignore the spaces, that's what I'm going
6 to charge the jury. And so, I mean, you know, the fact is
7 it's kind of hard to separate everything but I'm going to
8 give you a chance to more specifically state on page by page
9 what you objection to, I'll let you do that, go ahead.

10 MS. MCCURRY: Okay.

11 THE COURT: On page one.

12 MS. MCCURRY: On page one, the second question
13 they have the dashes between the and robbery, Did you
14 indicate to me you understood your rights and are willing to
15 talk to me about the dash, dash, robbery.

16 THE COURT: Uh-hum.

17 MS. CAMPBELL: We'll get rid of the dash, dash,
18 Your Honor.

19 THE COURT: Okay.

20 MS. MCCURRY: Next, the next question that's
21 there, the last one that's on page one, the objection I have
22 is that big space that's between the and the video store.

23 THE COURT: Okay.

24 MS. MCCURRY: Because in his initial statement it
25 was, the one was --

1 MS. CAMPBELL: The first one --

2 THE COURT: Okay. I understand. I'm going to try
3 to make both of y'all happy I can, go ahead.

4 MS. MCCURRY: All right. On page two the first
5 question -- my objection is the first part of the answer on
6 the video store, I think that implies there was other
7 robberies, there --

8 THE COURT: Wait, on were, Were, you armed during
9 the robbery?

10 MS. MCCURRY: Yeah, and, and --

11 THE COURT: And wait, wait, hold on a minute.

12 MS. MCCURRY: Okay.

13 THE COURT: And answer, On the video store I had a
14 box cutter without the blade in it.

15 MS. MCCURRY: Yes, sir. My objection to the
16 question is the end of the question, at least on my copy, it
17 clearly looks like something was altered on robbery.

18 THE COURT: Well, it had to be, it had robberies,
19 I think originally.

20 MS. MCCURRY: It did.

21 THE COURT: Okay. Well --

22 MS. MCCURRY: I'm just saying.

23 THE COURT: If that's your objection, I don't care
24 about that, that's overruled, go ahead.

25 MS. MCCURRY: But.

1 THE COURT: I mean, we might could clean it up a
2 little bit, I mean, typographically but, I mean, look this
3 is for his benefit. Go ahead.

4 MS. MCCURRY: Yes, sir.

5 THE COURT: Do your job, go ahead. What's the
6 neck one?

7 MS. MCCURRY: The answer on the video store, the
8 third question that they have listed they add the last part
9 that they had, The crack head, this black guy in his 30's,
10 they call him B or D, I'm not sure which is right. That's
11 just -- I just noted that as the only additional thing that
12 they added to what we had produced, so I don't really have a
13 problem with that if they just leave it at that.

14 MS. CAMPBELL: We're leaving it at that.

15 THE COURT: Okay.

16 MS. MCCURRY: Number three on page three.

17 THE COURT: Yes, ma'am.

18 MS. MCCURRY: The first question again, Why were
19 you committing the robbery? The robbery portion of that
20 question really looks like it's been monkeyed with.

21 THE COURT: Well, I'm going to tell the jury it
22 has been, I had to take some of it out. I've concluded
23 what's relevant, if there's anything that looks disputed
24 hold it against me not against the state, not against you,
25 not against Mr. Jackson. So, I mean, I'm going to clear

1 some of it up with my charge.

2 MS. MCCURRY: Okay.

3 THE COURT: All right, go ahead.

4 MS. MCCURRY: Second question, What happened to
5 the box cutter and the drill. We object to the, And the
6 drill portion of that. There was no drill used at the This
7 Is It Video. The drill was connected with the other two
8 robberies.

9 THE COURT: I got the drill from the guy name
10 Hendricks.

11 MS. CAMPBELL: We just didn't know how you would
12 redact that part because it says that was his coat that I
13 had on in the video store which is relevant and he refers to
14 him as Brian.

15 The drill in and of itself --

16 THE COURT: I'm going to leave it like it is.

17 MS. CAMPBELL: Thank you.

18 THE COURT: All right. I note your objection for
19 the record. All right, next one.

20 MS. MCCURRY: The questions -- the next question,
21 Did Brian Hendricks have anything to do with the robbery? I
22 don't know why that's relevant to have here, there's no,
23 there's no, my client is not denying that he was there.

24 THE COURT: Uh-huh.

25 MS. MCCURRY: So there's no reason to bring in the

1 stuff that deals with Brian Hendricks.

2 THE COURT: All right. If that's your objection
3 it's overruled, go ahead. What's the next one?

4 MS. MCCURRY: Again the next question, you know,
5 we object to any reference to the drill because there's no
6 evidence that he had a drill at This Is It Video.

7 THE COURT: All right. That's overruled, what's
8 your next one?

9 MS. MCCURRY: The next to the last question on
10 page where it asks about where Brian lives --

11 THE COURT: Doesn't he be at Crazy Mike's house?

12 MS. MCCURRY: Yes, that answer. That where again
13 where Brian lives and that isn't -- that's not relevant in
14 this case, none of that matters in this case.

15 THE COURT: All right. Overruled, go ahead.

16 MS. MCCURRY: Your Honor, there's no objection to
17 the rest of it.

18 THE COURT: Okay, all right. How about page four?

19 MS. MCCURRY: No objections on that page.

20 THE COURT: All right. I think you had about four
21 or five there I will note them for the record -- and I will
22 note as an observation the state or the defense is entitled
23 to a fair redaction, not a perfect one. Thank you all so
24 very much.

25 Anything further?

1 MS. CAMPBELL: Your Honor, the only other thing is
2 I do have my law clerk here if you wanted to inquire of him

3 --

4 THE COURT: Oh, yes.

5 MS. CAMPBELL: As far as any --

6 THE COURT: You teach swimming or something like
7 that?

8 MR.: I'm a head coach at the Jewish Community
9 Center Swim Team.

10 THE COURT: The what?

11 MR.: Jewish Community Center.

12 THE COURT: Is that Beth Shalom or Temple of
13 Light?

14 MR.: Eriwin and Con I think.

15 MS. MCDUFFIE: It's both, Your Honor.

16 THE COURT: What?

17 MS. MCDUFFIE: Both.

18 THE COURT: Oh, okay. A combination, all right.
19 And one of the jurors has two kids I think that might have
20 taken swimming lessons from you?

21 MR.: They're on our swim team now.

22 THE COURT: Okay. Did you see the mother last
23 night?

24 MR.: She was at the meet, I made no contact with
25 her. The times that we would have had to interact with her

1 children I just had my assistants do it and I just stayed
2 away.

3 THE COURT: You want me to make an inquiry of this
4 juror, I will be happy to?

5 Does she know you, do you know her?

6 LAW CLERK: We know each other. I'm not totally
7 aware if she knows that I work here. We had a parent's
8 meeting a couple weeks ago --

9 THE COURT: That was the only issue that came up,
10 do you know anybody that works at the AG's office, I meant,
11 Fifth Circuit Solicitor's Office.

12 LAW CLERK: She may or may not. I brought it up
13 at a parent's meeting just when I introduced myself. I
14 said, maybe, once I that I worked at the solicitor's office
15 and then that was it. She may or may not know, I --

16 THE COURT: I mean, we have an alternate, if I
17 need to burn her I can. I don't know who she is, I mean,
18 you picked her or accepted her so I don't know.

19 MS. MCCURRY: Well, I was under the impression
20 yesterday that she did not know that he worked for the
21 solicitor's office. And now he's saying that he did tell
22 her in a conversation or may have told her that he did work
23 here at the solicitor's office.

24 THE COURT: Well, let's let him finish.

25 MR. KATA: Well, we had a parent's meeting with

1 probably 50 parents from our team and as I introduced myself
2 to let them know a little bit about me, I mentioned that I
3 go to law school, that I -- where I work, I work here just
4 to give them a little background knowledge, it was to a hug
5 group weeks ago.

6 THE COURT: You haven't done anything wrong.

7 MR. KATA: That's all --

8 THE COURT: No body has.

9 MS. MCCURRY: Yes, sir, let's inquire of her.

10 THE COURT: All right. Look, I'll just take her
11 off if y'all want me to, I don't care.

12 MS. CAMPBELL: I'd rather have her sit if
13 possible.

14 THE COURT: Okay.

15 MS. CAMPBELL: Unless she has some knowledge --

16 THE COURT: Let me see how we're going to do this.

17 MS. CAMPBELL: And he will not be here for
18 anything in front of the jury.

19 COURT REPORTER: What's your name, sir?

20 MR. KATA: Justin Kata, K-A-T-A.

21 COURT REPORTER: Thank you.

22 THE COURT: Well, basically will that make a
23 difference, can you sit here as a fair and impartial juror,
24 if she says yes, I mean, that covers it. If she says no or
25 it makes her uncomfortable.

1 All right, let's bring her out, let's bring her
2 out.

3 Well, I'll go get her. What's her name again?

4 MS. CAMPBELL: Ms. Jones.

5 THE COURT: You stay here. You stay here. Let's
6 do it all over -- Ms. Jones.

7 MS. CAMPBELL: (Ms. Campbell nodded head.)

8 (Pause)

9 THE COURT: All right. What's your full name.

10 MS. JONES: Tracey Michelle Jones.

11 THE COURT: Tracey Michelle Jones. What are your
12 kids names the swimmers?

13 PROSPECTIVE JUROR: Maire and Lonna.

14 THE COURT: Okay.

15 MS. JONES: Jones.

16 THE COURT: Sit down. You know we asked a
17 question yesterday, did you know anybody that worked at the
18 Fifth Circuit Solicitor's Office, you remember that
19 question?

20 MS. JONES: I do.

21 THE COURT: Do you?

22 MS. JONES: No.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: Not that I know of.

25 THE COURT: All right, all right. That's fine,

1 that's fine. Somebody who works at the Fifth Circuit
2 Solicitor's Office teaches swimming at the Jewish --

3 MS. MCDUFFIE: Community Center.

4 THE COURT: The what?

5 MS. MCDUFFIE: Community Center.

6 THE COURT: Jewish Community Center where your
7 kids take swimming lessons, is that right?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: All right. Do you see anybody that
10 you recognize, let me ask you that, look around. Start over
11 there (indicating) sitting down.

12 MS. JONES: I do now.

13 THE COURT: You do now?

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: And it's the gentleman sitting next to
16 her, right?

17 PROSPECTIVE JUROR: Well, I recognize the
18 gentleman sitting there (indicating).

19 THE COURT: Stand up, what your name again son?

20 MR.: Justin Kata.

21 THE COURT: Justin Kata and yesterday you had no
22 idea he worked here, I'm asking you, or did you? He works
23 for the Fifth Circuit Solicitor's Office.

24 MS. JONES: I had no idea, I mean.

25 THE COURT: Okay.

1 MS. JONES: I have very little conversation with
2 him.

3 THE COURT: Beg your pardon?

4 MS. JONES: I have very little conversation with
5 him obviously because I didn't know.

6 THE COURT: So I mean, you had no idea yesterday
7 when the question was asked --

8 MS. JONES: No.

9 THE COURT: Do you know anybody --

10 MS. JONES: No.

11 THE COURT: Okay. Now, the fact that you now know
12 that he teaches swimming at the Jewish Community Center
13 would that or could that affect your ability to be a fair
14 juror and impartial juror in the trial of this case?

15 MS. JONES: No.

16 THE COURT: All right. You sure about that?

17 MS. JONES: Yeah.

18 THE COURT: Okay, all right. Thank you, ma'am.

19 Go back to the jury room but don't discuss this
20 with anyone, okay.

21 MS. JONES: Okay.

22 THE COURT: All right.

23 (Juror retires from the
24 courtroom.)

25 THE COURT: Yes, ma'am.

1 MS. MCCURRY: We don't have any objection to that.

2 THE COURT: All right. That's, that's, we just
3 need to do this for his benefit and for everybody's benefit
4 so there's nothing objection of her sitting as a juror.

5 Anything further before the jury comes out?

6 MS. CAMPBELL: No, sir.

7 THE COURT: All right. Let me do this, let me
8 give y'all five minutes then and then we'll bring them out,
9 okay.

10 You got something?

11 MS. MCCURRY: No.

12 THE COURT: Okay. We'll give you five minutes to
13 relax, then refresh yourselves and then we'll get started.

14 (Whereupon, a short recess was
15 held.)

16 THE COURT: All right. We all ready then?

17 MS. MCCURRY: Your Honor, I do have a motion.

18 THE COURT: Yes.

19 MS. MCCURRY: A motion to sequester the law
20 enforcement witnesses other than the lead investigator.

21 MS. CAMPBELL: Your Honor, we would just, I mean,
22 I don't know what her grounds are, she has had the
23 opportunity, in fact, interviewed some of our witnesses
24 yesterday, they have written reports. If there were any of
25 the lay witness, of course, we obviously would agree that.

1 I just don't know -- and I think the case says the mere
2 opportunity of the witnesses to repeat their testimony is
3 insufficient, you must make a showing that states that it is
4 intended and -- and I don't think that applies here. We
5 have only one lay witness and that would be the first
6 witness.

7 THE COURT: And what's your response?

8 MS. MCCURRY: Well, Your Honor, the -- all the law
9 enforcement witnesses do have in there reports about what
10 happened.

11 THE COURT: Okay, look. I'll sequester them and
12 put them outside. Y'all will just have to come in as we
13 call you, it won't take long. Just be -- I don't think it's
14 going to make any difference but out of an abundance of
15 caution I will do it. So y'all got to go outside, we'll
16 just call your name.

17 Any, anything else?

18 MS. MCCURRY: Your Honor, I just again would like
19 to fully renew my objection to the mention in the statement
20 of the drill for the record to fully elaborate that we
21 believe that that clearly indicates that he was involved in
22 other robberies that would not be admissible in this case
23 it -- under Lyle and it would be the prejudice of that is
24 substantial outweighed there's no probative value in having
25 it, identity is not an issue in this case indicate, intent

1 is not an issue in this case, the only issue is whether or
2 not my client --

3 THE COURT: Well, I guess I shouldn't mention the
4 clothes either how about the clothes?

5 MS. MCCURRY: We don't have any objection to what,
6 what, jacket.

7 THE COURT: All right, it's denied.
8 Anything further?

9 MS. MCCURRY: No, Your Honor.

10 THE COURT: Bring the jury in.

11 BAILIFF: Be glad to, Your Honor.

12 THE COURT: I've already told the jury that we
13 will probably go through lunch go until about two o'clock.

14 (The jury returned to the
15 courtroom.)

16 BAILIFF: The jury's all present.

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

18 Mr. Foreman, members of the jury, welcome back
19 this morning.

20 Ms. Pentigrass, you may swear them.

21 THE CLERK: Ladies and gentlemen of the jury,
22 please stand and raise your right hand to be sworn. At the
23 end of state that I'm about to give you please respond by
24 saying I do.

25 (Whereupon the jury was duly

1 sworn.)

2 THE CLERK: You may be seated.

3 THE COURT: Now, Mr. Foreman, members of the jury,
4 what I will now say is untended to serve as an introduction
5 in the trial of this case, it is not the substitute for the
6 detail instructions on the law which I will give you at the
7 close of this case and before you retire to pursue your
8 verdict.

9 This is a criminal case commenced by the state
10 which is sometimes referred to as the prosecution against
11 Michael Jackson. This case is based upon an indictment, I
12 read it to you yesterday, members of the jury. You should
13 distinctly understand that the indictment is simply a charge
14 and that it is not in anyway or any since evidence of the
15 allegation it contains.

16 The defendant has pled not guilty to this
17 indictment, the state therefore has the burden of proofing
18 each of the essential elements of the indictment beyond a
19 reasonable doubt. The purpose of the trial is to determine
20 whether the state has met this burden. Your purpose as
21 jurors is to find and determine the facts. Under our system
22 of criminal procedure you are the sole judges of the facts,
23 members of the jury. If at this time I should make any
24 comment regarding the facts you are at liberty to disregard
25 it. It is especially important that you perform your duty

1 of determining the facts diligently and conscientiously for
2 ordinarily there is no means of correcting an erroneous
3 determination of the facts by a jury. On the other hand and
4 with equal emphasis I instruct you that the law as I give it
5 to you or is given by the court constitute the only law for
6 your guidance and it is your duty to accept and follow the
7 law. It is your duty to follow the law as I give it to you
8 even though you may disagree with the law and even though I
9 may disagree with the law we all, we altogether have to live
10 with law the as I tell it to you.

11 You are to determine the facts from the testimony
12 you hear and the other evidence introduced in court, it is
13 up to you to determine the emphasis which you feel may be
14 properly drawn from the evidence. You must not consider
15 anything that you may have read or heard about the case
16 outside of the courtroom whether before or during the trial.

17 Until this case is submitted to you, you must not
18 discuss it with anyone even with your fellow jurors. After
19 it is submitted to you you must discuss it only in the jury
20 room with your fellow jurors.

21 It's important that you keep an open mind and not
22 decide any issue in the case until the entire case has been
23 submitted to you under the instructions of the court, that
24 is the law as I give it to you.

25 It is your added duty, Mr. Foreperson, to preside

1 in the jury room and be the juror's spokesman here in court.

2 Now, the prosecution or the state has the burden
3 of proof of proving the defendant guilty beyond every
4 reasonable doubt, and I'll explain that to you later.

5 Now, under our system the state will make an
6 opening statement and these opening statements are a way for
7 the parties that is the prosecution as well as the defense
8 to outline what they -- the state to outline what they
9 intend to prove and how they intend and they will prove it
10 to you. And for the defense to say, well, we don't think
11 they're going to be able to do that, y'all are all familiar
12 with trials.

13 So but arguments are not evidence, the evidence
14 will come from the witness stand, from the testimony of the
15 witnesses and from the exhibits that will be introduced.

16 Now, from time to time there will be an objection
17 in this case and if there's an objection and I say overruled
18 that means it's proper for the witness to answer that
19 question, if I say sustained that means the witness should
20 not answer the question. And, you know, please take no
21 special note of how I rule on an objection, don't think that
22 I favor one side or the other because of how I rule on an
23 objection, it's my job as the judge to make a decision and I
24 have to live with it and y'all have to live with it. So
25 take no special note on how I rule on an objection or don't

1 try to figure out that I'm in favor of one side or the
2 other. You know, members of the jury, my interest is that I
3 have no interest in this case at all except to try insure
4 that both the state and the defendant, Mr. Jackson, receive
5 a fair and impartial trial which are the exact same interest
6 that y'all have in this case.

7 Now, from time to time it may become necessary for
8 me to send you out the jury room and I hear arguments on the
9 law. From time to time I will bring the lawyers up here and
10 we'll whisper. It's not that I'm trying to hide or we're
11 trying to hide anything from you but it's certain things
12 under the law that you should hear and there's certain
13 things that you shouldn't hear. And if I have to send you
14 out it's because I'm hearing arguments on the law which is
15 my rim and the only way I can hear arguments on the law is
16 in your absences that is or either I'll bring the lawyers up
17 here and we'll whisper a little it or I'll have to send you
18 out, okay. So take no special note able who objects or how
19 I rule, I don't favor one side or the other which is the
20 exact same interest y'all have in this case to be fair and
21 impartial to both sides to the state as well as to
22 Mr. Jackson in this case.

23 Now, with that in mind, I'm going to invite your
24 keen attention to the opening statements on behalf of the
25 state by Ms. Campbell and on behalf after Ms. Campbell

1 finishes Mr. Jackson by Ms. McCurry.

2 Ms. Campbell.

3 MS. CAMPBELL: Please the Court.

4 THE COURT: Yes, ma'am.

5 MS. CAMPBELL: On February 5th of 2007 a man
6 walked into the This Is It Video store, walked up to the
7 counter, grabbed the clerk by the shirt and demanded money.
8 And when Michael Vasquez didn't comply quickly enough
9 opening the register, he punched him, he putted out a knife,
10 he threatened him with it and then he was able to get the
11 money and leave.

12 The man who produced the knife, who committed
13 armed robbery is Michael Jackson. And, ladies and
14 gentlemen, this (indicating) is Michael Jackson.

15 Now, my name is Luck Campbell and I'm the
16 Assistant Solicitor of the Fifth Judicial Circuit which is
17 made up of Richland and Kershaw County the Columbia and
18 Camden area. And I along with Joanna McDuffie who will be
19 presenting witnesses before you this week. This is not
20 going to be a long trial because the evidence in this case
21 is very clear and concise and overwhelming.

22 Now, as the judge has told you as you've listened
23 to him there is one indictment in this case before you,
24 there can be more than one. But in this case there is one
25 charge and one indictment. And as the judge told you

1 yesterday an indictment is not evidence just as these
2 arguments that you hear are not evidence. The evidence
3 comes from the sworn testimony, physical evidence that will
4 be entered, in this case a video, you will have the actual
5 opportunity to see what happened on the night of February of
6 2007. But an indictment is important because it's the
7 vehicle by which the charge is brought to court and
8 ultimately brought to you. And its purpose is two fold, one
9 it puts the defendant on notice of what the defense must
10 prove and two it also puts the state on notice of what the
11 elements.

12 In this case the Grand Jury of Richland County has
13 true billed an indictment for armed robbery and very simply,
14 ladies and gentlemen, it states that Michael Jackson did
15 while in Richland County on or about February 5th of 2007
16 committed a robbery by feloniously taking from the person or
17 presence of Michael Vasquez, he was the clerk that night, an
18 employee of This Is It Video by means of force or
19 intimidation of goods or monies of This Is It Video. Such
20 goods or monies being described in this case as U.S.
21 currency and he also grabbed a credit card receipts with the
22 intent to deprive the owner permanently of such property
23 while armed with a pistol, a dirk, slingshot, metal
24 knuckles, raiser or any other deadly weapon or while
25 alleging either by actions or words that he was armed or

1 while using a representation of a deadly weapon or any
2 object which a person present during the commission of the
3 robbery reasonable believed to be a deadly weapon.

4 Now, let me back up for a minute, what does that
5 mean? The legislature and its wisdom understand that when
6 people either have a weapon or act like they have a weapon
7 that bad things can happen. Therefore to commit armed
8 robbery you can either a gun, a knife, a box cutter, medal
9 knuckles any other deadly weapon, or if you can just allege
10 by placing a hand in a pocket, a representation of a gun or
11 a knife, it could be a toy gun because the legislature
12 recognizes it, if anyone acts like they have a gun or, in
13 fact, do have a gun bad things happen. And those are the
14 elements of armed robbery and the judge will give you the
15 law at the end of the case and you listen carefully to that
16 because that is very important in this case.

17 Now, the burden of proof as it should be is on the
18 State of South Carolina to prove each and every element of
19 this indictment beyond a reasonable doubt, that is the
20 highest level of proof and that's how it should be in a
21 criminal court.

22 The judge will tell you what is proof beyond a
23 reasonable doubt, it's proof that leaves you firmly
24 convinced of the defendant's guilt. And, ladies and
25 gentlemen, I submit in this case, perhaps, more than any

1 other, that is a burden the state welcomes in this case, in
2 this courtroom with these facts and the evidence.

3 On February 4th, of 2007 Michael Vasquez went to
4 work at the This Is It Video store, it's an adult video
5 store, it had adult items in it, it's open late until two.
6 That night he was working the five to two a.m. shift.

7 Shortly after midnight he had a customer in the
8 store and he saw another person come in, he didn't think
9 anything about it, there was nothing suspicious, nothing
10 should have caught his attention. He was behind the
11 counter, he was actually taking on the phone to a friend of
12 his.

13 The second person that came in kind of wondered
14 off to one part of the store and within just a short period
15 of time the person when the second persons came in left out
16 of the front door. Again, nothing caught his attention. He
17 noticed that the second person that came in, a man, walked
18 up to the counter, he went over to see what he needed.
19 There at the counter there's a register, a computer monitor
20 actually on the counter and when he met him face-to-face
21 that man grabbed him by the shirt, demanded he give up the
22 money, he wanted the money. And when he didn't open the
23 draw as fast as he wanted he dragged him back towards the
24 register, and you'll see it on the video. At some point he
25 even punches him in the face just to get the point across

1 that he meant business. And you will see in the video when
2 he reaches into his pocket and he pulls out what looks like
3 a knife or a box cutter and he holds it in a threatening
4 manner not that he even has to get the elements of.

5 Michael Vasquez did what he needed to, he opened
6 the register. You will see the defendant, Michael Jackson,
7 reach in grab something over \$100 and some credit card
8 receipts and then he exited. And as you saw him go out the
9 front door you saw him go to the left which is sufficient.
10 He called the police. The police come. There is no DNA
11 evidence there, no one got shot luckily in this case, there
12 was no blood from the defendant to be found. He didn't
13 really touch anything other than the front door so finger
14 print weren't really usable but what they were able to do
15 was review the video. They called in the K-9 dog. The dog
16 picked up a track from the front door. He followed it down
17 to a road right behind the video store to Zemer Crest, he
18 finally lost the track within an apartment complex within
19 two to three blocks of where it was. And at that point he
20 circled but he wasn't able to pick up the track again
21 because he had to go unfortunately to a triple homicide down
22 the road.

23 The police get the video that night.

24 Over the next week they try to develop a suspect,
25 there's nothing. In a move that's not uncommon they decided

1 back the next weekend the 10th and the 11th to give the
2 video because the quality was such that you could see the
3 person fairly clearly. The video went out on WIS various TV
4 stations that week end because that is a common tool because
5 there's a thing called crime stoppers, where people can call
6 in anonymously and give information. On the news that
7 weekend Richland County Sheriff's Department asked people to
8 help them did anyone recognized this person and they got a
9 call. That Monday morning, when they returned to work, over
10 the weekend they had developed information about Michael
11 Jackson, he was known to frequent the Broad River Road area.
12 They weren't able to get a good address on him but they knew
13 he was in the area and he fit the description.

14 Based on that information they were able to get a
15 photograph of Michael Jackson and put it in what's called a
16 photo line up that Monday. They went and met with the
17 victim in the case. The victim who was face-to-face with
18 the man who was threatening to cut him. And when the victim
19 looked at those six photographs in that photo line up he
20 immediately recognized the person who had robbed him and it
21 happened to be Michael Jackson a person that they had
22 developed as a suspect in the case. And at that point he
23 got the warrant for his arrest. They still didn't know
24 where he lived. So the next morning they set up
25 surveillance there at the corner of Broad River and Zemer

1 Crest because they knew he frequented the area. And low and
2 behold the next morning as they were out there investigators
3 and deputies Michael Jackson came walking down the road and
4 they took him into custody. That was the man that had been
5 identified but his appearance had changed. He had shaved
6 his head, he had shaved his mustache and remember the video
7 had been out that weekend on TV. When he was taken into
8 custody of Captain Smith of the Richland County Sheriff's
9 Department, placed him in his car and then he advised him of
10 his Miranda Rights which is important, his constitutional
11 right to remain slight to have an attorney, Michael
12 indicated he understood his rights and he waived those
13 rights. And he said basically -- he was told what he was
14 being arrested for, that he was tired, the drugs made him do
15 it, it was over. Captain Smith even went so far as to show
16 him still shots from the video showing Michael Jackson's
17 face and even Michael Jackson there in the car prior to
18 being transported any where acknowledged that that was
19 enough evidence for him, it was clear who it was.

20 He then transported him down to the sheriff's
21 department headquarters. He then Marandized him again, went
22 over his rights on a piece of paper, Michael Jackson signed
23 off acknowledging that he understood what his rights were.
24 He signed off that he wanted to talk to the police at that
25 point. Then he told Captain Smith about the drugs that

1 caused him to do it, that he had been smoking crack cocaine,
2 where he brought the crack cocaine. But yet he went in and
3 he robbed the video store that night but he just had a box
4 cutter that didn't have a blade. He minimum it at that
5 point.

6 He even on the way to the sheriff's department
7 pointed out the trailer where he had been staying with a guy
8 called Crazy Mike and that trailer just happened to be
9 across the street in the apartment complex where the dogs
10 had tracked him that night.

11 During the course of the interview Captain Smith
12 also noticed he was wearing certain clothing and even
13 Michael Jackson acknowledged that he was wearing the very
14 same hat that he was wearing from the robbery some eight,
15 nine days earlier. That's some of the evidence that the
16 state is going present to you.

17 All the state ask is that once you've heard all of
18 the evidence, once the judge has instructed you on the law
19 that you're going to apply that evidence is that you bring
20 back a verdict that's fair and just, that you hold him
21 responsible for his decisions.

22 The word verdict comes from a Latin phrase,
23 veredicto, and it simply means to speak the truth. All the
24 state ask is for a verdict for this community that speaks
25 the truth, holding him responsible for his actions back in

1 February of 2007, thank you.

2 THE COURT: All right, Ms. McCurry.

3 MS. MCCURRY: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. MCCURRY: Good morning, ladies and gentleman,
6 I'm Carol McCurry and I represent Michael Jackson.

7 The state has the burden of proof in this case,
8 Michael doesn't have to prove anything.

9 Michael sits here before you today presumed
10 innocence unless or until the state can prove him guilty of
11 this crime beyond a reasonable doubt. The letter of the
12 law, South Carolina State Law, but it's under God's law
13 where we see it the spirit of the law and therefore, I must
14 tell you, ladies and gentlemen, that Michael does not sit
15 here in front of you an innocence man. What he did that
16 night was wrong and it was a crime. But it wasn't armed
17 robbery, we don't deny that he took money from This Is It
18 Video store. But we contend that the evidence will show the
19 state is unable to prove to each and every one of you beyond
20 a reasonable doubt that Michael was armed with a deadly
21 weapon.

22 Michael Jackson is 50 years old now. Back in
23 February of 2007 he worked for a landscaper and he stayed on
24 and off with his mother. The evidence will show that
25 Michael has a serious drug addition and that he suffers from

1 hepatitis C.

2 Shortly before the incident took place at This Is
3 It Video Michael learned some really bad news, he had been
4 exposed --

5 MS. CAMPBELL: Objection, Your Honor, may we
6 approach?

7 THE COURT: Yes.

8 (Whereupon, a bench conference
9 was held off the record, in the
10 presence of the jury, but out of
11 the hearing of the jury.)

12 MS. MCCURRY: Michael Jackson learned that he had
13 been exposed to HIV and that he needed to be tested. HIV, a
14 potentially life threatening virus to have in someone who's
15 even in the best of health. And Michael didn't handle that
16 news very well at all. He gave into his addiction and he
17 started smoking crack cocaine.

18 He went on a binge and he smoked crack cocaine and
19 his body's need for the drug became more than his wallet
20 could afford. He had been smoking crack cocaine for two
21 days when he entered the This Is It Video store and he
22 encountered Mr. Vasquez, the clerk, who was working behind
23 the counter at 12 minutes past midnight on February the 5th.

24 You will see the video and you will see Michael
25 reach across the counter and grab Mr. Vasquez by his shirt

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 in the chest area. He pulls him a short distance down the
2 counter being careful not to knock over a computer monitor
3 actually balances it, catches it with his hands before they
4 reach the cash register. The cash register is then opened
5 and Michael reaches in and takes the money from the
6 register, puts it in his pocket and never lets go of
7 Mr. Vasquez's shirt while he does this. And he leaves the
8 store. There's no doubt that this is a horrifying
9 experience for Mr. Vasquez, no doubt. And Michael is indeed
10 sorry for what he did. This is a very serious case and we
11 ask that you hold the state to its burden of proof that
12 you -- the evidence or lack there of and the discrepancies
13 very carefully.

14 We believe that once you have considered all of
15 the evidence that you will conclude that Michael could have
16 been charged with a completely different crime altogether,
17 one that fits the act, that he was not committing an armed
18 robbery and that you will render a just and true verdict of
19 not guilty to that particular charge. Thank you very much.

20 MS. CAMPBELL: May it please the Court?

21 THE COURT: Yes, ma'am.

22 MS. CAMPBELL: State calls Michael Vasquez.

23 THE COURT: Come around, Mr. Vasquez.

24 THEREUPON,

25 MICHAEL VAZQUEZ,

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 after having been duly sworn, testified as follows:

2 THE CLERK: Please have a seat, state your full
3 name for the record.

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q Michael, how old you are?

7 A 24.

8 Q And do you live here in the Columbia area?

9 A Yes.

10 Q How long have you been living in Columbia?

11 A Most of my life.

12 Q Where did you go to high school?

13 A Spring Valley.

14 Q And when did you finish high school?

15 A 2002.

16 Q Back in February -- where are you employed now?

17 A Fresh Market.

18 Q The Fresh Market?

19 A Uh-hum.

20 Q And what type of store is that?

21 A Grocery store.

22 Q And what do you do at the Fresh Market?

23 A Deli prep.

24 Q The deli prep?

25 A (The witness nodded head.)

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Q And how long have you been working there?
- 2 A Since the end of January.
- 3 Q I want to turn your attention back to February of 2007,
- 4 where were you employed then?
- 5 A This Is It Video.
- 6 Q And what type of store is the This Is It Video?
- 7 A An adult store.
- 8 Q An adult store?
- 9 A (The witness nodded head.)
- 10 Q Does it have videos there?
- 11 A Videos, toys and lingerie.
- 12 Q Lingerie?
- 13 A (The witness nodded head.)
- 14 Q And how long had you been working at the This Is It
- 15 Video as of February 5th of 2007?
- 16 A May of the previous year.
- 17 Q That night on February the 4th of 2007, what day of the
- 18 week was this?
- 19 A Sunday.
- 20 Q And how late does the video store stay open?
- 21 A Two a.m.
- 22 Q That night, what shift were you working?
- 23 A Five p.m. to two a.m.
- 24 Q And did you always work at the This Is It Video over on
- 25 Broad River?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 A I'd work between that one and the one on Two Notch.
- 2 Q That night who all was at the video store working?
- 3 A Just me.
- 4 Q And was that unusual for you to work alone there?
- 5 A No, that was my usual shift.
- 6 Q I want to turn your attention to around midnight until
- 7 the early morning, will be just after midnight on the
- 8 fifth that same night, you were there, you were going
- 9 to close up at two a.m?
- 10 A Uh-hum.
- 11 Q What did you notice shortly after midnight, were there
- 12 any customers in the store?
- 13 A There was one customer and then Mr. Michael Jackson
- 14 walked in while the other customer was still in the
- 15 store.
- 16 Q And did you know either one of those two people?
- 17 A No.
- 18 Q Prior to that night. And when Mr. Jackson walked in
- 19 the store the other customer was already in there, did
- 20 you think anything about it?
- 21 A No.
- 22 Q Where were you in the store?
- 23 A Behind the register.
- 24 Q What were you doing?
- 25 A I was on the phone and walking back and forth keeping

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 an eye on the customers.

2 Q At some point did you notice that the first man who was
3 in the store when the second person came in, did you
4 notice him leave?

5 A Shortly after, yes.

6 Q Did he exit out then front door?

7 A Yes.

8 Q And there was nothing remarkable about him being in
9 there that night?

10 A No.

11 Q After the first person that was in store was in there
12 and was Mr. Jackson then the only customer in the
13 store?

14 A Right after the first one left.

15 Q And what part of the store was he in when the customer
16 was in the store?

17 A The department to the left which is where the lingerie
18 and clothing would be.

19 Q Okay. At some point did you notice him come up towards
20 the counter?

21 A Yes, after the first customer left.

22 Q And what happen then?

23 A He asked me for the money and then at that time point I
24 stated, Are you kidding me? And he grabbed my hoodie
25 at the time and then dragged me down to where the

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 register was.
- 2 Q Let me back up. You said that he came up to the
- 3 counter and he asked you for the money?
- 4 A Correct.
- 5 Q And do you remember exactly what he said?
- 6 A He was like, Give me your money.
- 7 Q And at that point you were behind the counter and he's
- 8 on the other side?
- 9 A Uh-hum.
- 10 Q And you said he grabbed you?
- 11 A Right.
- 12 Q And where did he grab you?
- 13 A On my chest towards my jacket where the punisher skull
- 14 is.
- 15 Q And I believe you said at first when he demanded money
- 16 you said, Are you kidding?
- 17 A Uh-hum.
- 18 Q And did you think he was kidding at that point?
- 19 A Yeah.
- 20 Q What changed your mind?
- 21 A When he grabbed me and dragged me down to where the
- 22 register was.
- 23 Q And at that point did you get a good look at the guy's
- 24 face, this is stupid questions?
- 25 A Right.

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Q And were -- this is another one, were you paying
2 attention?
- 3 A Yes.
- 4 Q And how far was he from you when you were looking at
5 his face?
- 6 A Probably a feet or so.
- 7 Q You said he dragged you down towards the register?
- 8 A Uh-hum.
- 9 Q And is there a computer monitor right there?
- 10 A Yes.
- 11 Q And what happened to the computer monitor?
- 12 A It about got knocked over I had to keep it from getting
13 busted on the floor.
- 14 Q Was he saying anything else?
- 15 A Not that I could remember.
- 16 Q At some point did you notice that he reached into his
17 pocket?
- 18 A Yes.
- 19 Q And what did you see then?
- 20 A Well, he threatened me with a weapon saying that he had
21 something in his pocket and then we -- when we got down
22 to the register I went to go open the draw to press the
23 bottom to worn the cops and to turn I just had to turn
24 the key to prop the draw. And then at that point when
25 the door opened he grabbed that money and punched me

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 and then ran out the door.

2 Q Prior to opening the draw, did you notice whether or
3 not -- you said he reached towards his pocket, did he
4 pull anything out of it?

5 A Not that I'm aware of. It wasn't until we got down to
6 the drawer when I was getting --

7 Q And that's the part I'm talking about, when you were
8 getting the drawer open.

9 A Right.

10 Q Did see some type of weapon?

11 A Yes.

12 Q And who had the weapon?

13 A Michael Jackson.

14 Q How was he holding it?

15 A In his hand.

16 Q What kind of weapon was it?

17 A I believe it to be a box cutter.

18 Q A type of knife, a box cutter type?

19 A Right.

20 Q And, in fact, prior to pulling it out, I believe you
21 just testified that he said something about it?

22 A Right.

23 Q What did he say to you?

24 A He threatened me, he had like a knife in his pocket.

25 Q And then he produced it?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 A Uh-hum.
- 2 Q And at that point, you were doing everything you could
3 to open the drawer?
- 4 A Right.
- 5 Q What was going through your mind?
- 6 A The sooner it was over and done with the better.
- 7 Q Did you think he would make good on his threat to use
8 the knife?
- 9 A I'd hope he wouldn't.
- 10 Q Why did you open the drawer?
- 11 A Because I didn't want to get cut.) ✓
- 12 Q Okay. How did he get the money?
- 13 A As soon as the draw opened he reached over and grabbed
14 the bills out the drawer and the credit card receipts. ✓
- 15 Q Did he say anything else prior to leaving?
- 16 A No, ma'am.
- 17 Q At some point, did he actually -- he already had you by
18 the shirt, did he physically assault you?
- 19 A Yes, he punched me in the face.
- 20 Q Was he saying anything when he punched you in the face?
- 21 A No.
- 22 Q Did you see him actually exit after he got the money?
- 23 A No, I reviewed the tape and that's when I saw him leave
24 to go to the left of the store.
- 25 Q What did do you after he left?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 A I immediately called the other store and the police
2 department.

3 Q And did the police respond?

4 A Yes.

5 Q And when the police got there, did you actually show
6 them the video?

7 A Yes.

8 Q And actually I think y'all reviewed it together?

9 A Uh-hum.

10 Q And did you also give the police a description of the
11 man that robbed you that night?

12 A Yes.

13 Q And do you remember what the description was?

14 A A black male, late 30's early 40's with a black hoodie
15 or a black jacket, a black beanie with orange lining to
16 the jacket.

17 Q Do you remember telling the police whether or not he
18 was armed?

19 A Yes.

✓ 20 Q And did you indicate that he had some type of knife or
21 box cutter?

22 A Yes.

23 Q Did you also after reviewing the tape saw which
24 direction you saw him leaving the store in?

25 A Yes.

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 Q And would that -- are you familiar with Zemer Crest and
2 Broad River Road?

3 A I know where it's at.

4 Q Okay. Did he go in that direction?

5 A Correct.

6 Q Were you able to determine that night approximately how
7 much money he took? ✓

✓ 8 A Yes, about \$104.

9 Q And was he also able to -- did he also take something
10 else that was in the register?

11 A Credit card receipts.

12 Q After the police came I believe you gave them the
13 description of the person and direction he went in?

14 A Yes.

15 Q And did you also turn over the video that night to him?

16 A My manger did that.

17 Q So your manager actually came down that night?

18 A No, he did not.

19 Q Okay. Had you ever seen the person that committed this
20 armed robbery before?

21 A No.

22 Q Is there any doubt that he had a weapon in his hand? ✓

23 A He defiantly had one.

24 Q I want to turn your attention to the 12th of February
25 about a week later, did a Captain Smith from the

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Richland County Sheriff's Department make contact with
2 you?
- 3 A Yes.
- 4 Q And where did that meeting take place?
- 5 A When I was living in Hopkins he came to my residence.
- 6 Q He came to your resident?
- 7 A Yes.
- 8 Q And who all was there when he came and met with you
9 that day?
- 10 A My roommate Melissa Watdel.
- 11 Q And you?
- 12 A Yes.
- 13 Q And Caption Smith?
- 14 A Right.
- 15 Q And when he came and met with you that day, did he then
16 show you some photographs?
- 17 A Yes.
- 18 Q Do you remember what if anything he said to you prior
19 to showing the photographs?
- 20 A All he told me was to see if I recognize anyone on the
21 sheet.
- 22 Q Okay. I'm going to show you what's been marked as
23 State's Exhibits Number one for, ID purposes at this
24 point, do you recognize that?
- 25 A Yes.

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Q And is this a series of photographs that he showed you
2 that day?
- 3 A Yes.
- 4 Q So when he showed you these photographs there's some
5 writing that been put on this and I believe your
6 initials up here?
- 7 A Uh-hum.
- 8 Q You didn't have any of that writing on it, the
9 handwriting?
- 10 A (The witness shakes head.)
- 11 Q When he showed you the photographs, did he indicate who
12 you should pick out or who you recognized?
- 13 A No.
- 14 Q And, in fact when you looked at those six photographs,
15 did you recognize someone?
- 16 A Yes.
- 17 Q Did anyone tell who you to pick?
- 18 A No.
- 19 Q Did anyone insinuate you had to pick one or anything
20 like that?
- 21 A No.
- 22 Q And when you looked at those the photographs who did
23 you recognize?
- 24 A Mr. Michael Jackson immediately. ✓
- 25 Q Did you know his name at the time?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 A No.
- 2 Q But did you recognize the man that had robbed you?
- 3 A Yes.
- 4 Q And he was armed with a weapon?
- 5 A Yes.
- 6 Q Which one was he on there?
- 7 A The top middle.
- 8 Q The night when you were robbed, you mentioned I think
- 9 that the person that robbed you had a hat on?
- 10 A Yes, a beanie.
- 11 Q A beanie?
- 12 A Yes.
- 13 Q Did he have any facial hair?
- 14 A He had a mustache.
- 15 Q And that's the description you given the police?
- 16 A Yes.
- 17 MS. CAMPBELL: Your Honor, at this time we'd offer
- 18 State's Exhibit Number 1 into evidence.
- 19 THE COURT: All right, without objection.
- 20 MS. MCCURRY: No objection.
- 21 (State's Exhibit 1 admitted into
- 22 evidence.)
- 23 MS. CAMPBELL: Your Honor, may I publish it?
- 24 THE COURT: Yes, ma'am.
- 25 MS. CAMPBELL: Thank you.

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 (Ms. Campbell publishes State's
2 Exhibit 1 to the jury.)

3 BY MS. CAMPBELL:

4 Q Did you continue to work at This Is It Video?

5 A No, I quite that night.

6 Q I'm going to show you what's been marked as State's
7 Exhibit four, five, six and seven, first just ask if
8 you recognize those?

9 A Yes. This is the store I worked at.

10 Q Okay. And six and seven I believe are though
11 photographs you were actually in?

12 A Yeah.

13 MS. CAMPBELL: Your Honor, at this time we'd offer
14 them into evidence.

15 MS. MCCURRY: No objection.

16 THE COURT: All right, without objection.

17 (State's Exhibit 4, 5, 6 and 7
18 admitted into evidence.)

19 BY MS. CAMPBELL:

20 Q State's Exhibit Number four what does that show?

21 A That's the front of the store.

22 Q And State's Exhibit Number five where in the store does
23 that show?

24 A The entrance.

25 Q And is this the actual entrance that he would have come

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 in that night?
- 2 A Yes.
- 3 Q And it's actually shown on the video that I'm going to
- 4 get to in a minute?
- 5 A Yes.
- 6 Q State's Exhibit Number Six, what does that show?
- 7 A That would be where the register is.
- 8 Q And was that where you were standing behind that
- 9 register that night?
- 10 A Yes.
- 11 Q And you're actually in this and I see the computer
- 12 thing next to you, is that that computer monitor you --
- 13 A Uh-huh --
- 14 Q You referenced?
- 15 A Uh-huh.
- 16 Q And finally State's Exhibit Number Seven, what does
- 17 that show?
- ✓ 18 A That would be me after I got punched in the face.
- 19 Q And the police actually took that picture of you that
- 20 night?
- 21 A Yeah.
- 22 Q And does it show the area where you were punched?
- 23 A Yes.
- 24 Q And where is that?
- 25 A (Indicating).

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 Q Right here (indicating)?

2 A Yes.

3 Q And that's where he actually punched you that night?

4 A (The witness nodded head.)

5 Q The videos that are in this store, how do those work?

6 A They're motion detected.

7 Q And so does it catch -- it's not a free running thing,
8 it has clips?

9 A Right.

10 Q I'm going to show you State's Exhibit 8 through 11, and
11 first just ask if you recognize those?

12 A Yes.

13 Q And are those stills taken from the video that night?

14 A Yes, they are.

15 MS. CAMPBELL: Your Honor, at this time we'd offer
16 them into evidence.

17 MS. MCCURRY: No objection.

18 THE COURT: All right, without objection.

19 (State's 8, 9, 10 and 11
20 admitted into evidence.)

21 BY MS. CAMPBELL:

22 Q And State's Exhibit Number Eight, what does that show?

23 A The defendant in the store.

24 Q And, in fact, State's Exhibit Number 11 show's a closer
25 up view?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 A Yes.

2 Q And is that how the defendant appeared that night when
3 he came into the store?

4 A Yes.

5 Q And I noticed in this, where are his hands at that
6 point?

7 A In his pocket.

8 Q And is that ultimately the pocket from where he
9 produced the weapon?

10 A Yes.

11 Q State's Exhibits Number 12 through 24, are these all
12 still photographs taken from the video that night?

13 A Yes.

14 Q And for the edification of the jury, were those
15 different angles and different cameras in the store?

16 A Yes, there were.

17 Q So there was a camera that covers say the entrance?

18 A Uh-huh.

19 Q And then one that covers the area where the counter is?

20 A And the shoes and the counter.

21 Q And the shoes are in a separate area.

22 A Uh-huh.

23 Q So there's several cameras that rotate?

24 A Yes.

25 MS. CAMPBELL: State's Exhibits 12 through 24,

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 Your Honor, we'd offer into evidence at this time.

2 THE COURT: Ms. McCurry, any objection?

3 MS. MCCURRY: No objection, Your Honor.

4 THE COURT: All right.

5 (State's Exhibits 12 through 24
6 admitted into evidence.)

7 BY MS. CAMPBELL:

8 Q State's Exhibit Number 12, what does that shows?

9 A Where he grabbed me.

10 Q And 13, that's where he initially grabbed you?

11 A Yes.

12 Q And that shows what he's wearing and everything?

13 A Yes.

14 Q And at that point, there is no weapon shown?

15 A No.

16 Q And that would be right after he first demanded the
17 money?

18 A Right.

19 Q And then State's Exhibits, 14, 15, 16 through 19, does
20 that show the precession of how he pulled you down
21 towards the register?

22 A Yes.

23 Q And taking them one at a time, this is when you're
24 still on the side of the register and this is all shown
25 in the video, right?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 A Uh-huh.

2 Q Ultimately to where he pulls you down on the other side
3 of the register?

4 A Right.

5 Q See in State's Exhibit 23, does that show you going
6 down?

7 A Yes.

8 Q And when was that?

9 A That's when I got punched in the face.

10 Q And it doesn't actually show the punch but it shows the
11 aftermath when you got down?

12 A Yes.

13 Q State's Exhibits 21 and 23, can you actually see an
14 objection in his hand at that point?

15 A Yes.

16 Q And was that, in fact, the object, the knife?

17 A Yes.

18 Q And it shown better actually in the video itself, is it
19 not?

20 A Yeah.

21 Q And State's Exhibit Number 24 actually shows him with
22 the money after he grabbed it?

23 A Yeah.

24 Q You knew at the point where the knife was?

25 A I believe it was in the back of his pocket, I'm not

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 sure.

2 Q I want the to show you -- you mentioned that he was
3 wearing a hat, I'm going to show you, what I have yet
4 to mark.

5 (State's Exhibit 40 marked for
6 identification.)

7 BY MS. CAMPBELL:

8 Q State's Exhibit Number 40 for ID purposes, was this the
9 type of hat he had on that night?

10 A Yes.

11 Q At my request did you review the video in this case?

12 A Yes.

13 Q And does it fairly and accurately show what happened
14 night?

15 A Yes.

16 Q Not every single second of it but clips?

17 A Right.

18 MS. CAMPBELL: Your Honor, at this time we'd offer
19 the video into evidence as State's Exhibit Number 35.

20 THE COURT: Any objection?

21 MS. MCCURRY: No objection.

22 THE COURT: All right, without objection.

23 (State's Exhibit 35 admitted
24 into evidence.)

25 MS. CAMPBELL: Your Honor, may the witness step

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 down and view the video?

2 (There was no response.)

3 MS. CAMPBELL: May the witness step down?

4 THE COURT: Oh yes, ma'am, sorry.

5 Mr. Vasquez, you may step down, sir.

6 BY MS. CAMPBELL:

7 Q Come over on this side because the court reporter can
8 hear you better.

9 Michael, what area of the store does this video
10 showing?

11 A That's where the register is.

12 Q Who is that over there (indicating) --

13 MS. MCCURRY: Your Honor, I objection.

14 THE COURT: Basis?

15 MS. MCCURRY: That the video is the best evidence.

16 THE COURT: Step -- y'all come up.

17 (Whereupon, a bench conference
18 was held off the record, in the
19 presence of the jury, but out of
20 the hearing of the jury.)

21 THE COURT: Overruled.

22 MS. CAMPBELL: Okay.

23 Start that over.

24 BY MS. CAMPBELL:

25 Q Is this you (indicating)?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 A Yes.
- 2 Q And at this point how many people are in the store, do
3 you know?
- 4 A I believe it's that person that's there.
- 5 Q Who is that walking in front of the corner?
- 6 A Mr. Michael Jackson.
- 7 Q And at the time you didn't know his name?
- 8 A No.
- 9 Q Never seen him before?
- 10 A No.
- 11 Q At this point is he forcing you down towards the
12 register?
- 13 A Yes.
- 14 Q Where is the register?
- 15 A Right underneath.
- 16 Q Right down here (indicating)?
- 17 A (The witness nodded head.)
- 18 Q And at that point what's he got in his hand? ✓
- 19 A The box cutter.
- 20 Q And you were attempting to open the door?
- 21 A Yes.
- 22 Q At that point he put it back?
- 23 A Yes.
- 24 Q Reaches in. Does he still have a hold of you?
- 25 A Yes.

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

- 1 Q At that point is that when he hits you?
- 2 A Yes.
- 3 Q And he's got the money in his hand, what are you doing
- 4 there?
- 5 A I making sure I'm not bleeding.
- 6 Q This would be where he punched you in the face?
- 7 A Yes.
- 8 Q At this point you were just trying to make sure you
- 9 were okay?
- 10 A Uh-huh.
- 11 Q And at that point you're making the phone call?
- 12 A Yes.
- 13 Q At this point he is already outside the store?
- 14 A Yeah, he ran out after he got the money.
- 15 Q Okay.
- 16 MS. CAMPBELL: Let me see the front where he comes
- 17 in.
- 18 Just quickly, Your Honor.
- 19 BY MS. CAMPBELL:
- 20 Q That smaller thing that shows all different angles of
- 21 the cameras?
- 22 A Yes.
- 23 Q Does that show him entering the store?
- 24 A Yes.
- 25 Q And what area is he going to?

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 A That's where the clothing and lingerie.

2 Q And the other customer that was in the store does he
3 then exit?

4 A Yes.

5 Q And that's showing where he left?

6 A Yes.

7 Q And without going --

8 MS. CAMPBELL: Go back to the -- all the different
9 angles of the camera, the eight little frames.

10 BY MS. CAMPBELL:

11 Q There you go. And starting right around 12:12 and the
12 time is up here (indicating) does it pretty accurately
13 show in intervals where all he's been and who all was
14 in the store?

15 A Yes.

16 Q Without going through all of them?

17 A Yes.

18 Q And that's on the video you put into evidence?

19 A Yes.

20 Q Okay, thank you. You may take the stand.

21 A (The witness complies.)

22 Q As I mentioned earlier on that you, actually can see in ✓
23 there where he pulls out the box cutter?

24 A Yes.

25 Q Holds it up and than puts it back in his pocket and ✓

MICHAEL VAZQUEZ DIRECT BY MS. CAMPBELL

1 grabs the money?

2 A Yes.

3 Q And that's reflected clear on the video?

4 A Yes.

5 Q And that's what you saw that night?

6 A Yes.

7 Q Prior to him pulling out the weapon, what did he tell
8 you?

✓ 9 A He just threatened me holding his hand in the pocket,
10 stating that he had a knife on him.

11 Q And that you needed to give him the money?

12 A Yes.

✓ 13 Q Is there any doubt he had a knife at all?

14 A No.

15 Q Or a box cutter?

16 A Right.

17 Q The person that produced the knife and took the money,
18 do you see him here in the courtroom?

19 A Yes.

20 Q Has his appearance changed any from the night when you
21 saw him?

22 A Yes.

23 Q But is it still the same person that robbed you?

24 A Yes.

25 Q Can you point him out for the jury?

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

1 A Sitting over there (indicating).

2 Q At the table?

3 A Yes.

4 Q Between the two lawyers?

5 A Yes.

6 Q Okay, thank you. That's all I have.

7 CROSS-EXAMINATION

8 BY MS. MCCURRY:

9 Q Morning Mr. Vasquez.

10 A Morning.

11 Q Having reviewed the video, I want to ask you a few
12 questions about, what happened. When, when, you spoke
13 to the police that night when they first arrived, and
14 you spoke to Deputy Snuffer?

15 A Yes.

16 Q Did you tell Deputy Snuffer that Mr. Jackson approached
17 you and punched you in the face?

18 A Not immediately punched me in the face, but yes, he
19 did.

20 Q Did you tell him that he presented a knife and demanded
21 money?

22 A Yes.

23 Q Did you tell anyone that you had ever seen Mr. Jackson
24 before?

25 A I've never seen him before.

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

1 Q Okay. When Mr. Jackson entered the store, and he
2 reached over and grabbed you, he grabbed you in the
3 chest area, is that true?

4 A Uh-huh.

5 Q Okay. And you didn't think that he was serious at that
6 point about wanting your money?

7 A Well, at that point, yes.

8 Q Okay. And did you at any point have your cell phone in
9 your hand when this incident happen?

10 A Yes.

11 Q Isn't it true that for the majority of the time that
12 this incident took place you held onto that cell phone?

13 A I didn't want to break it.

14 Q Okay. You didn't want to break your cell phone?

15 A Right.

16 Q You testified that Mr. Jackson pulled you a short
17 distance down the counter, correct?

18 A Correct.

19 Q And that you had to keep the monitor from falling over?

20 A Correct.

21 Q Okay. But isn't it true that Mr. Jackson reached up
22 and grabbed the monitor as well to keep it from falling
23 over?

24 A Yes -- touched the monitor --

25 THE COURT: Wait, stop.

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

1 Yes, sir.

2 BAILIFF: I have a juror that needs to go to the
3 restroom.

4 THE COURT: All right. Don't tell us who it.
5 We'll take a little break and you all go to the restroom and
6 I'll bring you back out shortly. Go ahead, y'all may go,
7 just don't talk about the case.

8 (The jury retires from the
9 courtroom.)

10 THE COURT: We'll be at ease. So just be at ease.

11 MS. CAMPBELL: Thank you, Your Honor.

12 THE COURT: Okay.

13 (Whereupon, a short recess was
14 held.)

15 THE COURT: Mr. Vasquez, I'm curious, how old are
16 you?

17 MR.: 24.

18 THE COURT: Okay. Are we all ready?

19 (There was no response.)

20 THE COURT: All right. Mr. Hollis, invite them to
21 come back in.

22 BAILIFF: Be glad to, Your Honor.

23 (The jury returned to the
24 courtroom.)

25 BAILIFF: The jury's all present, Your Honor.

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

1 THE COURT: Thank you, sir.

2 Welcome back Mr. Foreman, members of the jury.

3 Ms. Campbell -- I'm sorry, Ms. McCurry, you may
4 continue with your cross-examination.

5 BY MS. MCCURRY:

6 Q Now, Mr. Vasquez, when you initially spoke to law
7 enforcement about this incident you never told anyone
8 that Mr. Jackson threatened to cut you, did you?

9 A He just had the knife, he threatened me when he said
10 that he had a knife on him.

11 Q Okay. But you never told anyone that he threatened to
12 cut you?

13 A No.

14 Q And isn't it true that you never told anyone that
15 Mr. Jackson said that he had a knife on him at the
16 time?

17 A He did have a knife on him.

18 Q No, my question is, isn't it true that you never told
19 anyone that my client said to you that he had a knife?

20 A I told the police officer that he had a knife in his,
21 yes.

22 Q But Mr. Jackson never told you he had a knife?

23 A He just threatened my by saying he had a weapon in his
24 pocket.

25 Q Mr. Vasquez, isn't it true that you did not report to

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

- 1 law enforcement that Michael Jackson indicated to you
2 that he had a knife on him?
- 3 A I don't remember exactly I said to the police officer.
- 4 Q When Michael Jackson grabbed you were you scared,
5 correct?
- 6 A Yes.
- 7 Q Okay. And at that point you were going to give him
8 money, correct?
- 9 A Correct. He wanted me to open the register.
- 10 Q But at that point you were going to give him money?
- 11 A No, not my money.
- 12 Q The store's money?
- 13 A Correct.
- 14 Q And isn't it true that when you looked at the video you
15 can't actually see Mr. Jackson punch you in the face?
- 16 A No, you couldn't clearly see that.
- 17 Q Okay. And immediately after Michael left the store
18 after being robbed, you called the other store,
19 correct?
- 20 A Yes.
- 21 Q Okay. You didn't immediately call 911?
- 22 A No.
- 23 Q So there was five minutes before you called 911,
24 correct?
- 25 A I don't know the exact time.

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

1 Q You have any reason to think that it wasn't five
2 minutes?

3 A No.

4 Q And isn't it true that you were actually reviewing the
5 video tape at the time you were on the phone with the
6 911 operator?

7 A I'm not sure.

8 Q So you can't recall that you were reviewing the tape at
9 time you were on phone with the operator trying to get
10 a description of Mr. Jackson?

11 A Correct.

12 Q When you were on the phone with the 911 operator you
13 don't remember if you had reviewed the videotape or not
14 at that point?

15 A I mean, it was two years ago, I continue exactly tell
16 you exactly everything that happened.

17 Q Okay. Did you have -- you didn't have a clear
18 description of Mr. Jackson's clothing or anything until
19 you looked at the video, did you?

20 A I mean, I saw him face-to-face. I saw what he was
21 wearing.

22 Q So you could describe what he was wearing without
23 having looked at the video?

24 A Right.

25 Q This incident happened very quickly, didn't it?

MICHAEL VAZQUEZ CROSS BY MS. MCCURRY

- 1 A Yes.
- 2 Q And you were scared when this took place?
- 3 A I'm sure anyone would be.
- 4 Q You're right and anybody would be. And you've just
- 5 testified that you don't have a clear recollection as
- 6 to absolutely what happened and what you did?
- 7 A I remember what happened, yes.
- 8 Q But you don't remember reviewing the videotape when you
- 9 were speaking to 911?
- 10 A No.
- 11 Q Isn't it true, Mr. Vasquez, that you never told anyone
- 12 in law enforcement that Mr. Jackson had a box cutter?
- 13 A I told them that he threatened me with a weapon.
- 14 Q With a weapon?
- 15 A Yes.
- 16 Q But you never identified -- did you identify it as a
- 17 knife?
- 18 A It was -- all I saw was a red handle of the box cutter
- 19 and that was it.
- 20 Q But you just said you didn't know it was a box cutter?
- 21 A I mean, it had to be some type of knife.
- 22 Q Had to be some type of a knife?
- 23 A Yes.
- 24 MS. MCCURRY: Beg the Court's indulgence one
- 25 moment.

MICHAEL VAZQUEZ REDIRECT BY MS. CAMPBELL

1 THE COURT: Yes, ma'am.

2 MS. MCCURRY: Thank you, Your Honor, no further
3 question.

4 THE COURT: All right. Anything on redirect?

5 MS. CAMPBELL: Just a couple of questions.

6 REDIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Everything pretty much with a few intervals missing are
9 reflected on the videotape?

10 A Yes.

11 Q And the item that he had in his hand you told the
12 police, every police officer you met with, it's some
13 type of knife?

14 A Yes.

15 Q And that includes a box cutter?

16 A Correct.

17 Q And you filled out a robbery questionnaire and told
18 them it was some type of knife?

19 A Yes.

20 Q And you talked to the responding officer and told them
21 it was some type of knife?

22 A Yes.

23 Q And that he punched you in your face?

24 A Yes.

25 Q And that's all reflected in the video?

MICHAEL VAZQUEZ RECROSS BY MS. MCCURRY

1 A Correct.

2 Q Thank you.

3 MS. CAMPBELL: Thank you, Your Honor. I have
4 nothing further, Your Honor.

5 THE COURT: Anything further of this witness?

6 MS. MCCURRY: Just one, one, question, Your Honor.

7 THE COURT: Go ahead.

8 RECROSS-EXAMINATION

9 BY MS. MCCURRY:

10 Q Mr. Vasquez, isn't it true that you told the officer on
11 the robbery questionnaire it was a red handled knife?

12 A Yes.

13 Q Thank you. No further questions.

14 THE COURT: You may step down, Mr. Vasquez.

15 MS. MCDUFFIE: State calls Deputy Snuffer.

16 THEREUPON,

17 ROBERT SNUFFER,

18 after having been duly sworn, testified as follows:

19 THE CLERK: Please have a seat, state your full
20 name for the record.

21 THE WITNESS: My name is Robert Paul Snuffer.

22 DIRECT EXAMINATION

23 BY MS. MCDUFFIE:

24 Q Morning, Deputy Snuffer, where are you currently
25 employee?

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

- 1 A Lexington County Sheriff's Department.
- 2 Q And what are your duties with the Lexington County
- 3 Sheriff's Department?
- 4 A Assistant supervisor for the road patrol.
- 5 Q And in February of 2007 where were you employed?
- 6 A Richland County Sheriff's Department.
- 7 Q And what were your duties with the Richland County
- 8 Sheriff's Department in February of 2007?
- 9 A I was a senior deputy for road patrol.
- 10 Q And were you assigned a specify area?
- 11 A It was, it was Broad River and -- region four.
- 12 Q And how long have you been in law enforcement?
- 13 A Ten years.
- 14 Q On the evening of -- the early morning hours of
- 15 February the 5th, 2007, did you have the occasion to be
- 16 called out to 2831 Broad River Road?
- 17 A I did.
- 18 Q And what was that in reference to?
- 19 A An armed robbery that occurred at This Is It Video.
- 20 Q And is that located in Richland County?
- 21 A It is.
- 22 Q I show you what's been marked as State's Exhibit 37, do
- 23 you recognize this?
- 24 A I do.
- 25 Q And is it an accurate depiction of the area that you

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

1 just described?

2 A Yes, ma'am.

3 MS. MCDUFFIE: Your Honor, at this time we offer
4 State's Exhibit 37.

5 THE COURT: Any objection?

6 MS. MCCURRY: No objection, Your Honor.

7 THE COURT: All right, without objection.

8 (State's Exhibit 37 admitted
9 into evidence.)

10 BY MS. MCDUFFIE:

11 Q Deputy Snuffer, can you show the jury on State's
12 Exhibit 37 where This Is It video is located?

13 A Right here (indicating).

14 Q And what are the cross streets around it?

15 A This is Zemer Crest (indicating) and that's Broad
16 River.

17 Q And when you arrived at This Is It Video where did you
18 park your parole car?

19 A On the side so it couldn't be seen.

20 Q And when you arrived, what was the first thing that you
21 did?

22 A I contacted dispatch and had them contact the person
23 inside which was the victim give me the clothing
24 description have them meet me at the front door.

25 Q And why was that?

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

- 1 A For officers safety.
- 2 Q And once you met the victim at the door what then
3 happened?
- 4 A The victim advised me he had been robbed.
- 5 Q What, what, did he further tell you?
- 6 A He gave a description of the individual.
- 7 Q Please tell the jury what description of the suspect
8 was given to you?
- 9 A He stated the individuals was a black male, age between
10 35 to 40 about 5'10, weight ranges between 150 and 175
11 and a mustache.
- 12 Q Did he also describe the clothing the suspect was
13 wearing?
- 14 A Yes, ma'am.
- 15 Q And how did he describe that clothing?
- 16 A He said he had a black beanie, dark jacket with orange
17 lining, dark pants and shoes were unknown.
- 18 Q And did he give you or did he tell you what had
19 happened that evening?
- 20 A He told me that individual walked into the store and
21 reached over and had a knife, had presented a knife,
22 punched him and took money out of the cash register,
23 fled the scene on foot.
- 24 Q And was the suspect there when you arrived?
- 25 A No, he was not.

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

- 1 Q Did you observe any injures to the victim, Mr. Vasquez,
2 in this case?
- 3 A A little bit of redness on his face where he was
4 punched.
- 5 Q I show you what's already in evidence as State's
6 Exhibit Number Seven, is this consistent with what you
7 observed that evening?
- 8 A It is.
- 9 Q A the injuries were due to what?
- 10 A He was punched in the face by the subject, the
11 defendant.
- 12 Q And did he tell you that the suspect had a weapon?
- 13 A He did.
- 14 Q How did he describe the weapon to you?
- 15 A He said it was a, he said it was a knife, it was a red
16 handled knife.
- 17 Q And --
- 18 A With a sharp edge at the end.
- 19 Q Sorry, I should have asked you about this before, what
20 time did you arrived at This Is It Video?
- 21 A 12:22 a.m.
- 22 Q That's on February the 5th of 2007?
- 23 A It is.
- 24 Q After you took the description of the suspect and the
25 victim's recount of what happened that evening what did

ROBERT SNUFFER DIRECT BY MS. MCDUFFIE

1 you then do?

2 A He -- the actual victim notified his manager because we
3 couldn't review the tape at the time. I got -- after I
4 got the description of the suspect K-nine was also
5 involved, K-nine started a track and proceeded --

6 Q So you called out other units and did Deputy Lucas from
7 the K-nine unit arrive?

8 A He did.

9 Q And did Investigator now Sergeant Kevin Isenhoward
10 arrived?

11 A He did.

12 Q And as the investigator on the scene would you then
13 turn the crime scene over to him?

14 A I did.

15 Q And while you were there, was the crime scene secured?

16 A It was.

17 Q And how do you secure a crime scene?

18 A We have officers present who make sure no one goes in
19 and around the crime scene that's not authorized. We
20 also do a -- we usually do a crime scene log.

21 Q After the crime scene was secured and Investigator
22 Isenhoward took the scene over, did you have any
23 further involvement in this case.

24 A I did not.

25 MS. MCDUFFIE: Beg the Court's indulgence. No

ROBERT SNUFFER CROSS BY MS. MCCURRY

1 further questions.

2 THE COURT: All right, cross examine.

3 MS. MCCURRY: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. MCCURRY:

6 Q Good morning.

7 A Good morning, how are you?

8 Q I'm good, how are you? Deputy Snuffer, did you
9 complete anything in this case in addition to your
10 initial incident report and the one page supplemental
11 report?

12 A No, that's all I did.

13 Q Okay. Can I see what it is that you're testifying
14 from?

15 A Sure, uh-huh. This is my subpoena to be here.

16 Q Okay.

17 A Thank you.

18 Q Thank you. Now, Deputy, Snuffer, you stated that at
19 the time you were a senior deputy with the Richland
20 County Sheriff's Department, correct?

21 A Yes, ma'am.

22 Q Okay. And you just indicated that from your testimony
23 today you've reviewed your incident report and the
24 supplemental report, correct?

25 A Yes, ma'am.

ROBERT SNUFFER CROSS BY MS. MCCURRY

- 1 Q Okay. Now, your report does not reflect anywhere that
2 you were told that that was a knife with a sharp edge,
3 does it?
- 4 A No, it does not.
- 5 Q But you testified on direct that the that -- that
6 Mr. Vasquez told that you it was a, a, that it was a
7 knife or something with a sharp edge?
- 8 A Yes, ma'am.
- 9 Q Okay. But that's not true, is it?
- 10 A Oh, it was a knife.
- 11 Q But he didn't tell you that or you didn't put it in the
12 report.
- 13 A I may have not put it in the report.
- 14 Q Okay. When you interviewed crime victims in any case,
15 do you try to put down the sequence of events as they
16 describe to you what happened?
- 17 A Yes, ma'am, to the best I could.
- 18 Q Okay. So your report, isn't it true, indicates that
19 the suspect in this case, Mr. Jackson, walked to the
20 cashier at which time he punched the cashier in the
21 face, is that true?
- 22 A Yes, ma'am.
- 23 Q And then the subject presented a knife, correct?
- 24 A Correct.
- 25 Q And reached over the counter and took the cashier --

ROBERT SNUFFER CROSS BY MS. MCCURRY

1 took the cash from the register?

2 A Right.

3 Q So when you wrote this report down that's the way the
4 incident was described to you, correct?

5 A Right.

6 MS. MCCURRY: I have no further questions, Your
7 Honor. Thank you.

8 THE COURT: All right. Anything on redirect?

9 MS. MCDUFFIE: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. MCDUFFIE:

12 Q Deputy Snuffer, Mr. Vasquez did tell you that the
13 suspect did present a knife?

14 A He did.

15 Q And he went on further to describe it in the robbery
16 questionnaire as a red handled knife?

17 A He did.

18 Q He gave you that information?

19 A He did.

20 Q You also testified that he told you that it had -- it
21 was a knife with a sharp edge?

22 A Yes.

23 Q And just because that's not in your report doesn't mean
24 that he did not tell you that?

25 A That's right.

ROBERT SNUFFER BY MS. MCDUFFIE

1 Q You just failed to write it in your report?

2 A Yes, ma'am.

3 Q And you're writing these reports on the scene
4 typically?

5 A Yes, ma'am.

6 Q And things are usually hectic?

7 A Yes.

8 Q Trying to ascertain what's going on?

9 A Yes, ma'am.

10 Q So something like that may have been left out of your
11 report?

12 A Yes.

13 Q But he did tell you that there was a knife with a red
14 handle?

15 A Yes.

16 Q And that is in your report in two different locations?

17 A Yes, ma'am.

18 Q No further questions.

19 THE COURT: Anything further of this witness?

20 MS. MCCURRY: No, Your Honor.

21 THE COURT: All right. You may step down, officer
22 Snuffer.

23 MR. SNUFFER: Thank you.

24 MS. MCDUFFIE: Your Honor, we ask that the witness
25 to be excuse.

DAVID LUCAS DIRECT BY MS. CAMPBELL

1 THE COURT: I'm sure without objection, he wants
2 to go back to Lexington County I reckon.

3 MS. MCCURRY: Yes, sir.

4 THE COURT: All right.

5 MR. SNUFFER: Thank you.

6 THE COURT: All right. Good luck to you.

7 MS. CAMPBELL: State calls David Lucas.

8 I apologize, Your Honor, the witnesses are
9 sequestered.

10 THE COURT: Oh, that's all right.

11 The witnesses are sequestered that means they're
12 not in the courtroom at the same time. We got to go get
13 them every time we call someone. So it takes a little
14 while. Y'all understand, don't you?

15 (Jurors nodded head.)

16 THE COURT: Thank you.

17 THEREUPON,

18 DAVID LUCAS,
19 after having been duly sworn, testified as follows:

20 THE CLERK: Please have a seat, state your full
21 name for the record.

22 MR. LUCUS: David Lucas.

23 DIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q Deputy Lucas, where are you employed?

DAVID LUCAS DIRECT BY MS. CAMPBELL

- 1 A Richland County Sheriff's Department.
- 2 Q And what are your current duties there?
- 3 A Master Deputy of Region One.
- 4 Q And what area of town is Region One?
- 5 A The Lower Richland side and I-77 towards Sumter County.
- 6 Q I want to turn your attention back to February of 2007,
- 7 were you employed at the Richland County Sheriff's
- 8 Department then?
- 9 A Yes, ma'am.
- 10 Q And what were your duties back then?
- 11 A K-nine unit specialist.
- 12 Q And can you tell this jury a little bit as part of the
- 13 K-nine unit what you typically did?
- 14 A Mainly we would be called out on armed robberies or
- 15 narcotic searches our dogs can track and find out -- we
- 16 work county wide through control bound armed robberies,
- 17 we responded to -- we ran the track.
- 18 Q And you would run the track?
- 19 A Yes, ma'am.
- 20 Q And tell this jury was there a special dog that was
- 21 assigned to you back in February?
- 22 A Yes.
- 23 Q And which dog was what?
- 24 A E-man.
- 25 Q E-man?

DAVID LUCAS DIRECT BY MS. CAMPBELL

- 1 A Correct.
- 2 Q And, in fact, did that dog actually live with you at
3 the time?
- 4 A Yes, ma'am.
- 5 Q As in this case, tell this jury how you would start a
6 track if you're looking for a suspect that has fled the
7 scene?
- 8 A One of the first officers to get on the scene and he --
9 the area where the suspect was last seen leaving the
10 area, I get the dog out, let him get a little break for
11 a second and then in that same area I start to do a
12 sweep and then when he catches the scent he starts
13 pulling and we follow that which is a human scent.
- 14 Q And are they specially trained in this area?
- 15 A Correct.
- 16 Q And you have special training as well?
- 17 A Correct.
- 18 Q And in this case is the dog always able to get a sent?
- 19 A No, not all the time.
- 20 Q And what factors can play into that the ability to, in
21 fact, get a scent?
- 22 A Heavy foot traffic, heavy, heavy, rain, weather
23 conditions as in cold weather hot, hot, weather, foot
24 traffic, car traffic.
- 25 Q On the night of February the 5th, actually the early

DAVID LUCAS DIRECT BY MS. CAMPBELL

- 1 morning hours, did you response to the scene on Broad
2 River Road?
- 3 A Yes, ma'am.
- 4 Q And it was at This Is It Video Store?
- 5 A Yes, ma'am.
- 6 Q And were officers already there when you got there?
- 7 A Yes, ma'am.
- 8 Q And when you responded to the scene that night were you
9 shown an area where the person who committed the armed
10 robbery was last scene.
- 11 A Yes, ma'am.
- 12 Q And what area was that, sir?
- 13 A About where I believe Deputy Snuffer's patrol car was
14 just in front of it.
- 15 Q Just in front of it. And I show you State's Exhibit
16 Four, does that show the front of the store?
- 17 A Yes, ma'am.
- 18 Q And was -- in relation to the front of the store where
19 would you have started your track?
- 20 A I started -- I actually started in two places, I
21 started from the front door then I started from the
22 parole car.
- 23 Q Okay. And that was the information that was related to
24 you that night?
- 25 A (The witness nodded head.)

DAVID LUCAS DIRECT BY MS. CAMPBELL

1 Q That night was E-man able to pick up a scent that he
2 felt was fresh?

3 A Correct.

4 Q And just for -- how long does a scent typically stay
5 somewhere?

6 A Up to 48 hours, 72 hours if you're really lucky.

7 Q And is the dog able -- does he know how to pick up the
8 most recent scent?

9 A Correct.

10 Q And that's part of his training?

11 A Correct.

12 Q And the night of February the 5th, did E-man pick up a
13 trial?

14 A Correct.

15 Q And what -- where did the trail lead y'all that night.

16 A Down the -- straight down Zemer Crest Road, down into
17 the apartment complex and I can't remember exactly the
18 apartment numbers. But it was a very strong hold of a
19 human scent, there was no distractions at that time.
20 There was light traffic, the temperature was just about
21 perfect. There was a little bit of a light breeze, it
22 was very cold out which help with the scent in keeping
23 it down low. We pulled right into that apartment
24 complex.

25 Q And you mentioned that that was on Zemer Crest?

DAVID LUCAS DIRECT BY MS. CAMPBELL

- 1 A Correct.
- 2 Q Was the name of that apartment complex I believe
3 Hunter's Ridge or something?
- 4 A Yes, ma'am.
- 5 Q And how far from the This Is It Video did you actually
6 track that night, approximately?
- 7 A Approximately three blocks, three or four blocks.
- 8 Q Three or four blocks?
- 9 A Yes, ma'am.
- 10 Q And it started at the front of the store and continued
11 down --
- 12 A Zemer Crest.
- 13 Q Zemer Crest, Broad River to Zemer Crest?
- 14 A Correct.
- 15 Q When you got to Hunters' Ridge did the dog loose its
16 scent?
- 17 A Yes, ma'am.
- 18 Q And is that unusual?
- 19 A Yes, ma'am, that can happen.
- 20 Q That can happen?
- 21 A Yes.
- 22 Q So that's not unusual?
- 23 A If, if, somebody -- it could be a couple different
24 things. If somebody knows how to run circles to try to
25 trick a police dog they can do that, if they're picked

DAVID LUCAS DIRECT BY MS. CAMPBELL

- 1 up in a vehicle they'll lose the scent, if there's
2 some other environmental condition that might pop up can
3 stop the scent from being picked up.
- 4 Q Okay. So someone like intentionally want to direct a
5 dog run in circles that could be a problem?
- 6 A Yes, ma'am.
- 7 Q And, in fact, someone could pick up in a vehicle and
8 take them somewhere else?
- 9 A Correct.
- 10 Q And when you lost the scent at Hunter's Ridge -- were
11 you ever able to pick it back up that night?
- 12 A We've got dispatched to a triple shooting and I had to
13 pull the dog up, so I didn't reestablish.
- 14 Q And if he had been picked up in a vehicle and or just
15 running circles or anything in a zig zag pattern that
16 could effect your ability to track?
- 17 A Correct.
- 18 Q I want to show you what's been marked as State's
19 Exhibit Number 39, do you recognize this?
- 20 A Yes, ma'am.
- 21 Q And what is that show, sir?
- 22 A It shows about where we run -- it shows where we ran
23 with the track.
- 24 Q Okay.
- 25 A The two actual addresses.

DAVID LUCAS DIRECT BY MS. CAMPBELL

1 Q And here (indicating) this little point here
2 (indicating) does that show where the This Is It Video
3 is approximately?

4 A Correct.

5 Q And then over here the 916 Zemer Crest is that the
6 address of the apartment complex where you lost the --

7 A Yes, ma'am --

8 Q The track --

9 MS. CAMPBELL: Your Honor, at this time we'd offer
10 State's Exhibit Number 39 into evidence.

11 THE COURT: Any objection?

12 MS. MCCURRY: No, objection.

13 THE COURT: All right. Without objection.

14 (State's Exhibit 39 admitted
15 into evidence.)

16 BY MS. CAMPBELL:

17 Q Across the street or at the corner there, there's a
18 cross road that comes across Zemer Crest there, what's
19 the name of that street?

20 A Bailey or Betty.

21 Q Betty's Lane?

22 A Yes, ma'am.

23 Q I'm going to show you what's been marked as State's
24 Exhibit Number 38, which I have upside down, do you
25 recognize this?

DAVID LUCAS DIRECT BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q Does that show basically the same area just closer up?

3 A Yes, ma'am.

4 Q An overview.

5 MS. CAMPBELL: Your Honor, at this time we offer
6 State's Exhibit Number 38.

7 MS. MCCURRY: No objection.

8 THE COURT: All right.

9 (State's Exhibit 38 admitted
10 into evidence.)

11 Q And you see the corner only of the This Is It Video
12 store?

13 A Yes, ma'am.

14 Q And is that where I'm pointing right here (indicating)?

15 A Correct.

16 Q And can you tell basically, where did the dog run that
17 night getting towards Zemer Crest?

18 A May I stand?

19 Q Yes, please.

20 A We started around here (indicating). And I cut what we
21 call cutting the pie with the dog to pick up a scent, a
22 fresh one, the one with the pheromones and adrenaline
23 the dog is going to catch that. Then we come straight
24 to the very, very, hard pull we're running almost at a
25 sprint coming down Zemer Crest.

DAVID LUCAS DIRECT BY MS. CAMPBELL

- 1 Q Uh-huh.
- 2 A Up in the apartment complex and then the Building 700
- 3 or 900 is where we loose the track.
- 4 Q And, all the way, all the way, down the apartment
- 5 complex.
- 6 A Correct.
- 7 Q Which is shown on here?
- 8 A Right. Spring House and then Betty's Lane here
- 9 (indicating). There's, there, not much traffic at that
- 10 time of the morning at Zemer Crest and we're, we're,
- 11 parallel with the roadway.
- 12 Q Okay.
- 13 A Because it -- the scent will stay better on the side of
- 14 the road.
- 15 Q And then you lost the actual scent here?
- 16 A Correct.
- 17 Q So if someone circled around in here (indicating) to
- 18 intentionally descent that would direct the dog?
- 19 A Yes, ma'am.
- 20 Q And you never picked up that track again?
- 21 A No, ma'am.
- 22 Q And again that's at the corner of Betty's Lane and
- 23 Zemer Crest?
- 24 A Yes, ma'am.
- 25 Q And other than running the dog and following the scent

DAVID LUCAS DIRECT BY MS. CAMPBELL

1 down Zemer Crest to the Hunter's Ridge at the corner of
2 Betty Lane and Zemer Crest you didn't do anything else
3 in this case, did you?

4 A If I remember correctly I might have -- so other
5 officer I think knocked on some doors and I held the
6 dog back as we were checking some areas just to make --

7 Q Were you able to find the suspect that night that
8 matched the description?

9 A No, ma'am.

10 MS. CAMPBELL: That's all I have, Your Honor.

11 THE COURT: Cross-examination.

12 MS. MCCURRY: No questions, Your Honor.

13 THE COURT: All right. You may step down, office.

14 THE WITNESS: Thank you, Your Honor.

15 MS. CAMPBELL: Your Honor, may he be excused?

16 THE COURT: Yes.

17 Any objection?

18 MS. MCCURRY: No, sir.

19 THE COURT: All right.

20 MS. CAMPBELL: State calls Stan Richards.

21 MS. MCCURRY: Your Honor, may we approach briefly
22 while he's coming up?

23 (Whereupon, a bench conference
24 was held off the record, in the
25 presence of the jury but not in

STAN RICHARDS DIRECT BY MS. CAMPBELL

1 the hearing.)

2 THE COURT: Sure.

3 THEREUPON,

4 STAN RICHARDS,

5 after having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat, state your full
7 name for the record.

8 THE WITNESS: Stan Richards.

9 DIRECT EXAMINATION

10 BY MS. CAMPBELL:

11 Q Sergeant Richards, where are you employed?

12 A Richland County Sheriff's Department Crime Scene Unit.

13 Q And how long have you been in law enforcement, sir?

14 A I went to work with Richland County in 1994, I been in
15 the crime scene unit for about nine years.

16 Q Prior to joining the Richland County Sheriff's
17 Department what did do you?

18 A I was in the military.

19 Q Tell this jury a little bit about your education and
20 training in crime scene investigation.

21 A I attended -- College where I gained a Criminal Justice
22 Degree and -- Baptist University where I studied
23 Sociology.

24 I have been trained in a -- of different
25 disciplines, some of those include blood pattern

STAN RICHARDS DIRECT BY MS. CAMPBELL

1 analysis, laten print processing, DNA collection, crime
2 scene reconstruction and shooting reconstruction. I
3 also have been certified in crime -- as a crime scene
4 investigator and as a foot ware examiner through the
5 International Association For Identification.

6 Q And you've been qualified a number of times as an
7 expert in crime scene investigation?

8 A Yes, ma'am.

9 MS. CAMPBELL: Your Honor, at this time we'd offer
10 him as an expert in crime scene investigation.

11 MS. MCCURRY: No objection.

12 THE COURT: All right.

13 BY MS. CAMPBELL:

14 Q For the record, Sergeant Richards, you are a supervisor
15 in the crime scene investigative unit?

16 A I am presently --

17 Q And are you familiar with Billy Allen?

18 A I am.

19 Q And did he us to work in the crime scene investigative
20 unit?

21 A He did.

22 Q And, in fact, in February of 2007 he was the one that
23 actually responded to the call in this case?

24 A That's correct.

25 Q And he was the one that would have gone to This Is It

STAN RICHARDS DIRECT BY MS. CAMPBELL

- 1 Video in the early morning hours, is that correct?
- 2 A Yes, ma'am.
- 3 Q Is he still available for testimony?
- 4 A No, he isn't.
- 5 Q Where is he?
- 6 A As I understand it, he is in Iraq at the present time.
- 7 Q As his supervisor though, do you routinely review work
8 and in this case have you reviewed his notes?
- 9 A Yes, I have.
- 10 Q What he did at the crime scene?
- 11 A Yes, I have.
- 12 Q Have you also had an opportunity to just briefly review
13 the video in this case?
- 14 A I have.
- 15 Q When Investigator Allen response to the scene that
16 night what if anything did he do?
- 17 A Well, according to his analysis report, he entered the
18 business -- well, he took, he took, a look at the video
19 and based on that he determined that the suspect was
20 careful not to touch anything items in the business, so
21 there was no processing done at the time, only some
22 photographs.
- 23 Q Okay. And, in fact, when you reviewed the video did
24 you notice how he, the defendant, rubbed up against the
25 computer?

STAN RICHARDS DIRECT BY MS. CAMPBELL

- 1 A I did.
- 2 Q Screen. Would that be appropriate to try to get a
3 finger print from that?
- 4 A Finger print, no probably not.
- 5 Q And is that because of the movement of the hand?
- 6 A Yes.
- 7 Q And when a person leaves a finger print -- you familiar
8 with the term smudge?
- 9 A Yes.
- 10 Q And if the finger moves on an object is it able -- are
11 you able to get a clear print or a print?
- 12 A No. If you have a smudge there is no detail, ridge
13 detail, there so you cannot make the comparison.
- 14 Q And also in reviewing the video, did you also see the
15 video leave the area, could you tell whether or not he
16 actually put his fingertips on something?
- 17 A I did not see that, no.
- 18 Q Okay. And, in fact, on the front door of a business
19 such as This Is It Video Store or a convince store, are
20 you able to get usable prints from say a front door?
- 21 A It's very, very, difficult to get useable prints on a
22 doorknob of any kind -- or a handle going out of say a
23 convince store because of the substance -- it's made
24 out of and the number of people who would be entering
25 and existing that and the amino acids, the acids

STAN RICHARDS DIRECT BY MS. CAMPBELL

1 themselves, the environmental effect on the door
2 itself.

3 Q So in this case he did not even attempt to get
4 fingerprints from that door and would that have been
5 appropriate in this case?

6 A He was appropriate in not trying.

7 Q Also typically we hear about crime scenes say where
8 there may be blood spatter or like a rape kit or things
9 of that nature. Was there any type of injury to the
10 defendant where he would have left that by any body
11 fluids or anything?

12 A None that I could determine.

13 Q So there was no DNA collected at the scene?

14 A There was none.

15 Q He did take some photographs I do believe?

16 A Yes, ma'am.

17 Q And going to the crime scene if someone has been injured
18 in anyway or has been the victim of an assault is it
19 appropriate to try to take a picture of any type of
20 injury?

21 A Yes.

22 Q I show you State's Exhibit Number 7, is that the reason
23 he would have taken a picture of his face?

24 A Yes, it so.

25 Q Because he had been punched or assaulted in the face?

SCOTT MCDONALD DIRECT BY MS. CAMPBELL

1 A If there is an injury to the victim, yes, it's
2 appropriate to take a photograph.

3 MS. CAMPBELL: That's all I have, Your Honor.

4 THE COURT: Ms. McCurry, any questions?

5 MS. MCCURRY: No questions, Your Honor.

6 THE COURT: All right. You my step down,
7 Investigator Richards.

8 MS. CAMPBELL: State would call Lieutenant Scott
9 McDonald.

10 Your Honor, may he be excused?

11 THE COURT: Yes.

12 MS. MCCURRY: No, objection.

13 MS. CAMPBELL: Thank you.

14 THEREUPON,

15 SCOTT MCDONALD,
16 after having been duly sworn, testified as follows:

17 THE CLERK: Please have a seat, state your full
18 name for the record.

19 MR. MCDONALD: Scot McDonald.

20 DIRECT EXAMINATION

21 BY MS. CAMPBELL:

22 Q Lieutenant McDonald, where are you employed?

23 A Richland County Sheriff's Department.

24 Q And what do you do there, sir?

25 A I'm a lieutenant in the major crimes section.

SCOTT MCDONALD DIRECT BY MS. CAMPBELL

- 1 Q How long have you been in law enforcement?
- 2 A Just over 21 years now.
- 3 Q I want to turn your attention specifically to February
- 4 the 12th, 2007, were you involved in an investigation
- 5 to some degree of Michael Jackson for the robbery of
- 6 the This Is It Video store?
- 7 A Yes, I was.
- 8 Q And that Monday morning when you went to did you
- 9 receive some information from a crime stoppers tip that
- 10 had come in over -- don't say what it is, you can't say
- 11 what it is was but did you receive information that
- 12 came in over the weekend?
- 13 A Yes, I did.
- 14 Q Based on that information, did you then proceed to
- 15 develop a photo lineup?
- 16 A Yes, I did.
- 17 Q And who was the specify person y'all were putting in
- 18 the lineup?
- 19 A Michael Jackson.
- 20 Q And I show you State's Exhibit Number 1 which is
- 21 already in evidence, is that the lineup you actually
- 22 generated for this case?
- 23 A Yes, it is?
- 24 Q And is Michael Jackson's photograph in that lineup?
- 25 A Yes, he's photo number two.

SCOTT MCDONALD DIRECT BY MS. CAMPBELL

1 Q And you weren't actually present when that photo lineup
2 was shown, you just developed it, is that correct?

3 A That is correct.

4 Q And in developing the lineup tell the jury typically
5 what types of physical characteristics you're trying to
6 put into the lineup to make it a fair lineup?

7 A Well, on this particular one I was looking for a
8 blackmail, roughly the same age group as Mr. Jackson
9 was, mustache, like a slight beard, short haircut
10 trying to find other candidates with those similar
11 characteristics.

12 Q And were you able to get six photographs and put them
13 into a lineup?

14 A Yes, I was.

15 Q And did you turn that over to Caption Smith who later
16 showed that photo lineup?

17 A Yes, I did.

18 Q And in addition to this -- in this case -- as far as
19 this case, did you later after Mr. Jackson had been
20 identified prepare a BOLO that was sent out?

21 A Yes.

22 Q And what's the purpose of a BOLO?

23 A To alert the officers on street that we're looking for
24 this individual, whether we had warrants on him that
25 type thing, so we could apprehend him, we didn't know

SCOTT MCDONALD DIRECT BY MS. CAMPBELL

1 where to begin looking for him.

2 Q And what -- but what area of town was surveillance set
3 up the next day?

4 A The region four area which is the Broad River Road
5 area.

6 Q Okay. And you didn't actually participate in that
7 part?

8 A No, I was actually involved in a trial that following
9 week.

10 Q Did you also prepare a power point reflecting some
11 known photographs of Mr. Jackson?

12 A Yes, I did.

13 Q As well as comparing it to some stills from the
14 videotape from the This Is It Video store?

15 A Yes, I did.

16 Q And state's Exhibit Number 36, is this the power point
17 you actually prepared in this case?

18 A Yes.

19 MS. CAMPBELL: Your Honor, may we approach?

20 THE COURT: Yes.

21 (Whereupon, a bench conference
22 was held off the record, in the
23 presence of the jury, but out of
24 the hearing of the jury.)

25 MS. CAMPBELL: Thank you, Your Honor. Your Honor,

SCOTT MCDONALD DIRECT BY MS. CAMPBELL

1 at this time we'd offer State's Exhibit Number 36 into
2 evidence.

3 THE COURT: All right. Objection is noted, we can
4 expand later on that.

5 MS. MCCURRY: Thank you.

6 THE COURT: All right. This is exhibit, 30, which
7 exhibit?

8 MS. CAMPBELL: 36 I believe, Your Honor.

9 THE COURT: All right.

10 (State's Exhibit 36 admitted
11 into evidence.)

12 BY MS. CAMPBELL:

13 Q Lieutenant McDonald, was this video basically show some
14 stills from the This Is It Video store?

15 A Yes, that's correct.

16 Q As well as some known photographs of the defendant?

17 A That is correct.

18 Q Including finally the photograph of the defendant when
19 he was arrested?

20 A Yes.

21 Q This first still shot where does that come from?

22 A That is from the camera showing the entry door as
23 Mr. Jackson approaches, comes inside.

24 Q This person right here (indicating) is that a manikin?

25 A That is a mannequin.

SCOTT MCDONALD DIRECT BY MS. CAMPBELL

1 Q Thank you.

2 A Just a further shot of him coming into through the
3 doorway.

4 That's the actual robbery occurring there, he's
5 grabbing the victim. There you can see something in
6 his right hand, I believe it's some type of weapon.

7 Q And there you can see it as well?

8 A Right. And that's him as he's leaving after the
9 robbery.

10 Q And then you also took some of the video.

11 Keep going.

12 A That's an actual still shot of when he's on the left,
13 when he's first approaching coming into the store and
14 that's another picture of Mr. Jackson.

15 Q Okay. And are there some additional known photographs
16 of the defendant?

17 A That is. That's that same picture and there's several
18 additional pictures.

19 Q And in each of these first few pictures does he have
20 facial hair?

21 A Yes, he does.

22 Q As well as in the majority of them does he have hair on
23 his head?

24 A Yes.

25 Q And finally the last picture up there --

SCOTT MCDONALD CROSS BY MS. MCCURRY

1 A That would be --

2 Q Is that a photograph of how he appeared when he was
3 arrested?

4 A Yes, with a shaved head and shaved mustache.

5 MS. CAMPBELL: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. CAMPBELL: That's all I have, Your Honor, of
8 this witness.

9 THE COURT: Do you need this?

10 MS. MCCURRY: No, Your Honor.

11 THE COURT: All right, cross examine.

12 CROSS-EXAMINATION

13 BY MS. MCCURRY:

14 Q Good afternoon?

15 A Afternoon.

16 Q I just have a couple of things I would like to ask you
17 about. The tipster in this case was -- wasn't somebody
18 that wanted to remain anonymous, was it?

19 A It was someone who did want to remain anonymous.

20 Q But did not remain anonymous to law enforcement?

21 A We knew who he was.

22 Q In fact, you actually meet with this tipster, isn't
23 correct?

24 A That is correct.

25 Q And this tipster actually knew Mr. Jackson personally,

SCOTT MCDONALD REDIRECT BY MS. CAMPBELL

1 didn't he?

2 A He recognized him from walking up and down Broad River
3 Road.

4 Q And this tipster actually knew where he lived, didn't
5 he?

6 A I don't know -- I don't recall that.

7 Q Did you obtain any information as to how you might
8 possibly contact Mr. Jackson from the tipster?

9 A Only thing I recall is that he was quite frequently
10 seen walking up and down Broad River Road on a daily
11 basis is the information I recall.

12 Q Thank you.

13 MS. MCCURRY: I have no further questions.

14 THE COURT: All right, redirect.

15 MS. CAMPBELL: Just a couple of questions.

16 REDIRECT EXAMINATION

17 BY MS. CAMPBELL:

18 Q That information when she refers to the tipster, that's
19 someone that called in over the weekend?

20 A That's correct.

21 Q And you mentioned that he wanted to remain anonymous,
22 is there a policy in your department as far as someone
23 giving you information of a crime stoppers?

24 A Yes, there is.

25 Q And what's the policy if someone wishes to remain

SCOTT MCDONALD REDIRECT BY MS. CAMPBELL

1 anonymous?

2 A The remain anonymous?

3 Q And why is that, sir?

4 A For their protection.

5 Q And did this tipster want his identify know to anyone?

6 A No, he didn't.

7 Q And you respected that?

8 A Yes, we did.

9 Q I don't have anything further.

10 THE COURT: Anything further?

11 MS. MCCURRY: No, Your Honor.

12 THE COURT: You may step down, Investigator

13 McDonald. Thank you, sir.

14 How long is the next witness short or?

15 MS. MCCURRY: A little longer.

16 THE COURT: All right. Ms. McCurry, You want to
17 go ahead and take that break now?

18 MS. MCCURRY: Yes, sir that's fine.

19 THE COURT: All right.

20 I'm going to give you a short break, members of
21 the jury, probably ten or 15 minutes give you a chance to
22 refresh yourselves. We're going to come back and try to go
23 until about 2 o'clock, will y'all be ready? If you need
24 some refreshments, I'm afraid we don't have much but cookies
25 and things like that, but we'll make sure the bailiff

1 supplies those -- supplies those to you upon request.

2 You got that, Mr. Gillyard?

3 (There was no response.)

4 THE COURT: You got that?

5 BAILIFF: What was that now?

6 (Laughter)

7 THE COURT: Give them what they want that you can
8 give them.

9 BAILIFF: They've already had it.

10 THE COURT: Help him out, Mr. Hollis.

11 Just don't talk about the case, ladies and
12 gentlemen.

13 BAILIFF: They ate that when they had their break.

14 (The jury retires from the
15 courtroom.)

16 THE COURT: Ms. McDuffie, can I see you for a
17 minute?

18 MS. MCDUFFIE: Of course, Your Honor.

19 THE COURT: Ms. McCurry, anytime you need
20 something like this just let me know, okay.

21 MS. MCCURRY: Okay.

22 THE COURT: I mean, it doesn't matter. We'll be
23 at ease, we'll be at ease.

24 (Whereupon, a short recess was
25 held.)

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 THE COURT: Is everybody -- well, he's going to
2 check.

3 BAILIFF: We have one in the restroom and they'll
4 be ready, Your Honor.

5 THE COURT: Okay. Just don't tell me who it is.

6 BAILIFF: The jury's all present, Your Honor.

7 THE COURT: Welcome back, member of -- welcome
8 back --

9 (Laughter)

10 THE COURT: Excuse me.

11 PROSPECTIVE JUROR: You need a break?

12 THE COURT: Do I need a break?

13 (Laughter)

14 THE COURT: Yeah, from this job I need a break.

15 (Laughter)

16 THE COURT: Anyway welcome back Mr. Foreman,
17 members of the jury, this case will resume with the
18 prosecution calling the next witness.

19 MS. MCDUFFIE: State call Investigator Scot Faust.

20 THEREUPON,

21 SCOTT FAUST,
22 after having been duly sworn, testified as follows:

23 THE CLERK: Please have a seat, state your full
24 name for the record.

25 MR. FOUSE: Steven Scot Faust.

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 DIRECT EXAMINATION

2 BY MS. MCDUFFIE:

3 Q Good afternoon Sergeant Faust. Where are you currently
4 employed?

5 A The Richland County Sheriff's Department.

6 Q And what are your current duties with the Richland
7 County Sheriff's Department?

8 A I'm currently a sergeant over the special victims unit.
9 I've been doing that about six or seven months.

10 Q And in February of 2007 what were your duties with the
11 Sheriff's Department?

12 A I was assigned to the armed robberies division as an
13 investigator working in armed robberies.

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

15 A Since '95, late September of 1995, going on 14 years in
16 September.

17 Q And did you have the occasion to work on the case of
18 the armed robbery of the This Is It Video at 2831 Broad
19 River Road?

20 A I did.

21 Q And how did that case get assigned to you or how did
22 you start working on this case?

23 A I was as robberies come in they are assigned to several
24 of us that worked the armed robberies. On February the
25 5th, I was actually assigned to this specify case to

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 follow up on. When a robbery goes out we have on call
2 investigators that will respond and do what needs to be
3 done and after that's worked on the following morning
4 or after the weekend, so to speak, it will be assigned
5 to one of the investigators that are actually assigned
6 to that division.

7 Q And did you have the occasion to go out to the scene in
8 the early morning hours of February the 5th?

9 A No, I did not respond out on the scene. I was assigned
10 to the case once it come in. Once the report comes
11 into headquarters it's then assigned to investigator to
12 do the follow up.

13 Q And over the course of the next week and during the
14 weekend, did a tip come into your office in regards to
15 this case?

16 A It did.

17 Q And did you have a chance to follow up on this tip?

18 A I did not. It came into one of the on call
19 investigators over the weekend who did work on it and
20 then turned it over to some of the supervisors to do
21 some follow up on it.

22 Q And we've heard testimony that a lineup was shown to
23 the victim by Captain Smith, where were you when this
24 was being done?

25 A I was actually subpoenaed up to the courthouse for

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 another matter.

2 Q So were you able to further investigate this case?

3 A At that particular time I had to relinquish some of the
4 investigation when a leads comes in and it need to be
5 worked the supervisors picked it up and started to work
6 on it.

7 Q On February the 13th of 2007, did you the occasion to
8 come into contact with the defendant, Michael Jackson?

9 A I did.

10 Q And where was that?

11 A At our headquarters at 5623 Tow Notch Road I was
12 actually returning from the courthouse and saw the
13 caption with the defendant and walked over and offered
14 my services.

15 Q And do you remember approximately what time this was on
16 the 13th?

17 A (There was no response.)

18 Q If that will help refresh your memory.

19 A This was a little, this was a little, bit before 10
20 o'clock when I saw them walking in through the back
21 door and then I offered to assist the captain with
22 interviewing Mr. Jackson.

23 Q And at the time you offered your assistance where were
24 you?

25 A I was at the captain's office, in his office.

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 Q Describe for the jury Captain Smith's office.

2 A It is anywhere from about ten by ten, it's got a desk
3 in it and several chairs a couple of file cabinets.

4 Q And it was only you, Captain Smith and the defendant in
5 his office?

6 A That's correct, it is an enclosed office with a wall.

7 Q And what happened after the three of y'all were in the
8 office?

9 A When I sat down the captain asked Mr. Jackson if he had
10 been -- if he remembered being advised his verbal
11 rights and he stated he had. At that point in time we
12 went onto advise him of his rights from this form
13 (indicating) which is the written form where we check
14 off once we're read it and have him sign it
15 acknowledging that it was read and he understood it.

16 Q Please read the rights to the jury as they were read to
17 the defendant on February the 13th of 2007.

18 A It starts out where we list his name some basic
19 information date, time then it goes on to your rights,
20 before you ask any questions you must understand your
21 rights, then we ask if you understand that and then the
22 captain checked the box indicating that he had asked
23 that.

24 The next question, you have the right to remain
25 silent, anything you say can be used against you in

SCOTT FAUST DIRECT BY MS. MCDUFFIE

- 1 court.
- 2 Q Investigator Faust, let me stop you right there, did,
- 3 did, defendant understand these rights as you were
- 4 reading -- as Captain Smith was reading them?
- 5 A He did.
- 6 Q And how do you know that?
- 7 A Well, we would ask him do you understand what that mean
- 8 and he would indicate he did.
- 9 Q And if he didn't indicate that he understood a right
- 10 what would you then do?
- 11 A We would explain it or ask what his questions were but
- 12 in this case there was -- that situation did not arise.
- 13 Q So he indicated he understand each right as they were
- 14 read to him?
- 15 A That's correct.
- 16 Q Continue with the rights.
- 17 A You have right the right to talk to a lawyer for advise
- 18 before we ask any questions and have a lawyer with you
- 19 during any questioning. And that's how we look up and
- 20 acknowledge that you understand that. If you can not
- 21 afford a lawyer one will be appointed for you before
- 22 any questions if you wish. If you decide to answer
- 23 questions now without a lawyer present you still have
- 24 the right to stop answering at any time. You also have
- 25 the right the to stop answering any time until you talk

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 with a lawyer and you understand that and he would
2 acknowledged he did.

3 Move down to the waiver of rights where it says I
4 have read the statement of my rights and understand and
5 know what my rights are. I am willing to talk and
6 answer questions, I understand and know what I'm doing,
7 no promises had been made to me, and no pressure or
8 corrosion has been used against me. At that time we'd
9 asked him if he understood that and if he was willing
10 to waive his rights and he indicated he did and signed
11 the waiver as well as myself and Captain Smith.

12 Q And that's your signature at the bottom of the page as
13 the witness?

14 A That's correct in two spots under the your rights
15 section and the waiver of rights.

16 Q And that's on State's Exhibit 1?

17 A I believe that's exhibit two.

18 Q I'm sorry exhibit two. And then did you witness the
19 defendant's sign that form?

20 A I did.

21 Q And did the defendant waive his right and wanted to
22 speak with you and Captain Smith?

23 A He did.

24 Q What if anything after he waived his rights did he tell
25 you and Captain Smith?

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 A He stated, that, that, he committed the robbery due to
2 feed his drug habit. He went on to say that the
3 pictures from the -- the still pictures that we had
4 from the video was -- that was him in the video. He
5 would talked about the quality of the picture and it
6 was clear that it was him and he went on to admit that
7 he had a box cutter that he used to commit the robbery
8 but he said it didn't have a razor in it.

9 Q And after he gave you this verbal statement did
10 yourself and Captain smith want to get a written or
11 reduce this into writing or get a written statement
12 from him?

13 A That's correct.

14 Q And who proceeded to take a written statement from the
15 defendant?

16 A Captain Smith did.

17 Q And were you present the entire time this written
18 statement was taken?

19 A I was present for the entire verbal at that time when
20 we were going to reduce it to writing I decided that I
21 needed to go get some items to do some clerical matters
22 with some paper work to finish up the case and at that
23 time I would check periodically back in to see how
24 things were going and near the end of the statement I
25 was coming back into the office, I was going to leave

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 to go handle a matter and at that time, the statement
2 was wrapped up and we went over the statement and
3 covered what was in it and he agreed that that was what
4 the statement that he had just supplied to the captain
5 and at that time I witnessed it and notarized it.

6 Q I'm going show you what's been marked for I.D. as
7 Court's Exhibit Number 3, is this the statement that
8 was reduced to writing?

9 A This is the original with my signature.

10 Q And you signed it as the notary?

11 A Yes.

12 Q And you witnessed the defendant sign each one of though
13 pages?

14 A Yes, ma'am.

15 Q And how many pages are there in that statement?

16 A Four pages.

17 Q And you witnessed the defendant sign on each page?

18 A I did. And he verified that that was his statement and
19 he swore that it was the truth and after he signed it I
20 went and made a copy and supplied he with a copy.

21 Q And were you present when the statement was read back
22 to him by Captain Smith?

23 A Yes.

24 Q And did he indicate that that was his statement?

25 A That -- that's correct.

SCOTT FAUST DIRECT BY MS. MCDUFFIE

1 Q And he then signed the form?

2 A Yes.

3 Q And you notarized it?

4 A I notarized it and I swore him, I said you swear and
5 affirm that this is the truth?

6 Q And that is your signature on the bottom those pages?

7 A That is correct.

8 Q And after the taping of the statement of the
9 notarization of the statement, did you have any further
10 involvement in this matter?

11 A No, no.

12 MS. MCDUFFIE: Beg the Court's indulgence.

13 THE COURT: All right. Yes, ma'am.

14 BY MS. MCDUFFIE:

15 Q And the individual that you took this statement from or
16 was present when the statement was signed and also
17 advised him his rights, do you see him in the courtroom
18 today?

19 A I do.

20 Q Can you please point him out for the jury?

21 A He's the gentleman in the middle (indicating) of the
22 table where I'm indicating.

23 Q And what's he wearing?

24 A He's wearing a dark suit with a blue shirt and a tie.

25 MS. MCDUFFIE: Nothing further, Your Honor.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 THE COURT: Cross-examination.

2 MS. MCCURRY: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 MS. MCCURRY: I don't have any questions.

5 THE COURT: All right. You may step down,
6 Sergeant Faust fault.

7 MS. CAMPBELL: State would call Captain Smith.

8 THEREUPON,

9 JAMES STANDEN SMITH,
10 after having been duly sworn, testified as follows:

11 THE CLERK: Please have a seat, state your full
12 name for the record.

13 MR. SMITH: James Standen Smith.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Captain Smith, where are you employed?

17 A The Richland County Sheriff's Department.

18 Q And what do you do there, sir?

19 A I'm the investigation supervisor rank of captain in the
20 criminal investigative division. My primary
21 responsibility is to supervise the major crimes,
22 homicides, armed robberies, kidnapping, violent crimes.

23 Q And is it unusual for you to become involved in the
24 actual investigation of a case.

25 A It is not. We have a lot of things going on and in

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 this particular case for instance my detective was
2 assigned this case was involved in a trial so myself
3 and my lieutenant at the time became involved and
4 that's not unusual for that type of thing to occur.
- 5 Q And you're first involvement in this case I believe
6 began on February the ninth of 2007?
- 7 A That's correct.
- 8 Q And what did you review that day?
- 9 A Reviewed a some surveillance video from This Is It
10 robbery.
- 11 Q Okay. And that would be the video that's already been
12 introduced as State's Exhibit Number 35?
- 13 A Yes.
- 14 Q And in reviewing that video because of the quality of
15 the video from that store, did you make a decision as
16 to what to do with it?
- 17 A Yes. It's normal for us if we have a video of that
18 quality we've been successful with it time and time
19 again, to get it into the media and they've been real
20 good about running it for us especially if it's high
21 quality and --
- 22 Q And what's the purpose of you submitting a video such
23 as that? At that point, did you have any idea who
24 committed this armed robbery?
- 25 A No, ma'am.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 Q And what's the purpose of, of, running that on TV?

2 A Well, the purpose is pretty obvious, hopefully, in a
3 situation like where the person wasn't masked or didn't
4 try to disguise his identity someone could recognize
5 his face and call in and the people will still do the
6 right thing, crime stoppers is a pretty well publicized
7 avenue that people will use to call in tips and has
8 been successful plenty of times in the past and it was
9 in this case.

10 Q Okay. And that weekend it actually ran on several of
11 the news stations?

12 A It did.

13 Q And specifically did you become aware that Monday
14 morning when you had come to work that a crime stoppers
15 tip had come in?

16 A I did.

17 Q And when refer to crime stops explain to this jury what
18 crime stoppers is and the guarantee of being anonymous,
19 why is that?

20 A Someone can call in some information and not be
21 compelled to have to give their names. And what it
22 does is it allows the program to continue, not only are
23 people are worried about their safety but they also
24 sometimes simply don't want to become that deeply
25 involved. They want to provide the information that

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 they have but they don't want to get that far involved
2 for whatever reason they may have probably it is
3 safety. So it's a positive law enforcement tool and it
4 works for us.

5 Q And in this case, the information that y'all developed
6 over the weekend from the tipster, did he wish to
7 remain anonymous?

8 A Yes.

9 Q And actually you actually met with him though, is that
10 true?

11 A We did meet with him but he requested that his
12 information remained out of the file and we respected
13 his wishes.

14 Q That weekend, the information when you met with him,
15 was he able to give you specify information about the
16 identify of the person in the video?

17 A Yes, he named the individual by name.

18 Q And what name was that?

19 A Michael Jackson.

20 Q Was he able to give you some identifying information
21 about him?

22 A He indicated that he knew him from the area. I believe
23 when he first talked to the detectives on duty that
24 weekend he gave a general location where Michael
25 Jackson lived is what --

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 Q And when you say general location, what area did he
2 indicate Michael Jackson was staying?
- 3 A I believe he mentioned Middleburg, Middleburg Plaza
4 which is like Forest Drive not too far from Providence
5 Hospital.
- 6 Q But What area of town did he see -- did he indicate he
7 frequented?
- 8 A He frequented the Broad River Road area.
- 9 Q And was he able to give other -- without going into
10 identifying factors about the defendant's person?
- 11 A Yes.
- 12 Q That Monday morning, did become more involved in this
13 investigation?
- 14 A I did, me and Investigator Faust became involved in the
15 general sessions matters, I become more involved in the
16 case by Lieutenant Scot McDonald also became involved,
17 Sergeant Bluing who is another major crimes supervisor
18 he also become involved.
- 19 Q And that day, did Lieutenant McDonald develop a photo
20 lineup?
- 21 A Yes, he did.
- 22 Q And I'm showing you what's been marked as State's
23 Exhibit Number 1, which I believe is into evidence, is
24 that the photo lineup that was developed?
- 25 A It is.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 Q And that afternoon, did you have the opportunity to
2 make contact with the victim in the case?

3 A I did. I met with Mr. Vasquez around 4 o'clock that
4 afternoon.

5 Q And where did that meeting take place, sir?

6 A Actually at his residence at the time. I believe his
7 girlfriend was present at the time we met.

8 Q And when you went there, what was the purpose of you
9 going to meet with him?

10 A To show him the photographic lineup to see if he could
11 make an identification.

12 Q And at that point -- and in this photographic lineup
13 that you showed to him that day was Michael Jackson's
14 picture in it?

15 A Yes, it was.

16 Q When you showed him the lineup, what if any information
17 did you gave to him prior to showing him the lineup?

18 A Just asked him if he recognized -- of course, he knew
19 why I was there, if he recognized anyone in the line
20 up.

21 Q And did you indicate to him which one he should pick?

22 A No, ma'am.

23 Q Did you indicate in anyway that the person actually had
24 to be in there --

25 A No, ma'am --

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 Q That robbed him. And when you showed him the -- .
2 lineups, I noticed there was some handwriting on this,
3 was any of that handwriting present?
- 4 A No.
- 5 Q Can you show in the lineup and tell this jury what his
6 reaction was?
- 7 A He immediately identified Michael Jackson's photograph
8 which is number two on the top of the photograph, he
9 didn't have any hesitation.
- 10 Q And at that point did you have to memorialize who he
11 recognized?
- 12 A Yes. I filled out the bottom part which is sort of an
13 affidavit of what his identification, he signed it and
14 he also initialed and dated it the photograph itself.
- 15 Q At that point did you feel it was appropriate in this
16 case based on all the information to get a warrant?
- 17 A Yes.
- 18 Q What was the appropriate charge?
- 19 A Armed robbery.
- 20 Q Why is that?
- 21 A Because the facts and circumstances, the report which
22 the victim had made which was corroborated or
23 substantiated by the video itself reviled that it was a
24 taking of cash or property by use of a deadly weapon
25 and those are the elements of armed robbery.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 Q And where -- was it you office, not you personally, but
2 was your office able to secure an armed robbery warrant
3 at that time?
- 4 A Yes.
- 5 Q Did you make any attempts to try to find the defendant
6 that day?
- 7 A Actually on the morning of the 13th.
- 8 Q And -- okay, that's where I want to go next. What
9 exactly did you do to try to --
- 10 A Based on the information we had gotten from the tipster
11 as well as the location of the robbery itself and the
12 dog track, we set in that area, Zemer Crest, Broad
13 River Road area hoping that we would get lucky and that
14 we would spot Mr. Jackson.
- 15 Q And did you actually participate in this yourself?
- 16 A I did.
- 17 Q And approximately how many people were out there
18 surveilling the area?
- 19 A Probably six or eight including some uniformed officers
20 were present.
- 21 Q And that morning were you able to find Michael Jackson?
- 22 A We did.
- 23 Q And did you actually arrest him?
- 24 A Yes.
- 25 Q Where was he when you found him?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 A He was actually walking down Zemer Crest.
- 2 Q Once Mr. Jackson was arrested for the armed robbery,
3 what happened to him?
- 4 A One of the uniformed officers, I instructed him to
5 bring him to my vehicle, I was actually transporting
6 and immediately we would start communicating with
7 Mr. Jackson which is normal.
- 8 Q Prior to asking Mr. Jackson any questions once he was
9 placed in your vehicle, did you do anything?
- 10 A Yes, I, I, verbally marandized him or I advised him of
11 his Miranda Rights in, in, my vehicle.
- 12 Q And is that popper police --
- 13 A Yes --
- 14 Q Conduct?
- 15 A Yes. Generally, if someone is in custody and you
16 desire to question them you cannot do so if you didn't
17 advise him of his rights first.
- 18 Q And in this case, did you go through all of his
19 constitutional rights?
- 20 A I did.
- 21 Q And what rights were those?
- 22 A I advised him that he had the right to remain silent
23 and anything he said could be used against him in
24 court, I advised him that he had a right to talk to a
25 lawyer for advise and if he could not afford one one

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 would be appointed for him before questioning if he
2 wished. And I also advised him he had a right to stop
3 answering at any time if he desired to.
- 4 Q And did he indicate whether or not he understood his
5 rights?
- 6 A He did.
- 7 Q And did he indicate whether or not he wished to speak
8 to you?
- 9 A He did, he, he, was cooperative and willing to talk to
10 us.
- 11 Q Once you advised him his rights what happened?
- 12 A He immediately -- basically used the phrase to sort of
13 resign his faith, he said he was tired, sort of blamed
14 it on the drugs. In other words, it was an
15 acknowledgment of what had been going on, why we were
16 there. I actually showed him some stills that I had
17 from the surveillance video and he indicated that
18 basically that was good enough for him, you know.
- 19 Q He stated that was good enough for him?
- 20 A Yes.
- 21 Q And what did you take that to mean?
- 22 A An admission that that was indeed him on those
23 surveillance tapes.
- 24 Q And I show you State's Exhibit 8, 9 and 10, these are
25 just some of the stills, are there still photographs

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 from the video?

2 A Yes, ma'am.

3 Q And when you talk about stills those are actually
4 photographs from the actual video?

5 A Yes, ma'am.

6 Q The video itself was actually better quality, isn't it?

7 A Yes, the stills capture some of the fuzziness but you
8 can see the video much clearer this is very similar to
9 what I showed him that day.

10 Q And that's when he acknowledged that was enough for
11 him?

12 A Yes, ma'am.

13 Q Did you then proceed to start to transport him back to
14 headquarters?

15 A We drove from Zemer Crest to Broad River Road area to
16 our office which is at 5623 Two Notch Road.

17 Q Prior to getting to your office did he point out
18 anything in the area out there near Zemer Crest?

19 A Right as we were going by from the area where he was
20 arrested he pointed out a trailer on -- it's on Betty
21 Lane that he would stay at some, he wanted to tell us
22 about --

23 Q Okay. And I show you what's been marked as State's
24 Exhibit Number 38, does this actually show the This Is
25 It Video store?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 A Yes.
- 2 Q That got cut off, I don't know why. And Zemer Crest is
3 shown on here as well?
- 4 A Yes.
- 5 Q And Betty's Lane also shown on here as well?
- 6 A Yes (indicating).
- 7 Q And it's down there (indicating). And were you aware
8 of where the dogs tracked to that night?
- 9 A Yes, ma'am. They tracked to Hunter's Ridge Apartments.
- 10 Q Up there (indicating)?
- 11 A Up here (indicating) which would be in that same spot
12 which is close to the general area.
- 13 Q And later did he admit to you that he went to the --
14 back to Crazy Mike's at some point after the robbery?
- 15 A Yes.
- 16 Q Once he pointed out that area, did you then send some
17 officers to check out that trailer that he pointed out
18 to you?
- 19 A I did.
- 20 Q And that was done I believe by Investigator Isenhoward
21 and some other officers?
- 22 A Investigator Metz and Ewing initially I believe and
23 then later on Isenhoward went back I believe with back
24 with, maybe, Ewing the second time.
- 25 Q Once you got back to headquarters after he pointed out

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 the trailer, where did y'all go?

2 A We went to my office which is in the criminal
3 investigative section, it's a large room with cubicles
4 and offices, supervisor office.

5 Q Okay. And once he was in your office, what did you
6 proceed to do?

7 A I advised him of his rights again, at this time from a
8 written form which is standard again proceed that we
9 use.

10 Q And I'm going to show you what's been marked as State's
11 Exhibit number two, do you recognize that?

12 A I do.

13 Q And was that, in fact, the form you used that day?

14 A It's the original, yes, ma'am.

15 Q And when you first started using -- when you got that
16 form out, it's a blank form?

17 A Yes.

18 Q And then you fill in the writing on it?

19 A That's correct.

20 Q Other than the signature of the defendant as well as
21 your signature and invest -- Sergeant Faust?

22 A That's right.

23 Q That day, tell the jury exactly what you did to make
24 sure he understood his rights?

25 A Well, we went through them again the same fashion that

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 I had done earlier with the exception the form where we
2 actually checked, ticked the rights off as you go
3 through it. And we through them one at the time and I
4 checked them off as we went through it. The same
5 rights that I advised him of earlier, before I advised
6 him that he had the right to remain silent, that
7 anything that he said could be used against him in
8 court, he had a right to talk to a lawyer prior to us
9 asking any questions or have one with him during
10 questioning and if he could not afford a lawyer one
11 with be appointed for him for any question if he
12 wished. And I also advised him if he decided to answer
13 questions now without a lawyer present he could stop
14 answering any time and he also had a right to stop
15 answering at any time to talk to an attorney or a
16 lawyer. We checked every one of those off and
17 Mr. Jackson signed acknowledging he had been advised of
18 his right. I witnessed here (indicating) Sergeant
19 Cloud witnessed it right there (indicating).

20 Q Once you advised him of his rights, did he indicate he
21 wished to waive his rights and speak to you?

22 A He did.

23 Q An did you go through that information?

24 A Yes. The bottom part it's called waiver of rights I
25 think it just means he wanted to talk to us -- we went

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 through that and also a check place, I read to him the
2 statement of rights and what my statement of rights
3 are. I'm willing to talk and answer questions, I
4 understand and know what I'm doing, no promises has
5 been made to me and no presser or coercion of any kind
6 can be used against me. Same fashion, he signed here
7 (indicating) Mr. Jackson, I signed and Sergeant Faust
8 signed as a witness.

9 Q And once he indicated he wished to waive his rights and
10 talk to you, did he, in fact, wish to give you his
11 version of the events?

12 A Yes, he had been cooperative the whole time, more
13 detail at this point.

14 MS. CAMPBELL: Your Honor, at this time we'd offer
15 State's Exhibit Number 2 into evidence.

16 MS. MCCURRY: What's that?

17 MS. CAMPBELL: Advise of rights.

18 MS. MCCURRY: Okay. No objection.

19 THE COURT: That's the --

20 MS. CAMPBELL: The advise of rights.

21 THE COURT: Oh, okay. Without objection.

22 (State's Exhibit 2 admitted into
23 evidence.)

24 BY MS. CAMPBELL:

25 Q Did you review anything with him prior to taking his

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- 1 written statement?
- 2 A I believe that some of the media release video was
- 3 still up, I think I pulled it up on my compute.
- 4 Q Uh-huh.
- 5 A And I believe it was, maybe, WIS, it's convenient to do
- 6 it that way. I hit play and let him watch it on my
- 7 computer screen.
- 8 Q And once he reviewed that, did you then take a written
- 9 statement from him?
- 10 A We went through it the whole thing kind of top to
- 11 bottom, verbally and then he reduced that to a written
- 12 statement.
- 13 Q I'm going to show you what's been marked as Court's
- 14 Exhibit Number 3, do you recognize that?
- 15 A I do.
- 16 Q And how many pages is that document?
- 17 A It's almost four pages complete.
- 18 Q And is that the actual original statement you took in
- 19 the case?
- 20 A It is.
- 21 Q How did that statement get reduced into the typewritten
- 22 form?
- 23 A It's our police at the Richland County Sheriff's
- 24 Department that the interview would actually complete
- 25 the statement and perfectly we would all try to --

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1 especially use the computer to type it out. Sometime
2 you have to do it in the filed with a witness, maybe,
3 by hand the old fashion way. But if we did it in the
4 fashion since we were in the office we used the
5 standard computer template for a defendant's statement
6 and it was a question and answer type statement where I
7 would asked the question and I typed his specific
8 response to those questions.

9 Q And in this case, once you complete the typing up of
10 the statement, do you then print it out and go over it?

11 A Yes.

12 Q And was that done in this case?

13 A It was.

14 Q And how was that done?

15 A I read the statement back to Mr. Jackson to make sure
16 he agreed with the content, he did not want to make any
17 changes and he did agree with the content. At that
18 point in time he signed the statement in two places on
19 each page. On one, one, section indicating he made it
20 freely and voluntarily and the other section indicating
21 that it had been read back to him and asked that we
22 read it and a copy was given.

23 Q And that was done in this case?

24 A Yes. So in essence he signed it eight times, twice on
25 this page.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 Q And was Sergeant Faust present to witness him actually
2 signing it?

3 A He was.

4 Q And, in fact, was he there for some of the oral and
5 some of the written statement as well?

6 A He was.

7 Q I want to show you what's been marked as State's
8 Exhibit Number 3, is that a redacted copy of the
9 original statement that you can refer to in Court's
10 Exhibit 3?

11 A It is.

12 THE COURT: I will be happy to explain?

13 MS. CAMPBELL: Could you, Your Honor, that would
14 help me. Thank you.

15 THE COURT: Members of the jury, this is a
16 redacted copy of the original statement given by Mr. Jackson
17 to Captain Smith. A redacted copy is where I as the judge
18 decided that certain things that were discussed between
19 Captain Smith and Michael Jackson aren't relevant to this
20 particular case, so there will be spaces in the copy that
21 you will have in the jury room, those spaces are where I
22 deleted certain portions of the discussions that have
23 nothing to do with this particular case that is the robbery
24 that occurred at the This Is It Video on Broad River Road on
25 the date in question.

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1 There might be other people, other things that
2 were discussed between Captain Smith and the defendant,
3 Mr. Jackson, that I've concluded as a matter of law that
4 they aren't relevant, it could be somebody else's name or
5 some other event that don't have anything to do with the
6 events that took place on the 13th I think it was.

7 MS. CAMPBELL: Yes, sir, the 13th of February.

8 THE COURT: Of February. So they're going to be
9 gaps, they're going to be things that have been taken out
10 that I as the judge decided that should not be in the
11 statement that aren't relevant to the facts of this case,
12 does that make sense? So they're going to be gaps and
13 that's the reason for it.

14 MS. CAMPBELL: Thank you.

15 THE COURT: Any acceptations or any addition?

16 MS. MCCURRY: No, Your Honor.

17 THE COURT: All right, very well.

18 MS. CAMPBELL: Thank you, Your Honor.

19 BY MS. CAMPBELL:

20 Q Other than the gaps and everything that have been
21 referred to, does that accurately reflect the
22 information he gave you about the This Is It Video
23 robbery?

24 A It does.

25 MS. CAMPBELL: Your Honor, at this time we'd offer

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1 State's Exhibit Number 3, the redacted version into
2 evidence.

3 THE COURT: All right. If you still have your
4 previous technical objection it's observed for the record
5 but that's going in as we discussed it.

6 MS. MCCURRY: Yes, sir.

7 THE COURT: All right.

8 MS. MCCURRY: The previous objection as discussed.

9 THE COURT: All right, very well.

10 (State's Exhibit 3 admitted into
11 evidence.)

12 BY MS. CAMPBELL:

13 Q If you can refer to the portions that are relevant to
14 this case.

15 MS. CAMPBELL: Your Honor, permission to publish?

16 THE COURT: Yes, ma'am.

17 MS. CAMPBELL: Thank you.

18 BY MS. CAMPBELL:

19 A It's stated out with the first question basically,
20 Michael, I have previously advised you of your rights
21 verbally right after your arrest this morning?

22 His response was, Yes.

23 Question, Did you indicate to me that you
24 understood your rights and were willing to talk to me
25 about the robbery?

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1 Answer was, Yes.

2 What was the location and time?

3 The video store on Broad River Road next to the
4 laundry mat that was about a week ago was his answer.

5 Question, Were you armed during the robbery?

6 Answer, On the store -- on the video store I had a
7 box cutter without the blade in it.

8 Question, I have shown you some surveillance
9 video, is that correct?

10 Answer, Yes, sir.

11 Question, Where are the clothing particularly the
12 coat's that in the video?

13 Answer, The coat I had on when I robbed the video
14 store I had taken from a crack head who was at Crazy
15 Mike's house. Crazy Mike lives in a trailer I pointed
16 out to you this morning. I was at Crazy Mike's when I
17 left to go do the robbery, I brought the coat back to
18 Mike's and left it there. The crack head is a black
19 guy in his 30's, they call him B or D but I'm not sure
20 which is right.

21 Next question, Why were you committing the
22 robbery?

23 Answer was, Drugs and stupidity, I was smoking
24 crack.

25 Question, What happened to the box cutter and the

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1 drill?

2 Answer, That box cutter I threw it away that same
3 night when I left the video store. I slung it when I
4 was running through the people's yards coming through
5 the store going back to Crazy Mike's. I got the drill
6 from a guy named Brian Hendricks who I had basically
7 been with everyday. I want to level with you, that was
8 his coat too I had on at the video store. That drill
9 might be at Crazy Mike's house in a black tote bag
10 which is right behind the TV.

11 Neck question, Did Brian Hendricks have anything
12 to do with the robbery.

13 His answer was, No, sir, he just let me use the
14 coat and the drill.

15 Question, Did he know what you were using the coat
16 and drill for?

17 Answer, I just told him I would be right back. He
18 didn't have nothing to do with that. He didn't ask no
19 questions.

20 Question, So the other crack head, the one you
21 said had the coat who you talked previously doesn't
22 exist by that name.

23 His answer was, Well, that was Brian I was talking
24 about. I call him B, I just didn't want to say his
25 name.

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1 Question, Where does Brian live?

2 Answer, Mostly he be at Crazy Mike's house but he
3 use to live with a faggot in Trenton Court Apartments,
4 the faggot was named Shannon Carmichael. Shannon
5 always talked about his momma being a judge.

6 Question, Can you describe Brian Hendricks?

7 His answer was, He's a black guy about 43 years
8 old, he's skinny, about 130 pounds, he's about my
9 height which is 5'9" tall. He just got out of
10 Lexington County about three weeks ago. They were
11 holding him in for Georgia for a bad check but they
12 never came and got him so they turned him loose. He's
13 from Columbia, his people live on Forklin and Bonnie
14 Forest I have known him since high school. We went to
15 Columbia High together.

16 Next question, Where are you buying your crack?

17 His answer was, The house on the dirt road behind
18 the Calamines right around -- right on the corner just
19 past the house with all the cars and the stumps in the
20 yard. I buy from a guy named Russel -- put I'm not
21 sure on the spelling of his name. I also buy from the
22 Schoolhouse Road and Piney Grove Road, they still sell
23 back up in the whole on Piney Grove Road.

24 Next question, How much would you smoke in a day?

25 Answer, On the second a Friday was when I started

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1 getting high, I smoked as much of a quarter to a half
2 of an ounce a day. Previously I didn't smoke everyday
3 but I have smoked every since the second except this
4 past Saturday and Sunday when I was at my mother's
5 home.

6 Question, Tell me again why you had to start doing
7 the robbery?

8 I wanted to get high, I needed the money.

9 Question, When did you shave your mustache?

10 Answer, About two days ago this weekend when I was
11 home.

12 Question, Is the black toboggan hat you had today
13 the hat seen on the video?

14 His answer was, Yes, sir.

15 The last question, Is there anything you want to
16 add to this?

17 His answer was, I'm sorry for what I did, it was
18 stupid.

19 Q Once you had taken the statement from him he mentions
20 in the statement that you refer to a hat he was wearing
21 when he was taken into custody?

22 A Yes, ma'am.

23 Q I show you State's Exhibit Number 40, do you recognize
24 that?

25 A Yes, ma'am, it's the hat.

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 Q And you collected that then?

2 A I did.

3 MS. CAMPBELL: Your Honor, at this time we'd offer
4 State's Exhibit 40 in.

5 MS. MCCURRY: No objection.

6 THE COURT: All right, without objection.

7 (State's Exhibit 40 admitted
8 into evidence.)

9 MS. CAMPBELL: Thank you.

10 BY MS. CAMPBELL:

11 Q I want to go back through the statement. Before he
12 gave his written statement you had shown him some
13 stills?

14 A Yes.

15 Q And in those stills you could see something in his
16 hands?

17 A Yes.

18 Q And you had always actually played the video where you
19 could even see it better, is that correct?

20 A Yes. It's better when it runs, than the stills.

21 Q And in this statement specifically, did you ask him
22 whether or not he was armed?

23 A Yes.

24 Q What did he indicate to you?

25 A He indicated he had a box cutter.

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- 1 Q And so at that point he even seen the video and there
2 was something in his hand, but he said it was a box
3 cutter charge?
- 4 A He said it was a box cutter, yes, ma'am.
- 5 Q With no blade in it?
- 6 A That's correct.
- 7 Q Is it unusual when confronted with pretty compelling
8 evidence for someone to minimum what they do?
- 9 A It's very typical. Another example may be well, yeah I
10 had a gun but it was a toy or a cap gun, things of that
11 nature.
- 12 Q And in this case he said it was a box cutter with no
13 blade?
- 14 A That's right.
- 15 Q Even if it was a box cutter with no blade with that
16 effected him being charged with armed robbery in this
17 case?
- 18 A Still the threat of what appeared to be a deadly
19 weapon.
- 20 Q And again, he had been confronted with the video, is it
21 unusual for someone to want to give their version of
22 what happened?
- 23 A No, it's actual pretty typical.
- 24 Q And in this case, he said he did it because of drugs,
25 he wanted to get high?

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- 1 A That's right.
- 2 Q At any point did he ever mention to you from that time
3 you picked him up until you finish taking the statement
4 any kind of health problems that compelled him to rob?
- 5 A I don't recall anything about that, no, ma'am.
- 6 Q But, in fact, he goes into quite a bit of detail about
7 his drug use?
- 8 A His drug use, how long he's been using, where he was
9 buying.
- 10 Q He mentioned a person a Brian Hendricks?
- 11 A Yes, ma'am.
- 12 Q Did y'all attempt to today follow up on a Brian
13 Hendricks?
- 14 A Yes. We -- again I think we went to that trailer twice
15 trying to locate this individual and some of the things
16 he talked about -- we were unsuccessful.
- 17 Q Was there any evidence in this case that anyone other
18 than the defendant was involved in this robbery?
- 19 A No, none whatsoever.
- 20 Q So even if you found Mr. Hendricks it would merely be
21 to possibly corroborate part of his statement?
- 22 A Just gets more detail.
- 23 Q But there is no evidence he had any involvement?
- 24 A That's right.
- 25 Q Even by the defendant's own admission?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 A That's correct.
- 2 Q And Crazy Mike, did investigators from your department
3 actually make contact with a person that fit that
4 description?
- 5 A I believe they did and he fit that description.
- 6 Q And did he have any relevant evidence or anything left
7 at the house that they were able to find?
- 8 A They had a difficult time communicating with him and
9 they didn't find anything specifically relevant.
- 10 Q Then again why did the defendant tell you he robbed
11 this store?
- 12 A To get money for drugs.
- 13 Q I want to show you what's been marked as State's
14 Exhibit Number 34, is that a photograph that was taken
15 of the defendant the day he was arrested on February
16 13?
- 17 A Yes, ma'am.
- 18 Q And in this statement did you specifically ask him
19 about his appearance being changed?
- 20 A I did.
- 21 Q And what did he indicate to you?
- 22 A He indicate he had shaved.
- 23 Q And State's Exhibit 34 is how he appeared?
- 24 A He was cleaned up on that day, yes, ma'am.
- 25 Q On State's Exhibits 27 through 33 are those some other

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

1 photographs of the defendant?

2 A Yes, ma'am, they are.

3 Q And in each of those photographs is the defendant have
4 some type of facial hair or mustache?

5 A He does in each one.

6 Q And is that what's reflected in State's Exhibit Number
7 8?

8 A It is.

9 MS. CAMPBELL: Your Honor, we'd State's Exhibits
10 27 through 34.

11 MS. MCCURRY: Previous objection has been noted.

12 THE COURT: All right, they're in.

13 MS. CAMPBELL: Thank you.

14 (State's Exhibit 27 through 34
15 admitted into evidence.)

16 BY MS. CAMPBELL:

17 Q State's Exhibits Number 34, when did he mentioned that
18 he had shaved his mustache?

19 A Over the proceeding weekend was at his Mother's house,
20 which would be several days after the robbery.

21 Q But would that have been the weekend when the video was
22 being run on the news cast?

23 A It would be the same weekend.

24 Q And the physical description that was given by the
25 victim in this case, did it fit the defendant?

JAMES STAN SMITH DIRECT BY MS. CAMPBELL

- 1 A It was pretty well dead on.
- 2 Q Other than the age being off by a few years?
- 3 A That's, that's, not off by much.
- 4 MS. CAMPBELL: Beg the Court's indulgence.
- 5 THE COURT: Yes, ma'am.
- 6 BY MS. CAMPBELL:
- 7 Q When you went through and gave the defendant his
- 8 rights, did you promise him anything to make him talk
- 9 to you?
- 10 A No, ma'am.
- 11 Q Did you threaten him in anyway?
- 12 A No, ma'am.
- 13 Q Did you try to coerce him into talking?
- 14 A He was cooperative from the minute he got into my
- 15 office.
- 16 Q And did anyone threaten him, do anything to him to make
- 17 him talk?
- 18 A No, ma'am.
- 19 Q And, in fact, at some point I believe while he was with
- 20 you he requested to go outside and smoke?
- 21 A He did.
- 22 Q Did you accommodate him?
- 23 A We did.
- 24 Q Did you also accommodate him or when he requested that
- 25 you call his mother?

JAMES SMITH CROSS BY MS. MCCURRY

1 A He wanted me to call his mom to tell her that he was
2 okay, but he was in custody but he was okay, and I did
3 that.

4 Q The person that you took the statement from that
5 confessed to you about committing the armed robbery?

6 A Yes, ma'am.

7 Q Do you see him here in the courtroom?

8 A I do.

9 Q And where is he seated?

10 A Seated at the defense table in the dark coat, blew
11 shirt and tie.

12 Q And finally, in the defendant's own statement, did he
13 indicate, in fact, that he was there with some type of
14 weapon?

15 A He did.

16 Q And that would make this armed robbery?

17 A It would.

18 MS. CAMPBELL: Your Honor, may the record reflect
19 he's identified the defendant.

20 THE COURT: All right.

21 MS. CAMPBELL: That's all I have.

22 THE COURT: All right, cross-examination.

23 MS. MCCURRY: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. MCCURRY:

JAMES SMITH CROSS BY MS. MCCURRY

- 1 Q Good afternoon, Captain Smith?
- 2 A Good afternoon.
- 3 Q How are you doing?
- 4 A Fine.
- 5 Q In your position that you held with the sheriff's
6 department during this time, did you have knowledge of
7 the reports from the other people that worked under
8 either you, Investigator Faust, McDonald the other
9 investigators that worked with you.
- 10 A Which reports are you referring to?
- 11 Q Their particular reports, did you review them, talk to
12 them about the case?
- 13 A You mean, their investigative follow ups as they
14 pertain in this case?
- 15 Q Yes, sir.
- 16 A While we were working the case?
- 17 Q It -- have you, have you, had access to those, have you
18 reviewed them, have you talked to them about those
19 reports?
- 20 A I reviewed them in preparation for this trial.
- 21 Q Okay.
- 22 A Yes, ma'am. I don't know that I did at the time.
- 23 Q Okay. But here today then you're familiar with other
24 things that have been done that you can address?
- 25 A To some degree, I'm not sure what you're talking about,

JAMES SMITH CROSS BY MS. MCCURRY

1 I'm sure I'll find out shortly.

2 Q For example in preparation for being here today, did
3 you have the opportunity to review the sheet from the
4 911 call?

5 A I did not review the sheet from the 911 call, no.

6 Q Okay. Did you review Investigator Faust's
7 investigation report?

8 A I have looked at that, yes, ma'am.

9 Q Okay. Have you reviewed the incident report that was
10 prepared by Deputy Snuffer?

11 A I did.

12 Q As well as the supplemental report prepared by Deputy
13 Snuffer?

14 A I did.

15 Q Isn't it true that the first mention that the object
16 that Mr. Jackson had in his hand in the video store
17 that it was a box cutter comes in from the
18 investigation report of Investigator Faust?

19 A Well, it came from the defendant. I'm not -- are you
20 saying the first time it was ever mentioned?

21 Q Yes, the first place that it's mentioned is in the
22 investigation report?

23 A I believe it came from the defendant first.

24 Q Where it's written?

25 A Well, written in his statement, I'm not sure if, if, I

JAMES SMITH CROSS BY MS. MCCURRY

- 1 understand your question.
- 2 Q It's not contained in the incident report, correct?
- 3 A The word knife was used in this incident.
- 4 Q Well, I'm asking about the identity of what was in his
- 5 hand as a box cutter?
- 6 A Well, the defendant mentioned that.
- 7 Q Okay.
- 8 A First.
- 9 Q But in writing it's not mentioned in the incident
- 10 report, correct?
- 11 A It says knife.
- 12 Q Not mentioned in the supplemental report, correct?
- 13 A That's right.
- 14 Q Okay. First place it's actually written is in
- 15 Investigator Faust report?
- 16 A You mean, as far as the police documents are concern?
- 17 Q Yes, sir, yes.
- 18 A I could review the report if you'd like, I don't have
- 19 it with me but I'll take your word for that.
- 20 Q Okay. Okay, that's good for me.
- 21 A But the defendant I believe mentioned it first and I
- 22 believe that may be why it was in the report, that's
- 23 what I was trying to explain.
- 24 Q Okay. So Mr. Jackson is the one who said it was a box
- 25 cutter?

JAMES SMITH CROSS BY MS. MCCURRY

- 1 A I believe that he's the first one that made mention of
2 it. We just knew knife, of course, a box cutter is a
3 knife. I consider it a knife.
- 4 Q You consider it to be knife, not necessarily everybody
5 would consider -- you don't cut your stake with a box
6 cutter, correct?
- 7 A It's, it's, a form of a knife.
- 8 Q Yes or no, do you cut a steak with a box cutter?
- 9 A I don't believe I ever have, no, but I believe it would
10 work.
- 11 Q Okay. And when Mr. Jackson spoke to you in your office
12 and told you what had happened, there was no mention of
13 a drill involved in This Is It Video store at all,
14 there was?
- 15 A That's correct.
- 16 Q Okay. So the drill had nothing to do with anything
17 related to this case?
- 18 A That's correct.
- 19 Q Okay. When Mr. Jackson was in your office giving you
20 his statement his also told you that he slung the box
21 cutter in some people's yards when going he was running
22 from the stores, correct?
- 23 A I believe he said that, yes, ma'am.
- 24 Q On his way he was headed back to the gentleman Crazy
25 Mike?

JAMES SMITH CROSS BY MS. MCCURRY

- 1 A That's correct.
- 2 Q Okay. Did anyone from the sheriff's department ever go
3 look in the people's yard to see if they could recover
4 this box cutter?
- 5 A We went back in that area, I know went to Crazy Mike's.
6 I can't specifically say I seen and positively checked,
7 in other words, we didn't take him back to show us what
8 specific yards he ran through.
- 9 Q Okay?
- 10 A So I don't know that that was ever done.
- 11 Q Okay. And there was nothing, there was nothing, that
12 was ever found at Crazy Mike's house?
- 13 A Not relevant to this case, no, ma'am.
- 14 Q Okay. When you, when you, arrested Mr. Jackson, you
15 stated that he was, he was, very cooperative with you
16 from the beginning?
- 17 A He was.
- 18 Q Okay. And he was placed in your vehicle and you took
19 him to your office on Two Notch Road, correct?
- 20 A That's correct.
- 21 Q Okay. And you had causal conversation with him in the
22 car, correct?
- 23 A Well, after he made the initial acknowledgment, yes,
24 ma'am. We didn't go into a whole lot more detail about
25 it until we got to the office.

JAMES SMITH CROSS BY MS. MCCURRY

- 1 Q Okay.
- 2 A Until on the ride in.
- 3 Q Okay, yeah. I'm, I'm not concerned at this, at this,
4 moment about anything connected with the Miranda, the
5 verbal warnings that you gave him or anything like
6 that. I'm just going to talk to you right now about
7 general conversation that you had with him in your
8 vehicle on the way to the sheriff's department, that's
9 all.
- 10 A You're asking the questions.
- 11 Q Okay. Do you recall any, do you recall, exact details
12 of things that you spoke about while he was in the car
13 with you?
- 14 A I don't.
- 15 Q Do you recall the exact details of the things dealing
16 specifically with the robbery of the video store?
- 17 A Well, I refer to I believe the conversation was small
18 talk.
- 19 Q Okay.
- 20 A And that's generally, you know, that would discussion
21 not related to the reason why we were together.
- 22 Q Okay.
- 23 A If you will.
- 24 Q But it's fair to say that when you're talking about
25 having had a conversation with somebody you might not

JAMES SMITH CROSS BY MS. MCCURRY

- 1 remember particular details, right?
- 2 A Certainly.
- 3 Q Okay. But then when somebody asked you about something
- 4 specify that may jar your memory that you remembered
- 5 you had that discussion or it may not, correct?
- 6 A We could give it a try.
- 7 Q Okay. So for example, did Mr. Jackson talk to you
- 8 about where he worked, that he was working for a
- 9 landscaper at the time?
- 10 A He could have.
- 11 Q Okay. And did he talk to you about where he lived that
- 12 he was staying with my mother periodically?
- 13 A I, I, know we talked about that because he -- later on
- 14 came up in conversation about him being home that
- 15 weekend.
- 16 Q Okay. And the police had, in fact, gone to his
- 17 mother's house and spoke with her as well?
- 18 A I had gone there.
- 19 Q Okay, you went yourself?
- 20 A Yes, ma'am.
- 21 Q Okay. All right. And Mr. Jackson obviously told you
- 22 that he had a serous drug problem?
- 23 A He did.
- 24 Q Okay. Is it possible that he mentioned to you that he
- 25 was also suffering from Hepatitis C because of his drug

JAMES SMITH CROSS BY MS. MCCURRY

1 abuse?

2 A It's possible but I do not remember that.

3 Q Okay. And is it possible that he told you that part of
4 what set him off was that he been informed he been
5 exposed to HIV?

6 A I believe I'd remembered that, that's, that's,
7 something that sort of raises a red flag when you're
8 certainly dealing with people that you may be
9 physically dealing with, I think I would have
10 remembered that.

11 Q But you can't be positive?

12 A I can't be positive, no, ma'am.

13 Q Okay, all right. But he did tell you that he'd been
14 smoking crack since Friday February the 2nd?

15 A I --

16 Q He mention that to you?

17 A Had says he had a little break in between, that's
18 right.

19 Q Yeah.

20 A Started on the second.

21 Q Yeah, so he started smoking it on the second?

22 A With a little, a little, break in between I believe is
23 the way he explained it.

24 Q All right. And so did he, did he, tell you that he was
25 really tired?

JAMES SMITH CROSS BY MS. MCCURRY

- 1 A He did.
- 2 Q Okay. And did he mention to you do you recall in your
3 conversation that he'd been up for eight or nine days
4 at that point?
- 5 A I -- no, he didn't say that because he made a special
6 point of saying that he'd been to his mother's house,
7 the preceded weekend. So I, I, that's not true.
- 8 Q Well, but it is true that he could have been at his
9 mother's house and he didn't sleep, correct?
- 10 A But I'm pretty sure the break involved he rested at his
11 Mother's house is the way I remembered it. I don't
12 know that he actually used the word sleep he was not
13 smoking crack according to him during that period of
14 time.
- 15 Q Well, I wasn't asking about smoking crack, I was asking
16 was he just physically awake?
- 17 A I do know if we covered that in that kind of detail.
- 18 Q Okay.
- 19 A But it was my impression he had taken a little break,
20 you know, from smoking crack.
- 21 Q All right. Did you happen to notice whether or not he
22 had any physical injury whatsoever?
- 23 A I, I, did not annotate any, you know, I didn't inspect
24 him from head to toe. I don't have any idea what you
25 were making reference to.

JAMES SMITH CROSS BY MS. MCCURRY

- 1 Q So you didn't see any nicks or cuts on his hands or his
2 fingers --
- 3 A Again --
- 4 Q No notes of it when he was finger printed or anything
5 like that?
- 6 A I wasn't present when he was finger printed unless it
7 was relevant to the case itself or prominent, I don't
8 think I would have made a notation of it or even recall
9 it at this juncture.
- 10 Q Okay. And he -- when you were in the vehicle he took
11 you past Crazy Mike's house and he showed you where he
12 lived and that's where he had been at some point in
13 time?
- 14 A That's correct.
- 15 Q Okay. And he also gave you information about where
16 exactly he purchased crack cocaine?
- 17 A He did.
- 18 Q Okay. Three different locations, correct?
- 19 A I believe it was.
- 20 Q Okay. And he also told you that he had been smoking a
21 quarter to a half an ounce a day, correct?
- 22 A I don't have his statement in front of me, I believe
23 that's right.
- 24 Q Okay.
- 25 A He said a quarter a half an ounce a day, yes, ma'am.

JAMES SMITH CROSS BY MS. MCCURRY

1 Q And tell me if you could, verify Michael's height and
2 weight?

3 A I don't have his arrest report in front of me, but I
4 think he's, he's, 5'9, 160, 165 I don't have it in
5 front of me but I -- if you want to hand me a copy I
6 could be certain.

7 Q All right. Do you have any knowledge as to
8 Mr. Vasquez's height and weight?

9 A Other than what I would guess.

10 Q Who would you guess?

11 A Probably around 5'9, 150, maybe, something like that.

12 Q Okay. All right, you've had the, you've had the,
13 opportunity to review the video of the case as well,
14 correct?

15 A Yes, ma'am.

16 Q And the video shows that Michael enters a front door?

17 A It does.

18 Q Exited the same door, correct?

19 A Yes, ma'am.

20 Q Got you. Shows that he touched the computer monitor,
21 correct?

22 A Some point in time he brushed across it, yes, ma'am.

23 Q Your testimony is that the video shows he's brushing
24 across the monitor?

25 A Well, they sweep across it at one point in time to get

JAMES SMITH CROSS BY MS. MCCURRY

- 1 the cash door, I'm not sure what you mean by the --
- 2 Q Okay --
- 3 A I think you mean jostled it a little.
- 4 Q Let me rephrase my question, the video indicates he
- 5 places my hand cleaner up on the side of the monitor,
- 6 you can see that in the video, correct?
- 7 A You might be able to, I'm not sure if it actually shows
- 8 it actually pressing up against it or I can't say that.
- 9 Q Okay. All right.
- 10 A I know they're sweeping cross it, jostling it, from my
- 11 recollection, then they get the cash drawer and the
- 12 other action takes place.
- 13 Q Captain Smith, was, was there a sworn statement taken
- 14 from Mr. Vasquez in this case?
- 15 A I don't recall that there was.
- 16 Q Okay, just the, just the, initial incident reports,
- 17 that's the only memorization of what he said?
- 18 A That's not unusual, that's correct.
- 19 Q Okay. Not saying it is or not.
- 20 A Right.
- 21 Q I'm just asking if that --
- 22 A I believe that's right.
- 23 Q Okay.
- 24 A There was --
- 25 Q All right. And when Mr. Jackson gave you his statement

JAMES SMITH REDIRECT BY MS. CAMPBELL

1 Investigator Faust, excuse me, Sergeant Faust now was
2 present when that took place, correct?

3 A He was present during a good portion of it.

4 Q Okay. And the two of you were in the room at the same
5 time, you and Investigator Faust?

6 A Not for the entire, not for the entire, sequence but
7 different portions, yes, ma'am.

8 Q Okay. Were you there when he was signing the
9 statement?

10 A Yes.

11 Q Okay. And so you were there when Investigator Faust
12 actually placed Michael under oath when he was swearing
13 that what he was telling you was, in fact, the truth,
14 correct?

15 A Yes, ma'am.

16 MS. MCCURRY: Beg the Court's indulgence just one
17 moment.

18 THE COURT: Yes, ma'am.

19 MS. MCCURRY: I have no further question, Your
20 Honor. Thank you.

21 THE COURT: Anything on redirect?

22 MS. CAMPBELL: Just a few questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q She asked you a series of questions about this small

JAMES SMITH REDIRECT BY MS. CAMPBELL

- 1 talked y'all had?
- 2 A Yes.
- 3 Q She talked about health issues and everything like
- 4 that?
- 5 A She did.
- 6 Q And specifically in the written statement don't you ask
- 7 him specifically why he was committing the robbery?
- 8 A Yes.
- 9 Q And at that point would he have had the opportunity to
- 10 tell you about any health issues, any exposing anything
- 11 and that would have been put in the statement?
- 12 A If it was relevant in his mind as to why he was
- 13 committing the robbery I would assume he would.
- 14 Q And is that any information he related to you that day?
- 15 A No, ma'am.
- 16 Q And if he had related that information to you when you
- 17 asked him why were you committing the robbery, his
- 18 answer was drugs and stupidity?
- 19 A It was.
- 20 Q He didn't mention any health issues?
- 21 A He did not.
- 22 Q And had he mentioned any health issues you would have
- 23 put it in there just like the drugs and the stupidity?
- 24 A I put his response down, no matter what it was.
- 25 Q She asked you about that he swore to tell the truth in

JAMES SMITH RECROSS BY MS. MCCURRY

1 this, in this, case, he's the one that after seeing the
2 video admits it's a box cutter, is that correct?

3 A That's correct.

4 Q And a box cutter is a form of a knife?

5 A It is.

6 Q And does it make any difference in the charge of armed
7 robbery whether or not there was a box cutter with or
8 without a blade or a knife?

9 A No, ma'am, it doesn't.

10 MS. CAMPBELL: Beg the Court's indulgence.

11 THE COURT: Yes.

12 MS. MCCURRY: I don't have anything further.

13 THE COURT: Anything on recross?

14 MS. MCCURRY: Just a couple.

15 THE COURT: All right, all right.

16 RECROSS EXAMINATION

17 BY MS. MCCURRY:

18 Q Captain Smith, isn't it true that Michael would know
19 what he had with him at the video store?

20 MS. CAMPBELL: Objection, Your Honor, she's 00 I
21 don't think you can speculate what was in his mind.

22 THE COURT: Well, I'll let him answer, try and
23 answer the question if you can.

24 BY MS. MCCURRY:

25 A The way I would answer that is yes it would be true but

JAMES SMITH RECROSS BY MS. MCCURRY

1 it also would be true that he would minimize which is
2 common when you're taking a statement if somebody is
3 confessing something. And the form of minimization
4 would be saying it's a box cutter with no blade in it.

5 Q Okay. And that's your saying that it' minimization?

6 A I believe that, I believe that, was a minimization,
7 yes, ma'am.

8 Q Okay. But the fact of the matter is and the truth is
9 isn't it, that he did not need to see a video to figure
10 out what he had with him that day, correct?

11 A No, he mentioned it to be a box cutter.

12 Q My question is, he didn't tell you that it was a box
13 cutter simply because that's what he thought he saw in
14 the video?

15 A No, no, he mentioned it was a box cutter I believe
16 before.

17 Q Okay.

18 A We got to the video part.

19 Q Okay, that's just what I want to clear up. So he knew
20 exactly what he had on him at the time he was in the
21 This Is It Video, correct?

22 A Yes, ma'am.

23 Q Okay. Thank you.

24 THE COURT: Anything further of this witness?

25 MS. CAMPBELL: No, sir.

1 THE COURT: James Standon Smith, you may step
2 down, sir.

3 MR. SMITH: Thank you, Your Honor.

4 MS. MCDUFFIE: State calls Sergeant Kevin
5 Isenhoward.

6 THE COURT: Can I see y'all for a minute?
7 (Whereupon, a bench conference
8 was held off the record, in the
9 presence of the jury, but out of
10 the hearing of the jury.)

11 THE COURT: Members of the jury, I apologize but
12 my stomach is mashing together so I immediate to eat a
13 cracker or something. So I'm going to take about five
14 minutes to do so and we're going to come back and do one
15 more witness today and we'll just about finish the state's
16 case I believe, okay.

17 So go to the jury room for a few minutes, don't
18 talk about this case, we'll come back and we'll finish
19 with --

20 Is it Sergeant Isenhoward?

21 MS. ISENHOWARD: Yes.

22 THE COURT: All right. Sergeant Isenhoward, just
23 don't talk about the case.

24 (The jury retires from the
25 courtroom.)

KEVIN ISENHOWARD DIRECT BY MS. DUFFIE

1 (Whereupon a short recess was
2 held.)

3 THE COURT: All right, is everybody ready?

4 MS. CAMPBELL: Your Honor, some time -- I think
5 they're two stills from the video 25 and 26 which
6 inadvertently were not put into evidence, if we could move
7 those in I believe without objection.

8 MS. MCCURRY: We have no objection.

9 THE COURT: All right.

10 MS. CAMPBELL: Thank you.

11 (State's Exhibit 25 and 26
12 admitted into evidence.)

13 THE COURT: Bring the jury in.

14 (The jury returned to the
15 courtroom.)

16 BAILIFF: The jury's all present, Your Honor.

17 THE COURT: All right. Welcome back, members of
18 the jury.

19 Ms. McDuffie.

20 MS. MCDUFFIE: State calls Sergeant Kevin
21 Isenhoward.

22 THEREUPON,

23 KEVIN ISENHOWARD,
24 after having been duly sworn, testified as follows:

25 THE CLERK: Please have a seat, state your full

KEVIN ISENHOWARD DIRECT BY MS. DUFFIE

- 1 name for the record.
- 2 DIRECT EXAMINATION
- 3 BY MS. MCDUFFIE:
- 4 Q Would you please state your name for the record?
- 5 A My name is Kevin Isenhoward.
- 6 Q And, Sergeant Isenhoward, where are you currently
- 7 employed.
- 8 A Richland County Sheriff's Department.
- 9 Q And what are your current duties with the Richland
- 10 County Sheriff's Department?
- 11 A I'm a sergeant in the major crimes unit.
- 12 Q And as a sergeant in major crimes what are your
- 13 responsibility?
- 14 A I supervise -- supervising investigators that handle
- 15 and that solves robberies and violent crimes.
- 16 Q What were your duties in February of 2007?
- 17 A I was a major crimes investigator at the time.
- 18 Q And did you have the occasion to respond to 2831 Broad
- 19 River Road on February the 5th of 2007?
- 20 A Yes, I did.
- 21 Q And what was that in reference to?
- 22 A A reported robbery had occurred at the store.
- 23 Q And that would be This Is It Video?
- 24 A That's correct.
- 25 Q And when you arrived at This Is It, who else was

KEVIN ISENHOWARD DIRECT BY MS. DUFFIE

1 present there?

2 A There were several uniformed deputies there that
3 initially responded to the scene and I believe a lab
4 investigator Allen who was there.

5 Q And --

6 A And the victim --

7 Q When you arrived on the scene what's the first thing
8 you did?

9 A First and foremost I talked to the deputies on scene,
10 they'll update me on that situation, he's been reported
11 and what kind of information they received and what
12 they're doing, then I'll meet with the victim and ask a
13 few question of my own and learn exactly what happened
14 then make a determination whether anything else I need
15 to do at that time.

16 Q And did you have the chance to meet with the victim,
17 Mr. Vasquez, in this case?

18 A I did.

19 Q And did you begin to take a statement or fill out a
20 robbery questionnaire in this case?

21 A I did begin to out a robbery questionnaire.

22 Q A did stop filling it out at some point?

23 A Yes, I did.

24 Q And why is that?

25 A Well, unbeknownst to me one of the officers on scene

KEVIN ISENHOWARD DIRECT BY MS. DUFFIE

- 1 had already filled one out so he handed it to me.
- 2 Q And what is a robbery questioner ask?
- 3 A It asks a set or group of questions, basically asking
- 4 for information from the victim, personal information
- 5 and a description of the suspect as best they can
- 6 provide and it prompts questions about specific things
- 7 like height, weight, hair color, a list of questions.
- 8 Q And that was filled out that evening?
- 9 A Yes.
- 10 Q And in your talks with the victim, Mr. Vasquez, in your
- 11 review of the robbery questionnaire, was there anything
- 12 additional that Mr. Vasquez had to add that needed to
- 13 be memorialized?
- 14 A No.
- 15 Q And did you take a written statement from Mr. Vasquez
- 16 that evening?
- 17 A No.
- 18 Q And why is that?
- 19 A Basically, the information he had to provide was
- 20 provided in the robbery questionnaire.
- 21 Q And on that robbery questionnaire he provided that the
- 22 defendant used a weapon?
- 23 A Yes, he did.
- 24 Q And what kind of weapon was that?
- 25 A Specifically a red handled knife.

KEVIN ISENHOWARD DIRECT BY MS. DUFFIE

- 1 Q And were the K-nine -- was the K-nine unit called out
2 while you were there?
- 3 A Yes.
- 4 Q And did they begin a track?
- 5 A Yes, they did.
- 6 Q And at some point in the evening you had to leave the
7 scene?
- 8 A I had to leave shortly after speaking with the victim I
9 believe.
- 10 Q And why was that?
- 11 A There was a -- five people was shot in the nightclub,
12 two of them were killed. So I reported to that.
- 13 Q So you had to leave the scene to respond to that?
- 14 A Yes.
- 15 Q And when did you next become involved in this case?
- 16 A I don't know. I guess a week to ten days afterwards,
17 myself and Sergeant Uling conducted some follow up on
18 it in the case.
- 19 Q And did you learn at that point in time that
20 Mr. Jackson had given a statement to Captain Smith?
- 21 A Yes, I did.
- 22 Q And what were you following up on?
- 23 A Specifically some information that he was provided
24 about the location of some items used in the crime I
25 believe a drill and some clothing.

KEVIN ISENHOWARD DIRECT BY MS. DUFFIE

- 1 Q Specifically you were looking for a box cutter or a
2 coat?
- 3 A Yes.
- 4 Q Something in that nature?
- 5 A Yes.
- 6 Q And did you -- where did you go to look for these
7 items?
- 8 A We went to an address on -- I'm trying to recall the
9 street name.
- 10 Q If I showed you a map would that help refresh your
11 recollection?
- 12 A Yes.
- 13 Q I'm showing you State's Exhibit 39, can you tell the
14 jury where you went?
- 15 A An address on Betty's Lane it was a single wide trailer
16 located there at the corner, near the corner of Zemer
17 Crest and Betty's Lane.
- 18 Q And you can show to the jury where this incident took
19 place?
- 20 A This incident took place here (indicating) on Broad
21 River Road and this is Betty's Lane.
- 22 Q And that Zemer Crest Drive address is -- are you aware
23 of what that is?
- 24 A 916 I believe that may be the apartment complex where
25 the dog, the K-nine team went to tracked to.

KEVIN ISENHOWARD DIRECT BY MS. DUFFIE

- 1 Q And Betty's Lane is where an individual known as Crazy
2 Mike?
- 3 A Yes.
- 4 Q And did you encounter anyone fitting the description
5 that was provided to you?
- 6 A Pretty accurately there was a guy that was acting crazy
7 his name was Mike.
- 8 Q And did you have the opportunity to talk with him?
- 9 A Yes.
- 10 Q And did you look on his property for a box cutter or a
11 jacket?
- 12 A Yes. What I recall is he allowed us to search his some
13 of his property, specifically a bag which I recall
14 which was near the door to the trailer, we searched
15 that, we didn't locate anything, anything, connected in
16 the case with the robbery.
- 17 Q And taking you back to the early morning hours of
18 February 5th, while the dog was tracking you were the
19 investigator that are was at the scene?
- 20 A Yes.
- 21 Q Had the dog tracked to a box cutter would you have been
22 notified?
- 23 A Yes.
- 24 Q To your knowledge did the -- while the dog was tracking
25 was that item found?

KEVIN ISENHOWARD CROSS BY MS. MCCURRY

1 A No, it wasn't.

2 Q And was there anything of evidentiary value found at
3 Crazy Mikes?

4 A No.

5 MS. MCDUFFIE: Nothing further, Your Honor.

6 THE COURT: All right, cross examine.

7 MS. MCCURRY: Thank you.

8 CROSS-EXAMINATION

9 BY MS. MCCURRY:

10 Q Good afternoon, sir.

11 A Good afternoon.

12 Q When you started talking with Mr. Vasquez your initial
13 objective was to complete the robbery questionnaire?

14 A Yes, it's a tool we us to gain information from the
15 witness or victim.

16 Q Okay. Did you have an interview with him before you
17 started to do the questionnaire?

18 A Yes. We talked about what happened and what he
19 remembered and then we filled that out, fill out the
20 from.

21 Q So you were, you were, aware that he had obviously
22 called 911, correct?

23 A Yes.

24 Q Okay. Isn't it typical in a case like this that you
25 would, you would, have a recording of what happened on

KEVIN ISENHOWARD CROSS BY MS. MCCURRY

1 911, the call?

2 A 911 calls are recorded, yes.

3 Q Okay. Was there -- there wasn't one in this particular
4 case?

5 A I'm sure it was recorded but I did not retrieve the
6 recording.

7 Q Okay, all right. And in an investigation like this who
8 would normally do that?

9 A The case investigator.

10 Q Okay. And who was the case investigator in this case?

11 A I believe Captain Smith.

12 Q Would you agree that the call to 911 is the victim's
13 first recollection and relaying of information as to
14 what happened in this case?

15 A It is. Usually when we respond that's the purpose for
16 an investigator actually responding to the scene is to
17 go over in detail what they remember and it's freshly
18 exhibited at that point.

19 Q When you spoke with Mr. Vasquez was it relayed to you
20 or did you know if he had already reviewed the video
21 tape in this case prior to speaking with you?

22 A I don't know, I don't know, that I know that I recall
23 him saying to me he had reviewed it already. I know
24 that while we were there the video I did see a part of
25 the video.

KEVIN ISENHOWARD CROSS BY MS. MCCURRY

1 Q And you were watching that with Mr. Vasquez?

2 A Yes.

3 Q Okay. And at the point that you were starting to do
4 the robbery questionnaire, the actual questionnaire,
5 the form you use is a little different than the one
6 that was initially completed is that right?

7 A Yes, it's a newer version.

8 Q Okay. It's not specifically related to a robbery
9 division of the sheriff's department?

10 A Well, the robbery division came up with the robbery
11 questionnaire to aid the investigation. So, I mean, we
12 did update it.

13 Q Okay. And you didn't obtain any additional information
14 from Mr. Vasquez other than that which he relayed to
15 Deputy Snuffer, is that correct?

16 A The only additional information would be that, you
17 know, that night we were -- we didn't have the ability
18 to capture video, it was stored and some information
19 about that, how long it would be available to us and
20 just some general phone numbers that I recall writing
21 down I see that I wrote down.

22 Q Okay, thank you.

23 A Uh-hum.

24 MS. MCCURRY: I have no further questions.

25 THE COURT: Anything further of this witness?

1 MS. MCDUFFIE: No, sir, Your Honor.

2 THE COURT: You may step down, sir.

3 MS. ISENHOWARD: Thank you.

4 THE COURT: Can I see y'all for just a second?

5 (Whereupon, a bench conference
6 was held off the record, in the
7 presence of the jury, but out of
8 the hearing of the jury.)

9 THE COURT: Mr. Foreman, members of the jury, let
10 me thank you for your patience today and attention. That's
11 all the evidence or the only -- the last witness you will
12 here today. And, of course, particularly to the ladies
13 you'll have an opportunity tomorrow to go shopping and some
14 of the men too, if you'd like. You know, jury duty is an
15 opportunity some time for wives or spouses to go shopping
16 when the other party is unaware. That use to happen to me a
17 lot back in my earlier days. So I encourage y'all to talk
18 advantage of this opportunity.

19 And I'm going to ask that you come back at 9
20 o'clock on Thursday morning, okay, Thursday morning. And I
21 will -- very hopeful that we should conclude this matter
22 sometimes Thursday. I want to thank you on behalf of
23 Ms. Campbell, Ms. McDuffie for the state and Mr. McCurry for
24 Mr. Jackson for being patient and attentive. So I wish you
25 have a pleasant evening, pleasant day tomorrow, the main

1 thing is you can't talk about this case and I urge you again
2 please don't do so.

3 And I don't know whether you live out Broad River
4 Road or not but please don't drive around out there to try
5 to look at the location or anything like that, okay. That
6 would be unfair to either side for you to do so. So have a
7 pleasant and restfully evening and Wednesday and we'll see
8 you bright and early Thursday morning at nine o'clock.
9 Thank you all so very much.

10 (The jury retires from the
11 courtroom.)

12 THE COURT: Anything further?

13 MS. CAMPBELL: No, sir.

14 THE COURT: Folks, y'all take it ease, I'll see
15 y'all Thursday morning. Hopefully we can wrap this thing
16 up.

17 (Proceedings were commenced on
18 June 23, 2009.)

19 (The following proceeding were
20 held on June 25, 2009.)

21 THE COURT: Now, I believe, Ms. Campbell, the
22 state has officially rest, is that correct?

23 MS. CAMPBELL: Yes, Your Honor.

24 THE COURT: All right. I won't bring the jury
25 back out. I will now entertain the motions you made now is

1 the time to make them again, Ms. McCurry.

2 MS. MCCURRY: Thank you, Your Honor, may it please
3 the court. The defense would move under South Carolina
4 Rules of Criminal Procedures Rule 19(a) for a directed
5 verdict stating that the state has proved any competent
6 evidence leading to the defendant's guilt in the charge of
7 armed robbery.

8 THE COURT: All right. Well, we have the
9 confession, we have a video and we have the testimony of Mr.
10 Vazquez, your motion is denied.

11 MS. MCCURRY: Thank you, Your Honor. Also just
12 for the record I want to review the objection that I made to
13 the introduction of the photograph into evidence and as well
14 --

15 THE COURT: All right. Now, help me out a little
16 bit, that was to the photographs of Mr. Jackson in the video
17 store?

18 MS. MCCURRY: No, sir. The, the, actual
19 photographs of him that were, that were, taken from his
20 prior arrest and prior booking photographs.

21 THE COURT: Okay.

22 MS. MCCURRY: They started I believe the solicitor
23 said from 2004.

24 THE COURT: Okay.

25 MS. MCCURRY: And came --

1 THE COURT: And those are the photographs used to
2 make the lineup I do believe, is that correct?

3 MS. MCCURRY: Well, they were the photographs that
4 they were using to we believe for his identification. So
5 under Rule 403 my contention is that those photographs
6 should have been excluded because the probative value was
7 substantially outweighed by the effect prejudicial effect.

8 THE COURT: Okay.

9 MS. MCCURRY: The reason for that being that my
10 client had admitted that he was in the store, the identity
11 was in no way an issue. So there was zero probative value
12 to the introduction of those photographs which clearly show
13 him standing practically in front of the same brick wall
14 having his picture taken over the, over, a number of
15 different times. And those photographs have, have,
16 prejudiced my client because these people are going to
17 realize that those are probably mugshots or booking photos,
18 they're not pictures of him from actives that are unrelated
19 to --

20 THE COURT: All right. Once again
21 parenthetically, these are the photographs that were used to
22 make the lineup, are those the ones you're talking about?

23 MS. MCCURRY: No, Your Honor.

24 THE COURT: All right.

25 MS. MCCURRY: I'm talking about the other

1 photographs that she admitted as part of the power point
2 presentation that they did, when, when I objected and we
3 approached the bench and I said I was objecting --

4 THE COURT: Okay --

5 MS. MCCURRY: To these photographs because they're
6 booking photos. And they're just different pictures showing
7 him over different times that are clearly prejudicial to him
8 because they're, they're, obviously booking photos.

9 THE COURT: All right.

10 MS. MCCURRY: And his identity was not in question
11 so zero probative value and extremely prejudicial to my
12 client and I believe that under Rule 403 that those photos
13 should have been excluded.

14 COURT: I disagree. That request for motion is
15 also denied.

16 MS. MCCURRY: And, Your Honor, also to renew my
17 objections to the portions of the statement that referred to
18 the drill and other components that had nothing to do with
19 this particular robbery. Again, although the statement was
20 redacted to take out references to other robberies, the fact
21 that it's talking about a drill, it's talking about other
22 things that don't have anything to do with this case that
23 they haven't heard in this case other than when the
24 investigator read that statement to the jury. I believe
25 that that just is just going to cause confusion for them.

1 And again be prejudicial to my client because they're going
2 to be wondering what is this drill about even though there
3 was no drill mentioned in this particular case.

4 THE COURT: All right. I disagree again and my
5 ruling remains the same as at the time you contemporaneously
6 made it.

7 MS. MCCURRY: Thank you, Your Honor. And we would

8 --

9 THE COURT: You need to make your motion for me to
10 charge strong armed robbery I do believe.

11 MS. MCCURRY: Yes, sir.

12 THE COURT: Okay, go ahead.

13 MS. MCCURRY: That was the next one I was going to
14 request --

15 THE COURT: All right --

16 MS. MCCURRY: To charge for strong armed robbery.
17 We believe that there has been evidence presented in this
18 case from where the jury could conclude that my client was
19 guilty of the lesser included as apposed to the greater and
20 that under our state law that you should charge that on his
21 behalf.

22 THE COURT: All right. And my reason remains the
23 same as I think I indicated in chambers, he confesses to the
24 armed robbery, he said he had the box cutter and your
25 argument I think specifically went to the fact that he later

1 on said that there was no blade in the box cutter and I
2 analyze that having a gun with no bullets is still armed
3 robbery. So that's the reason specifically why I'm going to
4 deny that request to charge strong armed robbery.

5 MS. MCCURRY: Okay. Your Honor, I would request
6 that you charge the definition of a deadly weapon.

7 THE COURT: I will be happy to that, I mean, you
8 know, do you have a definition? I mean, have we -- this is
9 the first time that's been mentioned but I'll be happy to --

10 MS. MCCURRY: Yes. The definition of deadly
11 weapon under State versus Scurry and also that the question
12 of whether a person is armed with a deadly weapon is a
13 question of fact that the jury is to determine when that's
14 so --

15 THE COURT: Well, what's the definition? What's
16 your definition of State versus Curry you said?

17 MS. MCCURRY: Scurry.

18 COURT: Curry, what?

19 MS. MCCURRY: Scurry.

20 COURT: Scurry, I thought you said McCurry,
21 Scurry.

22 MS. MCCURRY: S-C-U-R-R-Y.

23 THE COURT: Okay. And what's that definition
24 again, you got to share it with the state so we'll be on the
25 same page.

1 MS. MCCURRY: The deadly weapon is generally
2 defined as any article, instrument or substance which is
3 likely to produce death or great bodily harm.

4 THE COURT: Ms. Campbell, I'll have your response
5 to that. No object?

6 MS. CAMPBELL: We have no objection.

7 THE COURT: Okay.

8 MS. CAMPBELL: In addition, I think it is defined
9 in the armed robbery statute itself as to any one of though
10 or other deadly weapon, but if she wants to add that line
11 in --

12 COURT: Oh, okay.

13 MS. CAMPBELL: We have no problem.

14 THE COURT: All right. We'll include that then.

15 And once again a deadly weapon doesn't have to be
16 deadly, it's just that it's the impression that's created.
17 So I'll be happy to add that language. I might have to
18 write it down, I don't think I have it in my charge but I'll
19 include it.

20 MS. CAMPBELL: If she's got the site I would just
21 like to --

22 THE COURT: Okay.

23 MS. CAMPBELL: Look the case up.

24 COURT: You have the site?

25 MS. CAMPBELL: She just --

1 MS. MCCURRY: 473 southeast second 61.

2 THE COURT: Do you have the case with you to make
3 a copy?

4 MS. MCCURRY: I can -- no, sir, not -- just have
5 my notes from the case itself.

6 MS. CAMPBELL: Your Honor, we believe --

7 MS. MCCURRY: Everybody's got computers and can
8 pull these things up, you know.

9 THE COURT: I have a slide rule.

10 MS. CAMPBELL: We do have that case, Your Honor.
11 If I can hand it up.

12 THE COURT: I think one person knows the slide
13 rule, does that mean you're old? Do you know what a slide
14 rule is?

15 (There was no response.)

16 (Ms. Campbell hands the Court
17 the case.)

18 COURT: That's when you have knowledge --

19 MS. CAMPBELL: I think in this case it even says
20 gasoline can be considered -- just that part right there.

21 THE COURT: Let's see.

22 MS. MCCURRY: And, Your Honor, I would --

23 THE COURT: Well, hold on. Let me read this
24 first. A deadly weapon is generally defined as any article
25 that's -- likely to produce death or great bodily harm,

1 and -- I'm sorry, go ahead.

2 MS. MCCURRY: Your Honor, I wanted to point out
3 for the record that my client did not confess to an armed
4 robbery, he confessed to a robbery. And he stated --

5 THE COURT: He confessed to an, he confessed to
6 an, robbery while he was armed, okay. I mean, we're talking
7 about semantics here.

8 MS. MCCURRY: Well --

9 THE COURT: He confessed to robbing the place
10 while was armed.

11 MS. MCCURRY: But the contention is he was not
12 armed with a deadly weapon and that's what --

13 THE COURT: All right. Anything else?

14 MS. MCCURRY: Armed robbery requires a deadly
15 weapon --

16 THE COURT: All right, anything else?

17 MS. MCCURRY: No, sir, Your Honor.

18 THE COURT: All right. Thank you.

19 Any other matters we need to take up?

20 MS. CAMPBELL: I just whether or not the defendant
21 wants to testify I believe --

22 THE COURT: Oh, yeah, yeah.

23 Ms. McCurry, is Mr. Jackson going to testify?

24 MS. MCCURRY: No, sir, Your Honor.

25 THE COURT: All right, then, stand up,

1 Mr. Jackson. Stand up, sir.

2 Where's, where's, my little sheet?

3 Would you raise your right hand.

4 THEREUPON,

5 MICHAEL JACKSON,

6 after having been duly sworn, testified as follows:

7 THE COURT: Now, Mr. Jackson, I got to ask you a
8 series of questions. I mean, you can sit down. And I'm
9 going to read them to you. All right, listen carefully.

10 Now, Mr. Michael Jackson, at this time I'm going
11 to explain to you certain of your rights, if do you not
12 understand anything I say please let me know. If you want
13 me to explain anything in more detail, please let me know,
14 do you understand so far, Mr. Jackson?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right, sir. We have now reached
17 the stage of the trial where you may present your defense.
18 You have the right to claim the protections given to you by
19 the Fifth Amendment to the Constitution of the United
20 States. The amendment states in part no person shall be
21 compelled in any criminal case to be a witness against
22 themselves, do you understand this, sir?

23 THE DEFENDANT: (There was no response.)

24 THE COURT: Mr. Jackson, do you understand what I
25 just said to you, sir?

1 THE DEFENDANT: Yes.

2 THE COURT: Thank you. This means that if you
3 cannot -- this means that you cannot be required to testify
4 in this case. You have the right to testify on your own
5 behalf, however, no one can make you testify. This is a
6 personal right and no one can waive this right except you,
7 do you understand this, sir?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Now, if you decide to
10 testify, Mr. Jackson, you will be subject to the same rules
11 that govern other witnesses and you may be examined and
12 cross-examined on any relevant issues in this case. In
13 addition, if you have any convictions involving dishonesty
14 or false statement or for crimes punishable for imprisonment
15 for more than one year and the court determines that the
16 privative value of admitting this evidence out weighs its
17 prejudicial effect to you. The solicitor will be able to
18 introduce your records to attack your credibility, if you
19 decide to testify, the decision on your part must be freely,
20 voluntarily and intelligently made with knowledge of the
21 protections given to you by the Fifth Amendment and the
22 consequences of your decision to testify. If you decide not
23 to testify, I will instruct the jurors that they cannot give
24 the fact that you did not testify any consideration
25 whatsoever and that there is to be no -- and there is to be

1 -- there's to be absolutely no prejudice to you because you
2 did not testify. It is left entirely up to you whether or
3 not to testify. You may talk with your attorney, your
4 family and friends or anyone else but the final decision
5 will be left up to you, do you understand what I've
6 explained to you, Mr. Jackson?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. Do you have any questions
9 about what I have explained to you, Mr. Jackson?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Have you discussed with
12 your lawyer.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Do you still wish to talk
15 to your lawyer anymore at this time?

16 THE DEFENDANT: (There was no response.)

17 THE COURT: Do you need to talk to her anymore
18 about testifying?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Do you wish to testify?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Thank you.

23 And the only thing is a little open from me, Ms.
24 McCurry, is I still don't have the exact language you want
25 me to charge regarding the definition of a deadly weapon.

1 Ms. Campbell handed me something up from State versus --

2 MS. CAMPBELL: That is her State versus Scurry,
3 Your Honor. I do believe that's the language she's
4 referring to.

5 THE COURT: Is this it, Ms -- I just want to make
6 sure, a deadly weapon is generally defined as any article --
7 that has been accepted which is likely to produce death or
8 great bodily harm?

9 MS. MCCURRY: Correct.

10 THE COURT: All right. That's the one you want?

11 MS. MCCURRY: Correct.

12 THE COURT: Okay, all right. And I won't, I
13 won't, talk about gasoline can by considered as a deadly
14 weapon.

15 MS. MCCURRY: And I did ask for --

16 THE COURT: I guess lighting it could be
17 considered a deadly weapon.

18 MS. MCCURRY: That they're charged that they are
19 the ones that get to make that determination whether or not
20 it is a deadly weapon and that's under State versus
21 Clemmeth.

22 MS. CAMPBELL: That would be contradicting the
23 statue though if their determination is to whether it was a
24 deadly weapon or a representation of a deadly weapon, if you
25 add in and or representation of a deadly weapon then I no

1 problem.

2 MS. MCCURRY: Well, well --

3 THE COURT: Well, y'all may not have a problem but
4 you both have confused me. Let's back up.

5 MS. MCCURRY: Whether he's armed with a deadly
6 weapon is a question of fact for the jury, they get to
7 determine whether or not it's a deadly weapon.

8 THE COURT: I think that's implicated in the
9 charge it seems to me but anyway, I think we're all
10 basically on the same page. Listen to my charge, if you
11 have any acceptations I'll be happy to listen to it.

12 MS. MCCURRY: Okay.

13 THE COURT: Anything further?

14 MS. MCCURRY: No, sir.

15 THE COURT: All right. Are we all ready to go
16 then?

17 (There was no response.)

18 THE COURT: Take your time. Y'all need a few more
19 minutes?

20 MS. MCCURRY: Just five more minutes?

21 THE COURT: If you want to run and refresh
22 yourselves I'll give you five minutes to do so.

23 MS. MCCURRY: Okay.

24 THE COURT: All right.

25 MS. CAMPBELL: Thank you, Your Honor.

1 (Whereupon, a short recess was
2 held.)

3 THE COURT: Bring them in Mr. Hollis.

4 BAILIFF: Be glad to, Your Honor.

5 MS. CAMPBELL: Your Honor, do you want us to rest
6 on the record or you'll do that for us?

7 THE COURT: I can just say you've rested when they

8 --

9 MS. CAMPBELL: State's rested and they've rested?

10 THE COURT: Okay.

11 MS. CAMPBELL: Thank you.

12 THE COURT: For the record everybody's rested, is
13 that good enough?

14 MS. MCCURRY: (The Ms. McCurry nodded head.)

15 THE COURT: All right.

16 (The jury returned to the
17 courtroom at 10:11 a.m.)

18 BAILIFF: The jury's all present, Your Honor.

19 THE COURT: All right. Welcome back, Mr.
20 Foreperson, members of the jury. I want to this opportunity
21 at the close of this case and I say the close of this case
22 because the state has rested and that is they have presented
23 all of the evidence you shall receive in the case.

24 And the defendant, Mr. Jackson, has concluded not
25 to present any evidence which is his right. And I'll

1 explain that right to you in my charge.

2 So we're at the point where you will hear the
3 closing or final arguments on behalf of the state, Ms.
4 Campbell, and on behalf of Mr. Jackson, Ms. McCurry.

5 The state will go first followed by Ms. McCurry.
6 I got to tell you to always bear in mind that the state must
7 prove the defendant guilty beyond every reasonable doubt and
8 I'll explain that to you in my charge. So with that in mind
9 I invite your keen and close attention to the final
10 arguments on behalf of the state by Ms. Campbell followed by
11 Ms. McCurry behalf of Mr. Jackson, the defendant.

12 Ms. Campbell.

13 MS. CAMPBELL: May it please the Court?

14 THE COURT: Yes, ma'am.

15 MS. CAMPBELL: Good morning. First thing I want
16 to do on behalf of the State of South Carolina, the citizens
17 of Richland County, is to thank you for your service in this
18 case. Over the last couple of days even though we didn't
19 meet yesterday that you've become aware that this is an
20 important case both to the defense and to the State of South
21 Carolina and the citizens of this county. And on everyone's
22 behalf here I want to thank you for your service. And I
23 know you showed up on Monday morning you didn't -- you
24 probably didn't know what you were going to end up doing.

25 The evidence in this case has been expedited

1 somewhat because of the defense in this case.
2 Identification is not an issue in this case. Certain other
3 matters are not a real issue in this case. The only issue
4 in this case is whether or not back on February 5th of
5 2007 Michael Jackson walked through that store while he was
6 armed and robbed Michael Vasquez.

7 Now, I'm going to talk a little bit about the law
8 in this case and then I'm going to talk little bit about the
9 facts. And then you will finally hear from Ms. McCurry I
10 done know what she's going to argue and I can't anticipate
11 that.

12 If while I'm talking about the law, if I misquote
13 you take the law as the judge gives it to you because he's
14 the sole finder of the law, just as you are the finders of
15 the facts in the case. He will tell you what the law is and
16 that law that you have to apply to the facts as you found
17 them.

18 And in that same vein if either side
19 mischaracterizes either the law or the facts in this case
20 you remember because the roles in this courtroom are very
21 well defined. The state's role is to bring forth all of the
22 relevant creditable evidence about what happened back on
23 February 5th. And the defense role is simple, it's to
24 defend the client to best of her ability.

25 The judge's role is to rule on the admissibility

1 of evidence and ultimately to tell you what the law is that
2 you have to apply in this case. But, ladies and gentlemen,
3 by far, the most important role in this courtroom is yours.
4 Each of you individually and eventually collectively when
5 you go back in there because each of you must agree on a
6 verdict, it must be unanimous. So your role is critical to
7 this system. Hold the state to its burden of proof and
8 determine what happened back on February the fifth.

9 Now, you've heard all of the evidence that you're
10 allowed to consider in this case. What is evidence? It is
11 the sworn testimony from that stand that you heard and the
12 physical evidence that we'll go back the video, the stills
13 from the video, all of those types of -- that type of
14 evidence. Questions by lawyers are not evidence if the
15 answer is no or I don't remember. Indewindo, speculation
16 are just plain wishful thinking, it's not evidence, ladies
17 and gentlemen; only the testimony and the physical evidence
18 is what you must base your decision on.

19 I want to take this opportunity, if I've done
20 anything in the last several days Ms. McDuffie offended any
21 of you sometime I get kind of talking fast, I want to get
22 everything out before you, so if we've done anything, any
23 objection, anything of that sort that offends you, please
24 don't hold it against the State of South Carolina, against
25 Richland County.

1 In a criminal case it's somewhat unique. We have
2 referred to various robbery questionnaires that have been
3 referred, investigative reports that have been referred to
4 and things of that nature.

5 In criminal cases the defendant has an absolute
6 right, as he should, to confront each and every witness that
7 comes before you. So you haven't seen any depositions,
8 there are no video tapes of people testifying, live
9 testimony, that is his constitutional right, as it should
10 be. And that's why you've heard references to the reports
11 or questionnaires but those aren't actually in evidence
12 before you. The limited acceptance to that is, of course,
13 the defendant's statement, in this case his redacted
14 statement. And the judge explained to you during the trial
15 why there's some gaps in it. Don't hold it against the
16 state or the defense because you have all the relevant
17 evidence that was in that statement as far as this crime is
18 concerned. And that's the reason when you get back there
19 that you'll have a copy that's missing parts. So don't
20 speculate about that as the judge instructed you, that is
21 the reason for that so that you understand it.

22 Also during the course you heard references from
23 other deputies that may have been at the scene or other
24 people involved. We can't bring forth each witness that may
25 or may not have observed anything to say the same thing over

1 and over again, it's called cumulative evidence. So
2 therefore we have brought forth those witnesses that have
3 something to add, they weren't cumulative to someone else's
4 testimony. That's why you may have heard reference to other
5 deputies such as Mr. Baliley when they found him on the
6 13th, that morning. There were other deputies there, but
7 we didn't bring them each to say the same thing that Captain
8 Smith was able to testify to and that's the reason for that.

9 Now, as the judge told you in the beginning the
10 burden of proof is on the State of South Carolina, as it
11 should be. That burden is the highest level of proof we
12 have and it's proof beyond a reasonable doubt. And the
13 judge is going to instruct you on the law and the easiest
14 definition that I can say about what is reasonable doubt,
15 it's the kind of doubt that makes you hesitate to act. But
16 the law has understood and the courts, they've come up with
17 a definition to explain it in a little more detail than that
18 as to what is beyond a reasonable doubt.

19 In a case called State versus Darbby, what is
20 proof beyond a reasonable doubt? Proof beyond a reasonable
21 doubt is proof that leaves you firmly convinced of the
22 defendant's guilt. There are very few things in this world
23 that we know with absolute certainty. And in criminal cases
24 the law does not require proof that overcomes every possible
25 doubt. If based on your consideration of the evidence you

1 are firmly convinced just firmly convinced of the
2 defendant's -- that the defendant is guilty of the crime
3 charged you must find him guilty. If on the other hand, you
4 think there's a real possibility that he didn't commit a
5 crime then find him not guilty. And I submit, ladies and
6 gentlemen, we don't have to as the judge will instruct you
7 to overcome every possible doubt. Although, I submit in
8 this case we have. We just have to leave you firmly
9 convinced of the defendant's guilt.

10 As the judge has instructed you in the beginning
11 you have before you one indictment, remember that's a
12 charging paper that's not evidence. But the indictment goes
13 toward the elements of the statue. What is armed robbery in
14 the State of South Carolina? And in our code of laws listen
15 to the judge as he will instruct you on the exact statue.
16 These are the elements of what is armed robbery (indicating)
17 a person who commits robbery. And I want to take this
18 opportunity to talk about what's the difference say a
19 larceny and a robbery? Larceny is stealing but it's not
20 from the person or the presence of another person. If I go
21 to school and I go up to someone else's locker and they
22 aren't there and I open up their locker and I steal the book
23 that's what's called a larceny. What's elevates the crime
24 of larceny to robbery is when do you it from the person or
25 presence of another person with violence or intimidation,

1 you don't have to have both. Any kind of violence or
2 intimidation. What carries it to the level of armed robbery
3 is when you commit the stealing from the person or presence
4 of another with intimidation or violence or the threat of
5 violence although it was in this case, remember he grabbed
6 him by the shirt and punched him in the face, while armed
7 with a deadly weapon. But the law goes one step further,
8 ladies and gentleman, in this case because the legislatures
9 recognized whenever someone goes and commits a robbery while
10 either they are armed or alleging to be armed it can cause
11 bad things to happen. So the statute doesn't even say that
12 we have to prove it was a gun with bullets, we don't have to
13 prove it was a knife with a blade, we don't even have to
14 prove it was a knife or a gun, it can be a toy gun, it can
15 be a hand in a pocket, merely acting like you have a knife
16 because then people react to deadly force or what they
17 perceive to be deadly force in like kind. In other words,
18 they are more likely than to react with deadly force as they
19 should because they are under fear for their life, it
20 doesn't have to be a gun with bullets, it doesn't have to be
21 a knife with a blade. It can be a stick, whatever. As long
22 as it is presented in the manner that a reasonable person
23 would perceive to be a deadly weapon. In this case, ladies
24 and gentlemen, you have the video. There is no question
25 that he presented something a knife as perceived by Michael

1 Vasquez. He doesn't have a dog in this fight, he didn't try
2 to make it better or worse. He just told you what happened
3 to him while he was trying to earn a living.

4 Armed robbery. A person who committed robbery
5 while either armed with a pistol, dirk, sling shot, metal
6 knuckles or just a raiser or other deadly weapons. And the
7 judge will go further than that in defining what is
8 considered a deadly weapon. It's any type of weapon which
9 can be reasonable inferred to cause harm, serious bodily
10 injury. And no one is going to get up her, I don't think,
11 and argue that a knife is not a deadly weapon, no one, I
12 don't think is going to get up here and argue that you can't
13 cause serious bodily injure to a person with a box cutter,
14 that's reasonable. That's one thing that makes it armed
15 robbery that they have an actual sling shot, a sling shot,
16 metal knuckles, raisers or other deadly weapon. And that
17 includes a knife, ladies and gentlemen. Or while alleging
18 -- and this is the part that they recognize, the
19 legislature, by action or words. In this case, you've got
20 both. You've got an actual weapon, be it a knife or a box
21 cutter, you've got him saying, I've got a knife and him
22 putting it out, you got a video of what actually happened,
23 that doesn't happen very often for us. And you'll have that
24 video back there with you. Alleging either by actions or
25 words he was armed while using a representation of a deadly

1 weapon or any object which is -- present during the
2 commission reasonably believed. It can be a toy gun, it can
3 be a gun without bullets, it can be knife, it can be
4 something that looked like a knife, it can be a hand in a
5 pocket. That's still elevates the crime to armed robbery.
6 But in this case, ladies and gentleman, you don't really
7 even have to fall back on these two which also make it armed
8 robbery because you've got him, and I'll show you, something
9 in his hand which he's brandishing as a knife because it is
10 a knife. At one point when you watch the video you even see
11 the glimpse off the actual blade, that's a determine for you
12 to make, I submit if it doesn't have a blade in it like he
13 said when he tried to minimum his role, he didn't have it.
14 It doesn't matter, he brandished it as a weapon, and in
15 every scenario that makes it armed robbery.

16 The judge will further instruct you about armed
17 robbery, but although there's a requirement of force or the
18 threat of force for the offense of armed robbery must
19 proceed or be temporaneous the taking of the victim's
20 property, the use of a dangerous weapon at any point in the
21 robbery would constitute armed robbery as long as it's
22 reasonably -- be part and single occurrence. No one is
23 going to argue that that robbery did commence when he walked
24 up and grabbed him and obviously he was armed at that time,
25 you don't even have to be -- you don't even have to show the

1 weapon, you can just have it as in this case, he did pull it
2 out. The judge will instruct you on that.

3 One other concept in this case is there's been a
4 lot of talk about how this defendant had a drug problem, and
5 the law recognizes that often drugs and or alcohol can cause
6 people to do bad things. For that reason the law also
7 recognizes that voluntary intoxication if the person chooses
8 to drink or to take drugs, as in this case, it's never an
9 excuse or a defense to a crime. A person who voluntarily
10 renders himself intoxicated, and you'll have the defendant's
11 statement, there's no doubt he says he was smoking crack
12 cocaine. In fact, that's the reason when asked is that he
13 did this. Drugs and stupidity. And I'll get back to that.
14 There's no less responsible for his acts while in such
15 condition, if a person voluntarily drinks intoxicating
16 liquors or takes drugs and becomes intoxicated and while in
17 that condition commits an act which would be a crime being
18 committed by a sober person the fact of drunkenness or
19 intoxication would not relieve the intoxicated person from
20 responsible. In other words, just because you're getting --
21 committing violent acts such as armed robbery, because you
22 need money for drugs and you have a drug habit you are still
23 responsible for what you choose to do, and I'll get back to
24 the choices he made.

25 In this case, you also heard about how the victim

1 was shown the photographic lineup because he never seen the
2 person before which is not unusual in armed robberies.

3 ID is not an issue in this case. Identification
4 is not an issue as the defense attorney told you in the
5 opening statement, it was him. In that same manner,
6 however, you heard us go through a lot about how this
7 defendant was advised of his rights prior to anyone taking a
8 statement from him that could later be used against him in
9 the court of law. In that same vein, ladies and gentlemen,
10 that's important because you can consider a statement we
11 must prove that it was a voluntary statement, that the
12 police did there job. And in this the case, ladies and
13 gentlemen, in this courtroom, they did everything by the
14 book. They advised him of his rights, not once but twice,
15 they made sure it was produced to written form and they made
16 sure he understood his rights prior to taking any kind of
17 incriminating statement from him. A statement in which he
18 minimums what he did from which he admits he committed a
19 crime.

20 The other thing in armed robbery too is in this
21 case I believe that the testimony was that a little over
22 \$100 dollar was taken. Listen carefully to the judge's
23 instructions. With larceny money amounts make a difference.
24 With armed robbery it doesn't matter if you stole one dime,
25 one penny, a credit card you never used, a wallet that he

1 throws away, it doesn't matter. It doesn't have to be a
2 certain amount to purport to be armed robbery. Listen to
3 the judge, he may not instruct you specifically but you
4 don't have to prove that but he will never instruct you that
5 we have to prove a certain amount.

6 Finally, ladies and gentlemen, creditability, the
7 last for the law. The judge will instruct you on
8 credibility. If someone has a bias or prejudice or a reason
9 to change their testimony, to make it better or worse, you
10 can believe one witness against many, many against one. The
11 judge will instruct you on that. You can believe all of a
12 witness's testimony, none of it, part of the it, it's
13 totally up to you.

14 Creditability is essential in this courtroom in
15 proving and I beg you judge Michael Vasquez. He was working
16 trying to earn a living back on February 5th of 2007 when
17 he was attacked and robbed at knife point. And is that
18 person left, he punched him once in the face just to show he
19 could. He told the police from the beginning he was robbed,
20 the guy had a knife, he perceived this knife he said it was
21 a red knife, it was kind of orangish in color. Does he have
22 anything to gain by making this better? Could he, it's on a
23 video. Those are the considerations that only you can see
24 in determining credibility or believability of a witnesses.
25 Is their testimony corroborated by other evidence. Is a

1 lack of Vasquez's testimony corroborated by what you saw in
2 the video? And there was no audio on that one but there was
3 video or was it contradicted? Those are the types of things
4 that you consider in deliberating.

5 Now, in every case when we're preparing for trial
6 I try to anticipate what the defense may be in a case. And
7 in this case the evidence was pretty overwhelming. Was it
8 the wrong guy, was it an identification issue, typical
9 defense. Was it just like a drug deal gone bad would be an
10 allegation, it wasn't a real robbery. Was it an inside job,
11 was it someone, you know, from the inside setting up, more
12 of an -- case. And the defense in this case is not unusual.
13 The evidence -- if the evidence is overwhelming, if ID is
14 not an issue, if not nothing else is available, it's called
15 the art of confessing error. Admit to some wrongdoing but
16 just don't admit that you committed that crime. That is a
17 typical defense. In her opening statement and I wrote down
18 and I don't want to misquote Ms. McCurry got up before you
19 and said her client was presumed innocent, but if she said
20 he was not innocent, he committed a crime, it was a
21 horrifying experience for Mr. Vasquez, these are her words.
22 He should have been charged with some other crime. I ask
23 you, I beg you, what other crime is this? It is taking
24 something from the presence of another person by force or
25 intimidation while armed or alleging to be armed with a

1 deadly weapon. This is a classic armed robbery, it's not
2 even close, it's a classic armed robbery. It could be in
3 the law books at the law school.

4 The problem for Mr. Jackson is threefold in this
5 case. He's trying to admit to some other crime, I don't
6 know what, is problematic because number one Mr. Vasquez and
7 Mr. Vasquez alone even if he didn't have a video, his
8 testimony alone but the problem becomes greater, he didn't
9 anticipate, there's a video that totally corroborates what
10 Mr. Vasquez says. And then to, to, make it even a little
11 more worse, there's the law as the judge is going to give it
12 to you. You don't even have to consider his statement
13 Mr. Vasquez alone coupled with the law and I submit it's
14 really over-the-top with the video, the defense can't get
15 around that. Although I submit they will get up here and
16 argue that you shouldn't apply the law as itself written.

17 There is no question that on February 7th of
18 2007 shortly after midnight Michael Jackson walked into This
19 Is It Video. He waited until -- he made sure until there
20 was no one else in the store, you'll have the video. He
21 then approached the counter. He demanded money. He grabbed
22 him by the shirt, started dragging him down, and when he
23 didn't act fast enough, I've got a knife, and he proved --
24 pulled it out to prove it.

25 Now, did he know where every camera was? And once

1 he pulled out that knife and that drawer got opened you will
2 see him put that back in his pocket, the knife. He grabbed
3 the money. And you even see him -- you can't see the actual
4 punch because remember the time, the little seconds is are
5 missing, you see when Michael Vasquez goes down like this
6 (indicating) he's still holding him up after getting
7 punched, that's the evidence in this case.

8 Now, I listened to cross-examination and there's
9 been a big deal about how Captain Smith didn't collect the
10 911 tape. Ladies and gentlemen, we brought forth the
11 relevant evidence. On the 911 help me, I've been robbed,
12 get the police here quickly. Does not prove anything in
13 this court. What does prove things is the fact that Snuffer
14 was found immediately, he took it down in account. He said
15 he had been punched, he had a knife. He gave a description,
16 guess what, it's him. He's right. Their own argument
17 corroborates that that's -- that Mr. Vasquez is creditable.
18 He tells him which direction he last saw him. He describes
19 it as a red knife. And, ladies and gentlemen, that's how he
20 should describe it because that's what he perceived. If he
21 described it as a reddish orange knife then you've got to
22 start wondering? That's what perceived, that's what he told
23 the police.

24 They talked back and forth about whether or not he
25 touched the computer. Whether or not he left or could have

1 left, which, you know, you heard from Stan Richards, if he
2 brushes over the computer, it's not going to leave a
3 fingerprint that's useable. If he couldn't get any
4 fingerprints from the front door, if he uses fingertips to
5 open it or if he touches it like that (indicating) or any
6 other way, there's not going to be a fingerprint. He talked
7 about how there's no sworn statement from the victim. They
8 don't take sworn statements from the victim, they take
9 robbery questioners which was done, everything by the book
10 in this case.

11 She also asked questions about whether or not he
12 told the police the exact words the robber used that night.
13 His actions speak louder than the words, the words just go
14 long with what he did.

15 She also asked Captain Smith some questions about
16 wouldn't he know what he had in the robbery? Yeah, that's
17 why he tried to say he knew he had a knife, that's why he
18 describes it as a box cutter without a blade, even he knows
19 he doesn't want to be guilty of armed robbery.

20 It's an attempt to shift your focus from the cold
21 hard facts in this case. Even though the testimony in this
22 case has not been lengthy, the facts are egregious, as she
23 said in her opening statement.

24 You know, there's an old joke about a lawyer, and
25 a preacher walking down the street, it had rained the night

1 before. As they were walking down the sidewalk, they looked
2 down and there's a big puddle, got mud at the bottom. And
3 in the middle of the puddle that's a sliver dollar and the
4 preacher goes, Oh, look, there's a sliver dollar. At which
5 point the lawyer picks up a stick, stirs up the water, the
6 silt and the mud obscures it, you can't see it anymore.
7 Then he looks at the preacher and he says, what silver
8 dollar?

9 Ladies and gentlemen, I want to take just a few
10 minutes of your time and focus on the cold hard facts of
11 this case. And it don't get much better than this. The
12 victim, the video, the confession. No question about ID, no
13 question about anything else.

14 What does the video show? I want to take a second
15 and show it to you just one time and they're other angles
16 when you get back there and see the video you'll see any
17 other angles you want to see, there's even closeups of the
18 other guy that was in the store, they're good pictures of
19 Michael Jackson coming in the store. The only thing that I
20 want to go over is the actual robbery itself.

21 THE COURT: Ms. Campbell.

22 MS. CAMPBELL: Yes, sir.

23 THE COURT: Can I see y'all a minute before y'all
24 show the video?

25 MS. CAMPBELL: Yes, sir.

1 (Whereupon, a bench conference
2 was held off the record, in the
3 presence of the jury, but out of
4 the hearing of the jury.)

5 THE COURT: I'm stopping this, members of the
6 jury, this is unusual in the middle of her argument.
7 There's a group of kids, they're some Carolina Scholars or
8 something. They wanted to come by and watch part of a
9 trial. So I think they're outside, I'm going to let them
10 come in and take a seat. And I apologize but that's short
11 of the way it is, y'all understand do you not?

12 (Jurors nodded their heads.)

13 THE COURT: Obviously it has nothing to with this
14 case, take no special note of it. That's just where we are.
15 It's a -- trials are public and people have the right to
16 come in and watch. Usually not at this stage in the trial
17 but I made an exception, there was an request made could
18 they come in, so that's where we are. And it's a good break
19 in the trial, so that what we're doing right now. And I
20 consulted with Ms. Campbell about it as well as Ms. McCurry
21 and they don't have a problem with it, so I'm asking y'all
22 not to have a problem with it, okay.

23 (Pause)

24 THE COURT: All right. Now, boys and girls, we're
25 in the middle of closing arguments in an armed robbery case.

1 This is Ms. Luck Campbell, she's an assistant
2 solicitor, she's about to conclude her closing argument.

3 This is Ms. Carol McCurry, she's represent the
4 defendant in the case. And once Ms. Campbell finishes she's
5 going to argue, okay. So I ask y'all to be quit and I'll
6 talk to y'all a little bit after this is all over, is that
7 okay?

8 (Students nodded heads.)

9 THE COURT: All right thank you.
10 I'm sorry, Ms. Campbell, you may continue.

11 MS. CAMPBELL: Thank you, Your Honor.

12 The video.

13 (The video being played for the
14 jury.)

15 THE COURT: You see the defendant, he grabs him.
16 You can see he's saying something to him which corroborates
17 what the victim says. He goes down, almost knocks over the
18 computer. Reaches into his pocket right there (indicating).
19 Puts it back in his pocket, reaches over, punches his and
20 grabs the money.

21 Okay. Not an armed robbery? No violence or
22 force? Michael Jackson on that night went in there,
23 demanded money. When he didn't act fast enough said he had
24 a knife, he produced the knife, threatened him with it, when
25 he opened the door, puts the knife back because it's served

1 its purpose. He's still armed with it. And then just to
2 show Michael Vasquez that he didn't cooperate fast enough he
3 punches him once in the face. The door is open, he's
4 cooperating, he's already been threatened with a knife.
5 Just because he was going to show Mr. Vasquez that he needs
6 to be a little quicker. This is armed robbery. I submit,
7 ladies and gentlemen, Mr. Vasquez's testimony alone is
8 enough but in this case you have total and complete
9 corroboration of what he says. As much as they my wish when
10 they talked about how -- they've asked questions about how
11 he had a drug problem, they've asked questions how he may
12 have been exposed to different diseases, that's not
13 evidence. That's an attempt to make you sympathetic towards
14 him because that's what they've got. It's a fishing
15 expedition to try to raise an inference that these may be
16 the problems. First time anyone's heard is in this
17 courtroom. Because back in 2007 when he's apprehended some
18 13 days later, after the news has showed his picture from
19 the video all over, after he has gone so far because he's so
20 sorry for what he's did that he wants to continue to -- that
21 he changes his entire appearance. And the other photos the
22 only reason we introduced those is to show this is the only
23 time that he choose to shave. That's how sorry he was.

24 The statement from Captain Smith, what does it
25 show you? There are three different phrases in that

1 statement, beside when the first question or second question
2 is, were you advised of your rights, then he asked you did
3 you -- where -- did you rob the store? And he says, Yes.
4 And I've retyped these but these are the words from the
5 statement and you'll have the actual statement, the redacted
6 version, back with you.

7 The question, were you armed during the robbery?
8 The answer wasn't no, it was an acknowledgment that he was
9 armed. But then he minimizes what he had.

10 Well, yeah. And you know the reason? He seen the
11 video, he knows what he had. He's try the distance himself
12 from the knife or the box cutter or any other deadly weapon
13 that he may have had. He may not understand how the armed
14 robbery law was written but he knows enough to try to say he
15 didn't have a knife or a box cutter. Because what he says,
16 Oh, yeah I had just the box cutter without the blade on it.
17 Specify.

18 This is an answer to the question, Were you armed
19 during the robbery? He acknowledged that he was armed
20 during the robbery and brandished a weapon, just trying to
21 make it less than it was.

22 Captain Smith, there were many questions about did
23 he tell you this, did he tell that he had this disease, did
24 he tell you that he had been exposed to this disease. When
25 asked specifically and as Captain Smith testified if he'd

1 answered anyway it was going to into the statement.

2 When asked specifically, Why were you committing
3 the robbery? His answer wasn't because I've been exposed to
4 so and so or because I suffer from something else which is
5 not in evidence.

6 His answer was, Drugs and stupidity. I was
7 smoking crack. The rest of that is an attempt to make him
8 sympathetic. Again towards the end of the state, he is
9 asked, Tell me again why you had to start doing the robbery.

10 I wanted to get high and I needed the money.
11 Ladies and gentlemen, that speaks volumes, he's asked on two
12 different occasions back when he was caught and there's no
13 question at the end, he's says he's sorry. And he's
14 defiantly sorry because at that point he's caught. After
15 he's apprehended not that he turned himself in. He's very
16 sorry.

17 Michael Jackson and I'm going to be acquitted,
18 counted on some certain things. He counted on the fact that
19 if he did this armed robbery he'd never get caught. And
20 even if he got caught who cares, it's an adult video store.
21 And even if he was arrested the grand jury would never
22 indict him. He never anticipated the video. He never
23 anticipated the quality of the police investigation. He
24 counted on the fact that if he brought to trial he would
25 just minimize his role. If he went to trial we could try to

1 make him sympathetic so no jury would convict him of the
2 crime he committed.

3 Michael Jackson miscalculated. All we ask is that
4 you hold him responsible for his choices back on
5 February 5th, for his actions back on February 5th.

6 The judge will tell you you have one indictment,
7 verdicts on that are possible verdicts of guilty or not
8 guilty. Michael Jackson made choices. Hold the state to
9 its burden of proof and find him guilty of the armed robbery
10 he committed that night. Thank you.

11 MS. MCCURRY: Your Honor, may we approach?

12 THE COURT: Yes.

13 (Whereupon, a bench conference
14 was held off the record, in the
15 presence of the jury, but out of
16 the hearing of the jury.)

17 THE COURT: I'm going to wait about five minutes
18 for her.

19 And like this is unusual. While we're waiting
20 I'll talk to the kids.

21 (The judge holds a conversations
22 with the visiting students off
23 the record.)

24 THE COURT: Ms. McCurry, are we all ready now?

25 MS. MCCURRY: Yes, sir, I am.

1 THE COURT: All right. You may proceed.

2 MS. MCCURRY: Good morning.

3 (Jurors acknowledge by saying
4 morning.)

5 MS. MCCURRY: Ladies and gentlemen, the first
6 thing I'd like to do is to tell that you, Ms. Campbell, with
7 the state couldn't be any further from the truth then to say
8 that I would want you to misapply the law in this case. I
9 want you to apply the law exactly like you're suppose to
10 apply the law. She, in fact, talked about legislative
11 intent, what did the legislature mean?

12 And I'm hopefully -- this is the actual definition
13 of an armed robbery. Now, For purposes of the aid it's
14 broken out as you can see with bullets. These bullet points
15 are what we refer to as the elements of what the crime is,
16 all right. You might recall those elements the same thing
17 as criteria. And the objective is if all of these things --
18 if these things are satisfied this is what is actually
19 proven beyond a reasonable, then my client would be guilty
20 of an armed robbery. So when the legislature wrote this
21 statue we want to believe that they wrote it in the way they
22 actually intend it to be applied. That they actually intend
23 to put commas where they put commas. That they actually
24 intended to insert ors where they wanted to insert ors, and
25 that they said exactly what they meant each one of these

1 things to mean.

2 Now, in this case, this poster represents what my
3 client has to prove to you, nothing. He doesn't have to
4 prove anything in this case. And the state's told you that
5 from their prospective that it doesn't get any better than
6 this for them in terms of an armed robbery.

7 And what I'm going to do, ladies and gentleman, is
8 help you to see, how they got there. And this is what we're
9 going to use to go by, these concepts. Selective memory
10 after acquired memory and selective belief. When
11 Ms. Campbell did her opening statement to you, she said my
12 client didn't touch anything but the front door. She said
13 the video is such a quality that you could see the person
14 fairly clearly and she said that Michael Jackson was
15 identified as the man who threatened to cut him, that's
16 Mr. Vasquez.

17 Now, what did you actually see in the evolution of
18 this proceeding? Okay. The very first thing was I told
19 that you my client committed the crime. But that it wasn't
20 an armed robbery. He did something bad, he made a mistake,
21 a horrible mistake but that it was not armed robbery
22 according to the statue, under the definition it's not.

23 Now, they said he didn't touch anything but the
24 front door. Well, the evidence showed you that he in fact
25 did touch something. He touched the video monitor in the

1 store when he was dragging Mr. Vasquez over it to get to the
2 cash register.

3 Now, how much people told you he didn't touch
4 anything? Solicitor told you he didn't touch anything, the
5 Stan Richards who is the supervisor the head of the crime
6 scene investigation, the expert in crime scene investigation
7 told you that my client was careful not to touch anything.
8 He said he was careful not to touch anything. And he also
9 testified that because the original crime scene investigator
10 who responded to the scene who did the investigation was no
11 longer employed with them, he was going by what his former
12 employee had, had, done. So that was Billy Allen.

13 Billy Allen said my client didn't touch anything.
14 There were no fingerprints because he didn't touch anything
15 that they could get fingerprints of, that's what he said.
16 Then Mr. Richards, the supervisor --

17 MS. CAMPBELL: Objection, Your Honor, she was just
18 saying -- he didn't testify.

19 THE COURT: Beg your pardon.

20 MS. CAMPBELL: I would just ask -- I'll with
21 drawer it.

22 THE COURT: Okay. I'm sorry.

23 Continue.

24 MS. MCCURRY: Thank you. The supervisor testified
25 that he reviewed the video himself in preparation for his

1 testimony. Then he also said in reviewing it that my client
2 was careful not to touch anything.

3 Ladies and gentlemen, who was the first person
4 that said he touched the computer monitor? We said it. We
5 told you he did it. They had all missed that. They didn't
6 tell you, well, yeah he touched a computer monitor but it
7 was all smudge. You know, and we couldn't get any prints
8 from it. They didn't tell you that. They want to talk
9 about minimizing in this case, I mean, for God's sake,
10 that's minimizing. You know, they're not standing up and
11 saying we were wrong, we didn't do a thorough investigation
12 because this whole case only lasted about nine days from the
13 time that the robbery was committed until the time my client
14 was arrested and told him what happened. So this isn't like
15 something that went on for month, after month, after month.

16 My client said I did this and that was the end of
17 it. His word was good enough for everybody at that point.
18 But they didn't tell you that he touched the monitor and --
19 but it was smudging and we couldn't get prints. They said
20 he didn't touch anything.

21 Now, Mr. Vasquez, the solicitor has told you that
22 his testimony alone is enough for you to convict my client
23 of an armed robbery. Now, what I want you to do is to take
24 a look at this definition one more time. I want you to have
25 these close by, okay. As we said, what happened to

1 Mr. Vasquez it was not a good thing. And we're not trying
2 to say that Michael should be excused for that. But what we
3 are saying is everyone that came into this courtroom and
4 testified before you they were all very clear about what
5 they wanted to do. I think to say that Mr. Vasquez doesn't
6 have a dog in this fight is not the legal way. He was the
7 victim in this case. How can you say he doesn't have a dog
8 in the fight? That just doesn't make a lot of sense. But
9 what Mr. Vasquez did tell you is that my client came into
10 the store and very first thing he says my client came into
11 the store and asked him for money and he says, Are you
12 kidding me? And my client grabbed him up by his shirt,
13 which you see that in the video, he does, he grabs him. And
14 at that point they go over the monitor and Mr. Vasquez tells
15 you that he had to keep the monitor from being knocked over.
16 He didn't say he and my client had to keep the monitor from
17 being knocked over because, if you think about it, when the
18 deputy testified, Deputy Snuffer, Deputy Snuffer told you
19 that when he responded to the scene he was a senior deputy
20 at the time, so that means that he's been a patrol deputy
21 for quite awhile. And when he got there I asked him about
22 you interview people, you try to write down exactly what
23 they tell you what happen and you try to be as accurate as
24 you can. And he said, Well, sure, that's what -- would want
25 to do. And what he reported was that my client reached over

1 the counter and he had a knife. Well, the video shows that
2 that's not true. When he reached over the counter he didn't
3 have a knife and he didn't have anything in his hand. But
4 if he had, how could he have put his hand up against the
5 video monitor? So it's inconsistent, he couldn't have done
6 exactly what Mr. Vasquez initially said he did because it
7 doesn't fit when you go back and look at the monitor. But
8 then nobody wanted to mention anything about my client put
9 his hand up on the monitor.

10 Then what did Deputy Snuffer say? He said he
11 reached over the counter and he had a knife, right. Well,
12 when Mr. Vasquez testified he told you that he didn't really
13 know what he had. That he had something, he says it was a
14 knife, then he says it was a box cutter. It was some kind
15 of weapon, some kind of weapon, it was a knife, it was a box
16 cutter. Okay. That's what he tells you.

17 Now, where was that ever said before? Not one
18 other person testified about Mr. Vasquez stating all of
19 those different things to them. Nobody else testified that
20 Mr. Vasquez said that Michael had a box cutter. But what
21 did Mr. Vasquez have in his disposal this whole time? The
22 store surveillance video. I asked him, I said in the video,
23 you're, you're, holding on to your cell phone the whole
24 time, and what did he say? Because I didn't want it to get
25 broken. He's being robbed, he's, he's, in fear for his

1 life, this man has a deadly weapon and he's worried about a
2 cell phone being broken. Doesn't even drop it, just get sat
3 down.

4 So the initial report is, he has a knife, then
5 it's described as a red handle knife. And then it gets
6 described as a the box cutter. So put it together. What he
7 has to have done is to have been armed with a deadly weapon.
8 And even if as the state has said, he didn't have a
9 representation of a box cutter. He had an actual, honest to
10 God box cutter that you can go into Lowe's, Home Depot and
11 go buy off the shelf. And right down the aisle way will be
12 the blades that go in it. So you can walk out that store
13 from Lowe's with that empty box cutter in your hand and I
14 serious doubt anyone is going to say you have a deadly
15 weapon in your possession at that point.

16 So what's crucial and what's important here,
17 ladies and gentlemen, is for you to understand that as this
18 is written is how you have to apply it and it's exactly what
19 the heck it means, all right. Or any object. Well, we know
20 it was a box cutter, okay. That it wasn't a, it wasn't a,
21 representation of a box cutter it was a real one. And it,
22 it, wasn't any object, wasn't like a broken bottom that you
23 would use in a bar fight or a rock or a bolder or a brick or
24 something that you could threaten somebody with and that
25 under the circumstances they could really believe that that

1 was a deadly weapon, that's what it is. But then what does
2 it say? It says even during that context that it has to be
3 the commission of the robbery reasonably believed to be a
4 deadly weapon during commission of the robbery and that's
5 what we're talking about. What was happening during the
6 commission of the robbery?

7 Mr. Vasquez a lot of the things that he testified
8 after acquired memory, after looking at the videotape, after
9 he waited almost five minutes to call 911, he's robbed
10 supposedly by somebody that doesn't know that has a deadly
11 weapon and he's so afraid that first we know that he
12 never -- he's worry about his cell phone, doesn't want that
13 to be broken. Then he calls the other video store. We
14 don't know why he called the other video store, could it
15 have been to ask him, how do I pull up this, this,
16 surveillance video, you know. Nobody came in and testified
17 about the very first person that he talked to after this
18 took place. They didn't come in here and tell you what he
19 said. Who's the second person that knows exactly what he
20 said happened at the time? Well, that would be, let me
21 think, okay, 911.

22 Now, you heard Investigator Isenhoward tell you
23 that the lead investigator is the person who is responsible
24 for requesting the 911 tape and which can be very, very,
25 important in a criminal case, be nice to know just exactly

1 what was said on there. And not only that, in addition, to
2 the tape, there's a form, a document that generated, it
3 gives you a minute-by-minute detail of what happened in that
4 phone conversation. And that phone conversation that began
5 some five minutes after the robbery took place. Took him
6 over twice the amount of time that the entire incident took
7 place before he called 911 and that, ladies and gentlemen,
8 is fresh evidence, that's as it happened, that's during the
9 commission of the crime. That's close as we've got to what
10 was really going on. But what was the testimony? The
11 testimony was he looked at the video, he's looked at the
12 video with the police, he's looked at the video with the
13 state. He's had numerous opportunities to look at this
14 video.

15 And everybody wants to make sure that we cover all
16 the basis. So what do we have to do? Well, let's see, he's
17 armed with a pistol, dirk, slingshot, medal knuckles, okay
18 razor, well, that would be the box cutter, if it had a blade
19 in it, if you believe that it had a blade in it it would
20 probably qualify as the razor, okay. But if you don't know,
21 if it's not one of those things then you can say, or and
22 again, there's a reason why they have commas and ors in the
23 structure of the statute, while alleging either by action or
24 words he was armed while using a representation of a deadly
25 weapon. Well, we've already covered and they've already

1 acknowledged that it wasn't a representation, it was
2 actually an honest to good box cutter, the dispute is, you
3 know, was it a deadly weapon. And I'm telling you that if
4 it's an empty box cutter and you can go into Lowe's and you
5 can go into Home Depot and you can buy one right off the
6 shelf but you're not buying a deadly weapon, that's just
7 doesn't make sense, they're not under lock and key, you
8 don't have to be a certain age, there's no requirement to
9 get one.

10 Now, again they want to talk about either by
11 actions or words, which still doesn't really matter because
12 he didn't have a representation. So let's just touch on it
13 briefly --

14 MS. CAMPBELL: Objection, Your Honor, her
15 misterminology (sic) of what a representation is.

16 THE COURT: Beg your pardon?

17 MS. CAMPBELL: She's misrepresenting what a
18 representation is.

19 THE COURT: I'm sorry, I missed that.

20 MS. CAMPBELL: Okay.

21 THE COURT: I will be happy to hear y'all up here
22 if you want me to.

23 MS. MCCURRY: Let me clean it up. I'm saying a
24 representation is a representation of something that's not
25 really what it is, okay, okay.

1 Now, when Mr. Vasquez testified that was the very
2 first time, very first time, that we heard anything about
3 that he was threatened with a weapon. And it was the very
4 first time we heard anything about that he had something in
5 his pocket, okay.

6 Deputy Snuffer first person that responded to the
7 scene, didn't writ that down. He didn't have any
8 recollection of that, none of the investigators that were
9 involved in this case, none of them were ever told that,
10 first time that it's mentioned that. But he doesn't have a
11 dog in this fight.

12 He tells you that on the video when they did their
13 direct examination says, you know, right here is where he
14 punched me. I was looking, everybody was looking. I asked
15 him on cross-examination I said, you can't really see on
16 that video where he punched you, can you? And he said, No,
17 you can't really see it. Not really on there. Now, did he
18 have an injury to his month? Did he get hit in the mouth?
19 He may have, he may very well have when my client was
20 pulling on his shirt and they were going back and forth at
21 it he may very well have gotten hit in the mouth, but it's
22 clear that there's no blow, there's no deliberate punch to
23 him. I mean, my client's only got two hands.

24 But what was, what was, happening during the
25 commission of this crime? We know that it was a very short

1 incident, this whole thing didn't last but a couple of
2 minutes. And that Mr. Vasquez held onto his cell phone the
3 whole time, he was worried about his cell phone. He says,
4 you know, give me -- When he grabbed you up you were going
5 to give him the money at that point, weren't you?

6 Well, he said, Well, I'm not going to give him my
7 money. And that's when I said, Well, you know, I mean, the
8 video store, you weren't going to fight him over the video
9 store's money? And he wasn't. He was going to give it to
10 him, that's all that was needed. And that's all my client
11 wanted, he just needed money.

12 What my client did, ladies and gentlemen, is bad
13 enough. But it's not enough for the state, it's not enough
14 for the people involved in this case. Deputy Snuffer, the
15 deputy that responded to the scene, he took that witness
16 stand (indicating) and he sat there and this case happened
17 two years ago, okay. He had his incident report and his
18 supplemental report. He had his notes in his lap and he
19 clearly had his hand down and he was reading as he was
20 testifying to you, because it's been two years ago. He's a
21 senior deputy with the sheriff's department, he responds to
22 hundreds probably thousands of calls in a year's time and
23 there's no humanly way that he would be able to come into
24 this courtroom and testify to you about what happened that
25 night, about what he knew about it without having the

1 benefit of reviewing and looking at his notes, he just
2 couldn't. But what was -- what did he say, that was
3 obviously a surprise? He said it was a red handled knife
4 with a sharp edge. Well, now, who the heck had ever said
5 anything about a sharp edge before? Mr. Vasquez testified,
6 he said a lot of things. He added in about being
7 threatened, about that he had something in his pockets,
8 those things that we never heard before. But even he didn't
9 add that it had a sharp edge. And you remember, I had to
10 ask him, I said, Let me, see where -- what you're reading
11 from. Because I thought, maybe, he had something I didn't
12 have. Then when I looked at it, it was the exact same
13 thing. And I had to ask him, you know, well, tell me where
14 in your report that you wrote down that Mr. Vasquez said
15 anything about there being a sharp edge. And although he'd
16 been reading along the whole time what he had to do, he had
17 to go back through and look at it again and it wasn't there.
18 Where did it come from all of a sudden? He wants you to
19 believe you think it's creditable to believe that he
20 couldn't remember the basic things about this case without
21 having his notes but from two years ago he can just all of a
22 sudden remember that one thing? And why is that, ladies and
23 gentlemen? That's just part of how it doesn't get much
24 better than this. That's just how we started getting here.
25 Because selective memory, after acquired memories, selective

1 beliefs.

2 Now, Stan Richards he was the crime scene
3 supervisor that testified that we talked about just a little
4 while ago. He said there was absolutely no blood at this
5 scene, whatsoever. So the logical explanation of why you
6 have no forensics dealing with the DNA or the examination of
7 any blood evidence in this case is because there was no
8 evidence of any blood evidence in the case. And so what
9 does that, what does that, tell us? Well, if Michael had a
10 box cutter and it had a blade in it and you saw how fast, I
11 mean, you realize that, you know, you can adjust the video
12 speed however you want it. But you know that you can look
13 at the timer and you know this thing happened pretty fast.
14 And you can see what goes on and you can see he pulls
15 something in and out, you know, he's reaching over, he's
16 grabbing money and, and, he's possibly, you know, on crack
17 at the time he's doing this which doesn't excuse it, I mean,
18 it really doesn't. But how in the heck could he do all of
19 that and not even cut himself? And his hand went from his
20 pocket over to the cash register a couple of times. I mean,
21 you know, could you possibly be that careful? I mean, was
22 he being that careful just like he was being that careful
23 not to touch anything?

24 And Captain Smith when he testified he told you
25 that when Michael was arrested that he didn't have any

1 injuries, he didn't have any cuts on his hands, on his
2 fingers that he could recall. Okay. So that matches, no
3 blood evidence, no injuries, no cuts. What does that go to?
4 No blade.

5 Now, Detective Faust he told you that he was there
6 when Michael gave his statement when he talked about what
7 happened. And so he knew that this was actually the second
8 time that Michael had been advised about his rights that he
9 knew what his rights were, that he knew that he didn't have
10 to say anything against himself, that he could ask for a
11 lawyer, that he didn't even have to do any of those things.
12 But instead my client didn't just give up his rights once
13 but he did it twice. And he signed four different pages
14 saying this is what happened. And Investigator Faust I
15 believe he's a sergeant now. Sergeant Faust said that he
16 actually swore him and put him under oath for the statement,
17 that my client was swearing that what he was telling them
18 was the truth and that's what he did.

19 Now, how did they act upon that statement? How
20 did they act upon the information that my client gave them
21 in that statement? Well, they went and got a warrant and in
22 the warrant as in the indictment they alleged he had a box
23 cutter. Okay.

24 Now, the interesting thing about this is that
25 Captain Smith when he testified tried to talk to him about,

1 well, where exactly did this notion of a box cutter come
2 from? I mean, where, where, did he get that? I mean,
3 Mr. Vasquez said something about a knife and it was a red
4 handled knife. You know, and then Mr. Vasquez says it's a
5 box cutter but what did Captain Smith tell us? You know,
6 Captain Smith told us, Well, it was your client that was the
7 first one that say anything about it being a box cutter.
8 They didn't get that from looking at the video. They didn't
9 get that from Mr. Vasquez because Mr. Vasquez got it from
10 after acquired memory. He got it after he was told it was a
11 box cutter. He didn't know that during the commission.
12 Okay. So my client tells them it's a box cutter. He's the
13 very first one. So what they do is they then charge him
14 that he has a box cutter. They don't say with a blade,
15 without a blade, they just say a box cutter. That's what
16 he's charged with. Okay. And so they're, they're, acting
17 on believing him about that.

18 And then what else do they do? Do they, do they,
19 honestly believe that he has a deadly weapon? I mean, could
20 they? Could they honestly believe that at that point after
21 they had sworn him in what he told them that it was a deadly
22 weapon? Well, if they did it's mighty interesting that they
23 didn't take him out into the yards where he said he through
24 it. He told them, he told them, he said, I flung it in some
25 yards while I was running from the video store back over to

1 Crazy Mike's, that what I did with it.

2 Now, ladies and gentlemen, if it was a deadly
3 weapon, if it was something that could inflict death or
4 serious bodily injury do you honestly think that the
5 sheriff's department would allow that to lay around in
6 somebody's yard? For somebody's kid to go out in their yard
7 and find that and hurt themselves with it? For somebody's
8 dong to go out and find it in the yard and think it's a toy
9 and cut itself mouth all up with it. Do you honestly think
10 they would do that? I would hope not. So what does that
11 tell us? They acted on the belief that he was telling them
12 the truth. It'd the only thing that makes sense. If it had
13 been a gun, if it had been a knife with a four inch blade,
14 five inch blade or a machete, do you think they would have
15 left it out there? What do we call that? Selective belief.
16 Believe what helps them. Believe what excuses what they
17 didn't do, and believe what helps advance their prosecution
18 of my client.

19 Now, as the state told you, the evidence was
20 expedited in this case because of the defense. Well, it was
21 expedited, expedited, to the extent that I told you that he
22 committed a crime but that it wasn't armed robbery. I tried
23 to clear up from the beginning that it was my client that
24 went in the store and he did something, he did a bad thing
25 that he shouldn't have done. But instead we sat here and

1 went on and, and on, and on, with evidence talking about who
2 went to the store. The only person who testified in this
3 case that didn't have a dog in the fight was the actually
4 man that had the dog in the case.

5 Ladies and gentlemen, they talked about it being
6 -- they talked about accumulative evidence that they brought
7 in here what they wanted you to here. Just what advances
8 their case. And, and, they think that, you know, that it's
9 just a slam dunk and that's how they planned it. To be just
10 a slam dunk, that's how they got to it doesn't get any
11 better than this.

12 These concepts, this is how, we're there. I told
13 you that he could have been charged with a completely
14 different crime and he wasn't. And she told you that strong
15 armed robbery is the crime that --

16 MS. CAMPBELL: Objection.

17 THE COURT: Over -- sustained, she didn't say
18 that. Disregard that last remark, members of the jury.

19 MS. MCCURRY: She talked about robbery --

20 MS. CAMPBELL: Objection, Your Honor.

21 THE COURT: You did talk about robbery, what's the
22 basis?

23 (There was no response.)

24 THE COURT: Overrule.

25 MS. CAMPBELL: Okay.

1 THE COURT: All right. Continue.

2 MS. MCCURRY: She talked about robbery, and told
3 you that robbery was basically a larceny which was sealing
4 something from somebody, you remember what she told you,
5 stealing from somebody. And then robbery is when you added
6 violence, threats of violence, intimidation you add that to
7 it so it's another ingredient that gets added and then
8 that's robbery. And then you have armed robbery where you
9 have to have armed with a deadly weapon, some sort of deadly
10 weapon or you go to have a representation of one, which as
11 they said we don't have in this case because he an honest to
12 goodness box cutter. And there was no other object that was
13 even mentioned that was involved.

14 So, ladies and gentlemen, it's your decision now,
15 to weigh all of the evidence in this case, to take a look at
16 everything that happened and to think about the fact that
17 they're certain evidence that you don't have.

18 Now, I asked you in the very beginning to
19 scrutinize very carefully the evidence or the lack there of
20 or the discrepancies and that you, you are the gate keepers,
21 you are the ones that have to decide this case. And, ladies
22 and gentlemen, you have to do it based on the law and the
23 way the law is written and the way every single comma and or
24 was put in that statue. That's exactly how I want you to
25 apply it. And the tough thing about this is my client said

1 he did something. He said he robbed the store. And now you
2 have to decide after the judge talks to you what's your
3 verdict is going to be in this case.

4 And they've talked to you about this state's
5 burden in the case that it's beyond a reasonable doubt. And
6 that a reasonable doubt is that sort of doubt that would
7 cause you to hesitate to act.

8 And now, ladies and gentlemen, that is the highest
9 burden of proof that we have. And in a car wreck case you
10 have preponderance of the evidence. So you picture the
11 scales of justice. And in a car accident case, in a civil
12 case, which is below this court that we're in today this,
13 this, (indicating) is all you need for the plaintiff to win
14 in a civil case. That's it, just a slight tipping of the
15 scale is all it takes. Beyond a reasonable doubt more like
16 that (indicating) it's got to go down to the floor.

17 Ladies and gentlemen, selective memories who had
18 them? Captain Smith certain things he remembers about small
19 talk he had with my client, certain things he doesn't.
20 After acquired memories. I've gone through this and asked
21 you to look at the evidence and you can see where did things
22 come after? Where did information come to you that its,
23 that its, origin evolved? After the commission of the
24 crime. What evidence is there, what is the best evidence
25 that would tell you happened when it actually happened?

1 First person that he talked to, 911, don't even have the
2 tape, could have the sheet that's generated but we don't
3 have that either. But we know that during the commission of
4 the crime, a bad crime, a robbery, that Mr. Vasquez was
5 worried about thinking that my client wanted his own money
6 and he was worried about his cell phone. And was it
7 reasonable at that point in time during the commission of
8 that crime for Ms -- Mr. Vasquez to think that an empty box
9 cutter was a deadly weapon, that it could really cause him
10 serious bodily injury or death, that he could really be cut
11 with it? No. I submit to you that that is not reasonable
12 to think that. And, ladies and gentlemen, you are the ones
13 that get to decide that issue. You're the ones that get to
14 decide if that's a deadly weapon or not. Think about what
15 your oath was, what it means to speak the truth and to tell
16 the truth.

17 In this case my client wanted to tell the truth.
18 He gave up his rights not once but twice. He told them what
19 happened. They told you at the time that they arrested him
20 that he was, he was, tired, that he was resigned to his
21 fate. He talked to them in the patrol car, in the SUV that
22 the investigator had, talked to them about what happened in
23 there. Then he went to the station and he talked to them
24 again, he waived all his rights again because he wanted tell
25 the truth. And the evidence shows that they had -- that

1 they believed him, they had to have or they wouldn't have
2 done the things that they did. They wouldn't have left a
3 deadly weapon laying out there.

4 And, ladies and gentlemen, the statement that he
5 gave they asked very specify questions of him. They want
6 you to think because when he was arrested on Tuesday the
7 13th and he didn't have a mustache at that time, they want
8 you to think that he did that for the purposes of concealing
9 his identity. He went into the store to begin with not
10 concealing his identity. He had on a beanie cap and he had
11 on a coat but it was the fifth of February, 12 minutes past
12 midnight, it was cold. He had on what anybody would have on
13 during cold weather. He wasn't trying to hide anything.
14 But did they ask him or is it documented any where? Well,
15 did you have a beard or a mustache before you went on a
16 crack binge? No. You don't know that. You don't know that
17 my client wasn't going round without a beard or a mustache
18 take for two years before this happened, you don't know.
19 But it helps them to try to make you think that that's a
20 bluff but you don't really know because they didn't ask the
21 question. These are the trained investigators but that's
22 what they do for a living, they ask the questions.

23 But, ladies and gentlemen, it's very clear there's
24 certain criteria that has to be met to meet this objective
25 and I just don't believe that you can find beyond a

1 reasonable doubt that that's been done. We've already taken
2 that burden away from you for, for, the most of it. Okay.
3 But now, you have to make the tuff call. You've heard both
4 sides of it, you know now what was selective memory, what
5 was after acquired memory and what was selective belief. I
6 believe not a deadly weapon when it suits to believe it's
7 not deadly, believe it is a deadly weapon when it suits you
8 to believe that it is one. So now, you know. You know
9 where it all started and you know where it's going. And
10 now, what you have to do is you have to render a decision in
11 this case. And, ladies and gentlemen, it's not hard to do
12 the right thing but it's hard to know what the right thing
13 is. But once you know what's right, once you know that it's
14 hard not to do it.

15 And, ladies and gentlemen, my client did not
16 commit an armed robbery. And I'm asking you to render a
17 true and just verdict and find him not guilty of that
18 particular charge. Thank you very much.

19 THE COURT: Now, members of the jury, do any of
20 y'all need a little short break before I give you my charge?

21 (There was no response.)

22 THE COURT: I mean it doesn't matter to me, do you
23 or not? Are y'all fine?

24 (Jurors nodded their heads.)

25 THE COURT: Okay.

1 Mr. Bill, thank you all for the visit.

2 MR. BILL: Thank you, Your Honor.

3 I'd like to wish these boys and girls the very
4 best.

5 All right. Now, Mr. Foreman, members of the jury,
6 the State of South Carolina charges the defendant Michael
7 Jackson with the offense of armed robbery.

8 Now, to this indictment the defendant,
9 Mr. Jackson, has pled not guilty which places upon the state
10 the burden of proving Mr. Jackson guilty.

11 A person charged with committing a criminal
12 offense in South Carolina is never required to prove himself
13 innocent. I charge you that is a vital and important rule
14 of law of evidence that a defendant in a criminal charge no
15 matter how great or serious may be the offense with which he
16 is charged must always be presumed innocence until his guilt
17 has been proven beyond a reasonable doubt. This presumption
18 of innocence remains with the defendant at all times, from
19 the moment of his appearance in this court throughout the
20 trial and until the jury has upon the testimony and evidence
21 presented, reached a verdict of guilty beyond a reasonable
22 doubt.

23 For it is the solemn duty of the jury if not
24 clearly convinced of his guilt beyond a reasonable doubt to
25 the contrary to acquit the defendant. So the burden of

1 proof is upon the state to establish by evidence of your
2 satisfaction the guilt beyond a reasonable doubt of the
3 defendant, Mr. Jackson, on trial here for the crime of armed
4 robbery.

5 Now, what is reasonable doubt? A reasonable doubt
6 is the kind of doubt that would cause great a reasonable
7 person to hesitate to act. If you have such a doubt as to
8 the guilt of the defendant then he would be entitled for a
9 verdict of not guilty. Reasonable doubt may arise from the
10 evidence which is in the case or from the absence or lack of
11 evidence in the case.

12 Members of the jury, you alone must make the
13 determination of whether or not reasonable doubt exist as to
14 the guilt or innocence of the defendant.

15 Now, the state has the burden of proving the
16 defendant guilty beyond a reasonable doubt. Some of you may
17 have served as jurors in civil case -- in civil where you
18 were told that that it is only necessary to prove that a
19 fact is more likely than not true. In criminal cases the
20 state's proof must be more powerful than that. It must be
21 beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the defendant's guilt. There
24 are very few things in this world that we know with absolute
25 certainty and in the criminal -- and in criminal cases the

1 law does not require, does not require, proof that overcomes
2 every possible doubt. If based on your consideration of the
3 evidence you are firmly convinced that the defendant is
4 guilty of the crime charged you must find him guilty, if on
5 the other hand, you think there is a real possibility that
6 he is not guilty you must found him not guilty.

7 A criminal defendant is presumed to be innocent
8 until his guilt is proved beyond a reasonable doubt. A
9 verdict of guilty can be based upon circumstantial evidence,
10 members of the jury -- direct or circumstantial evidence
11 provided the circumstantial evidence relied upon to prove
12 guilt measures up to these requires and law that I've just
13 stated to you. There are two types of evidence which are
14 generally presented at trial direct evidence and
15 circumstantial evidence.

16 Direct evidence is the testimony of a person who
17 has or who asserts or claims to have actual knowledge of a
18 fact, such as a witness or an eyewitness.

19 Circumstantial evidence is proof of a chain of
20 facts and circumstances indicating the existence of a fact.
21 The law makes absolutely no distinction between the weight
22 or value to be given to either direct or circumstantial
23 evidence, nor is a greater degree of certainty required of
24 circumstantial evidence than of direct evidence.

25 You should weigh all of the evidence in the case.

1 After weighing all of evidence if you are not convinced of
2 the guilt of defendant beyond a reasonable doubt you must
3 find the defendant not guilty.

4 Now, Mr. Foreman and members of the jury, under
5 the constitution and laws of the State of South Carolina you
6 are the finders of the facts in this case. I do not have
7 the right to pass upon the facts or even to express an
8 opinion I might have as to them nor may I intimate in anyway
9 what I may think about guilt or innocence of the defendant.

10 You're also the judges -- the sole judges of the
11 creditability, the believability of the witnesses who have
12 testified in this case. In passing upon their creditability
13 you may take into consideration many things, such as, the
14 demeanor or manner of testimony, whether the witness had a
15 reason to be biased or prejudiced, whether a witness's
16 testimony was contradicted on one hand or supported and
17 corroborated on the other hand. You certainly do not
18 determine this credibility or believability by counting the
19 number of witnesses for either side. You may believe a
20 small portion of a witness's testimony and disregard the
21 larger, or vice versa, you may believe one witness against
22 many or many against one.

23 You have heard the testimony of a witness who has
24 special knowledge, skill, experience and training in an
25 occupation who has given his opinion and he was the general

1 man that was the Investigator Stand Richardson I think was
2 the expert admitted in this case. You have heard the
3 testimony of a witness who has special knowledge, skill,
4 experience, training or education in a particular profession
5 or occupation and who has given an opinion as an expert as
6 to matters in which he is skilled. In determining the
7 weight to be given such opinion you should consider the
8 qualifications and credibility of the expert and the reasons
9 given for his opinion. You are not bound by such opinion,
10 give it the weight if any which you believe or deem that
11 it's entitled.

12 All things you will consider bearing in mind that
13 you should give the defendant the benefit of a -- of every
14 reasonable doubt.

15 Now, members of the jury, the fact that a
16 defendant in the trial of a criminal case did not testify in
17 his own behalf is not a factor to be considered by you in
18 anyway in your deliberations and in your consideration on
19 the question of the guilt or innocence of the accused. It
20 must not be considered by you in any manner whatsoever
21 against the defendant or mitigated against him in any
22 respect whatsoever.

23 A defendant has a constitutional right to remain
24 silent and the assertion of such a constitutional right
25 cannot and must not be considered by you in your

1 deliberations. Under your oath then you are to reach no
2 inference and draw no conclusion whatsoever to the fact
3 that a defendant in this case did not testify. The fact
4 that a defendant did not testify should not even be
5 discussed in a jury room.

6 The burden of proof, as I have stated to you, is
7 upon the state. It is not incumbent upon the accused to
8 prove himself innocent. The burden of proof remains upon
9 the state guilt beyond a reasonable doubt. The fact that a
10 defendant exercises his constitutional right to remain
11 silent is not a factor to be considered by you in
12 determining the guilt or innocence of the defendant.

13 Now. Now, members of the jury, by the
14 constitution and laws which makes you the finders of the
15 fact and the evidence I've just discussed with you. I am as
16 the judge made the sole and only instructor of the law. You
17 must accept as correct the law which I charge and apply it
18 to the evidence as you find it and reach your verdict. And
19 finally I charge you in this regard that you or for that
20 matter I should not be concerned about what the law ought to
21 be but rather what the law is that is as I charge it to you.

22 Now, what is armed robbery, members of the jury?
23 A person who committed robbery while armed with a pistol,
24 dirk, slingshot, metal knuckles, raiser or other deadly
25 weapon, or while alleging either by action or words he was

1 armed while using a representation of a deadly weapon or any
2 object which a person present during the commission of the
3 robbery reasonably believed to be a deadly weapon is guilty
4 of armed robbery.

5 Now, what is a deadly weapon? A deadly weapon is
6 generally defined as any article, instrument or substance
7 which is likely to produce death or great bodily harm. Our
8 armed robbery statute does not require the display of a
9 deadly weapon.

10 Now, members of the jury, although the required
11 force of threat of force for the offense of armed robbery
12 must either perceive or be contemporaneous with the taking
13 of the victim's property the use of a dangerous weapon at
14 any point in robbery shall constitute armed robbery as long
15 as it reasonable can be said to be part of a single
16 occurrence.

17 I charge you, members of the jury, Mr. Foreman,
18 that voluntary intoxication is never an excuse or a defense
19 to a crime. A person who voluntarily renders himself
20 intoxicated is no less responsible for his acts while in
21 such conduction. If a person voluntarily drinks
22 intoxicating liquors or takes drugs and becomes intoxicated
23 or if while in that conduction commits an act which will be
24 a crime if it had been committed by a sober person the fact
25 that that intoxication would not relieve the intoxicated

1 person from responsibility.

2 Now, Mr. Foreman and members of the jury, whatever
3 your verdict in this case it must be unanimous, that means,
4 of course, all 12 of you must agree. And I prepared what we
5 commonly refers to as a verdict form. I'll go over it with
6 you, briefly. It says State of South Carolina County of
7 Richland County, Court of general sessions, indictment
8 number so and so. The State versus Michael Jackson verdict
9 form for armed robbery. And it's one of two possible
10 verdicts guilty or not guilty. The one I listed first I
11 couldn't list them both at the same time obviously. But the
12 way this form reads is we the jury by unanimous consent find
13 the defendant guilty, number one or not guilty for the
14 second choice. And once you've reached the verdict, Mr.
15 Foreman, members of the jury, Mr. Foreman you need to sign
16 your name above the line that says foreperson, date it above
17 the line that says date and that should conclude your
18 services on this particular case.

19 I further charge you, tell you, that you
20 understand that a verdict in this case cannot be based on
21 passion, predigest, emotion or some other matter not found
22 in the evidence. You got to base your decision on what
23 you've heard from the witness stand and the exhibits or that
24 have been introduced as evidence in this case.

25 Now, I've got to ask that you go to the jury room

1 but don't yet begin discussing this matter. The time for
2 you to begin your deliberations, Mr. Foreman, will be when
3 the bailiff presents all of the evidence and exhibits that
4 have been introduced into evidence along with this verdict
5 form, that will be your signal to begin your deliberations.
6 Until then I still got to ask you not to talk about this
7 case. A slight chance or there is a chance I may have to
8 call you back out here to tell you something else. So for
9 right now, go to the jury room, but don't began discussing
10 this case until the bailiff brings you the verdict form,
11 okay.

12 (The jury retires from the
13 courtroom at 11:53 a.m.)

14 THE COURT: All right. Any additions or
15 objections from the state?

16 MS. CAMPBELL: No, sir.

17 THE COURT: From the defense?

18 MS. MCCURRY: No, Your Honor.

19 THE COURT: Once again for the record you wanted
20 me to request one of your charges strong arm, that was
21 denied, that would be -- but we can revisit that later on.
22 That's the only thing I can think of that you need to
23 mention right now.

24 And I invite y'all to look at all of the evidences
25 make sure what's in evidence is in evidence. I don't think

1 anything was marked for ID. Everything that was marked was
2 in. Let's double check that and then we'll give it to them.
3 And then I'll give you a chance to renew all of your motions
4 once they get it, okay.

5 MS. MCCURRY: Thank you.

6 THE COURT: All right. So let's just make sure
7 what's in evidence is in evidence and that should take care
8 of everything.

9 Mr. Vasquez, I want to wish you the very best.
10 I'm sorry for your troubles and problems that have happened
11 to you on that day.

12 And, Mr. Jackson, I also wish you the very best.
13 I don't know what's going to happen. I'm from a little
14 small town in Dillon they say you never know what a jury
15 will do or who a widow will marry and that goes for widowers
16 also. I don't know what they will do but I wish you both
17 the best. And I've enjoyed trying this case.

18 (Whereupon there was a break.)

19 THE COURT: I believe we have a verdict. Is
20 everybody ready?

21 MS. CAMPBELL: State's ready.

22 MS. MCCURRY: Defense is ready.

23 THE COURT: All right. Bring them in, Mr. Hollis.

24 BAILIFF: Be glad to, Your Honor.

25 (The jury returned to the

1 courtroom.)

2 BAILIFF: The jury's present, Your Honor.

3 THE COURT: All right.

4 THE CLERK: Mr. Foreman, have you reached a
5 verdict?

6 MR. FOREMAN: Yes.

7 THE CLERK: Would you please hand it to the
8 bailiff.

9 (The foreperson hands the
10 verdict to the bailiff.)

11 THE COURT: All right. You may publish it.

12 THE CLERK: Thank you, Your Honor.

13 State of South Carolina in Court of General
14 Sessions in the County of Richland County, Indictment Number
15 2007-GS-40-1683, State versus Michael Jackson, verdict for
16 armed robbery, we the jury by unanimous consent find the
17 defendant guilty signed John Mastrovito June 25th of 2009.

18 Mr. Foreman, is this your verdict and the verdict
19 of the entire jury?

20 MR. FOREMAN: Yes.

21 THE CLERK: Thank you.

22 THE COURT: Anything further from the jury from
23 the state?

24 MS. CAMPBELL: No, sir.

25 THE COURT: From the defense?

1 MS. MCCURRY: Motion to pole the jury.

2 THE COURT: All right. You have the questions?

3 THE CLERK: By name or by number?

4 THE COURT: You can do it by number.

5 THE CLERK: All right. Ladies and gentleman of
6 the jury panel, I'm going to ask you two questions, when I
7 call out your number please answer yes or no to each
8 question.

9 Number 161, was this your verdict?

10 JUROR: Yes.

11 THE COURT: Is this still your verdict?

12 JUROR: Yes.

13 THE COURT: Number 22, was this your verdict?

14 JUROR: Yes.

15 THE COURT: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Number 139, was this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR: Yes.

21 THE COURT: Number 138, was this your verdict?

22 JUROR: Yes.

23 THE COURT: Is this still your verdict?

24 JUROR: Yes.

25 THE COURT: Number 284, was this your verdict?

1 JUROR: Yes.

2 THE CLERK: Is it still your verdict?

3 MR. FOREMAN: Yes.

4 THE CLERK: Number 292, was this your verdict?

5 JUROR: Yes.

6 THE COURT: Is it still your verdict?

7 JUROR: Yes.

8 THE CLERK: Number 291, was this your verdict?

9 JUROR: Yes.

10 THE COURT: Is it still your verdict?

11 JUROR: Yes.

12 THE COURT: Number 289, was this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE COURT: Number 43, was this your verdict?

17 JUROR: Yeah.

18 THE COURT: Is it sill your verdict?

19 JUROR: Yes.

20 THE COURT: Number 264, was this your verdict?

21 JUROR: Yes.

22 THE COURT: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Number 255, was this your verdict?

25 JUROR: Yes.

1 THE COURT: Is it still your verdict?

2 JUROR: Yes.

3 THE COURT: Number 165, was this your verdict?

4 JUROR: Yes.

5 THE COURT: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: The jury's been poled, Your Honor.

8 THE COURT: Anything further?

9 MS. MCCURRY: No, Your Honor.

10 THE COURT: All right. Mr. Foreman, members of
11 the jury, I take this opportunity to thank you all once
12 again on behalf of everyone involved in this case. You
13 know, you can read about cases in the newspaper, you can
14 listen about cases on the radio, you see cases on TV, but
15 it's not quite the same until you sit as a juror in judgment
16 of your fellow citizens. It's not an easy thing to do. I
17 had the privilege of being on a couple of juries years ago
18 myself, until you go back into that jury room you don't know
19 how difficult it is to reach a verdict and what would appear
20 to be a relatively simple case but still it's not easy. I
21 mean, this is sort of a sad and a pitiful case in a lot of
22 ways. I don't know how bad of a person Mr. Jackson is, I
23 know what he did was wrong, but we all have souls. And we
24 always wish for the best for everybody somewhere along the
25 way and I'm sure y'all have those best wishes in mind and

1 for the defendant even though he was guilty with what he was
2 charged with. Like I said, it still is not easy to render
3 these decisions and I than you for participating in this
4 patriotic process.

5 Now, the good news is since you've served this
6 week you want be required to serve again for at least
7 another three years. But I hope sometimes in the future if
8 you ever receive another invitation to come serve your
9 country as jurors that you won't hesitate to accept it,
10 whether you're a principle over in Kershaw County or whether
11 you are from Long Island with two kids that take swimming at
12 the Jewish Center, whatever your situation may be, I wish
13 you all the very best clam nights and sun shinning days.
14 And if we should ever run into each other somewhere along
15 the way, maybe, at the Publics or Target or something like
16 that, if you see me don't stop and say hello just keep
17 going, will you, just leave me alone.

18 (Laughter)

19 THE COURT: Ladies and gentlemen, I will be happy
20 and proud for you to come up and say that you served as a
21 juror in this case. And you have my very best wishes once
22 again and God bless each and every one of you. You're free
23 to go back downstairs, I think they're going to send you
24 home for the week, okay. And even if you're a volleyball
25 teacher over in Chapin somewhere.

1 Is it Chapin? I know you're a coach.

2 JUROR: Me?

3 THE COURT: Yeah.

4 JUROR: Irmo.

5 THE COURT: I'm sorry, Irmo.

6 JUROR: Yeah, not Chapin.

7 THE COURT: Okay. That's good enough. Good luck
8 to y'all. I think they going to send y'all home for the
9 week.

10 (The jury retires from the
11 courtroom.)

12 THE COURT: All right. You have the sentencing
13 sheet, you want to bring Mr. Jackson around.

14 MS. MCCURRY: Your Honor, may I have a quick
15 motion?

16 THE COURT: Sure, sure, go ahead.

17 MS. MCCURRY: Defense moves for a new trial based
18 on lack of sufficient evidence which the jury could convict
19 Mr. Jackson of the charge of armed robbery.

20 THE COURT: All right. You know, I will deny your
21 motion but I will give you a chance to supplement the record
22 with a written notice if you want to.

23 MS. MCCURRY: Thank you, Your Honor.

24 THE COURT: And his prior record is unimportant in
25 this case, it's a life without parole matter. I guess you

1 better put the prior record on the record so that there will
2 be a sufficient basis to do so. What he's got two prior
3 violence, whatever.

4 And, Mr. Jackson, while you were out I spoke to
5 your mother who told me, quite frankly I have children too,
6 and I'm sure she loves you and you're lucky to have her.
7 And I wish you the very best.

8 THE DEFENDANT: (The defendant nodded head.)

9 THE COURT: It's nothing personal. I don't know
10 whether I have ever seen you again -- I've seen you before,
11 have I, not that I'm aware of. In the that I white male
12 other.

13 THE DEFENDANT: (The defendant shakes head.)

14 THE COURT: Okay, all right. You want to put his
15 prior record on the record?

16 MS. CAMPBELL: Yes, Your Honor, Ms. McDuffie is
17 going to do that.

18 THE COURT: All right, Ms. McDuffie.

19 MS. MCDUFFIE: Your Honor, please the Court. The
20 defendant's prior record, his prior strike is a 1989 robbery
21 from Lexington County for which he received a sentence of 22
22 years. The defendant was served with a notice of the
23 State's intention to seek life without parole on January the
24 22, 2009 and at this time if I may approach and hand up a
25 copy of that notice and his prior convictions, Your Honor,

1 for armed robbery.

2 THE COURT: All right.

3 MS. MCDUFFIE: Would you like to hear the rest of
4 his prior record, Your Honor?

5 THE COURT: Sure, go ahead.

6 MS. MCDUFFIE: Your Honor, in 1978 ABHAN and
7 strong armed robbery for which he received a YOA sentence,
8 1982 PWID marijuana, 1983 another marijuana charges, 1984
9 distribution of LSD, 1987 shoplifting, 1989 is the armed
10 robbery which is the strike that I just handed up to, Your
11 Honor. Also in 1989 distribution of marijuana, in 2002
12 there was a parole revocation, 2003 he was convicted of two
13 counts of forgery and sentenced to five years suspended to
14 one year and three years probation.

15 THE COURT: All right.

16 MS. MCDUFFIE: Your Honor, he also had two, two,
17 other pending armed robbery charge in addition to this one.

18 THE COURT: I assume y'all are going to dismissing
19 those, I don't know what --

20 MS. CAMPBELL: Yes, sir --

21 THE COURT: You're going to do, I assume.

22 Ms. McCurry, you can go ahead.

23 MS. MCCURRY: Pardon me?

24 THE COURT: Anything you would like to tell me?

25 MS. MCCURRY: Your Honor, my client is 50 years

1 old, there's really nothing I can say or do since this is a
2 mandatory sentence on your part.

3 THE COURT: I know. And I'll be honest with you,
4 Mr. Jackson, I didn't know you, I didn't know anything about
5 your prior record. You know, some people deserve life
6 without parole whether or not you do it's a difficult
7 question. But my hands are tied, there's nothing I could do
8 if I wanted to do anyway. Of course, you have a right to
9 appeal and I'm sure Ms. McCurry is going to file a notice of
10 intent to appeal. But forget all of that, I wish you the
11 very best for the remainder and your mother essentially.
12 You know, we all have mothers and you can rest assure of
13 this that your mother loves you as much she would any other
14 son, I can see that in her eyes. And, you know, I can
15 empathies with your background, with your situation and I
16 wish you the best, Mr. Jackson.

17 THE DEFENDANT: (The defendant nodded head.)

18 THE COURT: Good luck to you, sir.

19 All right. This is concluded.

20 (End of proceedings.)

21

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1 COUNTY OF RICHLAND)

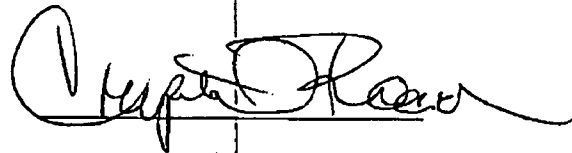
2 CERTIFICATE OF REPORTER

3 I, Crystal Roach, hereby certify that I reported
4 the preceding case entitled State V. Michael David Jackson,
5 Indictment No. 2007-GS-40-1683, the Richland County
6 Courthouse, June 22, 23, and 25th, 2009.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 348 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 20th day of September,
15 2009.



Crystal Roach, Court Reporter
and Notary Public for the
State of South Carolina my
Commission Expires:
April 21 2014

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STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

2013 CP4005-285Michael D. Jackson 294410
Full name and prison number (if any) of Applicant,

vs.

State

Name of Respondent.

APPLICATION FOR
POST-CONVICTION RELIEFRICHLAND COUNTY
FILED
2013 SEP -4 AM 11:20
JEANETTE W. JOHNSON
CLERK
S.C. JUD. S.INSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Lieber Correctional Inst. P.O. Box 205
Ridgeville S.C. 29472
2. Name and location of Court which imposed sentence Richland County
1701 Main St. Columbia S.C. 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 16-11-330(A)
 - (b) _____
 - (c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 6-25-09
 - (b) LWOP
 - (c) _____

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... whether a finding of guilty was made

- (a) after a plea of guilty _____
- (b) after a plea of not guilty Jury trial
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Denied

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) NA

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistant Counsel

(b) Denial of 6th and 14th Amendment 5th Amendment

(c) Denial of Due Process

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Counsel failed to strike juror during selection after juror lie

(b) Counsel failed to object to all statements made by defendant, due to sleep

(c) depravation, defendant had been getting high on crack for 14 days before giving statements to sheriff which was used as evidence against him

(C) Strategies and Tactics of Counsel

11. Prior to this application have you filed with respect to this conviction

351

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. NA
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

First filing PCR

- i. NA
 ii. _____
 iii. _____
- (b) the proceedings in which each ground was raised:
 i. NA
 ii. _____
 iii. _____
15. If any ground set forth in (9) 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) First filing of PCR
 (b) _____
 (c) _____
16. Were you represented by an attorney at any time during the course of:
 (a) your arraignment and plea? NA
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes
17. If you answered "yes" to one or more parts of (16), list:
 (a) the name and address of each attorney who represented you
 i. Carol A. Mc Curry
1735 Augusta Rd
West Columbia S.C. 29169
 ii. _____
 iii. Elizabeth Franklin Best & David Alexander
South Carolina Appellant Defense
 (b) the proceedings at which each such attorney represented you:
 i. Trial
 ii. Sentencing
 iii. Appeal
18. State clearly the relief you seek in filing this application.
That sentence be reversed and Court direct a verdict of guilty
of strong arm robbery and grant him a new sentencing hearing
19. Are you now under sentence from any other court that you have not challenged?

County of Richland

I, Michael D. Jackson, 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.

Michael D. Jackson

SWORN to and subscribed before me this 28th
day of August, 2013

Ludhean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

RICHLAND COUNTY
FILED
2013 SEP - 4 AM 11:20
JEANETTE WILBROOK
C.C.P. & G.P.

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Michael D. Jackson, 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 therefor.

Michael D. Jackson
Applicant

SWORN or affirmed to and subscribed before me this

28th day of August, 2013

Ludhean Bryant
Notary Public

My Commission Expires May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Michael D. Jackson, #294410,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2013-CP-40-5285

RETURN

Respondent, making its Return to the Application for post-conviction relief filed September 4, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was true bill indicted during the April 2007 term of the Richland County Grand Jury for Armed Robbery (2007-GS-40-1683). Carol A. McCurry, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable L. Casey Manning, where he was convicted as indicted. On June 25, 2009, Judge Manning sentenced Applicant to life imprisonment without the possibility of parole.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Elizabeth A. Franklin-Best, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on December 1, 2011. State v. Jackson, No. 2011-UP-522 (S.C. Ct. App. December 1, 2011). The Remittitur was issued on April 7, 2013.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject convictions, Applicant's trial transcript¹, the Applicant's records from the South Carolina Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel; in that,
 - a. "Counsel failed to strike juror during selection after juror lied."
 - b. "Counsel failed to object to all statements made by defendant, due to sleep deprivation; defendant had been getting high on crack for 14 days before giving statements to sheriff which was used as evidence against him."
 - c. "Strategies and Tactics of Counsel."
2. Denial of 6th and 14th Amendments
3. Denial of Due Process

Any claims not specifically enumerated in the Application or amendments will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In his application, Applicant alleges ineffective assistance of trial counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges

¹ Trial Transcript has been ordered and will be forwarded upon receipt.

ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of trial counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges that he was denied due process of law. Applicant's allegation fails to state what claim he is raising. The lack of facts does not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raise direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss this allegation for failing to state a claim upon which relief can be granted.

V.

Each and every allegation contained within the Application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held.

[signature block on following page]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

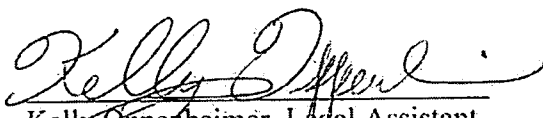
Jan. 7, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2013-CP-40-5285
	)	
MICHAEL D. JACKSON, #294410	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Anna R. Good, Esquire
Law Office of Anna Good, LLC
1720 Main Street, Suite 303
Columbia, South Carolina 29201

DATED this 7th day of January, 2014.


 Kelly Oppenheimer, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2013-CP-40-05285
	)	
	)	
	)	
Michael D. Jackson	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
State Of South Carolina	)	)
DEFENDANT	)	July 14, 2015
		Columbia, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE.

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

ANNA R. GOOD, ESQ.
Attorney for the Applicant

J. CLAYTON MITCHELL, ASSISTANT ATTORNEY GENERAL
Attorney for the State

KESHIA REED
Official Court Reporter

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

Michael Jackson

Ms. Good	8		39	

Mr. Mithcell		31		

Certificate of Reporter 42

1	<u>E X H I B I T</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	Applicant's 1	Letter March 30, 2009		12
4	Applicant's 2	Letter April 8, 2009		13
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1 THE COURT: All right. This is Michael Jackson.

2 MR. MITCHELL: Yes, sir, this Michael Jackson
3 vs. State of South Carolina 2013-40-5285. Mr. Jackson was
4 indicted April of 2007 for armed robbery. He was
5 represented by Ms. Carol McCurry on his charges, went to
6 trial for before Judge Manning. He was convicted as
7 indicted. He was sentenced to life imprisonment without
8 the possibility of parole.

9 THE COURT: It was an LWOP?

10 MR. MITCHELL: Yes, sir, it was an LWOP. I
11 believe prior burglary convictions. Direct appeal was
12 taken. The Court of Appeals affirmed his conviction in
13 April of 2013. This application September of 2013 where
14 he's alleged various aspects of ineffective assistance of
15 counsel. Ms. Good has filed an amended application
16 listing various aspects of ineffective assistance of
17 counsel. Failure to request a Bigger's hearing, failure
18 to call applicant to testify during Jackson vs. Denno
19 hearing. Failure to object to a crime stoppers tip, which
20 bolstered the testimony of the victim. Failure to
21 properly object to witnesses testifying as how facts
22 caused the crime to be an armed robbery. And failed to
23 present a proper -- present the proper facts in order to
24 allow applicant to receive a strong arm robbery charge --
25 jury charge.

1 And I note for the record that Ms. Carol McCurry
2 is not present today. We've made -- Ms. Good and I both
3 made numerous attempts to contact her and to review her
4 file. We had a hearing in January of this year where
5 Judge Goodstein ordered Ms. McCurry to turn over her file
6 within 30 days. She failed to do so. She's moved to
7 Washington state and I think is no longer practicing law.

8 She noted her files are still in the area. I
9 believe her office is out of Lexington, but she did not
10 have anyone that she could send over there to make copies
11 or make the file available. She also said that she was
12 uncomfortable with testifying by phone or by any other
13 method without the file in front of her. She's not
14 willing to have the file mailed to her in Washington. I
15 put this on the record because last hearing with -- before
16 Judge Goldsmith, which I believe was April 2nd or 3rd of
17 this year, Mr. Jackson indicated he would be okay going
18 forward without her testimony and we're prepared to do the
19 same.

20 THE COURT: Did you issue a subpoena to her?

21 MR. MITCHELL: I believe Ms. Good did. I issued
22 numerous subpoena's we mailed out to ---

23 THE COURT: She ignores them?

24 MR. MITCHELL: She's contacted me sporadically
25 when this has been scheduled. It's been hard to pin her

1 down.

2 THE COURT: Isn't she the one that was in the
3 military?

4 MR. MITCHELL: I believe she is in the Guard.

5 THE COURT: I meant the Guard.

6 MR. MITCHELL: I believe duty now as well. She
7 did end up calling me about a month ago or so. I talked
8 to her a couple times but to be Frank was not very
9 co-operative in this matter.

10 THE COURT: That surprise me because I've always
11 felt that she was respectful of the Court and certainly
12 would obey a subpoena. I don't know. I can't walk in her
13 shoes.

14 MR. MITCHELL: At this point, we're ready to go
15 forward and turn it over to Ms. Good at this time.

16 THE COURT: All right. Ms. Good, do you
17 understand what Mr. Mitchell just told me, is that -- the
18 fact that she's not here in anyway impair your ability to
19 represent your client?

20 MS. GOOD: No, sir, I've discussed with him the
21 different options of her being here versus not being here.
22 And he's ready to go forward because it's pretty clear
23 that she's not planning on coming back. And in addition
24 Your Honor for the record, there was a second amended
25 application filed October 1st 2014 adding to the grounds

1 that trial counsel failed to object to the client being
2 shackled and in handcuffs during the entirety of the
3 trial. And our previous conversation at the bench, Your
4 Honor, I have spoken with Mr. Jackson regarding the
5 situation your law clerk going to the AG's office to work
6 on post-conviction relief and he's prepared to go forward
7 today. He does not believe it's a conflict, Your Honor.

8 THE COURT: Well, the -- as I assured you, the
9 fact that she's going to work over there next year will in
10 no way influence my decision or will she have anything to
11 do with the ending of this case. And by the way, you have
12 a copy of your second amended?

13 MS. GOOD: Yes, sir.

14 THE COURT: I don't see it as part of the
15 packet. I got an amended application. All right, good.
16 All right. You may proceed.

17 MS. GOOD: Thank you, Your Honor. Call Michael
18 Jackson to the stand.

19 THE COURT: Come around, Mr. Jackson. You
20 solemnly swear or affirm the testimony you're about to
21 give in this hearing will be the truth, the whole truth,
22 and nothing but the truth so help you God?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Have a seat and state
25 your full name for the record.

1 THE WITNESS: Michael David Jackson.

2 THE COURT: What's your middle name?

3 THE WITNESS: David.

4 THE COURT: David.

5 THE WITNESS: Yes, sir.

6 WHEREUPON,

7 Michael D. Jackson,

8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. GOOD:

11 Q Mr. Jackson, as you've heard previously, you had a
12 trial June 22nd through 25th of 2009, you were found
13 guilty of arm robbery, correct?

14 A Yes, sir -- I mean, yes, ma'am.

15 Q At that time who was your attorney?

16 A Ms. Carol McCurry.

17 Q And prior to Carol McCurry, did you have another
18 attorney?

19 A Meghan Lee.

20 Q And when did Carol McCurry get on your case?

21 A She was assign to me April the 10th 2007.

22 Q And your trial was approximately two years later.

23 Were you incarcerated the entire time during your charge?

24 A Yes, ma'am.

25 Q And during that incarceration about how many meetings

1 did you have with Ms. McCurry those two years?

2 A She came to see me 21 months after she was assigned
3 to me. And then I seen her one more time before I went to
4 trial like a couple days before I went to trial, so I seen
5 her twice.

6 Q The first meeting you said was about 21 months after
7 she was appointed to you?

8 A Yes, ma'am.

9 Q Do you remember when she came to see you exactly?

10 A She came to see me April the 8th 2009 because the
11 very next week they serve LWOP papers on me.

12 Q So you met with her two years approximately after she
13 was assign?

14 A Yes, ma'am.

15 Q And did you ever try to contact her in those two
16 years before she ever came to see you?

17 A At least -- I can't count the times. Yes, ma'am, I
18 use to call and talk to a paralegal. I sent her all kinds
19 of letters. I wrote several judges concerning her conduct
20 with me. And finally I got a chance to see her. And then
21 when she did come to see me she said, Mr. Jackson, I don't
22 know why you in such a hurry for me to come down here and
23 see you. You're not eligible for nothing but prison. I
24 got clients that can go home. Clients that can get
25 probation. Clients that can get drug court. She said

1 only thing you going to get is prison unless you can help
2 Ms. Campbell solve this case and she showed me two
3 pictures.

4 Q Okay, stop. This is at the first meeting?

5 A This is the first meeting.

6 Q About how long did this meeting last?

7 A Long enough for her to tell me what I just said and
8 show me these two pictures.

9 Q Ten minutes, 20 minutes?

10 A I would say 20 minutes.

11 Q You were stating that she wanted you to help the
12 Solicitor's office with a case?

13 A Her exact words were Ms. Campbell said she would
14 bless you if you could help her with this case here.

15 Q Okay. And at that point you just said she showed you
16 two pictures?

17 A A picture of Raymond Randolph and Lewis Sanders.

18 Q Okay. And when she showed you those pictures, what
19 did you tell her?

20 A I told her that I knew both of them, but I mean I
21 couldn't assist her, you know.

22 Q And that was the end of that meeting?

23 A That was the end of the meeting.

24 Q Did you discuss your case at any time during that
25 meeting?

1 A With her?

2 Q Uh-huh.

3 A She already told me I was eligible for nothing but
4 for prison.

5 Q Did she go over the facts of the case or anything
6 with you?

7 A She said, well, you already said you was guilty. You
8 gave a statement saying that you committed the crime, you
9 know, so you got to handle that what she said basically
10 that you got to live with that.

11 Q So she was talking about your statement to law
12 enforcement?

13 A She said she had other clients that she needed to
14 see. You know, people that were eligible to go home and
15 stuff like that. She didn't have time to be wasting time
16 on somebody that was going to prison that was her exact
17 words.

18 Q And after that meeting did she contact you again?

19 A March the 1st. I left that letter over there. Yeah,
20 she contacted me through letter after I had wrote Judge
21 Childs.

22 Q Where is it?

23 A It's one of those letters right there. You can bring
24 me all of them. Let me see, yes, March 30th is when she
25 contacted me again.

1 Q Okay. And when she contacted you at that time what
2 did she tell you?

3 A She wrote me this letter.

4 Q Let show you what's been marked as Applicant's
5 Exhibit Number 1. Do you recognize this?

6 A Yes, ma'am.

7 Q And what is that?

8 A This is another letter she wrote me.

9 Q On March 30, 2009?

10 A Yes, ma'am.

11 MS. GOOD: At this time, I like to enter
12 Applicant's 1 into evidence, Your Honor.

13 THE COURT: Any objection?

14 MR. MITCHELL: No objection.

15 THE COURT: Without objection.

16 (WHEREUPON, Applicant's Exhibit No. 1 was
17 admitted into evidence.)

18 BY MS. GOOD:

19 Q After that letter, did you speak with her again or
20 what was your next action?

21 A I wrote her this letter.

22 Q And what did you tell her in that letter?

23 A I want her to be relieved as my counsel.

24 Q Okay. And when did you write that?

25 A It's dated April the 8th 2009.

1 Q And do you make copies of all the letters you write
2 to your attorneys?

3 A I sent her a copy of them. It's stamped and clocked
4 and everything right here.

5 Q And this is the letter you wrote her on April 8th of
6 2009?

7 A Yes, ma'am.

8 Q Asking for her to be relieved as counsel?

9 A Yes, ma'am.

10 MS. GOOD: Enter Applicant's Number 2, Your
11 Honor?

12 MR. MITCHELL: Without objection.

13 THE COURT: Without objection.

14 (WHEREUPON, Applicant's Exhibit No. 2 was
15 admitted into evidence.)

16 BY MS. GOOD:

17 Q And after sending that letter to her, did she file a
18 motion to be relieved as your counsel?

19 A No, ma'am.

20 Q At that time why did you want her relieved as your
21 counsel?

22 A Well, first of all, I didn't trust her. She never
23 came to see me. Besides, it took almost two years. And
24 then when she did come to see me, she told me I mean
25 basically nothing besides I was going to prison. She did

1 mention something about 30 years. And I said something to
2 her, well, can you maybe ask for ten or 15. Then she
3 said, well, that would still be a conviction and they
4 going to give you an LWOP. And I say what's the
5 difference you offer me 30 years. If I get ten or 15, you
6 saying they still going to give me LWOP, that don't make
7 sense. They hadn't even serve papers on me then, so I
8 mean...

9 Q And after you asked her to file the motion to be
10 relieved and she didn't, did you do something else?

11 A Yes, ma'am.

12 Q What is that? What did you do?

13 A I wrote ODC myself.

14 Q You wrote ODC?

15 A Yes, ma'am.

16 Q And at that time did she file a motion to be relieved
17 when you grieved her?

18 A No, ma'am.

19 Q Eventually, you stated you had a second meeting with
20 her. Do you remember when that meeting was?

21 A It was like a week before I went to trial when she
22 came to tell me I was going to trial.

23 Q Okay. And that's the first you had heard of a trial
24 date?

25 A Yeah, because in that letter, I mean, I wanted to go

1 to court and plea because she called my mother one time
2 and told my mother I was suppose to be going to court.
3 She never did come see me, but she called my mother and
4 said, well, Michael's going to plea. My mother came to
5 visit me in the county. And I never did go to court. And
6 she never did come see me, so I mean I don't know what
7 that was about.

8 Q So in the second meeting that you had where she told
9 you that you had a trial coming up in a couple of weeks,
10 about how long was that meeting? Do you remember?

11 A It might have lasted 30 minutes.

12 Q Did you all discuss the trial at all and any type of
13 strategy or the facts or what you were going to do?

14 A She did say that she was going to use a case out of
15 Virginia something about a person being heavily addicted
16 to drugs.

17 Q Okay. At that time -- I mean, I'm jumping forward a
18 little bit, but there was an issue regarding drugs and
19 your statement, correct, to law enforcement?

20 A Yes, ma'am.

21 Q Okay. And that's all she ever mentioned to you about
22 the case?

23 A And she asked me if I had anything to tell Stan Smith
24 to help me.

25 Q Eventually, you went to trial and your trial date was

1 June 22nd to June 25th of 2009, correct?

2 A Yes, ma'am.

3 Q And the indictment is this indictment here -- I
4 believe Your Honor has that in the packet already. Let me
5 show you the amended indictment. What day was that
6 indictment true billed?

7 A Two days before my trial.

8 Q And was that indictment ever served on you or were
9 you aware of that indictment?

10 A First time I seen an indictment was when I filed my
11 PCR.

12 Q Did you ever receive it from Ms. McCurry?

13 A No indictment. I never got the first indictment
14 until like three months ago the 2007 indictment when I
15 kept communicating with you about the indictments, that's
16 when I finally got one from 2007. I was under the
17 impression I was never indicted.

18 Q Okay. So eventually you started this trial and
19 during jury selection, did anything unusual happen?

20 A Tracy Michelle Jones said that she didn't recognize
21 anyone or knew anyone that worked at the Solicitor's
22 office.

23 Q Let me stop you for a second. You said Tracy
24 Michelle Jones. Who is Tracy Michelle Jones?

25 A Juror number 139.

1 Q So she's a juror in your case?

2 A Yes, ma'am.

3 Q Okay. And you just said she stated that she didn't
4 recognize or know anybody in the Solicitor's office?

5 A Yes, ma'am.

6 MS. GOOD: And, Your Honor, just for purposes of
7 clarity, it's around page 58 of the transcript.

8 BY MS. GOOD:

9 Q Did eventually come to light that she did know
10 someone who worked at the Solicitor's office?

11 A Justin Kata, that's how you pronounce his name. He
12 recognized her and he brought it to Judge Manning's
13 attention.

14 Q Okay. And at that time he was a law clerk in the
15 Solicitor's office?

16 A Yes, ma'am.

17 Q All right. And he stated he knew her from swimming?

18 A He coached her two children ---

19 MR. MITCHELL: Objection, Your Honor. I don't
20 think this has -- I don't think this is in the amended
21 application or the second amended application.

22 MS. GOOD: It's in his original application,
23 Your Honor.

24 THE COURT: Well, haven't looked through at his
25 original. If it's in there, it's in there. Go ahead

1 objection's overruled.

2 BY MS. GOOD:

3 Q You said he stated he coached one ---

4 A He coached two of her children.

5 Q Was the juror brought to the judge's attention and
6 spoken to about this?

7 A The very next day.

8 Q Were you there when that happened, when the judge
9 spoke with the juror?

10 A Yes, ma'am.

11 Q And the judge actually asked Ms. McCurry to talk with
12 you overnight about it and y'all discuss it in morning,
13 correct?

14 A Yes, ma'am.

15 Q Did she actually discuss it with you?

16 A No, ma'am.

17 Q And the next morning you stated the judge questioned
18 the juror about it. Did you discuss -- the discussion --
19 the judge's discussion with the sorry -- the jurors
20 discussion with the judge did you discuss that with Ms.
21 McCurry after it occurred when everyone knew what was
22 going on?

23 A Actually, I told Ms. McCurry that I didn't want her
24 as my juror because she lied first of all. And then
25 second of all being that I was being tried for arm

1 robbery, she was a business owner which means that she
2 could possibly interact with law enforcement on a regular
3 basis. So I was telling Ms. McCurry I didn't want, you
4 know, and she was like, well, she was picking the jury
5 because I didn't pick none of my jurors.

6 THE COURT: Ms. Good, at what stage of the
7 proceedings does this take place?

8 MS. GOOD: The jury selection. The actual jury
9 selection, Your Honor.

10 THE COURT: So before the complete jury was
11 seated?

12 MS. GOOD: Correct.

13 THE COURT: Okay.

14 BY MS. GOOD:

15 Q And at that time she told you she was picking the
16 jury not you?

17 A Yes, ma'am, I didn't pick none of my jurors.

18 Q And she put her on the jury?

19 A Yes, ma'am.

20 Q And you stated you wanted her struck and another
21 juror, correct?

22 A Yes, ma'am. It only takes one juror for a mistrial
23 or a hung jury whatever the case maybe. I might could
24 have got that lucky juror.

25 Q During the trial from the beginning to the end, you

1 stated you were incarcerated, correct?

2 A Yes, ma'am.

3 Q And when you're incarcerated, you're put in shackles
4 when you're taken from the jail to the holding cell?

5 A Yes, ma'am.

6 Q And in the courtroom were you in shackles?

7 A Yes, ma'am.

8 Q Did Ms. McCurry have you dressed out during the
9 trial?

10 A And, yeah, she went and picked up a suit from my
11 mother's house.

12 Q And despite the suit, did she ever request to have
13 your shackles removed during the trial?

14 A No, ma'am.

15 Q And to the best of your knowledge where were the
16 shackles?

17 A Just like I'm standing right here, I had on these
18 right here. They took them off when I came off the
19 elevator right there and whatever.

20 Q The hand ones?

21 A They left these on.

22 Q They left the hand ones on and feet off?

23 A Uh-huh.

24 Q So during the entirety of the trial, you had your
25 hands shackled?

1 A Matter of fact if you go to page six you'll see where
2 they ask me he is.

3 BAILIFF: Sir, sit down.

4 THE COURT: He's just demonstrating. He's okay.

5 A I want to demonstrate something if you don't mind.
6 On page six of my transcript, Judge Manning ask me to
7 stand up and face the jury and turn around. The whole
8 juror panel seen me in shackles. I had on leg irons this
9 particular day of the first day. So I had on leg irons
10 and shackles and the whole jury panel, the whole courtroom
11 actually.

12 Q Did you in fact also almost fall at one point?

13 A Yes, ma'am.

14 Q Prior to the trial when you were doing pretrial
15 motions, we mentioned a statement you gave to law
16 enforcement and a drug issue; correct?

17 A Yes, ma'am.

18 THE COURT: Let me back up, did she request from
19 Judge Manning to remove the shackles?

20 MS. GOOD: No, sir, it's never requested.

21 THE COURT: That's his testimony. Is that your
22 testimony?

23 THE DEFENDANT: Yes, sir.

24 BY MS. GOOD:

25 Q You gave a statement to law enforcement, correct?

1 A Yes, ma'am.

2 Q And Ms. McCurry during the Jackson vs. Denno hearing
3 you had an issue regarding your state of mind that you
4 wanted to bring up, correct?

5 A Yes, ma'am.

6 Q And what was that?

7 A I had been getting high of cocaine, crack, heroin,
8 like almost like nine days straight. And I was telling
9 Carol -- I mean, Ms. McCurry, Carol McCurry that when
10 Officer Smith them arrested me and this is in my statement
11 you can attest to this. I told them I'm glad this is over
12 with. I was ready to go lay down and get my some sleep.
13 I was tired.

14 Q And you said that you were coming off a crack binge
15 for about nine days?

16 A Yes, ma'am.

17 Q And when the last time you had slept before you gave
18 your statement to law enforcement?

19 A I did get some sleep like maybe three days before I
20 got arrested. I got arrested on a Tuesday, so I got some
21 sleep that weekend that Saturday.

22 Q Okay. And in fact during the Jackson vs. Denno, she
23 asked some questions about the crack binge and coming off
24 of that, correct?

25 A Yes, ma'am.

1 Q And law enforcement said, yes, they were aware of
2 that?

3 A Yes, ma'am.

4 Q Did you ever discuss with her about you testify about
5 the Jackson vs. Denno hearing?

6 A Yes, ma'am.

7 Q And did you want to testify?

8 A Yeah, I wanted to tell -- I mean try to sympathize
9 with the court and let them know that I was coming off a
10 binge and that I was suffering from sleep depravation when
11 I gave my statement. I mean, if a person is suffering
12 some sleep depravation, you know that it's lack of sleep.
13 And I couldn't have been in my right frame of mind even
14 though I mean I probably would have still gave a statement
15 saying that I did what I did, but you know.

16 Q And during the Jackson vs. Denno hearing, did you
17 tell her you wanted to testify?

18 A Yes, ma'am.

19 Q And what did she tell you?

20 A She didn't want me to take the stand. She said they
21 was going to bring my record up. I told her it didn't
22 make no difference you already serve LWOP papers on me.

23 Q And in fact, there was a pretrial hearing, so that
24 statement wouldn't have be given to the jury during the
25 trial, correct?

1 A Yes, ma'am.

2 Q After the Jackson vs. Denno hearing where she was
3 making this argument regarding the crack binge, did she
4 make an argument or give any case law to the judge as to
5 why your statement should be suppressed based on that?

6 A No, ma'am.

7 Q Did she argue it at all?

8 A No, ma'am.

9 Q And also in this case as everybody knows you were on
10 trial for arm robbery, it was based on ID, correct?

11 A Yes, ma'am.

12 Q And the victim did he ever say that he knew you on a
13 personal basis?

14 A No, ma'am.

15 Q And was there any hearing held prior to the trial
16 regarding his identification of you?

17 A No, ma'am, not to my knowledge.

18 Q Did she ever request one?

19 A Not to my knowledge.

20 Q And in fact she only questions him about his ID of
21 you during the direct examination of the trial, correct?

22 A Yes, ma'am.

23 Q Okay. And also during the trial, you became a
24 suspect as a result of someone pointing you out as a
25 person from crime stoppers from the store video, correct?

1 A Yes, ma'am.

2 Q And this was introduced at trial?

3 A Yes, ma'am.

4 Q Did your attorney ever object to this coming into
5 evidence?

6 A No, ma'am.

7 THE COURT: Say that again?

8 MS. GOOD: Said did Ms. McCurry ever object to
9 the crime stoppers tip.

10 THE COURT: Just explain that.

11 BY MS. GOOD:

12 Q The crime stoppers tip what did it say do you
13 remember? Was it giving a description of you and saying
14 they knew who that person was?

15 A The guy that call crime stoppers was a guy who I work
16 with. They don't know that I know he called crime
17 stoppers, but I know he did it because of the way that I
18 got arrested. And the person that was with him was
19 telling me not to come because I was going to meet him. I
20 actually was going to turn myself in, but I guess he
21 wanted to get the reward money. But he called Captain
22 Stan Smith them over the weekend and said that he
23 recognized the person that was on the video.

24 Q That's how they got to you not through the victim,
25 correct?

1 A That's right.

2 THE COURT: That came out in trial?

3 MS. GOOD: Yes, sir.

4 A Excuse me he the one brought me the razor to shave
5 with, the same guy who called crime stoppers on me.

6 MS. GOOD: And it's during Scott McDonald's
7 testimony, Your Honor.

8 BY MS. GOOD:

9 Q Did she ever make an argument during the trial that
10 was prejudicial and she didn't have the opportunity to
11 cross-examine the witness saying it was you on the video?

12 A No, ma'am.

13 Q Ultimately, Stan Smith who you mentioned several
14 times began testifying about the case in fact his
15 involvement. In fact, was the question asked of him in
16 page 215, Your Honor, of the transcript is where his
17 testimony begins. Did he testify as to the fact that he
18 believed this was an armed robbery and why it was an armed
19 robbery?

20 A Yes, ma'am.

21 Q Did she ever object to this?

22 A No, ma'am.

23 Q She allowed him to speak to the jury about why he
24 thought it was an arm robbery?

25 A Yes, ma'am.

1 Q Did he go through the facts of why he thought it was
2 an armed robbery?

3 A Yes, ma'am.

4 Q Ultimately, she argued to the jury there was during
5 the trial the entire time she argued that you had a box
6 cutter, correct?

7 A Yes, ma'am.

8 Q And she stated there wasn't a weapon in it, correct?

9 A It wasn't no razor in it.

10 Q Or a blade in it?

11 A Yes, ma'am.

12 Q But that you had a box cutter the entire time and
13 showed it to the victim?

14 A Her exact words were -- her opening statement was
15 Michael does not sit before y'all today an innocent man.
16 He is guilty of a crime. What Michael did, I guess you
17 can go to it. What he did was wrong, but it was not arm
18 robbery.

19 Q And she ultimately argued that it wasn't arm robbery
20 because you had a box cutter, correct?

21 A Yes, ma'am.

22 Q And she agreed with the fact that you presented that
23 box cutter to the victim?

24 A Yes, ma'am.

25 Q And she ultimately asked for a strong armed robbery,

1 correct?

2 A Yes, ma'am.

3 Q Did she get that charge?

4 A No, ma'am.

5 Q And in fact did the judge rule that she did not get
6 that charge because she argued that there was a box
7 cutter?

8 A Yes, ma'am.

9 Q And a box cutter is considered a weapon?

10 A Yes, ma'am.

11 Q And did she ever discuss this strategy with you?

12 A No, ma'am. She said she was going to use a case out
13 of Virginia with a person that was heavily addicted to
14 drugs, that's what she told me.

15 Q But she in fact never brought that case up, did she?

16 A No, ma'am. She did the exact opposite.

17 Q So basically throughout this entire about two and a
18 half years, she was your attorney you only met with her
19 about 40 to 50 minutes, correct?

20 A Yes, ma'am, twice.

21 Q And did she ever go over the case with you?

22 A No, ma'am.

23 Q Did she ever discuss trial strategy with you?

24 A No, ma'am.

25 Q Did she ever present any facts to you to help you do

1 what you needed to do during the trial?

2 A She did April or May she hired an investigator to
3 talk to some friends of mine about my drug addiction. The
4 investigator talking to my children's mother. He talked
5 to about five people. This was in regard to the case that
6 she was suppose to use. I forgot the investigator's name.
7 I don't know whether I got that letter with me, but anyway
8 she did act like she was going to use the case. So I was
9 under the assumption that that's what she's going to do.

10 Q And in fact you're here today asking the judge to
11 over turn your conviction at trial, correct?

12 A I sure am.

13 Q Based on the fact that she failed to strike a juror
14 that had connections to the Solicitor's office?

15 A Yes, ma'am.

16 Q The fact that you were shackled during the entire
17 trial and jury saw that?

18 A Yes, ma'am.

19 Q That she never requested Neil v. Biggers hearing
20 where the only issue in this was identification?

21 A Yes, ma'am.

22 Q That she failed to call you as a witness during the
23 Jackson v. Denno hearing regarding your drug use prior to
24 your statement to law enforcement?

25 A Yes, ma'am.

1 Q Failing to object to any crime stoppers tips?

2 A Yes, ma'am.

3 Q And failing to present a proper strategy to the jury
4 in order to get a strong arm robbery charge?

5 A Yes, ma'am.

6 Q Is there anything else you can think of at this time
7 that you like to tell the judge that could effect as to
8 why you were prejudice in this case or do you think we've
9 hit everything?

10 A I don't know about the warrant. I think my warrant
11 she didn't even argue my warrant or test the legality of
12 my warrant because on my warrant some guy name Croxton
13 sign as the affiant for Steven Fowls (sic). And if you
14 look through it in my transcript, they got every law
15 enforcement officer that was involved in my case. His
16 name was not on there. I've never seen him or never heard
17 of him, so he definitely cannot be the affiant. I mean,
18 she could have argued that, you understand what I'm
19 saying.

20 MS. GOOD: No further questions, Your Honor.
21 Answer any questions Mr. Mitchell has.

22 THE COURT: Mr. Mitchell, cross-examination.

23 MR. MITCHELL: Your Honor, may it please the
24 Court.

25 CROSS-EXAMINATION

1 BY MR. MITCHELL:

2 Q Good morning, Mr. Jackson.

3 A Good morning, sir.

4 Q Let's see here. You put Ms. McCurry in a pretty
5 tough spot; is that right? Because you gave a statement
6 essentially confessing to the crime; is that right?

7 A Yes, sir.

8 Q Okay. So the defenses you could raise in this case
9 was fairly limited, right? The evidence against you was a
10 surveillance video, right?

11 A Yes, sir.

12 Q And then the identification from the victim who was
13 working at the video store, right?

14 A From the crime stoppers tip.

15 Q Right.

16 A Then the video store.

17 Q Right. So he was the first witness up, right?

18 A The crime stoppers tip, yeah.

19 Q Okay, right. Not the crime stoppers tip but Michael
20 Vasquez, right?

21 A Yes, sir.

22 Q So he was the victim in the case?

23 A Yeah, he was.

24 Q All right. And then when you got arrested, you
25 confessed to the crime to the officer is that in the squad

1 car; is that right?

2 A Yes, sir.

3 Q Okay. And that's when you said something along the
4 lines of I'm coming down from a high. I been on kind of a
5 binge type deal, right?

6 A Yes, sir, it actually was the truth.

7 Q And you said that you were exhausted and you were
8 ready for it all to be over with?

9 A Yeah, I told them I was ready to go get some sleep
10 I'm tired.

11 Q This wasn't the only arm robbery charge you had
12 pending at the time, was it?

13 A No, sir.

14 Q You had three of those?

15 A I had two others.

16 Q Two others?

17 A Yes, sir.

18 Q So Ms. McCurry's advice to you was that you're likely
19 going to be convicted with the evidence that the State
20 had; is that right?

21 A You say that again?

22 Q I'm sorry, that Ms. McCurry's advice to you was that
23 the evidence, the strength of the evidence was likely you
24 would be convicted?

25 A She told me I was going to prison which I knew that,

1 but what we was trying to do -- I mean, what I was trying
2 to do was maybe, you know, if she would have -- felt like
3 if she would have put up more of a fight for me and
4 whatever try to get me a plea because she told my mother
5 that they did offer a plea, but she never told me what it
6 was.

7 Q When did she tell you about the plea offer?

8 A I can't really say, but all I know is my mother came
9 to visit me. And the only way I can know that is through
10 Alvin S. Glenn. The date that she came and see me she
11 came to tell me that Ms. McCurry say I will be going to
12 court that week to plea, but she never came to see me.
13 This is what she told my mother.

14 Q Okay. Now, there were some other incidents where the
15 Solicitor wanted you to testify to; is that correct?

16 A Yes, ma'am -- I mean, yes, sir.

17 Q You did not do that, right?

18 A No, sir.

19 Q So you didn't cooperate with the State in other cases
20 they had pending?

21 A And I felt like they got mad at me and serve LWOP
22 papers on me for that reason.

23 Q Now, let's go to this. You said something about the
24 amended indictment. I mean, you knew what you were facing
25 though, right?

1 A Yes, sir.

2 Q You knew that you were accused of robbing the video
3 store?

4 A Yes, sir.

5 Q Now, when the juror -- it was actually the -- I think
6 it was the intern law clerk at the Solicitor's that knew
7 one of the jurors, right? And he's the one that came
8 forward and said ---

9 A That he knew him.

10 Q Okay, that he knew the juror. So he brought that
11 information to the Court's attention and then Judge
12 Manning brought the juror out; is that right?

13 A Yes, sir.

14 Q And then Judge Manning questioned the juror on
15 whether she knew the law?

16 A Yes, sir.

17 Q And she testified that she did not, right?

18 A She testified, yeah, I know him. She said I seen him
19 before. And that's when he said, yeah, I had a hob group
20 the other night, whatever the case maybe, with the parents
21 to let y'all know a little bit about myself. I told y'all
22 where I worked at and everything. He told her along with
23 all the other parents where he worked at.

24 Q Okay. But she didn't know that he worked at the
25 Solicitor's office that was the issue; right?

1 A She say she didn't know where he worked at. He just
2 said he told them where he worked at. And I felt like she
3 should have struck that juror because I felt like I was
4 prejudice a little bit. I felt like I was prejudice
5 because I didn't want her first of all.

6 THE COURT: What was the name?

7 MR. JACKSON: Tracy Michelle Jones.

8 THE COURT: Jones.

9 MR. MITCHELL: Your Honor, that takes place on I
10 believe ---

11 THE COURT: I'm just trying to find it in the
12 transcript.

13 MR. JACKSON: It's starts on page 58 and then he
14 can go to also page 1 ---

15 MR. MITCHELL: The juror is questioned on 100
16 maybe.

17 THE COURT: Looking at 58 says talking about the
18 swim team practice. It's a swim team he teaches in the
19 evenings. It looks like it starts on 58.

20 MR. MITCHELL: And then he questions the juror
21 on page 108.

22 THE COURT: On what?

23 MR. MITCHELL: Page 108. Judge Manning brings
24 the juror out.

25 THE COURT: Okay. Go ahead.

1 BY MR. MITCHELL:

2 Q In your statement to law enforcement and your
3 statements here today, is that you were high on cocaine
4 and other drugs when this occurred; is that right?

5 A Yes, sir.

6 Q Ms. McCurry questioned Mr. Smith on that; isn't that
7 right?

8 A Yes, sir.

9 Q So she brought out the fact that you had been up for
10 about eight days. You had taken a lot of drugs leading up
11 to it; isn't that right? Is that right? She did question
12 him on that?

13 A They was trying to redact a part of a statement.

14 Q Right. And then she also asked that your statement
15 be suppressed because it's not voluntary, right, under
16 these grounds because you were intoxicated, right?

17 MR. MITCHELL: Your Honor, I point you to page
18 92 there.

19 BY MR. MITCHELL:

20 Q What you told law enforcement is that you had a box
21 cutter, right?

22 A Yes, sir.

23 Q You said it was an empty box cutter?

24 A Yes, sir.

25 Q And that's kind of where you went -- where Ms.

1 McCurry went with it, right? She argued that this wasn't
2 a deadly weapon. It's not arm robberies. It's something
3 less than that, right?

4 A Yes, that was the argument, yes, sir.

5 Q And that's kind of what she tried to do. She tried
6 to argue to the jury that this isn't a deadly weapon.
7 This is just a piece of plastic and that the victim knew
8 that, right? Is that right?

9 A I guess so, yes, sir.

10 Q You testified earlier she hired an investigator to
11 talk to some people that you asked her to talk to; is that
12 correct?

13 A Yeah, she said she wanted to talk to some people
14 about my drug use.

15 Q She kind of argued some of your drug use throughout
16 the witnesses; isn't that right?

17 A I don't remember. I don't remember her ---

18 Q With investigator Smith?

19 A She didn't bring it up during trial to the jury, did
20 she?

21 Q I believe she did on the -- in her closing and in her
22 opening, right? We'll move on from there.

23 A On the opening, she said that I was guilty of a
24 crime. That he sits here today not an innocent man. She
25 didn't say anything about drugs.

1 Q Now, you testified that you were handcuffed the whole
2 trial; is that right?

3 A Yes, sir.

4 Q So you were shackled on your feet, right?

5 A And I was shackled on my feet and I had ---

6 Q Handcuffed the whole time just like that?

7 A Yes, sir.

8 Q Judge Manning didn't say anything about that?

9 A No, sir.

10 Q Ms. McCurry never said anything about that on the
11 record?

12 A No.

13 Q You testified today that were handcuffed the entire
14 trial?

15 A Yes, sir.

16 Q Just like you are today?

17 A Yes, sir.

18 Q The same type shackles?

19 A Yes, sir.

20 Q They're not different kind of shackles where they
21 won't make noise?

22 A No, sir, the exact same kind of shackles.

23 Q But you were wearing a suit; is that right?

24 A I had a suit on, but, you know, that could instill
25 into a jury the sight of the shackles that I was a

1 dangerous individual that couldn't be control whether I
2 had a suit on or not.

3 Q Had you had some problems while you were locked up
4 leading up to the trial?

5 A No, sir, not to my knowledge. Besides being
6 depressed.

7 MR. MITCHELL: No further questions. Thank you
8 Mr. Jackson.

9 THE COURT: Redirect?

10 MS. GOOD: Just a couple, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. GOOD:

13 Q During the Jackson v. Denno hearing, you testified
14 she did question officers on the drug issue and your sleep
15 deprivation, correct?

16 A Yes, ma'am, she did.

17 Q And she was arguing that your statement was not
18 voluntary due to these issues, correct?

19 A Yes, ma'am.

20 Q But she never put you up to testify as to your actual
21 sleep depravation or the drugs that you been using up to
22 the time that you gave that statement?

23 A No, ma'am.

24 Q Okay. And you stated that she was arguing that the
25 empty box cutter was not a deadly weapon, correct?

1 A Yes, ma'am.

2 Q Are you aware of the elements of arm robbery?

3 A Yes, ma'am.

4 Q And that one of them is just the threat of a
5 potential weapon whether you have one or not is considered
6 an element of arm robbery?

7 A Yes, ma'am.

8 Q And an empty box cutter meets that element, correct?

9 A Yes, ma'am.

10 Q If the victim believe it's a weapon?

11 A Yes, ma'am.

12 Q And regarding the handcuffs during the whole trial,
13 was there anything ever put on the record regarding your
14 shackles?

15 A No, ma'am.

16 Q Did the judge ever make any decision that you were a
17 threat in the courtroom and needed to be shackled?

18 A No, ma'am.

19 MS. GOOD: No further questions, Your Honor.

20 THE COURT: All right. Is that it?

21 MR. MITCHELL: Nothing further, Your Honor.

22 THE COURT: All right. You may come down, sir.

23 (WHEREUPON, the witness leaves the witness
24 stand.)

25 MS. GOOD: I rest, Your Honor.

1 THE COURT: Rest.

2 MS. GOOD: Yes, sir.

3 THE COURT: Mr. Mitchell.

4 MR. MITCHELL: Your Honor, the State has no
5 witnesses.

6 THE COURT: All right. How much time you need
7 for proposed orders?

8 MS. GOOD: What, Your Honor?

9 THE COURT: How much time do you need for
10 proposed orders?

11 MS. GOOD: Whatever, Your Honor.

12 MR. MITCHELL: Thirty days.

13 MS. GOOD: Thirty days.

14 THE COURT: Thirty days. Thank you very much.

15 MS. GOOD: Thank you, Your Honor.

16 THE COURT: Mr. Mitchell (sic) I'm going to read
17 your transcript. Your lawyer is going to send me a
18 proposed order. The State's going to send me a proposed
19 order. And I'll let you know.

20 END OF REQUESTED HEARING

21

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 42, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of Common Pleas for Richland
County, South Carolina, on the 14th day of July, 2015.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 3rd day
of March 2016.

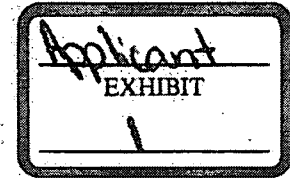


Keshia Reed, Court Reporter

**McCurry Law Firm, LLC**

Carol A. McCurry
Attorney at Law

Tel: (803) 936-0051
Fax: (803) 936-0041



March 30, 2009

Michael Jackson-Inmate 69889
Alvin S. Glenn Detention Center
201 John Mark Dial Dr.
Columbia, South Carolina 29209

RE: State v. Michael Jackson

Dear Mr. Jackson,

I just received the letter you sent to Judge Childs, regarding complaints you have with my representation of you. I wanted to address those complaints and let you know that I am, and have been working non-stop on your case.

First let me tell you, I requested funds for a private investigator to help me with your case, the order was approved, signed and granted, just last week. I had a meeting with Dave MacDougall, a investigator yesterday afternoon that I have hired to assist in your defense. He will be meeting with you as well.

In addition, I requested a criminal responsibility evaluation, as I felt this may help support your claims regarding your life long drug addiction, along with the physical and mental beating your body has taken due to the Hepatitis. The Order for the Evaluation was signed just last week, and the required documents have been sent to the Department of Mental Health. As soon as we receive a date for that I will let you know.

I have called Lee Correctional Institution and left a message for Ms. Hannibal to please return my call in regards to you not being ready to be discharged as you stated. I haven't heard back from her yet. Mr. MacDougall will pursue getting all of your Department of Correction records and anything Alvin S. Glenn Detention Center has on you as well.

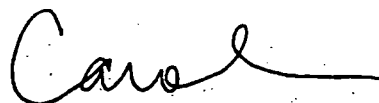
I have been working on your case Mr. Jackson. I have emailed your Solicitor about negotiating a plea (see attached email) and the only response I got was a call from her assistant saying that she was calling one of your cases to trial and she was going to "Lyle" in the other two charges. It certainly is distracting to have to stop the work we are doing, to deal with a bogus claim that I have been sitting back twiddling my thumbs while you sit in jail. It was my understanding, and has always been my understanding that you did not wish to go forward with a trial. Well, unfortunately that is just what we are headed for. I do not have the time or energy to write letters to you to defend myself or my office because you have a sudden need to write letters to the Judge complaining about me. Please, let us not overlook the fact that I have 200 other clients and I am just not able to come to the detention center every single time something happens. I was attempting to get things lined up and then send our investigator down to speak with you. I was also going to try and speak with Captain Smith again. However, at this point if you don't want me to represent you, then please let me know so I don't waste my time or anyone else's time either.

Finally, and for the last time, once I have gathered some information, useful or not, you will be the first to know. Otherwise, please let us try to focus on what is important at this time and that would be your defense.

Should you have any questions, concerns OR complaints, please address them with ME, your attorney.

With regards, I am

Very truly yours,



Carol A. McCurry

CAM/lmm



Carol A. McCurry
Attorney at Law
1735 Augusta Road
West Columbia, SC. 29169

Re: State v. Michael Jackson

Dear Mrs. McCurry,

My reason for writing you this letter is to inform you that I am in receipt of your recent letter to me dated for March 30, 2009. In that letter, you had expressed several concerns therein & really felt it necessary to address.

First of all, I am really glad to hear that someone has been able to reach you since it's obvious I couldn't without the Disciplinary Council and now Judge Childs. It seems like to me the only time I hear anything from you is after I file a complaint against you to the proper authorities capable of making you fulfill your obligation to me.

I do not believe that you have been working next step on my case since it has been over a year that I have seen or heard anything from you. I am glad also that you have finally decided to take me up on my suggestion that I have a Criminal responsibility evaluation to support my life long drug addiction. I guess your approach now is better late,

then never, never the less, Mrs. McLary, I resent your attempt now to down play the seriousness of your actions especially pretending like you were always supportive of this idea when in fact, we both know that you really weren't.

As I recall, your statement to me, "... there are millions of Americans suffering from mental illness due to the great depression therefore, the Govt doesn't want to hear about ~~your~~ ^{your} depression problem brought on by my learning that you have Hepatitis..." You also stated, "... I have clients that are eligible for programs such as, P.H., Drug Court as well as other programs that really need my help..." I had understood this to mean that I was only wasting your time. I'm your client also. I needed your help as well.

It doesn't take this long to have money approve to assist in a client's defense. The truth of the matter is this: You have been in possession of the information Mr. Hornbubl had my drug treatment at Lee County Correctional Institution for almost two years, but you haven't did anything to obtain this information until now. This is clearly ineffective assistance of Counsel. I could have signed a Consent form releasing this information or you could have gotten a subpoena.

The last time I had spoke with you was when I was turned L.A. OP papers you had asked me if I would take 30 rs to which I said no! you tried to convince me into taking the thirty years by saying, "... You should take the thirty years..." I said, "... I would like for you to see if they would give me ten years..." then you stated, "... that would still be a conviction and they would give you life for the conviction; I said, "...

so what's the difference in me accepting the ten or thirty years. If there are going to give me life any way for the conviction? I empathize with the fact that you have so many clients, but that's not my problem. I really shouldn't take on more than you can handle. I'm not supposed to suffer because you don't want to do your job. I don't trust you as my attorney so I think that it's best to end our client and attorney relationship.

Thanks for
chatting

Respectfully Submitted

Michael D. Jackson

SWORN AND SUBSCRIBED BEFORE ME

THIS 8th DAY OF April, 2009

James C. Jolly (L.S.)

MY COMMISSION EXPIRES: 05-24-12

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Michael D. Jackson, #294410,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2013-CP-40-05285

ORDER OF DISMISSAL

FILED
JAN 10 10 21 AM
CLERK OF COURT
C.C.P. & S.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 10, 2014. Respondent made its Return on March 12, 2015, requesting an evidentiary hearing be convened. Anna R. Good, Esquire, was appointed by the Richland County Clerk of Court. Applicant filed an amended application on May 6, 2014, and a second on October 1, 2014. An evidentiary hearing was held on July 14, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Good. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. The Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the PCR application, the Return, the trial transcript, and the appellate records.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was true bill indicted during the April 2007 term of the Richland County Grand Jury for Armed Robbery (2007-GS-40-1683). Carol A. McCurry, Esquire, represented Applicant. Applicant proceeded to a jury trial before the Honorable J. Grey Manning, where he was convicted as indicted. On

June 25, 2009, Judge Manning sentenced Applicant to life imprisonment without the possibility of parole.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Elizabeth A. Franklin-Best, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence on December 1, 2011. State v. Jackson, No. 2011-UP-522 (S.C. Ct. App. December 1, 2011). The Remittitur was issued on April 7, 2013.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in
 - a. Failing to object to Applicant's shackles allegedly being visible before the jury;
 - b. Failing to properly prepare and form a defense strategy;
 - c. Failing to move to strike a juror who knew an employee of the solicitor's office;
 - d. Failing to challenge the victim's identification through a photo lineup;
 - e. Failing to move call Applicant as a witness during the Jackson v. Denno hearing.
 - f. Failing to object to a Crimestoppers tip;

II. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation

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rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the appellate records, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Failing to object to Applicant's shackles allegedly being visible before the jury

Applicant alleges Counsel was ineffective in failing to object to his shackles being visible to the jury. Applicant testified that the jury saw him in shackles. Specifically, he alleged that he was told to stand and face the jury before the entire jury panel and that his handcuffs were clearly visible.¹ This Court finds this allegation without merit. Applicant relies on Deck v. Missouri, 544 U.S. 622 (2005) in support of his allegation. Deck held that a criminal defendant has a right to remain free of physical restraints that are visible to the jury absent a trial court determine that they are justified by a state interest specific to a particular trial. This Court finds Applicant's testimony not credible on the issue. Applicant's testimony is self-serving and unsupported by any evidence before the Court. Applicant has failed to present any probative evidence that his shackles were ever visible to the jury. This Court finds Applicant failed to meet his burden in proving Counsel was ineffective as he had not shown there to have been an objectionable issue with any credible evidence.

Applicant has also failed to show how he was prejudiced in any manner because there is overwhelming evidence of his guilt. In Humbert v. State, 345 S.C. 332 (2001), the supreme court faced the issue of whether the PCR court erred in finding no prejudice where the applicant was wearing a jail uniform and shackles during his trial. The court held that there was not a reasonable probability that he outcome of the trial would have been different had he not been dressed in a jail uniform. Humbert v. State, 345 S.C. at 338. See Byers v. Basinger, 610 F.3d 980, 989 n.6 (7th Cir. 2010) (finding that even if a defendant proceeds to a jury trial while

¹ Applicant's trial counsel, Carol A. McCurry (Counsel), did not testify at the PCR hearing. She has moved out of state and was unwilling to participate in the proceeding. Applicant made a motion to compel Counsel's compliance with a subpoena in turning over her defense file. This Court issued an Order on February 12, 2015, which gave Counsel thirty (30) days to obtain access to her file and to turn it over to Applicant. The Court also suggested that a deposition be scheduled to take her testimony. Counsel did not comply with this Order. The parties agreed to go forward without her file and testimony.

Handwritten signature/initials

wearing ankle restraints, he must still prove his appearance affected the outcome of his trial); Whitman v. Bartow, 434 F.3d 968, 971-72 (7th Cir. 2006) (finding any error in having the defendant proceed to a jury trial while wearing a prison jumpsuit was harmless because the State presented overwhelming evidence of the defendant's guilt); see also 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).

Here, even assuming Applicant was wearing shackles that were seen by the jury prior to jury selection, this Court finds no prejudice resulted. The facts in Humbert are more egregious than the facts here because the applicant in Humbert was wearing a jail uniform plainly visible to all. Here, Applicant was allegedly wearing handcuffs throughout the trial that may or may not have been seen by the jury. Applicant cannot show that the result of the trial likely would have been different if his restraints were not visible to the jury. Applicant entered This Is It Video, an adult video store, and robbed the cashier, Michael Vazquez. Applicant told Vazquez that he had something in his pocket which Vazquez believed to be a weapon. Applicant hit Vazquez in the face and absconded with around one-hundred dollars (\$100). Law enforcement received a Crimestoppers tip that Applicant was involved in the robbery. A photo line-up was compiled and Applicant was identified by Vazquez. The robbery was captured on video surveillance which showed Applicant committing the crime. Applicant gave a full confession to law enforcement after his arrest where he admitted that he robbed the store but stated that the box cutter did not have a blade in it. Furthermore, the jury deliberated less than two hours before they found Applicant guilty. See Dugas v. Coplan, 428 F.3d 317, 335 n.28 (1st Cir. 2005) (The court has looked not only to the strength of inculpatory evidence, but also the brevity of the jury's

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deliberations). There is clearly overwhelming evidence to support the jury's conviction. This Court denies and dismisses this allegation with prejudice.

Failing to properly prepare and form a defense strategy

Applicant alleges Counsel was ineffective in failing to prepare the case for trial. He argues Counsel did not present the proper facts to support a jury instruction on strong arm robbery. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). This Court finds Applicant has failed to meet his burden in proving prejudice. The evidence against Applicant was very strong which made Counsel's job much more difficult. It was Counsel's strategy to challenge the State's evidence, argue Applicant was under the influence of drugs, and highlight that the victim did not feel threatened. This was certainly reasonable under the circumstances of the case. Applicant has not presented any alternative defense or strategy that would have been stronger. Counsel cannot be held ineffective just because the State had a very strong case against Applicant. Furthermore, as discussed above Applicant cannot prove prejudice because there was overwhelming evidence of his guilt. This allegation is denied and dismissed.

Failing to move to strike a juror who knew an employee of the solicitor's office

Next, Applicant alleges Counsel was ineffective for failing to move to strike a juror who knew an employee of the solicitor's office. A defendant has a constitutional right to be tried by competent jurors, which implies a tribunal both impartial and mentally competent to afford a hearing. U.S.C.A. Const.Amend. 6. State v. Bell, 374 S.C. 136, 646 S.E.2d 888 (Ct. App. 2007). A decision on whether to dismiss a juror and replace her with an alternate is within the sound

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discretion. Id at 147, 894. This Court finds Applicant failed to meet his burden in proving that Counsel was ineffective. The prosecuting solicitor brought this issue to Judge Manning's attention. (Trial Tr. p. 58, lines 5-22; p. 106, lines 1-3). The employee was a law clerk with the solicitor's office and a swim team coach at the Jewish Community Center. (Trial Tr. p. 106, lines 6-17). The juror had two children on the swim team coached by the employee. (Trial Tr. p. 106, lines 18-21). Counsel then requested that Judge Manning inquire into the juror to see if she can remain fair and impartial and if she did in fact know any employees at the solicitor's office. The juror reiterated her answer that she did not know any employees of the solicitor's office. (Trial Tr. p. 109, lines 16-24). The juror then responded that she would remain fair and impartial. (Trial Tr. p. 111, lines 11-17). Counsel then noted that she did not have any objection. (Trial Tr. p. 112, line 1).

This Court finds Applicant failed to prove Counsel was ineffective in failing to move to strike the juror at that stage of the trial. Additionally, Judge Manning's colloquy with the juror showed that she could be fair and impartial. An objection to the juror remaining or a motion to strike the juror would have been baseless considering the juror's answers to Judge Manning's questions. This Court further finds Applicant has failed to prove he was prejudiced. Judge Manning would not have struck the juror after she informed him that she did not know the employee well, had not had many conversations with him, and that she could remain fair and impartial. This allegation is denied and dismissed with prejudice.

Failing to challenge the victim's identification through a photo lineup

Applicant next alleges Counsel was ineffective for failing to object to the victim's identification of Applicant through a photo lineup. Applicant argues that a Counsel should have

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requested that a Neil v. Biggers² hearing be held. This Court cannot make an informed decision of whether Counsel was ineffective in this regard because no evidence was presented on whether the identification was suggestive. It is possible that Counsel made the strategic decision not to challenge the identification because it would have been frivolous, but absent the victim being called to testify as to the specifics of the identification procedure, this Court will not presume deficiency. This allegation rests entirely on speculation because Applicant did not present any evidence to show that the lineup and lineup procedure was unduly suggestive. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) (“failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result.”). As noted, Applicant also cannot show prejudice. This allegation is denied and dismissed.

Failing to move call Applicant as a witness during the Jackson v. Denno hearing

Applicant also alleges Counsel was ineffective for failing to call Applicant as a witness during the Jackson v. Denno hearing. Applicant testified that he was high on cocaine and heroin when he made his statement and that he had been on a bender for nine (9) days prior to the robbery. He alleges that he did not make his statement knowingly and voluntarily because of his intoxicated condition and that Judge Manning would have suppressed his statement had he given that testimony at the Denno hearing. This Court finds this contention without merit.

“The fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words.” State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 113, 117 (1973). “Therefore, proof that an accused was intoxicated at the time he made a confession does not render the statement inadmissible as a

² Neil v. Biggers, 409 U.S. 188 (1972).

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saying.” Id. Judge Manning properly found that his statement was given knowingly and voluntarily and ruled that it was admissible. The investigator testified that Applicant told him he took a break from smoking crack and believed Applicant to be fully coherent and not under the influence of drugs. (Trial Tr. p. 91, line 14 – p. 92, line 11). He also testified that he has interviewed suspects who were on crack cocaine but did not believe Applicant to be high at the time. (Trial Tr. p. 86, line 21 – p. 87, line 2). This Court finds that Applicant would not have persuaded Judge Manning to suppress the statement with his testimony that he was intoxicated. Specifically with regards to Counsel’s failure to call Applicant as a witness, Counsel was able to argue this point without having Applicant testify as she aptly cross examined the investigator on this topic. (Trial Tr. p. 86-87). Furthermore, Applicant cannot show any prejudice from this alleged deficiency.

Failing to object to a Crimestoppers tip

Finally, Applicant alleges Counsel was ineffective in failing to object to testimony regarding an anonymous Crimestoppers tip. Applicant argues Counsel should have moved to have the tip and all evidence obtained therefrom suppressed. This Court disagrees and finds the testimony concerning the anonymous tip was properly admitted. Any challenge to the tip would have to be made as a challenge to the officer’s reasonable suspicion that Applicant was involved in the crime. This Court finds there was adequate reasonable suspicion in acting on the anonymous tip that Applicant committed the robbery and that he could be found walking on Broad River Road. Any challenge to the tip would have been fruitless. The required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip. State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665

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able to match stills from the surveillance videos to known photographs of Applicant. They were able to confirm that he was in fact walking along Broad River Road. The investigator's reliance on the tip was further justified because the anonymous tipster was known to the investigators. See State v. Driggers, 322 S.C. 506, 511, 473 S.E.2d 57, 60 ("[A] non-confidential informant should be given higher level of credibility because he exposes himself to public view and to possible criminal and civil liability should the information he supplied prove to be false."). Additionally, there was testimony presented at trial that investigators believed Investigator Scott McDonald knew Applicant and was able to corroborate the anonymous tip. (Trial Tr. p. 81, line 17 – p. 82, line 16). As noted, Applicant cannot prove any resulting prejudice due to the overwhelming evidence of his guilt.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days

appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 10 day of December, 2015.



G. THOMAS COOPER, JR.
Presiding Judge

Columbia, South Carolina

AMENDED
DOCKET NO. 2007-GS-40-1683

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

April TERM 2007

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THE STATE
vs.

Michael Jackson

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

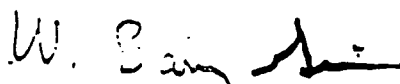
INDICTMENT

At a Court of General Sessions, convened on April 18, 2007, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Michael Jackson did in Richland County on or about February 5, 2007, commit robbery by feloniously taking from the person or presence of Michael Vasquez an employee of This Is It Video by means of force or intimidation goods or monies of This is It Video, such goods or monies being described as: US Currency and/or Credit Card Receipts, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of SC Code of Laws § 16-11-330(A).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WARREN B. GIESE, SOLESTOR