

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RAYMOND SMILEY,

APPELLANT

APPELLATE CASE NO. 2015-002002

RECORD ON APPEAL

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SC Court of Appeals

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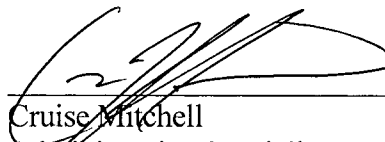
RAYMOND SMILEY,

APPELLANT

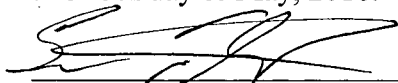
APPELLATE CASE NO. 2015-002002

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 25th day of May, 2016.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 25th day of May, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
STATE'S EXHIBIT # 1 (VIDEO SURVEILLANCE)**

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2014-GS-26-5250

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	September 8-10, 2015
	)	
Raymond Smiley,	)	
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

George DeBusk, Esquire
Attorney for Plaintiff

Edward Chrisco, Esquire
Attorney for Defendant

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

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1 determine the inferences which you feel may properly be drawn
2 from that evidence.

3 It is especially important that you perform your duty of
4 determining the facts diligently and conscientiously because
5 ordinarily there is no way to correct an erroneous
6 determination of the facts by a jury. On the other hand, and
7 with equal emphasis, the same law that makes you the judge of
8 the facts of this case makes me the judge of the law. The law
9 as given by the Court is the only law that you can consider.
10 You must accept and follow the law as I give it to you, even
11 though you may disagree with it. Just as I cannot tell you
12 what the facts of this case are, you cannot disagree with me
13 about the law to be applied in this case. Your job is to take
14 the law as I give it to you and apply it to the facts as you
15 find those facts to be from the testimony of the witnesses and
16 any other evidence that is introduced. After doing that, you
17 will then render your verdict, a true and just verdict under
18 the solemn oath that you just took as jurors. Now, until I
19 advise you to begin your deliberations, you must not discuss
20 this case with anyone, including your fellow jurors. Do not
21 discuss it with any friends, family members or anyone involved
22 in the case. After the case is submitted to you, you can then
23 discuss it, but only in the jury room with your fellow jurors.
24 The attorneys and parties in this case have been advised that
25 they're not to talk to you at all. So they're not being rude.

Opening Instructions by Court

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1 their clients' interests.

2 Now, what I now say to you is to serve as an introduction
3 to the trial of this case. These remarks are not a charge on
4 the law. I will instruct you on the law applicable to this
5 case at the end of the trial before you retire to consider
6 your verdict. This is merely an explanation of the procedure
7 that we will follow in the trial of this case so that you can
8 better understand what's happening.

9 Now, the Defendant is charged by an indictment. Here's
10 the indictment, and the Defendant is charged by an indictment
11 with the crime of armed robbery. Now, the elements of that
12 crime I'll explain to you at a later time. Now, this
13 indictment is simply the charge by which the case is brought
14 into court, and it is not in any sense evidence of any of the
15 allegations contained in it. The Defendant has pled not
16 guilty to this indictment, and the State, therefore, has the
17 burden of proving each of the elements of the indictment
18 beyond a reasonable doubt. It will be your duty, ladies and
19 gentlemen, to decide whether or not the State has met that
20 burden. Your purpose as jurors is to find and determine the
21 facts of this case. You are the sole judge of the facts of
22 this case. If at any time I make any comment regarding the
23 facts of this case, you must disregard my comments. You are
24 to determine the facts from the testimony you hear and the
25 other evidence introduced in court. It is up to you to

1 THE COURT: All right. Very well. Thank you.

2 Now, ladies and gentlemen, as I told you during voir
3 dire, we're getting ready to start the trial of the case of
4 the State of South Carolina versus Raymond Smiley. Now,
5 before we start this trial, I need to go over some
6 instructions with you or some preliminary charges. I know
7 from watching TV shows, movies, reading books for
8 entertainment purposes and things of that nature, trials are
9 often full of a lot of action, a lot of suspense, a lot of
10 excitement, and while that might be the case in this trial, it
11 probably won't be. The primary function of this trial is a
12 search for the truth, what happened, and that is often a slow,
13 deliberate, repetitive process, the exact opposite of what you
14 might be accustomed to when you watch trials for entertainment
15 purposes or read about them in magazines or books or whatever
16 the case may be. However, I do hope you find this case
17 educational. I hope you find this trial informative, and I
18 want to thank you from the outset for serving as jurors in
19 this case.

20 The attorneys appearing before you are advocates for the
21 parties they represent, but first and foremost, they are
22 officers of the court. They're sworn to uphold the integrity
23 and the fairness of our judicial system and to help you in a
24 search for the truth. Now, you should expect them to be
25 professional, competent and ethical in the representation of

Opening Instructions by Court

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1 THE COURT: All right. Mr. Schavitz, I understand you've
2 been selected as foreperson; is that correct?

3 MR. SCHAVITZ: Yes, sir.

4 THE COURT: All right. Thank you. If you would always
5 -- thank you for serving in that capacity, first of all, and
6 if you'd always occupy the seat where you now sit and is it
7 Ms. Reyes? Am I pronouncing that correctly?

8 MS. REYES: Reyes.

9 THE COURT: Reyes, I apologize. Ms. Reyes, as the
10 alternate, if you would always occupy the seat where you now
11 sit unless you become a member of the, the 12 jury panel. The
12 rest of you are at liberty to sit in whatever seat you like,
13 whether it be the same seat throughout the trial of the case,
14 whether or not you alternate seats during the trial of the
15 case, just whatever makes you feel more comfortable.

16 Now, before we begin this trial, just like qualifications
17 and voir dire, jurors are constantly taking oaths. So I'll
18 need you to stand and raise your right hand while the clerk
19 administers the oath for you to serve as jurors on this
20 particular case.

21 (Jury is sworn by the clerk.)

22 THE COURT: All right. Is there any member of the jury
23 that did not respond to the oath by saying, "I do"? If so,
24 please stand.

25 (No response.)

1 a motion to sequester all witnesses in the case. I think it's
2 already been done, but --

3 THE COURT: Any objection?

4 MR. DEBUSK: They're sequestered, Your Honor, except for
5 my chief investigator.

6 THE COURT: All right. So, so the Defendant will be
7 allowed in the courtroom and Chief Karen Shepherd; is that
8 correct?

9 MR. DEBUSK: Yes, Your Honor.

10 THE COURT: All right. Those two will be allowed in the
11 courtroom. All other witnesses will be sequestered by
12 consent. Okay. What's today, the 9th?

13 MR. DEBUSK: Yes, Your Honor.

14 THE COURT: All right. Anything further from the Defense
15 before we bring the jury in?

16 MR. CHRISCO: No, Your Honor.

17 THE COURT: All right. Where's everybody? Let's bring
18 the jury in.

19 (Whereupon, the following takes place in the presence of
20 the jury.)

21 THE COURT: All right. Ladies and gentlemen, welcome
22 back. I understand, Schavitz?

23 MR. SCHAVITZ: Yes.

24 THE COURT: Is that how you pronounce it?

25 MR. SCHAVITZ: Correct.

Motions

55

1 MR. DEBUSK: No, Your Honor.

2 THE COURT: Any by the Defense?

3 MR. CHRISCO: No, Your Honor.

4 THE COURT: All right.

5 (Remaining panel dismissed by Court with call-in
6 instructions.)

7 MR. CHRISCO: Your Honor, may we approach?

8 THE COURT: Yeah. Come on up.

9 (Whereupon, a bench conference is held.)

10 THE COURT: All right. We'll stand in recess for --
11 until they select a foreperson. All right.

12 OFF THE RECORD

13 (On the record. The following takes place outside the
14 presence of the jury.)

15 THE COURT: All right. The jury has selected Juror 316,
16 Curt B. Schavitz, as the foreperson. Let's -- we'll mark that
17 as Court's Exhibit -- what would that be, One, Two, Court's
18 Exhibit Two.

19 (Court's Exhibit Number Two [Foreperson Selection]
20 appropriately marked.)

21 THE COURT: All right. Anything from the State before we
22 bring the jury in?

23 MR. DEBUSK: No, Your Honor.

24 THE COURT: Anything from the Defense?

25 MR. CHRISCO: Yes, Your Honor. The Defense would have

1 will always occupy this first seat on the front row closest to
2 the witness stand. Ms. Reyes, as the alternate, you would
3 always occupy your seat, and since you are an alternate at
4 this point in time you would not be eligible to serve as
5 foreperson, but anyone else can serve as foreperson. Now, the
6 foreperson has absolutely no more authority, no more
7 influence, no more importance than any other juror. The sole
8 function of the foreperson is to act as a liaison between the
9 Court and the jury. If the jury has a question, the
10 foreperson lets the Court know. If the jury has a need, the
11 foreperson lets the Court know. When it's time to deliberate
12 the foreperson will preside over the deliberations, but other
13 than that, the foreperson has no more authority, no more
14 influence, no more importance than any other juror. So I'm
15 going to excuse you back to the jury room for just a few
16 minutes, and when you come back in, the foreperson will occupy
17 the first seat. Ms. Reyes, you'd always occupy yours. If you
18 can select a foreperson, just write his or her name on a sheet
19 of paper with the jury number, give it to the bailiff and
20 we'll bring you back into the court at that time. Okay.
21 Thank you very much.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. Any challenges to the selection
25 or composition of the jury by the State?

Jury Selection

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1 THE CLERK: Please be seated in the jury box.

2 THE COURT: All right. Let's choose an alternate. The
3 State gets one strike, Defense gets two.

4 THE CLERK: 298, Wendy Reyes.

5 MR. CHRISCO: Number again?

6 THE CLERK: 298.

7 What say the State?

8 MR. DEBUSK: Please present the juror.

9 THE CLERK: Defense?

10 MR. CHRISCO: Seat the juror.

11 THE CLERK: Please be seated in the jury box.

12 THE COURT: All right. Ladies and gentlemen, you will be
13 the jury that will preside over this case. I'm going to
14 excuse you back to the jury room for just a few minutes while
15 I release the remainder of the jury panel. It'll show you
16 where you will be going when we take breaks during the trial
17 of this case. While you're in the jury room if I could get
18 you to do me a favor and that would be to select a foreperson
19 for this jury. Now, I understand you may not know everyone
20 and you may not be able to select a foreperson, and if you
21 can't, don't worry about it. That's fine. I can appointment
22 someone to serve as foreperson. Many judges appoint their own
23 foreperson, but I like to give the jury the opportunity to
24 select one on their own accord, if they are able to do so.
25 Now, when you come back into the courtroom, the foreperson

1 Please excuse the juror in the trial of this case.
2 THE CLERK: You're excused from this particular case.
3 121, Christie Gallagher.
4 What say the State?
5 MR. DEBUSK: Please present the juror.
6 THE CLERK: Defense?
7 MR. CHRISCO: Please excuse the juror in the trial of
8 this case.
9 THE CLERK: You're excused from this particular case.
10 21, Jean Bennett.
11 What say the State?
12 MR. DEBUSK: Please present the juror.
13 THE CLERK: Defense?
14 MR. CHRISCO: Present the juror.
15 THE CLERK: Please be seated in the jury box.
16 1, Amber Anderson.
17 What say the State?
18 MR. DEBUSK: Please present the juror.
19 THE CLERK: Defense?
20 MR. CHRISCO: Seat the juror.
21 THE CLERK: 228, Charles Mauldin.
22 What say the State?
23 MR. DEBUSK: Please present the juror.
24 THE CLERK: Defense?
25 MR. CHRISCO: Seat the juror.

Jury Selection

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1 What say the State?

2 MR. DEBUSK: Please present the juror.

3 THE CLERK: Defense?

4 MR. CHRISCO: Please excuse the juror in the trial of
5 this case.

6 THE CLERK: You're excused from this particular case.
7 182, Mary Johnson.

8 What say the State?

9 MR. DEBUSK: Please present the juror.

10 THE CLERK: Defense?

11 MR. CHRISCO: Seat the juror.

12 THE CLERK: Please be seated in the jury box.
13 160, Michelle Hicks.

14 What say the State?

15 MR. DEBUSK: Please present the juror.

16 THE CLERK: Defense?

17 MR. CHRISCO: I can't read my notes, Your Honor. I'd
18 like to inquire as to what her occupation is.

19 THE COURT: Ms. Hicks?

20 MS. HICKS: Payment analyst with Practice Management
21 Group.

22 THE COURT: I'm sorry. Payment analyst with what?

23 MS. HICKS: Practice Management Group.

24 THE COURT: All right. Thank you.

25 MR. CHRISCO: Thank you.

Jury Selection

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1 363, Heather Truncer.

2 MR. CHRISCO: Number again?

3 THE CLERK: 363.

4 What say the State?

5 MR. DEBUSK: Please present the juror.

6 THE CLERK: Defense?

7 MR. CHRISCO: Your Honor, may I inquire as to what her

8 occupation is?

9 THE COURT: All right. Ms. -- is it Truncer?

10 MS. TRUNCER: Yes.

11 THE COURT: All right. Do you work?

12 MS. TRUNCER: I'm retired.

13 THE COURT: You're retired from what?

14 MS. TRUNCER: Pharmaceutical manufacturing.

15 THE COURT: All right. Thank you.

16 MR. CHRISCO: Please excuse the juror in the trial of

17 this case.

18 THE CLERK: You're excused from this particular case.

19 354, Brandy Tankersley.

20 What say the State?

21 MR. DEBUSK: Please present the juror.

22 THE CLERK: Defense?

23 MR. CHRISCO: Seat the juror.

24 THE CLERK: Please be seated in the jury box.

25 379, James Webb.

Jury Selection

49

1 What say the State?

2 MR. DEBUSK: Please present the juror.

3 THE CLERK: Defense?

4 MR. CHRISCO: Seat the juror.

5 THE CLERK: Please be seated in the jury box.

6 340, Kaleigh Smith.

7 MR. CHRISCO: What was that number?

8 THE CLERK: 340.

9 What say the State?

10 MR. DEBUSK: Please present the juror.

11 THE CLERK: Defense?

12 MR. CHRISCO: Seat the juror.

13 THE CLERK: Please be seated in the jury box.

14 20, Hattie Bennett.

15 What say the State?

16 MR. DEBUSK: Please present the juror.

17 THE CLERK: Defense?

18 MR. CHRISCO: Please excuse the juror.

19 THE CLERK: You're excused from this particular case.

20 18, Dennis Bellamy.

21 What say the State?

22 MR. DEBUSK: Please present the juror.

23 THE CLERK: Defense?

24 MR. CHRISCO: Seat the juror.

25 THE CLERK: Please be seated in the jury box.

1 22, Michael Benson.
2 What say the State?
3 MR. DEBUSK: Please present the juror.
4 THE CLERK: Defense?
5 MR. CHRISCO: Please excuse the juror in the trial of
6 this case.
7 THE CLERK: You're excused from this particular case.
8 16, Angelika Bellamy.
9 What say the State?
10 MR. DEBUSK: Please excuse the juror.
11 THE CLERK: You're excused from this particular case.
12 223, Jonathan Marlowe.
13 MR. CHRISCO: What was that number?
14 THE CLERK: 223.
15 What say the State?
16 MR. DEBUSK: Please present the juror.
17 THE CLERK: Defense?
18 MR. CHRISCO: Please excuse the juror in the trial of
19 this case.
20 THE CLERK: You're excused from this particular case.
21 303, Curtis Robertson.
22 What say the State?
23 MR. DEBUSK: Please excuse the juror.
24 THE CLERK: You're excused from this particular case.
25 388, Ruth Wilkerson.

Jury Selection

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1 MR. DEBUSK: Please present the juror.
2 THE CLERK: Defense?
3 MR. CHRISCO: Seat the juror.
4 THE CLERK: Please be seated in the jury box.
5 378, Vera Watson.
6 What say the State?
7 MR. DEBUSK: Please present the juror.
8 THE CLERK: Defense?
9 MR. CHRISCO: Seat the juror.
10 THE CLERK: Please be seated in the jury box.
11 238, Chad McWhorter.
12 What say the State?
13 MR. DEBUSK: Please present the juror.
14 THE CLERK: Defense?
15 MR. CHRISCO: Please excuse the juror in the trial of
16 this case.
17 THE CLERK: You're excused from this particular case.
18 359, Susan Techtmann.
19 MR. CHRISCO: That was what number?
20 THE CLERK: 359.
21 What say the State?
22 MR. DEBUSK: Please present the juror.
23 THE CLERK: Defense?
24 MR. CHRISCO: Seat the juror.
25 THE CLERK: Please be seated in the jury box.

Jury Selection

46

1 MR. DEBUSK: Five and ten, Your Honor.

2 THE COURT: Five and ten. All right.

3 THE CLERK: Juror Number 268, James Park.

4 What say the State?

5 MR. DEBUSK: Please present the juror.

6 THE CLERK: Defense?

7 MR. CHRISCO: Please excuse the juror in the trial of
8 this case.

9 THE CLERK: You're excused from this particular case.
10 316, Curt Schavitz.

11 What say the State?

12 MR. DEBUSK: Please present the juror.

13 THE CLERK: Defense?

14 MR. CHRISCO: Seat the juror.

15 THE CLERK: Please be seated in the jury box.

16 THE COURT: Come over here. Thank you.

17 THE CLERK: 375, Mickey Ward.

18 What say the State?

19 MR. DEBUSK: Please present the juror.

20 THE CLERK: Defense?

21 MR. CHRISCO: Please excuse the juror in the trial of
22 this case.

23 THE CLERK: You're excused from this particular case.

24 61, Virginia Collier.

25 What say the State?

Voir Dire

45

1 reason whatsoever why he or she should not serve as a juror in
2 this case with particular emphasis being placed on your
3 ability to be fair and impartial to both the State and the
4 Defendant? If so, please stand.

5 (No response.)

6 THE COURT: All right. Any additional questioning from
7 the State?

8 MR. DEBUSK: None, Your Honor.

9 THE COURT: Any from the Defense?

10 MR. CHRISCO: None, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, what
12 happens at this time, your names have been fed into a computer
13 and generated on a list at random and the clerk will call
14 those names according to the order in which they appear on the
15 list. If your name is called, if you could please come
16 forward and stand here in front of the attorneys, turn and
17 face the attorneys, bring with you any pocketbooks, coats,
18 umbrellas, whatever you might have. The State gets a certain
19 number of strikes. The Defendant has a certain number of
20 strikes, and we go through this procedure until we get a jury
21 of 12 and an alternate. So please listen carefully, and if
22 your name is called, please come forward, stand here in front
23 of my court reporter and face the attorneys, and you'll get
24 further instructions. All right? This is a -- is it five and
25 five? Okay.

1 Anyone else been the victim of a violent crime or had a
2 family member or close personal friend that is the victim of
3 or has been the victim of a violent crime? If so, please
4 stand.

5 (No response.)

6 THE COURT: Is any member of the jury panel aware of any
7 bias or prejudice towards either the State of South Carolina
8 or the Defendant in this case? If so, please stand.

9 (No response.)

10 THE COURT: Is any member of the jury panel a member of
11 the Grand Jury that issued the indictment in this case? If
12 so, please stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel that is
15 a member of or a contributor to any group which has as its
16 primary concern the promotion of law enforcement or victims'
17 rights? Now, some of these organizations are Mothers Against
18 Drunk Drivers, also known as MADD; Students Against Drunk
19 Drivers, also referred to as SADD; Citizens Against Spousal
20 Abuse, also referred to as CASA; and CAVC, Citizens Against
21 Violent Crimes or any similar type organization? If you're a
22 member of or a contributor to such organizations, if so,
23 please stand.

24 (No response.)

25 THE COURT: Does any member of the jury panel know of any

Voir Dire

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1 THE COURT: 261, all right. Ms. Olson, if you'd come
2 forward, please.

3 (Whereupon, an off-the-record bench conference is held
4 with Juror Number 261, counsel for the State and counsel for
5 the Defendant.)

6 THE COURT: All right. I'm excusing Juror 261, Rebecah
7 Olson from this case.

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

9 MS. JOHNSON: I'm 182.

10 THE COURT: Mary A. Johnson?

11 MS. JOHNSON: Yes.

12 THE COURT: All right. Ms. Johnson, if you'd come
13 forward, please.

14 (Whereupon, an off-the-record bench conference is held
15 with Juror Number 182, counsel for the State and counsel for
16 the Defendant.)

17 THE COURT: Yes, ma'am. Your name and number?

18 MS. GAUSE: 125, Cora Gause.

19 THE COURT: All right. Ms. Gause, if you'd come forward,
20 please.

21 (Whereupon, an off-the-record bench conference is held
22 with Juror Number 125, counsel for the State and counsel for
23 the Defendant.)

24 THE COURT: Juror Number 125, Cora L. Gause, is excused
25 from this case.

1 (Whereupon, an off-the-record bench conference is held
2 with Juror Number 38, counsel for the State and counsel for
3 the Defendant.)

4 THE COURT: All right. I'm going to excuse Juror 38,
5 Ms. Brock, from this case.

6 THE COURT: All right, sir. Your name and number?

7 MR. BAR HAI: Number 12, Shmuel Bar Hai.

8 THE COURT: Hold for one second. All right. You're
9 going to have to pronounce your name again for me.

10 MR.. BAR HAI: Shmuel Bar Hai.

11 THE COURT: All right. Mr. Bar Hai, if you'd come
12 forward, please.

13 (Whereupon, an off-the-record bench conference is held
14 with Juror Number 12, counsel for the State and counsel for
15 the Defendant.)

16 THE COURT: All right. The lady in the aqua colored
17 shirt, your name and number?

18 MS. DICKINSON: 88, Carey Dickinson.

19 THE COURT: All right. Ms. Dickinson, if you'd come
20 forward, please.

21 (Whereupon, an off-the-record bench conference is held
22 with Juror Number 88, counsel for the State and counsel for
23 the Defendant.)

24 THE COURT: Yes, ma'am, your name and number?

25 MS. OLSON: Rebecah Olson, 261.

Voir Dire

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1 THE COURT: Is any member of the jury panel ever been
2 represented by either of these attorneys? If so, please
3 stand.

4 (No response.)

5 THE COURT: Has any member of the jury panel ever been
6 involved in any legal action in which either of these
7 attorneys represented another party to that action? If so,
8 please stand.

9 (No response.)

10 THE COURT: Is there any member of the jury panel who
11 either personally, has a family member or close personal
12 friend employed with the 15th Circuit Solicitor's Office or the
13 Horry County Public Defender's Office? If so, please stand.

14 (No response.)

15 THE COURT: Has any member of the jury panel formed or
16 expressed an opinion about any issue or matter involved in
17 this case? If so, please stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel either
20 personally, had a family member or close personal friend that
21 has been the victim of a violent crime? If so, please stand.

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

23 MS. BROCK: Caroline Brock, 38.

24 THE COURT: All right. Ms. Brock, if you'd come forward,
25 please. If you all want to come on up.

1 Miller of the Loris Police Department; Officer Eric Stevens of
2 the Loris Police Department; Logan Sawyers; Julia Smiley;
3 Sandy Lowe; Willis Boyd; Cassandra Floyd; Rashawn Corey; James
4 Goodman; Alice Miller; Tom Shea; Van Carl Simmons; Devaras
5 Spane; Joseph Eric Stevens; Brenda Strickland; Wilson Suggs;
6 Larry Williams; and Joe Vaught. Is there any member of the
7 jury panel related by blood or marriage, have a close personal
8 relationship, business relationship, social relationship or
9 any other type of relationship with any of these potential
10 witnesses? If so, please stand.

11 (No response.)

12 THE COURT: Is there any member of the jury panel who
13 either personally, has a close personal friend or a family
14 member employed with the Wilco Hess station in Loris, South
15 Carolina? If so, please stand.

16 (No response.)

17 THE COURT: Prosecuting this case on behalf of the State
18 of South Carolina is Attorney George DeBusk. The Defendant's
19 attorney is Attorney W. William -- excuse me, W. Edward
20 Chrisco. Is there any member of the jury panel related by
21 blood or marriage, have a close personal relationship,
22 business relationship, social relationship or any type of
23 relationship with either of these attorneys? If so, please
24 stand.

25 (No response.)

Voir Dire

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1 questions with you. If there is any of them are applicable to
2 you, please let me know. As I said, we're getting ready to
3 start the trial of the State of South Carolina versus Raymond
4 Smiley. The allegations contained in the indictment against
5 Mr. Smiley allege that on or about August the 23rd, 2014, while
6 armed with a deadly weapon that Mr. Smiley robbed the Wilco
7 Hess. I believe this was in Loris. Is that correct?

8 MR. DEBUSK: Yes, Your Honor.

9 THE COURT: Okay. In Loris, South Carolina, as I said,
10 this happening on or about August the 23rd, 2014, according to
11 the indictment. Now, is there any member of the jury panel
12 that has heard anything, read anything, discussed anything or
13 knows anything about his case? If so, please stand.

14 (No response.)

15 THE COURT: All right. As I said, the Defendant in this
16 case is Raymond Smiley. Is there any member of the jury panel
17 related by blood or marriage, have a close personal
18 relationship, business relationship, social relationship or
19 any other type of relationship with Mr. Smiley? If so, please
20 stand.

21 (No response.)

22 THE COURT: All right. Please listen carefully as these
23 are the potential witnesses who may testify in this case:
24 Chief Karen Shepherd of the Loris Police Department; Officer
25 Chad Suggs of the Loris Police Department; Officer Alicia

1 (On the record, September 9, 2015, State v. Raymond Smiley,
2 2014-GS-26-5250. The following takes place in the presence of
3 the jury venire.)

4 THE COURT: All right. Good morning, ladies and
5 gentlemen. Welcome back. We are getting ready to start the
6 trial of the case of the State of South Carolina versus
7 Raymond Smiley. Now, I've got some questions to go over with
8 you. You have all been qualified to serve as jurors for this
9 term of General Sessions Court, but the next series of
10 questions I have to go over with you are what's called voir
11 dire questioning, that is to determine whether or not you're
12 qualified to serve as jurors on this particular case, and it
13 also gives the attorneys some additional information that
14 assists them in the jury selection process. So as I told you
15 yesterday during qualifications, jurors, just like witnesses,
16 are constantly taking oaths. So if I could please get all
17 members of the jury panel to stand and raise your right hand.

18 (Jury venire is sworn by the Court.)

19 THE COURT: Thank you very much. Please be seated.

20 First of all, is there any member of the jury panel that
21 did not respond to the oath by saying, "I do"? If so, please
22 stand.

23 (No response.)

24 THE COURT: All right. Now, oh, thank you. All right.
25 Ladies and gentlemen, please listen up as I go over these

Motions

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1 -- I'll take the bench at 9:30. I'll be here at nine. The
2 jury's coming in at 9:15. Okay?

3 MR. DEBUSK: Yes, Your Honor.

4 THE COURT: All right.

5 MR. CHRISCO: Thank you, Your Honor.

6 THE COURT: Sounds good. Thank you.

7 (Adjourned for day.)

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1 THE COURT: All right. Anything else? Well, so Mr.
2 Chrisco, you need to -- does he know which order or how you
3 want them here or --

4 MR. CHRISCO: I will tell him in the morning, Your Honor.

5 THE COURT: Okay. All right.

6 MR. DEBUSK: Yeah.

7 THE COURT: Then we'll do it that way. All right.

8 MR. DEBUSK: And we'll, we'll stage them in, Your Honor.

9 THE COURT: All right. Please just tell them to be ready
10 so that they can get down here as quickly, you know, without
11 too much delay. Okay?

12 MR. DEBUSK: We will, Your Honor.

13 THE COURT: All right.

14 MR. CHRISCO: Not to rehearse too much.

15 THE COURT: All right. Anything further?

16 MR. DEBUSK: Nothing from the State, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. CHRISCO: No, Your Honor.

19 THE COURT: All right. I've got the Clerk of Court to
20 tell them to have the jury panel in at 9:15. They'll pull a
21 panel. So we'll draw the jury at 9:30. Okay. All right.
22 And we'll get started. Anything further from the State on any
23 issue?

24 MR. DEBUSK: But not to -- nothing.

25 THE COURT: Okay. All right. We'll be in recess until

Motions

35

1 THE COURT: Well, I mean, if, if, if they're witnesses
2 and they're under subpoena, I'll leave it up to the Defense.
3 If you want them all here, we'll have them all here. If you
4 don't mind waiting to release one and get the other one here,
5 I'll do it.

6 MR. CHRISCO: We can do that, Your Honor.

7 THE COURT: Huh?

8 MR. CHRISCO: We can do that. I'm, I'm willing to be --

9 THE COURT: Okay. We'll do it however...

10 MR. DEBUSK: That's, that's all I'm asking, Your Honor.

11 THE COURT: Okay. Well, I mean, it's --

12 MR. CHRISCO: I'm willing to bend.

13 THE COURT: -- Rules of Evidence apply equally to the
14 Defense and to the State. So if the Defense -- is it
15 agreeable to just have them here one at a time, and --

16 MR. CHRISCO: One at a time, Your Honor.

17 THE COURT: Okay. If they agree to it then I'll do it.

18 MR. DEBUSK: Thank you, Your Honor.

19 THE COURT: But I'm going to afford them all the time
20 they need --

21 MR. DEBUSK: Understood. Understood.

22 THE COURT: -- you know, between witnesses to get them
23 here. Because, like I say, what's good for one side is good
24 for the other. Okay?

25 MR. DEBUSK: Yes, sir. Thank you, Your Honor.

1 MR. DEBUSK: No, Your Honor.

2 THE COURT: All right. All right. I find that the
3 statement is voluntarily made, and therefore, admissible at
4 trial.

5 MR. DEBUSK: Thank you, Your Honor. One final issue for
6 the State, Mr. Chrisco, at his request I, I subpoenaed several
7 officers that he may need to testify. The sergeant of those
8 officers, Sergeant Strickland from the County, he called and
9 he would ask that if possible, those officers are all on the
10 same shift and will be working tomorrow, if we could bring
11 them in in stages rather than altogether because that would
12 leave the county undefended if they all came at the same time,
13 four officers from the same shift.

14 MR. CHRISCO: The way, the way I hear it from the officer
15 is the officer, they're all on the same shift, but they're,
16 they're covering different parts of the county. That's their
17 responsibility. That night they were in one part of the
18 county. I don't know when I'm going to need them and I don't
19 know if the Court wants to wait an hour between witnesses when
20 we get to that point. So I'll let the Court make up its mind,
21 make up its mind.

22 MR. DEBUSK: He just asked, if possible, Your Honor, to
23 stage them in in 45-minute intervals because they do, they can
24 cover one adjacent sector, but they can't cover four sectors
25 at once. That's, that's the main issue.

Motions

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1 happened?

2 A Kind of.

3 Q But you heard what they, they read to you?

4 A Yeah.

5 Q Is this your signature appearing on this form, Court's
6 Exhibit Number One?

7 A Well, okay.

8 Q Is that your signature, sir?

9 A Right. I, I had signed that before I even said anything
10 to them. That was just --

11 Q But you signed it?

12 A -- that was just saying that I agree to talk to them.

13 Q You signed that before you talked -- they talked to you
14 about the --

15 A Right, sir. Yes, sir. Yes, sir.

16 Q As they're supposed to do?

17 A All right.

18 Q Thank you. No further questions.

19 THE COURT: Redirect?

20 MR. CHRISCO: No, Your Honor.

21 THE COURT: All right. You may step down.

22 A Oh, okay.

23 THE COURT: Anything further from Defense?

24 MR. CHRISCO: No, Your Honor.

25 THE COURT: Anything in reply?

1 EXAMINATION

2 BY MR. DEBUSK:

3 Q Is it fair to say, Mr. Smiley, you have a detailed memory
4 of what happened that -- when you talked to those two
5 officers?

6 A Do I have a detail, sir?

7 Q Detailed memory of what happened when you talked to those
8 two officers?

9 A Kind of.

10 Q So you remember some of the details about all the crack
11 heads and what they were saying to you and all that?

12 A Yeah.

13 Q Okay. So you were alert and in your right mind when you
14 spoke to them?

15 A Yes, sir.

16 Q Okay. Isn't it true that less than a year before this
17 happened you had just been released from serving a 20-year
18 sentence for armed robbery?

19 A Yes, sir.

20 Q And you're aware that if you're convicted of this charge
21 you could face even a longer sentence for armed robbery?

22 A Yes, sir.

23 Q Okay. And how old are you, Mr. Smiley?

24 A 54.

25 Q You familiar with your Miranda Rights even before this

Motions

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1 he seen something he think could have been a gun or with the
2 police report.

3 Q Did -- when they were talking to you, did they ever ask
4 you how far you went in school?

5 A They never ask me anything. They asked me about a bunch
6 of crack, crack head womens that I supposed to been sleeping
7 with and they brought up about my HIV. They brought up a lot
8 of stuff that wasn't concerning nothing about the case. They
9 was just telling me that peoples was saying I was in the
10 street having sex with different womens, and I have a
11 sickness, HIV, and they brought that up and they tried to get
12 my wife to think that I was doing all these things with these
13 crack head womens and all kind of stuff behind drugs and just,
14 I don't, I don't know, man, it's so much, I mean.

15 Q But during that, during that time that day did you -- did
16 they ask you how far you went in school?

17 A No, sir. They never.

18 Q How far did you go in school?

19 A Probably been the eighth grade.

20 Q Can you read?

21 A So so.

22 Q Can you write?

23 A Yes, sir.

24 Q No further questions.

25 THE COURT: Cross examination?

1 talked about a crime that happened on September the 19th they
2 was talking about, but the Wilco came in by them saying my
3 wife identified a picture. Wilco, they say Wilco got robbed
4 on the 23rd. I was in Loris from that time on up. Nobody
5 never came to me about Wilco or nobody never said anything to
6 me about Wilco. They came to me about the Exxon, and when,
7 when I spoke on the Exxon then they said that my wife
8 identified me at Wilco and all these other places. I, I, I
9 don't know, something, I'm just going by what they told me,
10 and my wife did said that they call her and told her that to
11 come down the police station identified some pictures, and
12 they gave her a picture off the wall of me, updated picture.
13 I don't, I don't, I don't know.

14 Q So --

15 A And, yeah, and, and Ms. Shepherd, she told me, you know,
16 she said that the clerk said that -- she didn't say me. She
17 didn't say me rob nothing. She said the clerk said that this
18 person that rob him stated that he had a gun. Then she said
19 that she told -- he told her he didn't have a gun, and that's
20 what she told me. Okay. When I got the police report, then
21 they had the police report saying that the clerk say he seen
22 something look like a barrel or something was covered with a
23 napkin. I don't, I don't, I don't know. I don't know. This,
24 this what the police report said. This what the police report
25 said. Nobody never said that they actually saw a gun. He say

Motions

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1 in Loris saying that I went in and bought two cigars for --
2 gave the clerk two \$1.00 bills. Then when the cash register
3 open I snatched the money out of the cash register, and then
4 they asked me about Wilco, that I was at Wilco that night or
5 whatever report they got robbed or something like that, and I
6 told them I might have been there and I, I, I couldn't
7 remember because at the time I was on drugs real bad, and they
8 had told me that they went by my wife house, Wilco, they say
9 Wilco got robbed on the 23rd of August and say they went by my
10 wife house the 22nd of September, questioned her about some
11 pictures, they wanted her to go down to the police station.
12 So she went down the police station. They said that she
13 identified some pictures of a video of me at the Exxon or
14 something like that, and they told me that my wife said that I
15 didn't come home that night, a few other things they was
16 telling me about my wife, and they wanted her to give -- they,
17 they wanted her to, to give them some pictures of me the
18 reason, talking about up, up-to-date pictures of me, and they
19 had her to go down to the police station to identify some
20 stuff about me. Yeah.

21 Q During this conversation did you at any time -- what did
22 you tell them about the Wilco?

23 A I told them that I did not rob no Wilco with no gun or
24 nothing like that. I have not had no gun or anything like
25 that, and they basically didn't talk about Wilco. They, they

1 what, what he knew and what went on?

2 A Correct.

3 Q And that time includes all reading the rights, getting
4 the form signed and all that?

5 A Yes, sir.

6 Q Thank you. No further questions.

7 THE COURT: All right. You may step down. Call your
8 next witness.

9 MR. DEBUSK: That would be our showing, Your Honor.

10 THE COURT: All right. Anything from the Defense?

11 MR. CHRISCO: Your Honor, the Defense will call Mr.
12 Smiley to the stand.

13 THE COURT: All right.

14 Raymond Smiley was called to the stand, duly sworn by the
15 clerk and testified as follows:

16 THE CLERK: State your full name and spell your last
17 name.

18 MR. SMILEY: Raymond Smiley, S-M-I-L-E-Y.

19 EXAMINATION

20 BY MR. CHRISCO:

21 Q Mr. Smiley, you remember talking with police officers
22 from Loris?

23 A Yes, sir.

24 Q Tell us about what took place.

25 A They, they interviewed me for a robbery happened at Exxon

Motions

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1 Q Did he appear to be grossly intoxicated?

2 A No, sir.

3 Q Did he appear to be under the influence of medication?

4 A No, sir.

5 Q Did he appear to understand what you were saying?

6 A Yes, sir.

7 Q Did he appear -- did he talk in a normal and
8 understandable way?

9 A Yes, sir.

10 Q Okay. He, he was in J. Reuben Long Correction Center --

11 A Correct.

12 Q -- Detention Center; correct? Right? So he would not
13 have had access at any time previous to that to --

14 A Correct.

15 Q Okay. Do you know how long he had been in J. Reuben
16 Long?

17 A No, sir. I don't.

18 Q Okay. During the 30 to 45 minutes that you may have
19 talked to him, was this the only incident you talked about?

20 A We also -- he discussed with us about the Tiger Mart
21 incident as well.

22 Q Okay. So there was more than one individual incident you
23 talked to him in that time?

24 A Correct.

25 Q And you also had to ask him some basic questions about

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1 (On the record, September 8, 2015.)

2 THE COURT: All right. What have we got?

3 MR. DEBUSK: Your Honor, the State has a Neil v. Biggers
4 hearing on the in-court identification of the, of the
5 Defendant, and we also have a Jackson v. Denno on the
6 Defendant's statement.

7 THE COURT: All right. Let's go ahead and put the case
8 on the record --

9 MR. DEBUSK: Yes, Your Honor.

10 THE COURT: -- so we'll have it.

11 MR. DEBUSK: This is indictment 2014-GS-26-52 -- I'm
12 sorry, Your Honor. My number is cut off. 5250, the State
13 versus Raymond Smiley charged with armed robbery.

14 THE COURT: All right. Which one do you want to do
15 first?

16 MR. DEBUSK: I would like to do the Neil v. Biggers, Your
17 Honor.

18 THE COURT: All right. Mr. Chrisco, you represent Mr.
19 Smiley?

20 MR. CHRISCO: I do, Your Honor.

21 THE COURT: All right. Anything before we do the Neil v.
22 Biggers hearing?

23 MR. CHRISCO: No, Your Honor.

24 THE COURT: All right. Call your first witness.

25 MR. DEBUSK: Your Honor, the State calls Logan Sawyers.

Motions

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1 Whereupon, Logan Wade Sawyers was called to the stand,
2 duly sworn by the clerk and testified as follows:

3 THE CLERK: And if you'll state your full name and spell
4 your first and last name.

5 MR. SAWYERS: Logan Wade Sawyers, L-O-G-A-N, S-A-W-Y-E-R-
6 S.

EXAMINATION

7
8 BY MR. DEBUSK:

9 Q Mr. Sawyers, who is your employer at this time?

10 A AlliedBarton.

11 Q I'm sorry?

12 A AlliedBarton.

13 Q What do you do?

14 A I'm a security officer.

15 Q And now how about in August of last year, August 23rd
16 specifically, who was your employer then?

17 A I was a, I was a cashier at Wilco.

18 Q Okay. Were you on duty August 23rd in the small hours of
19 the morning between two and three?

20 A Yes, sir.

21 Q Did anything unusual happen at that time?

22 A Yes, sir.

23 Q What happened?

24 A We got robbed.

25 Q Okay. Who was actually the person who got robbed, the

1 person most proximate to the robbery?

2 A I was.

3 Q Okay. You were acting as a cashier. Was it the money
4 out of the till that was taken?

5 A Yes, sir.

6 Q Did you see the person who did this?

7 A I did.

8 Q How far away from you were they?

9 A Within two feet.

10 Q Okay. How was the lighting in that location?

11 A Very good.

12 Q It is an indoor location?

13 A Yes, sir.

14 Q Okay. And the lights were, of course, on?

15 A Yes, sir. They were.

16 Q Okay. How long did you get to look at this individual?

17 A Approximately a minute.

18 Q Okay. Was he present in the store only during the
19 robbery or was he present any other time?

20 A All during the robbery.

21 Q And was he present before the robbery as well a little
22 bit?

23 A Just shortly before. Yes, sir.

24 Q So did you get a very good look at him?

25 A I did.

Motions

9

1 Q Okay. Would you recognize that person if you saw them
2 today?

3 A I do.

4 Q Since that day, have you seen any pictures of this
5 individual or individual accused of that crime?

6 A No, sir.

7 Q Did you view any lineups?

8 A No, sir.

9 Q Okay. Do you see the individual that you saw that robbed
10 you that day in the courtroom today?

11 A I do.

12 Q Who is it?

13 A The Defendant.

14 Q Okay. Thank you. Please answer any questions the
15 Defense might have.

16 THE COURT: All right.

17 EXAMINATION

18 BY MR. CHRISCO:

19 Q What time of day did this happen?

20 A Two a.m.

21 Q Two a.m.? And how was your -- how did this take place?

22 A I don't understand your question fully.

23 Q Well, how did -- you were -- money was given to someone.
24 How did it take place?

25 A He came in, got a cup of coffee, walked up to the

1 counter. I rang it up. Then he said, "Give me all the
2 money." I thought he was joking at first. Then he said he
3 was serious and that, that he would kill me, and I looked down
4 towards his hand. I saw about a quarter inch of the muzzle of
5 a barrel of a pistol and I knew he was serious. I opened the
6 drawer, handed him all the cash that was in there.

7 Q Then what happened?

8 A And then I asked the -- my co-worker to call the cops,
9 that he had a gun, was helping giving her a description to
10 tell them, and tell -- told them which way he was heading.

11 Q And during this time when he approached you till the time
12 he left how long was that?

13 A I would say approximately 30 seconds.

14 Q And during that 30 seconds did you -- were you looking at
15 him the whole time?

16 A I looked at him. Then I looked at the firearm. I looked
17 at the cash registers and the money. I looked back at him
18 while he was running out the door.

19 Q When he first approached you at the, at the -- where you
20 were, how soon after he approached you did he state that he
21 wanted the money?

22 A Within seconds.

23 MR. CHRISCO: No further questions, Your Honor.

24 THE COURT: Redirect?

25 MR. DEBUSK: Briefly, Your Honor.

Motions

11

1 REEXAMINATION

2 BY MR. DEBUSK:

3 Q Were you able -- did you see him long enough to be able
4 to give a description to the police?

5 A Yes, sir.

6 Q Okay. And you got a good look at him in a well-lighted
7 place; is that correct?

8 A Yes, sir. I did.

9 Q Thank you. No further questions.

10 THE COURT: All right, sir. You may step down. You may
11 step down.

12 A Okay.

13 MR. DEBUSK: Your Honor, we'd ask that Mr. Sawyers be
14 excused till tomorrow. He's -- return tomorrow for the trial,
15 but he's got to sleep for working tonight.

16 THE COURT: Any objection?

17 MR. CHRISCO: No objection, Your Honor.

18 THE COURT: All right. He's free to go until tomorrow.

19 MR. DEBUSK: Thank you, Your Honor.

20 THE COURT: Thank you. Call your next witness.

21 MR. DEBUSK: That's, that's our showing, Your Honor. He
22 -- there was no pretrial lineup or anything.

23 THE COURT: All right.

24 MR. DEBUSK: He hasn't seen the individual since, since
25 the day of the incident.

1 THE COURT: All right. Mr. Chrisco, anything in
2 response?

3 MR. CHRISCO: No, Your Honor.

4 THE COURT: All right. I think it's a proper enough
5 identification to at least go to the jury. All right.

6 MR. DEBUSK: Thank you, Your Honor.

7 THE COURT: All right.

8 MR. DEBUSK: Proceed with the Jackson v. Denno at this
9 time.

10 THE COURT: All right.

11 MR. DEBUSK: Your Honor, the State calls Chief Shepherd
12 of the Loris Police Department.

13 Karen Shepherd was called to the stand, duly sworn by the
14 clerk and testified as follows:

15 THE CLERK: Okay. If you'll state your full name and
16 spell your last.

17 MS. SHEPHERD: Karen Shepherd, S-H-E-P-H-E-R-D.

18 EXAMINATION

19 BY MR. DEBUSK:

20 Q Chief Shepherd, who is your employer?

21 A Loris Police Department.

22 Q How long you been with them?

23 A Fifteen years.

24 Q Okay. What's your position now?

25 A Chief of police.

Motions

13

1 Q Okay. Did you investigate a robbery at the Wilco Hess on
2 -- in Loris on August 23rd of last year?

3 A Yes, sir.

4 Q What did you do in that case? What, what investigation
5 did you carry out?

6 A I spoke to witnesses, and after doing interviews and all,
7 I obtained the warrants on the Defendant.

8 Q That Defendant being Mr. Raymond Smiley?

9 A Yes, sir.

10 Q After -- was that arrest warrant served on Mr. Smiley?

11 A Yes, sir.

12 Q Did you have occasion after that arrest warrant was
13 served to speak to him?

14 A Yes, sir.

15 Q Where did you talk to him?

16 A At J. Reuben Long Detention Center.

17 Q Who other than Mr. Smiley was with you?

18 A Sergeant Alicia Miller.

19 Q That's Sergeant Miller sitting behind the State's table?

20 A Yes, sir.

21 Q Were you -- did you record this statement?

22 A No, sir. We didn't.

23 Q Why not?

24 A The room that we were in was like a holding cell and
25 there was the echoing to where you couldn't, and my recorder,

1 the batteries were dead.

2 Q Okay. So physical impossibility?

3 A Yes, sir.

4 Q Before you talked to him, did you inform him of his
5 Miranda Rights, you or Sergeant Miller inform him of his
6 Miranda Rights?

7 A Yes, sir.

8 Q How did you do that?

9 A Officer Miller read him his rights, and I witnessed the
10 -- her reading and him signing.

11 Q Okay. Is there a form that you usually read the rights
12 off of?

13 A Yes, sir.

14 Q Let me show you -- get this marked as a Court's.
15 I'm showing you what's been marked as Court's Exhibit One and
16 ask if you recognize this.

17 A Yes, sir.

18 Q What is that?

19 A That's Miranda Right forms.

20 Q Is that a copy of the form that you used?

21 A Yes, sir.

22 Q How can you tell it's that -- copy of that form?

23 A Well, one, my signature is on it, and two, it's the one
24 we use every time that we do Miranda Rights.

25 Q Besides yourself, is there another signature on there?

Motions

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1 A Yes, sir.

2 Q Who is that?

3 A Raymond Smiley's.

4 Q Okay.

5 MR. DEBUSK: Your Honor, the State offers Court's One for
6 purposes of the hearing.

7 THE COURT: Any objection?

8 MR. CHRISCO: No objection.

9 THE COURT: Oh, let me -- did we mark that as Court's
10 Exhibit rather -- I mean, the State's putting it in.

11 MR. DEBUSK: I'm sorry. I asked her to mark this Court's
12 Exhibit. I should have marked it -- for purposes of the
13 hearing.

14 THE COURT: Okay.

15 MR. DEBUSK: We've done it both ways in the past, since
16 it won't technically be part of the trial record then we would
17 make it a Court Exhibit.

18 THE COURT: Okay. But I mean, it won't go back to the
19 jury as a Court's Exhibit?

20 MR. DEBUSK: We'll, we'll, we'll mark it separate, Your
21 Honor.

22 THE COURT: Okay. All right. Court's Exhibit One
23 admitted into evidence for purposes of this hearing.

24 (Court's Exhibit Number One [Miranda Rights Form]
25 appropriately marked.)

Motions

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1 BY MR. DEBUSK:

2 Q After you read him his Miranda Rights did he give you a
3 statement?

4 A Yes, sir.

5 Q What did he tell you about the robbery at the Wilco Hess?

6 A He told us that he had went -- he wasn't sure of the date
7 --

8 Q Uh-huh.

9 A -- but he did go to the Hess station. He said that he
10 had told the clerk to give him the money and he stated he
11 didn't have a gun.

12 Q Uh-huh.

13 A He said he didn't have to have a gun to rob a store
14 because the young fellow was so scared --

15 Q Uh-huh.

16 A -- that he would have gave him anything, and then he told
17 us that -- I asked him about the cup of coffee that he left on
18 the counter and he said it wasn't a cup of coffee, it was a
19 cup of hot chocolate..

20 Q Uh-huh. Okay. In the time you've worked with Loris have
21 there been other robberies at that Wilco, that particular
22 Wilco?

23 A No, sir.

24 Q Okay. So that's the only one that was -- that happened
25 at that Wilco?

Motions

17

1 A That -- not only -- that's the only robbery that's
2 happened at that location at that store. It hasn't been
3 robbed before.

4 Q Thank you. Please answer any questions that Mr. Chrisco
5 may have.

EXAMINATION

6
7 BY MR. CHRISCO:

8 Q Afternoon. You talked to him about another robbery that
9 day, too; didn't you?

10 A Yes, sir.

11 Q Isn't it true that you told him that the clerk didn't
12 even say that he had a gun?

13 A No. I didn't say that.

14 Q You didn't say that.

15 A No. I didn't tell him the clerk said he didn't have a
16 gun. I told him that the clerk said he had a gun. He said he
17 didn't have a gun. Mr. Smiley stated he didn't have a gun.

18 Q And you didn't tell him that no one said that he had a
19 gun?

20 A I told him the clerk said he had a gun, and he said he
21 didn't have a gun.

22 Q Did you tell him that anyone else said that he didn't
23 have a gun?

24 A No, sir.

25 Q Now, you were there that night?

1 A At the Wilco Hess?

2 Q Right.

3 A I came out after the initial officers was -- had, had
4 called me out and said they had had a robbery.

5 Q Isn't it true that a coffee cup, a swab had been done to
6 the top portion of it and also fingerprints to be done on it
7 was taken into custody by your department?

8 A Yes, sir. It was placed in evidence.

9 Q And what reason, what was done with that evidence?

10 A It's in our evidence.

11 Q Okay. What is the results of the swab?

12 A We haven't run tests on it.

13 Q What is the results of the fingerprints?

14 A They didn't -- they haven't run tests on them.

15 MR. CHRISCO: The Court's indulgence.

16 THE COURT: All right.

17 BY MR. CHRISCO:

18 Q How did you, how did you come about arresting Mr. Smiley?

19 A After doing -- I had done multiple interviews with
20 multiple individuals, and after interviewing several
21 individuals I interviewed Mr. Smiley's ex-wife based on
22 another case that I was working that was all part of an
23 investigation and that's how I got the identification of Mr.
24 Smiley.

25 Q Was he the only lead in this case?

Motions

19

1 A At that point in time, yes, sir.

2 Q Hadn't there been another one before then?

3 A Another what?

4 Q Lead. Didn't the witness that was there that night at
5 the Wilco state that a -- the person that had robbed the store
6 was in a certain described car and didn't your police
7 department stop that car?

8 A There was a individual that came up to a road officer and
9 told him that he believed that a person matching the
10 description of the individual that possibly robbed the Wilco
11 Hess was in a vehicle that had just left the Hill's, I believe
12 it was the Hill's parking lot. The officer stopped the
13 vehicle, identified the subject and determined that the
14 subject wasn't a light-skinned black male.

15 Q Wasn't that individual a witness, Van Simmons that was
16 there at the Wilco the night of the robbery?

17 A He was the individual, if I recall correctly, was the
18 individual sitting in a vehicle outside.

19 Q Sitting in a truck right outside the Wilco door?

20 A Uh-huh.

21 Q That same individual that stated that he saw the suspect
22 come out and go to his left?

23 A Are you asking me the question was he -- the individual
24 that stopped Officer Suggs, which was the road officer on duty
25 at the time, that he done a traffic stop on an individual that

1 was supposedly looked like the suspect that had robbed the
2 Hessco [sic] -- the Wilco Hess station had got into a vehicle.
3 He didn't say it was the suspect. He said he believed it was
4 the suspect, and Officer -- the road officer made a traffic
5 stop on the car and identified the individuals in the car and
6 the individuals were not light-skinned black male that matched
7 the description of the individual that had went into Hess
8 Wilco station.

9 Q No further questions.

10 THE COURT: Redirect?

11 REEXAMINATION

12 BY MR. DEBUSK:

13 Q That incident where the witness told Officer Suggs about
14 possibly seeing the suspect, did that happen on August 31st?

15 A No, sir.

16 Q August -- it didn't happen on the 23rd -- 31st,
17 approximately a week after the --

18 A It, it was sometime afterwards.

19 Q It was approximately a week; wasn't it?

20 A Yes.

21 Q Okay. And the individuals were stopped and interviewed;
22 correct?

23 A Yes, sir.

24 Q And it was determined that they were not suspects; is
25 that correct?

Motions

21

1 A That's correct.

2 Q Okay. Did anyone else to your knowledge confess to being
3 the individual that robbed the Wilco Hess on August 23rd?

4 A No, sir.

5 Q And based on your investigation you had -- you went
6 before a judge, right, and the judge issued that arrest
7 warrant; is that correct?

8 A Yes, sir.

9 Q And that's why you questioned the Defendant?

10 A Yes, sir.

11 Q Thank you.

12 THE COURT: All right. You may step down.

13 Call your next witness.

14 MR. DEBUSK: The State calls Sergeant Alicia Miller of
15 the Loris Police Department.

16 THE COURT: All right.

17 Whereupon, Alicia Miller was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Please state your full name and spell your
20 last name.

21 MS. MILLER: My name is Alicia Miller, A-L-I-C-I-A, M-I-
22 L-L-E-R.

23 EXAMINATION

24 BY MR. DEBUSK:

25 Q Sergeant Miller, who's your employer?

1 A Loris Police Department.

2 Q How long you been with them?

3 A Approximately nine years.

4 Q Okay. Did you take any part in the investigation of the
5 robbery at the Wilco Hess store in Loris on --

6 A Yes, sir.

7 Q -- August 23rd? What was your role in it?

8 A My role was going with Chief Shepherd to J. Reuben Long
9 Detention Center to interview the Defendant --

10 Q Was this after the arrest warrant was served upon him?

11 A Correct.

12 Q Did you or Chief Shepherd inform him of his Miranda
13 Rights?

14 A Yes, sir.

15 Q Let me show you Court's Exhibit One and ask if you
16 recognize it?

17 A Yes, sir. I recognize it.

18 Q Who actually read him his rights?

19 A I read the Defendant his rights.

20 Q Okay. Did the Defendant agree to give a statement?

21 A He agreed to speak with us to give us a verbal statement,
22 but not a written statement.

23 Q But he declined to write, write the statement?

24 A Correct.

25 Q Did you threaten him or coerce him in any way to get him

Motions

23

- 1 to, your or Chief Shepherd?
- 2 A No, sir.
- 3 Q Were you present through the whole interview?
- 4 A Yes, sir.
- 5 Q Did you deprive him of anything he wanted to make him get
- 6 a statement?
- 7 A No, sir.
- 8 Q How long did the whole interview take?
- 9 A We were approximately there maybe 30 minutes.
- 10 Q Okay. Did he ask for anything that he was denied in
- 11 order to get him to give a statement?
- 12 A No, sir.
- 13 Q So you didn't threaten him or coerce him in any way?
- 14 A No, sir.
- 15 Q Okay. What did he say?
- 16 A Upon speaking with Mr. Smiley he had stated that he had
- 17 been to the Wilco. He was unsure of what date, but he, he had
- 18 been there --
- 19 Q Uh-huh.
- 20 A -- and stated that he didn't have a gun, but the boy was
- 21 so scared that he would have given him anything he wanted.
- 22 Q Uh-huh.
- 23 A He said he did take the money but he did not have a gun.
- 24 Q Did he say he told the victim anything?
- 25 A He said that he may have told him he had something, but

1 he could not recall.

2 Q Okay. Did he tell him it was a robbery?

3 A But he did not have a gun. I'm sorry?

4 Q Did he tell the victim that it was a robbery?

5 A Yes. Yes.

6 Q Okay. And you, you also have worked Loris a long time.

7 Have there been any other robberies at the Wilco Hess station?

8 A No, sir.

9 Q Thank you. Please answer questions Mr. Chrisco may have.

10 A Okay.

11 EXAMINATION

12 BY MR. CHRISCO:

13 Q You stated that he may -- he said he may have had
14 something?

15 A He said that he may have told him he had a gun, he said,
16 but he did not have one.

17 Q Does a police officer find that important?

18 A Absolutely.

19 Q Well, why didn't you put it in your report?

20 A From, from him speaking with us?

21 Q Right.

22 A That he -- I put in there that he said he did not have a
23 gun.

24 Q But you stated here today that he said he had something.

25 A He said -- he had told myself and Chief Shepherd that he

Motions

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1 may have told him he had a gun. He said, "But I did not have
2 a gun. That boy was so scared he would have given me anything
3 I asked him for."

4 Q And I ask you this question --

5 A Uh-huh.

6 Q -- if that is so important then why didn't you put it in
7 your report of when -- that you made after talking with Mr.
8 Smiley?

9 A I'm not sure. I, I just I didn't. If it's not in there
10 it's not, so.

11 Q Now, how long did the interview last?

12 A From what I can recall because it's approximately been
13 about a year ago, 30 minutes. I'm really not sure how long it
14 was.

15 Q Take your time, close your eyes and think back.

16 A Uh-huh.

17 Q This is very important. This is a very serious crime.

18 A Okay. I would say about 35, 35 to 45 minutes from what I
19 can remember.

20 Q Thirty-five minutes of interview equals about nine lines
21 of typed on a report?

22 A Uh-huh.

23 Q Is that correct?

24 A Well, he kept repeating what he was saying. Yes.

25 Q How far did he go in school?

1 A How far did I go in school?

2 Q No. How far did he go in school?

3 A I'm not sure, did not ask him that.

4 Q Did he read the rights or did you read them for him?

5 A I read them to him and I asked him if he understood them
6 and he said yes. I said, "Are you willing to waive those
7 rights in order to speak with us today?" He said yes.

8 Q What type of medication was he on?

9 A I have no idea. I don't know the Defendant that well to
10 know what kind of medication he'd be on.

11 Q Do you know if he had been drinking that day?

12 A I'd hope -- I hope not, but no, I don't know that for a
13 fact. He was, he was incarcerated at J. Reuben Long Detention
14 Center.

15 Q All you did was just read him his rights and that was it?

16 A Correct.

17 Q If he said he understood then you took him that he knew
18 what he was doing?

19 A Usually when I ask somebody those questions, yes, and if
20 they're willing to sign saying that they understand those
21 rights, yes.

22 Q No further questions.

23 THE COURT: Redirect?

24 REEXAMINATION

25 BY MR. DEBUSK:

Opening Instructions by Court

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1 They're just following the instructions of the Court as well.

2 Now, during the trial you are not to read or listen to or
3 watch any news reports about the case, should there be any.
4 This includes anything that may be in the newspaper or on the
5 internet, the radio or television. You must not consider
6 anything you may have read or heard about the case outside of
7 the courtroom, whether that is before or during the trial of
8 this case. It is important that you keep an open mind and not
9 decide any issue in this case until all of the evidence has
10 been presented to you, the parties have made their closing
11 arguments and I have instructed you on the law to be applied
12 in this case.

13 It is your solemn responsibility to determine the guilt
14 or the innocence of the Defendant, and your verdict must be
15 based solely on the evidence as it is presented to you in this
16 trial and on the law as I instruct you during and at the close
17 of the trial.

18 Now, in just a moment the Solicitor will make what's
19 called an opening statement in which the Solicitor will
20 explain to you the issues in this case, or at least what the
21 Solicitor thinks the issues in this case are. The attorney
22 for the Defendant may also make an opening statement, although
23 he is not required to do so. What the attorneys tell you
24 during their opening statements is not evidence in this case.
25 It is only their contention as to what the issues in this case

1 are. The evidence in this case will be presented to you by
2 statements of sworn witnesses from the witness stand and any
3 other exhibits that may be introduced into evidence.

4 Now, in determining what the true facts are in this case
5 you must decide whether or not the testimony of a witness is
6 believable. It will be my responsibility to rule as a matter
7 of law as to whether certain testimony is admissible at all or
8 not. However, once testimony is admitted into evidence,
9 whether or not you believe it is solely for you to determine.
10 In deciding whether to believe a witness, you have the right
11 to consider the interest of any witness, the bias of any
12 witness, the prejudice of any witness, the opportunity for the
13 witness to have seen the matters and things about which the
14 witness may testify, and the way the witness acts on the
15 witness stand. You have the right to consider anything that
16 is in the record that will help you evaluate the testimony of
17 the witnesses. That means that it is your duty to pay close
18 attention to the witnesses, to observe the witnesses and
19 listen to them and to pay close attention to the attorneys and
20 to the Court. Don't let your thoughts wander, but give strict
21 attention to the testimony in this case so at the end of all
22 the testimony and after the arguments of counsel and a charge
23 on the law by the Court you will then be in a position to
24 determine what the facts are and to apply the law to those
25 facts and thus render a true and just verdict.

Opening by State

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1 All right. Any additional charges from the State?

2 MR. DEBUSK: No, Your Honor.

3 THE COURT: Any from the Defense?

4 MR. CHRISCO: No, Your Honor.

5 THE COURT: All right. At this time we'll begin the
6 trial with the opening statements, and as I told you, these
7 opening statements are not evidence. It's just the attorneys'
8 contention as to what they feel the issues in this case are.
9 Mr. DeBusk.

10 MR. DEBUSK: Thank you, Your Honor. May it please the
11 Court?

12 Ladies and gentlemen, on August the 23rd of last year
13 there was a robbery at the Wilco Hess gas station in Loris.
14 It's right across from the Sears on Highway 701, if you know
15 the Loris area, not far from the Food Lion shopping center.
16 There at about between two and three in the morning, early
17 hours of the morning, the clerk, a young man named Logan
18 Sawyers, was on duty. There was a fellow there. He was
19 standing by the coffee machine watching, and he walked up to
20 the counter with a cup of coffee and sat it down, and as Logan
21 Sawyers approached to take the payment, the Defendant reached
22 behind him and came up with an object hidden under a napkin.
23 He could see the barrel of what appeared to be a gun sticking
24 out. He was told, "This is a robbery." He was told to give
25 him the money, which he did. It was store policy. You don't

1 want somebody to get hurt. He gave him the money. Out the
2 thief went with the money in one hand and the gun in the
3 other. All this was captured on video. So you actually get
4 to see it. It's a little grainy, but you'll actually get to
5 see this robbery on video, and what's more, Logan Sawyers will
6 testify to you that he recognized who it was that robbed him.

7 This happened in the City of Loris. So the Loris Police
8 and the person of -- actually the Chief of Loris Police, Karen
9 Shepherd, sitting there at the table with me, did an
10 investigation. During the course of that investigation, they,
11 they developed a suspect, Raymond Smiley, the Defendant
12 sitting right there. They obtained an arrest warrant with the
13 results of their information, and they brought Mr. Smiley to
14 J. Reuben Long Detention Center, he was under arrest on that
15 warrant, and they talked to him. They read him his rights
16 just like on the TV, "You have the right to remain silent.
17 Anything you say can and will be used against you," etcetera,
18 and he gave a statement. He said, "Yeah. That was me in the
19 Wilco. That was me that took the money from that clerk. That
20 was me that told him it was a robbery," but he said he didn't
21 have a gun. There's something important that you have to
22 remember to understand the facts in this case. Having a gun
23 is one way to have an armed robbery. If you prove that
24 somebody had a gun, that's an armed robbery when they use it
25 to rob somebody, but there's another way as well, if you

Opening by State

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1 allege you're armed, threatening somebody's life with
2 something that appears to be a gun, it's a representation like
3 a toy gun or any object which someone present during the
4 robbery believes to be a firearm or a deadly weapon. You're
5 just as guilty of armed robbery. So you have to listen for
6 evidence that there was a gun, and you'll hear some. You have
7 to listen for evidence that there was any object that someone
8 took to be a gun or representation of a gun. All those are
9 part of the statute of armed robbery.

10 All the evidence will come from this stand. It should go
11 fairly quickly. You'll get to see the robbery on the screen
12 and you'll get to see still photos taken from that video, and
13 in the end it'll be up to you to decide whether Raymond Smiley
14 is, as he told the police, the person that robbed that Wilco
15 Hess, and you're here as a cross-section of the community to
16 decide the facts of this case and apply the law as the Judge
17 will give it to you, and in the end all we ask from you is a
18 fair and just verdict and your close attention while we
19 present the evidence. Thank you.

20 THE COURT: Mr. Chrisco.

21 MR. CHRISCO: Your Honor, the Defense would waive opening
22 argument until the State rests.

23 THE COURT: All right. Well, let me see the attorneys.

24 (Whereupon, a bench conference is held in the presence
25 but out of the hearing of the jury.)

1 THE COURT: All right. Ladies and gentlemen, we've got a
2 matter of law that we need to address with the attorneys
3 before we proceed. So I'm going to excuse you back to the
4 jury room, and I tell you why we do that. It's not that we're
5 trying to hide anything or keep anything from you, but when we
6 decide legal issues or the law to be applied, it often
7 requires me as the Judge or the attorneys to reference facts.
8 Well, what we say is not evidence, and so we do not want you
9 to be influenced by anything that I might say or the attorneys
10 might say. When we discuss the law to be applied and we
11 reference these factual issues, we don't want that to
12 influence you in your decision of what the facts are. So I'm
13 going to excuse you back to the jury room for just a few
14 minutes and we'll bring you back out in just a second.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: All right. Mr. Chrisco, what was that you
18 were citing from?

19 MR. CHRISCO: Your Honor, if I could approach. I think
20 that the, the cite pretty much narrows it down. It's from the
21 judicial website, and it's --

22 THE COURT: Yeah, but -- okay.

23 MR. CHRISCO: -- I think, a summary of the court bench.

24 THE COURT: Trial procedure, section H, okay, this says
25 --

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1 MR. CHRISCO: Court bench, and they, and they address it
2 there, judicial cites it. Do you see what I'm talking about?

3 THE COURT: Yeah. I see what you're saying, but I mean,
4 what is this referencing?

5 REPORTER: If he's going to want this on the record I
6 can't hear him turned around.

7 THE COURT: Okay.

8 MR. CHRISCO: It's the, it's the summary of the court
9 bench rules.

10 THE COURT: Court bench book.

11 MR. CHRISCO: Right.

12 THE COURT: Okay. Let's see. Now, this -- but it deals
13 with summary court is what this is saying.

14 MR. CHRISCO: Actually it deals with two courts. It says
15 there was two courts.

16 THE COURT: And the Courts of --

17 MR. CHRISCO: One is, one is magistrate and one is the
18 general sessions.

19 THE COURT: Okay. The procedure used in the courts
20 higher than magistrates' court and municipal courts is not
21 discussed in this book. So anything that comes after this is
22 not referencing circuit court procedure. Now, I've never --
23 of course, I'll admit, I've never had a request for a Defense
24 to defer opening statements. All right. As I understand that
25 that you're referencing that is procedures in magistrate

1 court. It says it doesn't discuss any procedures for anything
2 above magistrate or municipal court. So I'm -- are you aware
3 of -- Mr. DeBusk, what were you looking at earlier to try to
4 find the procedures?

5 MR. DEBUSK: Your Honor, I was looking at the Rules of
6 Criminal Procedure but they did not address openings. My
7 understanding is that openings are to be given before any
8 evidence is presented, closings after all evidence is
9 presented.

10 THE COURT: Okay. But that understanding is just from
11 practice or can you cite anything?

12 MR. DEBUSK: From practice and I can't cite a rule at
13 this time, Your Honor.

14 THE COURT: Okay.

15 MR. DEBUSK: Your Honor, I don't have a rule I can point
16 to at this time. We were looking at the on-line at the Rules
17 of Evidence as one cite, I mean, as the Rules of Criminal
18 Procedure cite as Rule 139, but I don't have a 139 in my book.
19 So I don't know if there is such a rule.

20 THE COURT: Say that again now.

21 MR. DEBUSK: We were looking at something on line which
22 cited a Rule 139 of Rules of Criminal Procedure, but my book
23 does not go up to 139. So I'm not aware of any rule.

24 THE COURT: There is not a Rule 139.

25 MR. DEBUSK: Exactly, Your Honor.

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1 THE COURT: All right. All right. Let me just do one
2 quick search.

3 MR. DEBUSK: Your Honor, may I step out for two minutes?

4 THE COURT: All right. That'll be fine.

5 MR. DEBUSK: Thank you.

6 THE COURT: All right. Well, I can't find anything on
7 point but because, number one, which you've cited, Mr. Chrisco
8 said it doesn't -- it wasn't discussed in anything above
9 magistrate or municipal court and because I've never had a
10 Defendant make opening statement after presentation, I'm going
11 to either require you to make your opening statement now or
12 waive it, whichever you prefer, but I'm not going to allow
13 another opening statement at the conclusion of the Plaintiff's
14 case. Okay?

15 MR. CHRISCO: I'll waive it, Your Honor.

16 THE COURT: Okay. All right. Anything from the State
17 before we bring the jury back in?

18 MR. DEBUSK: No, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. CHRISCO: No, Your Honor.

21 THE COURT: All right.

22 MR. DEBUSK: Did Mr. Chrisco say he was going to waive
23 his --

24 THE COURT: He was going to waive opening statement.

25 MR. DEBUSK: I'll call my first witness. Thank you, Your

1 Honor.

2 THE COURT: All right. Let's go ahead and bring the jury
3 in.

4 What we'll do is I'm going to keep looking to see if I
5 can find anything, and while I'm saying you're not going to do
6 it, you're waiving at this point in time, if we find that I've
7 made the wrong decision I'll make -- I'll allow --

8 MR. DEBUSK: Yes, Your Honor.

9 THE COURT: -- him to make an opening then, but I don't
10 know that I'll be able to find anything.

11 (Whereupon, the following takes place in the presence of
12 the jury.)

13 THE COURT: All right. Ladies and gentlemen, welcome
14 back. I appreciate your patience. We're ready to begin the
15 trial of the case. The Defense has waived their right to
16 opening statements, and so we're going to go straight into the
17 evidentiary portion. Mr. DeBusk, the State can call their
18 first witness.

19 MR. DEBUSK: Thank you, Your Honor. The State calls
20 Logan Sawyers.

21 THE COURT: All right.

22 Whereupon, Logan Wade Sawyers was called to the stand,
23 duly sworn by the clerk and testified as follows:

24 THE CLERK: State your full name and spell your last
25 name.

Logan Sawyers - Direct by State

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1 MR. SAWYER: Logan Wade Sawyers, S-A-W-Y-E-R-S.

2 DIRECT EXAMINATION

3 BY MR. DEBUSK:

4 Q Mr. Sawyers, where do you work now?

5 A Allied Barton Security Services.

6 Q Where do you -- where is your station?

7 A McLeod Loris Hospital.

8 Q Okay. What do you do?

9 A I'm a security officer.

10 Q Okay. How about in August of 2014, where were you
11 working then?

12 A I worked for Wilco Hess.

13 Q Where? Which station?

14 A 926 in Loris, South Carolina.

15 Q Where is that located for those that might not know the
16 area very well?

17 A It's on Broad Street or 701.

18 Q Highway 701?

19 A Uh-huh.

20 Q I'm going to show you what's been marked as State's
21 Exhibit Two and ask if you recognize that.

22 A Yes, sir. That's the store.

23 MR. DEBUSK: Your Honor, we would move State's Two into
24 evidence at this time.

25 THE COURT: Any objection?

1 MR. CHRISCO: No objection, Your Honor.

2 THE COURT: State's Exhibit Number Two admitted into
3 evidence without objection.

4 (State's Exhibit Number Two [Photograph - Store]
5 introduced into evidence and appropriately marked.)

6 MR. CHRISCO: One second, Your Honor.

7 MR. DEBUSK: Your Honor, may we publish this to the jury?

8 THE COURT: Yes.

9 BY MR. DEBUSK:

10 Q What was your job at the Wilco?

11 A I was a cashier.

12 Q What time did you work?

13 A I worked from ten p.m. to six a.m.

14 Q Now, how about on the night of the 22nd and the morning of
15 the 23rd, were you on duty that -- of August 2014?

16 A Yes, sir.

17 Q Were you on duty?

18 A Yes, sir. I was.

19 Q Okay. Did anything unusual happen that night or early
20 morning hours?

21 A Yes, sir.

22 Q What was it?

23 A A robbery.

24 Q Do you recall about what time that happened?

25 A Around two o'clock.

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1 Q. Okay. Tell the jury what happened.

2 A A guy came in, walked around, got a cup of coffee, stood
3 around, drank a little bit of it, came to the counter, put the
4 coffee on the counter. I rang it up. He told me to give me
5 -- give him all the money. I thought he was joking. Then he
6 told me he'd kill me. He presented a firearm that was
7 covered. I could see a quarter inch of the muzzle.

8 Q How was it covered? With what?

9 A It was covered with a napkin from the store.

10 Q Paper napkin?

11 A Yes, sir.

12 Q Okay. Where was he holding it? Was he pointing it at
13 you, holding it across the counter?

14 A No, sir.

15 Q Where was he holding it?

16 A He was holding it towards the side and he had it covered.

17 Q Okay. Does your store have a policy for robberies?

18 A Yes, sir.

19 Q What is that?

20 A Give them whatever they want.

21 Q What did you do?

22 A Gave him whatever he wanted.

23 Q What did you give him?

24 A Cash.

25 Q Do you know how much?

1 A No, sir. I do not.

2 Q Okay. Do you think it was over a hundred dollars?

3 A Yes, sir. It was.

4 Q Okay. Did you get a good look at this individual?

5 A I did.

6 Q How far were you from him when the robbery happened?

7 A Around two feet.

8 Q Was it well lit?

9 A Yes, sir.

10 Q You got a look, good look at his facial features?

11 A Yes, sir.

12 Q Have you seen that person between the time that happened

13 and when you came to court?

14 A No, sir.

15 Q Do you see that person in the courtroom today?

16 A I do.

17 Q Who is it?

18 A The Defendant.

19 Q Are you referring to the gentleman in the green shirt

20 over here?

21 A Yes, sir.

22 Q That would be -- I'm sorry, Mr. Smiley?

23 A Yes, sir.

24 Q Does the Wilco or did the Wilco store at the time you

25 worked there have a video surveillance system?

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1 A Yes, sir.

2 Q Did it record from one camera or multiple cameras?

3 A Multiple.

4 Q Let me show you what has been marked as State's Exhibit
5 One and ask if you recognize this.

6 A Yes, sir. I do.

7 Q What is it?

8 A It's the surveillance footage from that night.

9 Q Does it fairly and accurately represent the things that
10 occurred in the Wilco that night?

11 A Yes, sir.

12 Q Were you present when those things happened?

13 A Yes, sir.

14 Q In fact, are you present -- are you seen on the videos in
15 that?

16 A Yes, sir.

17 Q Okay.

18 MR. DEBUSK: At this time we'd move State's One into
19 evidence.

20 THE COURT: Any objection?

21 MR. CHRISCO: No objection, Your Honor.

22 THE COURT: All right. State's Exhibit Number One
23 admitted into evidence without objection.

24 (State's Exhibit Number One [CD - Surveillance Video]
25 admitted into evidence and appropriately marked.)

1 MR. DEBUSK: Your Honor, we're going to move to publish
2 this in just a moment. I just want to make some preparations.

3 THE COURT: All right.

4 BY MR. DEBUSK:

5 Q Now you said there were multiple camera angles; right?

6 A Yes, sir.

7 Q Did one of them have sound?

8 A Yes, sir.

9 Q Okay. While we're waiting for things to warm up here,
10 let me move on to a few other exhibits here. State's Exhibit
11 Three, I would ask you to look at that and tell me if you
12 recognize it.

13 A Yes, sir. That's the coffee cup he took up to the
14 counter.

15 Q Is that the upper or the lower photo?

16 A The lower photo.

17 Q What's the other photo show?

18 A Him walking up to the counter.

19 Q Is, is that -- what's the origin of that particular
20 photo, the other photo?

21 A I'm sorry?

22 Q What's the origin of that photo, where, where did it come
23 from?

24 A The top one or the bottom one?

25 Q The top one.

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1 A It came from the surveillance footage covering my
2 register.

3 Q Okay. Let me show you State's Number Four and ask if you
4 recognize that.

5 A Yes, sir. That's more angles of the coffee cup left on
6 the counter.

7 Q Is that the counter as it was when you worked there?

8 A Yes, sir.

9 Q Okay. Is that -- and again, how did that coffee cup get
10 on that counter?

11 A He put it there.

12 Q Is that a fair and accurate representation of the state
13 of the counter after that robbery?

14 A Yes, sir.

15 Q State's Five, I ask if you recognize these two.

16 A Yes, sir. I do.

17 Q What are they?

18 A The top one's of me giving him the cash. The bottom one
19 is him leaving the store.

20 Q How about State's Six, again, are those from the
21 surveillance video?

22 A Yes, sir.

23 Q State's Six, ask if you recognize that.

24 A Yes, sir. I do.

25 Q What is it?

1 A The top one's him just leaving the counter and the bottom
2 one is him getting closer to the front door.

3 Q Again, is that stills from the surveillance video?

4 A Yes, sir.

5 Q State's Seven?

6 A The top one is him walking in through the back door, and
7 the bottom one is him walking, getting ready to walk out the
8 front door.

9 Q And State's Eight.

10 A The top one is him walking out the front door and the
11 bottom one is a picture of the height strip on the left side
12 of the front door.

13 Q Is that a fair and accurate representation of the state
14 of that strip when you worked there?

15 A Yes, sir.

16 Q Let me ask you just for clarity, you just mentioned he
17 came in the back door; is that correct?

18 A Yes, sir.

19 Q And he went out the front door?

20 A Yes, sir.

21 Q State's Two, if you could tell the jury, is that the
22 front door or the back door?

23 A That is the front door.

24 Q And that's a double door; is that correct?

25 A Yes, sir.

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1 Q Is the back door a double door or single door?

2 A Single door.

3 MR. DEBUSK: Your Honor, Two is in evidence. At this
4 time we would move Three through Eight into evidence.

5 THE COURT: Any objection?

6 MR. CHRISCO: No objection.

7 THE COURT: All right. State's Exhibits Three, Four,
8 Five, Six, Seven and Eight are admitted into evidence without
9 objection.

10 (State's Exhibit Numbers Three through Eight
11 [Photographs] admitted into evidence and appropriately
12 marked.)

13 MR. DEBUSK: Thank you, Your Honor. At this time we
14 would ask to publish State's Exhibit One to the jury via
15 projection.

16 THE COURT: All right. Go ahead.

17 MR. DEBUSK: May we have the screen down, please?
18 I apologize, Your Honor. I've had this problem before. I'm
19 going to have to restart the machine.

20 BY MR. DEBUSK:

21 Q While the machine is restarting, going to return you to
22 the -- when the Defendant approached the counter. When he
23 approached the counter did he have anything in his hands
24 beside the coffee you mentioned?

25 A Initially, no, sir.

1 Q Okay. When he set the coffee cup down, did he retrieve
2 it or did he leave it there?

3 A He left it there.

4 Q Did you see him pull out the weapon that you spoke of?

5 A Yes and no. I saw it after he -- while he was presenting
6 it, but I did not see him actually pull out of his pocket.

7 Q When he -- and you said he came in the back door.

8 A Yes, sir.

9 Q And he left the front door. Did you see where he went?

10 A He went left out the front door.

11 Q Did you see any other -- were there any other people
12 inside the store when this happened?

13 A There's two others.

14 Q Who were they?

15 A One was an employee and one was a regular customer.

16 Q Was the employee, the other employee, was she part of the
17 robbery?

18 A No, sir.

19 Q Did, did she, did she know it was going on?

20 A No, sir. She didn't.

21 MR. DEBUSK: Pardon me, Your Honor. The Court's
22 indulgence one moment.

23 BY MR. DEBUSK:

24 Q After the robbery did anyone summon the police?

25 A I'm sorry?

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1 Q After the robbery did anyone summon the police?

2 A Yes, sir.

3 Q Did the police respond?

4 A Yes, sir. They did.

5 Q Did you speak with the police?

6 A I did.

7 Q Did you give them a statement?

8 A Yes, sir.

9 Q Okay.

10 MR. DEBUSK: I apologize, Your Honor. Technology is
11 great until it ceases to work.

12 THE COURT: All right.

13 BY MR. DEBUSK:

14 Q I think you testified to this already, but did he make
15 any threats to you in order to get that money?

16 A Yes, sir.

17 Q What did he say?

18 A He told me he'd kill me.

19 (State's Exhibit Number One played in open court.)

20 BY MR. DEBUSK:

21 Q I might ask you while, while we're going through this,
22 who are the two individuals standing over there in the corner?

23 A The one in the blue is an employee, and the man with the
24 hat on he's a -- he was a regular customer.

25 Q Was?

1 A He is deceased now.

2 Q Okay. What was that area they're standing on?

3 A That's the coffee center.

4 Q So that's where they sell the hot beverages?

5 A Yes, sir.

6 Q Who is this individual walking into the frame at this
7 point?

8 A It is the Defendant.

9 Q I'm going to turn the volume up. So I won't be asking
10 you anymore questions. Is that you?

11 A Yes, sir.

12 Q Is this when the robbery took place?

13 A Yes, sir.

14 Q Did you give him all the money from the register?

15 A I gave him all the cash.

16 Q Now, we hear several voices on this tape. Were you --
17 were we able to hear the voice of the robber?

18 REPORTER: I can't hear you. I can't hear you when
19 you've got that running.

20 THE COURT: You can't -- yeah. You're going to have to
21 turn that off if you're going to make statements.

22 MR. DEBUSK: Yes, Your Honor.

23 THE COURT: Okay.

24 (State's Exhibit One stopped.)

25 BY MR. DEBUSK:

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1 Q We heard several voices on there. Were we able to hear
2 the voice of the robber?

3 A Faintly.

4 Q Well, could you understand what he was saying on the, on
5 the tape?

6 A On the tape, no, sir.

7 Q Was he speaking in a low tone?

8 A Very low.

9 Q Was he trying to be surreptitious about what he was
10 doing?

11 A I'm sorry. I don't know what that word means.

12 Q Was he trying to hide what he was doing?

13 A Yes, sir.

14 Q Okay. From the others in the store?

15 A Yes, sir.

16 (State's One played in open court.)

17 Q This is another angle. It has no -- no -- there's no
18 sound in the other video angles; is there? Is that correct?

19 A No, sir.

20 MR. DEBUSK: Your Honor, I'm going to move this forward a
21 little bit.

22 BY MR. DEBUSK:

23 Q This is a different angle for the same incident; is that
24 correct?

25 A Yes, sir.

1 Q Okay. Again, is this where the robbery occurred?

2 A Yes, sir.

3 Q What does this angle show?

4 A That's the back door of the store.

5 MR. DEBUSK: I'm sorry, Your Honor. My machine is having
6 difficulty running this program. It's locked up again.

7 BY MR. DEBUSK:

8 Q While my computer is restarting yet again, when you spoke
9 to the police, Mr. Sawyers, did you give them a description of
10 the individual that robbed the store?

11 A I did the best I could.

12 Q Uh-huh.

13 MR. DEBUSK: I apologize for the delay, Your Honor. It's
14 the machine has seen its better days.

15 MR. CHRISCO: Your Honor, may we approach?

16 THE COURT: Yeah.

17 MR. DEBUSK: There's just one more angle, Your Honor, to
18 publish.

19 (Whereupon, a bench conference is held in the presence
20 but out of the hearing of the jury.)

21 THE COURT: All right. Ladies and gentlemen, while we
22 reboot this machine, we're going to take a short break, give
23 you an opportunity to stretch your legs, use the restroom,
24 whatever the case may be. Do not discuss the case even among
25 yourselves at this point in time. It's too early for

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1 deliberations. Don't conduct any independent investigation.
2 We'll take about a five or ten minute break and bring you back
3 out in just a minute. Thank you very much.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Let's take about a ten minute
7 break, then we'll come back. All right.

8 OFF THE RECORD

9 (On the record. The following takes place outside the
10 presence of the jury.)

11 MR. DEBUSK: Your Honor, the problem appears to have
12 been a corrupted disk. I have a duplicate of the same disk.
13 May I substitute that as the --

14 THE COURT: What's the Defense position?

15 MR. CHRISCO: Your Honor, I've seen the things a thousand
16 times. So, so he can, he can use the, the backup thing. I've
17 looked at it on the backups.

18 THE COURT: Okay. So we've got the --

19 MR. DEBUSK: This is the one I put into evidence that's
20 corrupted. The one in the machine now is the original I made
21 this one from, in fact.

22 THE COURT: So you're substituting --

23 MR. DEBUSK: The original for the copy.

24 THE COURT: Okay. What is the, the, the one you're
25 holding? What is that? That's State's Exhibit --

1 MR. DEBUSK: One, Your Honor, One.

2 THE COURT: One. All right. Let's mark the one that's
3 in the machine, you don't object to that one?

4 MR. CHRISCO: No, Your Honor.

5 THE COURT: All right.

6 MR. CHRISCO: It's a copy of the same one.

7 THE COURT: I mean, is the one in the machine the one
8 that you're going to be playing or you're substituting?

9 MR. DEBUSK: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. DEBUSK: They're -- yes.

12 THE COURT: All right. Well, let's mark the one in the
13 machine Exhibit 1A. Can we do it that way?

14 MR. DEBUSK: Your Honor, because they're -- that's fine.
15 Because they're disks we can't put a sticker on, I've got a
16 sticker on the case. If you could write it with a marker?

17 THE COURT: She says she can write on it. So the one --
18 and then the other one, so 1A is being substituted for State's
19 Exhibit One; is that correct?

20 MR. DEBUSK: That's correct, Your Honor.

21 THE COURT: Is that agreeable, Mr. Chrisco?

22 MR. CHRISCO: I have no objection to that, Your Honor.

23 (State's Exhibit Number 1A [CD -Surveillance] admitted
24 into evidence and appropriately marked.)

25 THE COURT: Okay. All right. Anything -- oh, before we

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1 go forward, before we bring the jury in, well, I left the case
2 back there. My law clerk did find a case that basically says
3 opening statements, the right to opening statements and the
4 timing of opening statements is left purely within the
5 discretion of the Court. So based upon my prior ruling, I'm
6 going to rule that you've waived, in other words, that you had
7 to present it at the time they did it. So and I can get you
8 that, that cite if you want to, and basically what happened in
9 that case, the, the State waived opening arguments, and so
10 that judge ruled that since the State waived opening arguments
11 the Defense was not entitled to -- not -- opening statements,
12 since the State waived opening statements the Defense was not
13 entitled to give an opening statement, and the Supreme Court
14 ruled that that was not correct, but because it's within the
15 discretion of the Court, they affirmed the conviction anyway
16 and said the timing and right to opening statements is purely
17 within the discretion of the Court. All right?

18 MR. DEBUSK: Your Honor, as it's now 12:30 do I -- would
19 I be correct anticipate we'll take a lunch break after this
20 witness?

21 THE COURT: Yeah.

22 MR. DEBUSK: Thank you, Your Honor.

23 THE COURT: Yeah. All right. Anything from the Defense
24 before we bring the jury back in?

25 MR. CHRISCO: No, Your Honor.

1 THE COURT: All right. Let's go ahead and bring the jury
2 in. My law clerk says he thinks that case was State v. Brown.
3 I do remember it was like a --

4 MR. CHRISCO: State v. what now, Your Honor?

5 THE COURT: Brown.

6 MR. CHRISCO: State v. --

7 THE COURT: I want to say it was like 1973 Supreme Court
8 decision and has been cited several times since then, and I
9 can get you -- he printed it out, and I just left it on my
10 desk. I can get you the actual --

11 MR. CHRISCO: That'll be fine, Your Honor. I can, I can
12 find it.

13 (Whereupon, the following takes place in the presence of
14 the jury.)

15 THE COURT: Now, ladies and gentlemen, welcome back. Mr.
16 DeBusk, you can continue with your direct examination.

17 MR. DEBUSK: Thank you, Your Honor. Continue publishing
18 the --

19 BY MR. DEBUSK:

20 Q Now, Mr. Sawyers, this is the register you were working
21 when that robbery occurred?

22 A Yes, sir.

23 Q Did the Defendant at any point tell you he had a gun?

24 A No, sir. He just presented it.

25 Q We talked about the front door and the back door. Which

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1 door is this?

2 A This is the back door.

3 Q Who is that that's standing at that door?

4 A That is my former co-worker.

5 MR. DEBUSK: Your Honor, I apologize. I started too late
6 in the, the -- I missed the part where the Defendant came in
7 or where the assailant came in.

8 BY MR. DEBUSK:

9 Q Who was that that just entered through the back door on
10 the --

11 A That was the, the Defendant.

12 Q Now, which door is this, the front or the back?

13 A That would be the front door.

14 MR. DEBUSK: Your Honor, may I publish State's Three
15 through Eight to the jury?

16 THE COURT: All right.

17 BY MR. DEBUSK:

18 Q Mr. Sawyers, once again, just to reiterate, did you get a
19 good look at the person who robbed you?

20 A Yes, sir.

21 Q How close was he to you?

22 A Within two feet.

23 Q It was a -- was it a well-lit area?

24 A Yes, sir.

25 Q Were you paying close attention to him?

1 A Yes, sir.

2 Q And do you see that person in the courtroom today?

3 A Yes, sir. He's the Defendant.

4 Q Thank you. Please answer any questions that Mr. Chrisco
5 may have.

6 THE COURT: Cross examination.

7 MR. CHRISCO: Thank you, Your Honor.

8 CROSS EXAMINATION

9 By MR. CHRISCO:

10 Q Good afternoon. How you doing?

11 A All right.

12 Q Who is the lady in the picture, in the video?

13 A That was my co-worker.

14 Q Co-worker have a name?

15 A Cassandra Ford.

16 Q Cassandra Ford?

17 A Yes, sir.

18 Q Now, what was her duties there?

19 A She was the lead doughnut cook.

20 Q The lead what now?

21 A The head doughnut maker.

22 Q Oh, okay. She was also in the part where you had said,
23 "Call the police"; right?

24 A Yes, sir.

25 Q The same person?

1 A Yes, sir.

2 Q And what did you say to her to get her to call the
3 police?

4 A That he had a gun.

5 Q I don't think you said that.

6 A I told her that we got robbed and that he had a gun.

7 Q All in one breath?

8 A No, sir.

9 Q How much money was taken?

10 A I don't know the approximate amount.

11 Q Did you tell somebody at some point how much money was
12 stolen?

13 A I did once I counted the register down. It had the exact
14 amount.

15 Q And when was that?

16 A Once the manager reached the store.

17 Q Was that before you gave a statement to the police?

18 A It was after.

19 Q After you gave a statement to the police?

20 A Yes, sir.

21 Q So the numbers that you told the police were just from
22 what?

23 A Yes. I'd have to say I figured that's how much was in
24 there.

25 Q Did you talk -- what time did you talk to the police?

1 A I'm not sure of the exact time.

2 Q Was it before you made the statement to the police?

3 A I had told them the description before I made the
4 statement.

5 Q Did you tell them what happened?

6 A Yes, sir.

7 Q You told them all of that before you made a written,
8 written statement?

9 A Yes, sir.

10 Q What did you tell them happened?

11 A That he came in and robbed us and he ran away.

12 Q You stated in your written statement, if you want to
13 look at that to refresh your memory, I'll be glad to hand it
14 to you, if your recollection needs to be refreshed.

15 A Yes. That'd probably be best.

16 Q Is that the statement that you wrote?

17 A Yes, sir.

18 Q Has your memory been refreshed?

19 A Yes, sir.

20 Q A little different than what you told the police; isn't
21 it?

22 A Yes, sir. It was a little -- it was a long time ago. I
23 can't remember every detail what I wrote.

24 Q In fact it's been a few weeks over a year; hasn't it?

25 A Yes, sir.

1 Q And have you seen your statement in that year and few
2 weeks?

3 A I glanced over it yesterday.

4 Q Have you talked with the Solicitor about the case?

5 A Yes, sir.

6 Q How many times you talk with the Solicitor about the
7 case?

8 A Before yesterday, once.

9 Q And how long was that?

10 A How long did it last or how long ago was it?

11 Q No. How long did that meeting -- how long did the
12 meeting last with the Solicitor?

13 A About an hour.

14 Q Take us through what happened that night again.

15 A From start to finish?

16 Q Uh-huh.

17 A He walked through the back door and went around the back
18 of the aisles, went towards the coffee counter, poured him a
19 cup of coffee.

20 Q Now, is coffee the only thing you can get over there?

21 A No, sir. You can get hot chocolate, cappuccino. That's
22 about it.

23 Q So when you say coffee cup, could have had something else
24 in it?

25 A Yes, sir.

1 Q Go ahead.

2 A He then stood at the front of the counter drinking it. I
3 was waiting for him to come up to the counter. Once he did,
4 he put the coffee cup down. I walked over, started to ring it
5 up. He then asked me for all the money. I thought he was
6 joking. Then the tone of his voice changed. He told me he'd
7 kill me. I knew he was serious. I went as quick --

8 Q Let's, let's stop right there. In the statement that you
9 wrote minutes from within you told the police what happened
10 you never put in that statement that he threatened to kill
11 you.

12 A I'm not sure why I didn't do that.

13 Q Why didn't you tell the police?

14 A I told them that he threatened me.

15 Q Continue.

16 A I opened the drawer as fast I could. I gave him all the
17 money. He took all the money, went out the front door and
18 turned left.

19 Q Let's stop. Let's back up. When he was at the counter
20 where were his hands?

21 A Before or after he put the coffee cup down?

22 Q Let's just say as he was walking to the cash register.

23 A The coffee --

24 Q Did you see, did you see his hands?

25 A The coffee cup was in his, in his left hand. I couldn't

1 see his right hand. It was a little bit lower than what I
2 could see.

3 Q Then what was -- what happened next?

4 A He put the coffee cup down, still didn't see his right
5 hand and then, I mean, he asked for all the money. I saw him
6 bring his right hand up, and he had a firearm that was covered
7 with a napkin. I could a quarter inch of the barrel or the
8 muzzle of the firearm.

9 Q And he had that in which hand?

10 A In his right hand.

11 Q Then what happened?

12 A And then he said he'd kill me. He told me to give him
13 money. I went along with what he was telling me.

14 Q Stop a minute. You said that as you was getting the
15 money that's when you saw in his right hand silver.

16 A I saw it before I grabbed the money.

17 Q But then he tells you again?

18 A Yes, sir.

19 Q How many times did he tell you that he was going to kill
20 you?

21 A Twice.

22 Q Twice. Then what did he do?

23 A I gave him the money. He proceeded to go out the front
24 door and went left.

25 Q And you were watching the video here?

1 A Yes, sir.

2 Q What did you see as he walked out the door?

3 A He walked straight out the door, then went left.

4 Q Isn't it true that once he walked out the door his right
5 hand went down behind him and you could see four fingers and a
6 thumb?

7 A I didn't see that part.

8 Q Now, when you told your co-worker, Ms. Ford, what'd you
9 say?

10 A Right afterwards?

11 Q Uh-huh, soon as this happened.

12 A I told her to call the police and she asked why. I told
13 her to call the police because we got robbed and that he had a
14 gun.

15 Q Was it that quick or was there some hesitation? Did she
16 ask you what happened?

17 A Yes. She asked me what happened and I explained to her
18 very briefly what happened.

19 Q In fact in your statement you state that he pulls -- "He
20 said -- he told me he had a gun." That's what you say in your
21 statement, but then you say he pulls the gun from the right
22 side. Then you say, "Presents what looked like a gun." Then
23 you say, "I was able to see the tip of the barrel." Then you
24 say, "The part of the gun I was able to see was silver." Is
25 that what you wrote in your statement?

1 A Yes, sir.

2 Q What time did this occur on that night?

3 A After two in the morning.

4 Q How far away was Cassandra Ford when this happened?

5 A She was about 15 feet away from me.

6 MR. CHRISCO: The Court's indulgence for just one moment,
7 Your Honor.

8 THE COURT: All right.

9 BY MR. CHRISCO:

10 Q When he walked out the door where was his hand?

11 A Which one?

12 Q Either one, pick one.

13 A I couldn't tell because they were in front of his body.

14 All I could see was his back.

15 Q When you gave him the money, what happened to it?

16 A I'm sorry?

17 Q When you gave him the money, which hand did you hand it
18 to, your hand?

19 A My hand to his hand?

20 Q Uh-huh.

21 A My left hand to his left hand.

22 Q And what did he do with the money?

23 A He just gripped it in his hand.

24 Q And walked out the store?

25 A I believe he put it in his pocket.

1 Q In fact, you say he put it in his pocket; is that
2 correct?

3 A Yeah.

4 Q So he had the coffee cup in his hand; correct?

5 A In his left hand when he approached the counter.

6 Q So then the next thing he has in his hand is the money?

7 A In that hand, yes, sir.

8 Q And you state -- what did he do with the money? How did
9 you state that in your statement?

10 A That he put it in his pocket.

11 Q You want to read your statement again or you just want me
12 to tell you?

13 A You can tell me.

14 Q You said he folded it and put it in his pocket.

15 THE COURT: Is that a question?

16 MR. CHRISCO: Yes, Your Honor.

17 THE COURT: All right. Ask it again.

18 Q Correct?

19 A Yes.

20 Q So you're saying that his hands was not visible to you as
21 he walked out of the store?

22 A Correct.

23 Q Would you say that his hands were visible to the camera
24 as he walked out the store?

25 A Possibly. I'm not sure.

1 MR. CHRISCO: No further questions, Your Honor.

2 THE COURT: All right. Redirect?

3 MR. DEBUSK: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. DEBUSK:

6 Q Mr. Sawyers, I'm showing you what's now marked as State's
7 Exhibit Nine and ask if you recognize that.

8 A Yes, sir. That's my statement.

9 MR. DEBUSK: Your Honor, under the rule of completeness
10 the State would offer this into evidence at this time.

11 THE COURT: Any objection?

12 MR. CHRISCO: No objection, Your Honor.

13 THE COURT: State's Exhibit Nine admitted into evidence
14 without objection.

15 (State's Exhibit Number Nine [Sawyers' Statement]
16 admitted into evidence and appropriately marked.)

17 BY MR. DEBUSK:

18 Q State's Exhibit Three, the top photo, what does that
19 show?

20 A That shows the Defendant going towards the counter.

21 Q What does he have in his hands, if anything?

22 A Coffee cup.

23 Q Anything else that you could tell at that time?

24 A Not at that time.

25 Q What's the lower photo show?

1 A The coffee cup.

2 Q Is that the same coffee cup he carried to the counter?

3 A Yes, sir.

4 Q Did he leave it there?

5 A Yes, sir.

6 MR. DEBUSK: Your Honor, may I publish State's Three to
7 the jury?

8 THE COURT: All right.

9 BY MR. DEBUSK:

10 Q State's Exhibit Five, upper photo, what does that show?

11 A Shows me handing him the money.

12 Q Which hand does he take it with?

13 A Left hand.

14 Q Where is his right hand?

15 A Crossing to his left side.

16 Q Where is it relative to his body?

17 A I'm sorry?

18 Q Where is it relative to his body?

19 A Facing the left side of his body.

20 Q So his right hand is, was it like this?

21 A Yes, sir.

22 Q Okay. What is in that hand based on your recollection?

23 A A firearm.

24 Q What did you tell the police when you gave this statement
25 that was in his hand?

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1 A A firearm.

2 Q What did you tell Cassandra Ford when she asked what
3 happened he had in his hand?

4 A A gun.

5 Q Now, the bottom photo of the exhibit I just showed you,
6 and State's Six, upper and lower, what does that show?

7 A That he's got something in his right hand while he's
8 walking out the door.

9 Q What is he doing in that photo?

10 A Leaving the counter going out the door.

11 Q Okay. And does he having something in his right hand?

12 A Yes, sir.

13 Q And he has just taken, I think you testified, the money
14 with his left hand. Does he have something in his left hand?

15 A Yes, sir.

16 Q And the coffee cup is on the counter. So it's not the
17 coffee cup?

18 A Yes, sir.

19 Q So there's something in his right hand and something in
20 his left hand?

21 A Yes, sir.

22 Q And based on State's Exhibit Six, where are his hands
23 relative to his body, are they behind him where you can see
24 him or in front of him?

25 A They're in front of him.

1 MR. DEBUSK: Your Honor, may I publish Six -- Five and
2 Six to the jury?

3 THE COURT: All right.

4 BY MR. DEBUSK:

5 Q Any doubt in your mind the Defendant had what appeared to
6 be a gun in his hand when he robbed you?

7 A There's no doubt in my mind.

8 Q And is that what you told Cassandra Ford?

9 A Yes, sir.

10 Q Is that what you told the police?

11 A Yes, sir.

12 Q And you testified today?

13 A Yes, sir.

14 Q Do you remember precisely what you told the police a year
15 ago, precisely?

16 A That I, that I saw a quarter --

17 Q Do you remember precisely the words you used?

18 A Yes, sir.

19 Q Can you repeat the words you used to the police or you
20 just know approximately what you told them?

21 A I know what I told them.

22 Q Okay.

23 A I saw a quarter inch of a barrel.

24 Q Okay. And you gave him money. Was it more than \$100?

25 A Yes, sir.

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1 Q Do you remember the exact amount?

2 A No, sir. I don't.

3 Q Did you account for the exact amount to your employer?

4 A Yes, sir.

5 Q But you don't remember what that exact amount was?

6 A No, sir. I do not.

7 Q Did you give the police an approximate amount when they

8 asked?

9 A Yes, sir.

10 Q So, what -- did the approximate -- to your, to your

11 recollection did the approximation turn out to be about, about

12 the right amount?

13 A Yes, sir.

14 Q Okay.

15 MR. DEBUSK: No further questions.

16 THE COURT: All right. You may step down.

17 MR. DEBUSK: Your Honor, Mr. Sawyers worked last night.

18 So he's probably very tired. Can we get him excused so he can

19 go home and sleep?

20 THE COURT: Any objection?

21 MR. CHRISCO: No objection, Your Honor.

22 THE COURT: All right.

23 MR. DEBUSK: Thank you, Your Honor.

24 THE COURT: He's free to go. They're still reviewing the

25 photos.

1 MR. DEBUSK: Madam Clerk, can you raise the screen?

2 THE COURT: All right. Ladies and gentlemen, if you'll
3 just leave those exhibits right there on the rail. We're
4 going to go ahead and break for lunch. It's a little bit
5 after one. I'm going to let you go to lunch on your own
6 today. I'm going to ask that you be back in the jury room at
7 2:30. That'll give you almost an hour and a half to eat lunch
8 and get back before we resume the trial of this case.

9 I caution you again, do not discuss the case. Don't
10 discuss it even among yourselves at this time. It's too early
11 for deliberations. Don't conduct any independent
12 investigations. Don't go looking through the newspaper, the
13 internet or trying to find out anything about the case. I
14 hope everybody has a good lunch and we'll see you back at
15 2:30. Thank you very much.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Anything from the State before we
19 break for lunch?

20 MR. DEBUSK: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. CHRISCO: No, Your Honor.

23 THE COURT: All right. We'll be back at 2:30.

24 OFF THE RECORD.

25 (On the record. The following takes place outside the

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1 presence of the jury.)

2 THE COURT: All right. Anything from the State before we
3 bring the jury in?

4 MR. DEBUSK: No, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. CHRISCO: No, Your Honor.

7 THE COURT: All right. Let's bring the jury in.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right. Ladies and gentlemen, welcome
11 back. Mr. DeBusk, the State can call your next witness.

12 MR. DEBUSK: Thank you, Your Honor. The State calls
13 Corporal Eric Stevens of the Loris Police Department.

14 I apologize, Your Honor. I thought he was right outside
15 the door there. He must have stepped away. Your Honor,
16 instead of waiting -- we'll call Mr. Stevens out of order, and
17 the State, the State calls Chief Karen Shepherd.

18 THE COURT: All right.

19 Whereupon, Karen Shepherd was called to the stand, duly
20 sworn by the clerk and testified as follows:

21 THE CLERK: State your full name and spell your last
22 name.

23 MS. SHEPHERD: Karen Shepherd, S-H-E-P-H-E-R-D.

24 DIRECT EXAMINATION

25 BY MR. DEBUSK:

1 Q Chief Shepherd, who's your employer?

2 A Loris Police Department.

3 Q And what are your duties at this time?

4 A I'm chief.

5 Q How about back in August of 2012, 2014, I'm sorry, what
6 were your duties then?

7 A I was interim chief.

8 Q Okay. As part of your duties as interim chief did you
9 investigate a robbery at the Wilco Hess that occurred on
10 August 23rd of 2014?

11 A Yes, sir.

12 Q What did you do?

13 A I came out and observed the scene and then I gathered
14 information.

15 Q Okay. How did you -- did you follow up on that?

16 A Yes, sir. I interviewed multiple individuals, which the
17 investigation led me to Ms. Julia Smiley.

18 Q Who is Ms. Julia Smiley relative to the Defendant?

19 A She is, according to what she told me, she was his ex-
20 wife.

21 MR. CHRISCO: Objection, Your Honor.

22 THE COURT: Sustained. Hearsay.

23 Q Did you interview Ms. Smiley?

24 A Yes, sir.

25 Q Okay. Did you find any more evidence leading you to a

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1 suspect when you interviewed Ms. Smiley?

2 A Yes, sir. Ms. Smiley, I asked her did she have a recent
3 photo of the Defendant, Mr. Smiley, and she provided me with a
4 current --

5 MR. CHRISCO: Your Honor.

6 A -- or provided me with a photo.

7 THE COURT: Hold for a second.

8 MR. CHRISCO: Hearsay.

9 MR. DEBUSK: He hasn't --

10 THE COURT: No, not that, overruled. Go ahead.

11 MR. DEBUSK: Thank you, Your Honor.

12 BY MR. DEBUSK:

13 Q Okay. So you obtained a photo from Ms. Smiley?

14 A Yes, sir.

15 Q Did anything about that photo strike you as important?

16 A Yes, sir. The moment that I saw the photo, the
17 individual, the Defendant resembled my suspect that was
18 involved with the Wilco Hess robbery.

19 Q Had you seen the surveillance video at that point?

20 A Yes, sir. I had.

21 Q Were you familiar with the person that appeared in the
22 video?

23 A Yes, sir.

24 Q Did you do anymore investigation with Ms. Smiley?

25 A With Ms. Smiley?

1 Q Yes.

2 A Yes, sir. I asked Ms. Smiley would she come down to the
3 police department and view some photos and a video, short
4 footage that I had.

5 Q Was it that same video that we saw in evidence already?

6 A Yes, sir.

7 Q State's Exhibit One.

8 A And Ms. Smiley --

9 Q And I ask you, after you showed that to Ms. Smiley what
10 did you do? Were you able to obtain an arrest warrant for the
11 Defendant?

12 A Yes, sir. I did.

13 Q Did you go to a judge?

14 A Yes, sir. I did.

15 Q Was that arrest warrant served on Mr. Smiley?

16 A Yes, sir. It was.

17 Q Do you know when?

18 A I'm not sure on the --

19 Q Would it refresh you if I showed you a copy of the
20 warrant?

21 A Yes, sir.

22 Q Okay. Who was the affiant in that warrant?

23 A I was.

24 Q Okay. So you obtained the, the arrest warrant. Did you
25 serve it?

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- 1 A No, sir.
- 2 Q Okay. When was it served?
- 3 A 10-28-2014.
- 4 Q After that arrest warrant was served on Mr. Smiley, did
- 5 you have occasion to interview him?
- 6 A Yes, sir. I did.
- 7 Q What date did that happen on?
- 8 A The -- I think it was the day after the -- maybe the 29th.
- 9 Q The 29th of October? Where did that interview take place?
- 10 A At J. Reuben Long Detention Center.
- 11 Q What, what part of the detention center, what room?
- 12 A In the -- it was in the booking area, but it was like the
- 13 holding cell.
- 14 Q Did you record that interview?
- 15 A No, sir. I didn't.
- 16 Q Why not?
- 17 A The, the way the room was set up and it's -- and also I
- 18 had some malfunction in my equipment.
- 19 Q I well understand that after today. When you did this
- 20 interview did you inform him of his Miranda Rights?
- 21 A Yes, sir. We did.
- 22 Q Let me back up for a minute. Who was in the interview
- 23 besides you and Mr. Smiley?
- 24 A Me and Sergeant Miller.
- 25 Q Sergeant, what's her first name?

1 A Alicia Miller.

2 Q Okay. Who read the rights to him?

3 A Sergeant -- Officer Alicia Miller.

4 Q Okay. And how did the -- how is that done? Is there a
5 form, it's written, off a card, how is that done?

6 A Yes, sir. We have a written form. It's printed out and
7 the rights are on there and then we read each individual line
8 to the individual.

9 Q Let me show you what's been marked as State's Exhibit 11
10 and ask if you recognize that.

11 A Yes, sir.

12 Q What is that?

13 A Miranda Right form.

14 Q Did that have any connection with this case?

15 A Yes, sir.

16 Q Is that the form that he was read his rights by the
17 sergeant from?

18 A Yes, sir.

19 Q Did he sign it acknowledging that he understood his
20 rights?

21 A Yes, sir.

22 Q Is that his signature that appears on there?

23 A Yes, sir.

24 Q Did you watch him sign it?

25 A Yes, sir.

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- 1 Q Whose signature appears at the bottom as a witness?
- 2 A Mine.
- 3 Q Did he appear to understand his rights?
- 4 A Yes, sir.
- 5 Q And he had been in custody for at least a day before this
- 6 happened?
- 7 A Yes, sir.
- 8 Q Did he appear to be under the influence of any drugs or
- 9 alcohol or anything at that time?
- 10 A No, sir.
- 11 Q Did he appear to understand what you were telling him?
- 12 A Yes, sir.
- 13 Q Did he agree to give a statement?
- 14 A Yes. He did.
- 15 Q What did he tell you about the Wilco robbery?
- 16 A He had told us that he was at the -- had -- was at the
- 17 Wilco Hess station, that he did take the money and he did set
- 18 the cup on the counter. When questioned about the cup being
- 19 coffee he said, no, it was hot chocolate, and he said that he
- 20 did not have a gun. He was there, but he did not have a gun.
- 21 Q Did he say what he told the victim during the robbery?
- 22 A I think -- I'd have to look back at my notes. I can't
- 23 recall right off the top of my head exactly what he told the
- 24 victim.
- 25 Q If I give you a copy of the report from that interview --

1 A The interview. Okay. Ask me the question again.

2 Q Okay. Just so the jury'll know that's -- is that
3 supplemental report from the interview that was conducted at
4 J. Reuben Long Detention Center of the Defendant?

5 A Yes, sir.

6 Q Did he say what he told the, the victim during the
7 robbery?

8 A He said he told the victim, "This is a robbery. Give me
9 the money."

10 Q Okay. Let me ask a couple of general things. As the
11 police chief in Loris can you tell me that the Wilco Hess what
12 county is that in?

13 A Horry.

14 Q Okay. And what other investigation was done by you or
15 other members of the Loris Police Department or were you aided
16 by any other agencies?

17 A Yes.

18 Q What other agency?

19 A Horry County.

20 Q Okay. What did they do?

21 A They come out and assist in helping to secure the scene,
22 also help look for the suspect that, that fled on foot and
23 also help collect some evidence.

24 Q What evidence did they help collect?

25 A The cup and swab, DNA swab and dusted for -- to try to

Karen Shepherd - Cross by Defense

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1 get some prints.

2 Q Did they get any identifiable prints from the location?

3 A They -- there was some partial prints or some, some
4 prints, yes, off the counter.

5 Q Off a counter?

6 A Uh-huh.

7 Q Okay. After examining the videotape, did the Defendant
8 touch the counter?

9 A No, sir.

10 Q Okay. Well, the cup was taken into evidence?

11 A Yes, sir. It was.

12 Q Okay. During the interview did the Defendant mention
13 seeing any other witnesses at the scene?

14 A The --

15 Q Feel free to, to consult your notes if you need to.

16 A The Defendant said when he exited the store there was a
17 vehicle in the parking lot and there was some gentlemen in the
18 vehicle or some individuals in the vehicle.

19 Q Thank you. Please answer any questions the Defense might
20 have.

21 THE COURT: All right. Mr. Chrisco, cross examination.

22 MR. CHRISCO: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. CHRISCO:

25 Q Good afternoon. What time did you get there that

1 morning?

2 A The exact time I'm not sure, but it was shortly after.
3 So probably somewhere, somewhere around -- if it happened at
4 2:30, probably about three or a few minutes after three.

5 Q And how many people were in the store when the robbery
6 occurred?

7 A That I recall from the video there was the victim, the
8 young man behind the counter. There was another worker,
9 female, and another individual that was a customer.

10 Q And what was that individual's name?

11 A Joe, I think. I think his name's Joe.

12 Q What about Willie Boyd?

13 A He was one of the individuals -- he wasn't in the store.
14 That is one of the individuals that was supposed to be outside
15 in a vehicle.

16 Q What about a person named Van Sessions?

17 A He was also one of the individuals in, in the truck
18 outside.

19 Q Cassandra Ford was one of the individuals on the inside?

20 A Ms. Floyd?

21 Q Cassandra Ford.

22 A She was the other -- the lady that makes the doughnuts.

23 Q Right. How many other witnesses were there?

24 A At the scene?

25 Q Uh-huh.

Karen Shepherd - Cross by Defense

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- 1 A Just those individuals.
- 2 Q Did any of them say that they saw a gun?
- 3 A The victim did.
- 4 Q Besides him?
- 5 A No, sir.
- 6 Q Now, how much money was taken? How much on the report,
- 7 shows on your report?
- 8 A I think it was, and I'd have to refer back to my report,
- 9 but it was \$258 or something like that, something
- 10 approximately about that amount.
- 11 Q Okay. The coffee cup, do we know for sure that it was
- 12 coffee?
- 13 A No, sir.
- 14 Q There was a swab used to circle the top of the cup, and
- 15 then that was done for DNA purposes; is that correct?
- 16 A It was, yeah, it was obtained of evidence.
- 17 Q And this happened on August the 23rd?
- 18 A Yes, sir.
- 19 Q And wasn't it, I think you said earlier, the 22nd of
- 20 September was when you talked with Ms. Smiley?
- 21 A Yes, sir. I'd have to be a hundred percent sure.
- 22 Q Well, look, make sure.
- 23 A Can I have my notes?
- 24 Q You didn't look over your case today before you came?
- 25 A Yes, sir, but there's a lot of dates and times and things

1 in this case that it's hard to remember all the -- ask me the
2 question again.

3 Q From the cup that was left on the counter a swab was
4 taken around the top portion of it --

5 A Yes, sir.

6 Q -- contained DNA?

7 A Yes, sir.

8 Q Is that correct?

9 A That's correct.

10 Q What -- and then this happened on August the 23rd and you
11 talked with Ms. Smiley and saw the picture on September the
12 22nd. That was almost a month later.

13 A Yes, sir.

14 Q What were the results for the DNA?

15 A There is no results because the -- it hasn't been tested.
16 It's in evidence.

17 Q It's in evidence?

18 A Yes, sir.

19 Q And was it going to examine itself or how -- why is it
20 still in evidence?

21 A I haven't had a request to send it to SLED.

22 Q Well, who would have to request that?

23 A Normally we get a request from the prosecuting officer.

24 Q So you just collect evidence and then wait for the State
25 Prosecutor to tell you what to do with it?

Karen Shepherd - Cross by Defense

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- 1 A Normally, yes, sir. We don't just send evidence down to
2 SLED to be tested unless it's requested to be tested.
- 3 Q Were there any fingerprints lifted from the counter?
- 4 A Yes, sir, some partial prints and --
- 5 Q Partial prints. And were those tested?
- 6 A No, sir.
- 7 Q They're in evidence?
- 8 A Yes, sir.
- 9 Q You bring that evidence with you today?
- 10 A No, sir.
- 11 Q It's evidence for this case; was it not?
- 12 A Yes, sir.
- 13 Q You didn't bring it?
- 14 A No, sir.
- 15 Q Why didn't you bring it?
- 16 A I didn't bring it.
- 17 Q You just brought the good stuff?
- 18 A I brought what I felt the -- was needed for court.
- 19 Q You brought what you felt.
- 20 A Well --
- 21 Q The search for the truth is not something you felt this
22 morning? You felt that you didn't need to bring the evidence
23 in this case into the courtroom.
- 24 A Yes, sir. I brought evidence into --
- 25 Q You didn't bring all the evidence; did you?

- 1 A Well, if you're referring to the prints and the DNA swab,
2 no, sir, I didn't.
- 3 Q You have the cup, too; don't you?
- 4 A Yes, sir.
- 5 Q How come you didn't record the statement?
- 6 A You talking about with Mr. Smiley?
- 7 Q Uh-huh.
- 8 A One reason was the room that we were in, and the other
9 reason was when I checked my recorder the recorder's battery
10 was dead, but there was another officer present at the time
11 that Mr. Smiley gave his statement.
- 12 Q You didn't check the batteries before you went over
13 there? You knew you was going to talk to him; right?
- 14 A Yes, sir. I knew it was a possibility.
- 15 Q You didn't check your battery to make sure everything was
16 good to go?
- 17 A No, sir, because normally it is but I hadn't used it
18 lately.
- 19 Q How much do you use it?
- 20 A How much do I use that particular recorder? I don't use
21 it very often any, anymore because I'm not the chief
22 investigator.
- 23 Q So any conversations you have with people you don't deem
24 that they need to be recorded because you're not the chief
25 investigator?

Karen Shepherd - Redirect by State

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1 A If I'm interviewing someone, yes, sir, I do, and it bees
2 [sic] -- it, it bees [sic] recorded.

3 Q I notice all through the reports that your department
4 wrote coffee cup, coffee cup, mentioned a bunch of times; is
5 it not?

6 A Yes, sir.

7 Q Yet you didn't know for sure if it was coffee or not?

8 A Well, the cup is a cup that is generally used for coffee.

9 Q So if an item can be used for something else but it can
10 only be for what you think that it is?

11 A Well, the cup is normally used for coffee, but the
12 individual, the Defendant told me had hot chocolate in it, not
13 coffee.

14 MR. CHRISCO: The Court's indulgence.

15 No more questions.

16 THE COURT: All right. Redirect?

17 REDIRECT EXAMINATION

18 BY MR. DEBUSK:

19 Q Chief Shepherd, the day after that warrant was signed or
20 served, served you had a confession from the Defendant; right?

21 A Yes, sir.

22 Q You had him on video; right?

23 A Yes, sir.

24 Q And you had a victim that could identify him; correct?

25 A Yes, sir.

1 Q If you hadn't had all those things, do you think you
2 would have sent off the DNA?

3 A Yes, sir.

4 Q For DNA analysis?

5 A Yes. I would have.

6 Q But when the Defendant himself is admitting he was the
7 one there --

8 A Yes, sir.

9 Q -- would it add anything to the case? Would it add
10 anything to the case?

11 A No, sir.

12 Q The cup that we're referring to, this it on State's
13 Exhibit Three?

14 A Yes, sir.

15 Q That cup was collected; was it not?

16 A Yes, sir.

17 Q Maintained safely in evidence?

18 A Yes, sir.

19 Q If anybody had requested to examine it they could have?

20 A Yes, sir.

21 Q Okay. Thank you.

22 MR. DEBUSK: No further questions, Your Honor.

23 THE COURT: All right. You may step down.

24 All right. The State can call their next witness.

25 MR. DEBUSK: Your Honor, the State calls Corporal Eric

Eric Stevens - Direct by State

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1 Stevens.

2 THE COURT: All right.

3 Whereupon, Joseph Eric Stevens was called to the stand,
4 duly sworn by the clerk and testified as follows:

5 THE CLERK: Okay. If you'd state your full name and
6 spell your last name.

7 MR. STEVENS: Okay. Joseph Eric Stevens, last name, S-T-
8 E-V-E-N-S.

9 DIRECT EXAMINATION

10 BY MR. DEBUSK:

11 Q Now, Corporal Stevens, who is your employer?

12 A Excuse me?

13 Q Who is your employer?

14 A Loris Police Department.

15 Q How long have you been with them?

16 A Approximately seven years.

17 Q What are your duties at this time?

18 A Enforce traffic laws, ensure public safety, just things
19 of that nature.

20 Q General patrol duties?

21 A Yes, sir.

22 Q How about in August of 2014?

23 A The 23rd?

24 Q No, what were your duties in August?

25 A The same, the same.

1 Q The same. Okay. Your patrol area is the City of Loris I
2 take it?

3 A That is correct.

4 Q Is there a Wilco Hess in Loris?

5 A That is correct.

6 Q I'm going to show you what's been marked as State's
7 Exhibit 10 and ask if you recognize this?

8 A I do.

9 Q What is it?

10 A It's the Wilco.

11 Q What's the red circle there, the red circle?

12 A What'd you say now?

13 Q What, what is the red circle indicating?

14 A Oh, it's the, the, the incident location?

15 Q Yeah. What is that building?

16 A Oh, it's the Wilco, Wilco Hess.

17 Q Okay. What's the built-up area over by the evidence
18 sticker, what's the city and over there by the evidence
19 sticker?

20 A I'm sorry. Repeat, repeat that again.

21 Q What is the city that Wilco Hess is close to?

22 A Oh, Loris. I'm sorry. I'm sorry.

23 MR. DEBUSK: Your Honor, the State would move -- is it
24 11, State's 11 into evidence.

25 THE COURT: Wait a minute.

Eric Stevens - Direct by State

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1 MR. DEBUSK: I'm sorry, 10, 10.

2 THE COURT: Ten, any objection?

3 MR. CHRISCO: I don't know yet, Your Honor. No
4 objection, Your Honor.

5 THE COURT: All right. State's Exhibit Number 10
6 admitted into evidence without objection.

7 (State's Exhibit Number 10 [Aerial Photograph] admitted
8 into evidence and appropriately marked.)

9 MR. DEBUSK: May I publish it to the jury, Your Honor?

10 THE COURT: All right.

11 BY MR. DEBUSK:

12 Q Now, let me ask you specifically about August 23rd of
13 2014. Were you on duty during the early morning hours?

14 A Yes, sir.

15 Q Did you respond to that Wilco indicated on that?

16 A Yes, sir. I did.

17 Q Why?

18 A I had a report of an armed robbery.

19 Q How, how many Loris officers responded?

20 A Myself and one other, one other patrol officer.

21 Q Did other officers show up later during the investigative
22 phase?

23 A Yes, sir.

24 Q Some from County, some from Loris?

25 A Yes, sir.

1 Q What did you do at the scene?

2 A When I arrived on scene I met with the witnesses. I, I
3 secured the scene.

4 Q How many witnesses were there?

5 A There were two witnesses outside near a truck.

6 Q Uh-huh.

7 A Once I went inside there were the employees at the Wilco
8 and that's, that's about all.

9 Q Okay. Did you or the other officers interview all the
10 witnesses?

11 A Yes, sir.

12 Q Including the two guys outside in the truck?

13 A Yes, sir.

14 Q Did you take some photographs?

15 A I did.

16 Q Let me show you one of our exhibits already in evidence
17 here, State's Four. Are those some of the photographs you
18 took?

19 A Yes, sir.

20 Q Okay. Was the cup indicated in those photographs
21 collected?

22 A Yes, sir. It was.

23 Q After talking to the witnesses, photographing the scene
24 and securing the scene, were you able to generate any suspects
25 that night?

Eric Stevens - Cross by Defense

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1 A No. We were not.

2 Q Okay. Who took over the investigation from there?

3 A Chief Shepherd and Sergeant Miller.

4 Q Thank you. Please answer any questions the Defense may
5 have.

6 CROSS EXAMINATION

7 BY MR. CHRISCO:

8 Q Good afternoon. What time did you get there?

9 A Approximately 2:42 a.m.

10 Q What are you referring to there?

11 A Excuse me?

12 Q What are you referring to?

13 A My arrival time at the Wilco?

14 Q No. I said what are you referring to when you --

15 A Oh, an incident report.

16 Q Okay. And you got there at what time?

17 A About 2:42 a.m., around that time.

18 Q And what time did the chief get there?

19 A A short time later.

20 Q How much -- how long is that?

21 A I don't know, after speaking with the witnesses and
22 trying to secure the scene, you know, I didn't keep track of
23 time.

24 Q Well, let's go through it then.

25 A Okay.

1 Q What witnesses did you talk to?

2 A When I first arrived on scene I saw the two people, the
3 witnesses standing outside. When I entered the store I made
4 contact with one of the employees and he advised me that he
5 had -- there was an armed robbery that took place. I made
6 sure --

7 Q Who is this, who is this employee?

8 A It was Mr. Sawyers.

9 Q Okay. So you got there and you saw two witnesses on the
10 outside?

11 A Yes, sir.

12 Q Did you say anything to them?

13 A I did. You know, they, they didn't know much on what,
14 what was going on as, you know, they just --

15 Q So you stopped and talked to them?

16 A Did to make sure everything was okay. And then --

17 Q How long did that take?

18 A A couple of minutes, a minute or two.

19 Q Did you get their names?

20 A It is -- it's documented.

21 Q That night, did you get their names, that, right then?

22 A I did not.

23 Q Did you know them before?

24 A I was familiar with them. They -- they're, they're
25 frequent customers at the store.

Eric Stevens - Cross by Defense

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1 Q So you knew them by name?

2 A I believe one of their names is Willis maybe, and I, I
3 couldn't tell you the other one's name, but I know them by
4 face. I'm familiar with their face.

5 Q But you didn't stop to get their name to make sure that
6 you had their names in case they got out of pocket.

7 Q No. I, I, I -- like I said, I -- I'm familiar with them.
8 We could have made contact if, you know, if needed be, but I
9 was more concerned with the inside, you know, to make sure
10 that everybody was okay inside also.

11 Q Okay. And you go inside. What, what do you do then?

12 A Spoke with Mr. Sawyers. He advised me that there had
13 been an armed robbery that took place, and after that we just
14 we secured the scene.

15 Q What did he say took place?

16 A He said that he had been robbed, said that the guy did
17 have a gun and said that he had took out running through the
18 front doors and took off running down the direction of 701
19 South.

20 Q Did he tell you how much money was taken?

21 A He said he, he thought around about maybe \$250.

22 Q And when did you find out that that number was not \$250?

23 A I believe a post investigation was conducted, and I
24 believe maybe at a later time it was discovered that there was
25 different amount. I'm not sure. The last -- on, on the

1 report I put \$250. That's, that's what was indicated to me on
2 -- when I arrived on scene.

3 Q So you don't know any other different number than the
4 \$250?

5 A No, sir.

6 Q So at the preliminary hearing when you testified there
7 was \$200 taken, where did that number come from?

8 A Around, I mean, 250. I didn't have the report on me at
9 that time.

10 Q Stop for a minute. Stop for a minute. You're going to a
11 preliminary hearing?

12 A Okay.

13 Q It's in the court. You take an oath.

14 A Uh-huh.

15 Q A serious crime, you don't bring your notes with you?

16 A Yes, sir. I, I do.

17 Q You just said you didn't have your notes.

18 A I didn't, I didn't have it, I didn't have it that day.

19 Q Okay. Go ahead.

20 A I was advised that about \$250 was taken, and we, we
21 secured the scene and interviewed witnesses and took evidence.

22 Q What evidence did you take?

23 A We took the cup that was on the counter.

24 Q Why?

25 A Because, well, it was indicated that the suspect used the

Eric Stevens - Cross by Defense

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- 1 cup prior to the armed robbery, and it was, it was taken for
2 evidence.
- 3 Q So, who took the cup into evidence?
- 4 A I did.
- 5 Q You did?
- 6 A Yes, sir.
- 7 Q And how did you secure it?
- 8 A I secured it in a paper bag.
- 9 Q Brown paper bag?
- 10 A That belongs -- yes, sir, belongs to Loris Police
11 Department.
- 12 Q Seal it or --
- 13 A Yes, sir.
- 14 Q -- or stapled it?
- 15 A I believe it was stapled. Yes, sir.
- 16 Q What was in the cup?
- 17 A A brown liquid. I didn't taste it so.
- 18 Q But you reported that it was coffee?
- 19 A That's what it appeared to be.
- 20 Q That's what it appeared to be. Now, where did you make
21 that assumption?
- 22 A Visual observation.
- 23 Q Anything else taken into evidence?
- 24 A The video and the pictures.
- 25 Q What about a swab?

1 A Yes. It was.

2 Q Tell me about the swab.

3 A Horry County Police had assisted with the investigation.
4 Officer Larry Williams, he, he took the, the swab for
5 evidence.

6 Q What happened to the swab?

7 A It was placed into evidence.

8 Q Who placed it into evidence?

9 A I believe Chief Shepherd did.

10 Q Did you follow up on the evidence and see what the
11 results were or there was testing?

12 A No, sir.

13 Q Why is that?

14 A I didn't. I just didn't. I didn't.

15 Q What follow-up investigation did you do to this call?

16 A It was handed over to Chief Shepherd and Sergeant.
17 Miller.

18 Q You heard nothing else about it?

19 A I did not.

20 Q Did you have any -- did you play any part in the stop
21 that was made on the two individuals who were one of the
22 witnesses there who said --

23 MR. DEBUSK: Objection, Your Honor.

24 THE COURT: Sustained.

25 A I did not.

Eric Stevens - Cross by Defense

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- 1 Q When did you write your report?
- 2 A The report was entered on August 23rd, 2014, at 6:39 a.m.
- 3 Q You wrote the report based upon what?
- 4 A The statements that I gathered when I was on scene.
- 5 Q And what was the, what was the description of the person
- 6 that you were looking for at that time?
- 7 A The -- I was given a description of a light-skinned black
- 8 male or possible Hispanic person with a receding hairline,
- 9 small build, and they were wearing black, a black shirt.
- 10 Q Excuse me. A small what now?
- 11 A Small build.
- 12 Q Small build.
- 13 A Yes, sir.
- 14 Q Go ahead.
- 15 A Wearing a black shirt and blue jeans.
- 16 Q Did you look around that night for someone like that?
- 17 A I did.
- 18 Q And where did your travels take you that night?
- 19 A The initial officer that was on scene he was given a
- 20 description. Prior to arriving on scene, I searched the
- 21 immediate area around the Wilco, and I did not locate any
- 22 suspects fitting that description.
- 23 Q What time did you look at the video?
- 24 A The -- it was -- I don't have an exact time. The
- 25 manager, the manager arrived on scene and gave us access to

1 the video.

2 Q Okay. You arrived there around 2:40 something you said?

3 A Yes, sir.

4 Q And you wrote your report at 6:39.

5 A Uh-huh.

6 Q Isn't that what you said?

7 A Yes, sir.

8 Q There was like four hours there; correct? Where did you
9 watch any of the videos? Where did that fall in between that
10 time period?

11 A Well, it was the, the description was given to me and we
12 were able to obtain copies of the video and view it at a later
13 time.

14 Q You didn't view it that night?

15 A Excuse me?

16 Q You didn't view it that night?

17 A No, sir. Actually, yes, we did.

18 Q Okay. You've told me you did and you didn't.

19 A Yes. We did.

20 Q Pick one and go with it.

21 A Yeah. We did.

22 Q You did? What time did it?

23 A Yes. We, we had to -- I, I couldn't tell you.

24 Q You couldn't tell me.

25 A I'm not sure when the manager arrived on scene.

Eric Stevens - Cross by Defense

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1 MR. CHRISCO: The Court's indulgence.

2 THE COURT: All right.

3 BY MR. CHRISCO:

4 Q When you respond to a call and it's one such as this, is
5 there a crime scene log set up?

6 A Yes, sir.

7 Q And what is that supposed to do?

8 A It's supposed to document anybody who enters into the
9 crime scene and their purpose for which they're entering.

10 Q And so their departure, too; right?

11 A Excuse me?

12 Q And their departure, too?

13 A Yes, sir.

14 Q And times are supposed to be done?

15 A Yes, sir.

16 Q All right. And you use military time; correct?

17 A Uh-huh.

18 Q So 0242 is 2:42 a.m. in the morning; correct?

19 A Yes, sir.

20 Q And is that standard for every crime scene that you do?

21 A Yes, sir.

22 Q And what does that help you do?

23 A Establishes a time period of when that person was there.

24 Q Crime scene log in this case?

25 A It documents everyone who was there on scene.

1 Q Do you have one in this case?

2 A I'm not sure.

3 Q Would you like to look?

4 A For the crime scene log?

5 Q Did you start it?

6 A I did not.

7 Q Isn't the first person that arrives starts the crime
8 scene log?

9 A Yes, sir.

10 Q Who was the first person to arrive?

11 A Officer Suggs.

12 Q So he started it?

13 A I'm not aware of that.

14 Q Don't you have to sign it?

15 A Yes, sir. I -- it's -- it happened about a year ago.

16 I'm, you know, I'm -- I'd have to --

17 Q And how about looked at the --

18 A I'd have to refer back to it.

19 Q Did you look at the police reports and stuff?

20 A Yes, sir. I have one in my hand.

21 Q Is that all that you've got there?

22 A Yes, sir.

23 Q Well, look through it and see if you find a crime, crime
24 scene log?

25 A No, sir. I, I didn't see one.

Eric Stevens - Cross by Defense

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- 1 Q So, you can't remember?
- 2 A No, sir.
- 3 Q Would you like your memory -- your recollection
- 4 refreshed?
- 5 A Sure.
- 6 Q Look over it.
- 7 A Okay.
- 8 Q Refresh your recollection.
- 9 A Okay.
- 10 Q So what time does the Wilco manager get there?
- 11 A I didn't see him on the log.
- 12 Q Didn't see what now?
- 13 A I didn't see him on the log. I don't --
- 14 Q Maybe you need your memory --
- 15 A Let me see it again.
- 16 Q -- your recollection refreshed? Take your time.
- 17 A Okay. Okay. The time isn't stated. The time isn't
- 18 stated.
- 19 Q Don't read from the document. Tell me what you -- tell
- 20 me after your memory's been refreshed what time did he get
- 21 there?
- 22 A I don't know.
- 23 Q And you don't know for what reason?
- 24 A I was busy doing other things. The time was not stated
- 25 -- put on the paper.

1 Q So you got two individuals that came there, you don't
2 know what time and left you don't know what time?

3 A Uh-huh.

4 Q You have control of the scene while you were there?

5 A Yes, sir.

6 Q What else did you do while you were there?

7 A That was basically it.

8 Q Basically it?

9 A Yes, sir. Interviewed any witnesses, employees, tried to
10 gather any evidence and that was it.

11 Q Why? Why were you gathering evidence?

12 A Because --

13 Q If you wasn't going to test it, why were you gathering
14 it?

15 A Why would I gather it if what now?

16 Q I said you weren't going to test it. Why would you
17 gather it?

18 A Well at that time I viewed it as evidence. It was in our
19 suspect's hands. So I viewed it as, as evidence.

20 Q And what evidence did you have that put it in the
21 suspect's hands?

22 A Witness statements, after him interviewing the, the
23 witness, Mr. Sawyers, he advised me that the subject or the
24 suspect was drinking the -- from the cup prior to the armed
25 robbery.

Eric Stevens - Cross by Defense

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- 1 Q You were the first one to talk with the person that said
2 he was robbed?
- 3 A I think I'm the second one, the first one being the
4 initial officer that was -- arrived on scene.
- 5 Q And who was that?
- 6 A Officer Suggs.
- 7 Q So what was your role there?
- 8 A As far as the on-scene?
- 9 Q Uh-huh.
- 10 A I, I was the officer that took the report.
- 11 Q What does that mean?
- 12 A I was the, the officer that, that completed the report
13 and I, I entered, like I said, I interviewed witnesses when I
14 was there and --
- 15 Q Who'd you interview?
- 16 A I interviewed Mr. Sawyers, the, the two witnesses
17 outside.
- 18 Q What were their names?
- 19 A The two witnesses outside?
- 20 Q Uh-huh.
- 21 A I know one is a Willis, that's all I could tell you about
22 them.
- 23 Q Still to this day that's all you can tell me about them?
- 24 A That's correct.
- 25 Q Did you see anybody with a gun?

1 A He did not advise me, no, sir.

2 Q Well, did you ask him?

3 MR. DEBUSK: Your Honor, hearsay.

4 THE COURT: Overruled. I'll allow it.

5 A He just advised me that he saw somebody running out of
6 the door and advised me which direction he ran to.

7 Q So under your investigation you, you found no one besides
8 the person that said he was robbed that said this person had a
9 gun; is that correct? That's a correct statement?

10 A That's correct.

11 MR. CHRISCO: No further questions, Your Honor.

12 THE COURT: All right. Redirect?

13 REDIRECT EXAMINATION

14 BY MR. DEBUSK:

15 Q Officer Stevens, are you a little nervous today?

16 A A little bit.

17 Q This the first time you've testified in General Sessions
18 court?

19 A Yes, sir.

20 Q Okay. I show you what's now been marked as State's
21 Exhibit 14. Do you recognize that?

22 A Yes, sir.

23 Q What is that?

24 A It's a crime scene log.

25 Q And who, who kept that log?

Eric Stevens - Redirect by State

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- 1 A I did.
- 2 Q And what are the first two names on there?
- 3 A Van Simmons and Willis Boyd.
- 4 Q Are those the two individuals who you talked to outside
- 5 the store?
- 6 A Yes, sir.
- 7 Q So you, in fact, you did record their names?
- 8 A Yes, sir.
- 9 Q Let me show you another item and see if this refreshes
- 10 your memory. Did you take a statement from Mr. Willis Boyd?
- 11 A Yes, sir.
- 12 Q A written statement?
- 13 A Yes, sir.
- 14 Q Let me show you another one and see if this recollects
- 15 your memory. Did you take a statement from the other
- 16 employee, Cassandra Ford?
- 17 A Yes, sir.
- 18 Q Doughnut maker?
- 19 A Yes, sir.
- 20 Q So you were busy, you were taking statements and you
- 21 recorded these names; did you not?
- 22 A Yes, sir.
- 23 Q So you were doing your job?
- 24 A Yes, sir.
- 25 Q Now a year after the fact do you remember everything you

1 did?

2 A It's been a year.

3 Q I mean, that's why you write, write reports; isn't it?

4 A That's correct. It's --

5 Q That's why you got everything in writing so you can
6 recollect the different dates; right?

7 A Yes, sir.

8 Q Now, when you were there you recorded the arrival of
9 several other officers; right?

10 A Yes, sir.

11 Q When you got there Mr. Van Simmons and Mr. Willis Boyd
12 were already there; were they not?

13 A That's correct.

14 Q So there's really no reason to record an arrival. They
15 could -- you don't know what time they got there?

16 A Huh-uh.

17 Q The same as Ms. Ford and Mr. Sawyers; right, and they're
18 employees, they stayed after you left; correct?

19 A Correct.

20 Q Other than the two people that were already there, I'm
21 sorry, four people that were already there, the only one you
22 didn't record entry and exit time for was the manager; is that
23 correct?

24 A That's correct.

25 Q And why didn't you record the time of arrival and

Eric Stevens - Redirect by State

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1 departure for the manager? Did you see him arrive?

2 A I did not.

3 Q Okay. And did you see him depart?

4 A I did not.

5 Q So you couldn't record the time on him?

6 A No, sir.

7 Q Was he speaking to other officers?

8 A He was.

9 Q Thank you.

10 MR. DEBUSK: Your Honor, at this the State would move 14
11 into evidence.

12 THE COURT: Any objection?

13 MR. CHRISCO: No, Your Honor.

14 THE COURT: State's Exhibit 14 admitted into evidence
15 without objection.

16 (State's Exhibit Number 14 [Crime Scene Log] admitted
17 into evidence and appropriately marked.)

18 BY MR. DEBUSK:

19 Q So your role there was initially to look for a suspect;
20 is that correct?

21 A Correct.

22 Q And then once you could not locate a suspect was to
23 interview witnesses?

24 A Yes, sir.

25 Q And you did those two things?

1 A I did.

2 Q And then to maintain the log of who came and went; is
3 that correct?

4 MR. CHRISCO: Objection, Your Honor, leading.

5 THE COURT: Sustained. Let's don't lead.

6 MR. DEBUSK: Okay.

7 BY MR. DEBUSK:

8 Q In other words, you were busy when you were there? You
9 were doing your job?

10 A I was. There was, you know, upset people, witnesses on
11 scene, and I was busy interviewing people, making sure that
12 nobody left.

13 Q Okay. And you helped collect evidence from the crime
14 scene? You also -- did you collect, help collect evidence
15 from the crime scene, also?

16 A Yes, sir.

17 Q Did you help photograph the crime scene?

18 A Yes, sir.

19 Q And so you were busy?

20 A I was.

21 Q And you recorded all this in a report; is that correct?

22 A Yes, sir.

23 Q And what's the purpose of those reports?

24 A In case you don't remember something you can refer back
25 to it.

Eric Stevens - Redirect by State

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1 Q And you brought your report with you, too?

2 A I did this time. Yes, sir.

3 Q Thank you.

4 MR. DEBUSK: No further questions.

5 THE COURT: All right. You may step down.

6 A Thank you.

7 THE COURT: Ladies and gentlemen, it's about 20 till
8 four. It's a good time for us to take our afternoon break.
9 I'm going to excuse you back to the jury room, give you an
10 opportunity to stretch your legs, get something to drink, use
11 the restroom, whatever the case may be, but please do not
12 discuss the case even among yourselves. It's too early for
13 deliberations. Don't conduct any independent investigations.
14 We'll take about a 10 or 15 minute break and then we'll come
15 right back. Thank you very much.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Anything from the State before we
19 recess?

20 MR. DEBUSK: No, Your Honor.

21 THE COURT: Anything from the Defense?

22 MR. CHRISCO: No, Your Honor.

23 THE COURT: All right. Let's take about a 10, 15 minute
24 break.

25 OFF THE RECORD

1 (On the record. The following takes place outside the
2 presence of the jury.)

3 THE COURT: All right. Anything from the State before we
4 bring the jury in?

5 MR. DEBUSK: No, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. CHRISCO: No, Your Honor.

8 THE COURT: All right. And get the jury and bring them
9 in.

10 MR. CHRISCO: Yes, Your Honor, if we could approach for a
11 second.

12 THE COURT: Yeah. Come on up.

13 (Whereupon, a bench conference is held.)

14 THE COURT: All right. Let's go ahead and bring the,
15 bring the jury in.

16 (Whereupon, the following takes place in the presence of
17 the jury.)

18 THE COURT: All right. Ladies and gentlemen, welcome
19 back: Mr. DeBusk, the State can call their next witness.

20 MR. DEBUSK: Thank you, Your Honor. The State calls
21 Sergeant Alicia Miller.

22 Whereupon, Alicia Miller was called to the stand, duly
23 sworn by the clerk and testified as follows:

24 THE CLERK: Please state your full name and spell your
25 last name.

Alicia Miller - Direct by State

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1 MS. MILLER: Alicia Miller, M-I-L-L-E-R.

2 DIRECT EXAMINATION

3 BY MR. DEBUSK:

4 Q Sergeant Miller, who's your employer?

5 A Loris Police Department.

6 Q And what are your duties?

7 A Numerous, I answer calls, take reports, interview people,
8 obtain warrants.

9 Q General patrol duties?

10 A Yes, sir.

11 Q How long you been with them?

12 A Approximately nine years.

13 Q How about in August of last year, what were your duties
14 and rank then?

15 A August of last year, I believe I was just a patrol
16 officer.

17 Q So you've been promoted?

18 A Yes.

19 Q Congratulations.

20 A Thank you.

21 Q Did you take any part in the investigation of a robbery
22 at the Wilco Hess in Loris that occurred on August 23rd of last
23 year?

24 A Yes, sir.

25 Q Okay. Are you familiar with the cases around the Loris

1 area?

2 A Yes.

3 Q Have there been any other robberies at that location?

4 A No, sir.

5 Q Okay. What did you do in association with this
6 investigation?

7 A I actually had gone to the jail with Chief Shepherd to
8 interview Mr. Smiley after he was arrested. After advising
9 Mr. Smiley of his rights --

10 Q Let's stand back for a minute about the rights. How do
11 you advise someone of their rights? Do you read them off a
12 card?

13 A We have a specific form that we use every time we speak
14 to somebody.

15 Q Let me show you State's 11 in evidence and ask you if you
16 recognize that.

17 A I do.

18 Q What is that?

19 A This is our standardized form, our rights form that we
20 before we speak to anybody we have to advise them of their
21 rights so they don't tell us anything that --

22 Q Is that the specific one or a copy of the specific one
23 you used with Mr. Smiley?

24 A Yes, sir.

25 Q How can you tell?

Alicia Miller - Direct by State

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1 A It has our -- my chief's handwriting on it, her signature
2 and it's the, the same form I've used for nine years now.

3 Q Is Mr. Smiley's signature on there?

4 A Yes, sir.

5 Q Did you witness him sign it?

6 A Yes.

7 Q Now, before you -- after you read him his rights did you
8 threaten or coerce him in any way to make a statement?

9 A No, sir.

10 Q Did you deny him anything he wanted so he would make a
11 statement?

12 A No, sir.

13 Q How long did the interview take?

14 A Approximately 35 to 45 minutes.

15 Q Okay. Did he seem impaired or, or under the influence of
16 anything at that time?

17 A No, sir.

18 Q Did he seem to understand what you were asking him and
19 what he was saying?

20 A Yes, sir.

21 Q Okay. What did he tell you about the incident at the
22 Wilco has?

23 A Mr. Smiley had, like I said, he spoke with us and did not
24 want to provide a written statement but he was willing to just
25 speak with us and stated that he had gone to the Wilco Hess.

1 He was unsure of the date.. He said that he did approach the
2 gentleman behind the counter.

3 Q Let me stop you for just a minute. I notice you're,
4 you're looking down at something. Just let the jury know what
5 you're looking down at.

6 A Yes. I'm sorry. I'm just referring back to some of my
7 notes that I took from that. Okay.

8 Q Is, is that your report you made, is your supplemental
9 report?

10 A Yes, sir. Yes.

11 Q Okay. Please continue.

12 A Okay. After speaking with Mr. Smiley he had stated that
13 he approached the gentleman behind the counter and advised --
14 told him that this was a robbery, to give him the money. He
15 said that the young man behind the counter gave him the money
16 and he walked out of the store. When he walked out of the
17 store, he said he saw a couple of people sitting in a truck
18 and he continued walking off from this location.

19 Q Did he, did he say whether he had a gun?

20 A He stated to me several times that he did not have a gun.

21 Q But he does admit that he was the one that approached the
22 clerk and took some money?

23 A Yes, sir.

24 Q Okay. Did he tell you what, what words he used with the
25 clerk?

Alicia Miller - Cross by Defense

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1 A Yes. He said that, "This is a robbery, give me the
2 money."

3 Q And did he mention whether the clerk appeared to be
4 frightened?

5 A He had mentioned that he, he seemed scared.

6 Q And are you familiar with the crime scene at all or were
7 you familiar with the crime scene in these photographs?

8 A Just the several photos that I have seen.

9 Q Okay. There was a cup there. Did he say anything in
10 reference to that cup?

11 A Yes. He did. When I had asked him about a cup, I said,
12 you know, "Why did you leave a cup of coffee there," and he
13 said it wasn't a cup of coffee, it was a cup of hot chocolate.

14 Q So he was actually correcting you about the, the crime
15 scene?

16 A Correct.

17 Q Please answer any questions the Defense might have.

18 A Okay.

19 CROSS EXAMINATION

20 BY MR. CHRISCO:

21 Q Good afternoon.

22 A Good afternoon.

23 Q How long did you say that the interview lasted?

24 A Approximately 35, 45 minutes.

25 Q You originally said 30 minutes. Now you said 35 to 45

1 minutes. Would it surprise you to know that in another place
2 that you under oath have said it was close to an hour?

3 A No. Yesterday when you had asked me to close my eyes and
4 rethink I told you 35 to 45 minutes.

5 Q Now, what was your part in the --

6 A My part of this?

7 Q Yeah.

8 A Was --

9 Q In the investigation, did you follow up on any witnesses?

10 A No. I did not.

11 Q What are your duties there?

12 A My duties at the police department?

13 Q Uh-huh.

14 A I am an initial call taker. I oversee my staff on my
15 shift. I basically --

16 Q I mean, what does that mean oversee your staff?

17 A Just scheduling when people are off and make sure things
18 are handled the way they're supposed to be done, make sure all
19 the paperwork's done for our shift.

20 Q And on the shift people you're over what, oversee those
21 people?

22 A Yes, sir.

23 Q If they have any problems, any questions and stuff?

24 A Uh-huh.

25 Q Were you the supervisor on duty when the two people were

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1 stopped in the Toyota?

2 A No sir. I was not on duty.

3 Q Do your -- what was your function there when -- to the
4 Miranda rights, just as a witness?

5 A Yes, sir.

6 Q And what was it he said again? Take me through what he
7 said.

8 A Take -- okay. After advising him of his rights on him
9 wanting to speak with us --

10 Q Did you ask him how far he went in school?

11 A No. I did not.

12 Q Do you think that would have mattered?

13 A I've never asked it before. So I wouldn't think to ask
14 him that then.

15 Q When you're reading someone rights do you --

16 A I ask them if they understand what I'm reading to them
17 and I usually turn the paper around to them. Like if I was to
18 read it to you and read it this way, and I do read it upside
19 down, and I ask them, "Do you understand everything on here?
20 If you're understanding, go ahead and sign for me," and that's
21 what Mr. Smiley did that day.

22 Q So you felt like he understood all of it?

23 A Yes, sir.

24 Q After he signed that, what happened then?

25 A We had, had asked him about the Wilco, if he had been to

1 the Wilco. He said yes, but he was unsure of the date that he
2 had gone.

3 Q Did he hesitate when you asked him that?

4 A No. No. He did not.

5 Q And what'd he say?

6 A He said that he was in there, and he had walked up to the
7 clerk and told him that this was a robbery, to, "give me the
8 money." He said the boy opened the register, he give him the
9 money and he walked out the door.

10 Q I hate to keep belaboring this, but what did he say was
11 in the cup?

12 A I had, I had asked him, I said, "So, why did you leave
13 your cup," and he -- "or why'd you leave your cup of coffee on
14 the counter," and he, he corrected me and said it was not a
15 cup of coffee, it was a cup of hot chocolate.

16 Q Did you ever look at the evidence in this case?

17 A No, sir. No.

18 Q Thank you. No more questions.

19 A All right.

20 THE COURT: Redirect?

21 MR. DEBUSK: No, Your Honor.

22 THE COURT: All right. You may step down.

23 A Thank you.

24 THE COURT: Thank you.

25 MR. DEBUSK: Your Honor, the State calls Sandy Lowe with

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1 the Horry County Sheriff's Office.

2 Your Honor, Madam Clerk tells me that State's 11, which
3 is the Miranda form, is not in evidence. I'd move it into
4 evidence at this time based on the --

5 THE COURT: Any objection?

6 MR. CHRISCO: No objection.

7 THE COURT: All right. State's Exhibit Number 11
8 admitted into evidence without objection.

9 (State's Exhibit Number 11 [Miranda Form] admitted into
10 evidence and appropriately marked.)

11 Whereupon, Sandy Lowe was called to the stand, duly sworn
12 by the clerk and testified as follows:

13 THE CLERK: Please state your full name and spell your
14 last.

15 MS. LOWE: Sandy Lowe, L-O-W-E.

16 DIRECT EXAMINATION

17 BY MR. DEBUSK:

18 Q Officer Lowe or Deputy Lowe, what's -- what is your --
19 who's your employer?

20 A Horry County Sheriff's Office.

21 Q Where do you work?

22 A J. Reuben Long Detention Center.

23 Q Is that the local jail?

24 A Yes.

25 Q Okay. What are your duties there?

1 A I am in charge of the classification department that
2 maintains the records of the detention center.

3 Q Okay. Did you examine the records pertaining to this
4 Defendant, Mr. Smiley?

5 A Yes, sir.

6 Q I'm going to show you what's been marked as State's
7 Exhibit 12 and ask if you recognize this?

8 A That is the photo that is taken in booking when the
9 inmate is booked in.

10 Q Was that when, when the warrant was served on him on
11 October -- in October of 2014?

12 A Yes.

13 Q October 28th?

14 MR. DEBUSK: Your Honor.

15 MR. CHRISCO: No objection, Your Honor.

16 MR. DEBUSK: Move this into evidence, Your Honor.

17 THE COURT: State's Exhibit Number 12 admitted into
18 evidence without objection.

19 (State's Exhibit Number 12 [Booking Photo] admitted into
20 evidence and appropriately marked.)

21 BY MR. DEBUSK:

22 Q Let me show you what's been marked as State's Exhibit 13
23 and ask if you recognize that?

24 A Yes.

25 Q What is it?

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- 1 A It is an assessment that the unit managers do on an
2 inmate to assess where they -- for their housing while they're
3 in the facility.
- 4 Q Is that regularly done on all prisoners?
- 5 A Yes.
- 6 Q Are the records of that regular activity kept by, by you?
- 7 A Yes.
- 8 Q Is that the copy of what was in your records?
- 9 A Yes. It is.
- 10 Q A fair and accurate copy?
- 11 A Yes.
- 12 Q What is the procedure when they go through that
13 questionnaire?
- 14 A The unit manager would ask the questions and then at the
15 end they would have the inmate sign their name on the bottom.
- 16 Q Okay. And that's regularly done every time someone is
17 booked?
- 18 A Yes. Well, when they --
- 19 Q Or gets classified.
- 20 A -- come down the hall. Yes.
- 21 Q Classified.
- 22 A When they're staying, yes.
- 23 Q Whose signature appears on that form?
- 24 A Raymond Smiley.
- 25 MR. DEBUSK: Your Honor, we would move this into evidence

1 at this time as a business record under Rule 803(6).

2 MR. CHRISCO: The Defense would object to it. May we
3 approach?

4 THE COURT: All right.

5 (Whereupon, a bench conference is held in the presence
6 but out of the hearing of the jury.)

7 MR. DEBUSK: Your Honor, we would move it into evidence
8 subject to the redaction we just stipulated to.

9 THE COURT: Is that agreeable?

10 MR. CHRISCO: No objection.

11 THE COURT: All right.

12 MR. CHRISCO: The redaction.

13 MR. DEBUSK: We will redact that before it goes to the
14 jury, Your Honor.

15 THE COURT: All right. State's Exhibit 13 admitted into
16 evidence without objection subject to the redaction stipulated
17 by the parties.

18 (State's Exhibit Number 13 [Assessment] admitted into
19 evidence and appropriately marked.)

20 BY MR. DEBUSK:

21 Q Please answer any questions the Defense might have.

22 CROSS EXAMINATION

23 BY MR. CHRISCO:

24 Q Good afternoon. How are you doing today?

25 A Good.

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1 Q . Thank you. No further questions.

2 THE COURT: All right. You may step down. All right.

3 The State can call their next witness.

4 MR. DEBUSK: The Court's indulgence one moment, Your
5 Honor.

6 No further witnesses, Your Honor. At this time the State
7 rests.

8 THE COURT: All right. Ladies and gentlemen, the State
9 has rested their case, and procedure dictates that this is the
10 time of the trial where I have to take up some legal matters
11 with the attorneys. So ordinarily I would just excuse you
12 back to the jury room and then bring you back out at a later
13 time, but given the time of day I think it's a good time for
14 us to go ahead and break for the day. I'm going to ask that
15 you please be back in the jury room at 9:15 tomorrow morning,
16 and we'll resume with the trial of this case. I remind you
17 again, do not discuss the case even among yourselves. It's
18 too early for deliberations. Don't conduct any independent
19 investigations, don't try to find out anything about the case.
20 I hope everybody has a good evening and we'll see you back at
21 9:15 tomorrow morning. Thank you very much.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. Any motions?

25 MR. CHRISCO: Your Honor, I know this is the part where

1 I'm supposed to stand up and say that they didn't prove the
2 elements of the case and I'm asking for a directed verdict,
3 but I think we've all heard the evidence. I think there's
4 enough there to take it to the jury. So I'll not make that.

5 THE COURT: All right. Anything from the State?

6 MR. DEBUSK: No, Your Honor. Other than the record for
7 when we talk about testifying, Your Honor.

8 THE COURT: Okay. All right.

9 All right. As we discussed in a side bar, Mr. Chrisco, I
10 thought I'd go over with your client his rights to testify at
11 this time and then that'll at least give him overnight to
12 think about whether or not he wishes to testify. Is that
13 agreeable?

14 MR. CHRISCO: Yes, Your Honor.

15 THE COURT: All right. Sir, if you'd please stand.

16 (Complies with request, and Defendant sworn by the
17 Court.)

18 THE COURT: All right. Sir, your name is Raymond Smiley?

19 MR. SMILEY: Yes, sir.

20 THE COURT: All right. Mr. Smiley, at this time I'm
21 going to explain to you certain rights that you have and
22 protections granted to you by the United States Constitution.
23 If you do not understand anything I say please let me know.
24 If you want me to explain anything in more detail, please let
25 me know. Okay. Do you understand that?

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1 MR. SMILEY: Yes, sir.

2 THE COURT: All right. We've now reached the stage of
3 the trial where you may present your defense. You have the
4 right to claim the protections given to you by the Fifth
5 Amendment to the United States Constitution which states in
6 part that no person shall be compelled in any criminal case to
7 be a witness against himself. This means that you cannot be
8 required to testify in this case. You have the right to
9 testify on your own behalf. However, no one can make you
10 testify. This is a personal right and no one can waive this
11 right except for you. If you decide to testify you will be
12 subject to the same rules that govern other witnesses and you
13 may be examined and cross-examined on any relevant issue in
14 this case. In addition, if you have any convictions involving
15 dishonesty or false statement or for crimes punishable by
16 imprisonment for more than one year and this Court determines
17 that the probative value of admitting this evidence outweighs
18 its prejudicial effect to you, the Solicitor will be able to
19 introduce your record to attack your credibility. At this
20 time is there anything in his prior criminal record that the
21 State would use to attack his credibility?

22 MR. DEBUSK: Your Honor, from 1997 there are convictions
23 for armed robbery, assault with intent to kill, criminal
24 conspiracy, CDVHAN and pointing and presenting. They were
25 back beyond the 10 years but the imprisonment did not end

1 until November of 2013, which would bring them within the 10
2 years, and also --

3 THE COURT: Okay. What would the probative value of
4 those be?

5 MR. DEBUSK: Your Honor, felony convictions would be
6 probative of his truthfulness and then there's a shoplifting
7 and resisting officers from North Carolina in 2014.

8 THE COURT: Okay. All right. So what was the 1997?

9 MR. DEBUSK: Armed robbery, assault -- assault with
10 intent to kill, criminal conspiracy, CDVHAN and pointing and
11 presenting a firearm.

12 THE COURT: What was the criminal conspiracy for?

13 MR. DEBUSK: The armed robbery, Your Honor. I reviewed
14 the case myself and the criminal conspiracy went along with
15 the armed robbery charge and the assault with intent to kill.

16 THE COURT: All right. Mr. Chrisco, what's the Defense
17 position on those?

18 MR. CHRISCO: Your Honor, 1997 was 18 years ago. I know
19 the sentence that he got is beyond that, but where he pled
20 guilty, the conviction was 1997.

21 THE COURT: Okay. All right. Let me get these again,
22 armed robbery, assault with intent to kill, criminal
23 conspiracy, criminal domestic violence of a high and
24 aggravated nature, and what were the others?

25 MR. DEBUSK: Pointing and presenting a firearm, that was

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1 the last of the '97 charges. Then from 2014 in North Carolina
2 shoplifting and resisting an officer.

3 THE COURT: Shoplifting and what?

4 MR. DEBUSK: Resisting an officer. Your Honor,
5 considering the, the similarities of the current charge we
6 would ask just that instead of using armed robbery to impeach
7 him, we just use a felony conviction from 1997 to, to -- for
8 impeachment purposes.

9 THE COURT: Okay.

10 MR. DEBUSK: And Your Honor, the reason being the
11 probativity is in the felony conviction, not in the nature of
12 the conviction that it being so similar might be prejudicial.

13 THE COURT: When did he complete his sentence?

14 MR. DEBUSK: Your Honor, I don't think it's been
15 completed yet, but he was released from incarceration on
16 November of 2013 and he is still under community supervision.

17 THE COURT: On all of those charges?

18 MR. DEBUSK: To my knowledge, Your Honor.

19 MR. CHRISCO: No, Your Honor. Just on the armed robbery
20 -- what was the other one? Just on the A, B and C Class
21 felonies would he be on community supervision.

22 MR. DEBUSK: That, that would be the armed robbery.
23 That'd be the armed robbery.

24 THE COURT: Okay. All right. I'm going to allow the
25 State to say he's a convicted felon for purposes of

1 impeachment, but I'm not going to let you get into the nature
2 of the charges. All right.

3 MR. DEBUSK: Understood, Your Honor.

4 THE COURT: Also, I'm not going to allow the, the
5 shoplifting or the pointing or presenting a firearm or
6 resisting arrest. I don't see where those have any probative
7 value at all, but these others, as convicted felons where the
8 release has been less than a year and he's still on community
9 supervision, I am going to allow you to address the fact that
10 he is a convicted felon, but not get into the specifics of the
11 charge. Okay?

12 MR. DEBUSK: Thank you, Your Honor.

13 THE COURT: All right. Do you understand that, Mr.
14 Smiley, that if you take the stand then they will be able to
15 introduce into evidence the fact that you are a convicted
16 felon as a means of attacking your credibility, but I will not
17 let them get into the fact that the felony for which you have
18 been convicted is an armed robbery or assault with intent to
19 kill or criminal conspiracy or criminal domestic violence of a
20 high and aggravated nature, but they will be able to get into
21 evidence that you have a conviction for a felony. Do you
22 understand that?

23 MR. SMILEY: Yes, sir.

24 THE COURT: All right. If you decide to testify this
25 decision on your part must be freely, voluntarily and

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1 intelligently made with knowledge of the protections given to
2 you by the Fifth Amendment and the consequences of your
3 decision to testify. If you decide not to testify, I will
4 instruct the jurors that they cannot give the fact that you
5 did not testify any consideration whatsoever and that there is
6 to be absolutely no prejudice to you because you did not
7 testify. It is left entirely up to you whether or not you
8 testify. You may talk with your attorney, your family and
9 friends or anyone else, but the final decision will be left
10 entirely up to you. Now, do you understand what I've
11 explained to you?

12 MR. SMILEY: Yes, sir.

13 THE COURT: All right. Do you have any questions about
14 what I've explained to you?

15 MR. SMILEY: No, sir.

16 THE COURT: Okay. I'm not going to require you to make a
17 decision at this time. Okay. I'm going to go ahead and
18 recess for the evening, but when we come back tomorrow morning
19 I'm going to ask you whether or not you wish to testify in
20 this case. Okay?

21 MR. SMILEY: Yes, sir.

22 THE COURT: All right. At this time anything further the
23 State wants placed on the record in that regard?

24 MR. DEBUSK: No thank you, Your Honor.

25 THE COURT: Anything further the Defense wants placed on

1 the record in that regard?

2 MR. CHRISCO: Yes, Your Honor.

3 THE COURT: All right.

4 MR. CHRISCO: I'd like the Court to order that the
5 detention center have Mr. Smiley here 30 minutes before the
6 court convenes, Your Honor, for me to talk with him.

7 THE COURT: Okay. Can we -- what time -- I've got the
8 jury coming back at 9:15.

9 MR. DEBUSK: Yes, Your Honor.

10 THE COURT: Okay. Can we get him here by 9:00 o'clock?

11 OFFICER: Yes, sir.

12 THE COURT: Okay. All right. I'll take the bench at
13 9:30. Is that sufficient, Mr. Chrisco?

14 MR. CHRISCO: And his clothes, Your Honor, that they --
15 he says that the jail is acting funny about his clothes. I
16 want to make sure that he's got his clothes when he comes to
17 -- from the jail.

18 THE COURT: Okay. All right. Well, they're, they're
19 supposed to bring that. So we'll get that. You know, if we
20 don't have it we'll take however much time we need to get it.
21 Okay?

22 MR. SMILEY: Yes, sir.

23 THE COURT: All right. Anything further from the
24 Defense?

25 MR. CHRISCO: No, Your Honor.

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1 THE COURT: All right. We'll be in recess.

2 MR. DEBUSK: Your Honor, if possible tomorrow I would ask
3 to be able to review the charge on armed robbery for my --
4 purposes of my closing.

5 THE COURT: Okay. Well, I mean, I'm, I'm working on the
6 charges.

7 MR. DEBUSK: Yes. I understand you're working on them.

8 THE COURT: Yeah. I mean, I'll definitely be charging on
9 the law on armed robbery, but you know, what -- I haven't
10 completed the whole charge yet.

11 MR. DEBUSK: I understand.

12 THE COURT: But we've still got to do that.

13 MR. DEBUSK: For my closing I just wanted to review the
14 part about the armed robbery --

15 THE COURT: All right.

16 MR. DEBUSK: -- but we can address that tomorrow, Your
17 Honor. Thank you.

18 THE COURT: That'll be fine. All right. So we'll be in
19 recess until then.

20 (Adjourned for the day.)

21

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25

1 (On the record, September 10, 2015, State v. Raymond Smiley,
2 2014-GS-26-5250. The following takes place outside the
3 presence of the jury.)

4 MR. DEBUSK: Your Honor, one bit of business from
5 yesterday. We had it figured that, I apologize, an exhibit
6 that needed to be redacted.

7 THE COURT: Right.

8 MR. DEBUSK: And I have redacted it.

9 THE COURT: That was State's Exhibit Number 13 as I
10 understand.

11 MR. CHRISCO: And I did, I, I viewed it earlier.

12 MR. DEBUSK: Okay.

13 THE COURT: All right. So you agree to State's Exhibit
14 13 as it now exists? .

15 MR. CHRISCO: I agree with it, Your Honor.

16 THE COURT: Okay. All right. So that's in evidence.

17 MR. DEBUSK: The original 13, I guess, can be changed for
18 the record.

19 (Court reporter and Court confer.)

20 THE COURT: Okay. Sounds good.

21 All right. Anything further from the State?

22 MR. DEBUSK: No, Your Honor.

23 THE COURT: All right. Mr. Chrisco, are we ready to go
24 forward with me to complete my questioning regarding your
25 client's right to testify?

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1 MR. CHRISCO: Yes, Your Honor.

2 THE COURT: All right, sir. Mr. Smiley, if you'd please
3 stand.

4 MR. SMILEY: Yes, sir.

5 (Complies with request.)

6 THE COURT: All right. Let's place him under oath again.

7 (Defendant sworn by the clerk.)

8 THE COURT: Okay. All right. Mr. Smiley, I'm going to
9 go over these rights with you as I did yesterday regarding
10 your right to testify. Okay?

11 MR. SMILEY: Yes, sir.

12 THE COURT: As I explained to you yesterday, at this time
13 I'm going to explain to you certain rights that you have and
14 protections that are granted to you by the United States
15 Constitution, and if you do not understand anything I say,
16 please let me know. If you want me to explain anything in
17 more detail, please let me know. Do you understand that?

18 MR. SMILEY: Yes, sir.

19 THE COURT: All right. We've now reached the stage of
20 the trial where you may present your defense. You have the
21 right to claim the protections given to you by the Fifth
22 Amendment to the United States Constitution which states in
23 part that no person shall be compelled in any criminal case to
24 be a witness against himself. This means that you cannot be
25 required to testify in this case. You have the right to

1 testify on your own behalf. However, no one can make you
2 testify. This is a personal right, and no one can waive this
3 right except for you. If you decide to testify, you will be
4 subject to the same rules that govern other witnesses, and you
5 may be examined and cross-examined on any relevant issue in
6 this case. In addition, if you have any convictions involving
7 dishonesty or false statement or for crimes punishable by
8 imprisonment for more than one year and this Court determines
9 that the probative value of admitting this evidence outweighs
10 its prejudicial effect to you, the Solicitor will be able to
11 introduce your record to attack your credibility. Now, as we
12 discussed yesterday, I will not allow the Solicitor to make
13 reference to the 2014 charges that -- which were the
14 shoplifting and the resisting arrest. However, the other
15 charges from 1997, he can't reference the specific charges,
16 but he will be allowed to say that you have been convicted of
17 a felony to attack your credibility. Do you understand that?

18 MR. SMILEY: Yes, sir.

19 THE COURT: All right. If you decide to testify, this
20 decision on your part must be freely, voluntarily and
21 intelligently made, with knowledge of the protections given to
22 you by the Fifth Amendment to the United States Constitution
23 and the consequences of your decision to testify. If you
24 decide not to testify, I will instruct the jurors that they
25 cannot give the fact that you did not testify any

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1 consideration whatsoever and that there is to be absolutely no
2 prejudice to you because you did not testify. It is left
3 entirely up to you whether or not you testify. You may talk
4 with your attorney, your family and friends or anyone else,
5 but the final decision will be left entirely up to you. Now,
6 do you understand what I've explained to you?

7 MR. SMILEY: Yes, sir.

8 THE COURT: All right. Do you have any questions about
9 what I've explained to you?

10 MR. SMILEY: No, sir.

11 THE COURT: All right. Have you had an opportunity to
12 discuss this matter with your attorney or with anyone else you
13 wish to discuss it with regarding whether or not you will
14 testify in this case?

15 MR. SMILEY: Yes, sir.

16 THE COURT: Do you need any additional time to talk to
17 your attorney about this matter?

18 MR. SMILEY: No, sir.

19 THE COURT: All right. Do you wish to testify in this
20 case?

21 MR. SMILEY: No, sir.

22 THE COURT: All right. And is this what you want to do?

23 MR. SMILEY: Yes, sir.

24 THE COURT: All right. Anything further you want placed
25 on the record in that regard, Mr. Chrisco?

1 MR. CHRISCO: No, Your Honor.

2 THE COURT: Anything further the State wants placed on
3 the record in that regard?

4 MR. DEBUSK: No. Thank you, Your Honor.

5 THE COURT: All right. Mr. Chrisco, does the Defense
6 intend to call any witnesses?

7 MR. CHRISCO: No, Your Honor.

8 THE COURT: All right. Well, then rather than let's
9 calling the jury in and having you rest and go straight in,
10 I've already got some jury charges. Let's take a little
11 while, let you all look over the charges. If you have any
12 questions, concerns, additions or deletions, we'll discuss
13 those. If there are none or after we make whatever final
14 draft we need to make, as I understand, we'll just bring the
15 jury in. You'll rest on the record. We'll go straight into
16 closing arguments, charge on the law and then deliberations.
17 Okay?

18 MR. CHRISCO: Yes, Your Honor.

19 THE COURT: Since the Defense is not placing anything in
20 evidence they would be entitled to last closing; okay?

21 MR. DEBUSK: Yes, Your Honor.

22 THE COURT: All right. Here we go. There we go. And
23 shouldn't take too long. It's, it's basically straight out of
24 the charge book. Let's take about 10 or 15 minutes and then
25 I'll, I'll come back in and check with you. Okay?

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1 MR. CHRISCO: Thank you, Your Honor.

2 THE COURT: All right. Thank you.

3 OFF THE RECORD

4 (On the record. The following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Have you had an opportunity to go
7 over the charges? Anything from the State?

8 MR. DEBUSK: Yes, Your Honor. We would request that the
9 full statutory language on the definition of armed robbery be
10 used, specifically on page 12, the paragraph that begins,
11 "Finally, the State must prove beyond a reasonable doubt that
12 the Defendant," and then this phrase, "was armed with a deadly
13 weapon during the robbery," we would request that that be
14 changed to, "committed the armed robbery while armed with a
15 deadly weapon or while alleging either by action or words he
16 was armed while using a representation of a deadly weapon or
17 any object which a person present during the commission of the
18 robbery reasonably believed to be a deadly weapon." That's
19 directly out of Statute 16-11-330, Section A, which is the
20 statutory definition of armed robbery.

21 THE COURT: Well, I mean, the only thing, and I
22 understand what your argument, but as I understand, the only
23 evidence in front of the jury is, what's his name, Mr.
24 Sawyers' testimony that he had a gun, not that he perceived it
25 to be a gun. He said, "I saw the barrel. It was a gun."

1 MR. DEBUSK: But Your Honor --

2 THE COURT: Then you've got the police statement or the
3 police testimony where the Defendant said, "I didn't have a
4 gun."

5 MR. DEBUSK: Right, and there is --

6 THE COURT: So I think it just comes, comes down -- what
7 evidence is there that shows he had something purported to be
8 a gun?

9 MR. DEBUSK: Well, he has the -- he denies he had a gun
10 and there is evidence on the video that he had something in
11 his hand as described by the witness. The witness said it was
12 covered with a napkin. The, the reasonable --

13 THE COURT: Well, that's what -- and --

14 MR. DEBUSK: There is a reasonable inference that it
15 wasn't a gun but a facsimile of a gun.

16 THE COURT: No. No. No. No. No. There's nothing in
17 evidence that shows there was a facsimile of a gun. You've
18 got the -- Mr. Sawyers' testimony that says, "He had a gun, I
19 saw the barrel."

20 MR. DEBUSK: Yes, Your Honor. He, he says --

21 THE COURT: You've got the Defendant --

22 MR. DEBUSK: -- he says he had a -- he, he saw a gun, but
23 the Defendant says it wasn't a gun, but there was clearly
24 something in his hand. The jury cannot move on from armed
25 robbery to strong arm robbery without first considering

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1 whether what he had in his hand may not have been a gun but
2 was some object being treated as a gun by the Defendant.

3 THE COURT: But I mean, what evidence is in the record
4 that says he had something other than a gun that he was
5 treating as a gun?

6 MR. DEBUSK: His statement that he said he didn't have a
7 gun. He had something in his hand. The, the video shows he
8 had something in his hand and he says it wasn't a gun. That
9 in itself is evidence that what at the time may have been a
10 facsimile of a gun.

11 THE COURT: And as I -- yeah, and as I understand he's
12 saying he didn't have a gun.

13 MR. DEBUSK: But he's, he's still -- the fact he didn't
14 have a gun doesn't mean he didn't have some item that he was
15 passing off as a gun, some -- any object which a person
16 present during the commission of a robbery reasonably believed
17 to be a gun. I mean, he had something in his hand and it's
18 clear from the video, you can see on the video, you can see it
19 on, Your Honor, if I may, State's Exhibit Six. You can see in
20 his right hand an object. He clearly had some object in his
21 right hand, and during the video he's clearly holding that up
22 to the clerk. The clerk took it to be a gun. He denies it
23 was a gun, but he clearly had something. So taking his
24 statement it was not a gun --

25 THE COURT: Okay. Well, I didn't understand his, I

1 didn't understand his statement to say, "This wasn't a gun."
2 I thought his statement was, "I didn't have a gun."

3 MR. DEBUSK: Your Honor, the fact that he says he didn't
4 have a gun doesn't mean he didn't have something that he was
5 passing off as a gun.

6 THE COURT: Well, I mean, I think his testimony is, "I
7 didn't have a gun." He's saying, "I didn't have anything,"
8 when they said armed robbery --

9 MR. DEBUSK: But Your Honor, --

10 THE COURT: -- and he's saying, "I didn't have a gun."

11 MR. DEBUSK: I don't think you can move on to consider
12 strong arm robbery until they've considered whether he had a
13 facsimile of a gun, rather than a gun.

14 THE COURT: Well, there is nothing that says he had a
15 facsimile of a gun. I mean, the fact of the matter is he said
16 he didn't have a gun. You've got State's Exhibit Six saying,
17 "There's something in that hand." Now, he says he didn't have
18 a gun and you've got Mr. Sawyers' testimony that says he did
19 have a gun and you've got State's Exhibit Six that shows
20 something in that hand.

21 MR. DEBUSK: Your Honor, and there's also the possibility
22 that the, the jury could think because the, the thing he took
23 to be a gun was covered with a napkin he may have been
24 mistaken. They should still have to consider it whether it
25 was a toy gun or some other item that could have been a gun.

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1 THE COURT: Well, there's --

2 MR. DEBUSK: It's, it's a, it's a possibility that the
3 jury could very well consider, and it's covered in the law as,
4 as written by the legislature, and it's something that the
5 jury should have to consider if they don't believe there is
6 sufficient proof --

7 THE COURT: Well --

8 MR. DEBUSK: -- it was an actual firearm, but should have
9 to consider whether it was a facsimile.

10 THE COURT: And I understand that. There still has to be
11 some evidence in the record.

12 MR. DEBUSK: Yes, Your Honor, there, there is. There's
13 the fact that he had something in his hand, yet he's denying
14 he had a gun. It doesn't mean it -- he's saying it wasn't a
15 firearm. He's not saying it wasn't something that was being
16 purported to be a gun during the robbery.

17 THE COURT: All right.

18 MR. DEBUSK: There is evidence in the record to support
19 that.

20 THE COURT: Mr. Chrisco. Let me hear from you.

21 MR. CHRISCO: Your Honor, he -- the witness said, Logan
22 Sawyers, said he saw a gun, he pulled the gun and that he saw
23 the barrel of the gun, and then he said, "I saw the silver on
24 the barrel of the gun." He is saying that he had a gun. He's
25 not saying that he had something that was a reasonable

1 facsimile of a gun. It could've been a toy gun, he didn't say
2 any of that stuff. He said that it was a gun.

3 MR. DEBUSK: Well, Your Honor, part of the, part of the
4 very statement in this law is that the person present at the
5 robbery reasonably believed it was a weapon. He could have
6 seen something, reasonably believes it was a weapon --

7 THE COURT: Okay.

8 MR. DEBUSK: -- and the jury might not be convinced it
9 was a weapon, but still should have to consider whether it was
10 some facsimile or any object reasonably believed to be a
11 weapon.

12 THE COURT: Have you got the -- let me see the statute.

13 MR. DEBUSK: Your Honor, I have a printout from, I think,
14 Justia.com, but it's, it's the statute language. It would be
15 on the judicial department website.

16 THE COURT: Okay. All right. What I'm going to do is on
17 page 12, the next to the last paragraph, say, "Finally, the
18 State must prove beyond a reasonable doubt that the Defendant
19 was armed with a deadly weapon during the robbery or was armed
20 with any object which a person present during the commission
21 of the robbery reasonably believed to be a deadly weapon,"
22 then, "A deadly weapon is an article, instrument." So I'll
23 add that in there. All right. Anything else from the State?

24 MR. DEBUSK: Your Honor, just in fairness, I think that
25 while alleging to be is, is actually an element that we would

1 have to prove. So I think that would have to be in there,
2 too, while alleging to be armed by words or actions because I
3 think it's a -- the second part of the armed robbery, is a
4 two-part thing, has to be alleging to be armed and he has to
5 have an object.

6 THE COURT: Okay. Now, what -- all right, yeah, and
7 that's what I'm saying. There's nothing in evidence that
8 shows that. There is absolutely nothing in evidence.

9 MR. DEBUSK: There is in evidence that he was alleging to
10 be armed.

11 THE COURT: Where?

12 MR. DEBUSK: There is evidence that he had a --

13 THE COURT: What in evidence -- what in evidence shows
14 that he alleges that he was armed?

15 MR. DEBUSK: The statement of the, of the victim where he
16 says he said he had a gun.

17 THE COURT: Yeah. You've got his testimony he said he
18 had a gun.

19 MR. DEBUSK: Yes, Your Honor. No.

20 THE COURT: So that means -- that's not an object that he
21 perceived to be a deadly weapon. He's saying that was a
22 deadly weapon.

23 MR. DEBUSK: "He told me -- he's -- he told me he had a
24 gun." So he's alleging to be armed if the jury was to believe
25 that it was not actually a firearm when it happened. They

1 would still have to believe that he was, A, alleging to be
2 armed, and B, in the possession of some object.

3 THE COURT: Okay.

4 MR. DEBUSK: I think the State would have to prove both
5 of those.

6 THE COURT: No. I'm, I'm just going to delete it. I'm
7 going to leave it the way it was to begin with.

8 MR. DEBUSK: Your Honor --

9 THE COURT: I'm going to leave it the way it was to begin
10 with. You've got Mr. Sawyers' testimony that says, "That was
11 a gun, I saw the barrel." You've got the Defendant saying, "I
12 didn't have a gun." Now, you've got Exhibit Six that you can
13 use to show that he had something.

14 MR. DEBUSK: Your Honor, but the, the jury -- I'm sorry.
15 Just to reiterate the point, the jury could still believe that
16 there wasn't sufficient proof that what he had was actually a
17 firearm, but it was something.

18 THE COURT: Well, if they don't believe. You're right,
19 if they do not believe Mr. Sawyers, then you're right. If
20 they --

21 MR. DEBUSK: No, Your Honor. They would still have to
22 believe he, he believed it was a gun.

23 THE COURT: No. No. No. No.

24 MR. DEBUSK: And he, he's testified.

25 THE COURT: He said it was a --

1 MR. DEBUSK: He believed it was a gun. He believed it
2 was a gun, but if they find he --

3 THE COURT: He didn't, he didn't say, "I saw what looked
4 like a gun." He didn't say, "I saw what appeared to be a
5 gun." He said, "I saw a gun. I saw the barrel."

6 MR. DEBUSK: Your Honor, I'm sorry. I don't mean to be
7 argumentative, but the statute says that he would have to
8 believe it was a gun even if it was a representation --

9 THE COURT: But what --

10 MR. DEBUSK: -- even if it was a piece of pipe that he
11 thought was a gun, he would still have to believe it was a
12 gun.

13 THE COURT: See, and I think what you're getting confused
14 with is the fact that you have heard allegations from the
15 Defendant, who has not testified and nothing is before the
16 jury, that says it was a pipe, it was a hose, it was anything
17 but a gun. You have got Mr. Sawyers saying, "I saw the gun."
18 You have got the Defendant's statement saying, "I didn't have
19 a gun."

20 MR. DEBUSK: Your Honor, but again, we have his statement
21 on the record that he says he didn't have a gun. His
22 statement is on the record --

23 THE COURT: That's right.

24 MR. DEBUSK: -- saying he didn't have a gun, but he
25 obviously, clearly in the video had something in his hand --

1 THE COURT: And you can argue that to the --

2 MR. DEBUSK: -- that -- in his hand he was gesturing at
3 it.

4 THE COURT: -- and you can argue that to the jury. You
5 can say his statement he says he didn't have a gun, but take a
6 look at State's Exhibit Six. There is clearly something in
7 his hand, and you've got Mr. Sawyers' testimony that says, "It
8 was a gun. I saw the gun. I saw the barrel."

9 MR. DEBUSK: But Your Honor, my -- I'm sorry. My whole
10 point is the State isn't required to prove that it absolutely
11 was a weapon. We also have the option of proving it was any
12 object that the person present reasonably believed was a
13 weapon.

14 THE COURT: And you have to stay with the evidence that
15 you have presented. Now, you have not presented any evidence
16 that shows that he had a toy gun, that he had a pipe, that he
17 had a hose, that he had something that was not a gun but that
18 he was purporting to present as a gun. Nothing to that effect
19 is in the evidence.

20 MR. DEBUSK: Your Honor, if I may, just one more time, he
21 had an object and that's clearly in the video. He denies it
22 was a gun. That in itself is evidence that he had an object
23 he did not -- that, that could have been -- that wasn't a gun.

24 THE COURT: But there's -- and there's nothing in the
25 evidence where he says that was anything other than a gun.

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1 He's just saying, "I didn't have a gun." He had a cup of
2 coffee. I mean, it's just like Mr. Sawyers, you got a cup of
3 coffee. You've got his statement saying, "That wasn't coffee.
4 That was hot chocolate." So if that was an issue, but he --
5 here he's not saying that in my right hand is not a gun. That
6 was something else. He was mistaken. He's saying, "I didn't
7 have a gun."

8 MR. DEBUSK: But Your Honor, if, if the jury finds it's
9 not a gun they still have to consider before they could
10 consider strong arm robbery whether it was an object he was
11 purporting to be a gun, and the person reasonably believed was
12 a gun and we've got on the record that he reasonably believed
13 it was a gun.

14 THE COURT: No. He did -- he said it was a gun.

15 MR. DEBUSK: Yeah. His, his belief was.

16 THE COURT: He didn't reasonably believe a gun. He said
17 unequivocally without any doubt, "I thought he had a gun. He
18 acted like a gun." He didn't say that. He said, "He had a
19 gun. He showed me the barrel."

20 MR. DEBUSK: That's what belief is, Your Honor. That's
21 what belief is. He believed it was a gun. He took it to be a
22 gun. That's what belief means.

23 THE COURT: Okay. All right. I'm going to leave the
24 charges as they are. All right. Anything else?

25 MR. DEBUSK: No, Your Honor.

1 THE COURT: All right. Anything from the Defense?

2 MR. CHRISCO: No, Your Honor.

3 THE COURT: All right. Let's go ahead and bring the jury
4 in. Now, I'll agree with you to the extent, Mr. Chrisco, you
5 can't argue that Mr. Sawyers was -- that anything in his hand
6 is anything other than a gun. You're not going to be able to
7 say --

8 MR. CHRISCO: Not going to say that.

9 THE COURT: -- that was a hose, that was a pipe or
10 whatever the case may be because there's nothing in the record
11 to support that either.

12 MR. CHRISCO: Not going to say anything, Your Honor.

13 THE COURT: All right.

14 MR. DEBUSK: Your Honor, if he does, we would ask to
15 revisit the ruling. If he makes that argument we would ask.

16 THE COURT: Well, I've just told him he can't make the
17 argument

18 MR. DEBUSK: Yes, Your Honor.

19 THE COURT: Okay.

20 (Whereupon, the following takes place in the presence of
21 the jury.)

22 THE COURT: All right. Ladies and gentlemen, welcome
23 back. I hope everyone had a good evening. Appreciate you
24 being on time, and I apologize for keeping you back in the
25 jury room for so long, but we are -- we did have some matters

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1 we needed to address and we're ready to go forward. All
2 right. Mr. Chrisco, does the Defense wish to call any
3 witnesses?

4 MR. CHRISCO: The Defense rests, Your Honor.

5 THE COURT: All right. All right. Ladies and gentlemen,
6 the Defense has rested in this case as well, and now is the
7 time of the trial where the attorneys will make their closing
8 arguments. Now, just like their opening statements, these
9 closing arguments are not evidence in the case. It is simply
10 the attorneys' contention as to what they think the evidence
11 has shown and the law to be applied in this case. If at any
12 time the attorney makes reference to a factual issue that is
13 different from the facts as you find them to be or references
14 the law that is different from the law as I will charge you at
15 the close of their arguments, then you're to disregard that
16 portion of their arguments. This is simply their contention
17 as to what the facts or what the evidence has shown in this
18 case. All right. Mr. DeBusk.

19 MR. DEBUSK: Thank you, Your Honor. May I have the
20 screen, please, Madam Clerk?

21 THE COURT: Lower the screen.

22 MR. DEBUSK: Ladies and gentlemen, you've heard the
23 evidence in the case. I can tell you something right now,
24 you're in a much better position than most juries because
25 you've actually seen the crime on video. This entire crime

1 was caught on video from multiple angles, State's Exhibit One.
2 I'm going to show it to you one more time. I'm going to slow
3 it down to half speed so we can look at it one more time. You
4 can see the now familiar view of the Wilco Hess station in
5 Loris, South Carolina. You can see the Defendant standing
6 over by the coffee machine drinking something out of a cup,
7 cup of coffee, the kind of cup that they usually put coffee
8 in, a coffee cup, right over here. The clerk, Logan Sawyers,
9 is standing up here beside his coworker, nothing but an
10 average late night scene or early morning scene at a, at a
11 convenience store. Someone comes in for a cup of coffee. The
12 clerks are standing, passing the time of day. Here he is.
13 He's got the cup of coffee now in his right hand. In a moment
14 he's going to approach the counter as if to pay. Again,
15 exactly what you would expect in such a situation. You've got
16 several views of the Defendant in evidence, and you've got a
17 point of comparison, both his appearance in court and his mug
18 shot when the warrant was served on him in October, just a
19 couple of months after this. Back then he still had the
20 goatee and still had the darker hair, just as appears in the
21 video. Here he is approaching, got the cup of coffee in his
22 left hand, switches it to his right, and he sets it down on
23 the counter. You've got several photos of that cup of coffee,
24 that coffee cup, whatever was in it, still standing on the
25 counter.

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1 Seeing a customer apparently wanting to pay for some
2 coffee, Logan Sawyers approaches, attempts to punch the coffee
3 into the machine. As you see the Defendant is reaching behind
4 his -- into his pocket as you would expect someone to pull out
5 their wallet, but what he pulls out he doesn't -- isn't a
6 wallet. It's a gun wrapped in a napkin. He holds it up in
7 front of him in his right hand. You can see him gesturing
8 with his head down towards the gun as he talks to the clerk
9 telling him, "Give me the money. I got a gun. I'll kill
10 you."

11 According -- following store policy, Logan Sawyers does
12 exactly that. He opens the cash register immediately upon the
13 threat, takes the money out, hands it to the Defendant. The
14 Defendant takes it with his left hand, still holding the gun
15 in his right hand, and you see him leave the premises carrying
16 the money in his right -- in his left hand, the gun in his
17 right hand, quickly leaves the premises.

18 You remember hearing the video as originally played,
19 immediately after that Mr. Sawyers calls the police or has his
20 colleague call the police, and he -- what were his first
21 words, "Call the police. We've been robbed. He took money.
22 He had a gun." He gives a statement to the police. When the
23 police arrive they take statements, they took statements from
24 the people outside in the truck. They took statements from
25 the other people in the building. They took statements from

1 Logan Sawyers. You've got that statement in evidence. "He
2 had a gun. I could see it. It was wrapped in a napkin. The
3 end of the barrel was sticking out. I could see the barrel.
4 It was a gun," three feet from him, probably less than three
5 feet across that counter he saw that gun and that's why he
6 gave him the money. Store policy or not, he was not going to
7 take chances with his life.

8 So you have Logan Sawyers, his testimony, his
9 identification of the Defendant as the person that robbed him
10 that night at the Wilco Hess station. You've got the mug shot
11 and the appearance in the pictures, all indicating the
12 Defendant was the armed robber that robbed the Wilco Hess
13 station on August 23rd, 2014, but you've got more than that as
14 well.

15 You recall Chief Shepherd. The police came after the
16 robbery. They interviewed people there. It's a small-town
17 police force. Sometimes they don't fill out all the paperwork
18 correctly, but they got the gist of it. They interviewed
19 everybody that was there. They gathered the evidence. They
20 retrieved the tape, which is the very crux of the case, and
21 they commenced to investigate. Chief Shepherd, she
22 interviewed some people, and she got a lead. She went and
23 talked to Ms. Smiley, and Ms. Smiley, she asked her if she had
24 a picture of Raymond Smiley, and she produced one, and Chief
25 Shepherd made the connection at that point. The person she

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1 saw in the picture looked just like the person in the video.
2 She asked Ms. Smiley down to the station to look at the video
3 some more and they got an arrest warrant.

4 Then they went to J. Reuben Long after that arrest
5 warrant had been served. Richard Smiley had been sitting
6 there for about a day. He was served on the 28th. They
7 talked to him on the 29th. They went to him, read him his
8 Miranda Rights, State's Exhibit 11, reading him his Miranda
9 Rights. He signed down here. You see it's the same signature
10 that he gave when he signed another form for the jail, these
11 things that are down here, the same signature. Mr. Smiley
12 signed and waived his Miranda rights, his right to remain
13 silent, and he talked to the police. He told them, "Yes. I
14 was the one at the Wilco Hess station. That was me. I went
15 up to the clerk, I told him this was a robbery." He denied
16 having a gun, but of course he's going to do that because he
17 doesn't want to admit to armed robbery, but the clerk knew.
18 That clerk was there three feet from him. He saw across that
19 counter in his hand the gun. He tried to hide it by leaning
20 away from the other customers and just showing it to him,
21 wrapping it in a napkin, but there is no doubt that was a gun.
22 The first thing he said to the police, "We were robbed, took
23 money, he had a gun." When he gave a statement to the police,
24 "He had a gun. He had a gun. I saw the gun. I saw the tip
25 sticking out," and you can see the gun yourself, not so good

1 in this view but in some other views. Excuse me. There we
2 are. You can see this is the Defendant walking up to the
3 counter with a coffee cup in his hand and nothing else. When
4 he got up there he put the coffee cup down and he reached
5 behind him just like I might reach back to get my wallet.
6 This is exactly what you would expect with a customer trying
7 to buy coffee, but he didn't bring out a wallet and open it up
8 and take out money. He brought out an object. There's the
9 coffee cup that he left on the counter. He brought out an
10 object that he held down in front of him and you watch the
11 video he keeps referring down to that gun when he's telling
12 him to give him the money.

13 JUROR: Can you turn the overhead lights out?

14 THE COURT: All right. Can you dim these any?

15 (Clerk and Court confer.)

16 THE COURT: All right. Well, I don't want to interrupt
17 your closing arguments if he would --

18 MR. DEBUSK: It doesn't bother me if you turn the lights
19 down. There'll be enough light for me.

20 THE COURT: All right. Let's go ahead and turn those
21 off. All right. That's good.

22 MR. DEBUSK: Here you see right by the register there
23 something white in his hand just as described by Logan
24 Sawyers, the gun wrapped in a napkin, held down by his waist,
25 he keeps gesturing down to it with his head. That's why Logan

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1 Sawyers gave him the money. Right there as he's giving him
2 the money with his -- particularly notice he's taking money
3 with his left hand. The object's still in his right hand.
4 Switching to another view, this is him as he's leaving. In
5 his left hand you can still see the money, and all these,
6 these still shots are in evidence, and you can, you can
7 examine them closely when you go back to deliberate, but in
8 his left hand you still see the money there. In his right
9 hand you see an item with white on the top and it looks like
10 something dark underneath. That's the gun. You can see it
11 even better in this position. See the money in his right -
12 left hand. In his right hand you can see the fist clenched
13 around it just as you would around a gun. You can see the
14 barrel extending down wrapped by the napkin and at the end
15 that quarter inch of barrel that -- described by the clerk.
16 There is the gun, and again, this picture is in evidence. So
17 you can look at it as closely as you want. You can watch the
18 whole video again because that's in evidence as well. That is
19 the gun. Here is a picture of the Defendant coming in.
20 Again, that's in evidence, the still shot. You've got the mug
21 shot. You can't really see it, but you got it in evidence,
22 full facial shot you can compare it to, the receding hairline,
23 the goatee, the high cheek bones, skin tone. There he is
24 leaving. You can see the profile. Thank you, Madam Clerk.
25 We're done now.

1 THE COURT: All right. Thank you.

2 MR. DEBUSK: But there again, you have the whole thing in
3 the records. You've got Logan Sawyers saying he was in there,
4 identified, identified him in court, said, "That's the man
5 that robbed me." You've got him standing three from him,
6 seeing that gun. You've got the gun showing on the video.
7 You've got him telling the police, soon as, soon as they call
8 them, "He had a gun," writing his statement, "He had a gun,"
9 coming here to testify to you, "He had a gun." The Defendant
10 denied it, but he would because he doesn't want to implicate
11 himself in an armed robbery.

12 He also said that what was in the cup, cup, coffee cup
13 was hot chocolate. You've got a picture of the coffee cup
14 there. You can decide for yourself. It looks dark like
15 coffee, not white and milky like hot chocolate, but there it
16 is. He admitted being there. He admitted it was him. You
17 can see by his appearance on the tape that's him. Compare it
18 to the, the booking photo. That's him. He's the one that
19 went to the Wilco Hess station in Loris on August 23rd, 2014,
20 and robbed Logan Sawyers with a gun. That makes him guilty of
21 armed robbery. Doesn't matter what the police did or didn't
22 do. That evidence is still there, the testimony of the clerk,
23 the admission of the Defendant, the video, most of all,
24 matched by appearance, matched by build, matched by height.
25 It's all there. It's all there for you to see. Could there

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1 have been more evidence in the case? Possibly, but it doesn't
2 change the fact of what's there, and what's there proves the
3 Defendant beyond a reasonable doubt guilty of armed robbery.

4 Now, what is beyond a reasonable doubt? The Judge will
5 give you instructions on that. He'll give you some, some
6 ideas like it's proof that leaves you firmly convinced of the
7 guilt. He'll also tell you that everything can't be proved
8 beyond all possible doubt, but here you've got the proof.
9 You've got the proof. You've got his own admission. You've
10 got him on video doing it. You've got the clerk that stood
11 three feet from him and saw that gun and gave him the money
12 under threat of his life. All that proves the Defendant
13 guilty beyond a reasonable doubt, but reasonable doubt comes
14 from you, are you firmly convinced. You're a cross-section of
15 the community. You get to decide. I put to you that based on
16 this evidence there's only one verdict you can have and that
17 is he is guilty of armed robbery. Thank you.

18 THE COURT: All right. Mr. Chrisco.

19 MR. CHRISCO: May it please the Court?

20 I didn't see earlier when the Prosecutor made his
21 statement, but I'll talk with you now --

22 JUROR: Could you ask him to speak up, please. Some
23 people are having trouble.

24 THE COURT: All right, sir.

25 MR. CHRISCO: I talk low. I don't talk loud, but I'll

1 talk close. I want to thank the State Prosecutor for getting
2 the statement of Mr. Smiley in. That saved us from having to
3 put up any evidence here, and the fact that we didn't can't be
4 held against my client. The Court will instruct you on that
5 law later on.

6 If you'll remember his statement, he says in the robbery
7 he didn't have a gun. I think if you'll look at those grainy
8 pictures there, you can see whatever you want to see in them.
9 I don't see a gun. In fact, that last portion that they
10 played where he's going out the door, taken about three more
11 steps you would have saw his hand when he comes out, you would
12 have saw four fingers pointing down and a thumb. People
13 outside say that they didn't see a gun. It shows his arm not
14 going anywhere. If you'll look at the --

15 MR. DEBUSK: Your Honor, I'm going to have to object. I
16 think he's arguing matters not in evidence.

17 THE COURT: Overruled.

18 MR. DEBUSK: There's no statement from the people
19 outside.

20 MR. CHRISCO: There was, Your Honor, through the officers
21 stating that during the investigation --

22 MR. DEBUSK: No, Your Honor.

23 MR. CHRISCO: -- the people outside --

24 THE COURT: All right. I sustain the objection.

25 MR. CHRISCO: -- said they didn't see a gun.

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1 THE COURT: I, I sustain the objection. Go ahead.

2 MR. CHRISCO: Now, look at the grainy pictures. When he
3 walks in the door you can see what appears to be something in
4 his hand, but he has nothing in his hand. You can see him in
5 the -- the pixels are just so distorted because it's a
6 commercial grade video.

7 Let's go back. There was something said during this
8 trial when an officer couldn't remember, then the follow-up
9 question was to -- by the Prosecutor was that it's been over a
10 year and it's hard to remember stuff over a year. They call
11 the cases. They want to use that excuse every time, they can
12 use it every time if they choose to call a case over a year
13 old. I think when you're a police officer you have a duty to
14 make proper notes so that when you go and testify that you're
15 able to represent the State or their department the best that
16 you can. I think that gives everybody a fair shot.

17 Now, let's talk about the case. I made a big to-do over
18 hot chocolate. There was a reason for it. An assumption,
19 that's what was made from that, the fact a thing that is
20 accepted as true or as certain to happen without proof, that's
21 an assumption, and from the very start when one person said
22 coffee then it was coffee from that point on, everybody
23 referred to it in the report as coffee. Not one police
24 officer picked it up, sniffed it and say, "No, it's not
25 coffee. It's hot chocolate." It's just the assumption of

1 what somebody else said first.

2 I say that to say this, he said there was a gun. Watch
3 that video. It's amazing that the microphone picks up
4 everybody's voices except my client and Logan Sawyers, doesn't
5 pick up anything that's said. When he handed the money over,
6 look at the way that he more or less waits until the person
7 leaves before he says, "There's been a robbery." The doughnut
8 maker says something to the effect, "I didn't see anything,"
9 and that's when he says, "He told me he had a gun." Then he
10 says, "And I saw part of the gun." Then he says, "I saw part
11 -- it was the barrel," as if he's building the story to make
12 it believable because he's maybe embarrassed because he gave
13 the money away with -- I know it's their policy, but maybe he
14 gave the money away at just someone saying, "Give me your
15 money," and now he's trying to keep that image by saying, "No,
16 it was a -- said he had a gun." You came in here with common
17 sense, just use it while you're here. If you'll look at that
18 video, that tells the tale. The art of deceit is detailed.

19 Now, one point it was mentioned that the Defense could
20 have its own experts to test all the stuff. It's not our job.
21 It's the State's job to prove every element of the crime. The
22 Defendant never has to do anything. That's the law. The
23 State has the burden to prove everything in the case.

24 Mr. Smiley was in the store that night. Mr. Smiley got
25 hot chocolate, and Mr. Smiley left with money in his hand. I

Closing Argument by Defense

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1 beg you, remember that video what was said after the robbery.
2 Look at the video. As he goes out the door there's nothing in
3 that hand. Yeah. It has nothing to do with what the police
4 did or didn't do in this case. It took them a month. Maybe
5 they could have solved it a little sooner had they tested the
6 stuff. I don't know. The evidence you've got here is
7 pictures. That's basically all the evidence and statements
8 that, that witnesses that they chose to have testify said.
9 The outside, this is the inside. You see his hand, see what's
10 in his hand, the store, handing over the money, him leaving.
11 There's no gun. Still leaving, leaving again. The picture
12 after he was arrested, where he signed his Miranda warning --
13 Miranda Rights, the signature's the same.

14 Logan Sawyers' statement, nowhere in the questioning of
15 the police did they say that he ever said that he was
16 threatened. He said he was. When he wrote a two-page
17 statement he never mentioned that, but pay close attention to
18 the detail of the gun or the lack of detail, but he's trying
19 to make you -- trying to convince people that there actually
20 was a gun in it.

21 A very serious case, you're going to be asked to decide
22 what to do in this case. There's going to be three possible
23 choices. We ask that you go back there, look at the evidence,
24 look at the evidence. Go look at the video. You'll see.
25 Come back with a verdict, a verdict of robbery. Thank you.

1 MR. DEBUSK: Your Honor, I have a very brief matter of
2 law if I could. Can we approach?

3 THE COURT: All right. All right. Ladies and gentlemen,
4 we have a matter of law we need to address. I'm going to
5 excuse you back to the jury room for just a few minutes and
6 we'll bring you back out in just a second. Thank you very
7 much.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right. Mr. DeBusk.

11 MR. DEBUSK: I'm sorry, Your Honor. Briefly, based on
12 Mr. Chrisco's argument that he's argued that the victim only
13 assumed it was a gun during his argument, we would renew our
14 request for at least the language that says that any object
15 that the -- someone present at the robbery reasonably believed
16 to be a weapon.

17 THE COURT: All right.

18 MR. DEBUSK: Based on the fact that there is evidence he
19 had something in his hand and that there is an argument on the
20 record that he just assumed it was a gun.

21 THE COURT: All right. Mr. Chrisco?

22 MR. CHRISCO: What I said was not evidence. It was just
23 I said that's what he said, he just assumed it was a gun. He
24 described it in his testimony. They've got the statement
25 where he describes the gun.

Closing Argument by Defense

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1 THE COURT: Okay.

2 MR. DEBUSK: And Your Honor, Mr. Chrisco's argument that
3 he assumed it was a gun clearly is arguing that it was not a
4 gun, but some other object. Thank you, Your Honor.

5 THE COURT: All right. I am going to add that into my
6 closing arguments on page 12 --

7 MR. DEBUSK: Thank you, Your Honor.

8 THE COURT: -- says, "Finally, the State must prove
9 beyond a reasonable doubt that the Defendant was armed with a
10 deadly weapon during the commission or during the robbery or
11 that the Defendant while alleging either by action or words he
12 was armed while using a representation of a deadly weapon or
13 any object which a person present during the commission of the
14 robbery reasonably believed to be a deadly weapon." All
15 right. Anything further from the State?

16 MR. DEBUSK: No, Your Honor.

17 THE COURT: Anything from the Defense? I'll note over
18 the Defendant's objection.

19 MR. CHRISCO: I would object to, to the, to the thing in
20 the, in the charge, Your Honor.

21 THE COURT: Okay. So noted. I'm overruling the
22 objection. So that'll -- all right. Let's go ahead and --
23 anything from the State before we bring the jury in?

24 MR. DEBUSK: No, Your Honor.

25 THE COURT: Anything from the Defense?

1 MR. CHRISCO: No, Your Honor.

2 THE COURT: All right. Let's go ahead and bring the jury
3 in. Before they or while they're on their way in, go ahead
4 and give each one, this is proposed verdict form.

5 MR. DEBUSK: No objection, Your Honor.

6 THE COURT: Okay. Well, that's your copy.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: All right. Ladies and gentlemen, welcome
10 back. All of the evidence in this case has been presented to
11 you. The attorneys have made their closing arguments and now
12 is the time of the trial wherein I charge you with the law to
13 be applied in this case.

14 The indictment charges the Defendant with armed robbery.
15 I remind you that the fact that the Defendant was arrested,
16 charged and indicted in this case is not evidence in this case
17 and cannot be considered by you as evidence of guilt in this
18 case, nor does the Defendant's arrest, charge or indictment
19 create any presumption or inference of guilt. This document
20 is simply the formal written instrument which contains the
21 charge made against the Defendant. It is the formal document
22 by which this case is brought into court.

23 The Defendant pleads not guilty to this indictment, and
24 that plea puts the burden on the State to prove the Defendant
25 guilty. A person charged with committing a criminal offense

Charge

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1 in South Carolina is never required to prove his innocence.
2 I charge you that an important rule of the law is that the
3 Defendant in a criminal trial, no matter what the seriousness
4 of the charge may be, will always be presumed to be innocent
5 of the crime for which the indictment was issued unless guilt
6 has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt.

8 The presumption of innocence does not end when you begin
9 your deliberations, but it accompanies the Defendant
10 throughout the trial until you reach a verdict of guilt based
11 on evidence satisfying you of that guilt beyond a reasonable
12 doubt. The presumption of innocence is like a robe of
13 righteousness placed about the shoulders of the Defendant
14 which remains with the Defendant until it has been stripped
15 from the Defendant by evidence satisfying you of the
16 Defendant's guilt beyond a reasonable doubt. The presumption
17 of innocence is not a mere legal theory. It is not just a
18 legal phrase. It is a substantial right to which every
19 Defendant is entitled unless you, the jury, are satisfied from
20 the evidence of the Defendant's guilt beyond a reasonable
21 doubt.

22 Now, what is a reasonable doubt in the law? A reasonable
23 doubt is the kind of doubt that would cause a reasonable
24 person to hesitate to act. Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the Defendant's

1 guilt. We know very few things with absolute certainty, and
2 in criminal cases the law does not require proof that
3 overcomes every possible doubt. If, based on your
4 consideration of the evidence, you are firmly convinced that
5 the Defendant is guilty of the crime charged, you must find
6 the Defendant guilty. If, on the other hand, you think a real
7 possibility exists that the Defendant is not guilty, you must
8 give the Defendant the benefit of that doubt and find him not
9 guilty.

10 I remind you that during this trial you and I have
11 certain duties to perform. As the trial judge, my
12 responsibility is to preside over the trial of this case. I
13 also have the duty to rule on the admissibility of evidence
14 offered during this trial. You are to consider only the
15 competent evidence before you. If any testimony was ordered
16 stricken from the record in this case during this trial, you
17 must disregard that testimony. You are to consider only the
18 testimony which has been presented from the witness stand, any
19 exhibits which have been made a part of the record in this
20 case and any stipulations of counsel.

21 I have the additional duty to charge you the law
22 applicable to this case. As the presiding judge, I am the
23 sole judge of the law of this case. Your duty as jurors is to
24 accept and apply the law as I now state it to you. If you
25 have any idea as to what the law is or what the law ought to

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1 be and your idea is different from what I now tell you the law
2 is, you must disregard your idea of what the law is or ought
3 to be because you are sworn to accept the law and apply the
4 law exactly as I state it to you.

5 In every case tried in this court before a jury, the jury
6 is the sole and exclusive judge of the facts in a case. A
7 trial judge cannot intimate, state, comment on or make any
8 statement to a trial jury about the facts in a case. Since
9 you, the jury, are the sole judge of the facts in this case,
10 you are not to infer from what I have said during the progress
11 of this trial in ruling upon the admissibility of evidence, or
12 otherwise, or anything that I say now during the course of
13 this instruction to you, that I have any opinion about the
14 facts in this case. The law does not allow me to have an
15 opinion about the facts in this case. This is a matter solely
16 for you, the jury, to determine. As jurors, your duty is to
17 determine the effect, value, weight and truth of the evidence
18 presented during this trial.

19 Necessarily, you must determine the credibility of
20 witnesses who have testified in this case. Credibility simply
21 means believability. Your duty as jurors is to analyze and to
22 evaluate the evidence and determine which evidence convinces
23 you of its truth.

24 In determining the believability of witnesses who have
25 testified in this case, you may believe one witness over

1 several witnesses or several witnesses over one witness. You
2 may believe a part of the testimony of a witness and reject
3 the remaining part of the testimony of that same witness. You
4 may believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety. You may
6 consider whether any witness has exhibited to you any
7 interest, any bias, prejudice or other motive in this case.
8 You may also consider the appearance and manner of the witness
9 while on the witness stand.

10 Now, I instruct you and emphasize the fact that the
11 Defendant did not testify in this case is not a factor to be
12 considered by you in any way in your deliberation and in your
13 consideration on the question of the guilt or the innocence of
14 the Defendant. The Defendant's failure to testify must not be
15 considered by you in any manner whatsoever.

16 A Defendant has the constitutional right to remain
17 silent, and the assertion of this right must not be considered
18 by you in your deliberations. I repeat, under your oath, you
19 are to draw no conclusion whatsoever from the fact that the
20 Defendant in this case did not testify. The fact that the
21 Defendant did not testify should not even be discussed in the
22 jury room.

23 The burden of proof, as I have stated to you, is on the
24 State. The Defendant is not required to prove his innocence.
25 The burden of proof remains on the State to prove the

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1 Defendant's guilt beyond a reasonable doubt.

2 Now, in order to establish criminal liability, criminal
3 intent is required. For example, the mental state required to
4 be proven by the State for a particular crime might be
5 purpose, intent, knowledge, recklessness or criminal
6 negligence. Criminal intent must be proven by the State
7 beyond a reasonable doubt. Criminal intent is always a matter
8 that must be determined by the jury from the circumstances
9 surrounding the situation. Criminal intent cannot be proven
10 to a mathematical certainty. Medical science cannot dissect a
11 person's brain and determine what the person had in mind. So
12 the law says that criminal intent may be inferred from the
13 circumstances shown to have existed. This is how you make a
14 determination of whether or not the element requiring intent
15 was present. Criminal intent does not have to be established
16 by direct and positive evidence, but intent may be established
17 by inference in the same way as any other fact, by taking into
18 consideration the acts of the parties and all the facts and
19 circumstances of the case. Criminal intent is a mental state,
20 a conscious wrongdoing. You must determine what the Defendant
21 intended to do based on the circumstances shown to have
22 existed.

23 Criminal intent can arise from an action or a failure to
24 act. It may arise from negligence, recklessness or an
25 indifference to duty or to consequences that is considered by

1 the law to be the equivalent of criminal intent.

2 Now, a statement alleged to have been made by the
3 Defendant has been admitted into evidence in this case. While
4 the Court has determined that the statement is admissible, I
5 instruct you that you make the ultimate decision of whether or
6 not the Defendant made the statement. If the Defendant did
7 make the statement, you must determine whether the statement
8 was made by the Defendant voluntarily and of his own free
9 will. This means that the statement was not caused by
10 pressure, force, fear, threats, coercion or intimidation or by
11 hope or a promise of leniency or a reward of any kind. In
12 determining whether the statement was voluntary, you should
13 consider both the characteristics of the Defendant and the
14 details of the questioning. Some of the factors that you must
15 consider are: the age of the Defendant; the Defendant's
16 education or lack of education; the Defendant's mental ability
17 or capacity; the Defendant's I.Q. or intelligence; the
18 Defendant's background and environment; the place and length
19 of the detention; the nature of the questioning; and the
20 advice, or lack thereof, to the Defendant of his
21 constitutional rights including, but not limited to, the right
22 to remain silent; that any statement could be used against him
23 in a court of law; the right to have a lawyer present; that if
24 he could not afford a lawyer, a lawyer would be appointed to
25 represent him without any cost; and that he could stop making

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1 a statement at any time. You must carefully consider all of
2 the surrounding circumstances before you give any weight to an
3 alleged statement.

4 The State has the burden of proving beyond a reasonable
5 doubt that the alleged statement was voluntary. If you
6 determine that the statement was given voluntarily, you may
7 give the statement any further consideration that you deem
8 proper. You must decide what weight, if any, should be given
9 to the alleged statement. If you determine the alleged
10 statement was not free and voluntary or and a voluntary
11 statement of the Defendant, you should not consider the
12 statement at all.

13 Now, the Defendant is charged with armed robbery. In
14 order to convict the Defendant of this crime, the State must
15 prove beyond a reasonable doubt that the Defendant took
16 personal property from the person or presence of another
17 person.

18 Property is in the presence of a person if it is within
19 the person's reach, inspection, observation or control so that
20 the person could, if not overcome with violence or prevented
21 by fear, keep possession of the property.

22 The State must also prove beyond a reasonable doubt that
23 the Defendant carried the property away intending to
24 permanently deprive the owner of the property and to keep the
25 property for the Defendant's own use. The slightest removal

1 of the property or the complete possession of the property,
2 even for an instant, by the Defendant is sufficient to show a
3 taking and carrying away of the property. The taking and
4 carrying away of the property must have been done with
5 violence or by putting the owner of the property in fear of
6 violence.

7 Finally, the State must prove beyond a reasonable doubt
8 that the Defendant was armed with a deadly weapon during the
9 robbery or that the Defendant, while alleging either by action
10 or words, that he was armed while using a representation of a
11 deadly weapon or any object which a person present during the
12 commission of the robbery reasonably believed to be a deadly
13 weapon.

14 A deadly weapon is any article, instrument or substance
15 which is likely to cause death or great bodily harm. Whether
16 an instrument has been used as a deadly weapon depends on the
17 facts and circumstances of each case. The following are
18 examples of instruments which may be deadly weapons: a
19 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a sling
20 shot, metal knuckles, a razor, gasoline, a fire bomb or
21 Molotov cocktail and lighter fluid. A gun may be a deadly
22 weapon even if it is not operating.

23 Now, if you find that the State has failed to prove
24 beyond a reasonable doubt that the Defendant was armed with a
25 deadly weapon, you must then consider whether the State has

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1 proved beyond a reasonable doubt that the Defendant committed
2 robbery. Included within the offense of armed robbery is the
3 lesser offense of robbery. In order to prove robbery, the
4 State must prove beyond a reasonable doubt all of the elements
5 that I have just explained to you for armed robbery except
6 that the Defendant was armed with a deadly weapon. In other
7 words, in order to prove robbery, the State must prove beyond
8 a reasonable doubt that the Defendant took the personal
9 property from the person or presence of another person,
10 without that person's consent, and carried it away with the
11 intent to permanently deprive the owner of the property and to
12 convert the property to the Defendant's own use. Also, the
13 taking and carrying away of the property must have been done
14 with violence or by putting the owner of the property in fear
15 of violence.

16 Now, there are three possible verdicts which you may find
17 in this case. No significance whatsoever should be given to
18 the order in which I state these verdicts to you. I simply
19 must state one first, one second and one third.

20 The possible verdicts in this case are: we, the jury,
21 find the Defendant Raymond Smiley guilty of armed robbery, or
22 we, the jury, find the Defendant Raymond Smiley guilty of
23 robbery, or we, the jury, find the Defendant not guilty.

24 Ladies and gentlemen, your verdict must be a unanimous
25 one. Mr. Schavitz, as foreperson, when the jury agrees on a

1 verdict, you will check the appropriate verdict on the verdict
2 form, sign your name as foreperson, and then knock on the door
3 and tell the bailiff that the jury has reached a verdict, and
4 we'll bring you back into the courtroom at that time.

5 Now, I'm going to excuse you back to the jury room, but
6 please do not begin your deliberations at this point in time.
7 I have to check with the attorneys to see if they have any
8 additional charges or exceptions to the charges I've given
9 you. If they do and I deem them appropriate, I'll bring you
10 back into the courtroom and make any additional charges or
11 corrections that, that need to be made. If there are none,
12 then we will send all of the exhibits with the verdict form
13 back to the jury room and the bailiff will instruct you that
14 you can begin your deliberations, but please do not begin your
15 deliberations until you're told to do so by the bailiff.
16 Okay? I'll excuse you back to the jury room. Thank you very
17 much.

18 (Whereupon, the following takes place outside the
19 presence of the jury.)

20 THE COURT: Any exceptions to the jury charge by the
21 State?

22 MR. DEBUSK: No, Your Honor. Thank you.

23 THE COURT: Any by the Defense?

24 MR. CHRISCO: Yes, Your Honor. The part that the Court
25 added after my opening -- after my closing argument.

Charge

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1 THE COURT: I'm sorry. What?

2 MR. CHRISCO: I said the part that was added.

3 THE COURT: Oh, that you have already raised an objection
4 to?

5 MR. CHRISCO: Yes, Your Honor.

6 THE COURT: Okay. All right. Your objection to that
7 modification is noted. I'm going to overrule it and let it
8 stand.

9 All right. Anything further from the State?

10 MR. DEBUSK: No, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. CHRISCO: No, Your Honor.

13 THE COURT: All right. Let's make sure we've got all the
14 exhibits. Here's the verdict form. You can take them back to
15 the jury, tell them they can begin their deliberations, but
16 when you do, please bring Ms. Reyes, Reyes, yeah, if you'd
17 bring her out. As a matter of a fact, can you go ahead and
18 get her, bring her out?

19 (Alternate released by Court.)

20 (Exhibits reviewed and approved by counsel for the State
21 and Defense.)

22 THE COURT: And then here are the exhibits right here.
23 If you'd go ahead and take them to the jury and tell them they
24 can begin their deliberations. All right. Anything from the
25 State?

1 MR. DEBUSK: No, Your Honor.

2 THE COURT: Anything from the Defense?

3 MR. CHRISCO: No, Your Honor.

4 THE COURT: All right. We'll be in recess until we hear
5 something from the jury.

6 (Deliberations begin at 11:30 a.m.)

7 OFF THE RECORD

8 (On the record. The following takes place outside the
9 presence of the jury. Question from jury at 11:45 a.m.)

10 THE COURT: All right. When the officer carried the
11 exhibits and verdict form back to the jury room, he came back
12 in and said the jury said they wanted to see the video, but
13 they want to see it up close. I know it's not set up in the
14 jury room. My recommendation, I'll hear from you all as to
15 what you want to do, my recommendation would be to let them
16 come in, play the video. If they want to get closer to the
17 screen, not confine them to the box, and just let them get
18 closer to the screen.

19 MR. CHRISCO: Why not play it on, why not play it on a
20 laptop, Your Honor? That way they can --

21 THE COURT: Can we do that?

22 MR. DEBUSK: We can, Your Honor. The only laptop I have
23 I just noticed I have all kinds of files from other cases that
24 aren't relevant to this one. I could call downstairs and get
25 a clean one sent up hopefully in a few minutes.

Question from Jury

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1 THE COURT: Okay. Would you prefer to do that, just have
2 a clean laptop sent up and then send it back to them?

3 MR. CHRISCO: That way they can look at it all they want
4 to as many times as they want to.

5 THE COURT: Okay. Now, do I need to bring them back in
6 and tell them that we're going to bring a laptop up or --

7 MR. CHRISCO: I think we just send someone back there and
8 tell them that we'll --

9 THE COURT: Okay. All right. Any objection to me just
10 stepping back there and telling them we're bringing them up,
11 bringing up a laptop so that they can play --

12 MR. CHRISCO: None whatsoever.

13 THE COURT: -- play the disk?

14 MR. DEBUSK: No, Your Honor.

15 THE COURT: And do it that way?

16 MR. DEBUSK: No objection.

17 THE COURT: That they're -- we're getting one, we just
18 don't have one at this point in time and they're bringing one
19 for them to view it.

20 MR. DEBUSK: We'll, we'll hopefully have one in a few
21 minutes, Your Honor.

22 THE COURT: Okay. Is that agreeable?

23 MR. CHRISCO: That's agreeable, as long as it's not that
24 one, Your Honor, the one that we had to wait on so much.

25 THE COURT: Okay.

1 MR. DEBUSK: And there's a few things on there they
2 probably shouldn't see.

3 THE COURT: All right. We'll stand in recess. I'll just
4 step back there right quick or is Ms. Sarvis back there? I'm,
5 I'm just going to tell her since she's the bailiff that we're
6 bringing a laptop so that they can look at the video --

7 MR. CHRISCO: Okay.

8 THE COURT: -- in the jury room and when it gets up --

9 OFFICER: You want me to just -- I can go get Ms. Dana
10 and have her come here and I'll watch the jurors.

11 THE COURT: Okay. That'll be good. Thank you.

12 (Bailiff enters courtroom.)

13 THE COURT: Ms. Sarvis, could you just stick your head in
14 the jury room and tell them that we're bringing a laptop for
15 them to view the video in the jury room.

16 BAILIFF: I will.

17 THE COURT: And that if that is not adequate --

18 BAILIFF: They just want to see it up closer.

19 THE COURT: Okay. But if they, if they would prefer to
20 come back in and watch it in here on the big screen, let us
21 know.

22 BAILIFF: Okay.

23 THE COURT: Otherwise, we'll send a laptop for them to
24 view it back there. Okay? All right. Thank you.

25 BAILIFF: Uh-huh.

Question from Jury

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1 (Bailiff exits courtroom.)

2 THE COURT: All right. Anything further from the State?

3 MR. DEBUSK: No, Your Honor.

4 THE COURT: Anything from the Defense?

5 MR. CHRISCO: No, Your Honor.

6 THE COURT: All right. We'll be in recess.

7 OFF THE RECORD

8 (On the record. Question from jury at 12:00 p.m. The
9 following takes place outside the presence of the jury.)

10 THE COURT: All right. I've gotten, I guess it's two
11 questions, one of them I do not understand. The first one I
12 do understand. Question from the jury it says, "Why are there
13 different dates on photo?"

14 MR. DEBUSK: Because the date on the camera was wrong,
15 Your Honor, but that's not in evidence, so.

16 THE COURT: Well, I would just say that is a factual
17 issue that the jury is to determine.

18 MR. CHRISCO: I would agree, Your Honor. They are what
19 they are.

20 THE COURT: Yeah. How do I want to say that?

21 MR. CHRISCO: Ask you, George.

22 MR. DEBUSK: Your Honor, I would just say that that's a
23 fact not in evidence, that why -- the reason for the
24 difference is a fact not in evidence.

25 THE COURT: Okay. That'll be good. That is a --

1 MR. CHRISCO: Well, Your Honor, it is in evidence.

2 MR. DEBUSK: No, the fact of -- the reason for the
3 difference is not in evidence.

4 MR. CHRISCO: They are what they are, Your Honor.

5 MR. DEBUSK: Yeah. There, there -- as they are in
6 evidence.

7 THE COURT: Yeah. Well, let me see. Let me see. All
8 right. What I'm going to say with regard to that is the
9 reason for different dates on the photo is a factual issue and
10 no evidence has been presented to explain any difference in
11 the dates on the photo, leave it at that.

12 MR. CHRISCO: No objection, Your Honor.

13 THE COURT: Okay. Now, the next, I don't know what this
14 means. He just wrote, "Police interview with Defendant,
15 signed confession." I don't know what they're asking.

16 MR. DEBUSK: Neither do I, Your Honor.

17 THE COURT: I don't know if they're asking if there is
18 one or why there isn't one. I almost feel compelled to bring
19 them in to, to let me know what they're requesting. As I
20 said, it just -- if you all want to look at it, it just says,
21 "Police interview with Defendant, signed confession."

22 MR. CHRISCO: May we should ascertain what the -- what it
23 is they -- they're, they're exactly looking for.

24 THE COURT: Yeah. I'm going to bring them in and I'm
25 going to say, "Why are there different dates on the photo,"

Question from Jury

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1 give the explanation I did, and I said, "Now, the second
2 question you had I don't really understand what you're asking.
3 What is it that you're -- you want to know," and find out what
4 it is and, and then we'll address it. Okay? All right.
5 Let's go ahead and bring the jury in. I'm going to go, "Why
6 are there are different dates on photo," let's put that as
7 Court's Exhibit Three. Yeah. Let me have that back, please.

8 (Court's Exhibit Number Three [Question from Jury]
9 appropriately marked.)

10 THE COURT: And then the police interview put as Court's
11 Exhibit Four.

12 (Court's Exhibit Number Four [Question from Jury]
13 appropriately marked.)

14 THE COURT: Thank you.

15 OFFICER: Judge, she brought me out another question. I
16 don't know if you wanted to try to address this one.

17 THE COURT: Yeah. Let's go ahead and hold them up and
18 let me see this. "Is Defendant left or right-handed?"

19 MR. CHRISCO: The same answer.

20 THE COURT: Again.

21 MR. CHRISCO: That's the same answer as the other one.

22 THE COURT: Well, I think is he left-handed or right-
23 handed I can just say that's a factual issue that's not in --
24 for which no evidence has been presented.

25 MR. CHRISCO: How about we just -- we can just be playing

1 catch when they come out, you know.

2 THE COURT: All right. Let's go ahead and bring them in.

3 MR. DEBUSK: Your Honor, we do have the clean laptop when
4 we need it.

5 THE COURT: Do what?

6 MR. DEBUSK: We, we have -- we've gotten a clean laptop
7 for when --

8 THE COURT: Okay. Yeah. We're going to put the left-
9 handed or right-handed as Court's Exhibit Five.

10 (Court's Exhibit Number Five [Question from Jury]
11 appropriately marked.)

12 (Whereupon, the following takes place in the presence of
13 the jury.)

14 THE COURT: All right. Ladies and gentlemen, welcome
15 back. I understand that you have submitted several questions.
16 The first one, "Why are there different dates on the photo?"
17 All right. The reason for the different dates on the photo is
18 a factual issue, and as I told you, you, the jury, determine
19 the facts. Now, there is no evidence been presented to
20 explain any difference in the dates on the photo. Okay.
21 That's all I can tell you on that is that that is a factual
22 issue subject to determination by the jury and that there's no
23 evidence in the record to explain that.

24 Likewise, "Is the Defendant left or right-handed?" That
25 also is a factual matter for which no evidence has been

Question from Jury

217

1 presented.

2 Now, your next question, "The police interview with
3 Defendant, signed confession." I'm not really sure what
4 you're asking on that. What is it you want?

5 FOREMAN: The police talked to him where he admitted
6 robbing the store. Did he sign that piece of paper?

7 THE COURT: There is no signed confession in evidence.

8 FOREMAN: Okay.

9 THE COURT: Okay?

10 FOREMAN: Can we see the police report?

11 THE COURT: That, likewise, is not in evidence. All you
12 can review is the evidence that has been presented to you.

13 FOREMAN: Okay.

14 THE COURT: All right. Thank you very much. I'll send
15 you back to the jury room. We also have the laptop -- now --
16 excuse me.

17 FOREMAN: Was there a written statement from the other
18 witness who was in the store who passed away?

19 THE COURT: Okay. There has not been a written statement
20 presented into evidence. Okay. All you can consider -- I
21 can't say whether there was any existed or didn't existed.
22 All I can tell you is you have all of the evidence and you can
23 only consider what was put into evidence at trial. Okay.
24 Now, also, we have a laptop. I understand you all wanted to
25 review the disk, the video. We've got a laptop that you can

1 use. If that is not sufficient, if you want to come back out
2 and see it on the big screen, just send me word that you want
3 to see it on the big screen. I do have it on a laptop where
4 you all can kind of gather around and see it, and if that's
5 sufficient, fine. I just, I just didn't want you to think
6 that because we're sending a laptop back there that you could
7 not come back and look at it on the big screen if you wanted
8 to. Okay?

9 FOREMAN: We'll try it on the little screen first.

10 THE COURT: All right. Sounds good. Thank you very
11 much. I'll see you send you back for your deliberations.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Anything from the State?

15 MR. DEBUSK: No, Your Honor, not from the State.

16 THE COURT: Anything from the Defense?

17 MR. CHRISCO: No, Your Honor.

18 THE COURT: All right. There you go.

19 OFF THE RECORD

20 (On the record. The following takes place outside the
21 presence the jury. Question from jury at 12:34 p.m.)

22 THE COURT: All right. We have another question. It
23 says, "Have Judge clarify the meaning or description of a
24 weapon." So I was just going to go by the jury charge book
25 and say, "A deadly weapon is any article, instrument or

Question from Jury

219

1 substance which is likely to cause or has been used to inflict
2 death or great bodily harm. Whether an instrument has been
3 used as a deadly weapon depends on the facts and circumstances
4 of each case."

5 MR. DEBUSK: Your Honor, we would ask for the whole
6 definition of -- starting with including that portion that we
7 discussed prior to charges, the whole definition of armed.

8 MR. CHRISCO: That's not the question.

9 THE COURT: Well, I mean, what is it you're -- what are
10 you wanting me to --

11 MR. DEBUSK: Beginning on page 12, Your Honor, "The State
12 must prove beyond a reasonable doubt the Defendant was armed,"
13 and then all of the rest of that, including the portion that
14 we -- down to where it says robbery on page 13.

15 THE COURT: Okay. Well, I'm not going to go and --

16 MR. CHRISCO: What is the question again?

17 THE COURT: In other -- the question is --

18 MR. CHRISCO: What's, what's the --

19 THE COURT: -- clarify the meaning or description of a
20 weapon. I mean, do you want -- so, in other words, you're
21 wanting me to -- tell me exactly what you want me to say.

22 MR. DEBUSK: Beginning at, "Finally, the State must prove
23 beyond a reasonable doubt that the Defendant," on the next to
24 the last paragraph on page 12, basically the paragraph prior
25 to what you were, you were reading, including the portion

1 about any object the person reasonably believes to be a
2 weapon.

3 MR. CHRISCO: That's not what they're asking.

4 THE COURT: Yeah. Yeah. I don't think that's what
5 they're asking.

6 MR. CHRISCO: Your Honor, I think the, the, the paragraph
7 that says that -- what they're asking is, is what -- the --
8 what you read in your, in your charge that the following are
9 examples or instruments which may be a deadly weapon.

10 THE COURT: Those are examples, and they're just wanting
11 me to clarify the meaning, and so they're not -- you know, I
12 don't want to lead them to believe that these are the only
13 things that can be deadly weapons.

14 MR. DEBUSK: But, Your Honor, I think it's important to
15 let them know that armed includes -- armed robbery includes a
16 situation where there is an item the person reasonably
17 believes to be a weapon.

18 THE COURT: Well, no. I don't think that's what they
19 asked. I think I've already charged them on that law.
20 So -- all right. I'll note the objections of the State. I
21 also note the objections of the Defense, and I'm just going to
22 charge them the way I've, I've got it, got it listed.
23 Anything further from the State before we bring them in?

24 MR. DEBUSK: No, Your Honor.

25 THE COURT: Anything from the Defense?

Question from Jury

221

1 MR. CHRISCO: No, Your Honor.

2 THE COURT: All right. Let's bring them in. I'm going
3 to go -- also go ahead and tell them that we've got a lunch
4 coming for them, too, as well.

5 All right. This is State's [sic] Exhibit Six. Six, all
6 right.

7 (Court's Exhibit Number Six [Question from Jury]
8 appropriately marked.)

9 (Whereupon, the following takes place in the presence of
10 the jury.)

11 THE COURT: All right. Ladies and gentlemen, welcome
12 back. I understand you have another question, and based upon
13 what I was given it says, "Have the Judge clarify the meaning
14 or description of a weapon." Is that correct?

15 FOREMAN: Yes.

16 THE COURT: All right. For the purposes of this trial, a
17 deadly weapon is any article, instrument or substance which is
18 likely to cause or has been used to inflict death or great
19 bodily harm. Now, whether an instrument has been used as a
20 deadly weapon depends on the facts and circumstances of each
21 case. Okay. So that is up to you.

22 FOREMAN: Is that enough?

23 JUROR: I, I wanted to know did he have to just say he
24 had a gun or do we have to prove he had a gun? Could he walk
25 up and say, "I've got a gun," and that would be considered

1 armed robbery?

2 JUROR: It's the armed robbery thing.

3 THE COURT: I understand. Hold for one second.

4 JUROR: If he just said he had a gun.

5 THE COURT: All right. And so that we get this on the
6 record.

7 (Court and court reporter confer.)

8 JUROR: What's that.

9 THE COURT: Yes. The foreperson, your jury number?

10 JUROR: I'm 228.

11 THE COURT: You're 228. All right, sir.

12 FOREMAN: 316, I believe.

13 THE COURT: 316.

14 FOREMAN: Got it back in the room.

15 THE COURT: All right.

16 FOREMAN: Do you want the whole description of armed
17 robbery? No?

18 THE COURT: This is -- all right. The State must prove
19 beyond a reasonable doubt that the Defendant was armed with a
20 deadly weapon during the robbery or that the Defendant, while
21 alleging either by action or words that he was armed while
22 using a representation of a deadly weapon or any object which
23 a person present during the commission of the robbery
24 reasonably believed to be a deadly weapon. All right.

25 Now, we, as a side note, I'm going to send you back out,

Question from Jury

223

1 let you continue with your deliberations. We do have lunch
2 coming for you. Okay. Now, you can do one of two things when
3 lunch gets here. You can either stop your deliberations, eat
4 your lunch and then resume your deliberations or you can eat
5 your lunch and continue to deliberate. The only requirement
6 is that everybody must do the same thing. Okay? You can't
7 have some jurors deliberate while others stop and eat lunch.
8 So as long as everybody does the same thing you can either
9 deliberate during lunch or you can stop and then resume.
10 Okay? All right. I'm going to send you back out and let you
11 resume your deliberations.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Anything further from the State?

15 MR. DEBUSK: No, Your Honor.

16 THE COURT: All right. Anything further from the
17 Defense?

18 MR. CHRISCO: No, Your Honor.

19 THE COURT: Okay. I know that there was an objection to
20 that part, but based upon their follow-up question, I deemed
21 that it was appropriate to go ahead and give that follow-up
22 instruction.

23 MR. CHRISCO: Continue the objection I had from the
24 original.

25 THE COURT: Right. All right. There's that, and we will

1 stay in recess. It is here. All right. You can go ahead and
2 get it to them. I told them they could continue deliberations
3 or stop, whichever they deem appropriate. Okay. Thank you a
4 lot.

5 OFF THE RECORD

6 (On the record. The following takes place outside the
7 presence of the jury. Question from jury at 2:18.)

8 THE COURT: All right. We got a request from the jury to
9 listen to the testimony of Logan Sawyers. Let's mark that
10 request as Court's Exhibit Seven.

11 (Court's Exhibit Number Seven [Question from Jury]
12 appropriately marked.)

13 THE COURT: All right. Anything from the State?

14 MR. DEBUSK: No, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. CHRISCO: No, Your Honor.

17 THE COURT: All right. Let's bring the jury in.

18 (Whereupon, the following takes place in the presence of
19 the jury.)

20 THE COURT: All right. Ladies and gentlemen, welcome
21 back. I understand that you would like to listen to the
22 testimony of Logan Sawyers again; is that correct?

23 FOREMAN: Yes, sir.

24 THE COURT: All right. We've got that set up. The court
25 reporter will play that back for you. If you can't hear it or

Question from Jury

225

1 you're having trouble hearing it, just raise your hand and let
2 me know. Okay.

3 FOREMAN: Okay.

4 (Logan Sawyers testimony played back in open court,
5 beginning at page 71, line four, through page 82, line 11.)

6 FOREMAN: Your Honor, they are happy that they heard what
7 they wanted to hear or do we have to keep going?

8 THE COURT: Okay. Well, you're the one that requested to
9 listen to the testimony.

10 FOREMAN: Right.

11 THE COURT: Now, if you were listening -- if you were
12 wanting to hear one particular part of the testimony and
13 you're satisfied with that, that will be fine.

14 FOREMAN: Is everybody satisfied?

15 THE COURT: If there's anyone that wants to listen to the
16 entire testimony, we can play the entire testimony. It's
17 whatever the jury --

18 FOREMAN: They're, they're satisfied.

19 THE COURT: Okay. All right. I'll excuse you back to
20 the jury room so you can continue your deliberations.
21 Thank you.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. Anything from the State?

25 MR. DEBUSK: No, Your Honor.

1 THE COURT: Anything from the Defense?

2 MR. CHRISCO: No questions, Your Honor.

3 THE COURT: All right. We'll stand in recess.

4 OFF THE RECORD

5 (On the record. The following takes place outside the
6 presence of the jury. Verdict is reached at 3:14 p.m.)

7 THE COURT: All right. I understand the jury has reached
8 a verdict. Anything from the State before we bring the jury
9 in?

10 MR. DEBUSK: No, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. CHRISCO: No, Your Honor.

13 THE COURT: All right. Let's go ahead and bring the jury
14 in.

15 (Whereupon, the following takes place in the presence of
16 the jury.)

17 THE COURT: All right. Ladies and gentlemen, welcome
18 back. Mr. Schavitz, I understand the jury has reached a
19 verdict. Is that correct?

20 FOREMAN: Yes. We have.

21 THE COURT: All right. And have you completed and signed
22 the verdict form?

23 FOREMAN: Yes, I have.

24 THE COURT: All right. If you'd please hand it to the
25 clerk.

Verdict

227

1 (Complies with request. Court reviews.)

2 THE COURT: All right. I'll ask the clerk if she'll
3 please publish the verdict.

4 THE CLERK: State of South Carolina, County of Horry,
5 indictment 2014-GS-26-5250, State of South Carolina versus
6 Raymond Smiley, we, the jury, find the Defendant, Raymond
7 Smiley, guilty of armed robbery, September the 10th, 2015,
8 Foreperson, Curt Schavitz?

9 FOREPERSON: Yeah.

10 THE CLERK: Ladies and gentlemen of the jury, if this is
11 your verdict please signify by raising your right hand.

12 (All jurors raise right hand.)

13 THE COURT: All right. Let the record reflect that all
14 jurors raised their right hand. Any polling of the jury by
15 the Defendant?

16 MR. CHRISCO: No, Your Honor.

17 THE COURT: All right. All right. Ladies and gentlemen,
18 I want to thank you for your service not only in this case but
19 for this week. This will conclude your services as jurors,
20 not only on this case, but for this week. I know it's not an
21 easy thing to do to serve on a jury, but I do want to thank
22 you for your service. You all have a one-year
23 disqualification from serving jury duty for the next year and
24 you've got a three-year exemption. I hope you don't exercise
25 your exemption because we do need good jurors, and I want to

1 thank you for your service. So you're free to go now for the
2 remainder, not only for the remainder of the day but for the
3 remainder of the week as well, and thank you very much.

4 (Whereupon, the following takes place outside the
5 presence the jury.)

6 THE COURT: All right. Any reason as to why we cannot go
7 ahead and impose sentence at this time?

8 MR. DEBUSK: Your Honor, we'll need Mr. Anderson because
9 of the probation, parole and pardon because of the community
10 supervision. Would you like me to step next door and --

11 THE COURT: All right. Let's go ahead and get, let's go
12 ahead and get him up here. Okay? We can do that.

13 MR. DEBUSK: I'll get him.

14 THE COURT: All right. How long do you think -- have we
15 got a sentencing sheet prepared?

16 MR. DEBUSK: The Court's indulgence one moment, Your
17 Honor. I do not, Your Honor. I can step in the back and make
18 one in three minutes.

19 THE COURT: All right. Let's go ahead and take about a
20 five or 10 minute break while we get probation and parole up
21 here and go ahead and get a sentencing sheet in place. Okay?

22 MR. DEBUSK: Yes, sir.

23 THE COURT: Okay. All right. Thank you.

24 OFF THE RECORD.

25 (On the record.)

Sentencing

229

1 THE COURT: All right. Mr. Chrisco, anything in
2 mitigation?

3 MR. CHRISCO: Your Honor, I think you've heard the case,
4 and you heard the other day when my client got on the stand.
5 We would just ask mercy of the Court, Your Honor.

6 THE COURT: All right. Mr. Smiley, is there anything you
7 want to say?

8 MR. SMILEY: No, sir.

9 THE COURT: All right. Is the victim present or wish to
10 speak?

11 MR. DEBUSK: No, Your Honor.

12 THE COURT: All right. Prior criminal record?

13 MR. DEBUSK: From 1979 housebreaking, grand larceny; '81,
14 pointing a firearm; '82, use of vehicle without permission;
15 '82 grand larceny; '85, failure to stop for blue light; '85
16 arson second degree; '96 and '97; I think these were all at
17 the same time, resisting arrest, resisting an officer, armed
18 robbery, AWIK, criminal conspiracy, CDVHAN and pointing and
19 presenting a firearm; in 2014 from North Carolina shoplifting
20 and resisting an officer.

21 THE COURT: All right. All right. Is probation and
22 parole -- I understand that there is a community supervision
23 revocation?

24 PROBATION OFFICER: Yes, Your Honor. He is currently on
25 community supervision resulted from the armed robbery and the

1 assault and battery with intent to kill. That was back in
2 '97, Judge, 97-GS-26-00572. He, he's had some violations in
3 that case, Judge. He, he hadn't reported to the office on
4 that since September of 2014. Also, today's conviction will
5 be a new violation. He's got roughly over a year remaining on
6 that community supervision, which Your Honor knows he can only
7 be revoked for one year maximum. So, that, that would be what
8 would be appropriate on the sentence, Your Honor.

9 THE COURT: All right. Have we served -- does -- do you
10 need to serve him with a warrant or a citation or how do you
11 --

12 PROBATION OFFICER: Yes. Yes, Your Honor. I will do
13 both of those if you will give me a moment.

14 THE COURT: Okay.

15 MR. CHRISCO: Your Honor, if I could just clarify, the
16 reason he hadn't reported since September of '14, he's been
17 incarcerated since September of '14.

18 THE COURT: Okay. All right.

19 MR. CHRISCO: It's 361 days. He says September 14th is
20 when arrested up in North Carolina and they put a hold on him
21 to be extradited here.

22 THE COURT: All right.

23 PROBATION OFFICER: Thank you, Your Honor.

24 THE COURT: All right. Mr. Chrisco, you also represent
25 Raymond Smiley in his violation of community supervision?

Sentencing

231

1 MR. CHRISCO: Yes, Your Honor.

2 THE COURT: All right. And does -- have you received a
3 copy of the citation or the warrant?

4 MR. CHRISCO: Just now, Your Honor.

5 THE COURT: All right. And have you had an opportunity
6 to discuss the allegations in that with your client?

7 MR. CHRISCO: I think it was self-explanatory, Your
8 Honor.

9 THE COURT: All right. And does your client admit or
10 denied that he's willfully violated the terms of his community
11 supervision?

12 MR. CHRISCO: Well, he would deny it because he was
13 locked up and couldn't report.

14 THE COURT: Okay. What about --

15 MR. CHRISCO: Conviction he cannot deny because he's been
16 convicted.

17 THE COURT: All right. All right. Mr. Smiley, you have
18 been convicted of armed robbery by a jury trial. Likewise,
19 that conviction constitutes a violation of your community
20 supervision. On the community supervision I am going to
21 revoke one year. On the conviction for this armed robbery,
22 the sentence of the Court is that you be confined to the State
23 Department of Corrections for 30 years. Now, how do I mark
24 the sentence date? I mean, I want the, the 30 years to run
25 concurrent with the community supervision revocation.

1 PROBATION OFFICER: Correct. Correct.

2 THE COURT: Do I put today's date in that, with that
3 order?

4 PROBATION OFFICER: I'll have a revocation order, Judge,
5 that you can date today.

6 THE COURT: Okay. What is -- and what is that, that case
7 number?

8 PROBATION OFFICER: That case number is 97-GS-26-00572.
9 There -- back then there was a count one and count two in
10 that.

11 THE COURT: Okay. All right. For the armed robbery it's
12 30 years, revoke the one year on the community -- for
13 violation of community supervision, and that those will run
14 concurrent. All right. Get credit for any time served.

15 MR. CHRISCO: Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. SMILEY: Thank you, Mr. Chrisco.

18 MR. CHRISCO: You're welcome.

19 (Adjourned.)

20

21

22

23

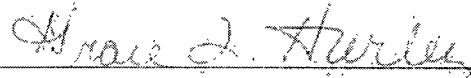
24

25

C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the trial held in the case of The State versus Raymond Smiley, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on September 8-10, 2015.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

December 11, 2015.

WITNESSES

Joseph Eric Stevens Loris Police Department

DOCKET NO. 2014-GS-26- 05250

The State of South Carolina

County of Horry

George H. DeBusk, Jr.
14H04797

COURT OF GENERAL SESSIONS

DECEMBER, 2014 TERM

ARREST WARRANT NUMBER

2014A2620500098

CDR: 0139 16-11-0330(A)

DOA: 10/28/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: DEC 18 2014 *[Signature]*

VERDICT

Foreperson of Petit Jury
Date:

THE STATE

vs.

Raymond Smiley
B/ M

LORIS, SC 29569-0000
DOB:
SSN:

ATTORNEY: William Edward Chrisco

Indictment for

Armed Robbery

Jimmy A. Richardson, II, Solicitor

ORIGINAL

2015 JAN -7 AM 9:18

CLERK OF COURT
DATE RECEIVED FROM
GRAND JURY

CERTIFIED COPY
2015 SEP 11 AM 10:36
CLERK OF COURT
HORRY COUNTY

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF HORRY)

FILED
HORRY COUNTY
2015 SEP 14 PM 2:36
MELANIE HUBBARD WARD
CLERK OF COURT

At a Court of General Sessions, convened on December 18, 2014, the Grand Jurors of Horry County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That Raymond Smiley did in Horry County on or about August 23, 2014, while armed with a deadly weapon, to wit: or while alleging, either by action or words, was armed while using a representative of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away personal property of Wilco Hess from or in the immediate presence of Wilco Hess with intent to deprive Wilco Hess of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

FILED
HORRY COUNTY
2015 SEP 10 PM 4:10
MELANIE HUBBARD WARD
CLERK OF COURT
COURT DATE
PLED GUILTY/TRIAL

FILED
HORRY COUNTY
CLERK OF COURT

2015 SEP 11 AM 10:36

CERTIFIED COPY

COUNTY OF
STATE

Horry

VS.

Raymond Smiley

AKA:

Race: BLACK Sex: M Age: 54

DOB: SS#:

Address:

City, State, Zip: LORIS, SC 29569-0000

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery (10-30 years)

INDICTMENT/CASE#: 2014GS2605250

A/W#: 2014A2620500098

Date of Offense: 8/23/2014

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: *[Signature]*

SCB16182

DeBusk, Jr., George H.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed X years
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment
of \$ X; plus costs and assessments as applicable*; the balance is suspended with probation for Xmonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

days/hours Public Service/Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd in equal consecutive weekly/monthly
pmts. of \$ 25.00 beginning 9/10/2015

\$ paid to Public Defender Fund

Other:

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Melanie Huggins-Ward
Grace Hurley

Presiding Judge

Judge Code:

Sentence Date:

M. Huggins-Ward
2148
*Sept. 10, 2015*FILED
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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 25, 2016

Susan B. Hackett

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SC Court of Appeals

ATTORNEY FOR APPELLANT

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