

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
The Honorable Tanya A. Gee

VOLUME I OF II

RECEIVED

JUL 9 2016

SC SUPREME COURT

RICHARD KOUGH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002311

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

CLAY MITCHELL
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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	NO.	DESCRIPTION	ID	EV
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2				
3	1-A	Photograph	10	252
4	1-B	Photograph	10	252
5	1-C	Photograph	10	252
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DEFENDANT'S EXHIBITS

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Monday, December 7, 2009

THE COURT: Is the State ready to call their case?

MS. GARFIELD: Your Honor, I've already told Mr. Johnson this. We just have one issue as far as there is an independent witness who has woke up this morning with high blood sugar. I had talked with him about 30, 45 minutes ago. He has taken his medication, should be fine by early afternoon. Just as far as pre-trial purposes, we may have to do him this afternoon. He does the show-up ID.

THE COURT: Okay.

MS. GARFIELD: And Mr. Kough, he has seen the video. However, I have --

THE COURT: Just go ahead and state the case on the record.

MS. GARFIELD: State vs. Richard Kough, charged with armed robbery. And that's K-O-U-G-H. Let me get the indictment. Indictment number 09-GS-40-6661.

THE COURT: Okay.

MS. GARFIELD: Further, Your Honor, there is a video taken from the Exxon station where this incident occurred. It's a six-screen multiplex video. The defendant has seen it. However, since then I have taken the video to our IT person at the

1 Sheriff's Department who has isolated the pictures
2 where I've got them one-by-one. Neither Mr. Johnson
3 nor Mr. Kough have reviewed that video. We've got it
4 set up here in the courtroom. If they can have the
5 opportunity to review that as well.

6 **THE COURT:** Okay. What would we like to go
7 forward with right now?

8 **MS. GARFIELD:** We intend to introduce this video
9 through our first witness. So I don't know if they
10 need to review it before we begin.

11 **MR. JOHNSON:** Your Honor, I think we need to
12 review it because the video was showing my client
13 with his previous attorney. I have not seen the
14 video and definitely haven't seen the video yet. My
15 client saw the whole video but we have not seen the
16 whole video. I'd ask the Court's indulgence to take
17 a look at the video.

18 **THE COURT:** We'll do that. The Court will take
19 a break. How long does the video last?

20 **MS. GARFIELD:** Oh. It's just minutes.

21 **THE COURT:** All right. I'll just step down for
22 a little bit. I haven't stepped down yet. I'll be
23 back in a moment.

24 (Whereupon, a break is taken)

25

1 (WHEREUPON, State's Exhibit No. 1-A is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 1-B is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 1-C is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 1-D is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 1-E is marked
10 for identification.)

11 (WHEREUPON, State's Exhibit No. 1-F is marked
12 for identification.)

13 (WHEREUPON, State's Exhibit No. 1-G is marked
14 for identification.)

15 (WHEREUPON, State's Exhibit No. 2 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 3 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 4 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 5 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 6 is marked for
24 identification.)

25

1 (WHEREUPON, State's Exhibit No. 7 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 8 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 9 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 10 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 11 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 12 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 13 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 14 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 15 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 16 is marked for
20 identification.)

21 (WHEREUPON, State's Exhibit No. 17 is marked for
22 identification.)

23 (WHEREUPON, State's Exhibit No. 18 is marked for
24 identification.)

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1 (WHEREUPON, State's Exhibit No. 19 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 20 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 21 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 22 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 23 is marked for
10 identification.)

11 (WHEREUPON, State's Exhibit No. 24 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 25 is marked for
14 identification.)

15 (WHEREUPON, State's Exhibit No. 26 is marked for
16 identification.)

17 (WHEREUPON, State's Exhibit No. 27 is marked for
18 identification.)

19 (WHEREUPON, State's Exhibit No. 28 is marked for
20 identification.)

21 **THE COURT:** You all still need more time?

22 (Pause)

23 **MR. ROGERS:** Your Honor.

24 **THE COURT:** Yes.

25 **MR. ROGERS:** The defense did want to see one

1 last portion of the video.

2 **THE COURT:** Go ahead. Go ahead.

3 (Pause)

4 **THE COURT:** Counsel, just approach quickly.

5 (Whereupon, a bench conference is had)

6 **THE COURT:** Okay. Defense counsel, have you had
7 enough time to review the video?

8 **MR. JOHNSON:** Yes, Your Honor.

9 **THE COURT:** Okay.

10 **MR. JOHNSON:** Oh. Your Honor, may we approach?
11 I forget about one thing.

12 **THE COURT:** Yes, you may.

13 (Whereupon, a bench conference is had)

14 **THE COURT:** Okay. The Court is ready to proceed
15 with any pre-trial motions. Are we ready to proceed
16 with any pre-trial motions?

17 **MS. GARFIELD:** Yes. It's my understanding that
18 Mr. Johnson has motions regarding show-up
19 identifications as well as a motion to suppress.

20 **THE COURT:** Okay.

21 **MR. JOHNSON:** That's correct, Your Honor. There
22 was two show-up identifications made on my client by
23 the police. We have objection to those show-up ID's.
24 As well as the police made entry into the boarding
25 house without a search warrant. And at that time

1 they arrested my client, searched his goods and
2 recovered some items that they intend to show during
3 the trial, and we have objection to that being
4 admitted.

5 **THE COURT:** Okay. Let's begin with the show-up
6 I.D. Any evidence?

7 **MS. GARFIELD:** Your Honor, and as we discussed
8 in your chambers last week, what I intend to do is
9 just call all the witnesses and ask them questions
10 regarding everything, and then we can make the
11 appropriate arguments at the end, rather than calling
12 them twice to do them one-by-one.

13 **THE COURT:** Sure. That will be fine.

14 **MS. GARFIELD:** Thank you. At this time the
15 State calls Tonya McGeorge.

16 TONYA MCGEORGE, after being duly sworn,
17 testifies as follows:

18 **THE CLERK:** Thank you. Have a seat in the
19 witness stand, please, and give the court reporter
20 your name.

21 **THE WITNESS:** My name is Tonya McGeorge.

22 DIRECT EXAMINATION

23 **BY MS. GARFIELD**

24 **Q** Ms. McGeorge, may I call you Tonya?

25 **A** You sure can.

1 Q Have you ever testified in court before?

2 A No, I have not.

3 Q So you're a little nervous?

4 A A little, yes.

5 Q Just take your time. Okay? I'm going to
6 specifically take you back to July of 2008.

7 A Yes, ma'am.

8 Q Where were you employed?

9 A Corner Pantry Convenience Stores.

10 Q And which Corner Pantry?

11 A On this particular day I was at Harding and Gervais.

12 Q And is that Corner Pantry in a particular gas
13 station?

14 A I beg your pardon?

15 Q Is that Corner Pantry a part of --

16 A Yes. It's an Exxon.

17 Q Exxon gas station at the corner of Gervais and
18 Harden?

19 A Mm-hmm (affirmative).

20 Q And is that within the City of Columbia city limits?

21 A Yes, it was.

22 Q Also in Richland County?

23 A Yes.

24 Q Ms. McGeorge, on that particular day back on July
25 19th, 2008, you were working?

- 1 **A** Yes, I was.
- 2 **Q** Do you recall what shift you were working?
- 3 **A** I was working the closing shift.
- 4 **Q** And closing shift would entail what hours?
- 5 **A** 2 to 10.
- 6 **Q** 2 to 10?
- 7 **A** Mm-hmm (affirmative).
- 8 **Q** And at that particular time -- tell us about your
- 9 educational background?
- 10 **A** I have a high school diploma.
- 11 **Q** Where did you go to high school?
- 12 **A** Williston-Elco High School in Williston, South
- 13 Carolina.
- 14 **Q** And what brought you to Columbia?
- 15 **A** My work.
- 16 **Q** Your work. Okay. On this particular day did you
- 17 have an occasion to become a victim of a robbery?
- 18 **A** I did.
- 19 **Q** And particularly, can you explain to the Court what
- 20 you observed immediately prior to the robbery?
- 21 **A** Immediately prior, it was a typical day. It was
- 22 going normally. I observed the defendant walk into
- 23 the gas station. He -- at this particular time it
- 24 was slightly busy. He made it to the counter and
- 25 asked for a pack of Newport cigarettes.

1 Q And I'm going to stop you right there, Tonya. Before
2 he came up to the counter, were there other people in
3 the store?

4 A There were.

5 Q And he was in line?

6 A Yes.

7 Q And do you recall that day? When you first saw him,
8 what was he doing?

9 A He proceeded -- when I first noticed him, he
10 proceeded to the drink cooler and came back around
11 and waited until he got to the counter where I was
12 at.

13 Q And do you recall what he was wearing?

14 A Yes. A yellow type football jersey type top, blue
15 jeans.

16 Q Okay. And when he approached the counter, what did
17 he do, Tonya?

18 A He requested a pack of Newport cigarettes which I
19 turned around to obtain for him, handed me a \$20 bill
20 to pay for the purchase and then proceeded to ask me
21 for all the cash out of the cash register.

22 Q Did he --

23 A After producing a knife.

24 Q And did he make any remarks to you?

25 A Hurry up. I want all the money. This is not a joke.

1 I am serious.

2 Q And what did you do, Tonya?

3 A I did as he requested. I gave him the cash out of
4 the cash register.

5 Q And did you do it quickly?

6 A Yeah.

7 Q Did you take any time to actually observe the
8 defendant?

9 A I did. Yes. I wanted to obtain as much information
10 in my memory as I could so when I called 911 I would
11 have the information to give to the officers.

12 Q And what is that description that you recall?

13 A A white male, five-two to five-seven, approximately
14 200, 220, average build, and what he was wearing.

15 Q Do you remember meeting with Investigator Thomas?

16 A I do.

17 Q And do you remember he went over a questionnaire with
18 you?

19 A Yes, I do.

20 Q He wrote down your answers to certain questions?

21 A I did.

22 Q Regarding the defendant?

23 A I did.

24 Q Do you think if you looked at that that may refresh
25 your memory as to the description you gave

1 Investigator Thomas?

2 **A** Yeah.

3 **MS. GARFIELD:** Your Honor, at this time I'd like
4 to approach the witness.

5 **THE COURT:** Yes.

6 **MS. GARFIELD:** And if I can get this marked for
7 pre-trial purposes only. Charlie, this is a
8 questionnaire.

9 **MR. JOHNSON:** Okay.

10 (WHEREUPON, Court's Exhibit No. 1 is marked for
11 identification.)

12 **Q** Tonya, I'm going to hand you what's been marked as
13 State's Exhibit -- I'm sorry -- Court's Exhibit No.
14 1. And do you recognize that document?

15 **A** I do.

16 **Q** And if you can just go through it line-by-line, what
17 is the description that you gave Investigator Thomas
18 of the person that robbed you on July 19th?

19 **A** A male, a white male approximately 23 to 35 years of
20 age, five-foot-two to five-foot-five, fair
21 complexion, sandy blonde hair, medium voice, stocky
22 build, wearing a yellow jersey, jeans, with a weapon
23 as a knife, right-handed, on foot out of -- and he
24 went out of the door in the direction of the right.

25 **Q** Okay. And if you say go out of the door in the

1 direction of the right, that would be going down
2 Harden Street. Is that correct? Not Gervais. He'd
3 be going down Harden?

4 **A** No. He went down Gervais.

5 **Q** Okay. If I could have that. Okay, Tonya. Just beg
6 the Court's indulgence. Okay, Tonya. I'm going to
7 ask you to just step down. We're showing this to the
8 judge at this point. I show you what's been marked
9 as State's Exhibits 1-A, 1-B, 1-C, 1-D, 1-E, 1-F and
10 1-G.

11 **A** Okay.

12 **Q** If we can go just through them one-by-one beginning
13 with 1-A, what is this a photograph of?

14 **A** That's a general overview of the inside of the store.

15 **Q** And is that looking from behind the store or from the
16 front?

17 **A** This would be looking from the direction of the back
18 of the store.

19 **Q** And that's where the drink coolers would be?

20 **A** Yes.

21 **Q** Okay. And what about State's Exhibit 1-B?

22 **A** This is closer to the front, the cash register area.
23 This is more off towards the office side of the
24 store.

25 **Q** Okay. And continue to 1-C.

1 **A** This is over in the area to where the coffee area is,
2 where the general like fountain sodas would be if
3 there was a fountain machine in that store.

4 **Q** And that would be to the right of the cashier's
5 stand?

6 **A** No. That's actually to the left of the cashier's
7 stand.

8 **Q** Oh. If you were standing in the cashier's stand?

9 **A** Right.

10 **Q** Okay. But if I was a customer facing it, it would be
11 to my right?

12 **A** It would be to your right.

13 **Q** Okay. If you will please explain Exhibit 1-D?

14 **A** This would be closer to the front door. Or, no.
15 This would be actually in the front area of the
16 fountain area.

17 **Q** So actually you're on the other side of the chips
18 that are pictured in 1-C.

19 **A** Right.

20 **Q** Is that correct?

21 **A** Right. Exactly. This is over where the lottery --
22 this is all in the same general area.

23 **Q** And when you say "this is all", are you referring to
24 1-D, 1-E and 1-F?

25 **A** Exactly.

1 Q Okay. And then when we --

2 A No. This is behind the cash register. 1-F.

3 Q And that would be Exhibit 1-F?

4 A (Nods head affirmatively).

5 Q Okay. That's behind the cash register?

6 A Yes.

7 Q As well as what is 1-G?

8 A Behind the cash register, cigarette stands.

9 MS. GARFIELD: Your Honor, at this time we would
10 introduce these exhibits into evidence for purposes
11 of the pre-trial hearing.

12 THE COURT: Anything further?

13 MR. JOHNSON: I have no objection, Your Honor.

14 Q Okay, Tonya. Explain to Judge Childs where you were
15 standing when you first noticed the defendant enter
16 the store?

17 A I was approximately right in the area behind the cash
18 register attending to the other customers in line.

19 Q Okay. And where do you see -- when the defendant
20 walks into the store, where does he go? And you
21 might want to refer to 1-A for that explanation.

22 A He walked towards this way, down the center aisle
23 towards the back.

24 Q And then did he eventually come back towards the cash
25 register?

1 **A** He did. He did. He came within the area of the
2 newspaper stands.

3 **Q** And where were you when he came and asked for the
4 cigarettes?

5 **A** I was behind the cash register.

6 **Q** So you were back here?

7 **A** Yeah. I was in this area.

8 **Q** Okay. And approximately where was he when he came
9 and asked you for the cigarettes and the money?

10 **A** Approximately, he was right in this area here.

11 **Q** And that would be specifically State's Exhibit 1-C in
12 front of what?

13 **A** The cash register.

14 **Q** Okay. Tonya, you can go ahead and take your seat.
15 Are you okay?

16 **A** Yeah. I'm fine.

17 **Q** Are you aware if the Exxon was equipped at that time
18 with video?

19 **A** I had -- I'm sorry. Can you repeat that?

20 **Q** I'm sorry. At that time that this incident occurred,
21 are you aware that Exxon had a video in place, a
22 security camera?

23 **A** I knew there were cameras in place. As to whether
24 they actually had the camera running, I did not know.

25 **Q** But then afterwards after the robbery occurred you

1 learned that there was a video?

2 **A** Yes.

3 **Q** And you have reviewed that video?

4 **A** I have.

5 **Q** And you reviewed that with Mr. Rogers on this laptop.

6 Is that correct?

7 **A** I did.

8 **MS. GARFIELD:** Your Honor, at this time we would
9 like to publish the video. I think you will have to
10 step down if you want to review it.

11 **THE COURT:** Certainly. Thanks for the
12 invitation. Most times lawyers don't invite me to
13 see the evidence.

14 **MS. GARFIELD:** Well, this is sort of important.

15 **Q** Now, first, Tonya, you recall that the video had a
16 multi-screen?

17 **A** I do.

18 **Q** Is that correct? And can you see it where you are?

19 **A** No, I cannot.

20 **Q** Do you want to step down?

21 **A** Sure.

22 **Q** You can just have a seat in the jury box. Is this
23 the video that you reviewed?

24 **A** It is.

25 **Q** Okay. Thank you. Mr. Rogers, if you would please

1 play it.

2 (Video being played)

3 Q Is that the individual walking in --

4 A It is.

5 Q -- towards you?

6 (Video being played)

7 Q Ms. McGeorge, is that you standing behind the
8 counter?

9 A That is me.

10 (Video being played)

11 Q Okay. I believe that includes it all regarding the
12 robbery at that time. Is that right, Tonya?

13 A Yes.

14 Q And there is also additional -- these particular
15 blocks on this video, you've seen them where they've
16 been isolated. Is that correct?

17 A Yes.

18 MS. GARFIELD: Okay. And at this time, Mr.
19 Rogers, if you will show these. I don't believe I
20 marked this. Did I, Jenny?

21 COURT REPORTER: You did not.

22 MS. GARFIELD: Okay. I need to get it marked.

23 (WHEREUPON, State's Exhibit No. 29 is marked for
24 identification.)

25 MS. GARFIELD: What we've just viewed was

1 State's Exhibit 29. For purposes of this hearing, we
2 move to introduce that into evidence.

3 (WHEREUPON, State's Exhibit No. 30 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 31 is marked for
6 identification.)

7 Q And, Tonya, that is a view from behind the register?

8 A It is.

9 (Video being played)

10 Q And after he left, Tonya, what did you do?

11 A My next step was I called 911.

12 Q And you told the 911 operator --

13 A I told the operator --

14 Q -- what happened?

15 A -- that I had just been robbed. And they asked for a
16 description of the suspect. And I gave them the
17 description that I had in my memory. And I -- you
18 see me go to the window, and I'm watching the
19 direction of where he ran.

20 Q Okay. And what direction was that?

21 A He ran out the front door towards the right down
22 Gervais.

23 MS. GARFIELD: And, Judge, there is one more.

24 Sorry.

25 THE COURT: That's all right.

1 Q And you've also seen another angle of this video as
2 well. Is that right?

3 A I have, yes.

4 Q I believe the one you just saw was State's Exhibit
5 No. 31. And I would ask to introduce that in
6 evidence for purposes of this hearing. We're now
7 going to show you State's Exhibit No. 30.

8 A Okay.

9 (Video being played)

10 Q Tonya, is that you behind the counter?

11 A Yes, it is.

12 (Video being played)

13 **MS. GARFIELD:** That concludes it, Your Honor,
14 all the videos. And we will introduce State's
15 Exhibit No. 30 into evidence for purposes of
16 pre-trial at this time.

17 **THE COURT:** Any objection?

18 **MR. JOHNSON:** No objection, Your Honor.

19 **THE COURT:** Okay.

20 Q Tonya, on this particular day you were at work?

21 A Mm-hmm (affirmative).

22 Q You weren't under the influence of any alcohol or
23 drugs?

24 A Absolutely not.

25 Q And the lighting within the Exxon is good?

1 **A** Yes.

2 **Q** In fact, it was fluorescent lights on top?

3 **A** It was.

4 **Q** And when he is -- the suspect is doing the robbery,

5 how far away is he from you?

6 **A** No more than I am from this lady right here.

7 **Q** So you would say what? A couple of feet? Is that

8 correct?

9 **A** A couple of feet.

10 **Q** Nothing blocked your view?

11 **A** Nothing.

12 **Q** You said -- you indicated prior that you called 911?

13 **A** I called 911.

14 **Q** And you gave a physical description that you've

15 testified to today in court?

16 **A** I did.

17 **Q** To the 911 operator. You also explained to the 911

18 operator that he had fled?

19 **A** Yes.

20 **Q** At that time or shortly thereafter did officers with

21 the Columbia Police Department arrive?

22 **A** Less than five minutes.

23 **Q** And, in fact, at first you -- well, who was the first

24 officer you came in contact with? Do you remember

25 her name?

1 **A** I don't remember her name. I remember there was a
2 young woman.

3 **Q** Okay. And that's safe to say. So you came in
4 contact with this female officer?

5 **A** Mm-hmm (affirmative).

6 **Q** And you gave her a description as well?

7 **A** I did.

8 **Q** Was that the same description that's reflected here
9 today?

10 **A** It was.

11 **Q** And eventually, sometime later, a few minutes I
12 believe that's correct, Investigator Thomas came to
13 the store?

14 **A** He showed up, yes.

15 **Q** You recognize Investigator Thomas?

16 **A** I do.

17 **Q** Would you say about how long did he come?

18 **A** I really -- probably no more than ten minutes.

19 **Q** Okay. And at that time did you inform Investigator
20 Thomas of what had happened?

21 **A** I did.

22 **Q** And did Investigator Thomas at any time take a
23 statement from you?

24 **A** He did.

25 **Q** And was that there at the Exxon?

1 **A** It was.

2 **Q** Was anything interrupted with you giving that
3 statement?

4 **A** My statement was interrupted.

5 **Q** And why was that?

6 **A** Because they had caught the suspect. Or they had
7 located the suspect.

8 **Q** They located the suspect. At that time did
9 Investigator Thomas leave the Exxon?

10 **A** He did. He left.

11 **Q** And at any time did he come back?

12 **A** He did.

13 **Q** And when he came back, what was the purposes of him
14 coming back?

15 **A** To get me.

16 **Q** He got you. Did he put you in a patrol car?

17 **A** He did.

18 **Q** And was there anyone else besides you and
19 Investigator Thomas?

20 **A** Yes.

21 **Q** And who was that?

22 **A** My supervisor, Lisa Taylor.

23 **Q** And Lisa Taylor rode in the car with you?

24 **A** She did.

25 **Q** Was Lisa Taylor present at the Exxon when the robbery

1 occurred?

2 A She was not.

3 Q She came after you called the police?

4 A Yes. After I called 911 and the -- I told -- when
5 the first unit arrived, I told the operator that the
6 officers were there and they hung up with me. And my
7 next phone call was to Lisa.

8 Q And at that time, jump ahead. You got in the car
9 with Investigator Thomas. And do you know where he
10 took you?

11 A I did not know the area. I am not from Columbia. I
12 knew it was a very short drive.

13 Q And you eventually -- do you recall -- describe the
14 location he took you?

15 A I beg your pardon?

16 Q If you'll describe the location that he took you?

17 A Dark. Very --

18 Q Outside was dark?

19 A Yes. It was dark. It was not a well lit area, not
20 an area that I would personally be in.

21 Q And did he take you to a house or a building or what?

22 A A house. It was what I would say was a house.

23 Q Okay. I'm going to show you State's Exhibit No. 12
24 for purposes of ID. Do you recognize this
25 photograph?

- 1 **A** This is the location.
- 2 **Q** Is that where Investigator Thomas took you?
- 3 **A** Mm-hmm (affirmative).
- 4 **Q** And when you got there, do you recall what you did?
- 5 **A** I identified the suspect.
- 6 **Q** You saw the suspect?
- 7 **A** I did.
- 8 **Q** And if you'll describe to me how he appeared?
- 9 **A** He had changed out of the yellow top into a red
10 jersey.
- 11 **Q** Okay. And did he have the other characteristics of
12 the description that you had given law enforcement?
- 13 **A** I believe he did.
- 14 **Q** Okay. I'd like to show you again State's Exhibit 12.
15 Physically where were you, Tonya, when you went
16 there?
- 17 **A** I was -- I stayed in the patrol car on the street.
- 18 **Q** So you're on the street?
- 19 **A** Yes.
- 20 **Q** And where is the suspect?
- 21 **A** He is in front of the house right here on the
22 walkway.
- 23 **Q** Okay. And is he -- was he in custody at the time?
- 24 **A** He was.
- 25 **Q** He was?

1 **A** Mm-hmm (affirmative).

2 **Q** And at that time did Investigator Thomas tell you
3 what to say?

4 **A** No.

5 **Q** Did he suggest that this was the person that did it?

6 **A** Absolutely not.

7 **Q** Exactly what did he tell you to do?

8 **A** He asked me to look at the suspect, and then he asked
9 the question if I was -- if this was the person that
10 had robbed me.

11 **Q** And what was your answer to that?

12 **A** I was 80 to 90 percent sure that it was him.

13 **Q** And the reason you had some percentage of hesitation
14 was because of why?

15 **A** Because of the difference in the lighting.

16 **Q** And also was anything different about his appearance?

17 **A** And the difference in his appearance from the
18 changing of his clothes.

19 **Q** Okay. And was there any kind of -- what was the
20 lighting at that location when you identified him?

21 **A** I identified him by flashlight, the --

22 **Q** Were you holding a flashlight?

23 **A** No. I was not. I stayed in the patrol car.

24 **Q** Okay. Would you explain to the judge what you mean
25 by a flashlight?

- 1 **A** A bright light, such as like a halogen light type.
- 2 **Q** And that light was coming from where?
- 3 **A** From outside, from -- I don't know. I don't know who
- 4 had it.
- 5 **Q** That's fair enough. That's good. All right. I'm
- 6 going show you State's Exhibit No. -- I can't read
- 7 it. State's Exhibit No. 25. Do you recognize this?
- 8 I kind of show you, would you agree this is an aerial
- 9 map?
- 10 **A** Yes.
- 11 **Q** And this is Gervais Street?
- 12 **A** Mm-hmm (affirmative).
- 13 **Q** And this is Harden Street?
- 14 **A** Mm-hmm (affirmative).
- 15 **Q** And specifically -- I can't really see it myself.
- 16 Let me back up here. What is right here?
- 17 **A** That's the Exxon.
- 18 **Q** Okay. And you came out of the Exxon after the
- 19 robbery?
- 20 **A** Not until I got in the patrol car.
- 21 **Q** You never left inside the Exxon?
- 22 **A** I never left the store.
- 23 **Q** But when you're inside and you see him exit the door,
- 24 what direction do you see him saying off in?
- 25 **A** Coming this way.

1 Q This way?

2 A Mm-hmm (affirmative).

3 Q And when Investigator Thomas put you in the patrol
4 car, do you recall which direction you traveled?

5 A The same direction.

6 Q The same direction. Tonya, giving the statement to
7 Investigator Thomas, that was interrupted. Did you
8 ever have an opportunity to finish that statement?

9 A I did not. Investigator Thomas requested that I meet
10 him at the police station the following day after I
11 got off of work. I did go up there, and he was
12 investigating another case.

13 Q He was not able to meet with you?

14 A He was not able to meet me.

15 Q And you were never able to follow up with
16 Investigator Thomas. Is that correct?

17 A I was not.

18 Q When you're in the car with Investigator Thomas and
19 you drive up and you see the suspect, how long did it
20 take you to tell Investigator Thomas if you thought
21 that was him or not?

22 A Approximately maybe two minutes.

23 Q Okay. Does the defendant look different today than
24 he did then?

25 A Yes, he does.

1 Q And tell me about that?

2 A He's had a haircut. He is now wearing glasses and he
3 is slightly thinner.

4 Q Okay. Anything different about his facial hair?

5 A He is clean shaven.

6 Q Thank you. Beg the Court's indulgence. Thank you,
7 Ms. McGeorge. Please answer any questions Mr.
8 Johnson may have for you.

9 A Okay.

10 MR. JOHNSON: May it please the Court, Your
11 Honor.

12 THE COURT: Yes.

13 CROSS EXAMINATION

14 BY MR. JOHNSON

15 Q Good morning, Ms. George [sic].

16 A Good morning.

17 Q Ms. George [sic], did you meet with the Solicitor's
18 Office prior to coming here today?

19 A No.

20 Q You never talked to them prior to coming here?

21 A I have spoken with Dolly on the phone on several
22 occasions to find out the proceedings.

23 Q Okay. So you never had any meetings prior to today?

24 A No.

25 Q Now, you said that you initially -- when this

1 happened, do you know what time it was?

2 **A** Approximately 8:30.

3 **Q** Was the sun still up?

4 **A** No.

5 **Q** So it was kind of dark outside?

6 **A** Yes.

7 **Q** And the amount of time -- from looking at the tape,
8 the amount of time that you had probably this whole
9 matter took about 10 or 15 seconds at first him
10 standing in front of you?

11 **A** Approximately.

12 **Q** So your whole observations as far as identifying my
13 client is based on about fifteen seconds of
14 observations, probably max ten to fifteen seconds?

15 **A** I would say so, yes.

16 **Q** And you were pretty scared at the time. Is that
17 correct?

18 **A** Sure.

19 **Q** And even then when you did identify him in the
20 line-up, as you say, it was extremely dark in the
21 area that they took you, right?

22 **A** Mm-hmm (affirmative).

23 **Q** You were still probably pretty frightened from the
24 ordeal of being robbed. Is that correct?

25 **A** I wouldn't say frightened. I was shaken up.

1 Q Okay. And how close were you to my client when you
2 identified him as the person that was in the store?

3 A I was less than ten feet.

4 Q You were actually outside the car?

5 A I was in the car but I was close enough I could
6 identify him.

7 Q Did the car have tinted windows?

8 A That I am not sure of.

9 Q You don't remember?

10 A I don't remember.

11 Q But you was in the back seat of the police car?

12 A Yes.

13 Q Was it a marked police car?

14 A Yes.

15 Q But you don't remember if the windows were tinted or
16 not?

17 A I don't.

18 Q So what did they do? Did they stand him in front of
19 the house and shine lights on him or something?

20 A Yes.

21 Q What kind of lights? Flashlights? Car lights?

22 A Like flashlights. It was -- they were bright. I
23 can -- bright enough to where I could tell I was
24 sure.

25 Q Was he standing on the porch, or did they bring him

1 down to the steps? Or what did they do?

2 A He was standing on the walkway area.

3 Q On the walkway area. If you're sitting in the car,
4 was he about this close to you?

5 A Probably a little closer. I had the window down just
6 slightly where I could --

7 Q And you say you was about 80 or 90 percent sure. Is
8 that correct?

9 A Yes.

10 Q And you said that he changed clothes. How do you
11 know he changed clothes?

12 A Because I remembered the yellow -- the description I
13 gave them was a yellow jersey. He was then wearing a
14 red jersey.

15 Q And what I'm saying is, you're assuming that he
16 changed clothes. You don't know if he changed
17 clothes, do you?

18 A Two different colors.

19 Q If you're only 80, 90 percent sure, you're not
20 positively sure it was him?

21 A I was -- I was sure enough that, I mean, I could -- I
22 could tell.

23 Q The thing that made him different was what he had on.
24 Is that correct?

25 A Yes. It was. But there is a difference in the two

1 colors.

2 Q All right. Exactly. The things that made you 80 or
3 90 percent not sure is that you was not sure because
4 of what he had on. Is that correct?

5 A The differences in him were the two different colored
6 tops he had on, yes.

7 Q And then what else about him made you only 80 or 90
8 percent sure and not 100 percent sure?

9 A Just the difference in the lighting and the color of
10 the top.

11 Q So it's possible that it could not have been him?

12 A I have no doubt. Seeing him again today, I have no
13 doubt in my mind that this is the man that robbed me.

14 Q But that night when you identified him, right, as you
15 said earlier, you was only 80 or 90 percent sure,
16 right?

17 A I did say that, yes. I mean, I have no -- I'm not
18 going to sit here and say I'm 100 percent sure, that
19 that night I was 100 percent sure when that's not the
20 statement that I made.

21 Q And that was because you wasn't sure, right?

22 A I was sure, but I was not 100 percent sure.

23 Q Okay. No other questions.

24 REDIRECT EXAMINATION

25 **BY MS. GARFIELD**

1 Q Tonya, know one told you the suspect had changed
2 clothes?

3 A No.

4 Q On your way over there?

5 A No. Absolutely not.

6 Q So when you saw him, he looked like the person that
7 robbed you with a different shirt on?

8 MR. JOHNSON: Your Honor, objection. I know
9 this is pre-trial, but she's leading the witness.

10 THE COURT: Sustained.

11 Q So when you got there, was that the person that had
12 robbed you?

13 A I felt it was, yes.

14 Q But he had on different clothing?

15 A He just had on different clothes.

16 Q And you and I, this is the first time you and I have
17 ever laid eyes on each other?

18 A I've never met you until this morning.

19 Q We've spoke on the phone several times?

20 A Yes.

21 Q And, Tonya, because don't live in Columbia any more?

22 A I do not.

23 Q Thank you. No further questions.

24 THE COURT: Anything on redirect?

25 MR. JOHNSON: I have nothing on redirect, Your

1 Honor.

2 **THE COURT:** Okay. Is this witness needed for
3 the second issue at all?

4 **MS. GARFIELD:** Oh, no.

5 **THE COURT:** Thank you. You can step down.

6 **THE WITNESS:** Thank you.

7 **THE COURT:** Any further issues with respect to
8 the identification?

9 **MS. GARFIELD:** We have several more witnesses.

10 **THE COURT:** Okay. Go ahead.

11 **MR. ROGERS:** The State calls Lisa Taylor.

12 LISA TAYLOR, after being duly sworn, testifies
13 as follows:

14 **THE CLERK:** Thank you. Have a seat in the
15 witness stand, please. Give the court reporter your
16 name.

17 **THE WITNESS:** Lisa Taylor.

18 DIRECT EXAMINATION

19 **BY MR. ROGERS**

20 **Q** Good afternoon, Ms. Taylor.

21 **A** Hello.

22 **Q** How are you today?

23 **A** Good.

24 **Q** I've got a couple of questions for you.

25 **A** Okay.

1 Q First of all, where do you live?

2 A In Lexington.

3 Q And do you have any businesses here in Richland
4 County?

5 A The company I work for has stores there. I'm a
6 district manager for Corner Pantry. And I have
7 several stores or a few stores in Richland County.

8 Q Do they have one on Gervais Street?

9 A They do.

10 Q And where is it? Do you know what corner that store
11 is located on?

12 A The corner of Harden and Gervais.

13 Q Were you working with that company back on July 19th,
14 2008?

15 A Uh-huh (affirmative). I was.

16 Q Do you remember anything unusual happening that
17 night?

18 A My cashier had called me from the store that night
19 and told me she had just been robbed.

20 Q Who is that cashier?

21 A Tonya McGeorge.

22 MR. JOHNSON: Your Honor, I hate to interrupt,
23 but I have an objection. What is the relevance of
24 this witness to a show-up ID?

25 MS. GARFIELD: Your Honor, she is in the car

1 with them. Mrs. George testified to that.

2 **THE COURT:** This is the one she testified about?

3 **MS. GARFIELD:** Yes, Your Honor.

4 **MR. JOHNSON:** I understand she was in the car,
5 Your Honor. But she has no knowledge of who robbed
6 the store. I don't know of her being in the car,
7 what relevance that would be.

8 **MS. GARFIELD:** She has knowledge that
9 Investigator Thomas did not suggest a positive
10 identification.

11 **THE COURT:** She was there to witness how the ID
12 occurred?

13 **MS. GARFIELD:** She is in the car sitting there
14 while Tonya is viewing the suspect.

15 **THE COURT:** Okay. It would be relevant to that
16 issue. Obviously she is not going to identify the
17 gentleman, but the other issue is ancillary to it.
18 That's fine. Proceed.

19 **MR. ROGERS:** Thank you, ma'am.

20 **Q** About what time did you receive a phone call from
21 Tonya?

22 **A** 8:30, 8:45 maybe that night.

23 **Q** Okay. And what did you do at that --

24 **A** I'd been at Wal-Mart. I don't know.

25 **Q** I'm sorry. Say it again?

1 **A** I'd been at Wal-Mart all day. Well, a couple of
2 hours. I wasn't sure what time it was. I dropped my
3 bags and left and went to the store.

4 **Q** After you received that phone call, what did you do?

5 **A** I went straight to the store, got there 30 minutes;
6 30, 40 minutes later.

7 **Q** When you arrived there what did you see?

8 **A** The police had it closed up and they were -- I guess
9 the crime scene unit was in there doing what they
10 needed to do. And Tonya was standing over there just
11 waiting for somebody to come back.

12 **Q** Were you able to speak with Tonya?

13 **A** Yeah. I talked with her just trying to calm her
14 down, make sure she was all right.

15 **Q** Were you there with her when Investigator Thomas
16 showed up?

17 **A** Yes. It wasn't five minutes after I was there, if
18 that long, he showed back up.

19 **Q** After he arrived back on the scene, what happened
20 next?

21 **A** That's when he told her that the neighborhood kids
22 had given him a suspect, told him where someone was
23 and wanted to know if she felt like going on a ride
24 to identify him or to see if that was him.

25 **Q** How did she respond?

1 **A** She said yeah and asked him if I could go with her.

2 **Q** And did you accompany her?

3 **A** Mm-hmm (affirmative). We got in the car.

4 **Q** Whose car did you get in?

5 **A** It was the investigator's.

6 **Q** And do you remember about what direction you
7 traveled?

8 **A** We came out of the store on the Gervais Street side
9 and took a right. Then we took a left not long after
10 that. I was very new to the area. That was the
11 first store at the time with my company there. But
12 when we took the left and went up through all these
13 houses, I couldn't tell you where exactly.

14 **Q** Did it take you long to get there?

15 **A** Oh, no.

16 **Q** Once you arrived there what did you see?

17 **A** It was dark, dark streets. There are lots of police
18 cars on the street. We stopped in front of a house.
19 We were kind of downhill from the house. They pulled
20 the guy out. The investigator came over and told
21 Tonya she was hidden by the lights, not to worry
22 about it or be scared or anything; he could not see
23 her. And then they brought him over in front of the
24 car, shined the lights on him, and then he came back
25 and asked her.

1 Q Now, before they brought the suspect out into the
2 lights, did Investigator Thomas instruct Tonya about
3 anything that she had to do?

4 A Hmm-mm (Negative).

5 Q Did she give him any kind of indication of what he
6 expected her to do?

7 A No. Me and Tonya talked the whole way to the scene.
8 He never said anything.

9 Q All right. Once the suspect was taken out and put in
10 front of the lights, what happened next?

11 A Then he came. We sat there 20 seconds, 30 seconds or
12 so. She was looking at him, and then he came and
13 asked her.

14 Q He who?

15 A The investigator came to the door and asked her if
16 that was the gentleman that had just robbed her.

17 Q What did Tonya say?

18 A She sat there for a minute. She said, yep, I'm
19 pretty sure I am. And he was like, how sure are you?
20 And that's when she said a number. I don't remember
21 the exact number at the time. She said a percentage
22 sure. He's changed clothes, so the color looks
23 different.

24 Q Did anybody tell her that he had changed clothes?

25 A No.

1 Q Did anybody suggest that the color of his shirt was
2 different?

3 A Hmm-mm (Negative).

4 Q That his appearance had changed in any way?

5 A No. No talk about it other than, is this the guy?

6 And then they went back out to the car and then he
7 came back and got back in and took us back to the
8 store.

9 Q Did she seem confident that that would be the same
10 person?

11 A Yeah. She was. Yes.

12 Q After --

13 A She just kept --

14 Q -- Tonya made the identification, where did you go
15 next?

16 A We went back to the store and then sat there and
17 waited for them to finish up or my boss to tell me
18 what I needed to do because it was my first robbery
19 as a district manager as well. All that just wrapped
20 it up. And then they were going to contact her
21 later.

22 Q Thank you, ma'am. Your Honor, just a moment, please.
23 Ma'am, I have no further questions for you. Please
24 answer any questions opposing counsel may have.

25 THE WITNESS: Okay.

1 **MR. JOHNSON:** May it please the Court, Your
2 Honor?

3 **THE COURT:** Yes.

4 CROSS EXAMINATION

5 **BY MR. JOHNSON**

6 **Q** Ms. Taylor, I just have one question for you. You
7 observed -- well, it's actually going to be two
8 questions. Did the officer tell you -- you was in
9 the car. Did the officer say that they had caught
10 someone they believed to be the person that robbed
11 the place?

12 **A** He came in the store right after I'd gotten there and
13 told Tonya that they had a suspect, wanted to know if
14 she would come identify him. We were not in the car
15 when he said that.

16 **Q** And you rode with her to the location?

17 **A** Mm-hmm (affirmative).

18 **Q** And she was not 100 percent sure that that was him.
19 Is that correct?

20 **A** Her exact words were, I'm pretty sure but he's
21 changed clothes.

22 **Q** So when I said that she was not 100 percent sure that
23 that was the person, is that true?

24 **A** All I can tell you is what she said. I don't know
25 what she was.

1 Q Well, you just described for them that you thought
2 that she was --

3 A What she told, what she said --

4 THE COURT: One at a time speak. Ask the
5 question; then answer it.

6 Q You just told the Court that you were sure that she
7 was definitive that was him?

8 A Mm-hmm (affirmative).

9 Q But you also told the Court that she said that she
10 was only a percentage because you say you couldn't
11 remember the number, right?

12 A Right.

13 Q So if she's not -- if she is a percentage sure, that
14 would mean she was not 100 percent sure. Is that
15 correct?

16 A I -- sure.

17 Q You don't even have to answer.

18 A Whatever. I don't know.

19 MR. JOHNSON: I have no other questions, Your
20 Honor.

21 A You twist it.

22 MR. ROGERS: Thank you, ma'am. We have no
23 further questions for this witness.

24 THE COURT: All right. Is she finished?

25 MR. ROGERS: Yes, Your Honor.

1 **THE COURT:** Okay. You can step down.

2 **MS. GARFIELD:** Beg the Court's indulgence.

3 **MR. ROGERS:** The State next calls Officer Taurus
4 Sanders.

5 TAURUS D. SANDERS, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Please have a seat there, sir.
8 State your full name for the record.

9 **THE WITNESS:** Taurus D. Sanders.

10 DIRECT EXAMINATION

11 **BY MR. ROGERS**

12 **Q** Good afternoon, sir.

13 **A** Good afternoon.

14 **Q** Where are you currently employed?

15 **A** City of Columbia Police Department.

16 **Q** What is your rank there?

17 **A** Sergeant.

18 **Q** Are you assigned to a particular division?

19 **A** I am a patrol sergeant currently.

20 **Q** And is there a particular area for which you patrol?

21 **A** South region.

22 **Q** Approximately where is that in Columbia?

23 **A** That includes Five Points going back east towards
24 Garners Ferry, also includes Wildewood to the Kershaw
25 County line.

1 Q Were you working with the City of Columbia back in
2 July of 2008?

3 A Yes, I was.

4 Q Were you on duty on July 18th, 2008?

5 A Yes.

6 Q Thank you. Excuse me. On the 19th, sir.

7 A Yes. That day, too.

8 Q Do you remember a call coming out about a robbery on
9 Harden Street on that night?

10 A Yes, I do remember it.

11 Q Okay. How do you remember learning about that call?

12 A At the time I was the sergeant in charge of Five
13 Points which is basically a few blocks from the Exxon
14 gas station. The call went out and me and my guys
15 responded to the area and began looking for the
16 suspect.

17 Q Now, would this location be inside your normal patrol
18 area?

19 A It's on the edge. But since it's so close and it's a
20 business, we normally keep an eye on that as well.
21 But it's not really Five Points.

22 Q And once you received that call, did you go directly
23 to the incident location?

24 A No. I went to the immediate area around the incident
25 location, the neighborhood area.

1 Q Did you learn through the radio a particular area of
2 interest to you?

3 A Officer Bowman received information from a female
4 that the suspect had went to the house at the corner
5 of Pine and Gervais.

6 MR. ROGERS: Your Honor, permission to approach?

7 THE COURT: Yes.

8 Q Sir, I'm going to show you what's been pre-marked as
9 State's 25. Do you recognize this as on overhead
10 area?

11 A Yes.

12 Q And do you recognize this area?

13 A I do.

14 Q What area is shown here?

15 A This is the MLK area. This was the area I was
16 initially patrolling looking for the suspect. And
17 this is the Waverly area here. This is the house
18 where we eventually ended up that we were notified
19 where the suspect was.

20 Q Okay. Do you see the incident location where the
21 robbery occurred?

22 A Yes. The Exxon is just up the top on the left.

23 Q Okay. And about how close would you say these two
24 are in proximity to each other?

25 A It's only a matter of a block and a half really.

1 Q When you arrived at -- you said you eventually
2 arrived at the Pine Street house. Is that correct?

3 A Yes.

4 Q And do you remember approximately where you parked?

5 A I parked in the roadway. I can't remember exactly.
6 I think I ended up blocking the roadway at some
7 point. But I did park in the street just down from
8 the house, somewhere around in here.

9 Q Okay. And approximately how much time passed when
10 between when you heard the initial call on the radio
11 and when you arrived at the house on Pine Street?

12 A It was no more than ten minutes.

13 Q When you arrived at the house on Pine Street, what
14 did you do next?

15 A Myself and Officer Turner were the first two to
16 arrive. We were both SWAT team members at the time.
17 And additional units ended up arriving as well, and
18 we told them to surround the side and the back of the
19 house.

20 Q So you and Turner were the first two officers at the
21 Pine Street house?

22 A Correct.

23 Q You said SWAT team. How were you two dressed that
24 evening?

25 A We were in normal patrol uniform.

1 Q So additional units arrived and you instructed them
2 to do what?

3 A Surround the house.

4 Q Do you remember approximately how many units arrived?

5 A It may have been eight to twelve officers when it was
6 all said and done.

7 Q When these officers were surrounding the house, were
8 they on foot or in a car?

9 A On foot. The house sits elevated off of the roadway.
10 So you have to walk up to get to the house.

11 Q When you arrived at the house on Pine Street, did you
12 attempt to make contact at that house?

13 A Yes. Once we got the house surrounded, making sure
14 no one could go out the back unnoticed, myself and
15 Officer Turner knocked on the door, announced
16 ourselves and tried to get someone to answer the
17 door.

18 Q Were you aware if anybody was inside?

19 A Not at that time we weren't, no.

20 Q Did anybody come to the door?

21 A No one came to the door.

22 Q When no one came to the door, what did you do next?

23 A We just continued knocking. And at some point one of
24 the officers on the -- it would be the south side of
25 the house was looking into the bathroom and could

1 notice a white male inside the bedroom changing
2 clothes at the time.

3 Q Now, it was safe to say it was dark out that night?

4 A It was a very dark neighborhood. There's only one
5 street light I believe.

6 Q When the officers arrived on the scene, were there
7 blue lights and sirens?

8 A We didn't have our blue lights on then.

9 Q After you had the officer report that there was a
10 white male inside the house, --

11 A Right.

12 Q -- what happened next?

13 A We continued knocking on the door. We instructed an
14 officer just to keep an eye on him, see what he was
15 doing. And then at some point the bathroom light
16 went off.

17 Q After the bathroom light went off, what happened
18 next?

19 A We then directed our attention towards the bathroom.
20 We pretty much said, you know, we know you're in the
21 bathroom; just come on out, with no response.

22 Q Were you able to gain entry into the house that
23 evening?

24 A Eventually we did. There was a female that lived
25 nextdoor that knew how to get in contact with the

1 owner. And we instructed her to see if she could so
2 we could get a key. She came back and said she could
3 not locate the owner at the time. And she said,
4 well, I know there's a guy that lives in the area
5 that has a room. And she went and tried to locate
6 him. Eventually she did locate him. And he came
7 back and gave us a key and he let us in to make
8 entry.

9 Q Did he give you consent to go inside the house?

10 A Yes, he did.

11 Q Do you remember if that it was written or verbal?

12 A It's verbal.

13 Q Were you present when he came gave that consent?

14 A Yes, I was.

15 Q Did he have a key to the house?

16 A He did.

17 Q Did that key work in the door?

18 A It did.

19 Q What was your understanding as to his ties to that
20 house?

21 A He was a resident. He had control. He had a key.

22 Q And did he tell you whether or not anyone else was
23 staying in the house that night?

24 A He said there were other tenants. I then discovered
25 it was a boarding house at that time. And he said

1 there were other tenants that did live there. But we
2 had no knowledge anyone else was in the house at the
3 time.

4 Q So to the best of your knowledge, there was only a
5 white male inside the house?

6 A Correct.

7 Q After -- could you describe that tenant, the one who
8 showed up with the key?

9 A All I know, he was just a black male in his maybe mid
10 to late thirties.

11 Q Did anybody take a statement from him or anything?

12 A Not me or any of my guys, no.

13 Q After receiving the key and the consent to search the
14 premises, --

15 A Yes.

16 Q -- what did you do next?

17 A We made entry and cleared the initial rooms,
18 approaching --

19 Q When you say -- I'm sorry to cut you off. I want to
20 go a little slower here. When you make entry, how
21 many people went through the door?

22 A Me and Turner were the pointmen since we had the
23 tactical experience. Turner -- the house kind of
24 splits up. Turner took one side and I took the other
25 side. And he had some officers with him and I had

1 some officers with me. And we went room-by-room.
2 basically until we got to the point of the bathroom.

3 **Q** Okay. Can you describe this bathroom area in
4 relation to -- where was it -- how close was it to
5 the door?

6 **A** It's probably mid point in the house. It's kind of
7 in the middle on the right side.

8 **Q** Did you have to go through a bedroom to get to this
9 bathroom?

10 **A** The first room is like a common area, a living room
11 type open area. And there is a room to the right
12 that had French doors that was locked. It had like a
13 padlock on it. And if you went to the left, it's
14 another open room, and there was some luggage
15 somewhere over there on the side. And then you could
16 see straight through the kitchen. And then the
17 bedrooms were on the right side by the bathroom.

18 **Q** When you -- did you personally find the suspect in
19 the bathroom?

20 **A** No. Not me personally, no. I was there when the
21 bathroom was opened.

22 **Q** Okay. And when you opened up -- when the bathroom
23 door was opened, what do you remember seeing inside
24 the bathroom?

25 **A** I just remember one of the officers initially opened

1 the bathroom kind of carefully. And from what I can
2 tell, it sounded like the suspect was up against the
3 window side of the bathroom. And then we brought him
4 out.

5 **Q** Okay. Was he placed into custody at that time?

6 **A** He was detained, yes.

7 **Q** Detained. Can you describe that to the Court?

8 **A** We just basically handcuffed him and cleared him for
9 weapons just for our safety.

10 **Q** Did you do a protective sweep of the rest of the
11 house?

12 **A** We did.

13 **Q** What was the purpose of that?

14 **A** Just to make sure there was no one else in there. We
15 don't know if anyone assisted him or what the
16 circumstances could be. And also to make sure there
17 were no weapons in plain sight.

18 **Q** Do you remember finding any clothing of evidentiary
19 value?

20 **A** There was some clothing on the bathroom floor with
21 some money on the floor as well.

22 **Q** And was that in a suitcase? Describe how that was
23 located?

24 **A** It's just on the floor.

25 **Q** Just laying on the ground?

1 **A** Just laying on the floor.

2 **Q** Do you know what happened to that clothing?

3 **A** I do not. No, I don't.

4 **Q** What was your role that evening in relation to the
5 house on Pine Street?

6 **A** To make entry and to see if that was the suspect and
7 if so to apprehend him.

8 **Q** Would it be somebody else's responsibility to recover
9 evidence?

10 **A** It would be.

11 **Q** Once the suspect was taken into custody, what did you
12 do next?

13 **A** I understood that the clerk wasn't 100 percent about
14 the ID. So I contacted central because we were given
15 information from a cab driver that he had made
16 contact with the suspect prior to the store being
17 rob.

18 **Q** Okay. I want to stop you there.

19 **A** Yes.

20 **Q** So after the suspect was taken into custody, were you
21 present when Investigator Thomas did the show-up
22 identification with the victim?

23 **A** Yes, I was.

24 **Q** Okay. Do you remember approximately how much time,
25 how long had elapsed between when the call went out

1 to when the show-up ID occurred?

2 **A** It may have been 30, 35 minutes.

3 **Q** Were you able to actually watch the show-up
4 identification by the victim?

5 **A** Yes. I was there when we brought him out of the car.
6 He was sitting in the back of a police car when the
7 clerk arrived. And we got him out of the back of the
8 car and stood him in front of the police car and
9 shined the spotlight on him.

10 **Q** He had been detained. Was he cuffed?

11 **A** His hands were behind him. We didn't turn him. So
12 unless they really looked closely, you really
13 couldn't tell he was handcuffed. All you saw was his
14 arms behind him.

15 **Q** Were officers on either side of him?

16 **A** Yes.

17 **Q** Okay. After the show-up identification was made, you
18 mentioned a cabbie?

19 **A** Yes.

20 **Q** What happened in relation to that cabbie?

21 **A** We had all -- we also received a second call after
22 the clerk had called. Let me correct that. Dispatch
23 actually received two calls. Initially they put out
24 the call about the cabbie, and it was somewhat
25 confusing because we were initially directed towards

1 the Greyhound bus station which is where the cabbie
2 was initially before the robbery occurred. And the
3 statement was a gentleman had told him to stay away
4 from the gas station, he was about to rob it.

5 Then going forward, after discovering that she
6 wasn't 100 percent sure, I wanted to get ahold of
7 that cabbie to see if he could positively identify
8 the suspect. Eventually I did, and I took him back
9 to the house.

10 Q Okay. So did you go to the Greyhound station to find
11 him?

12 A Yes, I did.

13 Q And did you take him back in your vehicle?

14 A I did.

15 Q Taking him back to the scene, did you give him any
16 instructions as to what you expected to happen next?

17 A No.

18 Q What did you tell him?

19 A When we arrived I told him, look at him and don't
20 give me an answer right away. I said, make sure it's
21 him. If you're not sure, let me know. But if you
22 are sure, tell me. But just look at him first and
23 make sure that's the guy.

24 Q And were you in a marked patrol car?

25 A I was in a slick top. It was semi-marked. Yes.

1 Q Where was the cab driver sitting?

2 A He was in my front seat.

3 Q When you arrived on the scene, could you describe how
4 the defendant was situated?

5 A We brought him out to the car again, just like we did
6 for the clerk. And I positioned my car probably
7 about 15, 20 feet away just so he couldn't see the
8 cabbie.

9 Q Okay. Were there lights being shined on the
10 defendant?

11 A We shined the lights again; yes, sir.

12 Q After the cab driver had a chance to look at the
13 suspect, was he able to make an identification?

14 A He did. He says, those aren't the same clothes but
15 that is him.

16 Q Did you tell him that the defendant had changed
17 clothes?

18 A No, I did not.

19 Q Did you suggest to him that his appearance might be
20 different in any manner?

21 A No, I did not.

22 Q After the cab driver was able to make a positive
23 identification, what happened next?

24 A I took him back to the gas station. I then made
25 contact again with Investigator Thomas. And he

1 wanted the cab driver to come in that night to give a
2 written statement at headquarters. So I relayed that
3 information to the cab driver.

4 **Q** After dropping the cab driver off, what did you do
5 next?

6 **A** I thanked him for his time and staying around and
7 cooperating. And he just affirmed that he was going
8 to go to write a statement later.

9 **Q** Did you go back to the Pineview house?

10 **A** I did go back to the Pine Street house; yes, sir.

11 **Q** What did you do then?

12 **A** I just made sure my guys were situated and if we
13 needed to wrap anything up and just to see where we
14 were as far as the case. And at that time I
15 understood that he was -- the suspect was in custody
16 for the robbery.

17 **Q** Would you describe your role at the Pine Street
18 location as a supportive role?

19 **A** More of a support, but more -- of course since I was
20 a sergeant, as a supervisor as well just to make
21 sure, you know, laws were being enforced and adhered
22 to.

23 **MR. ROGERS:** Your Honor, if I may have a brief
24 moment?

25 **THE COURT:** Yes.

1 (Pause)

2 **MR. ROGERS:** Thank you, sir. No further
3 questions. Please answer any questions opposing
4 counsel may have.

5 **MR. JOHNSON:** May it please the Court.

6 CROSS EXAMINATION

7 **BY MR. JOHNSON**

8 **Q** Sergeant Sanders?

9 **A** Yes, sir.

10 **Q** How you doing? Let me clarify a couple of things.
11 You didn't talk to anyone personally that told you
12 where the suspect had went, did you?

13 **A** No, sir. Not personally.

14 **Q** So you were just sent there because another officer
15 apparently talked to someone that said somebody that
16 matched the description went into that house. Is
17 that correct?

18 **A** That's correct.

19 **Q** When you got to the house, why didn't you go inside?

20 **A** The door was locked.

21 **Q** Okay. Once you discovered somebody was in there that
22 you thought was a suspect, why didn't you go inside
23 then?

24 **A** We didn't have enough reason to force entry and our
25 policy doesn't allow that.

1 Q Okay. You had to have basically -- well, what -- the
2 policy is what? That you can't go inside without
3 permission. Is that correct?

4 A Right. And if we need to get a search warrant, it
5 would have to be specifically stated in the search
6 warrant for forced entry.

7 Q Okay. Why couldn't you then go get a search warrant?

8 A Because we were sure that someone was inside and we
9 were still attempting to get a key.

10 Q Okay. So the key that you did get, you said someone
11 nextdoor said that they knew somebody that lived
12 there. Is that correct?

13 A That's correct.

14 Q Who was the person nextdoor that told you that?

15 A All I know is it was a black female.

16 Q So you didn't get her name?

17 A No, sir, I didn't.

18 Q So you didn't know who she was?

19 A No, sir.

20 Q All right. The person that she went and got that
21 came back with a key, --

22 A Right.

23 Q -- what was his name?

24 A I do not know, sir.

25 Q So you don't know who that was?

- 1 **A** No, sir.
- 2 **Q** Did you check his ID to see if his ID had the same
3 address as the location that you was going in?
- 4 **A** No, sir. We asked if he lived there and he said yes,
5 he did; and he had a key.
- 6 **Q** And you just took his word for it?
- 7 **A** He had a key.
- 8 **Q** All right. Other than him having a key, how do you
9 know he lived there?
- 10 **A** Other than his word. That's all I had, sir.
- 11 **Q** And how can you check his word as far as being a
12 credible person if you don't know who he is?
- 13 **A** Sometimes that's all you have.
- 14 **Q** Couldn't you check? If you knew his name, couldn't
15 you check to see if there was some warrants on him or
16 did he really live there or not?
- 17 **A** That wasn't a priority at the time.
- 18 **Q** The priority was you just wanted to get in the house,
19 right?
- 20 **A** Correct.
- 21 **Q** And that's what you did?
- 22 **A** Eventually, yes.
- 23 **Q** Without a search warrant?
- 24 **A** Correct.
- 25 **Q** No other questions.

1 **MR. ROGERS:** Thank you. I have no further
2 questions for the witness.

3 **THE COURT:** You can step down.

4 **MS. GARFIELD:** The State calls Margaret Thomas.

5 MARGARET T. LAND, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Please have a seat there, ma'am.
8 State your full name for the record.

9 **THE WITNESS:** Margaret Thomas Land.

10 **COURT REPORTER:** L-A-N-D.?

11 **THE WITNESS:** Mm-hmm (affirmative).

12 **COURT REPORTER:** Thank you.

13 DIRECT EXAMINATION

14 **BY MS. GARFIELD**

15 **Q** Ms. -- what is your official last name? Bland?

16 **A** Land, L-A-N-D.

17 **Q** Land?

18 **A** Mm-hmm (affirmative).

19 **Q** I apologize. I thought it was Thomas.

20 **A** That's okay. I get it every day.

21 **Q** Ms. Thomas, where do you reside?

22 **A** -----

23 **Q** And do you own other properties besides where you
24 live?

25 **A** Yeah. Five on that street.

1 Q And particularly for purposes of this hearing,
2 Ms. Thomas, do you own

3 A I do.

4 Q And I'm going to hand you what's been marked as
5 State's Exhibit No. 14. Do you recognize this?

6 A Yeah. That's my front porch.

7 Q And this is

8 A Yes, it is.

9 Q And, Ms. Land, specifically, do you rent this
10 property out?

11 A Yes, I do.

12 Q And who do you rent this property out to?

13 A At that time a gentleman by the name of Sylvester
14 Roberson was living in the third bedroom. And Alvin
15 Johnson was living in the front room.

16 Q Okay. And specifically, Ms. Land, back on that date,
17 I want to show you -- if you will describe
18 Mr. Roberson for us?

19 A He is about 35, medium build, about five-eight.

20 Q And what is his -- is he black or white?

21 A He's black.

22 Q And he's a man?

23 A Yes.

24 Q And I'm going to show you what's been marked as
25 State's Exhibit No. 18. Can you just relay to the

- 1 Court what that's a photograph of?
- 2 A The dining room.
- 3 Q Okay. And do you see anything -- what is that that
- 4 goes off from the dining room?
- 5 A That's the bedroom.
- 6 Q That's the bedroom?
- 7 A Yes.
- 8 Q And is that the -- who was residing in that bedroom
- 9 at the time of this incident?
- 10 A I'm thinking.
- 11 Q I believe that's the bedroom you took me in the other
- 12 day.
- 13 A Yeah. Sylvester Roberson.
- 14 Q Okay. Thank you. Was there any white males residing
- 15 there at the time?
- 16 A Never lived there.
- 17 Q Never had a white male live in that boarding house?
- 18 A Not in that particular house, no.
- 19 Q Not in that particular boarding house. Have you ever
- 20 heard of the defendant, Richard Kough?
- 21 A No, I haven't.
- 22 Q And you see him sitting here today sitting at the
- 23 counsel table, at defense counsel table?
- 24 A Yes, I do.
- 25 Q Do you recognize him?

1 **A** Never seen him a day in my life.

2 **Q** Beg the Court's indulgence. Ms. Land, Mr. Kough has
3 never rented from you. Is that correct?

4 **A** No. No, ma'am.

5 **Q** The tenants that resided in the boarding house, were
6 they allowed to have roommates?

7 **A** No, they were not.

8 **Q** Thank you. Please answer any questions Mr. Johnson
9 has for you.

10 CROSS EXAMINATION

11 **BY MR. JOHNSON**

12 **Q** Good afternoon, Ms. Thomas.

13 **A** Good evening.

14 **Q** Good to see you again.

15 **A** You, too.

16 **Q** Were the tenants that lived in that location allowed
17 to have guests, people to come visit them?

18 **A** Yes, they were.

19 **Q** So it's possible he could have been a guest?

20 **A** He could have possibly.

21 **Q** No other questions.

22 REDIRECT EXAMINATION

23 **BY MS. GARFIELD**

24 **Q** Ms. Thomas, where is your house in relation to this
25 house?

1 **A** Across the street two houses down on the opposite
2 side of Pine Street.

3 **Q** Did you ever see the defendant in your neighborhood?

4 **A** No.

5 **Q** Thank you. Nothing further.

6 **MR. JOHNSON:** I have no follow up, Your Honor.

7 **THE COURT:** Thank you. You can step down.

8 **MS. GARFIELD:** The State calls Investigator A.
9 L. Thomas. Your Honor, just before I forget, if
10 you'll just add to the witness list that her last name
11 is Land. I just have her as Margaret Thomas.

12 **THE COURT:** Okay.

13 ARTHUR L. THOMAS, after being duly sworn,
14 testifies as follows:

15 **THE CLERK:** Please have a seat, sir. State your
16 full name for the record.

17 **THE WITNESS:** Investigator Arthur L. Thomas.

18 DIRECT EXAMINATION

19 **BY MS. GARFIELD**

20 **Q** Investigator Thomas, where are you employed?

21 **A** City of Columbia Police Department.

22 **Q** And were you employed with the City of Columbia
23 Police Department back in July of 2008?

24 **A** Yes, I was.

25 **Q** And specifically, on July 19th, 2008, Saturday night

1 I believe, were you working?

2 A Yes, I was.

3 Q And did you respond to a robbery call at the Exxon
4 station on the corner of Gervais and Harden?

5 A Yes, I did.

6 Q And when you got to that scene, can you please share
7 with the Court what you observed?

8 A Upon arriving on the scene, officers were already set
9 up at the scene. The business itself was closed down
10 so that we could preserve the scene for our crime
11 scene unit. I observed a young lady who was the
12 clerk there. She advised on what transpired as far
13 as the robbery was concerned. I provided her with a
14 sheet to assist in giving me a description of what
15 the suspect looked like.

16 We were also advised that there was videotape of
17 the actual incident available. While she was
18 preparing the paperwork, I went in the back to view
19 the video of the robbery itself. Unlike the video
20 that's shown here today, their system plays it much
21 clear. So definition and so forth was a great deal
22 clearer than the video we have.

23 In viewing it, I was able to get a visual of the
24 suspect, his clothing, facial features, facial hair.
25 He had a receding hairline and a bald spot in the

1 back top of his head which were all characteristics
2 that were pretty unique to me.

3 Q And besides those just unique characteristics;
4 generally, how would you have described the person
5 you viewed from the video?

6 A He was about probably five-six, maybe about 170, 180
7 something pounds or what have you, just looking at
8 his build. At that time a little stockier than he is
9 now. He had longer hair than he has right now. And
10 he was a Caucasian male.

11 Q Did you conduct a robbery questionnaire with the
12 victim, Ms. McGeorge?

13 A I did.

14 Q I'm just going to hand you what's been marked as
15 Court's Exhibit No. 1 and see if you recognize this
16 document?

17 A Yes, I do.

18 Q And that description that Ms. McGeorge provides to
19 you, would you agree that's the same description you
20 see in the video?

21 A Yes. It is. Yellow shirt, jeans, white male. The
22 age is -- I thought him to be a little older. She
23 gave 23 to 35, and I gave him about 30 to 38 at the
24 time that I viewed the video. Yes.

25 Q And after you did that robbery questionnaire -- did

1 you do the questionnaire before you watched the
2 video?

3 **A** Yeah. I had her doing paperwork while I was trying
4 to watch the video. Yes.

5 **Q** At that time did you get a call over your radio
6 regarding developments in the case?

7 **A** Yes, I did.

8 **Q** And just explain to the judge what the nature of that
9 call was?

10 **A** While viewing the video and speaking with the victim,
11 a call goes out that there is information of a
12 possible suspect entering a house at

13 . Sergeant Sanders and other officers advised
14 me that they had the house surrounded at the time and
15 that they could observe a male in motion in the house
16 apparently changing clothing. It was a Caucasian
17 male fitting basically the same description given by
18 the clerk.

19 **Q** And at that time when you received this information,
20 what did you do?

21 **A** At that time I advised that I was going to leave the
22 area, head over to the Pine Street area to assess
23 what we had over there. And I did so.

24 **Q** And approximately how long would you say it takes you
25 to drive from the Exxon station to Pine Street?

1 **A** It's approximately a block and a half. So you're
2 talking about a minute tops, a minute and a few
3 seconds.

4 **MS. GARFIELD:** I'm going to ask the witness to
5 step down, Your Honor.

6 **THE COURT:** Certainly.

7 **Q** I show you State's Exhibit for pre-trial purposes
8 No. 25. Investigator Thomas, is there an aerial
9 photograph of the incident location?

10 **A** Yes, it is.

11 **Q** And if you can just point out for Judge Childs where
12 the Exxon station is located?

13 **A** This would be the Exxon station right at Gervais and
14 Harden Street here.

15 **Q** Okay. And where is this boarding house that you're
16 referring to on Pine Street located?

17 **A** The boarding house is again approximately a block and
18 a half down from the Exxon station here on Pine
19 Street, right in this area.

20 **Q** And there's been reference in prior testimony
21 regarding a Greyhound station. Where would the
22 Greyhound station be located?

23 **A** The Greyhound station is exactly across the street
24 from the Exxon station.

25 **Q** And where do the cabs generally hang out for fares?

1 **A** Over at the Greyhound station.

2 **Q** At the Greyhound station? Do you know exactly where
3 they are?

4 **A** I want to say on this side of the Greyhound station
5 as I can recall.

6 **Q** All right. Thank you. Have you ever had the
7 opportunity to walk on foot from the Exxon station to
8 Pine Street?

9 **A** I have not.

10 **Q** What's the distance though? How long would you
11 think?

12 **A** Again, it's approximately a block and a half that I
13 can recall driving. It's not that far a distance at
14 all.

15 **Q** Okay. Please take your seat. Once you got to the
16 boarding house, please just explain to the jury [sic]
17 what you observed when got there?

18 **A** Upon arriving at the boarding house I observed
19 several of my officers around the boarding house
20 itself. As I'm pulling up they are still
21 communicating on the movement of the subject inside.
22 When I arrive on the scene Sergeant Sanders and
23 Sergeant O'Connell I believe are briefing me on
24 exactly what we have.

25 Sanders is also trained as SWAT, and he had

1 another officer with him who was trained with SWAT.
2 So they already set up a perimeter around the house
3 to keep their eyes on the individual along with the
4 other officers.

5 They described to me that there was a white male
6 on the back, I believe it's the right side of the
7 house, who apparently is changing clothes and has
8 somehow placed himself in one of the rooms. They had
9 knocked on windows, knocked on doors, but he would
10 not come to the door.

11 We tried to get a keyholder. We were informed
12 that there was a possible homeowner or someone that
13 lived nearby by one of the people in the community.
14 We were trying to get a keyholder so that you can get
15 the door open. We were unable to get the owner, but
16 eventually a keyholder arrived, a gentleman who
17 expressed to me that he actually stayed in the
18 residence, he had a key to the property, and he was
19 willing to give us consent to search the property.

20 He gave us a key, provided us with information
21 that there was a Caucasian male that visited that
22 area and asked could he put some bags in the house.
23 But he did not stay there. He wasn't a resident
24 there. So there would be possibly some clothing that
25 belonged to this gentleman.

1 Upon opening the door we cleared the house.
2 Taurus, some of his officers and myself went
3 room-by-room to clear it for our protection and for
4 others. We did not initially observe the defendant.
5 Once the house was cleared we note that he was in the
6 bathroom area. So we had somebody watching that area
7 while we checked the remainder of the house. He had
8 latched the bathroom. It had one of these little
9 hook latches.

10 Q From the inside of the restroom?

11 A From the inside of the restroom area. And he refused
12 to open the door. We had an officer use a clothes
13 hanger to slit the latch up and we were able to open
14 the door. He was in the bathroom, I want to say just
15 against the window or the wall somewhere in the
16 restroom area when the officers pulled him out.

17 Q Was there anything found to evidentiary value in that
18 bathroom?

19 A I just remembered some clothing being on the floor
20 and a few dollars.

21 Q All right. And at that time what did you do with the
22 clothing?

23 A The clothing that we recovered, what have you, had
24 been put on the bed in the bedroom. The bathroom is
25 here and there's a bed in the room area. So I placed

1 the clothing and what have you on the bed.

2 Q And what were your purposes for laying the clothing
3 on the bed?

4 A So that my CSI officer could photo what's recovered,
5 what we found there during the processing of the
6 scene for later.

7 Q And so that your CSI person could perhaps photograph
8 that --

9 A Correct.

10 Q -- clothing? I hand you State's Exhibit No. 19. Do
11 you recognize this photograph?

12 A Yeah. That's a photograph of what I would call the
13 common area, maybe the den area, and it angles toward
14 the bedroom.

15 Q Okay. And I'll hand you State's Exhibit No. 23. Do
16 you recognize that photograph?

17 A And this is a photograph of the actual bathroom that
18 he locked himself in.

19 Q All right, sir. I'm going to also hand you State's
20 Exhibits 18 through 22. If you can just go through
21 them one-by-one and identify them by their numbers.
22 I'm sorry. 18, 20, 21 and 22. And if you can just
23 explain to the judge what these are photographs of
24 and what is depicted in them?

25 A No. 18 is again a photo of the common area that's

1 heading toward one of the bedrooms and what I believe
2 is the -- I want to say the kitchen area. And there
3 is a couch here and there is a chair. Photograph 20
4 is a photograph of the actual bed that was in the
5 room where the bathroom was. On that bed is a yellow
6 shirt, a few dollars in currency and some other
7 clothing and a belt. And again, this is in the main
8 bedroom where the bathroom was where he had
9 barricaded himself.

10 Q What did that yellow shirt mean to you when you saw
11 it?

12 A The yellow shirt looked like the shirt I saw in the
13 video. It also fit the description that the victim
14 gave me when she gave me a description of the suspect
15 and to me was evidence of clothing he was wearing
16 during the crime.

17 Q After you had -- at that time the defendant is taken
18 into detention?

19 A He was.

20 Q And what did you do after that? Did you ever go back
21 to the Exxon?

22 A I did. I went back to the Exxon to bring the clerk
23 up. We were going to do a show-up ID of the
24 individual. He had changed clothes. He had, instead
25 of the bright yellow shirt, he had on a bright red

1 shirt. And instead of the pants that he had on, he
2 had on some jeans. So he changed clothing.

3 I went to the Exxon, picked her up. Her
4 district manager was on the scene at the time. She
5 asked could she come along. I allowed that to
6 happen. They got in the back seat of my car. We
7 drove up to the incident location on Pine Street. I
8 had officers illuminate the area with alley lights
9 and headlights -- there were a number of cars
10 there -- and bring the suspect out into the brightly
11 lit area.

12 Q And these would be lights coming from the patrol
13 vehicles?

14 A That's correct.

15 Q Thank you.

16 A So he was well illuminated. And I asked her to take
17 her time and just take a look at them and to let me
18 know is this the individual. She did so. A few
19 moments later she advised that it looked like the
20 gentleman; he had changed clothes.

21 Q I'm going to show you State's Exhibit No. 24. Do you
22 recognize this photograph?

23 A Yes.

24 Q And who is that a photograph of?

25 A This is a photograph of the defendant as he looked

1 that night, the night of the robbery. He had a
2 beard, mustache, receding hairline. This is exactly
3 as he appeared on the video and at the scene that
4 night.

5 **Q** And that picture was photographed that night?

6 **A** Yes, it was.

7 **Q** And that's how he looked coming out of the bathroom?

8 **A** Correct.

9 **Q** The bathroom that was locked that you all had to --

10 **MR. JOHNSON:** Your Honor, objection again.

11 She's leading the witness.

12 **THE COURT:** Sustained.

13 **Q** The bathroom was locked?

14 **A** Correct.

15 **Q** And the locked bathroom is where the defendant was
16 coming out?

17 **MR. JOHNSON:** Your Honor, once again, she's
18 leading the witness.

19 **THE COURT:** Sustained.

20 **A** He was barricaded in a locked restroom. That's
21 correct.

22 **Q** Did he answer to any of the knocks at the door?

23 **A** He did not.

24 **Q** And did he voluntarily open the bathroom door?

25 **A** He did not.

1 Q Thank you. At this time I'd like to introduce
2 State's Exhibits 24, 21, 20, 23, 19, 22 and 18.

3 MR. JOHNSON: I have no objection, Your Honor.

4 THE COURT: Okay. Those will be admitted.

5 Q Beg the Court's indulgence. Investigator Thomas, the
6 person that was in that photograph, do you see him in
7 the courtroom today?

8 A Yes, I do.

9 Q And can you please just describe him for the record?

10 A He looks different than he did the night of, but the
11 gentleman in the gray shirt, glasses and short
12 haircut.

13 Q Thank you. Your Honor, may the record reflect that
14 Investigator Thomas has identified the defendant?

15 THE COURT: It shall so reflect.

16 Q Thank you. Investigator Thomas, are you aware, was
17 there anyone else inside the house when you all went
18 in?

19 A No one.

20 Q Thank you. Nothing further. Please answer any
21 questions Mr. Johnson has.

22 MR. JOHNSON: May it please the Court, Your
23 Honor.

24 THE COURT: Okay.

25 CROSS EXAMINATION

1 **BY MR. JOHNSON**

2 **Q** Good afternoon, Investigator Thomas.

3 **A** Good afternoon, counselor.

4 **Q** Investigator Thomas, I just want to clarify a couple
5 of things.

6 **A** Yes, sir.

7 **Q** When you went to the house, the reason you didn't go
8 inside, because you didn't have a warrant. That's
9 correct?

10 **A** The reason, the house was secured. We had no way of
11 entering, no key or anything of that nature.

12 **Q** And let's clarify. There was no sign of forced entry
13 in that house that somebody had broken into that
14 house, is there?

15 **A** No signs of forced entry that I could see. No, sir.

16 **Q** And because the house was secured you had to get
17 either a search warrant or either somebody that lives
18 there to allow you in. Is that correct?

19 **A** That is correct.

20 **Q** So you went in because you said that someone allowed
21 you in?

22 **A** Yeah. A keyholder who arrived on the scene some
23 minutes later advised us that he resided there. He
24 did have a key and he gave us consent to come in. He
25 provided us with a key to open the door. He also

1 provided me with information about your client, that
2 he asked to leave some bags there but did not reside
3 there.

4 Q Okay. And somebody had given him -- so let's clarify
5 that. So that he had asked to leave his bags there.
6 So he was given permission to be there?

7 A Apparently so.

8 Q Okay. So he was an invited guest?

9 A His bag had permission to be there.

10 Q Right. His bags was there. So he was an invited
11 guest?

12 A Again, I don't know.

13 Q If he asked permission?

14 A I only know that the gentleman said that.

15 Q And he was given permission to leave his stuff there?

16 A Permission to leave the bags on the property.

17 Q And this is a boarding house. Is that correct?

18 A We later found out that's what it was, yes.

19 Q Now, the person that gave you that information, you
20 don't know who that was?

21 A I believe it to be Roberson, but I can't say for
22 certain.

23 Q No. Because they didn't get a name?

24 A At the time of the incident, no, I did not.

25 Q And they didn't get an address?

1 **A** He lived there.

2 **Q** How do you know?

3 **A**

4 **Q** I mean, how do you know?

5 **A** The information provided to us by him was that he was
6 a resident. He had knowledge of the area. He had
7 knowledge of what would be where, and he told us
8 where we could go.

9 **Q** But that could be a person that lived across the
10 street?

11 **A** That's not what he claimed to be. He claimed to be
12 the tenant. And he had the key.

13 **Q** But you don't know with that was, do you?

14 **A** He had the key to the house.

15 **Q** But you don't know who that was, do you?

16 **A** Information provided to me, that he was a tenant that
17 had a key to the home. That's all I have, sir.

18 **Q** When you did the drive-up, the drive-up show-up or
19 whatever you call it, --

20 **A** Yes, sir.

21 **Q** -- the show up, you brought the witness there in a
22 police car. Is that correct?

23 **A** I brought her in my investigative vehicle, yes.

24 **Q** Did it have tinted windows?

25 **A** No, it did not.

1 Q Once you got her there, then you took the defendant
2 out of a car, a paddy wagon. Is that correct?

3 A I took him out of the vehicle, yes.

4 Q So he was taken -- you brought her there. Then you
5 took him out of the paddy wagon and set him up in
6 front of her. Is that correct?

7 A I don't know if it's the paddy wagon or just a patrol
8 car.

9 Q Just a patrol car?

10 A He was certainly taken out of a vehicle. The area
11 that we placed him in was well illuminated by alley
12 lights and vehicle headlights. And then she was
13 allowed to view him.

14 Q Okay. And she saw them take him out the police car.
15 Is that correct?

16 A I can't recall that she saw him actually come out.
17 She may have.

18 Q And he was handcuffed. Is that correct?

19 A He was detained. Yes, he was, sir.

20 Q Now, earlier the officer also made some description
21 about he had his hands behind his back so he couldn't
22 see any cuffs. He doesn't believe he could see any
23 cuffs. Is that correct?

24 A I heard the officer saying that, yes.

25 Q But getting in and out of a car, how does a suspect

1 normally get out of a car when he is handcuffed?

2 **A** Leans out and steps out.

3 **Q** He leans out and only backs out. Is that correct?

4 Because he has to lean over to get out the car?

5 **A** I can't recall how he exited but he exited the
6 vehicle and was placed in the lighted area.

7 **Q** And the witness was not 100 percent sure?

8 **A** She identified the individual, and from her testimony
9 she gave a percentage of her identification.

10 **Q** A percentage. I guess I'll go through this with you
11 as well. So a percentage is not 100 percent. Is
12 that correct?

13 **A** Her statement was that she gave an 80 to 90 percent
14 identification because the clothing didn't match.
15 The individual was the individual but the clothing
16 didn't match and that that was what gave her a
17 percentage concern.

18 **Q** You didn't ask her to identify the clothing, did you?

19 **A** I didn't. But, you know, a witness is a witness.
20 You have to take what they give you.

21 **Q** Right. And when they're not sure, you've got to take
22 that, correct?

23 **A** She was 90 percent certain of the individual she
24 was --

25 **Q** Oh, it's 90? I thought it was 80 a few seconds ago.

1 **A** 80 to 90, however she quoted it, counsel.

2 **Q** Okay. But she was not 100 percent sure?

3 **A** No, sir.

4 **Q** All right. That's all I want. Thank you.

5 **MS. GARFIELD:** Nothing further.

6 **THE COURT:** Okay. You can step down.

7 **THE WITNESS:** Thank you, Your Honor.

8 **MS. GARFIELD:** The State calls Investigator Paul
9 Nelson.

10 **MR. JOHNSON:** Oh. Your Honor.

11 **THE COURT:** Yes.

12 **MR. JOHNSON:** We have been going for a while and
13 my client is telling me that he has to get to the
14 bathroom, and I don't --

15 **THE COURT:** Sure. We can take a break.

16 **MR. JOHNSON:** It's his only pair of pants.
17 Thank you.

18 (Pause)

19 **THE COURT:** You all come up for scheduling
20 purposes.

21 (Whereupon, a bench conference is had)

22 **THE COURT:** So we're going to just take the bond
23 setting and then break for 45 minutes and then we'll
24 finish up. We'll pick the jury and then do that.

25 (Whereupon, a bench conference is had)

1 (Whereupon, a lunch break is had)

2 **THE COURT:** The parties ready to proceed with
3 jury selection?

4 **MS. GARFIELD:** The State is ready.

5 **MR. JOHNSON:** The defense is ready, Your Honor.

6 **THE COURT:** Thank you. All right. And I assume
7 that you all want general voir dire because I haven't
8 received anything.

9 **MR. JOHNSON:** Oh. Your Honor, I do have some
10 voir dire.

11 **MS. GARFIELD:** Judge, you ask if anybody has
12 been charged, if anyone in the family has been
13 charged with a violent crime as well as a victim?

14 **THE COURT:** Sure. You all look over that. In
15 the meantime I'm going to ask for the jurors to come
16 down.

17 (Pause)

18 **THE COURT:** Good afternoon, ladies and gentlemen
19 of our jury panel. My name is Judge Michelle Childs
20 and I am one of the Circuit Court judges here in
21 Richland County. I will be trying a criminal case or
22 what we call our General Sessions cases. You all as
23 you got qualified this morning were qualified to
24 serve on various panels. This particular jury will
25 be for a criminal case or General Sessions as opposed

1 to civil cases or Common Pleas.

2 You are going to hear or be qualified to see who
3 can hear the matter of The State vs. Richard Kough.
4 It's a true billed indictment for armed robbery.
5 This indictment is just the manner by which a case is
6 brought to trial. It's just a formal written
7 instrument for how a case comes to trial.

8 Mr. Kough has exercised his Constitutional right
9 to a jury trial and has pled not guilty. So those of
10 you who are selected for the jury will be determining
11 guilt or innocence in this matter.

12 Madam Clerk, would you please swear the jurors
13 in after which I will question you.

14 **THE CLERK:** Yes, Your Honor. Ladies and
15 gentlemen of the jury panel, would you please stand
16 and raise your right hand to be sworn.

17 (Whereupon, the jury is sworn)

18 **THE COURT:** Ladies and gentlemen, the State will
19 be represented by Dolly Garfield as well as Andrew
20 Rogers. Do any of you know either Dolly Garfield or
21 Andrew Rogers and have a close personal or social
22 relationship with them? If so, please stand. Yes.
23 Juror numbers only, please.

24 **JUROR:** 207.

25 **THE COURT:** And your answer?

1 **JUROR:** I know Dolly.

2 **THE COURT:** Okay. Would that affect your
3 ability to proceed as a fair and impartial juror in
4 this case?

5 **JUROR:** No, it would not.

6 **THE COURT:** And for all of my questions, when I
7 ask whether or not you can be a fair and impartial
8 juror, my description of that is that you would have
9 the opportunity to listen to the testimony and other
10 evidence presented in this case in this courtroom by
11 both parties and then make up your mind after fair
12 and considerate deliberations over the testimony and
13 other evidence presented in this courtroom. So for
14 all my questions, that will be the definition for you
15 being a fair and impartial juror.

16 Okay. Has anyone ever had anybody, themselves,
17 close family or personal social relationship to be a
18 victim, such that the Richland County Solicitor's
19 Office actually prosecuted the case? If so, please
20 stand. That you, a family member or close personal
21 friend has been victimized in some way such that the
22 Richland County Solicitor's Office was somehow
23 involved in the prosecution of the case. If so,
24 please stand.

25 Okay. And then we have representing then the

1 defendant, first we have Mr. Richard Kough. And I
2 would ask his lawyer, Mr. Charlie Johnson, to stand
3 with him.

4 **MR. JOHNSON:** Your Honor, for the record, it's
5 Kough.

6 **THE COURT:** Excuse me? Kough.

7 **MR. JOHNSON:** The pronunciation is Kough.

8 **THE COURT:** Excuse me. I apologize.

9 Mr. Richard Kough. Mr. Johnson represents Mr. Kough.
10 Do any of you know Mr. Charlie Johnson or Mr. Richard
11 Kough and have had any close personal or social
12 relationships with them? That would include yourself
13 or your immediate family. If so, please stand.

14 Okay. And that would include whether or not
15 anybody has been represented by Mr. Johnson for any
16 reason. He does more than just criminal work I
17 believe. So just for any reason. Okay. Thank you
18 very much.

19 I am also going to list for you some witnesses
20 that might be called in this case. So please listen
21 carefully. Tonya Hill McGeorge. And she is in the
22 courtroom. And please indicate for all if you know
23 the person or have any close personal or social
24 relationship with them.

25 Investigator Paul Nelson, Columbia Police

1 Department. He is standing. Sergeant Brian
2 O'Connell, Columbia Police Department. Investigator
3 A. L. Thomas, Columbia Police Department. He is here
4 standing.

5 And I'll indicate to you if someone is in the
6 courtroom. Corporal John Walker, Columbia Police
7 Department. Officer Katrina Eastwood, Columbia
8 Police Department. Carl Quintyne. And he is
9 standing.

10 Daniel Bowman, Columbia Police Department.
11 William Kirkland. Chad Turner. Officer Cynthia
12 Waggoner, Columbia Police Department. Sergeant
13 Taurus Sanders, Columbia Police Department. Lisa
14 Taylor. Officer R. C. Calby, Columbia Police
15 Department. Officer Matthew Buck, Columbia Police
16 Department. Matthew Buck.

17 Jennifer Blair, 911 Communications. Captain
18 Brian Redmond, Alvin S. Glenn Detention Center.
19 Margaret Thomas Land. Sylvester Roberson.
20 Investigator Brian Metze, Richland County Sheriff's
21 Department. Okay. Those are potential witnesses who
22 may be called in the case.

23 Other questions that I would ask you: Is any
24 member of the jury panel related by blood or marriage
25 or have a family member who is also related by blood

1 or marriage to anyone in law enforcement? And that
2 can be in South Carolina or other places. If so,
3 please stand. Juror number, please.

4 **JUROR:** 47.

5 **THE COURT:** What's your relationship?

6 **JUROR:** My brother and my father.

7 **THE COURT:** And which agency?

8 **JUROR:** My brother is with the Fayetteville
9 Police Department in Fayetteville, North Carolina.
10 And my father is retired from the St. Francesville
11 Parish in Louisiana.

12 **THE COURT:** Would that affect your ability to
13 proceed as a fair and impartial juror in this case?

14 **JUROR:** I do not think so.

15 **THE COURT:** Thank you. Juror number?

16 **JUROR:** 154.

17 **THE COURT:** Okay.

18 **JUROR:** Actually my husband is with the FBI.

19 **THE COURT:** Would that affect your ability to
20 proceed as a fair and impartial juror in this case?

21 **JUROR:** No, it would not.

22 **THE COURT:** Thank you, ma'am. Juror.

23 **JUROR:** 158. My brother was a SLED agent. He's
24 deceased.

25 **THE COURT:** Would that affect your ability to

1 proceed as a fair and impartial juror in this case?

2 **JUROR:** No.

3 **THE COURT:** Thank you. Is there any member of
4 the jury panel employed by, related by blood or
5 marriage to or a friend or acquaintance of anyone
6 employed by the South Carolina Attorney General's
7 Office, the Solicitor's Office, particularly the
8 Richland County Solicitor's Office, or any
9 prosecuting Attorney's Office in the state of South
10 Carolina? If so, please stand.

11 **JUROR:** Did you say currently?

12 **THE COURT:** It could be formerly or currently.
13 That will be fine. Stand, please. Juror number?

14 **JUROR:** 55.

15 **THE COURT:** Okay.

16 **JUROR:** My husband worked for the Attorney
17 General's Office for about six years. But that's
18 been about six year ago.

19 **THE COURT:** Would that affect your ability to
20 proceed as a fair and impartial juror in this case?

21 **JUROR:** No.

22 **THE COURT:** Thank you. Is any member of the
23 jury panel employed by, related by blood or marriage
24 to anyone related to defendant's counsel which is
25 Mr. Charlie Johnson or to the Richland County Public

1 Defender's Office? If so, please stand.

2 Has any member of the jury panel ever been
3 employed by any civilian or military law enforcement
4 agency? If so, please stand. Juror number?

5 **JUROR:** 182. I was an MP in the Army for six
6 years.

7 **THE COURT:** Would that affect your ability to
8 proceed as a fair and impartial juror in this case?

9 **JUROR:** No, ma'am.

10 **THE COURT:** Thank you. Is any member of the
11 jury panel a member of -- I'm sorry. Juror number?

12 **JUROR:** 246, ma'am.

13 **THE COURT:** Okay.

14 **JUROR:** South Carolina Army National Guard.

15 **THE COURT:** Thank you both for your service as
16 well.

17 **JUROR:** Thank you, Your Honor.

18 **THE COURT:** Would that affect your ability to
19 proceed as a fair and impartial juror in this case?

20 **JUROR:** No, ma'am.

21 **THE COURT:** Thank you. Is any member of the
22 jury panel a member of, contributor to any group
23 which has as its primary concern the promotion of law
24 enforcement or victims' rights? If so, please stand.
25 And these groups would not be limited to Sister Care,

1 CAVE, Cadre, MADD or SADD. Law enforcement or
2 victims' rights.

3 I would ask the same question with respect to
4 defendant's rights. For example, The Innocence
5 Project for persons who have been involved with death
6 penalty projects or beliefs of persons wrongfully
7 convicted. If so, please stand.

8 Has any member of the jury panel ever been a
9 witness in a criminal trial? If so, please stand.

10 Has any member of the jury panel read or heard
11 anything about the case? If so, please stand.

12 Has any member of the jury panel discussed this
13 case or heard anyone discuss this case with anyone
14 else? If so, please stand.

15 Has any member of the jury panel formed or
16 expressed any opinion about this case?

17 Have you, any member of your family, or any
18 close friend ever been the victim of an armed robbery
19 or any type of violent offense? And that can include
20 criminal domestic violence, carjacking, theft,
21 burglary, just anything of that nature. And I'm
22 going to ask you to come around for these responses
23 to be out of the earshot of your fellow jurors.

24 (Whereupon, the following side bar conferences
25 are had with jurors as follows)

1 **THE COURT:** Number, please?

2 **THE CLERK:** Number 47.

3 **THE COURT:** Yes.

4 **JUROR:** Do you want me to tell you?

5 **THE COURT:** Yes. I was held up at knife point
6 at my parents' restaurant. That was in 1993. My
7 mother was then held up by the same group the
8 following week by gunpoint. Would that affect your
9 ability to proceed?

10 **JUROR:** I think it would.

11 **THE COURT:** It would affect your ability to be a
12 fair and impartial juror in this case?

13 **JUROR:** Yes, ma'am.

14 **THE COURT:** Juror number 47 will be excused from
15 the trial of this case.

16 **THE CLERK:** Number 55.

17 **THE COURT:** Yes.

18 **JUROR:** My aunt was the victim of an armed
19 robbery about seven or eight years ago.

20 **THE COURT:** Would that affect your ability to
21 proceed as a fair and impartial juror in this case?

22 **JUROR:** No. Absolutely not.

23 **THE COURT:** Okay. Thank you. 55 will remain
24 with us.

25 **COURT REPORTER:** Did she say her aunt was the

1 victim of an armed robbery?

2 **THE COURT:** Yes.

3 **COURT REPORTER:** That's what I thought.

4 **THE CLERK:** Number 246.

5 **THE COURT:** Yes.

6 **JUROR:** I was robbed at gunpoint in 1993.

7 **THE COURT:** Would that affect your ability to
8 proceed as a fair and impartial juror in this case?

9 **JUROR:** No, ma'am.

10 **THE COURT:** Okay. 246 will remain with us.

11 **THE CLERK:** Number 231.

12 **THE COURT:** Yes.

13 **JUROR:** Hi. About 40 years ago I was beaten and
14 sexually assaulted.

15 **THE COURT:** Okay. Would that affect your
16 ability to proceed as a fair and impartial juror in
17 this case?

18 **JUROR:** No.

19 **THE COURT:** Thank you very much for the
20 information. 231 will remain with us. Yes.

21 **THE CLERK:** Number 237.

22 **JUROR:** Hi.

23 **THE COURT:** Hi.

24 **JUROR:** My home was burglarized about four and a
25 half years ago. The perpetrator was caught and is

1 serving time.

2 **THE COURT:** Okay. Would that affect your
3 ability to be proceed as a fair and impartial juror
4 in this case?

5 **JUROR:** No.

6 **THE COURT:** Thank you very much. 237 will
7 remain with us.

8 **THE CLERK:** Number 158.

9 **THE COURT:** Yes.

10 **JUROR:** How you doing? My son was recently the
11 victim in an attempted burglary. They broke the door
12 down while he was still in the house.

13 **THE COURT:** Would that affect your ability to
14 proceed as a fair and impartial juror in this case?

15 **JUROR:** That alone, no.

16 **THE COURT:** Okay. Thank you. So that means you
17 can listen to the facts and evidence in this case and
18 make up your mind on what goes on in the courtroom?

19 **JUROR:** That event alone would not. I --

20 **THE COURT:** Okay. You have other reasons? You
21 need to tell me now.

22 **JUROR:** I probably do. I would tend toward law
23 enforcement. My son was in law enforcement. I don't
24 know whether I could or not, to be honest with you.

25 **THE COURT:** Okay. Whether or not you would be

1 in favor of law enforcement versus someone else?

2 **JUROR:** Exactly.

3 **THE COURT:** Would you be able to make up your
4 mind based on the facts going on in this courtroom,
5 or do you think have you a bias one way or the other?

6 **JUROR:** I probably have a bias one way or the
7 other.

8 **THE COURT:** Okay. Thank you very much. 258
9 will be excused from the trial of this case.

10 **JUROR:** Is that 158, Judge?

11 **THE COURT:** 158. Thank you.

12 **THE CLERK:** Okay. 207.

13 **THE COURT:** Hi.

14 **JUROR:** Hi. My parents' home was burglarized.
15 And I had two employees that were victims of armed
16 robbery.

17 **THE COURT:** Okay. Would that affect your
18 ability to proceed as a fair and impartial juror in
19 this case?

20 **JUROR:** No.

21 **THE COURT:** Okay. Thank you. 207 will remain
22 with us.

23 **THE CLERK:** 134.

24 **THE COURT:** Come forward.

25 **THE CLERK:** I'm sorry. 134.

1 **JUROR:** I was just a victim of a CDV before.

2 **THE COURT:** Okay. Would that affect your
3 ability to proceed as a fair and impartial juror in
4 this case?

5 **JUROR:** No.

6 **THE COURT:** Thank you. 134 will remain with us.

7 **THE CLERK:** 229..

8 **THE COURT:** Come forward. Yes.

9 **JUROR:** There was two. My son was robbed. I'm
10 a little bit nervous.

11 **THE COURT:** That's okay.

12 **JUROR:** His roommate stole money from him. He's
13 still in the process of getting that straightened
14 out.

15 **THE COURT:** Okay.

16 **JUROR:** Then my daughter had a young man at the
17 church molest her at the church.

18 **THE COURT:** Okay. Would that effect your
19 ability to proceed as a fair and impartial juror in
20 this case?

21 **JUROR:** It might.

22 **THE COURT:** Okay. What I mean again is would
23 you be able to listen to the facts and testimony in
24 this case and make up your mind just based on what's
25 here and not let that influence you?

1 **JUROR:** I probably can.

2 **THE COURT:** Probably can or cannot?

3 **JUROR:** I probably can.

4 **THE COURT:** Are you sure?

5 **JUROR:** Well, no. I'm not so sure.

6 **THE COURT:** All right. But, I mean, as best
7 within your ability, will you not let those issues
8 influence you?

9 **JUROR:** Well, I don't know without hearing the
10 testimony, you know. I don't know what's involved in
11 this. So it might. I mean, if it was --

12 **THE COURT:** Well, the allegation was that there
13 was a weapon at a convenience store that was held
14 against a store clerk.

15 **JUROR:** It probably wouldn't make any difference
16 then.

17 **THE COURT:** All right. Thank you. Juror 239
18 will remain with us.

19 **JUROR:** Number 219.

20 **THE COURT:** Come forward. Yes.

21 **JUROR:** My house was broken into.

22 **THE COURT:** Okay. Thanks for letting me know.
23 Would that affect your ability to proceed as a fair
24 and impartial juror in this case?

25 **JUROR:** No.

1 **THE COURT:** Okay. Thank you. 219 will remain
2 with us.

3 **THE CLERK:** Number 256.

4 **THE COURT:** Yes.

5 **JUROR:** I had a brother, nephew, two brothers
6 and a nephew that were held up. This was in
7 Brooklyn, Philadelphia and New York.

8 **THE COURT:** Okay. Would that affect your
9 ability to proceed as a fair and impartial juror in
10 this case?

11 **JUROR:** No.

12 **THE COURT:** Thank you very much. 256 will
13 remain with us.

14 **THE CLERK:** Number 78.

15 **JUROR:** Your Honor, I thought I'd better tell
16 you about this. My son was assaulted when he was a
17 juvenile. And I believe it was two juveniles. And I
18 think it was settled in Family Court. We never got
19 any disposition on the case.

20 **THE COURT:** That's good information.

21 **JUROR:** Okay.

22 **THE COURT:** Would that affect your ability to
23 proceed as a fair and impartial juror in this case?

24 **JUROR:** No. I'll be fair. Thank you.

25 **THE COURT:** Thank you very much. 78 will remain

1 with us.

2 **MS. GARFIELD:** Would you ask that guy how he
3 knows me?

4 **THE COURT:** No. I wouldn't. I've learned --

5 **MS. GARFIELD:** Because --

6 **THE COURT:** It's okay.

7 **MR. ROGERS:** Your Honor, juror number 134 was a
8 black female?

9 **THE COURT:** Yeah. Victim of a CDV.

10 (Whereupon, the side bar conferences are
11 concluded)

12 **THE COURT:** Is there anything in the nature of
13 the allegations in this case that would cause anybody
14 to be unable to sit as a fair and impartial juror?
15 And the allegations are simply that there was a
16 convenience store robbery essentially and that a
17 weapon was held toward a store clerk. Is there any
18 reason why anybody think they could not be a fair and
19 impartial juror under those circumstances?

20 And has any member of the jury panel ever been
21 charged with or alleged or had a close family or
22 personal family friend or member been accused of a
23 crime? If so, please stand and come forward. And,
24 juror 207, if you'd come down, I have another
25 question I need to ask you. Come forward.

1 (Whereupon, the following side bar conferences
2 are had with jurors as follows)

3 **THE COURT:** Juror number?

4 **THE CLERK:** Number 182.

5 **THE COURT:** Thank you.

6 **JUROR:** My uncle, John Balk, was committed for
7 cocaine distribution. And my Uncle Tom was put in
8 jail for assault and battery.

9 **THE COURT:** Okay. Would that affect your
10 ability to proceed as a fair and impartial juror in
11 this case?

12 **JUROR:** No, ma'am.

13 **THE COURT:** Okay. Thank you. Juror 182 will
14 remain with us.

15 **THE CLERK:** Number 200.

16 **JUROR:** Judge.

17 **THE COURT:** Yes.

18 **JUROR:** When I was in my twenties I was charged
19 with failing check writing because I bought a car and
20 got put in jail for child support.

21 **THE COURT:** Okay.

22 **JUROR:** And couldn't -- anyway, I didn't serve
23 no time or anything. I just had the probation.

24 **THE COURT:** Okay. Would that affect your
25 ability to sit as a fair and impartial juror?

1 **JUROR:** No, it would not.

2 **THE COURT:** Thank you very much. 200 will
3 remain with us.

4 **THE CLERK:** Number 78.

5 **THE COURT:** Yes.

6 **JUROR:** My son was convicted of possession of
7 cocaine and went to Wateree Correctional Institute
8 and served his time.

9 **THE COURT:** Okay. Would that affect your
10 ability to proceed as a fair and impartial --

11 **JUROR:** No. I would be fair and impartial.

12 **THE COURT:** Thank you very much. 78 will remain
13 with us.

14 **THE CLERK:** Excuse me. Number 133.

15 **JUROR:** Okay. Hi. I actually have an uncle
16 serving time now for armed robbery.

17 **THE COURT:** For armed robbery?

18 **JUROR:** Yeah.

19 **THE COURT:** Would that affect your ability to
20 proceed as a fair and impartial juror in this case?

21 **JUROR:** No. Not at all.

22 **THE COURT:** Thank you. 134 will remain with us.

23 **JUROR:** 133.

24 **THE COURT:** 133. I apologize. Thank you.

25 **THE CLERK:** This is juror 134.

1 **THE COURT:** 134. She might remain with us, too.

2 **JUROR:** Okay. My husband was convicted of armed
3 robbery.

4 **THE COURT:** Who was?

5 **JUROR:** My husband.

6 **THE COURT:** Okay. Would that affect your
7 ability to proceed as a fair and impartial juror in
8 this case?

9 **JUROR:** No.

10 **THE COURT:** Okay. Thank you very much.

11 **JUROR:** Number 250. My husband was accused of
12 assault.

13 **THE COURT:** Would that affect your ability to
14 proceed as a fair and impartial juror in this case?

15 **JUROR:** No.

16 **THE COURT:** Thank you very much. 250 will
17 remain with us. 250 will remain with us.

18 **THE CLERK:** 256.

19 **THE COURT:** Yes.

20 **JUROR:** I was accused of a domestic violence.

21 **THE COURT:** Who was?

22 **JUROR:** Me.

23 **THE COURT:** You? Okay.

24 **JUROR:** Charges was dropped.

25 **THE COURT:** Okay. Would that affect your

1 ability to proceed a fair and impartial juror in this
2 case?

3 **JUROR:** No.

4 **THE COURT:** Thank you very much.

5 (Whereupon, a bench conference is had)

6 (Whereupon, the following side bar conferences with
7 jurors continue as follows)

8 **THE CLERK:** Number 207.

9 **THE COURT:** Yes. I'd like to know how do you
10 know Ms. Garfield.

11 **JUROR:** One of her very good friends is a very
12 good friend of ours also.

13 **THE COURT:** What's her name?

14 **JUROR:** Michelle Irely.

15 **THE COURT:** Okay. I just wanted to ask you that
16 question. Okay. Thank you very much.

17 **JUROR:** Thank you.

18 **THE COURT:** 207 will remain with us.

19 **JUROR:** Number 94.

20 **THE COURT:** Okay.

21 **JUROR:** That was drugs. It was drugs. Drugs.

22 **THE COURT:** Who was?

23 **JUROR:** My brother.

24 **THE COURT:** Would that affect your ability to
25 proceed as a fair and impartial juror?

1 **JUROR:** No. I could.

2 (Whereupon, the side bar conferences are
3 concluded)

4 **THE COURT:** Defendant's proposed voir dire
5 number 13, the Court will not inquire that of the
6 jurors based on the State's objection.

7 Has anyone ever served on a jury panel before,
8 whether it be civil or a criminal case? If so,
9 please stand. Okay. Let's start right here.

10 **JUROR:** Just --

11 **THE COURT:** Juror number first.

12 **JUROR:** Pardon me?

13 **THE COURT:** Juror number first.

14 **JUROR:** 60.

15 **THE COURT:** Okay. Just tell me the type of
16 case.

17 **JUROR:** It was wrongful death.

18 **THE COURT:** Okay. And then what was the jury
19 disposition of the case?

20 **JUROR:** A hung jury.

21 **THE COURT:** Okay. Thank you. Juror number.

22 **JUROR:** 168.

23 **THE COURT:** Okay.

24 **JUROR:** It was years ago. It was possession
25 with intent to distribute. Guilty on possession, not

1 on intent to distribute.

2 **THE COURT:** Okay. Would that affect your
3 ability to proceed as a fair and impartial juror in
4 this case?

5 **JUROR:** No.

6 **THE COURT:** The same thing with you, number 60.
7 Would that affect your ability to proceed as a fair
8 and impartial juror?

9 **JUROR:** No.

10 **THE COURT:** Okay. Next.

11 **JUROR:** 209.

12 **THE COURT:** Okay.

13 **JUROR:** It was a civil. It was settled.

14 **THE COURT:** Do you know the type of case?

15 **JUROR:** I don't. It was several years ago. I'm
16 sorry.

17 **THE COURT:** Okay. Would it affect your ability
18 to proceed as a fair and impartial juror here?

19 **JUROR:** No.

20 **THE COURT:** Thank you.

21 **JUROR:** 185. Magistrate's court. Traffic
22 tickets.

23 **THE COURT:** Would that affect your ability to
24 proceed as a fair and impartial juror here?

25 **JUROR:** It would not.

1 **THE COURT:** Okay. Thank you.

2 **JUROR:** 275. Very similar to this.

3 **THE COURT:** Okay. So a criminal case?

4 **JUROR:** A criminal case, yes.

5 **THE COURT:** Did you actually get to a verdict?

6 **JUROR:** Yes. It was a guilty verdict.

7 **THE COURT:** Would that affect your ability to
8 proceed as a fair and impartial juror here?

9 **JUROR:** No, ma'am.

10 **THE COURT:** Thank you very much. Yes.

11 **JUROR:** 231.

12 **THE COURT:** Okay.

13 **JUROR:** A criminal case, possession of drugs
14 with intent to distribute, not guilty.

15 **THE COURT:** Would that affect your ability to
16 proceed as a fair and impartial juror in this case?

17 **JUROR:** No, ma'am.

18 **THE COURT:** Thank you. Juror number?

19 **JUROR:** 219.

20 **THE COURT:** Okay.

21 **JUROR:** Civil.

22 **THE COURT:** Do you know what kind of civil case?
23 Do you remember?

24 **JUROR:** I don't offhand. It was about eight
25 years.

1 **THE COURT:** That's okay. Would that affect your
2 ability to proceed as a fair and impartial juror
3 here?

4 **JUROR:** No.

5 **THE COURT:** Okay. Yes, sir.

6 **JUROR:** 246, assault and battery, found guilty.

7 **THE COURT:** Would that affect your ability to
8 proceed as a fair and impartial juror in this case?

9 **JUROR:** No, ma'am.

10 **THE COURT:** Thank you. Yes, sir.

11 **JUROR:** Civil, property.

12 **THE COURT:** And what juror number?

13 **JUROR:** 293.

14 **THE COURT:** Okay. Do you know what type of
15 civil case?

16 **JUROR:** It was a property dispute, land
17 purchase.

18 **THE COURT:** Would that affect your ability to
19 proceed as a fair and impartial juror here?

20 **JUROR:** No, ma'am.

21 **THE COURT:** Thank you very much. Yes.

22 **JUROR:** 255. Years ago, civil case, property
23 damage. Plumbing. And then in Magistrate's Court, a
24 DUI.

25 **THE COURT:** Would that affect your ability to

1 proceed as a fair and impartial juror here?

2 **JUROR:** No.

3 **THE COURT:** Okay. Yes, sir.

4 **JUROR:** Number 78. It was forgery and also a
5 civil case for a car accident. And I was on a
6 federal jury the night before they settled the case.

7 **THE COURT:** Okay. Would that affect your
8 ability to proceed as a fair and impartial juror
9 here?

10 **JUROR:** No.

11 **THE COURT:** Okay. Has anyone on the jury panel
12 ever witnessed a crime? If so, please stand. Okay.

13 **THE BAILIFF:** We have one.

14 **THE COURT:** I'm sorry. Juror number?

15 **JUROR:** 57.

16 **THE COURT:** Do you wish to come forward, or do
17 you want to stand from there?

18 **JUROR:** It was a home burglary in my
19 neighborhood.

20 **THE COURT:** Okay. And would that affect your
21 ability to proceed as a fair and impartial juror
22 here?

23 **JUROR:** No, ma'am.

24 **THE COURT:** Yes. Juror number?

25 **JUROR:** 237.

1 **THE COURT:** Thank you.

2 **JUROR:** It was a domestic dispute, assault and
3 battery.

4 **THE COURT:** Would that affect your ability to
5 proceed as a fair and impartial juror?

6 **JUROR:** No, ma'am.

7 **THE COURT:** And then with respect to the
8 defendant's proposed voir dire from 16 through 28,
9 based on the State's objection, the Court will not
10 ask those of the jurors.

11 Also with respect to other questions, is there
12 any member of the jury panel who can think of any
13 reason that you would be biased or unable to be fair
14 and impartial in this case? If so, please stand.

15 Okay. And then now is the speak now or forever
16 hold your peace portion. If there is any reason that
17 you can't have full attention to this matter for
18 purposes of the State and the defense having fair and
19 deliberate jurors, please let me know.

20 Such reasons could include that you might be
21 having back surgery this week, that you're getting
22 married this week, that you're a student and you're
23 going to have an exam this week; just anything that
24 just would have your mind somewhere other than in
25 this courtroom. It would just be fair to us to let

1 us know. If you've just got some kind of situation
2 that's on your mind or something you have to go to
3 and that, yes, you're here and you're ready to do
4 your service but it's just got a good week, please
5 just be fair to us and let us know. You can come
6 forward.

7 (Whereupon, a side bar conference is had as
8 follows)

9 **THE COURT:** Yes. Juror number again?

10 **JUROR:** 134.

11 **THE COURT:** Okay.

12 **JUROR:** I've got to work night shift. And my
13 mother and father-in-law keep my children for me.
14 They're small.

15 **THE COURT:** Okay.

16 **JUROR:** And my child has to be picked up at 2:30
17 every day, and they're not able to pick my children
18 up from school.

19 **THE COURT:** Okay.

20 **JUROR:** And in the daytime I keep them. And my
21 mother and father-in-law are disabled. They're very
22 sick. So they're unable to really keep them for me
23 without aggravation at night.

24 **THE COURT:** Okay. And there is no one else who
25 you can arrange to help you?

1 **JUROR:** I have no family here except for my
2 sister. And the schedule that she has won't allow
3 her to.

4 **THE COURT:** Okay. All right. Okay. Thanks for
5 giving us the information.

6 **JUROR:** Okay.

7 (Whereupon, the side bar conference is
8 concluded)

9 (Whereupon, a bench conference is had)

10 **THE COURT:** Juror number 134, we're going to
11 excuse from you the trial of this case. Thank you
12 very much.

13 **JUROR:** Okay.

14 **THE BAILIFF:** Come back here, please.

15 **THE COURT:** Go back there. Anyone else? Okay.
16 Attorneys, are there any other questions that
17 you wish for the Court to ask?

18 **MS. GARFIELD:** Nothing from the State.

19 **MR. JOHNSON:** Nothing from the defense, Your
20 Honor.

21 **THE COURT:** Okay. I'll just give you all a few
22 moments, and then we're ready to go ahead and proceed
23 with the selection.

24 **MR. JOHNSON:** Judge, Your Honor, what's the
25 number of strikes?

1 **MS. GARFIELD:** Five and ten?

2 **THE COURT:** Five and ten.

3 **MR. JOHNSON:** Five and ten. Okay.

4 (Pause)

5 **THE COURT:** The parties ready to proceed?

6 **MS. GARFIELD:** The State is ready.

7 **MR. JOHNSON:** The defense is ready, Your Honor.

8 **THE COURT:** Okay. Clerk, you may begin.

9 **THE CLERK:** Ladies and gentlemen of the jury
10 panel, as I call your number, please come down and
11 stand in front of the microphone. Bring all your
12 belongings with you. Stand in front of the
13 microphone and give us your job, what you do for a
14 living. Okay. Number 136. Juror number 136.

15 **JUROR:** I'm sorry.

16 **THE CLERK:** That's all right.

17 (Black female)

18 **THE CLERK:** Just stand there and give your
19 occupation, please.

20 **JUROR:** Full-time student.

21 **THE CLERK:** What says the State?

22 **MS. GARFIELD:** Please present the juror.

23 **THE CLERK:** What says the defense?

24 **MR. JOHNSON:** Seat the juror, please.

25 **JUROR:** Have a seat in the jury box, please.

1 Number 26.

2 (Black male)

3 **THE CLERK:** Give us your occupation, please.

4 | **JUROR:** Warehouseman, UTI.

5 **THE CLERK:** What says the State?

6 **MS. GARFIELD:** Please present the juror.

7 **THE CLERK:** What says the defense?

8 **MR. JOHNSON:** Please dismiss the juror.

9 **THE CLERK:** Please have a seat in the back of
10 the courtroom. Number 261.

11 (Black female)

12 **JUROR:** Square D Electric Company.

13 **THE CLERK:** What says the State?

14 **MS. GARFIELD:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. JOHNSON:** I didn't hear what she did.

17 **THE CLERK:** What's your occupation again, ma'am?

18 **JUROR:** Square D Electric.

19 **MR. JOHNSON:** Please seat the juror.

20 **THE CLERK:** Have a seat in the jury box, please.

21 Number 256.

22 (Black male)

23 **JUROR:** Clarence Thomas, truck driver.

24 **THE CLERK:** What says the State?

25 **MS. GARFIELD:** Please excuse the juror.

1 **THE CLERK:** Have a seat in the back of the
2 courtroom, please. Number 301.

3 (White male)

4 **JUROR:** I'm a computer operator.

5 **THE CLERK:** What says the State?

6 **MS. GARFIELD:** Please present the juror.

7 **THE CLERK:** What says the defense?

8 **MR. JOHNSON:** Please seat the juror.

9 **THE CLERK:** Have a seat in the jury box. Number
10 182.

11 (White male)

12 **JUROR:** Freelance customer service.

13 **THE CLERK:** What says the State?

14 **MS. GARFIELD:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. JOHNSON:** Please seat the juror.

17 **THE CLERK:** Have a seat in the jury box, please.
18 Number 60.

19 (White female)

20 **JUROR:** I'm an area sales director for Icon
21 Document Service.

22 **THE CLERK:** What says the State?

23 **MS. GARFIELD:** Please present the juror.

24 **THE CLERK:** What says the defense?

25 **MR. JOHNSON:** Please dismiss the juror.

1 **THE CLERK:** Have a seat back in the courtroom,
2 please. Number 55.

3 (White female)

4 **JUROR:** I'm a teacher's assistant at a local
5 elementary school.

6 **THE CLERK:** What says the State?

7 **MS. GARFIELD:** Please present the juror.

8 **THE CLERK:** What says the defense?

9 **MR. JOHNSON:** Please seat the juror.

10 **THE CLERK:** Have a seat in the jury box, please.
11 Number 74.

12 (Black female)

13 **JUROR:** Customer service representative.

14 **THE CLERK:** What says the State?

15 **MS. GARFIELD:** Please seat the juror.

16 **THE CLERK:** What says the defense?

17 **MR. JOHNSON:** Please seat the juror.

18 **THE CLERK:** Have a seat in the jury box, please.
19 Number 133.

20 (Black female)

21 **JUROR:** Human resource assistant at Ft. Jackson.

22 **THE CLERK:** What says the State?

23 **MS. GARFIELD:** Please excuse the juror.

24 **THE CLERK:** Have a seat in the back of the
25 courtroom. Number 255.

1 (White female)

2 **JUROR:** I'm an elementary school guidance
3 counselor.

4 **THE CLERK:** What says the State?

5 **MS. GARFIELD:** Please present the juror.

6 **THE CLERK:** What says the defense?

7 **MR. JOHNSON:** Please excuse the juror.

8 **THE CLERK:** Have a seat in the back of the
9 courtroom, please. Number 246.

10 (White male)

11 **JUROR:** I'm a library assistant at Richland
12 County Public Library and I'm also in the National
13 Guard.

14 **THE CLERK:** What says the State?

15 **MS. GARFIELD:** Please present the juror.

16 **THE CLERK:** What says the defense?

17 **MR. JOHNSON:** Please seat the juror.

18 **THE CLERK:** Have a seat in the jury box, please.
19 Number 185.

20 (White male)

21 **JUROR:** I'm an attorney.

22 **THE CLERK:** What says the State?

23 **MS. GARFIELD:** Please excuse the juror.

24 **THE CLERK:** Have a seat in the back of the
25 courtroom, please. Number 25.

1 (Black male)

2 **JUROR:** Paint and body technician.

3 **THE CLERK:** What says the State?

4 **MS. GARFIELD:** Please present the juror.

5 **THE CLERK:** What says the defense?

6 **MR. JOHNSON:** Please seat the juror.

7 **THE CLERK:** Have a seat in the jury box, please.

8 Number 79.

9 (Spanish female).

10 **JUROR:** Military retiree, administrative
11 assistant.

12 **THE CLERK:** What says the State?

13 **MS. GARFIELD:** Please present the juror.

14 **THE CLERK:** What says the defense?

15 **MR. JOHNSON:** Please seat the juror.

16 **THE CLERK:** Have a seat in the jury box, please.

17 Number 176.

18 (White male)

19 **JUROR:** Project manager for a construction
20 company.

21 **THE CLERK:** What says the State?

22 **MS. GARFIELD:** Please present the juror.

23 **THE CLERK:** What says the defense?

24 **MR. JOHNSON:** Please seat the juror.

25 **THE CLERK:** Have a seat in the jury box, please.

1 Number 217.

2 (White female)

3 **JUROR:** I'm a coordinator or investigator at
4 USC.

5 **THE CLERK:** What says the State?

6 **MS. GARFIELD:** Please present the juror.

7 **THE CLERK:** What says the defense?

8 **MR. JOHNSON:** Please seat the juror.

9 **THE CLERK:** Have a seat in the jury box, please.

10 Number 219.

11 (Black male)

12 **JUROR:** Carpenter with MB Kahn Construction.

13 **THE CLERK:** What says the State?

14 **MS. GARFIELD:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. JOHNSON:** Please seat the juror.

17 **THE CLERK:** Have a seat in the jury box, please.

18 **THE COURT:** Two alternates, please.

19 **THE CLERK:** Number 31.

20 (Black female)

21 **JUROR:** Customer service technician,
22 TelePerformance Global Sciences.

23 **THE CLERK:** What says the State?

24 **MS. GARFIELD:** Please present the juror.

25 **THE CLERK:** What says the defense?

1 **MR. JOHNSON:** Please seat the juror..

2 **THE CLERK:** Have a seat in the jury box, please.

3 Number 229..

4 (White male)

5 **JUROR:** I'm a minister.

6 **THE CLERK:** What says the State?

7 **MS. GARFIELD:** Please excuse the juror.

8 **JUROR:** Thanks.

9 **THE CLERK:** Number 231..

10 (White female)

11 **JUROR:** I'm a communications director for a
12 non-profit organization.

13 **THE CLERK:** What says the State?

14 **MS. GARFIELD:** Please present the juror.

15 **THE CLERK:** What says the defense?

16 **MR. JOHNSON:** Please seat the juror.

17 **THE CLERK:** Have a seat in the jury box, please.

18 **THE COURT:** Thank you, ladies and gentlemen of
19 the jury panel who were not selected for this
20 particular trial. I hope you have the opportunity to
21 serve with us this week, but you'll be excused from
22 the trial of this case. Thank you all.

23 (Pause)

24 **THE COURT:** Okay, ladies and gentlemen of the
25 jury of the jury panel who today are fortunate enough

1 to serve on this case. We hope that your jury
2 service will be both educational and informative. We
3 will actually begin the trial in the morning because
4 I'm actually in the middle of some pre-trial issues.
5 I'm going to ask you throughout the trial to not
6 discuss the case in any shape, form or fashion. I
7 don't believe that it's publicized but I never know
8 if there is any media personnel in the courtroom. So
9 don't read anything or listen to anything about the
10 case.

11 Even as you go home tonight to your friends,
12 family, significant others, do not even mention the
13 type of case that you are hearing because a lot of
14 times when we speak with people, you just mention a
15 subject matter, and somebody has got an opinion on it
16 before you even get any facts or anything out.

17 So we want to make sure that whatever you are
18 going to sit in judgment of is as a result of what
19 you hear in this courtroom and any testimony or other
20 evidence presented here, not based on anything else
21 other than what's in here. So I request that you not
22 even discuss the type of matter that you are hearing
23 this week. And of course to not even discuss the
24 case at all until it's given to you for your
25 deliberation.

1 You will be excused for the evening, and I'll
2 ask that you report back to your jury room at 9:30.
3 You will be sworn in at that time to take your oath
4 for this case and then we'll proceed with the case.
5 Thank you all, and have a good evening.

6 (Jury out at 4:00 p.m.)

7 **THE COURT:** You all can take a very short break
8 and then we'll proceed along.

9 (Whereupon, a break is taken)

10 **THE COURT:** Are you all ready to proceed?

11 **MS. GARFIELD:** May it please the Court. The
12 State calls Carl Quintyne.

13 CARL QUINTYNE, after being duly sworn, testifies
14 as follows:

15 **THE CLERK:** Thank you. Have a seat in the
16 witness stand, please, and give the court reporter
17 your name.

18 **COURT REPORTER:** What's your name, please?

19 **THE WITNESS:** Carl Quintyne.

20 DIRECT EXAMINATION

21 **BY MS. GARFIELD**

22 **Q** Mr. Quintyne, where do you reside?

23 **A** Where do I live?

24 **Q** Mm-hmm (affirmative).

25 **A** I am currently living at

1 Q And I'm going to ask you to speak into the
2 microphone.

3 A I'm sorry.

4 Q I know you can be loud. Mr. Quintyne, how long have
5 you been living in Columbia?

6 A I'd say about ten years or so, maybe more.

7 Q And what do you do for work?

8 A Drive a taxi cab.

9 Q And were you driving a taxi back in July of 2008?

10 A Yes, ma'am.

11 Q And specifically on that evening around 8:30 or so,
12 did you have the occasion to hear anyone say
13 something unusual?

14 A Yes, ma'am.

15 Q And if you will just explain to the jury, give a
16 description -- I mean -- to the jury -- to the judge;
17 if you'll give a description of the person that you
18 saw?

19 A On that day I was sitting in my cab and backing into
20 the stand, the young man who is sitting over there,
21 he walked up and he stated that he was getting ready
22 to rob the store across the street and he said
23 everybody needs to get out of here. And he proceeded
24 to walk across the street. About five, ten minutes
25 later I saw a couple of officers coming into the

1 Greyhound and over by the store.

2 Q And when you say the store across the street, what

3 particular store?

4 A It's a gas station.

5 Q And what gas station is it?

6 A I think it is a -- I think it's an Exxon or Mobil,

7 something like that.

8 Q Okay. And you're at the Greyhound?

9 A Correct.

10 Q And what are you doing at the Greyhound station?

11 A I was actually waiting for a fare off the Greyhound

12 bus.

13 Q And when you say waiting on a fare, does that mean

14 you were physically in your cab?

15 A Yes. I was in my cab.

16 Q And approximately how far were you from this person

17 when they walked by and made this statement?

18 A He walked right up right inbetween the cabs right

19 across the street.

20 Q So you saw him right outside your window?

21 A Yeah.

22 Q This was a summer night?

23 A Yes, ma'am.

24 Q Was your window down?

25 A Yes, ma'am.

1 Q Okay. And can you describe what this person looked
2 like on that day?

3 A He doesn't look like that any more. He has some
4 hair. He was wearing I believe a yellow t-shirt,
5 about five-six, five-eight, something like that.

6 Q And can you describe his hair?

7 A It was bushy.

8 Q What color was it?

9 A Not blonde, not brown, but like ...

10 (Pause - looking at court reporter)

11 **COURT REPORTER:** Not gray.

12 A Not gray. But it's really hard to say. It's
13 something like your hair color but maybe --

14 Q It's safe to say between blonde and gray. Is that
15 correct?

16 **MR. JOHNSON:** Your Honor, she's leading the
17 witness again.

18 **MS. GARFIELD:** I'm sorry, Judge. I'm tired,
19 Charlie.

20 Q Okay, Mr. Quintyne. So after this -- I'm sorry. Let
21 me show you these photographs. Let me show you
22 State's Exhibit No. 5, State's Exhibit No. 4 first.
23 Starting with No. 4, what is this a photograph of?

24 A This is a photograph of the Greyhound bus station.
25 This is actually backing off Gervais Street.

1 Q And where do the cabs wait out hanging on fares?

2 A Right here in this area.

3 Q And that's reflected in the picture?

4 A Yeah. The first five lanes are all for cabs only.

5 Q And what does this picture reflect a view of?

6 A The Exxon, the cab stand and the bus stop where the
7 bus actually parks in front of the Greyhound.

8 Q So would this have been the angle you would have
9 viewed that night?

10 A Well, it would be more to the front of the cab where
11 he actually walked past where I was sitting at the
12 passenger's -- at the driver's side. He actually
13 walked across the street that way.

14 Q Okay. And I guess, let me rephrase my question.
15 Would that have been the angle you would have seen
16 when he would have walked across the street?

17 A Yes, ma'am.

18 Q And State's Exhibit No. 5, what does that reflect?

19 A This is actually -- this is the parking lot from the
20 Greyhound and this is the Exxon. So I would say this
21 is maybe a view from the Exxon towards the Greyhound.

22 MS. GARFIELD: Okay. Your Honor, at this time I
23 want to introduce State's Exhibits 4 and 5 into
24 evidence for purposes of this hearing.

25 Q As well as if you will take a look at --

1 **THE COURT:** And then any objection?

2 **MR. JOHNSON:** No, Your Honor. No objection,
3 Your Honor. I'm sorry.

4 **THE COURT:** Thank you. Admitted.

5 **Q** And State's Exhibit No. 6, what is this photograph
6 reflecting?

7 **A** That's the Greyhound over there. So this is the --
8 it looks like the parking lot of the Exxon gas
9 station.

10 **MS. GARFIELD:** Okay. I move State's Exhibit
11 No. 6 into evidence.

12 **MR. JOHNSON:** No objection.

13 **Q** Mr. Quintyne, after you saw the police responding,
14 what did you do?

15 **A** When I saw the police responding, I left the
16 Greyhound with a fare. And as I came back, there was
17 an officer there waiting for me.

18 **Q** At the Greyhound station?

19 **A** Yes, ma'am.

20 **Q** When you saw the defendant walk by, what was the
21 lighting like outside the Greyhound?

22 **A** You mean as far as was it dark or was it still lit?

23 **Q** Yes, ma'am. Yes, sir.

24 **A** I would say it was -- it wasn't really dark/dark but
25 it was getting dark.

- 1 Q And this would be around 8:30 in July?
- 2 A Yeah. Around that time. 8:30, 9:00, somewhere
3 around that time.
- 4 Q Are there also -- I'm not familiar. Are there street
5 lights at the Greyhound station?
- 6 A You have a -- there's a light right in the back where
7 the cab was actually parked at. There is lights on
8 at the Greyhound also.
- 9 Q Once you got back you said an officer was waiting on
10 you?
- 11 A Yes, ma'am.
- 12 Q And what did that officer ask you to do?
- 13 A That officer asked me would I be able -- can I
14 identify the person that I actually saw that walked
15 across to the store. I said, yes, I can. If I see
16 the the person again, I can actually pick him out.
- 17 Q And what did he ask you to do at that time?
- 18 A He asked me would I be willing to follow him up to
19 the police patrol car and follow him over to where
20 the person was at?
- 21 Q So you followed him in your cab?
- 22 A No, ma'am.
- 23 Q What did you do?
- 24 A I got into the officer's car.
- 25 Q And the officer, did the officer drive you somewhere?

1 **A** Yes, ma'am.

2 **Q** Where did the officer drive you?

3 **A** To Pine Street.

4 **Q** Were you familiar with the Pine Street area at the
5 time?

6 **A** Yes, ma'am.

7 **Q** And I'm going to show you State's Exhibit No. 25.

8 Mr. Quintyne, would you agree with me that this is an
9 aerial photograph?

10 **A** Yes, ma'am.

11 **Q** Okay. I'm going to specifically direct you, what's
12 this street going up and down?

13 **A** That's Gervais Street.

14 **Q** And this street going across?

15 **A** That's Harden Street.

16 **Q** Okay. And where would you have been when you saw the
17 defendant walk by your cab?

18 **A** Okay. The Greyhound should be -- that's the Exxon.

19 So the Greyhound should be I think this building
20 here.

21 **Q** This would be the Greyhound?

22 **A** That would be the Greyhound.

23 **Q** And where do the cabs congregate?

24 **A** The cabs park right here.

25 **Q** Okay. And that is where you were?

1 **A** I was parked right here by the sign, right here. The
2 bus stop should be right back here. I was parked in
3 the corner by the sign.

4 **Q** And where is the Exxon station?

5 **A** The Exxon station should be -- all right. Let's see.
6 The Greyhound. So it should be over here somewhere.

7 **Q** And when the officer got you, are you familiar with
8 the path you took?

9 **A** We came out of the bus station and he came up to Pine
10 Street which should be back here. And I think it
11 should be this house here somewhere. It should be
12 the house on here.

13 **Q** And that's the house you were taken to?

14 **A** Yes, ma'am.

15 **Q** Did the officer at any time make any suggestions to
16 you as far as identification?

17 **A** No. He just asked me could I identify the person.
18 And I said, yes; if I see him again, I can remember.

19 **Q** Okay. And you said you went to this house on Pine
20 Street. I'll show you State's Exhibits No. 12 and
21 14. Do you recognize, first with No. 12, what is
22 that a photograph of?

23 **A** This is a photograph of the house he came out of.
24 It's a white house at the corner.

25 **Q** And is that house readily seen from Gervais Street?

1 **A** I don't think so. I don't think you can see it
2 exactly from Gervais Street.

3 **Q** And if you don't know the answer, that's fine.

4 **A** You have to go up -- if you're going up Gervais or
5 Harden, if you're like right by The Fish Fry, then
6 you can look across and see the house there.

7 **Q** That's a fish restaurant on Gervais Street?

8 **A** Yes, ma'am.

9 **Q** And what is Exhibit No. 14?

10 **A** That is the front door where the person came out of
11 the house.

12 **MS. GARFIELD:** Your Honor, I believe they're
13 already in evidence. But we just move them to be in
14 evidence for purposes of the pre-trial.

15 **THE COURT:** Okay.

16 **MS. GARFIELD:** 12 and 14.

17 **Q** Mr. Quintyne, when you pulled up into the place car,
18 just explain to the judge what happened next?

19 **A** When I pulled up, the defendant, he came out; and I
20 told the officer that was him.

21 **Q** And what did the defendant look like at that time?

22 **A** Looks like that, just with some hair.

23 **Q** Was anything different about him?

24 **A** I don't remember him wearing glasses then.

25 **Q** Oh, I'm sorry. Not as far as now. Was there

1 anything different about when saw him at Pine Street
2 from when you saw him at the Greyhound station?

3 **A** I think when he passed us he was wearing different
4 clothes from -- when I got to the scene where he was
5 picked up at, he was wearing something red. He was
6 wearing a red shirt or something.

7 **Q** I believe you testified before that he had been
8 wearing a yellow shirt at the Greyhound station?

9 **A** Yes.

10 **MR. JOHNSON:** Your Honor, she's leading the
11 witness again.

12 **MS. GARFIELD:** Your Honor, I'm asking him about
13 his testimony.

14 **THE COURT:** Yes. I will overruled. He did
15 mention that.

16 **MS. GARFIELD:** I know I lead, but I know that
17 one wasn't.

18 **Q** Mr. Quintyne, I'm going to hand you State's Exhibit
19 No. 24. And do you recognize that photograph?

20 **A** Yes, ma'am.

21 **Q** And what is that a photograph of?

22 **A** That's a photograph of the young man standing there,
23 sitting there.

24 **Q** Is that how he looked at Pine Street?

25 **A** Pine Street. When he was at Pine Street, this is

1 what he was wearing. When he passed he was wearing a
2 yellow t-shirt.

3 Q A yellow t-shirt? Thank you. I know this is already
4 in evidence. After you identified the defendant,
5 what did you do next?

6 A I filled out the statement and after that I left.

7 Q Where did you fill out your statement?

8 A I filled out my statement at Pine Street.

9 Q At Pine Street?

10 A Yeah.

11 Q And was that with an investigator?

12 A Yes, ma'am.

13 Q And do you recall who that investigator was?

14 A I believe it was the officer sitting there.

15 Q Investigator Thomas?

16 A Yes, ma'am.

17 Q I beg the Court's indulgence. At any time did any
18 law enforcement person suggest to you who this person
19 was at Pine Street?

20 A No.

21 Q What was the lighting like at Pine Street? Do you
22 recall?

23 A Pine Street is just a dark street. It's lighted but
24 it's not very light.

25 Q How were you able to see the defendant at Pine

1 Street?

2 **A** He was right there and I could see him right out -- I
3 was parked on the side, on one side of the road and
4 he was actually on the other side of the roadway
5 where I could actually see him.

6 **Q** Okay. Please answer any questions Mr. Johnson has
7 for you.

8 **MR. JOHNSON:** May it please the Court, Your
9 Honor.

10 **THE COURT:** Yes.

11 CROSS EXAMINATION

12 **BY MR. JOHNSON**

13 **Q** Good afternoon, Mr. Quintyne.

14 **A** How you doing?

15 **Q** Mr. Quintyne, I want to ask you something that you
16 just said. When they showed you what is State's
17 Exhibit No. 24, this picture of my client, you say
18 that there was something different about him in that?
19 What was different about him when you identified him?

20 **A** His shirt.

21 **Q** He had a yellow t-shirt on when you identified him?

22 **A** Yes, sir.

23 **Q** So when they did the line-up to you and showed him,
24 he had a yellow t-shirt on?

25 **A** No. When he passed us walking past the Greyhound, he

1 had a yellow t-shirt on. When he was brought out he
2 was wearing different clothes. He was wearing a red
3 shirt.

4 Q Okay. So he had a red shirt on when he was at the
5 store, at the other spot?

6 A No, no. When he came out of the house on Pine
7 Street, he was wearing different clothes than the
8 shirt here. When he passed us at the Greyhound he
9 was wearing a yellow t-shirt.

10 Q He had a yellow t-shirt. It wasn't a jersey or
11 nothing like that. It was a t-shirt?

12 A I can't remember exactly if it was a jersey. All I
13 know is the shirt was yellow.

14 Q Okay. You gave a statement. Is that correct?

15 A Yes, sir.

16 Q And you wrote down everything you saw that day,
17 right?

18 A Pretty much. Yes, sir.

19 Q Did you earlier mention that you say you saw him
20 leave the station?

21 A The bus station?

22 Q The gas station.

23 A He walked across the street.

24 Q You don't have that in your statement.

25 A I believe that I put it in there.

1 Q Huh? I didn't hear you.

2 A I said I believe that I put it in there. I put in
3 that statement that he came out from behind the buses
4 or from towards Laurens Street and he walked between
5 the cabs towards the bus station, towards the Exxon
6 gas station and he stated that he was going to rob
7 the store. He also stated, everybody needs to get
8 out of here. And he walked across the street into
9 the store.

10 Q Right. But you didn't see him leave the gas station,
11 did you?

12 A I just -- no. I didn't see him leave. I didn't know
13 what direction he went.

14 Q So you never saw him leave the gas station. You saw
15 him walking to the station?

16 A Yes. To the gas station.

17 Q And you watched him walk into that station?

18 A Yes. I saw him walk from the bus station.

19 Q And he was walking from the bus station to the gas
20 station is what I'm asking you?

21 A Yes.

22 Q And you watched him walk into the station. Is that
23 correct?

24 A Yes.

25 Q And he was dressed the same way that you described

1 him in your statement. Is that correct?

2 A Yes.

3 Q He didn't change clothes or anything between the bus
4 station or the gas station. Is that correct?

5 A Not as far as I know.

6 Q I mean, --

7 A When he passed me, he was wearing a yellow t-shirt,
8 yellow jersey, yellow whatever. Whatever it was that
9 was on the top was yellow. When he went towards the
10 store and went into the store, he was wearing that
11 yellow --

12 Q And you watched him from the time he passed you until
13 the time he went into the store?

14 A Yes.

15 Q But you don't know if he robbed the store or not, do
16 you?

17 A Well, a few minutes after he went in the store, the
18 cops were all over.

19 Q The cops were there?

20 A Yeah.

21 Q But you wasn't in the store and you didn't see him
22 rob the store and you don't know if he robbed the
23 store?

24 A No, sir. I wasn't in the store.

25 Q So you don't know if he robbed it, right?

1 **A** No, sir. I just going by what his statement was.

2 I'm not -- I wasn't in the store to see if he robbed
3 the store or what he did in the store.

4 **Q** You were just going by what the police told you?

5 **A** No. I'm not going by what the police told me. I'm
6 going by what he said, what he said to me or said out
7 in the open.

8 **Q** Right. But you don't know if he did that or not?

9 You don't know if you wasn't there. Now, if you've
10 got another way of knowing, tell me.

11 **A** No. I mean, I wasn't in the store. So I don't know.

12 **Q** Then just answer the question.

13 **A** No, sir.

14 **Q** Do you know if he robbed the store?

15 **A** No, sir.

16 **Q** That's all I wanted. Thank you.

17 REDIRECT EXAMINATION

18 **BY MS. GARFIELD**

19 **Q** Do you know what he said he was going to do?

20 **A** Yes, ma'am.

21 **Q** And what was that?

22 **A** He said that he was going to rob the store; everyone
23 should leave.

24 **Q** And you did give a statement to Investigator Thomas?

25 **A** Yes, ma'am.

1 Q I hand you -- I guess I have to have this marked for
2 pre-trial -- a copy of your statement.

3 (WHEREUPON, Court's Exhibit No. 2 is marked for
4 identification.)

5 Q I hand you what's been marked as Court's Exhibit No.
6 2. Do you recognize this, Carl?

7 A Yes, ma'am.

8 Q And what is that?

9 A This is my handwriting and my statement.

10 Q And starting at one, two, three, four, five, the
11 sixth line, first complete sentence; will you just
12 read from?

13 A From here?

14 Q (Nods head affirmatively)

15 A He walked across Gervais Street to the gas station
16 across from the Greyhound and entered the store.
17 About five, ten minutes later I saw City of Columbia
18 cops approach the Greyhound bus station and then
19 another and another until there were about six or
20 seven cars.

21 Q But you indicate in there that you saw him walk into
22 the gas station?

23 A Yes, ma'am.

24 Q Thank you. I have nothing further.

25 MR. JOHNSON: I have nothing further, no follow

1 up, Your Honor.

2 **THE COURT:** Okay. Sir, you can step down.

3 **MS. GARFIELD:** The state calls Investigator Paul
4 Nelson.

5 PAUL J. NELSON, after being duly sworn,
6 testifies as follows:

7 **THE CLERK:** Thank you. Have a seat in the
8 witness stand and give the court reporter your name.

9 **THE WITNESS:** Officer Paul Joseph Nelson.

10 DIRECT EXAMINATION

11 **BY MS. GARFIELD**

12 **Q** Investigator Nelson, where are you employed?

13 **A** The City of Columbia Police Department.

14 **Q** And what are your duties with the police department?

15 **A** I'm with the crime scene unit.

16 **Q** Was that your position back in July of 2008?

17 **A** It was.

18 **Q** And specifically on July 19th, 2008, in the evening
19 did you respond to an armed robbery call?

20 **A** I did.

21 **Q** And, Investigator Nelson, I know that you did a lot
22 regarding this case, but I want to specifically just
23 direct you to you reporting to the Pine Street
24 address. Well, I guess back up. Previous to the
25 Pine Street address, what was the information you

1 gathered that had occurred during the robbery?

2 **A** When I arrived at 2020 Gervais Street I was informed
3 by Officer Eastwood of what had happened at the
4 convenience store, Handy Pantry, Exxon gas station
5 where I was informed that a white male subject had
6 robbed the community store wearing a yellow shirt.

7 **Q** Okay. Was there video obtained in this case?

8 **A** There was.

9 **Q** At that time had you had an opportunity to review the
10 video?

11 **A** Not until today.

12 **Q** And once you gathered this information, you did
13 several things at the store. Is that correct?

14 **A** That's correct.

15 **Q** Involving crime scene processing?

16 **A** That's correct.

17 **Q** At any time did you get a call to respond to
18

19 **A** I did.

20 **Q** And what was the purpose of responding to that
21 location?

22 **A** The subject was apprehended over there and placed
23 into custody where they needed me for photography,
24 photographs, as well as collection of evidence.

25 **Q** Investigator Nelson, I'm going to direct you to

1 State's Exhibit No. 25, an aerial photograph.

2 A Yes, ma'am.

3 Q You've had an opportunity to review this, haven't
4 you?

5 A I did.

6 Q And can you just point out for us where the Exxon gas
7 station is located?

8 A Right here.

9 Q And where is

10 A Right here.

11 Q Approximately how far would you indicate that is?

12 A One city block and a half.

13 Q All right. Can you estimate the distance?

14 A 2,000 feet maybe. 3,000 feet.

15 Q So pretty easy to get to?

16 A (Nods head affirmatively)

17 Q And you drove your vehicle to the scene?

18 A I did.

19 Q And once you got there, what was the purpose of you
20 responding to that location?

21 A They needed me for evidence collection as well as
22 photography, photographs.

23 Q Okay. Specifically, are you aware of what evidence
24 you were to be collecting?

25 A I was.

1 Q And what was that evidence?

2 A A yellow shirt and some currency.

3 Q When you got there, were officers already inside that
4 location?

5 A They were.

6 Q And I'm just going to ask you to step down,
7 Investigator Nelson. Actually, Charlie, I don't know
8 if you've seen this. Investigator Nelson, are you
9 familiar with this?

10 A I am.

11 Q And if I can get it marked.

12 (WHEREUPON, State's Exhibit No. 32 is marked for
13 identification.)

14 Q Thank you. I'm going to show you what's been marked
15 as State's Exhibit No. 32. You are familiar with
16 this exhibit?

17 A I am.

18 Q And why are you familiar with it?

19 A This is a sketch that I completed of the scene of
20

21 Q Okay. And can you just explain to us beginning where
22 would you enter this location?

23 A This is an entryway into the -- I called it the
24 second living room just. Prior to entering the main
25 door of the front residence, there was a living room

1 here, as well as these French doors you entered into
2 another room where there was a couch in the corner,
3 as well as viewing the bedroom corner fireplace right
4 here on this side.

5 **Q** Point to me where you would actually enter into this
6 house?

7 **A** You would enter from down here.

8 **Q** And where would Pine Street be?

9 **A** Down here.

10 **Q** And is this what we see in State's Exhibit No. 12?
11 Is that a picture of

12 **A** That's correct.

13 **Q** And specifically No. 14, is that familiar as well?

14 **A** Correct.

15 **Q** Is that the door that you would have entered?

16 **A** The front entryway. Yes, ma'am.

17 **Q** And then once you entered that door, where are you in
18 reference to this diagram?

19 **A** I am further in, still in the main part of the living
20 room, first living room. I have not entered into the
21 second part of this living room area here.

22 **Q** So this is a second living room in the back?

23 **A** That's correct.

24 **Q** And then what is over here to the right?

25 **A** There was a bedroom over here with a bed with a

1 family bathroom.

2 Q Is there anything specific that led you into that
3 bedroom?

4 A Officers brought my attention to a shirt that they
5 had placed on the bed along with some currency in
6 this area here.

7 Q Okay. And at that time were you given the
8 opportunity to photograph what you saw on the bed?

9 A I did.

10 Q Okay. I'm going to show you those pictures. If you
11 will just take the stand back. Okay. First I'm
12 going to show you State's Exhibit No. 11. Do you
13 recognize this photograph?

14 A I do. It's in the middle of Gervais Street towards
15 Pine.

16 Q So if you're on Gervais Street, that is your view
17 facing Pine Street?

18 A That's correct.

19 MS. GARFIELD: Thank you. Your Honor, I'll
20 introduce State's Exhibit No. 11.

21 MR. JOHNSON: No objection, Your Honor.

22 THE COURT: All right. Thank you.

23 Q Okay. I'm going to hand you State's Exhibits 15, 16,
24 17, 18, 19, 20, 21, 22 and 23. If you can go by each
25 exhibit, identify them by exhibit number and explain

1 Q Okay.

2 A And into bedroom number two, a photograph of the
3 interior of the residence at the
4 currency and the shirt on the bed, just a photograph
5 again of the room and how it looked when I arrived;
6 several items of clothing on the floor as well as on
7 the bed, too, as well.

8 Just a little close up of
9 interior residence of the bedroom of six dollars in
10 U.S. currency. I collected that as well. And this
11 is a photograph of the interior of the bathroom,
12 second bedroom.

13 Q And that would be the bedroom that the yellow shirt
14 and the currency was found?

15 A Correct.

16 Q Okay. I am going to hand you State's Exhibit No. 26.
17 Can you identify this package? Do you want some
18 gloves?

19 A This is evidence that I collected from 1212 Pine
20 Street.

21 Q And --

22 A A yellow shirt.

23 Q And can you please show that to the judge? Do you
24 want some gloves?

25 A Yes, please.

1 (Pause).

2 **THE WITNESS:** Your Honor, may I stand up?

3 **THE COURT:** Yes, you may.

4 **A** This is the yellow t-shirt that I collected from the
5 area of the master bedroom.

6 Correction. Bedroom number two on top of the bed.

7 **MS. GARFIELD:** Your Honor, at this time I move
8 the yellow t-shirt, yellow jersey into evidence,
9 State's Exhibit No. 26.

10 **MR. JOHNSON:** No objection, Your Honor.

11 **THE COURT:** Okay. Thank you.

12 **Q** I also hand you State's Exhibit No. 27. Do you
13 recognize that package?

14 **A** That's correct. This is the six dollars of U.S.
15 currency that I collected from from
16 the bedroom number two.

17 **Q** And how much money was it?

18 **A** Six.

19 **Q** And that's reflected in the photographs that you took
20 as well?

21 **A** Correct.

22 **Q** And I have not had these marked. Just for purposes
23 of pre-trial, I will get you to identify these.

24 (WHEREUPON, State's Exhibit No. 33 is marked for
25 identification.)

1 (WHEREUPON, State's Exhibit No. 34 is marked for
2 identification.)

3 Q Investigator Nelson, can you identify package number
4 33?

5 A I cannot. It's not mine.

6 Q You did not collect this?

7 A No. I did not.

8 Q What about State's Exhibit No. 34?

9 A I cannot. This is not mine. I did not collect this.

10 Q Okay. Thank you. Now, when you were looking at
11 State's Exhibit No. 21 -- you've already been over
12 it -- what is that a photograph of?

13 A A photograph of the bedroom number two, bed area,
14 currency on the bed, as well as a yellow shirt with
15 several other clothing items.

16 Q Does that photograph reflect the yellow shirt that
17 you took into evidence?

18 A Yes.

19 Q And is there other articles of clothing in the
20 photograph as well?

21 A There are.

22 Q And can you just describe what those articles of
23 clothing are?

24 A Socks, shirt, pair of sneakers, more shirts from the
25 floor. It looks like a pair of jeans on the bed.

1 Q Were any of those items taken into evidence?

2 A No. They were not.

3 Q And can you give an estimation as to why not?

4 A In my opinion the shirt was described to me at the
5 scene of a yellow shirt, and that was what I
6 collected.

7 Q You weren't given details as to any other clothing?

8 A I was not.

9 Q Were you present for any of the witnesses that came
10 on the scene for identification purposes?

11 A Not that I can remember. No.

12 Q And were you present at Pine Street before the
13 officers made entry?

14 A No. No.

15 Q And did you ever have any interaction with the victim
16 in this case?

17 A I didn't. No. Except for a photograph that I'd
18 taken of him at

19 Q And you had no -- I said the -- I believe you
20 answered -- I said did you have any contact with the
21 victim?

22 A The victims?

23 Q Right.

24 A No.

25 Q Nor the defendant?

1 **A** Nor the defendant, except for

2 **Q** Beg the Court's indulgence. Investigator Nelson,
3 back at the Exxon station when you initially arrived,
4 did you do any search for fingerprints?

5 **A** Yes, I did.

6 **Q** And were you successful in what you --

7 **A** I did.

8 **Q** -- retrieved?

9 **A** I lifted two partial latents off the interior glass
10 door of the business.

11 **Q** And did you have the opportunity to do any
12 comparisons with prints from the defendant?

13 **A** I did.

14 **Q** And were there any matches made?

15 **A** They did not match up.

16 **Q** And is that -- was that surprising to you as a crime
17 scene investigator?

18 **MR. JOHNSON:** Your Honor, objection. It calls
19 for opinion. And surprise, he's not the one to judge
20 whether it's surprising or not.

21 **MS. GARFIELD:** He as a vast amount of knowledge
22 in fingerprint collection and can explain, how
23 especially a busy place as a gas station with
24 customers that come in and out --

25 **THE COURT:** Without testifying, Ms. Garfield.

1 **MR. JOHNSON:** Also testimony, Your Honor.

2 **THE COURT:** I will sustain the objection. I
3 think there is a better way you can ask him.

4 **Q** Based on your experiences, Investigator Nelson, are
5 matches always found at convenience stores?

6 **A** Not all the time. Not everybody has a criminal
7 conviction or a criminal history.

8 **Q** Can you give explanations as to the prints that are
9 commonly found at busy places like gas stations,
10 convenience stores?

11 **MR. JOHNSON:** Your Honor, objection on that.
12 Relevance.

13 **THE COURT:** Overruled.

14 **Q** You can answer.

15 **A** Can you repeat it? I was --

16 **Q** I'll withdraw the question.

17 **A** Okay.

18 **Q** There's no point going into it at this point.

19 **THE COURT:** Okay.

20 **MS. GARFIELD:** I believe that's all I have,
21 Judge.

22 **THE COURT:** Okay.

23 CROSS EXAMINATION

24 **BY MR. JOHNSON**

25 **Q** Good afternoon, Officer Nelson.

1 **A** Good afternoon.

2 **Q** The yellow shirt and the clothes that was on the bed
3 that was in the picture, I think it was -- do you
4 have it up there, or is it down there?

5 **A** No, I don't.

6 **Q** State's Exhibit 20 I think?

7 **A** Yes, sir.

8 **Q** That's the picture that you took of the yellow shirt
9 and things on the bed. Is that correct?

10 **A** That's correct.

11 **Q** Now, you later discovered that my client didn't put
12 those things there, but actually the police or the
13 investigating officers and stuff laid that out on the
14 bed. Is that correct?

15 **A** That's how I found it when I got there.

16 **Q** And then you were later informed that that shirt
17 actually was taken out of his suitcase. Is that
18 correct.

19 **A** Don't know.

20 **Q** You don't know?

21 **A** No. I was not informed of that.

22 **Q** Okay. But you were informed that they spread it out
23 on the bed and did those things?

24 **A** Afterwards, yes.

25 **Q** And that my client did not put those things there.

1 Is that correct?

2 A That's correct.

3 Q Okay. So, for lack of a better word, all the items
4 was tampered or touched by the police prior to you
5 doing your examination?

6 A That is your knowledge. That could be correct, yes.

7 Q Did you find \$360?

8 A No. I did not.

9 Q There was a description of blue jeans that they said
10 that the person that committed this crime had on.
11 Did you collect any blue jeans?

12 A I did not. But he was wearing blue jeans when I took
13 a photograph of him.

14 Q Okay. Why didn't you collect the blue jeans to see
15 if they could be identified?

16 A I was informed of as well as just the yellow shirt
17 from the scene.

18 Q Who informed you?

19 A Eastwood, the officer on the scene at 2020 Gervais
20 Street.

21 Q He told you to just take the yellow shirt?

22 A She told me that he was wearing a yellow shirt.

23 Q But she didn't give you any other information?

24 A No. Just a height and weight description.

25 Q And were you able to match any serial numbers on the

1 six dollars you found with any possible connections
2 or anything like that?

3 **A** Nothing like that at all.

4 **Q** And you took fingerprints and that didn't match?

5 **A** That did not match.

6 **Q** And except for the evidence that you discovered
7 there, that's the only evidence that could possibly
8 connect my client to this crime, that yellow t-shirt
9 and the six dollars?

10 **A** That's correct.

11 **MR. JOHNSON:** I have no other questions, Your
12 Honor.

13 **THE COURT:** Thank you.

14 **MS. GARFIELD:** Nothing further, Judge.

15 **THE COURT:** Okay. You can step down. Any
16 additional witnesses?

17 **MS. GARFIELD:** Nothing from the State.

18 **THE COURT:** Okay.

19 **MR. JOHNSON:** Your Honor, I have no witnesses
20 that I plan on putting up. But just for information,
21 I discovered there is one additional motion I need to
22 make.

23 **THE COURT:** Okay.

24 **MR. JOHNSON:** It won't require really any more
25 testimony. But the officer described that the

1 pictures he took was actually the shirts and stuff
2 were spread on the bed by the police themselves. I
3 would make objection to those pictures being entered
4 because they're basically staged.

5 They have the shirt. They can present that to
6 the jury. They have the money. They can present
7 that to the jury. But any pictures and stuff of the
8 clothes laying out on the bed that my client had
9 taken them off or laid them there in changing clothes
10 and things of that nature, I would object to those
11 pictures coming in because the evidence was tampered
12 with and moved from the original in the location,
13 whether it was in the suitcase, whether it was in
14 whatever. But they were not placed in that location.
15 And that picture is extremely prejudicial and would
16 have some effect on the jury.

17 **THE COURT:** Okay.

18 **MS. GARFIELD:** I just don't understand how it's
19 prejudicial when we have witnesses that testify as to
20 what they did and why it was like that. I certainly
21 think the pictures aid the jury because they are able
22 to not only see the items that were collected as well
23 as items that weren't collected, and because they
24 didn't know to collect them at the time. Also it
25 shows them the inside of this boarding house to allow

1 the jury to familiarize themselves with the layout
2 and where in relation like the bathroom was to the
3 front room and where things were found.

4 **THE COURT:** Anything admitted into evidence need
5 to be a fair and accurate representation of what is
6 there. And so I think more so what I'm hearing from
7 Mr. Johnson is that it can't be a fair and accurate
8 representation as to what they found because they
9 placed it there. So you would have to rephrase the
10 question insofar as how it's admitted. Is it a fair
11 and accurate representation of what --

12 **MS. GARFIELD:** Of how they put it onto the bed.
13 I certainly don't have any problem with that.
14 Investigator Thomas, that's his position.

15 **MR. JOHNSON:** My argument, Your Honor, is that I
16 would have no problem with pictures of the house.
17 I'm not saying all the pictures.

18 **THE COURT:** Right.

19 **MR. JOHNSON:** My only argument are pictures
20 specifically of the yellow shirt and the money and
21 the things laying on the bed. They were placed there
22 by the police. If the police want to present
23 something, they can present the yellow shirt. That's
24 a more accurate description of the shirt than the
25 pictures.

1 **THE COURT:** Okay. Let me see the pictures
2 because some of them didn't have the pictures of the
3 yellow shirt in them.

4 **MS. GARFIELD:** I'll just get them all and go
5 through them all with you so we won't miss any.
6 You've got some, don't you?

7 **THE COURT:** I gave them back to the court
8 reporter.

9 **COURT REPORTER:** I put them back down there.

10 **MS. GARFIELD:** Okay.

11 (Whereupon, a bench conference is had)

12 **MS. GARFIELD:** There are no other pictures of
13 that room.

14 **THE COURT:** So you're essentially just objecting
15 to the fact that they laid it out.

16 **MR. JOHNSON:** They laid that out and spread it
17 on the bed where they actually put everything.

18 **THE COURT:** But you would have them testify to
19 say that that's what they did?

20 **MS. GARFIELD:** That's what they did.

21 **THE COURT:** But the reason for the picture
22 itself other than the shirt and the money being there
23 is what?

24 **MS. GARFIELD:** Well, at least State's Exhibit
25 No. 24. 21. 21. It shows the relationship of the

1 bathroom where the defendant was found to that room.

2 **MR. JOHNSON:** But they have a diagram here, Your
3 Honor, that shows the relationship of the room. They
4 don't need that picture to show it.

5 **THE COURT:** Okay. And what about 22 and 24?

6 **MS. GARFIELD:** It was just a close up. If you
7 find that cumulative, I don't have any problem
8 withdrawing that.

9 **THE COURT:** Okay. 20?

10 **MS. GARFIELD:** The same thing.

11 **THE COURT:** 18?

12 **MS. GARFIELD:** That's just showing the layout of
13 the house. Certainly it's just one.

14 **THE COURT:** And 19?

15 **MS. GARFIELD:** Yeah. You can take out one or
16 the other, is my position. I mean, I know Charlie is
17 objecting to both of them.

18 **THE COURT:** All right. I'll allow 18 and 21 in
19 with the specific description of how they found the
20 room and what the police did with the shirt. Just
21 because the whole point is that the shirt was in the
22 room. They didn't put it in the room. Is that
23 correct?

24 **MR. JOHNSON:** No, Your Honor. They are saying
25 they found it in the bathroom.

1 **THE COURT:** Okay.

2 **MS. GARFIELD:** Which is right there beside the
3 back bedroom.

4 **MR. JOHNSON:** And it's my understanding they
5 found it in a suitcase and not in the room.

6 **MS. GARFIELD:** Investigator Thomas testified to
7 that.

8 **THE COURT:** Okay.

9 **MS. GARFIELD:** You found the yellow shirt in the
10 bathroom? Where?

11 **INVESTIGATOR THOMAS:** The money and the yellow
12 shirt -- I was trying to confer on that -- was in the
13 bathroom, and then we put it on the bed.

14 **MR. JOHNSON:** But what was in the suitcase?

15 **INVESTIGATOR THOMAS:** The ID, I think the wallet
16 and some identification was in the suitcase, is what
17 I'm told.

18 **THE COURT:** But the money and the yellow shirt
19 was in the bathroom?

20 **INVESTIGATOR THOMAS:** Right.

21 **THE COURT:** Was it out or --

22 **INVESTIGATOR THOMAS:** On the floor.

23 **THE COURT:** On the floor?

24 **INVESTIGATOR THOMAS:** Right.

25 **THE COURT:** So you just picked it up and put it

1 on the bed?

2 **INVESTIGATOR THOMAS:** The identification and
3 other things were in the suitcase.

4 **THE COURT:** I've got you.

5 **MR. JOHNSON:** That's what the -- well, okay.
6 Your Honor, I still make the objection that those
7 pictures come in. They have a diagram that shows the
8 relationship of the room. They did not need that to
9 show a relationship. The only thing they can use
10 that for is to just show that the clothes are laying
11 on the bed.

12 **THE COURT:** Okay. 19, 20 and 22 we'll take out.

13 **MS. GARFIELD:** We'll put those separately now.

14 **THE COURT:** And then we'll look at 18 and 21.

15 **COURT REPORTER:** I'll need those, Ms. Garfield.

16 **MR. JOHNSON:** And, Your Honor, if I could.

17 **THE COURT:** Certainly.

18 **MR. JOHNSON:** They have a diagram here that
19 shows the whole room and the relationship of the
20 bathroom and the room. They do not need those
21 pictures to show that relationship. There is nothing
22 significant about that room that they can't show on
23 this.

24 **THE COURT:** Okay. And particularly with 21,
25 that's where it's laid out. But the bathroom doesn't

1 show in 18?

2 **MS. GARFIELD:** No. It should show -- the
3 purpose of this picture when you do them in order, it
4 sort of shows you as walking through the front door,
5 throughout their path to get there, and that is the
6 point of that picture.

7 **THE COURT:** Okay.

8 **MS. GARFIELD:** Does that make sense, what I'm
9 saying? It's just to get you -- because it's kind of
10 a back area. It's a weird shaped house as far as
11 when you go inside.

12 **THE COURT:** Okay. And then 21, you want that
13 because the bathroom is right there?

14 **MS. GARFIELD:** Correct.

15 **THE COURT:** Okay. And what is this door right
16 here on 18 where the yellow shirt is?

17 **MS. GARFIELD:** That door? It's a closet.

18 **THE COURT:** Okay.

19 **MR. JOHNSON:** Your Honor, they have those
20 pictures here. They have that. They have the
21 bathroom. They have pictures of that layout.

22 **MS. GARFIELD:** That doesn't show the layout of
23 the house.

24 **MR. JOHNSON:** As I said though, the diagram
25 does. Those pictures will serve no purpose.

1 **MS. GARFIELD:** I'll withdraw the diagram then.

2 **THE COURT:** I'll allow 18 and 21 in with a
3 specific description as to how the items were placed
4 on the bed.

5 **MS. GARFIELD:** No problem.

6 **THE COURT:** Okay. And I'll take the other ones
7 out.

8 **MR. JOHNSON:** Okay.

9 **MS. GARFIELD:** And you've got those, right?

10 **COURT REPORTER:** I've got them.

11 **MS. GARFIELD:** And in reference to the diagram,
12 Charlie, if you don't mind, I noticed while I was
13 doing direct that Investigator Nelson did this with
14 A, B and C as labels. Weren't one of those
15 designated as where the knife was found?

16 **THE WITNESS:** Yeah.

17 **MS. GARFIELD:** A stipulation has been there was
18 a knife found when they searched this residence.
19 However, we don't believe it was the knife that was
20 used. So we're not introducing that. I know Charlie
21 does not have any objection to that. But I was going
22 to ask if Investigator Nelson could just reprint the
23 diagram without the letters?

24 **MR. JOHNSON:** He can just put a white piece of
25 paper over it.

1 **INVESTIGATOR NELSON:** Yeah. Sure. Do you want
2 to do that for tomorrow?

3 **MS. GARFIELD:** Tomorrow.

4 **THE COURT:** Hold it up. Without what letters?

5 **MS. GARFIELD:** See the A and the B and the C?

6 **INVESTIGATOR NELSON:** It refers on my legend and
7 A and B and what it means as far as the bed.

8 **MS. GARFIELD:** One I just didn't want to have
9 explain since we're not introducing it anyway.

10 **MR. JOHNSON:** The A are windows?

11 **INVESTIGATOR NELSON:** Yes.

12 **MR. JOHNSON:** And the B is just a bed?

13 **INVESTIGATOR NELSON:** The B is the couch.

14 **THE COURT:** And the C is ...?

15 **INVESTIGATOR NELSON:** The bed.

16 **MR. JOHNSON:** Oh.

17 **MS. GARFIELD:** Why don't we just reference it's
18 a couch and just not say why?

19 **MR. JOHNSON:** We don't have to take it out. It
20 just shows what the couch was. You don't have to say
21 what was on it.

22 **MS. GARFIELD:** Okay. I just want to make sure
23 we are on the same page and didn't mislead in any way
24 or accidentally say something.

25 **THE COURT:** All right. Is that all the

1 testimony for the day? Is that all the testimony for
2 the day?

3 **MS. GARFIELD:** Yes, ma'am.

4 **THE COURT:** I'll hear brief argument on your
5 pre-trial issues.

6 **MR. JOHNSON:** Do you want me to go first, Your
7 Honor? I guess since I made the motion --

8 **THE COURT:** That's fine. Yes.

9 **MR. JOHNSON:** Your Honor, the two motions, the
10 first one was the show-up identification. The main
11 witness, the witness that was the alleged victim,
12 basically stated, she stated on the stand that she
13 was not 100 percent sure, that she was somewhere
14 between 80 or 90 or some percent sure. She testified
15 that my client was -- the testimony is that my client
16 was taken out of the police car in handcuffs and
17 stood before her in another police car. She was
18 given the impression, not directly or implied, that
19 this was the gentleman that had robbed the store.
20 And that was extremely suggestive.

21 It's a suggestive position that they had. I
22 mean, it was not like a three-picture line-up or it
23 was late at night. It was within minutes, a half an
24 hour or so of the robbery actually happening, and she
25 could not suppose anything else but this was the

1 person. But even at that, she stated that she was
2 not 100 percent sure.

3 The second ID witness I submit to the Court had
4 the same suggestive nature of the ID done to him,
5 although he was not even able to testify that he saw
6 my client rob the store. The main thing was that
7 they said that my client did not appear to be the
8 same person at first, the way he was dressed or
9 anything like that.

10 The State did not really present any evidence in
11 the case that he had changed his clothes. The
12 testimony as I recall is that someone told them
13 someone that matched that description had a red shirt
14 on when he went into the house. My client had a red
15 shirt on when he came out the house.

16 Therefore, just because of the suggestive nature
17 of the picture, the way that my client was
18 handcuffed, he was in custody, he was taken out of
19 the police car within sight of the witness actually
20 seeing my client taken out, she could not make any
21 suggestion but that my client was actually the
22 person.

23 As a result of that, Your Honor, we ask you that
24 the show-up identification be suppressed. Do you
25 want to rule on them one at a time?

1 **THE COURT:** Go ahead and speak to both of them.

2 **MR. JOHNSON:** As far as the second one, Your
3 Honor, was the lack of a search warrant in entering
4 the house. I think the significant thing there, Your
5 Honor, is that there was -- that as the officer
6 stated, he knew he couldn't go in the house because
7 he didn't have a search warrant, that the only way he
8 could enter the house was to receive permission from
9 someone that lives there or either to go get a
10 warrant to go into the house.

11 They entered the house without a search warrant
12 supposedly based on the belief or the fact that they
13 had someone there that lived in the house, which was
14 an important element. But they could not produce a
15 person. They could not produce a name. They did no
16 identification check even to see who the person was.

17 They made their own assumption that this person
18 had a key, they could go into the house. It was not
19 the owner. The owner wasn't presented to the Court.
20 She did not do it. They could not even say who the
21 person was. Without them being able to present that
22 person to the Court, without them being able to
23 specifically identify at least or make any attempt
24 to, they didn't even make any attempts, Your Honor,
25 to verify that that person who was the person they

1 even say he was, if he even gave his name.

2 They have no basis for going into that house
3 without a search warrant. There is nothing
4 indicated -- the officer testified -- in the evidence
5 I think the officer testified that he saw my client
6 in the bathroom changing clothes. He was not
7 destroying evidence. He was not attempting to run.

8 They said they had the house surrounded. There
9 was no immediate emergency to get into the house.
10 They could have then went and gotten it, followed the
11 proper procedure, got the owner of the house,
12 identified the person who came with the key or went
13 and got a search warrant. They did neither of those
14 things. As a result I think any evidence taken from
15 that property as a result of that illegal search
16 should be suppressed.

17 **THE COURT:** Okay. All right. The State.

18 **MS. GARFIELD:** Thank you, Your Honor. I will
19 reference the show-up identification motion. This is
20 certainly a case where this is an example of where a
21 show-up identification is admissible. Your Honor, as
22 you're aware, you've got to look at the totality of
23 the circumstances.

24 In this situation I'll at least start with the
25 victim, Tonya McGeorge. She is in the Exxon. It's

1 fully lit. She is not under the influence of any
2 drugs or alcohol. She catches the -- she sees the
3 defendant come into the store. He is wearing a
4 visible bright shirt which catches her eye. She is
5 able to testify where he went first, then what he
6 proceeded to do.

7 Her testimony was that as she is giving him the
8 money she tried to commit to her memory what he
9 looked like. She gives a description to a 911
10 operator. She then gives the same description to the
11 reporting officer. She then gives the same
12 description to the investigating officer that arrives
13 on the scene.

14 She then goes with the investigator who does not
15 at any time give her any ideas about how this
16 defendant is going to appear when they get there.
17 Law enforcement did get information from a source
18 that the defendant had entered this boarding house
19 and had changed clothes.

20 They did not know what he had changed clothes
21 in. He was does come out. He is dressed
22 differently. And when the victim sees him, she takes
23 her time. She lets a few moments pass. She
24 indicates that is him. I am 80 to 90 percent sure.
25 And the only reason she couldn't say I'm 100 percent

1 sure is because he had changed his clothing.

2 She is even able to see him in the courtroom
3 today and say that is the man, I am confident that is
4 the man that robbed me.

5 The show-up ID is given within -- and we
6 certainly don't have it documented the exact time,
7 but it's within minutes of this robbery; at the most,
8 30 minutes. It is very near the crime scene. This
9 is, I think Investigator Nelson testified, it's a
10 city block and a half. You can actually from the
11 photographs taken outside the Exxon station you can
12 see the boarding house right off of Pine Street from
13 Gervais Street.

14 The witness's memory was still extremely very
15 fresh, and it certainly gave the investigators an
16 opportunity to where if the victims had not
17 identified the defendant --

18 **THE COURT:** Go ahead.

19 **MS. GARFIELD:** -- if the victim had not
20 identified the defendant, then they would have let
21 this guy loose and gone on and continued the search.
22 However, she gives an identification. It's 80 to
23 90 percent. And what did the law enforcement do, but
24 they further that and go back and looking for the
25 cabbie, Carl Quintyne.

1 I will go now into him. He is sitting in his
2 cab, has no reason to be a part of this whatsoever,
3 sees the defendant walk by. He says there's lighting
4 in the back of the terminal. At that time it's
5 probably around 8:30 or so. The sun is going down.
6 It's late July. So the middle of July is when it is
7 the lightest for the longest amount of time.

8 He sees the defendant walk by, hears the
9 statements made, watches him walk across the street,
10 gives the exact same description almost as the victim
11 does as far as height, as far as build, as far as
12 what he's wearing, as far as description of the hair,
13 the color of the hair, white male.

14 And then he sees police cars and he goes on to a
15 fare, comes back from the cab fare where law
16 enforcement is waiting on him, asks him, do you mind
17 looking at this guy. And he says, sure. He was has
18 no reason to have, you know, made it up that he sees
19 him. It's clearly in his realm when he sees him
20 that, yep, that's the guy but he changed clothes.
21 And that's his response.

22 And he's given the same explanation to
23 Investigator Thomas that day when it happened as far
24 as the description of the defendant. He was able to
25 give the same description today. Again, he is also

1 able to make this identification in a very short
2 amount of time from when he saw the defendant cross
3 the street and make the statement, I am going to rob
4 the Exxon, or I'm going to rob the gas station; as
5 well as this is a very short distance from the
6 Greyhound station to . It is not a
7 long walk at all.

8 This certainly allows police to determine if
9 they need to continue to search for other suspects as
10 well as or if they need to let an innocent person go
11 by. So I believe this show-up identification was
12 extremely proper. It follows all the guidelines that
13 are outlined in Neil v. Biggers, as well as from our
14 Supreme Court -- I mean our Court of Appeals, State
15 vs. Brown. And I would just ask you to please allow
16 this into evidence.

17 **THE COURT:** Did you have something?

18 **MR. ROGERS:** Your Honor, I will address the
19 search issue at the Court's convenience.

20 **THE COURT:** That's fine. Go ahead.

21 **MR. ROGERS:** May it please the Court. Your
22 Honor, defense counsel's objection is partially
23 correct. Normally the State is not allowed to make
24 entry into a residence without a search warrant.
25 There are very well known exceptions to that. The

1 most well known is exigent circumstances which the
2 State argues applies here.

3 Part of exigent circumstances, Your Honor, there
4 are four factors that are generally considered to
5 be -- that are generally considered when analyzing
6 exigent circumstances. One is the possibility for
7 destruction of evidence. One is the hot pursuit of
8 the fleeing felon, the imminent destruction of
9 evidence, the need to prevent the suspect's escape,
10 and the risk or danger to police or other people
11 outside the dwelling, inside or outside the dwelling.

12 Your Honor, I'll start off with the most on
13 point case that I have. That case is Maryland
14 Penitentiary v. Hayden.. That's 387 U.S. 294. That
15 was a 1967 case which is very similar to the facts
16 involved at bar here.

17 In that case, Your Honor, an armed robbery was
18 committed involving taxi cabs. Those taxi cabs were
19 able to keep an eye on the suspect, alert the police
20 to that suspect's location within minutes of the
21 armed robbery. Police arrived on the scene within
22 minutes, made entry into that residence and found the
23 suspect inside as well as the weapon that was used in
24 the robbery and his clothing that was used in the
25 robbery.

1 In that case, Your Honor, the court held that
2 the search of the premises while without a search
3 warrant was reasonable given the circumstances, given
4 the proximity in time to the armed robbery, to the
5 crime, the possibility of destruction of evidence
6 inside, the possibility of flight by the defendant
7 and him escaping the police. Even though the police
8 were on the scene, since they had not taken him into
9 custody, the court held that it was reasonable for
10 them to make entry into the house to secure his
11 person and to prevent his escape.

12 Also, Your Honor, there was a risk of danger
13 there. Arguably that case involved a firearm. This
14 case involved a knife. But the police were unaware
15 as to what other weapons might be inside the house.
16 The police were unaware as to what other persons may
17 or may not be inside the house, may or may not be in
18 danger inside the house.

19 As to the destruction of evidence, Your Honor,
20 that is very -- something that the police took into
21 great consideration at the time because they were --
22 enough time had elapsed that the defendant was able
23 to get rid of the money that was stolen from the
24 robbery at the Exxon station. The \$360 that was
25 taken was not recovered.

1 So the destruction of evidence I think goes in
2 the State's favor. They were able to go into the
3 residence to secure the shirt, the yellow shirt that
4 was given as a description by the victims, Ms. Tonya.
5 They were able to secure that before the defendant
6 was able to destroy that piece of evidence.

7 Your Honor, also under the hot pursuit element
8 there, in the Hayden case the police arrived within
9 moments and were able to search the residence. Here
10 the testimony is that the police arrived on the scene
11 within five to ten minutes, a very short period of
12 time between when the armed robbery took place and
13 when they actually arrived on the scene. That short
14 period of time definitely goes in the State's favor
15 for hot pursuit.

16 It's the State's position that they were able to
17 make entry into the residence regardless of whether
18 or not the tenant had arrived on the scene with a
19 key, that the exigent circumstances existed at the
20 time that the officers arrived at the residence and
21 that those conditions were such that warranted
22 them -- that it was reasonable for them to break down
23 the door if necessary to search the house and secure
24 the defendant's person.

25 Now, that did not occur at this time. The

1 police did secure the perimeter and try to obtain a
2 key so they didn't have to break down the door. It's
3 the State's position that they were legally within
4 their rights to search that premises at the time they
5 arrived on the scene.

6 For argument sake, Your Honor, if the Court does
7 not believe that exigent circumstances and hot
8 pursuit were sufficient for the search, Your Honor,
9 the State's next point is that the resident who
10 appeared on the scene, the tenant, the black male
11 tenant who was described who had told the officers
12 that he was a resident and that he gave verbal
13 consent to search the residence, Your Honor, there is
14 a case on point. If the Court would hold on for just
15 a second.

16 That is Illinois vs. Rodriguez. It's 497 U.S.
17 177. It's a 1990 case, Your Honor. That held that a
18 person giving permission to search can have apparent
19 authority to grant that search, does not have to have
20 actual authority and that the police can rely
21 reasonably on the appearance of that apparent
22 authority to act.

23 The apparent authority of that tenant would be
24 enough to grant the police the ability to search the
25 premises at their will, especially since given

1 another case, Your Honor, Georgia v. Randolph, a 2005
2 case. The cite is 547 U.S. 103.

3 In that case, Your Honor, consent to search was
4 given by a co-occupant. And that was granted to be a
5 valid search by the court. Here there was testimony
6 that at least, that only two people were renting out
7 that boarding house at that time. One of them
8 arguably was on the premises to grant consent to
9 search the residence. The officers did not have to
10 wait for both residents to arrive.

11 There was no testimony and no evidence to
12 suggest even that the defendant was a tenant in that
13 apartment or in that residence. In fact, all of the
14 evidence gathered by the police at that time
15 suggested that the defendant had no legal right to be
16 inside the residence.

17 And, thirdly, Your Honor, there has been no
18 evidence presented by the defense or otherwise that
19 the defendant was a guest in the premises. And
20 without that, he has no standing to even challenge
21 the search in the first place. So the State's third
22 argument is that he doesn't have standing to
23 challenge the search at all.

24 Your Honor, once the police are legally and
25 rightfully allowed inside the residence the

1 observation of the yellow shirt in question was
2 legally seized under plain view. That was also a
3 secondary holding in the 1967 case that I quoted with
4 the armed robbery first. It's a very similar case
5 and similar holding there.

6 And if the Court requires further case law, I've
7 got a stack of it if you need to see it.

8 **THE COURT:** The Court, we've done some of our
9 own research as well. But I'll allow Mr. Johnson to
10 respond to the matters here.

11 **MR. JOHNSON:** Your Honor, as relates to the
12 search itself, the State is forgetting its own
13 evidence. I think it was the investigator who stated
14 that the person that let them in the house also gave
15 them additional information that that person told him
16 that my client was given permission to leave his bags
17 and stuff within the house. Therefore, he was an
18 invited guest and did have a right to be in that
19 place.

20 The State's also own testimony was that this was
21 a boarding house, which means that each individual
22 had right of expectancy of privacy to their own
23 particular area. This was not a general location.
24 They were separate boarding houses. That individual,
25 assuming that individual was safe, the other person

1 that lived in the house could only give the police
2 permission to search his area of that house, of that
3 boarding house. They were paying separate rents for
4 two separate locations within that house.

5 They were aware that my client had been given
6 permission to leave his bags and things within that
7 area. So he was an invited guest. That was the
8 State's own evidence. So for them now to come
9 forward and say that that's not the case, they're
10 incorrect.

11 Also, Your Honor, the last time I checked, my
12 client was considered innocent. For the State to
13 stand here now and indicate that he destroyed \$360
14 because they can't find it, it might be just the
15 opposite, that they can't \$360 because he didn't take
16 it. They can't take that assumption. And that's
17 what's going on here. They're making an assumption.

18 He fits the description. That's all they have.
19 He has a yellow t-shirt. That's all they have. They
20 are trying to make jumps that they can't make. They
21 have someone that comes in and because he's got a key
22 and they want to get inside, they take the key. They
23 don't even take the time to check for ID, to check to
24 make sure that that person is a legitimate person
25 that can give them the right to go inside. And it

1 violates my client's Constitutional rights by doing
2 that.

3 The officer stated that could see my client,
4 that he was inside the house and he refused to come
5 to the door, which was his right. The officer knew
6 that he did not have the right to go inside. This is
7 nothing where anybody jumped to any conclusion.
8 There was no quick chase or there was nobody
9 threatened.

10 There was no evidence to destroy. What could he
11 destroy? There was -- it doesn't meet any of the
12 exigent circumstances that the State is describing.
13 The only thing it has is that the State should have
14 waited and got a warrant to go inside or got a
15 verified owner of the property to go inside. Short
16 of that, they violated it. And anything that they
17 found as a result of that illegal search should be
18 depressed. Suppressed. Depressed. It's getting
19 late in the day.

20 **THE COURT:** All right. You have something else,
21 Mr. Rogers?

22 **MR. ROGERS:** Your Honor, if I may, there were
23 three points I would like to address there.

24 **THE COURT:** Sure.

25 **MR. ROGERS:** First the evidence by the State was

1 not that the defendant was a guest at

2 The evidence presented by the State was that
3 the defendant was allowed to keep as bag, a suitcase
4 or some type of bag inside that residence. There has
5 been no testimony that he was a guest, that he had
6 any expectation of privacy. At the most, he was a
7 bailee and the tenants were the bailor, and that he
8 had temporarily given control of his suitcase to
9 someone else in the residence. That's a generous
10 reading of his rights and his expectations of privacy
11 at There has been nothing to
12 suggest that he was an overnight guest or any had any
13 other heightened level of interest and expectation of
14 privacy at that residence.

15 Secondly, the State is not arguing that because
16 we couldn't find the money that it was destroyed.
17 That was used as an example of the exigent
18 circumstances and one of the four factors that there
19 was a possibility that evidence could be destroyed,
20 there was a possibility that the t-shirt could be
21 destroyed, hidden, burned or otherwise discarded such
22 that the police would not be able to locate that
23 piece, that item, that piece of evidentiary -- that
24 piece of evidence. Your Honor, we're not suggesting
25 that the defendant is guilty because we couldn't find

1 the money.

2 The third issue that I would like to address is
3 that it's an incorrect statement or characterization
4 by the defense. It's the State's position that
5 responding officers did have the right to enter the
6 premises at the moment they arrived
7 on the premises due to hot pursuant and exigent
8 circumstances. The fact that the officers chose not
9 to exercise that right at the time does not waive
10 that right.

11 They tried to reduce damage to civilian property
12 by obtaining a key to the house so they did not have
13 to break down the door. That does not waive any
14 expectation or any right that they had in securing
15 the premises, securing the defendant, securing his
16 escape and securing any evidence that may be inside.
17 Thank you, Your Honor.

18 **THE COURT:** Okay. With respect to the show-up
19 identification, everyone knows that show-up ID's are
20 generally, per se, unduly suggestive. But I
21 believe -- do you have something else?

22 **MR. JOHNSON:** Your Honor, I hate to interrupt,
23 but there's just one thing I wanted to clarify.

24 **THE COURT:** Sure.

25 **MR. JOHNSON:** It was my understanding that the

1 witness from the store testified that she was
2 preparing a statement but she stopped because they
3 told her that they have got somebody. That's when
4 she left to go to the scene.

5 **MS. GARFIELD:** It came over the radio. If I
6 recall, it came over the radio that they had someone.
7 Investigator Thomas left and then he came back and
8 got her.

9 **MR. JOHNSON:** And that's why she stopped to go.

10 **MS. GARFIELD:** Right. She stopped writing. So
11 she didn't stop. He left and then he came back and
12 picked her up. So she did not finish her statement
13 because he left.

14 **MR. JOHNSON:** But my thing is, Your Honor, there
15 was some question about when the ID was taken or when
16 she actually got there hours wise. The state had
17 indicated it was about 30 minutes. I was just
18 looking at her written statement that was stopped
19 short. It started at 11:10 p.m. This happened at
20 8:54. So it makes it almost two hours, Your Honor.
21 So it was not immediately after this crime that she
22 did the show-up line-up. This was at least two hours
23 after it, going by her own statement.

24 **THE COURT:** Okay.

25 **MS. GARFIELD:** Your Honor, I'm just going by

1 what the victim testified to.

2 **MR. JOHNSON:** And that's all I did.

3 **MS. GARFIELD:** And that's what she reported.

4 But she wasn't crossed on time. I don't know
5 anything about the time. It wasn't asked.

6 **THE COURT:** Okay. All right. Generally show-up
7 ID's are suggestive. But then you also have to look
8 at the totality of the circumstances. And I believe
9 the State has met its burden of proof in that regard.
10 So I'm going to allow the identification of both the
11 clerk and the cabbie. All right. And then as to the
12 search, one moment.

13 (Pause)

14 **THE COURT:** All right. In this last matter I
15 just want to look at these cases a little more
16 carefully, and I'll take that under advisement until
17 tomorrow morning. All right. 9:30. And we did the
18 ruling before that so you know how to prepare your
19 opening. I put on the record which ones I was not
20 going to ask based on the State's objection.

21 **MS. GARFIELD:** Okay.

22 **MR. JOHNSON:** And, Your Honor, the only other
23 thing is the 911 transcript. We have agreed to make
24 that a part of the record.

25 **THE COURT:** Okay.

1 **MR. JOHNSON:** I have my copy. And if you can,
2 will you make me a copy of it? I'll make this copy a
3 part of the record.

4 **MS. GARFIELD:** Has your copy got holes in it?

5 **MR. JOHNSON:** Yes. Well, we can do it in the
6 morning if you just want to make a copy in the
7 morning.

8 **MS. GARFIELD:** Yeah. I'll make a copy in the
9 morning. Oh, here.

10 (Pause)

11 **MR. JOHNSON:** Just for the record, Your Honor,
12 we're trying to get a clean copy and we'll make it a
13 part of the record tomorrow.

14 **MS. GARFIELD:** I don't have a clean copy.

15 **THE COURT:** All right. And just so the Court is
16 clear, the shirt and the money that were obtained
17 were not in the suitcase, correct? And that's what
18 Mr. Rogers is indicating, that it was in plain view
19 once the officers entered the home.

20 **MR. ROGERS:** That has been the evidence so far.

21 **MR. JOHNSON:** Your Honor, also they found it.
22 He's not here, is he?

23 **MS. GARFIELD:** Sanders? He testified it was on
24 the floor in the bathroom.

25 **MR. JOHNSON:** I don't remember him testifying to

1 that.

2 **MR. ROGERS:** He did.

3 **MR. JOHNSON:** Your Honor, could I ask before you
4 make the decision that I could bring it up to clarify
5 that in the morning?

6 **THE COURT:** Sure.

7 **MR. JOHNSON:** Because I think that's a
8 significant issue.

9 **THE COURT:** Okay. And then the area that it was
10 found in is in the bathroom, in the room where the
11 bag was. That whole bedroom is where the suitcase
12 would have been.

13 **INVESTIGATOR THOMAS:** Correct.

14 **THE COURT:** Because then the issue becomes
15 whether or not he thinks he had an expectation of
16 privacy in the confines of that bathroom and room.
17 The State's position would be only as to the bag
18 because he was not staying there.

19 **MS. GARFIELD:** Right.

20 **THE COURT:** And not just because the bag is in
21 the confines of the room. Okay. Just to understand
22 your argument. Okay. And this will be Court's
23 Exhibit 1, defendant's requested voir dire as well as
24 the State's witness list.

25 **COURT REPORTER:** I've already marked 1 and 2.

1 **THE COURT:** Okay. Whatever the next one is.

2 (WHEREUPON, Court's Exhibit No. 3 is marked for
3 identification.)

4 (Whereupon, the proceedings are concluded for
5 the day, to be reconvened tomorrow morning)

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1 Tuesday, December 8, 2009

2 **THE COURT:** I wanted to go ahead and discuss the
3 ruling that I looked at last night. And my thoughts
4 on the search --

5 **MS. GARFIELD:** Your Honor.

6 **THE COURT:** Yes.

7 **MS. GARFIELD:** Before you do so, I just want
8 to -- and actually, Mr. Rogers wants to proffer for
9 you -- we spoke with our witnesses after court last
10 night.

11 **THE COURT:** Okay.

12 **MS. GARFIELD:** To kind of confirm, wanted to
13 make sure we had shared the proper information with
14 Your Honor. After speaking with Sergeant Sanders --
15 and he is here if you'd like to question him as
16 well -- he is the one that actually found the bags
17 belonging to the defendant. They were not found in
18 that bedroom.

19 **THE COURT:** Let's, to make the record clean, you
20 need to put him up.

21 **MS. GARFIELD:** Okay.

22 **MR. ROGERS:** The State calls Sergeant Sanders.

23 TAURUS D. SANDERS, after being recalled,
24 testifies as follows:

25 DIRECT EXAMINATION

1 **BY MR. ROGERS**

2 **Q** Good morning, Sergeant.

3 **A** Good morning.

4 **Q** I've got a couple of the questions for you about the
5 night of July 19th, 2008.

6 **A** Yes.

7 **Q** We spoke about that at some length yesterday. Do you
8 remember that?

9 **A** Yes.

10 **Q** I'd like to draw your attention to the house at

11 Do you remember that house?

12 **A** Yes, sir, I do.

13 **Q** When you made entry into that house, sir, did you
14 find any suitcases?

15 **A** Yes, I did.

16 **Q** And where did you find those suitcases?

17 **A** They were off to the left of the house. If you're
18 placing the house, it's on the left side. It's a
19 room. It's basically like a sunroom. And the bags
20 were in that room with some other items for storage
21 or whatever.

22 **MR. ROGERS:** Okay. Permission to approach the
23 witness, Your Honor?

24 **THE COURT:** Yes.

25 **Q** Sir, I'm going to show you two exhibits that have

1 previously been marked, State's Exhibit 14, State's
2 Exhibit 13. Do you recognize the house in that
3 picture?

4 **A** Yes. That's

5 **Q** And for the record, that was Exhibit 13. And Exhibit
6 14?

7 **A** Yes.

8 **Q** Okay, sir. For describing to the Court, if you're
9 looking at the house, is it safe to say that State's
10 14 is a front view of the house from the street?

11 **A** Correct.

12 **Q** And State's 13, how would you describe that?

13 **A** More of an angled view focusing on the left side.

14 **Q** Do you see the room where you found the suitcase?

15 **A** Yes.

16 **Q** Could you point to it for the Court?

17 **A** It's right here, the glass surrounding.

18 **MR. ROGERS:** Your Honor, I'd like the record to
19 reflect the witness is pointing to State's Exhibit
20 13, the left side of the house.

21 **THE COURT:** Okay.

22 **Q** And that is the room where you found the suitcase,
23 sir?

24 **A** Yes.

25 **Q** Were you able to determine who you believed that

1 suitcase to belong to?

2 **A** I assumed it was the defendant's at the time because
3 they had tags on it like from a bus station or tags
4 for check in or check out, like you were traveling.

5 **Q** And in that room that they were found in, can you
6 describe some of the other contents of that room?

7 **A** It just had other miscellaneous items, more like a
8 storage room. But the suitcases were definitely kind
9 of separated from everything else.

10 **Q** Was there any bed in that room?

11 **A** No. No bedroom.

12 **Q** While inside the house, sir, did you find the
13 defendant?

14 **THE COURT:** I'm sorry. What was the last
15 question? Was there any what?

16 **MR. ROGERS:** Was there a bed.

17 **THE COURT:** Okay. And you're referring to the
18 sunroom?

19 **MR. ROGERS:** Yes, ma'am.

20 **THE COURT:** Okay.

21 **Q** Sir, while you were inside the house, did you find
22 the defendant?

23 **A** Yes, sir. Inside the bathroom.

24 **MR. ROGERS:** Okay. If I may approach, Your
25 Honor?

1 **THE COURT:** Yes.

2 **Q** Sir, I'm going show you State's Exhibit 12. Do you
3 recognize the residence there?

4 **A** Yes, sir.

5 **Q** And what house is that?

6 **A** That's

7 **Q** And how would you describe this view of the house?

8 **A** It's more of the right side, focused on the right
9 side of the house.

10 **Q** And do you see the room where you found the
11 defendant?

12 **A** Yes, I do.

13 **Q** Can you point to that for the court?

14 **A** It's right here, this little outset.

15 **Q** And, Your Honor, I'd like the record to reflect the
16 defendant [sic] is pointing to State's Exhibit 12 on
17 the right side of the house.

18 **A** Witness.

19 **Q** Excuse me. The witness.

20 **THE COURT:** Okay.

21 **Q** Sir, did you find any suitcases in the room where you
22 found the defendant?

23 **A** No; no suitcases in the bathroom.

24 **Q** And in the room, in that bathroom, did you see any
25 items of evidentiary value in plain view?

1 **A** Yes, sir. I saw the yellow shirt on the floor along
2 with the money, some one dollar bills along the floor
3 as well.

4 **Q** At any time did you search the suitcase that was on
5 the other side of the house?

6 **A** No, sir, I didn't.

7 **Q** Do you have any personal knowledge whether or not
8 that suitcase was searched?

9 **A** I cannot recall if they were or not.

10 **Q** Okay. Thank you, sir. I have no further questions
11 at this time.

12 CROSS EXAMINATION

13 **BY MR. JOHNSON**

14 **Q** Officer, isn't it true that you did not individually
15 find the defendant? Isn't that correct?

16 **A** I was there when the door was opened and he was
17 apprehended by the other officers. I was standing
18 just outside the door.

19 **Q** Right. So he was inside the bathroom. Is that
20 correct?

21 **A** Correct.

22 **Q** And officers refeed to the bags. You are now saying
23 they wasn't in the room. Is that correct?

24 **A** I'm saying I located bags in the sunroom area, if
25 what's what we want to call it.

1 Q You say you located bags. But was those the
2 defendant's bags?

3 A I can't say for sure. I didn't look at the names on
4 the tag.

5 Q So you don't even know if those bags are the bags
6 that we're referring to, do you?

7 A As -- referring to as ...?

8 Q The bags that you found in that room, you don't know
9 that they are the defendant's bags, do you?

10 A Not 100 percent; no, sir.

11 Q Just saw some bags in the room?

12 A Yes, sir.

13 Q And you are not saying that they are the defendant's
14 bags, because you don't know, do you?

15 A Not for certain; no, sir.

16 Q All right, Officer. Also can you explain how your
17 police report, it says that a yellow shirt was found
18 inside the bag?

19 A I do not know. I did not write that report, sir.

20 MR. JOHNSON: I have no questions of this
21 witness, Your Honor.

22 THE COURT: Okay.

23 MR. JOHNSON: But I do -- would like to call
24 Investigator Thomas back to the stand.

25 THE COURT: Okay. Any redirect?

1 **MR. ROGERS:** Brief.

2 **THE COURT:** Sure.

3 REDIRECT EXAMINATION

4 **BY MR. ROGERS**

5 **Q** Sergeant, did you -- excuse me. Do you recall
6 finding any bags or suitcases in the bedroom near the
7 bathroom where the defendant was at?

8 **A** I do not for certain. No, sir, I don't. I don't.

9 **Q** Okay. Do you remember finding any other bags or
10 suitcases elsewhere in the house?

11 **A** No, sir.

12 **Q** Thank you, sir.

13 **MR. JOHNSON:** Just one follow up, Your Honor.

14 RECROSS EXAMINATION

15 **BY MR. JOHNSON**

16 **Q** But did you look?

17 **A** We checked all the rooms in the house. And I would
18 say as a scanning look, yes, but not for search
19 purposes.

20 **Q** You didn't look, did you?

21 **A** Not for search purposes, no.

22 **Q** So you don't know, do you?

23 **A** Other than the bags I saw in the other room; no, sir.

24 **Q** And you don't know who those bags belonged to?

25 **A** No; not for certain.

1 **MR. JOHNSON:** No other questions, Your Honor.

2 **THE COURT:** Thank you. Sir, you can step down.
3 All right. Are there any more witnesses for the
4 State on this issue?

5 (No response)

6 **THE COURT:** All right. Defense. State, you
7 don't have any more witnesses on the issue?

8 **MR. ROGERS:** Yes, Your Honor. I'm sorry. We
9 were conferring for a second.

10 **THE COURT:** That's fine.

11 **MR. ROGERS:** The State has no other witnesses at
12 this time on that issue.

13 **THE COURT:** That's okay. Does the defense have
14 a witness?

15 **MR. JOHNSON:** I'd like to call Investigator
16 Thomas back to the stand.

17 **THE COURT:** Okay.

18 ARTHUR L. THOMAS, after being recalled to the
19 stand, testifies as follows:

20 DIRECT EXAMINATION

21 **BY MR. JOHNSON**

22 **Q** Investigator Thomas, on the case summary report, --

23 **A** Yes.

24 **Q** -- the armed robbery, do you have that before you?

25 **A** I do.

1 Q Could you go down to -- let me make sure I get the
2 lines right. On the 12th line where it says -- it
3 starts on that line I think "minutes later"?

4 A On which line is it on? The 12th line?

5 Q The 12th line. The 12th written line.

6 A Okay.

7 Q It says: "Minutes later". If you could go down to
8 "passed the Exxon station" where it says: "the guy"?

9 A Okay.

10 Q Could you read from down to the end of the paragraph?

11 A All right. "The guy at the Greyhound station also
12 stated he ready to rob the store"? Is that what
13 we're talking about?

14 Q Yes. Right.

15 A Okay. All right. "The suspect had two bags in the
16 house, a yellow" --

17 Q I just want you to read, start with "the guy" and
18 just read that whole paragraph. Just start at "the
19 guy" and read down to the end of the paragraph. Read
20 it out loud.

21 A Okay. "The guy at the Greyhound station all stated
22 that he ready to rob the store." Is that right?

23 Q Right.

24 A Okay. "The suspect had two bags in the house. A
25 yellow shirt was found in one of the bags. A knife

1 was found on the floor under cushions of living room
2 chair."

3 **Q** Okay.

4 **A** All right.

5 **Q** So in your police report you wrote that the yellow
6 shirt was found in the bag. Is that correct?

7 **A** I do have that in there.

8 **Q** And yesterday when you said that it wasn't found in
9 the bag, you had misspoken. Is that correct?

10 **A** Well, actually, when I spoke to Sergeant Sanders, he
11 advised me of exactly where the shirt was located. I
12 focused on the suspect when we pulled him out of the
13 bathroom area and I pulled him to the side and
14 started questioning him. Sanders and the other
15 officers had located the evidence, bag, money and
16 clothes; and when I went back I thought that the
17 shirt had came out the bag. Sanders verified that it
18 came out the restroom with the money.

19 **Q** But there is nothing in any of your police reports
20 that indicate that you found a yellow shirt on the
21 bathroom floor. Is that correct?

22 **A** No, sir.

23 **Q** But there is something in your report to indicate
24 that the yellow shirt was found in the bag. Is that
25 correct?

1 **A** That's correct, sir.

2 **Q** And you filled that report out based on information
3 you received that day. Is that correct?

4 **A** I filled this out based on information I had that
5 day.

6 **Q** And you wouldn't normally put anything in there that
7 you wasn't told. Is that correct?

8 **A** Obviously I put something in there that I assumed,
9 and that was my error.

10 **Q** That ain't what I asked you.

11 **A** That's my answer.

12 **Q** You wouldn't normally put anything in that report
13 that you was not told. Is that correct?

14 **A** Again, obviously I put something in there that I
15 assumed. I assumed that it came out of the bags.

16 **Q** Why would you assume it came out of the bags? Based
17 on what?

18 **A** Just on when I got back in the room.

19 **Q** Okay. Based on what facts in the room that made you
20 think that came out the bag? Probably that there
21 wasn't nothing on the floor in the bathroom?

22 **A** Based on what I was given at the time.

23 **Q** Based on the facts at the time. Is that correct?
24 You wouldn't make up nothing?

25 **A** No. I'm not trying to make up anything.

1 Q So based on the facts that you had at that time the
2 shirt came out the bag. Is that correct?

3 A That's what my notes indicate, sir.

4 Q I have no other questions.

5 CROSS EXAMINATION

6 **BY MS. GARFIELD**

7 Q Investigator Thomas?

8 A Yes.

9 Q When did you write this report?

10 A Sometime later.

11 Q It was not written that night?

12 A No.

13 Q In fact, the next day after this incident --

14 **MR. JOHNSON:** Your Honor, objection. She is
15 leading the witness again.

16 Q The next day --

17 **THE COURT:** Sustained.

18 Q -- after this incident, did you work on that day?

19 A Yes.

20 Q And do you recall what kind of cases you were working
21 that day?

22 A I worked a homicide the very next day.

23 Q So is it safe to say, was this a priority or was the
24 homicide a priority?

25 A The homicide became a priority. That's why I could

1 not re-interview the victim the following day. I had
2 to cancel her interview. She actually came to
3 headquarters and I had to send her away because we
4 had a homicide.

5 Q So you actually filled in this report later?

6 A I did.

7 Q And after reading this report in preparation for
8 trial, was there many things that you did not put in
9 it?

10 A Yes.

11 Q And you did in fact search those bags --

12 MR. JOHNSON: Your Honor, objection.

13 Q I'm sorry. Did you search those bags?

14 A Yes.

15 MS. GARFIELD: Judge, this is a defense witness.

16 I can lead now.

17 THE COURT: Yes.

18 MS. GARFIELD: Thank you.

19 A I did search the bags, yes.

20 Q And in those bags what was your purpose of searching
21 those bags?

22 A I was looking for identification for the individual
23 here. And I believe I found the wallet and maybe a
24 cellphone or something out of the bag.

25 Q And that's what you took into evidence?

1 **A** Yes.

2 **Q** And that was for purposes of identifying the
3 defendant?

4 **A** Correct.

5 **Q** And, in fact, you remember taking that yellow shirt
6 off the floor?

7 **A** I remember -- I remember picking the shirt up and
8 putting it on the bed for Nelson, yes.

9 **Q** But you didn't write that in your report?

10 **A** No, I did not.

11 **Q** And what you're saying today is the fact that you
12 wrote it was found in the bag was a mistake?

13 **A** That was an error on my behalf, and I apologize.

14 **Q** Thank you. Nothing further.

15 REDIRECT EXAMINATION

16 **BY MR. JOHNSON**

17 **Q** Officer Thomas?

18 **A** Yes, sir.

19 **Q** You are now saying that you remember going in the
20 bathroom, taking a yellow shirt off the floor and
21 putting it on the bed?

22 **A** No. I remember putting the yellow shirt on the bed,
23 yes.

24 **Q** But you didn't take it off the floor in the bathroom,
25 did you?

1 **A** I can't recall where I picked it up from, no. I
2 don't remember putting it --

3 **Q** In your report you said it came out of the bag?

4 **A** As I explained earlier, I'm in error with that.

5 **Q** Well, how did --

6 **A** I took the wallet. In the report I don't even
7 mention taking the wallet out of the bag. And as the
8 prosecutor has mentioned, I did this report sometime
9 later after working a homicide and so I am in error
10 with my notes.

11 **Q** Well, how can you remember so clearly now
12 something that you couldn't remember an hour or so or
13 within a day or so after this incident happened?
14 Wouldn't it be fair to say that the things --

15 **A** What do you mean by a day or so, counsel?

16 **Q** Wouldn't it be fair to say that the things that you
17 report in a report a day or so would be more clear in
18 your mind than things that you remember now?

19 **A** Again, counselor, I did not confer with Sanders after
20 the homicide to re-do my notes. What I did was my
21 notes. I did recall going in the bag and retrieving
22 articles. The evidence that counsel put up yesterday
23 was a wallet and a cellphone that I forgot about, and
24 that's what I got out of the bag.

25 Conferring with what we had as far as him being

1 in the bathroom and what have you, Sanders had the
2 recollection of that because they did that portion of
3 it. Like I said, I focused on the young man. As
4 soon as they pulled him out, I pulled him to the side
5 and started asking him questions.

6 Q So now it's your statement that you went in the bag
7 and took everything out of the bag but the yellow
8 shirt?

9 A No. I didn't take everything out the bag.

10 Q You say you took the wallet, you took ID?

11 A I recovered identification because your client chose
12 to not speak any further without an attorney.

13 Q How did all the other stuff get on the bed? There
14 was other stuff on there; shoes, clothing, stuff like
15 that it out of that bag on the bed?

16 A Again, I'm not certain what all was on the bed. And
17 I can't tell you in taking out, looking for the
18 wallet or looking for the other items what I placed
19 on the bed.

20 Q You don't remember. But do you remember placing the
21 yellow shirt on the bed?

22 A Yeah. It's pertinent evidence. I remember that,
23 yes.

24 MR. JOHNSON: I have no other questions, Your
25 Honor.

1 **THE COURT:** Okay. Any recross?

2 **MS. GARFIELD:** No, ma'am.

3 **THE COURT:** Okay, sir. You can step down.

4 **THE WITNESS:** Thank you.

5 **THE COURT:** Any further witnesses for the
6 defense?

7 **MR. JOHNSON:** No, Your Honor. I have none.

8 **THE COURT:** Okay. Thank you.

9 (Pause)

10 **THE COURT:** All right. Mr. Johnson, you had
11 something?

12 **MR. JOHNSON:** Yes, Your Honor. I'd just like to
13 address the Court about some issues that were brought
14 up. The issue about the bags, the officer testified
15 that he saw bags in another room but he couldn't say
16 that they was the defendant's bag. Officer Thomas
17 just testified that he saw bags in the room because
18 he took the stuff out and put it on the bed. He puts
19 my client's bags in that room.

20 He didn't say he brought no bags in there out of
21 another room. He said that those bags was in the
22 room and he took things out except for the yellow
23 shirt. The officer said he saw bags in the other
24 room but he couldn't say they was my client's bags.
25 We submit that it's still the same, that my client

1 was an invited guest in that house, he was in that
2 room and the bags was in that room.

3 **THE COURT:** Okay. So it's your argument to the
4 Court the expectation of privacy in the bags?

5 **MR. JOHNSON:** It's expectation of privacy in the
6 bags; as well as relate to the room of the person
7 that invited him inside, he would have expectation of
8 privacy within that room.

9 **THE COURT:** Okay. But I don't know that we have
10 testimony about anything other than that his bag was
11 there, no testimony that he was specifically a guest.

12 **MR. JOHNSON:** Well, there is testimony that he
13 was allowed to bring his bags in that room, in that
14 house and keep his bags there for safekeeping. There
15 is testimony that there was no breaking or entering
16 into the house, which means that my client did not
17 break into the house. There is testimony that he has
18 been there before. There is testimony that he was
19 taking a shower.

20 When looking at the circumstances, the complete
21 circumstances, it can be inferred that he was a guest
22 in that house. He was taking a shower. There was
23 testimony that he had been allowed to keep his bags
24 there. He had been there before. And there is no
25 testimony that he broke into the house allegedly

1 after the crime.

2 **THE COURT:** State.

3 **MR. ROGERS:** First, Your Honor, I don't believe
4 there's any testimony that the defendant was taking a
5 shower. I believe that's not in the record at all,
6 in the least. He was in the bathroom, but there has
7 been no testimony, there has been no testimony about
8 a shower.

9 Also, Your Honor, as far as the defense argument
10 that there was no breaking and entering, just because
11 the defendant, he didn't -- the State did not find a
12 broken door, broken windows doesn't mean the
13 defendant had a lawful right to be inside the
14 premises. The front door could have been left open.
15 The tenants were nearby. So there's been no -- the
16 breaking and entering into the house, that's not
17 necessarily an issue in this case.

18 There has been no testimony the defendant was an
19 invited guest, much less an overnight guest in the
20 residence. The only testimony has been that he was
21 allowed to keep his suitcase in the house. Your
22 Honor, the State's argument is that since there has
23 been no testimony that the defendant was an invited
24 guest or an overnight guest, he had no heightened
25 expectation of privacy and no security interest in

1 anything in the residence beyond his suitcase. Since
2 he does not have a heightened expectation of privacy,
3 he does not have proper standing to challenge the
4 search of that residence, first of all.

5 Second of all, we have the hot pursuit and
6 exigent circumstances discussion we had yesterday.
7 The police had a right to go inside the premises
8 immediately upon finding the defendant inside the
9 residence upon their information and belief that the
10 defendant who had just committed the armed robbery
11 was inside that residence.

12 Thirdly, Your Honor, they were allowed to search
13 the residence by the co-tenant who came to the scene
14 and identified himself as a tenant of that residence.
15 That authority granted to them -- or the authority to
16 search the residence, the verbal consent to search by
17 the co-tenant was enough for the officers to gain
18 entry into the residence.

19 However the Court finds that the officers were
20 lawfully inside that residence, once the officers
21 breach the threshold and step inside that residence,
22 they are able to seize any piece of evidentiary
23 value, any item that they find to be immediately
24 apparent as evidence of a crime to seize and search
25 that item as long as it's in plain view.

1 Specifically, Your Honor, I'd like to site
2 Maryland Penitentiary v. Hayden which I cited
3 yesterday, 387 U.S. 294, as well as State v. Brown.
4 The State v. Brown cite, Your Honor, is 289 S.C. 581.
5 Both of those cases support the State's position that
6 once the officers are inside the residence to arrest
7 the defendant, as long as they see that yellow shirt
8 which has been identified numerous times as the
9 bright yellow shirt that was used in the robbery,
10 once they see that item in plain view, regardless of
11 where that item is, as long as it's in plain view,
12 the officers can seize that piece of evidence.

13 **THE COURT:** Okay. Go ahead.

14 **MR. JOHNSON:** Your Honor, there's no evidence
15 that yellow shirt was in plain view. The evidence is
16 on the record in the police report that the yellow
17 shirt was taken out of the bag. The police have
18 presented -- or the State has presented no evidence
19 to conflict that, except the officer saying that he
20 may have.

21 They have to go by their own records, their own
22 reports. They have to go by things based on that.
23 In their own police report written by Investigator
24 Thomas, he wrote in that he took the yellow shirt --
25 that the yellow shirt was taken out of the bag. As a

1 result, the State can't come now and say, well, we're
2 speculating. They have to go by what they wrote in
3 their reports.

4 **THE COURT:** Go ahead.

5 **MR. ROGERS:** Your Honor, the State is bound by
6 the facts of the case. And the facts of the case are
7 that Sergeant Sanders made entry into the residence.
8 He testified twice to this Court that he found -- he
9 observed the yellow shirt at the defendant's feet
10 inside the bathroom when they arrested the defendant.
11 Just going on his testimony alone, he has testified
12 twice that that item was found on the bathroom floor,
13 not inside any kind of locked compartment, not
14 underneath anything, not hidden in any manner; in
15 plain view on the floor at the defendant's feet.

16 Now, while the report by Investigator Thomas
17 does mention that the item was taken from a suitcase,
18 Your Honor, he has testified today and has clarified
19 his position that his involvement in the case, his
20 main goal was to investigate the defendant and to go
21 inside trying to get more information out of him.

22 Once he decided to take the Fifth Amendment, the
23 officer then attempted to identify him by going
24 through the suitcase to seek some type of identifying
25 information which is where he found the wallet and

1 the driver's license and they were able to identify
2 the defendant.

3 The information in the report where it says that
4 the yellow shirt was taken from the suitcase, it has
5 already been explained as an error by Investigator
6 Thomas, an oversight because he was distracted by the
7 murder and the report was written days later.

8 He also testified at least twice in court that
9 he remembers taking the yellow shirt and placing it
10 on the bed. I think that explains where the yellow
11 shirt came from and how it ended up on the bed.

12 **THE COURT:** Okay. Anything further?

13 **MR. JOHNSON:** Just finally, Your Honor; I'm
14 probably sitting through the wrong hearing because
15 the sergeant did not testify that he saw a shirt at
16 the feet of the defendant. He just testified that he
17 didn't even arrest the defendant, that other people
18 arrested the defendant. He was at the door. I do
19 not remember any testimony where he said he saw a
20 yellow shirt at the feet of the defendant.

21 Now, the state maybe would like that to be the
22 case, but I think they have to go by the facts of the
23 case. And that was not testified by no Sergeant.

24 **MR. ROGERS:** Your Honor, if I mischaracterized
25 that, I do remember the witness saying that he

1 found -- he remembers seeing the shirt on the floor
2 of the bathroom. If I added at his feet, I
3 apologize. But his testimony was that he remembers
4 seeing the yellow shirt on the floor of the bathroom.

5 **THE COURT:** All right. I just want to look at
6 my notes as well.

7 (Pause)

8 **THE COURT:** All right. I'm looking at
9 yesterday's notes. And under Taurus Sanders, he does
10 say that he did a sweep of the house and he found
11 clothing and money on the bathroom floor.

12 With respect to today's testimony, my ruling
13 would be that the police had a reasonable belief that
14 the tenant had a common and apparent authority to
15 enter into the house by virtue of the key. Once the
16 tenant allowed the police to go in, then the
17 possessory interest, if at all, of the defendant
18 would be in his suitcase.

19 I realize that Investigator Thomas has certain
20 information in the report and then he's got certain
21 information to which he's testified. But because I
22 do have testimony or evidence on the issue, then the
23 Court just has to allow that as well as Sergeant
24 Sanders' testimony in my opinion to meet the
25 preponderance of the evidence at this time.

1 Obviously that will be then later on a jury issue for
2 Mr. Johnson to argue, any discrepancy in the
3 testimony.

4 But I believe at this threshold hearing, the
5 preponderance of the evidence does indicate that the
6 tenant had an interest into the home, allowed the
7 officers to enter the home by the key. So the
8 officer had to have a reasonable belief that he had a
9 common and apparent authority to enter into that
10 house, meaning the tenant. And that's what the
11 officers' belief was at the time.

12 Once they're in, then the arguments about plain
13 view and hot pursuit I think would follow. And then
14 we also have testimony about the clothing and money
15 actually being found on the bathroom floor. As I
16 indicated, there's some discrepancy there, but it's
17 been cleaned up, and also there is testimony on the
18 record at this point in time. So the Court would
19 allow it in and respectfully deny the motion to
20 suppress.

21 Okay. Any other issues at this time?

22 **MR. JOHNSON:** I have nothing else, Your Honor.

23 **THE COURT:** Okay. Are you all ready for your
24 jurors?

25 **MS. GARFIELD:** Yes, ma'am.

1 **THE COURT:** Okay. Jurors, please.

2 (Jury in at 9:52 a.m.)

3 **BAILIFF:** The jury is all present, Your Honor.

4 **THE COURT:** One moment.

5 (Pause)

6 **THE COURT:** Good morning, ladies and gentlemen
7 of the jury panel. We are about to begin the trial
8 of The State vs. Richard Kough. As I indicated
9 yesterday, Mr. Kough has been charged with the
10 offense of armed robbery. The armed robbery
11 indictment is only the formal written instrument by
12 which this case is actually brought to trial. So
13 that is not to be considered for your consideration
14 at all.

15 He has pled not guilty and therefore is
16 exercising his Constitutional right to come to a jury
17 trial. Therefore, you as the jurors shall decide his
18 guilt or innocence. But before we begin this trial
19 I'd like to lay out some various instructions and
20 parameters of the trial to you.

21 All of the issues that we handle in our court
22 are very serious issues. They're with real people,
23 not actors as you might see on TV. So I'd like you
24 to know that you will hear testimony from live
25 persons and that you as the jurors will be the sole

1 judge of the facts.

2 Obviously there is a dispute in the evidence and
3 facts and testimony here today. And so you are the
4 sole judges of the facts and you determine the
5 credibility or the believability of all witnesses.

6 I am the judge in the case and therefore will
7 determine what the law will be. And I will determine
8 and give that to you at the conclusion of the case.
9 You will have to accept the law as I give it to you,
10 not what you think the law ought to be or what
11 someone has told you it is, but it must be only the
12 law that I give to you in this case as it applies to
13 the facts in this case.

14 During this trial the State has the burden of
15 proof in the case. Their burden of proof is beyond a
16 reasonable doubt. They have to convince the jurors
17 that the defendant is in fact guilty beyond a
18 reasonable doubt. The State will begin presenting
19 its case with both parties first giving an opening
20 statement which is just a general overview of what
21 you're expected to hear in terms of testimony and
22 other evidence in the case. Both the State and the
23 defense has that opportunity to present opening
24 statements.

25 Never is there anything that the lawyers say,

1 none of it is ever evidence. All your evidence will
2 be the testimony elicited from witnesses and any
3 other general evidence that we will hand to you in
4 the courtroom.

5 After the State presents and the defense present
6 their opening statements, then the State will present
7 its case through witnesses. The defense has the
8 opportunity to cross examine. The defense is never
9 required to prove himself innocent. So the defense
10 does not even have to put up a case. Instead, the
11 State has to meet its burden of proving the case
12 beyond a reasonable doubt.

13 There will be a portion of the trial at which I
14 will instruct the defense of his rights as to whether
15 or not he wishes to testify or not testify. That
16 decision is totally up to him after I advise him of
17 his rights at the appropriate time. But it can never
18 be considered by you that the defense either does not
19 testify or does not put up a case because again it's
20 the State's burden of proof.

21 Sometimes in the trial you will hear the parties
22 making objections. They've all gone to law school.
23 I know they'll meet the highest professional and
24 ethical standards, but they do understand courtroom
25 etiquette and evidentiary rules as well as criminal

1 law. So they will try to object if they believe that
2 something elicited from a witness is objectionable or
3 improper. If I overrule the objection, then that
4 means I'll allow it to go forward. If I sustain it,
5 then I agree that it's improper and would not be for
6 your consideration.

7 Every so often you will see me ask the lawyers
8 to approach the bench. That's because I'm going to
9 discuss with them a matter without having to each
10 time require you to go out. If I think that I have
11 to send you out because we have to put everything on
12 the record with the court reporter taking everything
13 down, then I'll do so. But most times I'll try to
14 resolve the issues in what we call a side bar so that
15 you don't have to keep continually going in and out.

16 We want to thank you on behalf of all the
17 parties and definitely the Court for your service.
18 Being a juror is one of the highest callings to
19 public service in our Democratic society. And so we
20 thank you for participating in this opportunity, and
21 we certainly hope you find it educational and
22 informative.

23 I really enjoy my job because every day, every
24 hour I'm learning something new. And so I hope that
25 you will find it educational and informative as well

1 as you are sitting there as serious jurors with
2 making sincere and serious decisions as well. Thank
3 you for this opportunity to serve. And I now will
4 direct your attention to the trial. State, you may
5 begin with your case.

6 **MR. JOHNSON:** Your Honor?

7 **THE COURT:** Yes.

8 **MR. JOHNSON:** Could we have the witnesses
9 sequestered, please?

10 **THE COURT:** Yes.

11 **MS. GARFIELD:** We would just ask the defense
12 witnesses also be sequestered.

13 **MR. JOHNSON:** That's fine, Your Honor.

14 **THE COURT:** All right. The State may proceed
15 with your opening statement.

16 **MR. ROGERS:** Thank you, Your Honor. May it
17 please the Court. Your Honor?

18 **THE COURT:** Oh. One moment. I apologize. One
19 of the bailiffs did indicate that a juror might wish
20 to take notes. We expect that this case will just go
21 through today, at most tomorrow morning. So I'm
22 going to advise that you not take any notes. And
23 that would mean as to all jurors. Rely on your
24 collective memory at the time of your deliberations.
25 Thank you very much.

1 **MR. ROGERS:** Thank you. Your Honor.

2 **THE COURT:** And one other thing. I really
3 apologize. I'm sorry. We have been doing so much
4 pre-trial issues that I forgot my script in my head.
5 The other thing is no communications devices
6 throughout the trial. You are not to Tweet, Twitter,
7 do any of those types of things with respect to the
8 trial.

9 You are to not pay attention to any news media
10 accounts or reports with respect to the trial. As I
11 will remind you continuously, do not discuss the case
12 in any shape, form or fashion. Even the subject
13 matter, as I indicated yesterday, we don't want
14 anyone to inject their opinions on you. We want you
15 to decide the case based on what goes on in this
16 courtroom.

17 As to the alternates, I expect you to pay just
18 as close attention, just as if you were a regular
19 juror. On several occasions I've had to replace an
20 alternate into the main jury pool to actually be a
21 decision maker in the case. So I expect you to pay
22 just as close attention and not sit back there and
23 relax. You are a part of this trial as well. Thank
24 you. I promise you that's the conclusion of my
25 opening remarks. And to you, Mr. Rogers.

1 **MR. ROGERS:** Thank you, Your Honor. May it
2 please the Court. Your Honor, counsel, ladies and
3 gentlemen of the jury, Tonya McGeorge is an average
4 citizen of this county, just like any citizen you
5 might meet on the street or any person you might know
6 personally.

7 On July 19th, 2008 she went to work. She is a
8 hard working mother of three. She is married. This
9 date was special for a couple of different reasons;
10 first, because it was her first day back to work.
11 She had recently been in a motorcycle accident. She
12 was out sick and had been out a number of weeks
13 recuperating. This was her first day back. She had
14 been eager to get back to work, earn a paycheck for
15 her family.

16 On July 19th she went to work just like she'd
17 done on any number of different occasions, except
18 this day was different. Because on that day the
19 defendant walked through those doors of her Corner
20 Pantry store. He walked through the doors of that
21 store. He waited until other customers had left and
22 completed their business.

23 And when the store was empty, he walked up to
24 the counter. He requested a box of Newport
25 cigarettes. Tonya turned around, retrieved those

1 cigarettes for him. As she handed them to him, he
2 handed her a 20 dollar bill. She looks down to take
3 the money and make change. When she looks back up,
4 he is holding a knife. And that's when he robbed
5 her.

6 She remembers this very clearly. She took time.
7 When he demanded money, you're going to hear her
8 testify, that she looked down, she gave him the
9 twenties and she looked at him. Gave him the tens
10 and she looked at him. She gave him the fives, she
11 looked at him. She gave him the one's, she looked at
12 him. She took this time so that she could remember
13 every detail of his appearance so that she could help
14 the police find him.

15 As soon as he gets the money, he exits the store
16 and runs away. She calls 911, does exactly what
17 she's supposed to do. Tonya McGeorge is just like
18 everybody else, except she's special, because on
19 July 19th she became a victim of armed robbery.

20 Good morning, ladies and gentlemen. My name is
21 Andrew Rogers. And I along with my co-counsel,
22 Ms. Dolly Justice Garfield, we represent The State of
23 South Carolina. It is our responsibility to
24 prosecute this case on the behalf of the citizens of
25 this county and this state.

1 It is defense counsel's job, that's Mr. Charlie
2 Johnson, to represent the defendant. And it's the
3 Judge's job to act as a referee, to decide the facts
4 of the case. Or excuse me. To decide the law of the
5 case.

6 Now, part of our responsibility here as the
7 prosecutors is to present the facts of this case. It
8 is our burden to prove to you that the defendant did
9 in fact rob the Corner Pantry store on July 19th,
10 2008. That is our burden of proof. That's something
11 we must do. That's a burden that we welcome.

12 We're going to be able to prove to you beyond a
13 reasonable doubt the defendant did in fact commit
14 this armed robbery by producing a number of witnesses
15 today. We'll call a number of people to the stand.
16 The first witness you're going to hear from is
17 Ms. Tonya McGeorge. She is going to relay to you the
18 facts as she recalls them. She is going to walk you
19 through her day on July 19th. And she will testify
20 that she remembers the defendant producing a knife
21 and robbing her at knife point.

22 You're also going to hear from Carl Quintyne.
23 Carl Quintyne is a very interesting character. Carl
24 Quintyne is important because he is a cab driver.
25 And across the street from the Exxon is the Greyhound

1 bus station. And you're going to hear that
2 Mr. Quintyne was parked at the Greyhound parking lot
3 like he's done on any number of days. It was a warm
4 July night. So he had his windows down. Mr.
5 Quintyne was waiting on a taxi fare. He was waiting
6 on a customer to take to a different location. And
7 while he was waiting he saw the defendant walk past
8 his car.

9 Carl Quintyne will tell you that he heard the
10 defendant say: I need money, I'm going to go rob the
11 Exxon, you all get out of here. He thought it was a
12 joke at first. But sure enough, moments later
13 numerous police car arrived on the scene. At that
14 time Carl drove away. He had to take his fare, but
15 he came back and assisted the police later.

16 You're also going to hear from a Trina Eastwood.
17 Ms. Eastwood was the first officer who arrived on the
18 scene. It is her job to secure the location and to
19 kind of take control of the incident location at the
20 Exxon at the Corner Pantry. She was the first
21 responding officer on the scene.

22 You're also going to hear from Ms. Lisa Taylor.
23 Ms. Lisa Taylor was a friend of Tonya McGeorge. She
24 was another employee of the business. And after
25 Tonya called 911, she called Lisa and said, Lisa,

1 you're never going to guess; I just got robbed. Lisa
2 came out to the premises to help Tonya out, to make
3 sure everything was all right.

4 You're going to hear that Lisa and Tonya went in
5 the police car with Investigator Thomas to the scene.
6 So the police had found a suspect and wanted to see
7 if Tonya was able to recognize this person. You're
8 going to hear that Tonya was in fact able to identify
9 the suspect in custody as the defendant, as the
10 person who had robbed her moments earlier.

11 You're also going to hear from Sergeant Taurus
12 Sanders. Taurus Sanders was stationed in Five Points
13 which is very close to the Exxon station, the Corner
14 Pantry station. Sergeant Sanders responded to the
15 scene based on a call from dispatch. He didn't go to
16 the Exxon station. He instead went to a house a
17 short distance away down the street.

18 Through the testimony we will hear that that
19 location was about a block and a half away from the
20 incident location where the robbery occurred, that
21 when he arrived on the scene he saw a white male
22 standing inside a bathroom. He'd observed that. The
23 officers were able to observe this suspect through
24 the window because the lights were on inside and the
25 blinds were up and it was dark outside. So they

1 could see inside the residence.

2 You're going to hear from Sergeant Sanders that
3 he and another officer were on the SWAT team. They
4 were the most trained individuals on the scene. So
5 they were the first people to make entry into the
6 residence. The cops didn't go in and break down that
7 door that night. They had the defendant inside.
8 They waited until a tenant, somebody who had a key to
9 the building, was able to come forward, produce that
10 key, give them consent to go inside.

11 At that time after that person opened up the
12 door, then the police went inside. Sergeant Sanders
13 is going to tell you that he went inside, cleared the
14 residence. They found no other individuals besides
15 the defendant. He was the only person in that house.
16 The defendant was hiding in the bathroom, that he had
17 a hook latch that had locked the bathroom door. He
18 shut the bathroom door and locked himself in with
19 that hook latch. They kicked down the door, they
20 removed the hatch and went inside and arrested the
21 defendant.

22 You'll also hear that some clothing was found.
23 Now, this is important. When Tonya was robbed, when
24 she called 911 and when she spoke to the officer and
25 gave a description of the suspect, she described the

1 defendant: Height, weight, build, appearance. She
2 also described the man who robbed me had a yellow
3 shirt, a bright yellow shirt.

4 You will hear Sergeant Sanders testify that when
5 they made entry into the residence and they found the
6 suspect, they found the defendant in the bathroom.
7 And on the floor of the bathroom was a bright yellow
8 shirt. And this was taken into custody, taken into
9 evidence.

10 The defendant wasn't wearing a bright yellow
11 shirt in the residence. He was wearing a red shirt.
12 Despite his change in appearance, both Tonya McGeorge
13 and Carl Quintyne were able to personally identify
14 the defendant as the person that Tonya saw rob her
15 and the person that Karl heard admit: I'm going to
16 go rob the Exxon.

17 After Sergeant Sanders testifies you're going to
18 hear from Investigator Paul -- excuse me. It's Paul
19 Nelson with the CPD. He is in charge of evidence
20 collection. Kind of like CSI. But this is the real
21 world. I don't know if you're familiar with NCIS.
22 There is an evidence tech at NCIS that can take a
23 hair sample and give you a picture from orbital
24 satellites. This is the real world.

25 Nelson was able to go through, process the scene

1 and try to collect fingerprints. It's a busy place,
2 a busy, common place, lots of fingerprints. He was
3 unable to find a fingerprint that matched the
4 defendant. That's okay.

5 He secured the video surveillance. You're going
6 to be able to see that video surveillance. The video
7 surveillance is not the most crystal clear. It's not
8 like NCIS or CSI. We can't tell you how many
9 freckles he has. But you can see a white male
10 robbing the store. You're going to be able to watch
11 that.

12 Mr. Nelson also went to the scene on Pine Street
13 where the defendant was arrested, took pictures of
14 that scene, cleared that scene and took the yellow
15 shirt into evidence.

16 You're also going to hear from Margaret Thomas.
17 Margaret Thomas is the owner of the property on Pine
18 Street. She is going to be able to testify that the
19 defendant did not rent a room from her, that she had
20 never seen the defendant before and that he was not a
21 tenant in that house.

22 After Ms. Thomas testifies you're going to hear
23 from another character. Billy Kirkland. He is an
24 interesting character. You're going to hear from
25 Mr. Kirkland that while Mr. Kirkland was in jail the

1 defendant admitted to him that he robbed or that he
2 was guilty of the crime, that the police had him in
3 custody and he needed somebody to feign an alibi for
4 him. Just sit and wait and see what you hear from
5 Mr. Kirkland.

6 Finally you're going to hear from Investigator
7 Al Thomas. Investigator Al Thomas was the
8 investigator on this case. He is the individual from
9 the Columbia Police Department who arrived on the
10 scene and interviewed the victim, Ms. Tonya McGeorge.
11 He took her to the incident location on Pine Street
12 where the defendant was arrested.

13 He did the show-up identification with Ms.
14 McGeorge where she positively identified the
15 defendant as the person who arrested -- or the person
16 or robbed her.. He took a -- he was in charge of the
17 investigation of the case. You're going to hear
18 about him, how the case unfolded and how his
19 investigation unfolded.

20 There is a lot of testimony is that is going to
21 come from this stand today. You're going to get to
22 see pictures. You're going to see video. You're
23 going to see a shirt. You're going to hear a lot of
24 witnesses tell you what they remember happened.

25 I ask that you keep an open mind throughout this

1 case, that you listen very carefully to what the
2 witnesses say. I am confident that after weighing
3 all the evidence in this case, after hearing all the
4 testimony and seeing all the pictures, at the end of
5 this case you're going to be able to come back with a
6 verdict in this case. I am confident that after
7 weighing all the evidence you'll return a verdict of
8 guilty in favor of the State.

9 At the conclusion of this trial Ms. Dolly
10 Justice Garfield will address you once again and make
11 the closing arguments. Thank you.

12 **THE COURT:** Thank you. Defense counsel.

13 **MR. JOHNSON:** Thank you, Your Honor. May it
14 please the Court. Good morning, ladies and
15 gentlemen. I want to thank you for being here today,
16 because one of the important parts of the criminal
17 justice system is the jury part. We cannot get what
18 I would consider to be a fair verdict without a fair,
19 competent jury. And you sit in that place today.

20 Now, my name is Charlie Johnson. I'm a defense
21 attorney. I've been practicing here in Columbia for
22 about 15 years now. Sitting over there is Richard
23 Kough. He is 33 years old. He is a furrier. When
24 he first told me that, I thought he was saying he was
25 a farrier. But he tells me a farrier puts horseshoes

1 on horses. And that was his job.

2 He lives in Pennsylvania, Pittsburgh,
3 Pennsylvania, and he was down here visiting this area
4 to see I think it was his ex wife who was actually
5 going through recruit training at Ft. Jackson when he
6 was arrested for the charges.

7 Now, we've all seen on TV where there are
8 individuals who says that it wasn't me. That's the
9 first thing they say whenever they're arrested.
10 You've got the wrong man.

11 Well, a lot of times, 90 percent of the time,
12 99 percent of the time the police get the right
13 person. But they don't always get the right person.
14 I remember when I was growing up I saw a little
15 license tag, well, a bumper sticker on the back of a
16 bumper sticker; I mean, the back of a bumper. And it
17 said: Did you ever stop to think that maybe they
18 really are after me?

19 There are some cases where the police actually
20 do arrest the wrong person. We believe that this is
21 one of those cases. They arrested someone that fit
22 the description, which was my client. But we submit
23 to you that if you take the time and look at the
24 evidence you will see that it could not have been my
25 client.

1 Now, I have many friends who are policemen. And
2 we always have this conversation where I tell them
3 that most of the time you do a good job. You go and
4 you find the person and you arrest them. But where
5 you go wrong is that you arrest a person; then you
6 build your case to match that person. Whereas, it's
7 my belief that you should build a case and then based
8 on evidence you go and arrest the right person. In
9 this case this is what they did. They arrested my
10 client and then they built their case around making
11 him to be the perpetrator.

12 You will find out that the eye witness didn't
13 exactly give 100 percent identification as that my
14 client was the person that robbed her. You will find
15 out that she told the police I'm about 80, 90 percent
16 sure. Well, I submit to you being 80 or 90 percent
17 sure is not sufficient enough when you are attempting
18 to prove someone guilty of armed robbery.

19 They make a big thing about a yellow shirt,
20 which I submit that if everybody looked in their
21 closet they have some stuff in yellow in their
22 closet. They found a yellow shirt and it matched the
23 description of the person that robbed the store.

24 But I ask you to look at details. This case is
25 about details. You will see that the witness said it

1 was a yellow jersey, not a yellow shirt that person
2 had on that robbed them. They found a yellow shirt.

3 You will find out the police -- they talk about
4 CSI. Well, CSI is good. And the police can get DNA
5 evidence, fingerprints evidence. They will tell you
6 that they've got the perfect science, that there's no
7 way that they could ever be wrong when they get
8 somebody with DNA evidence.

9 But when they get DNA evidence or fingerprints
10 evidence and it doesn't match the suspect, then they
11 just tell you that the procedure is flawed because it
12 doesn't match the suspect.

13 What the police point out here is that they took
14 fingerprints. They didn't match them to my client.
15 They didn't match. What the police will tell you,
16 they forgot to tell you, or what the State forgot to
17 tell you is that there was \$360 taken in this
18 robbery. Within a matter of 15 minutes the police
19 arrested my client. They found 6 dollars in his
20 pocket. There is no knife.

21 They do have a video. I want you to look at the
22 person's hands. You can see the person's hands on
23 the counter. There is no knife. There is no knife.
24 You will not see a knife. I ask you to look for one.

25 You are the jury. You determine the facts. The

1 State nor me can tell you what those facts are. You
2 make that own determination. There is no money.
3 There is no knife. There is no fingerprints.

4 They take my client, after they find him at this
5 house, they put him in a police car and handcuff him
6 with cuffs behind his back. They then take a witness
7 that had been traumatized because she had just been
8 robbed, they put her in a police car and say, we
9 think we've got the person and we need you to
10 identify them.

11 They then take her to the scene on Pine Street,
12 a very dark, scary street. She is already scared.
13 And then at around 10:00 at night as she sat there
14 take my client out of the police car with cuffs on,
15 have him stand up before her while she's sitting
16 inside a police car and shine lights on him and then
17 say, is this the man?

18 And then even with that, she says, well, I'm
19 about 80 to 90 percent sure. They said, good enough,
20 we've got our man, case closed. And now they bring
21 the case before you and want you to find him guilty.

22 I submit that my client deserves your undivided
23 attention today. Because what we're doing is we're
24 going to go on a scavenger hunt today. And I ask you
25 to go on this scavenger hunt with me. What we're

1 going to look for, the truth. I am not asking you to
2 find anything this way or anything that way. You as
3 a jury are required to find the truth out of the
4 facts. I believe that if you look for the truth you
5 will find the truth, that my client is not guilty of
6 armed robbery. Thank you.

7 **THE COURT:** Thank you. State, you may call your
8 first witness.

9 **MS. GARFIELD:** Thank you, Your Honor. The State
10 calls Tonya McGeorge.

11 TONYA MCGEORGE, after being duly sworn,
12 testifies as follows:

13 **THE CLERK:** Thank you. Have a seat in the
14 witness stand and give the court reporter your name.

15 **THE WITNESS:** My name is Tonya McGeorge.

16 **COURT REPORTER:** Thank you.

17 DIRECT EXAMINATION

18 **BY MS. GARFIELD**

19 **Q** Good morning, Tonya.

20 **A** Good morning.

21 **Q** Are you a little nervous this morning?

22 **A** A little.

23 **Q** Is this the first time you've ever testified before?

24 **A** I have never testified.

25 **Q** Tonya, where do you live?

1 **A** Currently I live in Orangeburg County.

2 **Q** And who do you live with?

3 **A** I live with my husband, my three children and my
4 brother and sister-in-law.

5 **Q** And how old are your children?

6 **A** My children are 15, 13 and 12.

7 **Q** Were you living in Orangeburg back in July of 2008?

8 **A** I was living in Orangeburg County in a small town
9 called North.

10 **Q** Where were you employed at that time?

11 **A** I was employed for Corner Pantry Convenience Stores.

12 **Q** And did you specifically work at any one location?

13 **A** I was hired for one specific location. However, this
14 particular day I was asked to help open this new
15 store.

16 **THE COURT:** And one moment. Madam Clerk, I need
17 you to swear the jury in for this case.

18 **THE CLERK:** Thank you, Your Honor.

19 **THE COURT:** This particular jury.

20 **THE CLERK:** Ladies and gentlemen of the jury
21 panel, would you please stand and raise your right
22 hand to be sworn.

23 (Whereupon, the jury is sworn)

24 **THE COURT:** You can continue.

25 **MS. GARFIELD:** Thank you, Your Honor.

1 Q All right. I believe you were just testifying that
2 you were opening up a new store?

3 A We were.

4 Q Okay. And where was that new store?

5 A On the corner of Harden and Gervais Street.

6 Q And was it in an already established business?

7 A It was.

8 Q And what was that business?

9 A It was also a convenience store previously.

10 Q And was it associated with any particular gas
11 station?

12 A It was an Exxon.

13 Q What was the store before it was the Corner Pantry?

14 A It was known as Pitt Stop.

15 Q So it is now Corner Pantry?

16 A It is now Corner Pantry.

17 Q On July 19th, 2008, was that your first day working
18 at that particular location?

19 A It was.

20 Q What had you been doing previously to that day?

21 A Previously to that day I had been on medical leave.

22 In May I was involved in a motorcycle accident where
23 I was hospitalized. I had a broken arm and I was out
24 of work for six to eight weeks.

25 Q So July 19th was your first day back?

1 **A** It was my first day at that store. However, I had
2 been back to work approximately two days.

3 **Q** I will hand you what's been marked as State's
4 Exhibits No. 2 and 3. What is State's Exhibit No. 2
5 a photograph of, Tonya?

6 **A** This is the photograph of the front of the store on
7 the outside.

8 **Q** And do you recall what the address is?

9 **A** I do not.

10 **Q** Is it in the City of Columbia?

11 **A** It is.

12 **Q** Is it here in Richland County?

13 **A** Yes, it is.

14 **MS. GARFIELD:** Your Honor, we introduce State's
15 Exhibit No. 2.

16 **THE COURT:** Any objection?

17 **MR. JOHNSON:** No objection, Your Honor.

18 **THE COURT:** Okay. That will be admitted.

19 (WHEREUPON, State's Exhibit No. 2 is admitted
20 into evidence.)

21 **Q** And I'll just hand you State's Exhibit No. 3. Can
22 you identify what that's a photograph of?

23 **A** Yes. This is also a photograph of the front door of
24 the store, and above the door is the street address
25 which is 2020.

1 Q And what street is this located on?

2 A It's on Gervais Street.

3 Q Gervais Street?

4 A Yes, ma'am. Corner of Gervais and Harden.

5 Q The intersection of Gervais and Harden?

6 A Right on the corner lot.

7 MS. GARFIELD: Your Honor, we introduce State's
8 Exhibit No. 3.

9 THE COURT: Any objection?

10 MR. JOHNSON: No objection, Your Honor.

11 THE COURT: Okay.

12 MS. GARFIELD: And may I publish these to the
13 jury?

14 THE COURT: Yes, you may.

15 (WHEREUPON, State's Exhibit No. 3 is admitted
16 into evidence.)

17 Q Tonya, on that evening around 8:30, 8:45 --

18 A Yes.

19 Q -- did any thing unusual happen to you?

20 A Yeah. It did. It was a gentleman walked into the
21 store and I noticed him because of the color of his
22 shirt. It was --

23 Q What was the color of the shirt?

24 A It was a bright yellow shirt. And at this time it
25 was a moderately busy time of the evening. He came

1 in and proceeded towards the drink coolers and waited
2 for other customers to come through for me to finish
3 their transactions. When he approached the counter
4 he requested a pack of Newport cigarettes which I had
5 to turn my back to him to retrieve because they were
6 behind me. He then paid me with a \$20 bill.

7 As I was retrieving the change from his \$20, I
8 looked up and he had a knife. He told me that this
9 is a robbery. I want the cash, to hurry up and give
10 him the cash. And as I did that, I was thinking to
11 myself about my children. I'm sorry.

12 Q That's okay. Take your time. May I approach the
13 witness, Your Honor?

14 THE COURT: Yes, you may.

15 (Kleenex given to the witness)

16 A Thank you.

17 Q You're welcome. Just take your time.

18 A And as I thought to myself, I said, well, I have to
19 be safe for them. So I'm going to do what he asks.
20 And as I did, I individually took the denominations
21 out; and as I handed him each of the denominations, I
22 retrieved information for myself so I could give a
23 description to the police officers.

24 Q Can you describe for the jury what the knife looked
25 like?

- 1 **A** The knife was your original black handle, black
2 plastic handle, serrated-edge steak knife, ordinary,
3 everyday kind of knife that you could find in any
4 kitchen, any steakhouse. To me it was a weapon. And
5 regardless of the fact that it was an ordinary knife,
6 it was still a dangerous weapon.
- 7 **Q** Did you fear for your life, Tonya?
- 8 **A** I feared that I could be hurt if I did not do what I
9 was asked.
- 10 **Q** And as you're handing him the money, as you say,
11 you're looking at him?
- 12 **A** Right.
- 13 **Q** What's the lighting like in that gas station?
- 14 **A** It's flourescent lighting.
- 15 **Q** How far away was he from you?
- 16 **A** I am not -- no further away from him as I am to the
17 court reporter.
- 18 **Q** And can you describe to the jury what he looked like?
- 19 **A** Five-two to five-five, 150 to 180 pounds, bright
20 yellow shirt, husky voice, stocky build. And it was
21 my first time being involved in something like this.
- 22 **Q** Can you recall anything about his hair?
- 23 **A** He had sandy brown hair.
- 24 **Q** And can you recall anything about his facial
25 features?

- 1 **A** He had a beard.
- 2 **Q** And can you recall his --
- 3 **A** And he did not wear glasses at the time.
- 4 **Q** And can you recall his race?
- 5 **A** I beg your pardon?
- 6 **Q** What was his race?
- 7 **A** White.
- 8 **Q** After you handed him the money, what did you do?
- 9 **A** My initial reaction was to call 911.
- 10 **Q** Did the defendant leave?
- 11 **A** I beg your pardon?
- 12 **Q** Did the person that robbed you leave the store?
- 13 **A** He did.
- 14 **Q** What did you do next?
- 15 **A** As I was on the phone with the 911 operator, I
- 16 watched out the window to the direction that he ran.
- 17 **Q** And what direction was that?
- 18 **A** He went out the front door and ran towards the right
- 19 down Gervais Street.
- 20 **Q** Are you familiar with that area of town, Tonya?
- 21 **A** Honestly, no, I'm not.
- 22 **Q** What store did you normally work at?
- 23 **A** My home store was the Corner Pantry on Highway 311 in
- 24 Cayce.
- 25 **Q** So work was bringing you to the downtown area? Work

1 brought you to the downtown area?

2 **A** Work brought me to the downtown area.

3 **Q** Were you familiar with any of the other businesses
4 around that Gervais Street?

5 **A** I knew of the Greyhound station. I have rode the
6 Greyhound before. I knew where that was at.

7 **Q** Were there any other customers in the store when this
8 occurred?

9 **A** As the event was going on, two gentlemen walked in.
10 They were both African-American gentlemen. As they
11 approached to the counter, they saw what was going on
12 and they quietly backed out of the front door.

13 **Q** Was there any other employees at the store?

14 **A** No. I was the only employee.

15 **Q** Tonya, I'm going to show you this board that I've
16 made with several photographs on it. Your Honor, may
17 the witness step down?

18 **THE COURT:** Yes.

19 **COURT REPORTER:** Could you have her face me,
20 please.

21 **Q** For the court reporter's record, this is an exhibit
22 reflecting Exhibit Nos. 1-A, 1-B, 1-C, 1-D, 1-E, 1-F
23 and 1-G. Tonya, I'm going to direct your attention
24 first to State's Exhibit No. 1-A. And can you
25 explain to the jury what that is a photograph of?

1 **A** This photograph is an overview of the entire inside
2 of the store; the front door being to your left, the
3 cashier stand being in the back area.

4 **Q** And what would be in the far left of this picture?
5 What would be over here?

6 **A** A small drink cooler, possibly a larger drink cooler.
7 I haven't been in that store since the incident
8 occurred.

9 **Q** And if you will refer to picture 1-B. What does that
10 photograph reflect?

11 **A** This area here?

12 **Q** I'm sorry. This area here.

13 **A** Okay. 1-B, this is the customer view of the cash
14 register and the lottery area.

15 **Q** Which --

16 **A** The lottery was not up at that time because of it
17 being a new store.

18 **Q** Okay. And can you please describe what picture 1-C
19 represents?

20 **A** 1-C, that is also the side over here, a counter where
21 the lottery machine actually sits and the entryway
22 toward where the soda fountain area would be, the
23 coffee area.

24 **Q** And please explain to the jury what picture 1-D
25 represents?

1 **A** This is actually the entryway to behind the counter
2 where I was at, would be my view of the store.

3 **Q** And what does 1-E show?

4 **A** That is the lottery area.

5 **Q** And what does 1-F show?

6 **A** This is the entryway towards the cash register. This
7 is how I would go in and out behind the cash
8 register.

9 **Q** Specifically in 1-G?

10 **A** This shows the cigarette and tobacco where I have to
11 turn around and retrieve the cigarettes.

12 **MS. GARFIELD:** Your Honor, at this time I would
13 enter into evidence State's Exhibits 1-A through 1-G.

14 **MR. JOHNSON:** I have no objection, Your Honor.

15 **THE COURT:** Okay. They will be admitted.

16 (WHEREUPON, State's Exhibit No. 1-A is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 1-B is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 1-C is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 1-D is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 1-E is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 1-F is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 1-G is admitted
4 into evidence.)

5 Q Okay. Tonya, I want you to show the jury where you
6 were standing when the defendant walked into the
7 store?

8 A I was standing in this area here where this window is
9 in front of the tobacco area.

10 Q And you are referring to Exhibit 1-G, correct?

11 A I am.

12 Q And using Exhibit 1-A, can you show the jury where
13 the defendant went --

14 A Yes.

15 Q -- when he entered the store?

16 A The front door is in this general area, and he
17 came --

18 Q I see some jurors leaning over, Tonya. Let me do
19 this.

20 (Easel with exhibit is repositioned)

21 A The front door is in this general area and he came
22 running down through this aisle here into the drink
23 area.

24 Q And then what did he do?

25 A He proceeded into the area around where the newspaper

1 stand is and allowed other customers to go ahead of
2 him.

3 Q Okay. And where are you this entire time?

4 A The entire time I'm standing behind the cash
5 register, behind the counter attending to customers.

6 Q And did he eventually approach the clerk's desk?

7 A He did. He did.

8 Q And where would he have been standing at that time?

9 A He would have been right around in this area here.

10 Q And you're referring to Exhibit 1-B. Is that
11 correct?

12 A I am.

13 Q And then the door that you showed us in 1- A, is that
14 the only door to your --

15 A It is.

16 Q So you'd have to come in that door and leave out that
17 door?

18 A You would. Because in the area past the cash
19 register and the soda fountain area is the office
20 area and into the cooler.

21 Q All right. Okay. Tonya, please take your seat.

22 Tonya, are you aware if the Exxon station, the Corner
23 Pantry had video surveillance?

24 A I know that there were cameras installed in there as
25 it previously had been a convenience store. But due

1 to the fact that there had been a change in
2 ownership, I wasn't aware if they worked.

3 Q And after the robbery occurred, did you find out if
4 they worked?

5 A I found out at a later date that they -- actually I
6 found out just a few days ago that there was footage.

7 Q And in the last few days have you had an opportunity
8 to review that videotape?

9 A I have.

10 Q And if you can just sort of explain to the jury what
11 the screens looks like. What do the screens look
12 like in the video?

13 A It's slightly blurred. Being that I was there, I
14 know what I'm looking for. But you can tell the
15 images of people and you can hear some audio.

16 Q Does the video reflect what occurred that day, this
17 night?

18 A It does.

19 MS. GARFIELD: Your Honor, at this time I'd like
20 to introduce State's Exhibits 29, 30 and 31 into
21 evidence. These are the videos. And I'd like to
22 publish them to the jury.

23 THE COURT: Thank you.

24 MR. JOHNSON: No objection.

25

1 (WHEREUPON, State's Exhibit No. 29 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 30 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 31 is admitted
6 into evidence.)

7 Q Just give us a minute to set up.

8 A Okay.

9 Q Tonya, can you see the video? Can you see it?

10 A I can't see from this angle.

11 Q Would it be easier for you to step down?

12 A I'm sorry?

13 Q Would it be easier for you to step down?

14 A It would.

15 Q How about just come stand right beside me. Would
16 that be okay, Your Honor?

17 **THE COURT:** Yes --

18 Q I'm going to ask Mr. Rogers to play the video he has
19 set up, and I'd just like for you to tell the jury
20 when you see this person enter the store that robbed
21 you.

22 A Okay.

23 (Video being played)

24 A Right there.

25 Q There in the yellow shirt?

1 **A** In the yellow shirt.

2 **Q** And, Tonya, this is you?

3 **A** This is me.

4 **Q** Is the person that robbed you now in line?

5 **A** He is.

6 **Q** He's now exited the store?

7 **A** He did.

8 **Q** And what are you doing at this time?

9 **A** I am dialing 911 and looking out the window in the
10 direction where he ran.

11 **Q** And if you go outside that door, which direction was
12 it?

13 **A** To the right.

14 **Q** Okay. I believe there's another video that you've
15 also reviewed?

16 **A** I have.

17 **Q** Will you please load that up and publish it to the
18 jury. And again, Tonya, if you could just tell the
19 jury when you see the person that robbed you enter
20 the store.

21 (Video being played)

22 **A** Right here.

23 **Q** What was he doing just then, Tonya?

24 **A** This gentleman, he was like saying I had nothing to
25 do with it.

1 Q Oh, I'm sorry. No. The person in the yellow shirt.
2 A He was robbing me.
3 Q Did he have a weapon?
4 A He had a knife.
5 Q What are you doing at this time?
6 A I am speaking with the dispatcher of 911.
7 Q I believe we have another video. We'll show that
8 one. What we just saw was State's Exhibit 30. We've
9 already viewed State's Exhibit 29. And we will now
10 look at State's Exhibit 31. Is that you behind the
11 counter?
12 A That is me.
13 Q Tonya, what's just happened to you?
14 A I was robbed.
15 Q And what did you do at this time?
16 A I dialed 911.
17 Q Tonya, when you called 911, what did you tell 911?
18 A I told the dispatcher that I was at the Corner Pantry
19 on the corner of Gervais and Harden and I had just
20 been robbed.
21 Q Did you give a description of who had robbed you?
22 A I did.
23 Q Did you give a description of what you were robbed
24 with?
25 A I did.

1 Q Do you recall what that was?

2 A A steak knife.

3 Q And do you recall the description you gave the 911
4 operator?

5 A I believe I told them that it was a normal steak
6 knife that you use in a -- you could find it in an
7 everyday restaurant.

8 Q Do you recall the description you gave of the person
9 that robbed you?

10 A I do.

11 Q And can you share with the jury what you told 911?

12 A I beg your pardon?

13 Q I'm sorry. Will you share with the jury what you
14 told 911?

15 A I told them he had sandy brown hair, stocky build,
16 wearing a yellow shirt, blue jeans, approximately
17 five-foot-two to five-foot-seven, approximately 150
18 to 180 pounds.

19 Q And, Tonya, did the police come to the Exxon station?

20 A They did.

21 Q And how long would you say it took them to arrive?

22 A No more than two to three minutes.

23 Q And do you recall speaking with a police officer?

24 A I do.

25 Q And do you recall that responding officer's name?

- 1 **A** I beg your pardon?
- 2 **Q** Do you recall the responding officer's name?
- 3 **A** I do not.
- 4 **Q** Do you know if it was a man or a woman?
- 5 **A** There was a man and a woman.
- 6 **Q** Do you remember speaking with the woman?
- 7 **A** I do.
- 8 **Q** Did you give her a description of what had happened?
- 9 **A** I believe I did, yes.
- 10 **Q** What did you tell her?
- 11 **A** The same thing.
- 12 **Q** The same thing you told the 911 operator?
- 13 **A** Yes.
- 14 **Q** And do you also recall meeting with an investigator?
- 15 **A** I do.
- 16 **Q** And do you recall the investigator's name?
- 17 **A** Investigator Thomas.
- 18 **Q** And do you see him in the courtroom?
- 19 **A** He is.
- 20 **Q** And can you just explain to the jury where he is
- 21 sitting?
- 22 **A** He's sitting with you at your table.
- 23 **Q** At counsel table. And did you tell Investigator
- 24 Thomas what had happened?
- 25 **A** I did.

1 Q In fact, I believe you completed a robbery
2 questionnaire with him?

3 A I most certainly did.

4 Q And in that you gave a description of who robbed you?

5 A I did.

6 Q And do you recall what that description was?

7 A As I previously stated.

8 Q Okay. And do you also recall telling him if a weapon
9 was used?

10 A I do.

11 Q And what kind of weapon, Tonya?

12 A A steak knife.

13 Q And do you recall being interrupted while you were
14 telling Investigator Thomas what had happened?

15 A Yes, I do.

16 Q And do you know why?

17 A Investigator Thomas was called away due to a -- they
18 felt they had a suspect.

19 Q Okay. And at any time did Investigator Thomas
20 return?

21 A He did.

22 Q And when he returned, what did he want you to do?

23 A He asked me if I would be willing to go make an
24 identification.

25 Q Okay. Was there anybody else at the store involved

1 with Exxon at that time?

2 A Yes, there was.

3 Q And who was that?

4 A My immediate supervisor, Lisa Taylor.

5 Q And how did Ms. Taylor know about this incident?

6 A I called her.

7 Q When did you call her?

8 A As soon as I told the 911 operator that there were
9 officers on the scene, they hung up with me, and I
10 immediately called her at her home.

11 Q And she came to the store?

12 A Within 20 to 30 minutes, yes.

13 Q And did you go with Investigator Thomas?

14 A I did.

15 Q And did you get in a car?

16 A I did.

17 Q Was it a -- what kind of car was it?

18 A A patrol car.

19 Q And where did he take you?

20 A At that point in time I did not know what street it
21 was. I knew it was a very short drive, no more than
22 two minutes. It was a dark location.

23 Q Okay. And was it a business or a house?

24 A No. It was a residential area.

25 Q Okay. May I approach the witness?

1 **THE COURT:** Yes, you may.

2 **Q** I hand you what's been marked as State's Exhibit
3 No. 12. Do you recognize this photograph?

4 **A** I do. This is at the home that we pulled up in front
5 of.

6 **Q** Okay. And do you recognize State's Exhibit No. 13?

7 **A** That's a front view of the house.

8 **Q** And this is the same house that you pulled up in
9 front of?

10 **A** Yes.

11 **MS. GARFIELD:** Your Honor, at this time we'd
12 introduce State's Exhibits 12 and 13.

13 **MR. JOHNSON:** No objection, Your Honor.

14 **THE COURT:** Thank you. They will be admitted.

15 (WHEREUPON, State's Exhibit No. 12 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 13 is admitted
18 into evidence.)

19 **Q** And, Tonya, I'm going to try to hold up. I guess if
20 you'll step down one more time. I'm sorry to get you
21 up and down. I'm showing the jury State's Exhibit
22 No. 12. Can you show the jury where you would have
23 been?

24 **A** I was -- I actually never exited the vehicle. I was
25 in the street in the patrol car.

1 Q And where was the person you were asked to look at?

2 A The person that I was asked to identify was in this
3 general area in front of the house. There is a
4 walkway.

5 Q But you're down in the car?

6 A I'm in the car.

7 Q And you just testified -- you can take the stand.

8 You can just testify that it was a dark area?

9 A Yes, ma'am. It was a dark area.

10 MS. GARFIELD: Your Honor, at this time I'd like
11 to publish these pictures to the jury.

12 THE COURT: Okay.

13 MS. GARFIELD: 12 and 13.

14 Q You were asked to look at a particular individual?

15 A I was.

16 Q And how were you able to see him?

17 A They brought him out into the open area in front of
18 the house and had halogen lights and the headlights
19 on the cars.

20 Q And were the lights being shown in the direction of
21 the defendant?

22 A Yes. In the direction of the house.

23 Q Okay. And describe the person that you were asked to
24 identify, that you were asked to look at?

25 MR. JOHNSON: Your Honor, I'd just like to renew

1 my objection to the identification for the record.

2 **THE COURT:** Okay. Certainly. The Court will
3 stand by its prior rulings.

4 **MS. GARFIELD:** Thank you, Your Honor.

5 **Q** You may proceed.

6 **A** A white male approximately five-foot-two to five-foot
7 seven, around 150 to 180-pound range. He had changed
8 clothing. He did not have the same top on. And he
9 was wearing blue jeans.

10 **Q** And were you able to identify him as the person that
11 robbed you with the knife?

12 **A** Yes, I was, within an 80 to 90 percentile.

13 **Q** And what kept you from making a 100 percent
14 identification?

15 **A** It is my belief that what kept me from 100 percent
16 was the lighting, because of it being dark outside
17 with the different lights and the flourescent
18 lighting in the store.

19 **Q** And was there anything different about his
20 appearance?

21 **A** The difference as in appearance? He had the beard,
22 no glasses. He had full hair. He had changed from a
23 yellow top to a red top.

24 **MS. GARFIELD:** Your Honor, at this time, may I
25 approach the witness?

1 **THE COURT:** Yes, you may.

2 **Q** I'd like to show you State's Exhibit No. 24. Can you
3 identify this photograph?

4 **A** This is the person that I identified.

5 **Q** And that's what he looked like that night?

6 **A** It is.

7 **MS. GARFIELD:** Your Honor, at this time we'd
8 like to move into evidence State's Exhibit No. 24.

9 **MR. JOHNSON:** Over my prior objection, Your
10 Honor.

11 **THE COURT:** Okay.

12 **MS. GARFIELD:** Thank you. At this time may I
13 publish this to the jury?

14 **THE COURT:** Yes, you may.

15 (WHEREUPON, State's Exhibit No. 24 is admitted
16 into evidence.)

17 **Q** Is this the person that robbed you?

18 **A** Yes.

19 **Q** After you told Investigator Thomas about this
20 information, where did you go?

21 **A** He took me directly back to the store.

22 **Q** And I'm sorry. Let me back you up, Tonya. Was
23 anyone else with you and Investigator Thomas?

24 **A** Yes. I requested -- I asked Investigator Thomas
25 would my supervisor ride with me as a support system.

1 Q And that supervisor being who?

2 A Lisa Taylor.

3 Q So she rode with you in the car?

4 A She did.

5 Q The person you were about to identify, did you know
6 what kind of clothing he'd be wearing?

7 A No.

8 Q After you made the identification, you said you went
9 back to the store?

10 A Yes.

11 Q And what did you do there?

12 A Basically at that time -- this was not a 24-hour
13 store. We closed at 10:00. And it was basically
14 right around closing time.

15 Q And after that were you able to talk with
16 Investigator Thomas and finish your statement?

17 A I was not.

18 Q Did you at any other time get together with
19 Investigator Thomas?

20 A I did not. He had requested that I come to
21 headquarters the following day. Which I did go. He
22 was otherwise obtaining another investigation.

23 Q He was not able to meet with you?

24 A I beg your pardon?

25 Q He was not able to meet with you?

1 **A** No, he was not.

2 **Q** If you'd just give me a moment. Tonya, I show you --

3 **MR. JOHNSON:** Your Honor.

4 **MS. GARFIELD:** It's for ID purposes.

5 **MR. JOHNSON:** May we approach?

6 **THE COURT:** Yes.

7 (Whereupon, a bench conference is had)

8 **Q** Tonya, I'm going to show you what's been marked
9 State's Exhibit No. 26 for ID purposes only. Does
10 this look like the shirt the man that robbed you was
11 wearing?

12 **A** Yeah.

13 **Q** Thank you. Beg the Court's indulgence. Tonya, do
14 you see the man that robbed you at knife point on
15 July 19th, 2008 in this courtroom?

16 **A** Yes. Yes.

17 **Q** And can you share with the jury?

18 **A** He is sitting --

19 **Q** Where is he sitting?

20 **A** He is sitting at the defense table.

21 **MS. GARFIELD:** Your Honor, may the record
22 reflect the witness has identified the defendant as
23 the person who robbed her.

24 **THE COURT:** Yes.

25 **Q** Thank you, Tonya. Please answer any questions Mr.

1 Johnson may have.

2 **A** Okay.

3 **MR. JOHNSON:** May it please the Court.

4 **THE COURT:** Let's take a very short break for
5 the jurors. I'm going to remind you not to discuss
6 the case in any shape, form or fashion. We'll have
7 about a ten to fifteen-minute break.

8 (Jury out at 11:07 a.m.)

9 **THE COURT:** Okay. Witness, you can step down.
10 I remind you that you are under oath and you are not
11 to discuss your testimony with anyone. Okay? All
12 right. I thought this would be a great time to put
13 the objection on the record first, and then you all
14 can take your break as well.

15 **MR. JOHNSON:** Thank you, Your Honor. Your
16 Honor, my objection was to the State asking the
17 witness concerning the yellow shirt. My objection
18 is, not laid the proper foundation, that the shirt
19 was extremely prejudicial and served no probative
20 value.

21 There was no foundation as to where that shirt
22 came from. There is no specific, particular
23 identification relating that shirt that could make
24 that shirt unique to any other yellow shirt that
25 anybody could have bought from a store. Therefore,

1 the shirt in asking the witness "is this the shirt" I
2 think was extremely prejudicial and had no probative
3 evaluate whatsoever. As well as the State did not
4 lay any foundation as to where that shirt came from,
5 how it was found, anything of that nature.

6 **THE COURT:** State.

7 **MS. GARFIELD:** Your Honor, no foundation has
8 been laid. I did not seek to introduce it in
9 evidence for that reason. However, it's very
10 probative because we've got to explain why the shirt
11 was taken into evidence, why it was important. This
12 way the victim is able to not only give a description
13 of the yellow shirt, but she is has now shown the
14 jury that she recognizes that shirt as being like the
15 one the defendant was wearing.

16 Therefore, that will go in support of when
17 Investigator Thomas testifies as to why he then goes
18 to the house and realizes when they see the shirt on
19 the floor in the bathroom why the shirt was
20 important. It's very probative. And I thank you for
21 allowing me to argue it.

22 **THE COURT:** Okay. All right. I'll allowed it
23 in as an ID at this time over defense objection,
24 understanding that sometimes it takes more than one
25 witness to actually admit an item of evidence into

1 evidence.

2 **MS. GARFIELD:** Thank you.

3 **MR. JOHNSON:** Thank you.

4 **THE COURT:** Thank you all. You're at ease.

5 (Whereupon, a break is taken)

6 **THE COURT:** Are we ready for the jurors?

7 **MS. GARFIELD:** Your Honor, may we approach?

8 **THE COURT:** Yes.

9 (Whereupon, a bench conference is had)

10 **THE COURT:** Are you ready for the jurors?

11 **MR. JOHNSON:** Yes, Your Honor.

12 **THE COURT:** The jurors, please.

13 (Jury in at 11:33 a.m.)

14 **THE BAILIFF:** The jury all present Your Honor.

15 **THE COURT:** Thank you. Mr. Johnson, you may
16 continue with your cross examination.

17 **MR. JOHNSON:** Thank you, Your Honor.

18 CROSS EXAMINATION

19 **BY MR. JOHNSON**

20 **Q** Good morning, Tonya.

21 **A** Good morning.

22 **Q** Tonya, it's very important because of your
23 identification, I want you to understand that I
24 require you to think about details. Okay?

25 **A** Mm-hmm (affirmative).

1 Q And if at some point if I upset you or something like
2 that, please let me know. I'm sure you will. And
3 we'll give you some time to make sure everything is
4 all right. Okay?

5 A Okay.

6 Q Now, this happens about 8:30 at night. Is that
7 correct?

8 A That's correct.

9 Q How long had you been at work by that time?

10 A Approximately six and a half hours maybe.

11 Q So you'd been working about six and a half hours.
12 Basically you went to work when?

13 A About 2.

14 Q About 2. You had been working all day. You had been
15 out sick?

16 A Mm-hmm (affirmative).

17 Q So, needless to say, I guess you wasn't in your
18 working form at that time because you'd only been
19 working about two days prior to this happening?

20 A I was getting back up to par.

21 Q Okay. Now, when the gentleman who robbed you walked
22 into the store, you was serving other people but you
23 did see someone walk in?

24 A I did.

25 Q With a yellow shirt on. But you didn't really have a

1 lot of time to give him a lot of attention because
2 you were serving other people. Is that correct?

3 **A** I actually made eye contact with him when he walked
4 in the door.

5 **Q** And then he went to the back and you went about
6 serving everyone. Is that correct?

7 **A** Yes.

8 **Q** Well, let's talk about a couple of things. After you
9 was robbed you say you called 911. You did give them
10 an immediate description of the person that robbed
11 you. Is that correct?

12 **A** Yes.

13 **Q** And that was the most accurate description you could
14 give because it was fresh in your mind. Is that
15 correct?

16 **A** Right.

17 **Q** And you basically told them, you described the person
18 as being five-two to five-five, not five-seven to
19 five-eight as you said today? Do you remember saying
20 that?

21 **A** Okay.

22 **Q** So that would make him little shorter than what you
23 described him today?

24 **A** Possibly.

25 **Q** You also said that complexion was fair. Is that

1 correct?

2 A (Nods head affirmatively).

3 Q That he was medium built?

4 A Mm-hmm (affirmative).

5 Q Well, stocky built. And you had the voice at medium?

6 A Mm-hmm (affirmative).

7 Q Do you remember saying that the person that robbed
8 you didn't have -- today you said he had brown hair.

9 Do you remember saying that?

10 A I said sandy brown hair.

11 Q Right. Why is it that in the 911 report it's
12 reported that you say sandy blonde hair?

13 A Sandy brown, sandy blonde.

14 Q They're different?

15 A Slightly.

16 Q Blonde --

17 A But I remember sandy brown hair.

18 Q Blonde. Are you telling the jury that blonde, sandy
19 blonde hair and brown hair are the same?

20 A No. I'm not saying that at all.

21 Q They're kind of opposite, aren't they?

22 A It's a slight difference. More of a dirty blonde
23 towards a brown is what it is.

24 Q But that is not what you said.

25 A I understand that.

1 Q You said sandy blonde hair and it's on the 911
2 report. Also on the report remember that they asked
3 you about, which they asked you about, you did a
4 suspect identification chart that you did with
5 Investigator Thomas?

6 A Yes.

7 Q And you filled that out?

8 A Yes.

9 MR. JOHNSON: Your Honor, may I approach the
10 witness?

11 THE COURT: Yes, you may.

12 MR. JOHNSON: Your Honor, may I approach?

13 THE COURT: Yes, you may.

14 Q I give you what's been marked Court's Exhibit No. 1.
15 Do you recognize that?

16 A I do.

17 Q What is that?

18 A It is the suspect identification chart.

19 Q Is that the one that you filled out?

20 A It is.

21 Q Do you see where it says hair?

22 A I do.

23 Q What is written on there?

24 A I wrote sandy blonde. I made a mistake, I mean, as
25 far as the description. It was sandy blonde hair. I

- 1 just made a mistake when I said sandy brown.
- 2 **Q** So it was brown?
- 3 **A** No.
- 4 **Q** It was brown, or was it blonde?
- 5 **A** It was sandy blonde.
- 6 **Q** It was blonde?
- 7 **A** Yes.
- 8 **Q** And it wasn't brown?
- 9 **A** No.
- 10 **Q** So you made a mistake?
- 11 **A** This morning, yes. I made a mistake when I said
- 12 brown.
- 13 **Q** Okay. My client's hair is brown?
- 14 **A** I see that now.
- 15 **Q** Okay. So are you saying that he died his hair or
- 16 something?
- 17 **A** I don't know what he did, but it's a possibility.
- 18 **Q** Isn't that possibility the same possibility of why
- 19 you wasn't 100 percent sure when you identified him?
- 20 **A** No. I believe I was only 80 to 90 percent sure
- 21 because of the lighting being dark outside and the
- 22 flourescent lighting him in the headlights of the car
- 23 and the halogen lights compared to the flourescent
- 24 lighting of the store.
- 25 **Q** Well, why didn't you ask him could they put him in a

1 better light so you could better identify him?

2 A That was the best lighting available to us at the
3 time.

4 Q And at that time you said that you was only 80 to
5 90 percent?

6 A Well, 80; 70, 80, something. I never said
7 80 percent. I said 80 to 90.

8 Q So you wasn't 100 percent sure?

9 A I believe I've said that, yes.

10 Q Now, let's talk about how this identification went.
11 The police, you was talking to the officer. They
12 said that they had found someone they suspected to be
13 the person that robbed you. Is that correct?

14 A Correct.

15 Q So you had in your mind that they had possibly caught
16 the person that robbed you. Is that correct?

17 A Yes.

18 Q And you wanted to see that person. Is that correct?

19 A I was asked if I would be willing to make a possible
20 identification.

21 Q So they take you down a dark road. You're already
22 scared. Didn't they take you down a darker road than
23 where you was? Is that correct?

24 A Yes.

25 Q And you was nervous?

- 1 **A** I'm not going to say I wasn't. Yeah. Sure.
- 2 **Q** Were you crying?
- 3 **A** No. Absolutely not.
- 4 **Q** But you say you asked your boss to go with you for
5 support?
- 6 **A** Yeah.
- 7 **Q** Because you was upset?
- 8 **A** I was nervous. I was a little upset. But I was not
9 crying.
- 10 **Q** Okay. But you was upset enough that you needed
11 someone to go with you just for support?
- 12 **A** It made me feel more comfortable.
- 13 **Q** I understand. They take you down the road. Then
14 they take my client out of a car. Did you see that
15 he was handcuffed?
- 16 **A** I did not pay attention to that.
- 17 **Q** You didn't pay attention to it?
- 18 **A** No, sir.
- 19 **Q** Didn't they ask you to observe him closely to make
20 sure that that was the person?
- 21 **A** Yeah, they did. But I didn't pay attention -- I
22 wasn't -- I wasn't I guess concerned with the
23 position of his hands.
- 24 **Q** Wouldn't you be concerned about how the person looked
25 when you're identifying someone that you say had

1 robbed you?

2 **A** I was looking at the face. I wasn't looking at his
3 hands.

4 **Q** So in looking at his face, you saw a person that had
5 brown hair?

6 **A** Okay. I -- I said I saw a person with sandy blonde
7 hair.

8 **Q** But you saw a person that had brown hair. Isn't that
9 correct?

10 **A** The person that I saw, yes.

11 **Q** Had brown hair?

12 **A** Okay. I was not close enough to notice his hair
13 color to realize what color his hair was at the time
14 of identification. I was in the patrol car the whole
15 time.

16 **Q** So now you wasn't close enough to even see his hair
17 color?

18 **A** Not at the identification, no. In the store he was
19 less than five feet from me. Yes.

20 **Q** That's the only time you ever identify my client as
21 being the person that robbed you. You say you had no
22 other contact with the police after that night?

23 **A** I didn't.

24 **Q** So you saw someone -- Your Honor, may I approach the
25 witness again?

1 **THE COURT:** Yes.

2 **Q** This is State's Exhibit 24. Please take a look at
3 that. That's the way he looked that night?

4 **A** It is.

5 **Q** And that's a picture of him, the way he looked,
6 right?

7 **A** This is the way he looked.

8 **Q** What color hair does he have?

9 **A** His hair is dark brown or brown.

10 **Q** Dark brown?

11 **MS. GARFIELD:** Objection. He just
12 mischaracterized her answer.

13 **THE COURT:** The jury will recall the testimony
14 that she has given from the stand.

15 **Q** Did you not initially say dark brown?

16 **A** I started to, yes.

17 **Q** Because --

18 **A** The way it looks that way towards --

19 **Q** Dark brown?

20 **A** I mean, the way it's being held, yes.

21 **Q** Not sandy blonde?

22 **A** Okay.

23 **Q** And that could be the reason why you was not
24 100 percent sure that that was the guy?

25 **A** I still say it's because it was dark outside using

1 different lighting.

2 Q Let me ask you this. You observed him in front of
3 you for how long?

4 A Probably about 15, maybe 30 seconds at the most.

5 Q Would you be surprised if when we look at the tape it
6 was actually ten seconds?

7 A Well, it -- I guess you have to be in my position to
8 see where I'm coming from with this because it seems
9 at the time that it's actually a lot longer than it
10 is.

11 Q Well, I understand. That's because you're upset. I
12 mean, you're scared. There is a person standing
13 before you robbing you. I understand that. But
14 that's why details is important for identification.
15 That's why I'm asking you to take your time and think
16 about this. He actually was standing before you
17 about ten seconds. Isn't that true?

18 A Okay.

19 Q So you had ten seconds. You was nervous and you made
20 the best identification you could, correct?

21 A Yes.

22 Q I'm not saying that you're lying or anything like
23 that. But you make the best identification you can.
24 So you left things out. Is that correct? I mean,
25 it's possible you could have made some mistakes?

1 **A** I don't feel that I left anything out, no.

2 **Q** Sandy blonde and brown; you left that out, right?

3 **A** Okay. As quickly as it happened, under the lighting
4 that I had, I made the judgment that it was a sandy
5 brown or sandy blonde-headed person.

6 **Q** And that was a mistake, correct?

7 **A** I'm human.

8 **Q** I have no problem with that. That's what we're here
9 for. Okay. Isn't it as well possible as this
10 gentleman here that you identified being the person
11 that robbed you with dark brown hair was not the
12 person that robbed you?

13 **A** No. I feel and I believe in my heart of hearts that
14 this is the person that robbed me.

15 **Q** I'm not asking you how your heart feels. I'm asking
16 you what your mind and your --

17 **A** My mind tells me --

18 **Q** -- and your intelligence tells you.

19 **A** -- says that this was the person in front of me.

20 **Q** The person that ran away?

21 **A** The person that left the building, yes.

22 **Q** You saw him run away, right?

23 **A** I did.

24 **Q** Did he have a bag in his hand?

25 **A** I do not recall.

1 Q You can remember specific things but you can't
2 remember watching him run away? Did he have
3 something in his hands?

4 A I don't remember him having anything in his hands.

5 Q So then he didn't have anything in his hands, right?

6 A Not to my knowledge, no.

7 Q Okay. What hand did he have the knife in?

8 A Right.

9 Q He had it in his right hand?

10 A Yes.

11 Q You could see it on the video?

12 A It's not clear on the video, no. But, yes, it was in
13 his right hand.

14 MR. JOHNSON: Your Honor, if I could, I'd like
15 to replay the video. I think it was Exhibit 31.

16 THE COURT: You may.

17 MR. JOHNSON: There's a point I'd like to show
18 the jury.

19 THE COURT: You may.

20 Q And if you could, Tonya, I'd like to you step down.
21 And I'm going to ask you to please show the jury the
22 knife in his hands. I'm going to hand that to you.

23 (Mr. Johnson hands pointer to the witness)

24 Q Now I'm going to ask you some questions while we're
25 looking at this. Now, that's you standing there,

1 correct?

2 **A** It is.

3 **Q** Now, where is the person that robbed you standing?

4 **A** He just came in the door and he's standing in this
5 area right here.

6 **Q** That's him right there, right?

7 **A** Yes.

8 **Q** Now I want you to keep an eye on him. Now, you
9 mentioned earlier that he went to the ice box in the
10 back. Do you see him standing there?

11 **A** He is standing there.

12 **Q** When does he go to the ice box? I want you to point
13 it out when he goes. Because as of now he has not
14 been to the ice box, right?

15 (No response)

16 (Video continues to be played)

17 **Q** As of right now he's always been in the picture. Is
18 that correct?

19 **A** He has.

20 **Q** So he's been nowhere near the ice box, right?

21 (No response)

22 (Video continues to be played)

23 **Q** Could you point to him again where you can see him in
24 the picture?

25 **A** He is in this corner right here.

1 Q Here. Still not went to the ice box, right?

2 A No.

3 Q Okay. He is at the counter?

4 A He is.

5 Q So he never went to the ice box, did he?

6 A No, he did not.

7 Q All right. Could you please point to what hand he
8 has a knife in?

9 A The knife is right here behind this printing on the
10 film.

11 Q But you can see his hand right there, right?

12 A He's got his hand just above the counter and the
13 knife is in his hand.

14 Q I see his hand now. Please show me a knife.

15 A There is a knife right there.

16 Q Isn't that money in his hands?

17 A In his left hand.

18 Q Where is the -- so you're saying that -- but that's
19 his right hand reaching out?

20 A There is a knife in his hand.

21 Q Please continue.

22 (Video continues to be played)

23 Q And you're telling the jury that that was a knife?

24 A There was a knife in his hand.

25 Q Can you please back it up again, please.

1 **MR. ROGERS:** How far?

2 **MR. JOHNSON:** Just back to when he was right
3 there at the counter when he starts the actual
4 robbery. I don't know the time.

5 **Q** He is at the counter?

6 **A** Mm-hmm (affirmative).

7 **Q** You see his hand sitting on top of the thing? Is
8 there a knife in the thing now?

9 **A** Where he's holding his hand right there, a knife is
10 in his hand with the blade facing me.

11 **Q** Now, you hand him money there, right?

12 **A** He's grabbing the money with his left hand.

13 **Q** And he's putting it in his pocket. There's his other
14 hand handing out, and he reached out behind and
15 pointed at you?

16 **A** He is pointing a knife. That reflection is off the
17 blade of the knife.

18 **Q** But he just put money into that hand?

19 **A** No. I put all the money in his left hand.

20 **Q** Please back it up one more time. And I want you to
21 watch his right hand this time. Right before he
22 walks out, you actually put money into his hand.

23 That's his left hand. Watch his right hand. Now,
24 you're going to hand money to his hand right now.

25 **A** That's his left hand.

1 Q He sticks it in his hand and puts it in his pocket.
2 How could he take money from you with his right hand
3 with a knife in his hand?

4 A He -- I gave him the money in his left hand.

5 Q Okay. Thank you. Let's talk about the yellow shirt.
6 You called it a yellow shirt now. Is that correct?

7 A I did.

8 Q Why it is on the same reports that I showed you
9 earlier that was marked Court's Exhibit No. 1 -- will
10 you please read what you called it on the report?

11 A A yellow jersey.

12 Q That's different than a shirt. As a matter of fact,
13 in some reports they even called it a football
14 jersey?

15 A I never called it a football jersey.

16 Q But you called it a jersey?

17 A It's a jersey type shirt to me. That's --

18 Q What do you consider a jersey?

19 A A shirt and a jersey is worn on the upper torso. So,
20 to me, the way it was sitting on his body was as a
21 jersey.

22 Q Then why are you in court today calling it a shirt?

23 A It's the same thing.

24 Q Did you meet with the state prior to today?

25 A No.

1 Q You didn't meet with them yesterday?

2 A Yesterday. Yes. I'm sorry.

3 Q So you met with the State yesterday, right?

4 A Briefly.

5 Q And you discussed your testimony. Is that correct?

6 A Briefly.

7 Q You talked about a shirt?

8 A We did not discuss in detail --

9 Q That ain't what I asked you.

10 A I never met with them as a formal meeting before.

11 Q I didn't say formal. Any meetings?

12 A No meeting at all. None whatsoever.

13 Q A minute ago you just said you met with them

14 yesterday?

15 A Just as far as when I came to the courthouse, that

16 was the first time I ever met them.

17 Q And you've been sitting through court. But you're

18 here today. So now you're using the term "shirt"?

19 A Okay. I correlate the shirt and the jersey as being

20 the same item.

21 Q But would you admit that there is a difference

22 between a shirt and a jersey?

23 A Yes.

24 Q What's the difference?

25 A One has holes. Some jerseys you can see through.

1 Q So when you say jersey, do you mean that that shirt
2 that you saw had holes in it?

3 A No. I just called it a jersey.

4 Q You're saying a jersey have holes, right? I don't
5 want to confuse you. So take your time, please. I
6 mean, I'm not trying to confuse you. I just want to
7 understand what you're talking about because this is
8 very important.

9 A He had a yellow shirt on.

10 Q I asked you what's the difference between a shirt and
11 a jersey?

12 A A shirt is -- I mean, they're both clothing garments.

13 Q But you said something about holes. What did you
14 mean by that?

15 A Like a mesh material.

16 Q That's a jersey, right?

17 A Right.

18 Q And in your statement that you wrote right after you
19 saw him, within minutes of seeing him, you said
20 jersey?

21 A Okay. I see that.

22 Q That would mean that you saw something that had mesh
23 or holes in it. Is that correct?

24 A Possibly.

25 Q Well, I'm not trying to put words in your mouth. If

1 you said jersey, you're saying that that was
2 something that had holes in it, was a jersey, right?

3 **A** I don't recall 100 percent accuracy on that.

4 **Q** But you say it's jersey on your paper?

5 **A** I wrote jersey, yes.

6 **Q** And taking it the next logical step, you would not
7 have said jersey unless you saw something that you
8 believed to be a jersey, correct?

9 **A** I guess when I saw him, to me, it fit as a jersey.

10 **Q** Because it had holes in it?

11 **A** I'm not saying it had holes in it. I'm not going to
12 say that it had holes in it. Because it was not mesh
13 material.

14 **Q** This is a -- you were just shown this a minute ago?

15 **A** Yes.

16 **Q** This is a shirt that was taken from my client out of
17 the room?

18 **A** To me that resembles a jersey because of the way it's
19 made.

20 **Q** Where are the holes?

21 **A** There are no holes.

22 **Q** Isn't it true that you don't know if this is the
23 shirt you saw?

24 **A** I'm sorry?

25 **Q** Isn't it true that you do not know if this is the

1 shirt that the individual that robbed you had on?

2 **A** No. I don't know that that's the exact shirt. I
3 know it's similar to.

4 **Q** Therefore, if it wasn't the exact shirt, then it
5 wouldn't be the shirt that the person that robbed you
6 had on. Is that correct?

7 **A** I can't say that.

8 **Q** You can't say that it is, can you?

9 **A** I can't say that it's not either.

10 **Q** So in short, there's not many things you really can
11 say definite, is there? You can't definitely
12 identify him, can you?

13 **A** I believe this is the individual that robbed me, yes.

14 **Q** You believe that. But can you definitely identify
15 him?

16 **A** I can say, yes, I believe and I know that this is the
17 person that was in front of me.

18 **Q** Why didn't you do it the night of the crime?

19 **A** I did.

20 **Q** You said 80 percent. I'm not quite sure. Isn't what
21 you said?

22 **A** I never said I was not quite sure.

23 **MS. GARFIELD:** Objection. That was not her
24 testimony.

25 **MR. JOHNSON:** She can answer whether she did or

1 not, Your Honor.

2 **THE COURT:** Sustained. The jurors will recall
3 the witness's testimony.

4 **Q** But by saying 80 percent, you are not saying
5 100 percent, correct?

6 **A** I also said 80 to 90 percent.

7 **Q** Even at 90 percent, you're not saying 100 percent,
8 are you?

9 **A** I never said 100 percent, no.

10 **Q** So then you are not completely sure?

11 **A** I may have not been at that time.

12 **Q** But now a year and a half later you are?

13 **A** I've had a year and a half to think about this. I've
14 had a year and a half to remember what it felt like.

15 **Q** I understand that. I'm saying I understand that
16 you've been through a lot. What I'm asking you is
17 about what happened and getting the right person for
18 what they did to you.

19 **A** I believe we have the right person.

20 **Q** You believe. You can't remember if the person ran
21 away with a bag or not, can you?

22 **A** I can tell you what I saw inside the store and that
23 person did not have a bag in the store.

24 **Q** Outside the store you looked out the window, correct?

25 **A** It was dark. I watched the direction they ran.

1 That's basically the only thing that I looked for. I
2 wasn't looking for anything in their hand.

3 **Q** I understand. So very easily you could have made
4 mistakes, right?

5 **A** Okay. I feel like I'm being called a liar.

6 **Q** No, ma'am. I'm not. I'm just asking you, is it
7 possible that you could have made a mistake?

8 **A** No. I don't.

9 **Q** I have no other questions.

10 **MS. GARFIELD:** May it please the Court?

11 **THE COURT:** Yes.

12 REDIRECT EXAMINATION

13 **BY MS. GARFIELD**

14 **Q** Tonya, are you okay?

15 **A** Yeah.

16 **Q** Tonya, there's been lots of questions about shirts,
17 jerseys. I'm going to direct your attention to our
18 clerk here.

19 **A** Yes, ma'am.

20 **Q** What do you call that's red on her?

21 **MR. JOHNSON:** Your Honor, objection. Relevance.

22 **MS. GARFIELD:** Your Honor, we've had ad nauseam
23 questions about shirts. He is trying to say she gave
24 different descriptions. I am making an example of
25 how that could be.

1 **MR. JOHNSON:** I'm not aware of the clerk being
2 an exhibit.

3 **THE COURT:** The clerk?

4 **MR. JOHNSON:** Using the clerk as an exhibit,
5 Your Honor, wherever that --

6 **MS. GARFIELD:** I'm just asking her what is red
7 on the clerk.

8 **THE COURT:** Overruled.

9 **MS. GARFIELD:** Thank you.

10 **Q** To you, what is a jersey?

11 **A** To me, a jersey is something a football player wears,
12 the shirt over their pads. The item that we're
13 talking about to me also resembles a jersey because
14 of the way it's made, because of the way it fit on
15 the body.

16 **Q** And in your opinion is a jersey a shirt?

17 **A** Yes.

18 **Q** And when the person that robbed you left the store --

19 **A** Mm-hmm (affirmative).

20 **Q** -- was he still wearing the yellow shirt or the
21 yellow jersey?

22 **A** Yes.

23 **Q** So you didn't take it off of him?

24 **A** No, I did not.

25 **Q** When the police got there, did you have a shirt?

1 **A** No.

2 **Q** If you'd taken the shirt off of him --

3 **MR. JOHNSON:** Your Honor, objection. Is she
4 testifying or does she have questions?

5 **MS. GARFIELD:** I have a question.

6 **THE COURT:** I'll let you complete your question
7 first and let's wait before you answer it to see if
8 it's objectionable.

9 **Q** If you'd taken the shirt off of him, would it have
10 been in your possession?

11 **A** I would assume so, yes.

12 **Q** But that shirt that you had been shown was not in
13 your possession?

14 **A** Absolutely not.

15 **Q** I'm going to redirect you to the video. If you'll
16 step back down again.

17 **MS. GARFIELD:** Your Honor, I'm referencing
18 State's Exhibit No. 29 and I'm going to ask Mr.
19 Rogers to display that.

20 **THE COURT:** Okay.

21 (Video being played).

22 **Q** Is that him walking in?

23 **A** It is.

24 **Q** Pause it, please. At this time do you see him on
25 this video?

1 **A** I do not.

2 **Q** Do you know where he's gone at this time?

3 **A** I do not.

4 **Q** But he is not standing right there in front of the
5 counter the whole time?

6 **A** No.

7 **MR. JOHNSON:** Your Honor, can we approach,
8 please?

9 (Whereupon, a bench conference is had)

10 **Q** Tonya, procedurally, to save the jury some time
11 without putting you back up, Mr. Johnson wants to ask
12 you a question about this. I'm going to let him ask
13 you and then I'll finish. Okay?

14 **A** Okay.

15 RECROSS EXAMINATION

16 **BY MR. JOHNSON**

17 **Q** Tonya, you just said that you can't see him on that
18 video?

19 **A** At the frame I'm looking at.

20 **Q** Looking at it right there, you can't see him?

21 **A** No. Right. No.

22 **Q** What is that in the bottom frame?

23 **A** I'm not looking in the bottom frame. She showed me
24 the top frame.

25 **Q** So you can see him in the bottom frame?

1 **A** In the bottom one, yes. I am not looking --

2 **Q** Would you please point to him?

3 **A** He is at the very corner right here.

4 **Q** Right there. And it's clear that he never left that
5 spot and never went to the ice box like you're
6 saying?

7 **A** In this frame. In this frame he is not shown. And
8 this is the frame that I was asked about.

9 **Q** I understand. But by looking at all the frames, you
10 can clearly see that he never went to the ice box as
11 you said. Is that correct?

12 **A** Yes.

13 **MR. JOHNSON:** No other questions.

14 REDIRECT EXAMINATION

15 **BY MS. GARFIELD**

16 **Q** Tonya, is that the direction of the ice box?

17 **A** I beg your pardon?

18 **Q** Is that the direction of the ice box?

19 **A** No. That is off to the left.

20 **Q** Down towards the aisle, towards this aisle?

21 **A** Mm-hmm (affirmative).

22 **Q** And at the bottom at the end of the aisle, what is
23 that?

24 **A** There is a person at the drink box.

25 **Q** At the ice box?

1 **A** Right.

2 **Q** Go ahead and just show it just little bit further.

3 (Video continues to be played).

4 **Q** If you'll pause it. At this time if you'll look at
5 that frame, what do you see? What is in his hand at
6 that time?

7 **A** In this hand here he has the knife.

8 **Q** Okay. Continue.

9 (Video continues to be played).

10 **A** If you also watch that frame, he is continually
11 stuffing the money in his left pocket.

12 **Q** And that's the -- what hand did you give him the
13 money in?

14 **A** The left.

15 **Q** And is the knife visible to you during the entire
16 robbery?

17 **A** It is.

18 **Q** Thank you. Please take your seat. Tonya, is this an
19 experience that you have been able to forget?

20 **A** Absolutely not.

21 **Q** Tonya, are you telling the truth today?

22 **A** With 100 percent accuracy.

23 **Q** Thank you.

24 **MR. JOHNSON:** Just some follow up, Your Honor.

25 **THE COURT:** Yes, you may.

RECROSS EXAMINATION

BY MR. JOHNSON

Q When you say that you're telling it with 100 percent accuracy, is that because you're positive that you're telling the truth?

A I am 100 percent positive.

Q So when you looked at my client and that day you was not 90 to 80 percent, that meant that you were not 100 percent positive it was him. Isn't that true?

A What are you asking?

Q When you saw my client in that line-up --

A There was no line-up.

Q Exactly. When they brought him out to the car by himself with handcuffs on, you looked at him and you said, I'm only about 80 to 90 percent. That's because you was not 100 percent positive about it, correct?

A Because of the difference in the lighting situations.

Q Because he did not look exactly like the person that robbed you?

A You're putting words in my mouth.

Q I'm asking you.

THE COURT: Speak one at a time, please.

Q I'm asking you. Because he did not look exactly like him, you were not 100 percent positive?

1 **A** Because of the lighting.

2 **Q** If you was 100 percent positive, what would you have
3 said?

4 **MS. GARFIELD:** Your Honor, asked and answered.

5 **THE COURT:** Go ahead. Continue. Just --

6 **Q** If you was 100 percent positive, what would you have
7 said?

8 **A** I would have probably said the same thing that I said
9 a year and a half ago. Because of the lighting
10 differences.

11 **Q** You say he went to the drink box. You was wrong,
12 correct?

13 **A** I was wrong. However, the footage you had showed me
14 was only of one direction. When you had the seven
15 different images on the screen, the top middle, he is
16 in a position to where you cannot see him at
17 100 percent of the time. And by all accounts and
18 purposes, you would think he went to the drink box.
19 So there is two different frames on there showing two
20 different things at the same time.

21 **Q** Anything else you want to tell them before I ask you
22 the next question?

23 **A** Go ahead.

24 **Q** So, therefore, there's two sides to every story. Is
25 that correct?

1 **A** You could put that in there, yes.

2 **Q** You thought that he went to the box because you
3 couldn't see him, correct?

4 **A** Because that's the direction I saw him walk.

5 **Q** All right. And you assumed that that's where he
6 went, correct?

7 **A** Yes.

8 **Q** But then once you saw it from a different direction,
9 from a different point of view, you was wrong.
10 Right?

11 **A** I'll admit being wrong, yes.

12 **Q** Just as you could be wrong about your identification
13 today?

14 **A** No.

15 **MR. JOHNSON:** No other questions.

16 **THE COURT:** You can step down. Next witness.

17 **MR. ROGERS:** The State's next witness is
18 Ms. Lisa Taylor.

19 LISA TAYLOR, after being duly sworn, testifies
20 as follows:

21 **THE CLERK:** Thank you. Have a seat in the
22 witness stand and give the court reporter your name,
23 please.

24 **THE WITNESS:** Lisa Taylor.

25 **COURT REPORTER:** Thank you.

DIRECT EXAMINATION

BY MR. ROGERS

Q Good afternoon, Ms. Taylor.

A Hello.

Q How are you doing today?

A Good.

Q I've got a couple of questions for you. First I'd like to begin; where do you live?

A In Lexington.

Q And where do you work?

A For Corner Pantry. I'm a district manager.

Q District manager?

A Mm-hmm (affirmative).

Q What does that entail? What do you have to do?

A I cover eight stores in the Columbia area.

Q And by "cover", what do you mean?

A That I'm over them, the district manager.

Q The manager?

A Yeah.

Q Were you working with Corner Pantry in July of 2008?

A Yes, sir.

Q And were you still in that same capacity as the district manager?

A Yes, sir.

Q Do you remember anything unusual happening on

1 July 19th, 2008?

2 **A** We had the robbery at one of my stores at the corner
3 of Harden and Gervais.

4 **Q** How did you first learn of that?

5 **A** My cashier gave me a call after the fact and told me
6 that she had just been robbed.

7 **Q** Were you at work at that time?

8 **A** No. I was like 8:30, 9:00 that night. I was at
9 home.

10 **Q** When the call came in, what did you do next?

11 **A** I went to the store, left the house and went to the
12 store immediately.

13 **Q** When you arrived at the store, what did you see?

14 **A** It was closed down. The police were there. I went
15 in to check on my cashier and see what was going on.

16 **Q** How many officers would you say were there? Do you
17 remember?

18 **A** Probably two or three maybe. It wasn't too many at
19 that time. There were cars outside and around but
20 ...

21 **Q** Were there any customers inside the building?

22 **A** No. The store was closed. We'd already closed it
23 down.

24 **Q** Who did you speak to when you arrived?

25 **A** I went to Tonya first, the cashier.

1 Q How would you describe her demeanor?

2 A She was very upset, shaken.

3 Q Was she crying?

4 A She'd tear up a few times. I don't know if it was --
5 it wasn't full blown crying or anything. I mean, she
6 was --

7 Q When you arrived there, was she speaking to any
8 officers?

9 A Mm-hmm (affirmative). Yeah. There was one officer
10 there with her trying to get her statement.

11 Q Okay. Do you remember who that officer was?

12 A It was a female officer. I did not remember at the
13 time.

14 Q At any point do you remember seeing a male officer
15 speak to her?

16 A A few minutes after I arrived an officer came back
17 and came up to her and asked her if she --

18 MR. JOHNSON: Your Honor, objection. Hearsay.
19 She can't talk about what an officer said.

20 MR. ROGERS: Your Honor, we're not using it for
21 the truth of the matter asserted. We're using it to
22 describe to the Court what happened and why those
23 events happened.

24 THE COURT: All right. You all approach.

25 (Whereupon, a bench conference is had)

1 **THE COURT:** Objection sustained.

2 **Q** I'm going to rephrase that question for you.

3 **A** Okay.

4 **Q** After you arrived on the scene, did you have an
5 occasion to speak with a male officer? Did you talk
6 to a male officer at the scene?

7 **A** I don't think I directly spoke to them, no.

8 **Q** Did you observe a male officer speaking to Tonya?

9 **A** Yes.

10 **Q** After the male officer and Tonya spoke, did you guys
11 leave the scene?

12 **A** Yes, we did.

13 **Q** And who all left the scene?

14 **A** It was me and Tonya and the investigator.

15 **Q** How did you leave the scene?

16 **A** In his car.

17 **Q** The two of you in the front seat?

18 **A** In the back seat.

19 **Q** In the back seat?

20 **A** Both of us were in the back. He was driving.

21 **Q** Do you remember what type of vehicle it was?

22 **A** It was in a police car, an LTD, a Crown Victoria or
23 whatever they are.

24 **Q** The officer that drove you, was he in uniform? Was
25 he wearing a suit? Do you remember what he was

1 wearing?

2 **A** No. I think he was wearing a uniform.

3 **Q** When he drove you from the Corner Pantry, where did
4 you go?

5 **A** We -- I'd say around the block, a block and a half,
6 and then took a right out of the store and then a
7 left, almost immediate left.

8 **Q** A pretty short distance?

9 **A** Yes.

10 **MR. ROGERS:** If I may approach the witness, Your
11 Honor.

12 **THE COURT:** Yes, you may.

13 **Q** I'm going to show you a couple of pictures. Okay?

14 **A** Okay.

15 **Q** Do you recognize this picture?

16 **A** No.

17 **Q** You don't? Okay. Do you recognize the house in
18 either of these pictures?

19 **A** No. It was very dark wherever we went. I could not
20 see the house.

21 **Q** Okay. When you arrived on the scene, were there any
22 lights on the scene?

23 **A** There was just a few headlights of the cars that were
24 on the street. Houses were elevated up above the
25 street. So I couldn't see up into there. It was

1 dark.

2 Q Were there any officers at the place where you went?

3 A Oh, yeah. There were lots of them.

4 Q About how many officers would you say?

5 A There were a lot. Eight, ten. I mean, there were a
6 lot of vehicles up and down the street.

7 Q A lot of police vehicles?

8 A Police vehicles, yes.

9 Q When you arrived on the scene with Tonya and the
10 officer, what did you observe next?

11 A We sat there. The investigator got out of the car
12 and then came back. They brought a guy down and put
13 him in front of the car and shown lights on him.

14 Q Okay. Now, let me stop you there.

15 A Okay.

16 Q The individual who you said the police brought
17 somebody out?

18 A Mm-hmm (affirmative).

19 Q Okay. Do you remember what that person was wearing?

20 A He had on -- really all I saw of him was the top
21 half. All I could see was a red shirt.

22 Q Were there -- you said it was dark in the area?

23 A Mm-hmm (affirmative).

24 Q Were there lights on him?

25 A Yes. They were shining just directly on him.

1 Q Do you know what kind of lights they were?

2 A I would say the spotlights from the cars or

3 headlights from the police cars.

4 Q And after the officer came back and that individual

5 in the red shirt was brought out and put in the

6 lights, what happened next?

7 A The investigator came to the door and asked Tonya if

8 she recognized him.

9 Q Did the officer suggest who this individual was?

10 A No.

11 Q Did he give her any information about what that

12 person was wearing?

13 A No.

14 Q What that person had done?

15 A All he said was: Do you recognize this person?

16 Q Okay. And what did Tonya do?

17 A She sat there for a minute looking and she gave her

18 answer.

19 Q Did it look like she was concentrating?

20 A Mm-hmm (affirmative). Yes.

21 Q At that time?

22 A Yes, she was.

23 Q At that time when she was looking at the individual,

24 could you describe her demeanor?

25 A Just concentrating on him, looking at him.

- 1 Q Was she calm?
- 2 A Yeah. I would say relatively calm.
- 3 Q Was she able to give an identification of that
- 4 person?
- 5 A Yes.
- 6 Q And what was that?
- 7 A She said that she was pretty sure that it was him.
- 8 Q Okay. Do you remember her exact words?
- 9 A She gave a percentage of -- I don't remember the
- 10 number of what -- she was pretty sure it was him,
- 11 whatever percent it was she used. The only thing was
- 12 different clothes.
- 13 Q Did she say the clothes were different?
- 14 A She said that, yes.
- 15 Q And despite that, she was still able to identify him?
- 16 A Yes.
- 17 Q After she made that identification, what happened
- 18 next?
- 19 A He took us back to the store.
- 20 Q Did you see what happened to the man in the red
- 21 shirt?
- 22 A I didn't really look. I was talking to Tonya.
- 23 Q Were you and Tonya still in the back seat of the car?
- 24 A Yes, sir.
- 25 Q At any time when you were at the scene did you leave

1 the car?

2 **A** Nope. Never got out.

3 **Q** Okay. Once she made the identification, where did
4 the officer take you?

5 **A** We went back to the store.

6 **Q** Okay. And what happened there?

7 **A** They finished -- the police finished up what they
8 were doing and then I got an inventory of what was
9 taken and called my boss. It was pretty much time to
10 close the store then. So we wrapped it up and
11 everybody went home.

12 **Q** About how long did you stay? From the time you got
13 there until the time you left, how long would you say
14 you stayed in the Corner Pantry and with the
15 officers?

16 **A** Maybe an hour. It wasn't too long.

17 **Q** If I may have a moment, Your Honor?

18 **THE COURT:** Yes.

19 **Q** Ma'am, I have no further questions for you. Defense
20 counsel is going to ask you some questions.

21 **A** Okay.

22 CROSS EXAMINATION

23 **BY MR. JOHNSON**

24 **Q** Good morning, Ms. Taylor.

25 **A** Good morning.

1 Q I just have a couple of quick questions. You said
2 that the officer didn't persuade you or tell you
3 about the person that they were showing you. But did
4 they say that we think we may have someone for you to
5 look at?

6 A They came and -- yes. Well, came and asked --

7 Q And you're assuming that you was going to see someone
8 that might have been the robber. Is that correct?

9 A Mm-hmm (affirmative).

10 Q Okay. So you knew when you was going that you was
11 going to see if you could identify a person that they
12 had arrested. Is that correct?

13 A Right.

14 Q Now, wasn't that person taken out of a car?

15 A To tell you the truth, I didn't see where he came
16 from. I mean, I was looking up and then all of a
17 sudden they brought him in front. I don't know if he
18 came from up there or -- I don't know.

19 Q When he was standing there, was he just standing
20 there by himself [sic]? You know, just standing
21 there? Or was the police around him?

22 A No. He had officers on each side of him.

23 Q He had officers on each side. Had lights shining on
24 him?

25 A Mm-hmm (affirmative).

- 1 Q And he had a red shirt on?
- 2 A Mm-hmm (affirmative).
- 3 Q You was there and you watched Tonya take a look at
- 4 him. Is that correct?
- 5 A Right.
- 6 Q Tonya took her time, correct?
- 7 A Uh-huh (affirmative).
- 8 Q She said, I think that's him. Is that what she said?
- 9 Or I don't want to put words in your mouth. But is
- 10 that basically what she said? Or what did she say?
- 11 A She said I'm whatever number it was, whatever percent
- 12 sure that that's him but the clothes are different.
- 13 Q Okay. So she didn't 100 percent say I'm sure that's
- 14 him. She said I'm about 80, 70 or 80, whatever
- 15 number it was. But she gave a percentage. Is that
- 16 correct?
- 17 A She gave the percentage and she said she was sure
- 18 that that was him other than the clothes.
- 19 Q Now, you said you made an inventory of money that was
- 20 taken, correct?
- 21 A Mm-hmm (affirmative).
- 22 Q How much one was taken?
- 23 A I haven't looked back at my notes. I want to say it
- 24 was 300 something dollars.
- 25 Q About 360? Does that sound about right?

1 **A** That sounds about right.

2 **Q** But close to at least \$300 that was taken?

3 **A** Right.

4 **Q** Was anything else taken?

5 **A** Hmm-mm (negative).

6 **Q** What about the cigarettes?

7 **A** That's right. He never did pay for those. He took
8 the 20 back, too, that he had given her.

9 **Q** Yes, ma'am. What kind of cigarettes?

10 **A** Newports.

11 **Q** What? Was it like a pack of Newports?

12 **A** Mm-hmm (affirmative).

13 **Q** Thank you.

14 **MR. ROGERS:** We have no further questions for
15 this witness.

16 **THE COURT:** Okay. You can step down and be
17 excused. You can call your next witness.

18 **MS. GARFIELD:** Thank you, Your Honor. The State
19 calls Carl Quintyne.

20 CARL QUINTYNE, after being duly sworn, testifies
21 as follows:

22 **THE CLERK:** Thank you. Have a seat in the
23 witness stand and give the court reporter your name.

24 **THE WITNESS:** Carl Quintyne.

25 DIRECT EXAMINATION

1 **BY MS. GARFIELD**

2 **Q** Mr. Quintyne, I'm going to ask you to push the
3 microphone a little bit closer to you. Mr. Quintyne,
4 where are you from?

5 **A** I'm from New York.

6 **Q** What brought you down to South Carolina?

7 **A** I wanted a change in my life.

8 **Q** And do you have family?

9 **A** Yes, ma'am.

10 **Q** Share with the jury a little bit about your family?

11 **A** I have two daughters and two boys.

12 **Q** How old are they?

13 **A** My son, my youngest son is eight years old. My
14 oldest son is eleven years old. I have a
15 two-year-old daughter and an eleven-month-old
16 daughter.

17 **Q** And you reside here in Columbia?

18 **A** Yes, ma'am.

19 **Q** What do you do for a living?

20 **A** Drive a taxi cab.

21 **Q** For what company?

22 **A** Blue Ribbon.

23 **Q** Were you also a taxi cab driver back in July of 2008?

24 **A** Yes, ma'am.

25 **Q** Specifically, were you working Saturday night, July

1 19th, 2008?

2 A Yes, ma'am.

3 Q And around 8:30 or so in the evening, did anything
4 unusual -- did you observe anything unusual?

5 A Yes, ma'am. A young man walked past my cab and
6 stated that he is going to go and rob the store
7 across the street. He stated that everybody needed
8 to get away from that area.

9 Q And where were you when you heard this?

10 A I was actually backing into the stand at the corner
11 of Gervais.

12 Q You had your windows down? You had your windows
13 down?

14 A Yes, ma'am.

15 Q And can you describe the person that made the
16 statement to you?

17 A The young man sitting over there.

18 Q Do you remember telling law enforcement later a
19 description of the person?

20 A Yes, ma'am.

21 Q Do you remember writing a statement?

22 A Yes, ma'am.

23 Q And would it help you to review that statement to
24 refresh your memory?

25 A I remember most of it.

1 Q Well, then can you share with the jury what you told
2 the police about what he looked like?

3 A I told the officer that the young man was a white
4 male, he was wearing a yellow t-shirt and his hair
5 was more in the blonde, not gray, not brown, but
6 somewhat -- I don't know -- between red and brown I
7 guess.

8 Q And what was he wearing?

9 A At that time I remember, all I can remember right
10 now, at that time he was wearing a yellow t-shirt.

11 Q Yellow t-shirt?

12 A Yeah. It was a yellow shirt.

13 Q Okay. Mr. Quintyne, at that time what did you think
14 to yourself?

15 A At that time I actually thought it was a joke. I
16 just thought he was just talking out his mind.

17 Q Did you watch him walk off?

18 A Yes. He walked between cabs across the street
19 towards the store.

20 Q And what store was that?

21 A I believe it was Exxon/Mobile. I believe an Exxon.

22 Q May I approach the witness?

23 **THE COURT:** Yes, you may.

24 Q I'm going to show you State's Exhibits No. 4, 5 and 6
25 first. Will you step down? Is that okay, Judge?

1 **THE COURT:** Yes.

2 **Q** Would you step down for a second. State's Exhibit
3 No. 4, what is this a photograph of?

4 **A** It's a photograph of the cab stand.

5 **Q** What is across the street?

6 **A** It's the Exxon on Gervais Street.

7 **Q** And what is State's Exhibit No. 5 a photograph of?

8 **A** This is the Exxon on Gervais Street, I guess looking
9 back towards my station.

10 **Q** I'll let you come around this way. Okay. And
11 State's Exhibit No. 6, what is that a photograph of?

12 **COURT REPORTER:** Could you have him switch,
13 please?

14 **MS. GARFIELD:** Sure. I'm sorry.

15 **A** This is the parking lot of the Exxon.

16 **Q** Okay. And what is across the street?

17 **A** That is the Greyhound bus station, and that would be
18 where the sign of the area where I was parked.

19 **MS. GARFIELD:** Your Honor, at this time I'd like
20 to introduce State's Exhibits No. 4, 5 and 6 into
21 evidence.

22 **MR. JOHNSON:** No objection, Your Honor.

23 **THE COURT:** All right.

24 (WHEREUPON, State's Exhibit No. 4 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 5 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 6 is admitted
4 into evidence.)

5 **Q** Looking back at State's Exhibit No. 6, can you share
6 with the jury where you would have been parked? I'm
7 going to ask you to put this down.

8 **A** I was parked over here by the corner at the sign
9 right in the first parking space.

10 **Q** And that's where you were when you saw this person
11 walk by?

12 **A** Yes, ma'am.

13 **Q** Okay. I also show you what's been marked as State's
14 Exhibit No. 25. Mr. Quintyne, you've seen this
15 exhibit before?

16 **A** Yes, ma'am.

17 **Q** And what is this a map of?

18 **A** This is a map of the Greyhound, Gervais, Harden, Pine
19 Street. This should be the Greyhound. This should
20 be the Exxon.

21 **Q** Okay. I'm going to ask you to take this pointer and
22 just show the jury approximately where you would have
23 been parked?

24 **A** I would have been parked right here.

25 **Q** And then you saw the person that made the statement

1 they were going to rob the store?

2 **A** Correct.

3 **Q** Walk in what direction?

4 **A** They walked across.

5 **Q** Across that way?

6 **A** Yes, ma'am.

7 **Q** Okay. All right. I'm going to let you sit. We're
8 going to come back with this but I want you to take
9 the stand.

10 **A** Okay.

11 **Q** Mr. Quintyne, you watched him walk across the street.
12 And then what did you observe?

13 **A** I just watched him walk across the street and went
14 into the store. And after that I saw, five minutes
15 later, maybe five, ten minutes later, seven minutes
16 later one officer arrived and another and another and
17 another. At that point --

18 **Q** They arrived at the Greyhound or to the Greyhound
19 station?

20 **A** Some was at the Greyhound. Some was at the store.
21 And at that point somebody came off the bus. I
22 picked up that person and I took them to their
23 destination.

24 **Q** A fare?

25 **A** Yes, ma'am. When I arrived back, there was an

1 officer there waiting for me. And I believe it was
2 the lady from the boarding house told me there was an
3 officer outside waiting for me. And when I came out
4 I saw the officer there.

5 **Q** The officer was there to get to meet with you?

6 **A** Yes, ma'am.

7 **Q** And at that time what did the officer want you to do?

8 **A** He asked me would I be able to identify the person
9 that actually went into the store. And I said, well;
10 if I see him again, the person who walked past my cab
11 or vehicle, I'd be able to.

12 **Q** At that time what did you do?

13 **A** I went with the officer to identify the person, which
14 was the young man there.

15 **Q** Where did he take you to?

16 **A** To Pine Street.

17 **Q** To Pine Street?

18 **A** Yes, ma'am.

19 **Q** And was there anybody else in the car with you?

20 **A** Just the officer.

21 **Q** Did the officer suggest to you this is the person
22 that did it?

23 **A** No.

24 **Q** It's something you came up with?

25 **A** Yes, ma'am.

1 Q When you got there, did you observe an individual?

2 A Yes, ma'am.

3 Q And can you describe the individual that you saw?

4 A It was the young man there. He was wearing the white
5 t-shirt, different shirt. But it was the young man
6 there.

7 Q And did you --

8 A He had more hair, more hair on his body then.

9 Q At the time he had more hair?

10 A Yes, ma'am.

11 Q And did you tell the officer that's the guy I saw?

12 A Yes, ma'am.

13 Q And it was the guy that had made the statement about
14 robbing the store?

15 A Yes, ma'am.

16 Q I'm going to show you what's been marked State's
17 Exhibit No. 14. Do you recognize this home in this
18 picture?

19 A This is the house on Pine Street.

20 Q And is that the house that the officers took you to?

21 A Yes, ma'am.

22 MS. GARFIELD: Your Honor, we'd introduce
23 State's Exhibit No. 14.

24 THE COURT: Any objection?

25 MR. JOHNSON: No objection, Your Honor. I'm

1 sorry.

2 **THE COURT:** Okay. Thank you.

3 (WHEREUPON, State's Exhibit No. 14 is admitted
4 into evidence.)

5 **Q** Mr. Quintyne, if you could step back down again, back
6 to the board. This house on Pine Street, can you go
7 back over a little bit just so everybody on the jury
8 box can see; if you can show where the Exxon station
9 was again?

10 **A** The Exxon station is here.

11 **Q** Where is that house that you were taken to Pine
12 Street?

13 **A** The house should be -- I believe this house here is
14 on Pine Street.

15 **Q** And about how long would that take you, did that take
16 you to get there?

17 **A** Just a few minutes.

18 **Q** Thank you. Please take your seat. Mr. Quintyne, I'm
19 going to show you another photograph, State's Exhibit
20 No. 24. Do you recognize the person in that
21 photograph?

22 **A** Yes, ma'am.

23 **Q** And who is that person?

24 **A** This is the same young man over there when he came
25 out the house.

1 Q Is that the same person that's sitting at the counsel
2 table?

3 A Yes, ma'am.

4 Q Later did you meet with an investigator and give your
5 statement?

6 A Yes, ma'am.

7 Q Had you ever seen this person before?

8 A Only on that day.

9 Q On that day?

10 A Yeah.

11 Q Prior to him walking by your cab, had you seen him?

12 A No.

13 Q I think that's all. Please answer anything Mr.
14 Johnson has.

15 CROSS EXAMINATION

16 **BY MR. JOHNSON**

17 Q Good morning, Mr. Quintyne.

18 A Good morning.

19 Q Just a couple of questions for you. You said that
20 you was parked at the bus station?

21 A Correct.

22 Q Were you backed in or were you facing out towards the
23 street?

24 A Backed in.

25 Q So that means, were you sitting in the -- I guess you

1 was driving. So you're sitting on the left side of
2 the car?

3 **A** Correct.

4 **Q** Backed in?

5 **A** Correct.

6 **Q** Did the person walk beside you on the left?

7 **A** He walked approaching the vehicle between the
8 driver's side of the vehicle and he stated that he
9 was going to rob the store. And --

10 **Q** Who was he talking to?

11 **A** He was just talking out.

12 **Q** So he just yelled it?

13 **A** He just yelled it out in the open.

14 **Q** Made an announcement, and that caught your attention.
15 Right?

16 **A** Yeah.

17 **Q** And you noticed him, right?

18 **A** Yes, I did.

19 **Q** You made observations of who he was, right?

20 **A** Yes, I did.

21 **Q** And in your -- and you described him as being
22 five-six to five-eight, right?

23 **A** Yes, I did.

24 **Q** You said he had a yellow t-shirt on?

25 **A** Yes, sir.

1 Q And you watched him then walk across and go inside
2 the Exxon station, correct?

3 A That's correct.

4 Q You forgot one thing. You said that he also had a
5 white hat on. Do you remember that?

6 A I don't remember.

7 MR. JOHNSON: Your Honor, may I approach the
8 witness?

9 THE COURT: Yes, you may.

10 Q Do you recognize that? Do you recognize that?

11 A I didn't write the report, sir. Yeah. But as far as
12 now to then, I don't remember it now.

13 Q No. Don't hand it back to me. Before you explain,
14 I'm just asking you -- we'll take one step at a time.
15 Okay?

16 A Okay.

17 Q Do you recognize that?

18 A Yes. It's my statement.

19 Q That's a statement that you wrote to the police?

20 A Yes.

21 Q All right. Please read -- let me take a look at it
22 real quick. Please read the first four lines.

23 A It says: On July 19th, 2008, somewhere between the
24 hours of 8 and 9 p.m, a gentleman about five-six,
25 five-eight --

1 **COURT REPORTER:** Wait a minute. You need to
2 slow down and speak up, please.

3 **A** I'm sorry. On July 19th, somewhere between the hours
4 of 8 and 9 p.m., a gentleman about five-six,
5 five-eight wearing a yellow t-shirt and a white hat
6 walked past my job as I was backing into the sign.

7 **Q** Okay. Wearing a white hat. Right?

8 **A** Yeah.

9 **Q** And this is your writing, right?

10 **A** Yes, sir.

11 **Q** So that means that's what you saw?

12 **A** Yes, sir.

13 **Q** And you watched this person with a yellow cap [sic]
14 on who said he was going to rob the store with a
15 white hat on walk into the store. Right?

16 **A** Okay.

17 **Q** So then under your assumption the person that robbed
18 the store had a white hat on, right?

19 **A** Okay.

20 **Q** No. Not okay. I'm asking you to tell me if that's
21 what you wrote. Is it true or not?

22 **A** Yes, sir.

23 **Q** Okay. And you saw this person still had the white
24 hat on, right?

25 **A** Yes, sir.

1 Q Went into that store, correct?

2 A Correct.

3 Q Now, we can make two assumptions from that. Either
4 you didn't observe it correctly and you was wrong
5 about whether he had a white had on or not. Correct?
6 That's one possibility, right?

7 A Yes, sir.

8 Q The other possibility is that if you did see my
9 client and he did have a white hat on, that he had a
10 white hat on, right?

11 A Yes, sir.

12 Q And now, if the person that robbed the store, on the
13 video, if he walks in and doesn't have a white hat
14 on, it couldn't be my client, could it?

15 A I really can't answer that question because he could
16 have took the hat off.

17 Q But the person you saw didn't take his hat off when
18 he walked into the store, right?

19 A As from what I saw from my cab to the store, I saw
20 him walk into that store.

21 Q With a white hat on, right?

22 A I watched him walk into the store.

23 Q I'm just asking you.

24 A I can't remember whether he took the hat off when he
25 walked into the store. But when he passed me, that's

1 what I saw.

2 **Q** But a few seconds ago you were positive. What's
3 different now?

4 **A** I'm positive the same guy right there is the guy that
5 walked past me with the yellow t-shirt on.

6 **Q** With a white hat. Right? That's what you wrote.

7 **A** Right.

8 **Q** So there is no way -- on here you say he took a white
9 hat off. Correct?

10 **A** That's correct.

11 **Q** And as far as you know, he didn't take that white hat
12 off. I'm asking you to tell the truth. I ain't
13 asking you to make up nothing.

14 **A** I'm not lying. I'm not making up anything.

15 **Q** He didn't take the white hat off, did he?

16 **A** I didn't see him take anything off.

17 **Q** So then he walked into the store with a white hat on,
18 correct?

19 **A** He walked into the store. I can't say whether he
20 took the hat off or whether he didn't. I saw him
21 walk into the store.

22 **Q** Did he have a white hat on when he walked into the
23 store?

24 **A** When he passed me he had on the hat.

25 **MS. GARFIELD:** Objection, Judge. He's asked

1 that question now three times at least.

2 **THE COURT:** Sustained.

3 **Q** And when you saw him again and you identified him,
4 when you identified my client, right?

5 **A** Yes, sir.

6 **Q** That was the person that you saw with a white hat on?

7 **A** Yes, sir. I don't forget faces.

8 **Q** I'm not saying that you did. But you also wrote in
9 your statement that the guys said that he robbed the
10 station after he saw the police show up, right?

11 **A** Yeah. There was -- everybody else was outside.

12 **Q** So when my client made the statement he was going to
13 rob the store, you're saying he made an announcement
14 to everybody: I'm going to rob the store?

15 **A** There was a few other drivers out there and there
16 were also some panhandlers standing on the side of
17 the Greyhound.

18 **Q** Now, let me explain this, too. The State asked you
19 about whether it was 8:30 when this happened and
20 stuff like that. You really don't know what time it
21 was that he said that, do you?

22 **A** It was between 8, somewhere between 8 or 9. I don't
23 know exactly what time between.

24 **Q** So you've got an hour gap. Between 8 and 9, right?
25 Not a half an hour gap, but an hour?

1 **A** Right.

2 **Q** So it's possible that my client could have walked in
3 that store and left before it was robbed. Isn't that
4 possible?

5 **A** From my knowledge, from what I saw, the young man
6 walked past me and walked into that store, a few
7 minutes later there were cops that were all over the
8 place.

9 **Q** But what you call a few minutes is an hour. You're
10 saying it could have been from 8 to 9. Because the
11 store wasn't robbed until 8:54. Isn't that about an
12 hour?

13 **A** Yes, sir.

14 **Q** But that's what you're calling a few minutes?

15 **A** I didn't know what the exact time was at the time.

16 **Q** Then that's all you have to say, you know the exact
17 time. Is that what you're saying?

18 **A** Yes, sir.

19 **Q** So let's clarify this. Sometime between 8 and 9:00
20 you saw my client with a white hat on walk into the
21 the Exxon station, correct?

22 **A** Right.

23 **Q** Sometime between around 8:54, because it had to be
24 after 8:54 when you found out that the store was
25 robbed because you saw the policemen there, right?

1 **A** Uh-huh (affirmative).

2 **Q** So if you saw the policeman already there and let's
3 say the police got there about ten minutes after the
4 robbery, that had to be about 10:14. I mean, it had
5 to be about 9:10, 9:14 or ten minutes after 9.

6 Correct?

7 **A** I don't know what the exact time was. All I know is
8 between 8 or 9:00. I can't sit here and tell you it
9 was 8:14, it was 8:10, it was 8:05. I just know it
10 was between that time. I left the Greyhound and I
11 came back and I spoke to the officer. I didn't look
12 at the time to see what time it was.

13 **Q** All right.

14 **A** That is the truth.

15 **Q** I understand. I'm not saying that you're not. I'm
16 just trying to clarify time. Because, like I say,
17 you said a few minutes but we later found out it's an
18 hour. That's important. You understand why that's
19 important, don't you?

20 **A** Yes, sir.

21 **Q** Okay. And just for one clarification. This is your
22 writing. This is a report that you wrote, right?

23 **A** Yes, sir.

24 **Q** And in the report that you wrote you say that you saw
25 my client with a white hat on, correct?

1 **A** Yes, sir.

2 **Q** And in the report that you wrote you said that you
3 saw him go into the store with a white hat on,
4 correct?

5 **A** I saw him go into the store.

6 **MS. GARFIELD:** Objection.

7 **A** I never said that I saw him go into the store with a
8 white hat on. I saw him go into the store. If he
9 took that hat off, I don't know.

10 **Q** Well, let me ask you this.

11 **A** He could have had it on. I don't know. He walked
12 into the store.

13 **Q** But that would call for speculation, right?

14 **A** You may say. I don't know.

15 **Q** That's my point. You don't know, do you?

16 **A** He walked into the store. He passed me. He walked
17 into that store.

18 **Q** When saw him he had a white hat on, right?

19 **A** Yes, sir.

20 **Q** You saw nothing to indicate that he took that hat
21 off, did you?

22 **A** From the angle from where I was at to the store, I
23 can't say that he took his hat off.

24 **Q** But a minute ago you said you could see the store
25 clearly. So what? You can't see it clearly now?

1 **A** Yeah. You can see the store from the corner of from
2 where I was parked at. If he took his hat off, if he
3 went in his pocket, if he changed something, I can't
4 see that.

5 **Q** Why couldn't you see it? You didn't have a clear
6 angle at the store?

7 **A** Yeah. I'm sitting in my driver's side looking back
8 at when he walked into the store.

9 **Q** Exactly. You were sitting in the seat looking back
10 at him when he walked into the store. You cannot say
11 that he took that white hat off, can you?

12 **A** No, sir.

13 **Q** No other questions.

14 REDIRECT EXAMINATION

15 **BY MS. GARFIELD**

16 **Q** And you can't say he had the hat on either, can you?

17 **A** When he passed me, the hat was on.

18 **Q** But when he went in the store, you can't say he had
19 the hat on?

20 **A** No, sir. No, ma'am.

21 **Q** And you see him go across the street. You see him go
22 into the store?

23 **A** Correct.

24 **Q** And about how much time elapses before you start to
25 see the police cars come?

1 **A** It was roughly I'd say five, seven minutes, eight
2 minutes, somewhere around there.

3 **Q** Thank you. I have nothing further.

4 **MR. JOHNSON:** Just to follow up. Your Honor, I
5 forgot. I want to admit this as Defense Exhibit No.
6 1, the statement. I want to admit it in as evidence.

7 **MS. GARFIELD:** I think it would be No. 2.

8 **COURT REPORTER:** No. I haven't marked any
9 Defense Exhibit yet.

10 **MR. JOHNSON:** Oh. I guess -- well, we haven't
11 put that in yet. Yeah. I guess I can do it all at
12 one time.

13 **THE COURT:** Okay.

14 **MR. JOHNSON:** Also, Your Honor, what we have is
15 the 911 transcript. And I guess just to save time,
16 we'll just mark both of them as Defense Exhibit 1 and
17 2. I guess the transcript would be defense Exhibit
18 No. 1. And the statement would be No. 2.

19 **THE COURT:** Okay.

20 (WHEREUPON, Defendant's Exhibit No. 1 is marked
21 for identification and received in evidence.)

22 (WHEREUPON, Defendant's Exhibit No. 2 is marked
23 for identification and received in evidence.)

24 **MS. GARFIELD:** Your Honor, I don't have any
25 issue with that. If we could just -- there's

1 personal information on that statement. If he can
2 take that off.

3 **MR. JOHNSON:** I can highlight it.

4 **THE COURT:** We'll get a copy. That's fine.
5 We'll do it later on. Okay.

6 RECROSS EXAMINATION

7 **BY MR. JOHNSON**

8 **Q** You identify his hair, saying he had bushy hair or
9 brown hair, correct?

10 **A** Mm-hmm (affirmative).

11 **Q** How could you say that if he had a hat on?

12 **A** I could see his hair. The hat was -- it wasn't like
13 a -- I mean, it looks like a baseball hat but not
14 like a brand new hat. The hat wasn't -- it just
15 didn't have lift in it.

16 **Q** So it was a hat?

17 **A** Yeah.

18 **MR. JOHNSON:** No other questions.

19 **THE COURT:** Can you step down and be excused,
20 sir.

21 **THE WITNESS:** Thank you.

22 **MS. GARFIELD:** May I approach just a minute on
23 something?

24 **THE COURT:** Yes. You all approach really quick.
25 (Whereupon, a bench conference is had)

1 **MR. ROGERS:** The State calls Ms. Katrina
2 Eastwood.

3 KATRINA EASTWOOD, after being duly sworn,
4 testifies as follows:

5 **THE CLERK:** Thank you. Have a seat in the
6 witness stand and give the court reporter your name.

7 **THE WITNESS:** Katrina Eastwood.

8 DIRECT EXAMINATION

9 **BY MR. ROGERS**

10 **Q** Good afternoon, ma'am.

11 **A** Hi.

12 **Q** Where are you currently employed?

13 **A** The City of Columbia Police Department.

14 **Q** How long have you been employed there?

15 **A** Approximately five years.

16 **Q** What is your current job?

17 **A** I'm a police officer but I'm on light duty currently.

18 **Q** What is light duty?

19 **A** Basically desk work. Off the street. I had my knee
20 operated on.

21 **Q** So that's because of your operation?

22 **A** Correct.

23 **Q** Were you employed with the City of Columbia in July
24 of 2008?

25 **A** Yes.

1 Q How were you employed then?

2 A Patrolling.

3 Q The same type of job responsibility?

4 A Correct.

5 Q What does a patrolman do?

6 A We just kind of surveil the area, respond to calls,
7 take calls, give reports.

8 Q Would you work more in a patrol car or more at a
9 desk?

10 A Patrol car.

11 Q Were you working on the evening of July 19th, 2008?

12 A Correct.

13 Q Did you respond to an armed robbery call that night?

14 A Yes.

15 Q Prior to that call coming out, what were you doing?

16 A I believe I was on another call. I was just
17 finishing up another call in the area.

18 Q I have a quick follow-up question, something we
19 touched on earlier. Your light duty that you're on
20 right now, how was your knee injured?

21 A I was on a domestic call and breaking up the fight.
22 My knee was dislocated.

23 Q And that was a job-related injury there?

24 A Yes.

25 Q Okay. About how long ago did that injury occur?

1 **A** It happened in '07 but I was released back out on the
2 street.

3 **Q** Was that before or after this armed robbery? That
4 was '07. So it would be before this armed robbery?

5 **A** Yes.

6 **Q** Okay. On July 19th of 2008 you said you were on a
7 different call when you heard the armed robbery?

8 **A** I was finishing another call. I'm not sure what it
9 was but it was in the area.

10 **Q** Okay. The call that came out, how did you receive
11 that call?

12 **A** It was over the radio.

13 **Q** And --

14 **A** It was dispatched over the radio.

15 **Q** -- was that a particularly urgent call?

16 **A** Yes. We have these toned out calls that like when
17 you have to respond in a timely matter or sometimes
18 running blue lights and sirens, they do a tone call.
19 And that's how it came over the radio.

20 **Q** And when a toned call comes out, are officers
21 supposed to --

22 **A** Basically, if there's nothing urgent that you're
23 attending to, then, I mean, you can kind of drop what
24 you're doing, and, I mean, you try to get there as
25 soon as you can.

1 Q And did you initiate your blue lights and sirens?

2 A I do not remember.

3 Q Did you arrive at the scene of the armed robbery?

4 A Yes.

5 Q Do you remember where that armed robbery was located?

6 A At 2020 Gervais Street, on the corner of Gervais and
7 Harden.

8 Q Okay, ma'am. If I may approach the witness, Your
9 Honor?

10 **THE COURT:** Yes, you may.

11 Q Ma'am, I'm going to show you a couple of pictures.

12 A Mm-hmm (affirmative).

13 Q These pictures are State's Exhibit 5, State's Exhibit
14 2, State's Exhibit 3 and State's Exhibit 4. Take a
15 second to look at those pictures.

16 A Okay.

17 Q Do you recognize the buildings in those pictures?

18 A That's the business that was involved in the
19 incident.

20 Q If you could hold that picture up to the jury so we
21 can show them. Which State's Exhibit is that?

22 A I'm sorry?

23 Q Which Exhibit No. is that?

24 A 4.

25 Q Okay. And there's a blue taxi in the corner. Can

1 you tell where this picture was taken from?

2 **A** It's across the street from the incident location
3 nearby the Greyhound boarding house.

4 **Q** And is that the Exxon, the Corner Pantry that was
5 robbed that's in the picture?

6 **A** Yes.

7 **Q** Can you hold that up and point to where the Exxon is
8 in the picture?

9 **A** It's right here.

10 **Q** Can you move on to the next picture? And what
11 exhibit number is that?

12 **A** That's the address of the business.

13 **Q** Okay. And on the sticker, what number is that?

14 **A** 3.

15 **Q** Okay. And what number is above the door?

16 **A** 2020.

17 **Q** And that's the incident location?

18 **A** Correct.

19 **Q** And can you show us the next picture? And what does
20 that show?

21 **A** It's the front of the business.

22 **Q** Which Exhibit No. is that?

23 **A** 2.

24 **Q** And that's the armed robbery location?

25 **A** Correct.

1 Q Can you show us the next? I think there is one more
2 picture. And what exhibit number is that?

3 A 5.

4 Q Okay. And is the Exxon that you responded to in that
5 picture as well?

6 A Yes. It's right here.

7 Q Okay, ma'am. When you arrived on the scene at 2020
8 Gervais Street, what did you observe?

9 A The attending cashier in the business, she was still
10 behind the counter. And I went inside because there
11 was no one else there. I went inside to make sure
12 everything was okay. And she just seemed to be like
13 ready to kind of tell me what had happened.

14 Q And now, you said the victim was there?

15 A Mm-hmm (affirmative).

16 Q And no one else was there?

17 A Correct.

18 Q No other witnesses?

19 A I didn't see any.

20 Q And any other officers yet?

21 A No.

22 Q So were you the first officer on the scene?

23 A Yes.

24 Q As the first officer on the scene, does that give you
25 certain responsibilities or duties that you're

1 supposed to do?

2 **A** Yes. I mean, you basically kind of take control as
3 far as giving the description out; if you have any
4 description of the suspects, in what direction, and
5 kind of for other officers around to surveil the area
6 to see if they can find the person if there was one
7 and then kind of initiate the report that has to be
8 taken.

9 **Q** Did you speak with the victim?

10 **A** Yes.

11 **Q** And based on your conversation with her, were you
12 able to get a description of the suspect?

13 **A** Yes.

14 **Q** What did you do with that description?

15 **A** I put it over the radio.

16 **Q** Do you remember specifically what that description
17 was?

18 **A** No. I put it in the report. I didn't bring it.

19 **Q** Ma'am, if I show you a copy of your report, would
20 that refresh your memory?

21 **A** I have one.

22 **Q** You have one with you?

23 **A** Yes.

24 **Q** If you'd refer to that. After referring to that,
25 what was the description that you were able to give

1 out on the radio?

2 **A** It was approximately five feet -- a white male,
3 approximately five-two to five-five in height, 170,
4 180 pounds in weight, and he was between the ages of
5 28 and 35 wearing a yellow football jersey, sandy
6 brown hair, low profile haircut. That's all that was
7 given to me at the time. That's what I dispatched
8 over the radio.

9 **Q** And when you arrive on the scene, are you trying to
10 get information out as quickly as possible?

11 **A** Correct.

12 **Q** Why would you do that?

13 **A** Just in case he was in the area still.

14 **Q** After taking the description of the suspect from the
15 victim, what did you do next?

16 **A** Put it over the radio. And people acknowledge or
17 make sure, you know, everything was clear. And then
18 I asked her what had -- you know, I asked her what
19 had took place.

20 **Q** And what were you able to determine had happened?

21 **A** She said the -- she had had other customers and the
22 suspect came in and he was in line. He -- she knew
23 what he asked I guess to purchase. I believe it was
24 Newport 100's, cigarettes. And when he asked for it,
25 during payment he gave her a \$20 bill for purchase.

1 And once the victim opened up the cash register, he
2 presented a steak knife and then advised that it was
3 a stick-up and to give him all the money.

4 Q Do you remember any specific description of the knife
5 besides steak knife?

6 A No. She just said it was a large steak knife.

7 Q Okay. After other officers had responded over the
8 radio that they had received the description, did
9 more officers arrive on the scene?

10 A My supervisors. And eventually we have what we call
11 an ID Tech, crime scene investigator and a regular
12 investigator to do the case.

13 Q Do you remember which crime scene investigator showed
14 up on the scene?

15 A Yeah. Officer Nelson.

16 Q Nelson?

17 A Mm-hmm (affirmative).

18 Q And when he arrived on the scene, approximately how
19 long after the call would you say that Officer Nelson
20 responded to the scene?

21 A I don't remember.

22 Q Would you say it was a short time? A long time?

23 A It was a reasonable -- I mean, I was still doing
24 notes on the report and everything.

25 Q After he arrives on the scene, what happened?

1 **A** He -- I believe he went up behind the desk and kind
2 of -- he got what the story was and started kind of
3 looking behind the desk on where the suspect was, I
4 guess to start taking prints and things of that
5 nature.

6 **Q** When he arrives on the scene, what would his
7 responsibilities be?

8 **A** What I just said.

9 **Q** Like to collect evidence and stuff?

10 **A** Correct. Yeah.

11 **Q** Would you then take everybody out of the business so
12 that he could be in there alone?

13 **A** Well, you don't really want anybody to be in the area
14 as soon as I get there on the scene. So when I spoke
15 with the victim, it was kind of off to the side, she
16 showed me without touching anything kind of what had
17 taken place. But no one else other than my
18 supervisors and myself went inside.

19 **Q** So Officer Nelson arrives on the scene and starts
20 collecting evidence?

21 **A** Mm-hmm (affirmative).

22 **Q** After Officer Nelson arrives, did another
23 investigator arrive on the scene?

24 **A** Investigator Thomas.

25 **Q** Just for clarification, is Officer Thomas in the

1 courtroom today?

2 **A** I'm sorry?

3 **Q** Just for clarification, is Officer Thomas in the
4 courtroom today?

5 **A** Yes.

6 **Q** Where is he sitting?

7 **A** (Witness points).

8 **Q** When Officer Thomas arrives on the scene, what
9 happens?

10 **A** He basically was a little more thorough as far as
11 talking to the victim. And I know that there was a
12 video that was needed to be looked over and they did
13 that. And then eventually, I'm not sure what point
14 in time, but someone -- there was a suspect located
15 over the radio, and then eventually the victim was
16 transported over there to ID him, the suspect.

17 **Q** When the call comes out that there was a suspect, was
18 Officer Thomas still with you on the scene?

19 **A** Yes.

20 **Q** Do you remember which officer took the victim to the
21 suspect?

22 **A** It's usually our supervisor on normal situations if
23 the investigator is not there. But both my
24 supervisor and the investigator were outside and it
25 was one of the two.

1 Q Do you remember anyone from the Corner Pantry, any
2 other employees showing up to the scene?

3 A I believe it was victim's manager because she was the
4 one that needed to run the video.

5 Q And did you speak with her at all?

6 A Briefly.

7 Q Do you remember approximately how long after the call
8 that the victim was taken to go be shown the suspect?

9 A I don't remember how long. It was after ID Tech and
10 Investigator Thomas was there.

11 Q Do you remember if the manager went with them?

12 A I believe she did.

13 Q Do you remember approximately how long they were gone
14 from the scene?

15 A Hmm-mm (negative). No.

16 Q Did they return back to the scene?

17 A Yes.

18 Q Did anything significant in your memory happen after
19 they returned to the scene?

20 A Not to my knowledge.

21 Q Do you remember about how long it took ID Tech Nelson
22 to complete his investigation or survey of the
23 property?

24 A No. Because he was still working while I was working
25 on the report.

1 **Q** Okay. Would it be your duty to stay on the scene
2 until all information is collected?

3 **A** Yes.

4 **Q** And did you do that that night?

5 **A** Yes. I stayed outside of the business because there
6 were still people. Regardless of the lights off and
7 everything, there were still people trying to come
8 and, you know, buy items and get gas and things of
9 that nature.

10 **Q** Were those people allowed in the business?

11 **A** No.

12 **Q** At any point did you leave the scene to go see where
13 the suspect was apprehended?

14 **A** No.

15 **Q** After you left the Corner Pantry, did you do any
16 other work on this case?

17 **A** No. Not to my knowledge.

18 **MR. ROGERS:** One moment, Your Honor.

19 **THE COURT:** Sure.

20 **MR. ROGERS:** Ma'am, I have no further questions
21 for you. Defense counsel may ask you some questions.

22 **MR. JOHNSON:** May it please the Court.

23 **THE COURT:** Sure.

24 CROSS EXAMINATION

25 **BY MR. JOHNSON**

1 Q How you are you this morning, Officer Eastwood?

2 A How you doing?

3 Q Just a couple of questions for you. You were the
4 first officer on the scene?

5 A Yes, sir.

6 Q So you give out the description to the police; I
7 mean, to the 911 dispatcher to put it out. Is that
8 correct?

9 A Yes. Over the radio.

10 Q Now, you just read your incident report where you
11 described the person being five-two to five-five.
12 Correct?

13 A Correct.

14 Q 170, 180 pounds?

15 A Mm-hmm (affirmative).

16 Q Between 28 and 35. And in your report you have sandy
17 brown hair, correct?

18 A Okay.

19 Q When did you do this report?

20 A I did it while I was on the scene.

21 Q You typed this out?

22 A Yes. We have computers in our car.

23 Q And you typed this out?

24 A Mm-hmm (affirmative).

25 Q Could you have made a mistake as far as the hair

1 goes?

2 **A** That was what I was given.

3 **Q** And that's what you gave. And you gave exactly to
4 the 911 dispatcher what you was given, correct?

5 **A** Yes. What is in the report is what I put out.

6 **Q** And can you look at the 911 report at 20:51? Do you
7 recognize that report that has been previously
8 marked? I think that's Defendant's Exhibit No. 2.

9 **A** No. I've never seen this. Look at what now?

10 **Q** Could you look at the top of it? Is that a 911
11 report?

12 **A** I'm assuming. I have never seen one.

13 **Q** Okay. But let me just point out something to you.
14 On 7-19 at 20:51 at the top, would you please read
15 what it says there?

16 **A** Everything from the bottom or --

17 **Q** I'm sorry. I'm sorry. That one. No. I'm sorry.
18 Let me clarify it for you.

19 **A** All right.

20 **Q** 7-19 at 20:51 where it gives a description, will you
21 please read that?

22 **A** All right. I see the Corner Pantry, white male armed
23 with a knife, sandy blonde hair.

24 **Q** Sandy blonde hair?

25 **A** Okay.

1 Q And that would be the description -- if they gave
2 that, that would be the description you gave them.
3 Correct?

4 A I'm assuming.

5 Q So then it's possible that your report is wrong when
6 you have sandy brown?

7 A Well, I mean, what I've wrote down is what was in my
8 notes at the time. So if that's what I said, it must
9 have been an error on my part.

10 Q In your notes?

11 A Huh?

12 MS. GARFIELD: Objection.

13 A What was being said over the radio.

14 MS. GARFIELD: I'm sorry. May we approach?

15 THE COURT: Yes.

16 (Whereupon, a bench conference is had)

17 THE COURT: Thank you all.

18 Q Officer, I need to clarify. I've misspoken.

19 A Okay.

20 Q This would not have been the time -- Your Honor, just
21 for the record, we just discovered this would not
22 have been the time that the officer called it in.
23 This would have been the initial report by the victim
24 at the time.

25 THE COURT: Okay.

1 **MR. JOHNSON:** So I don't know how you would like
2 to address the jury about it. I misspoke about this.

3 **THE COURT:** Okay. I think you've told them.

4 **MR. JOHNSON:** Okay. Thank you, Your Honor.

5 **THE COURT:** Thank you for the clarification.

6 **Q** One other question. When you initially get to the
7 scene -- you received training as far as being the
8 first officer at the scene. Is that correct?

9 **A** Yes, sir.

10 **Q** So are you taught to touch any of the evidence or do
11 anything with the evidence?

12 **A** No. We're not taught that.

13 **Q** What are you taught?

14 **A** To make sure no one touches the -- I mean, as much as
15 you can, just kind of stay away from the contaminated
16 areas of where the suspect might have been.

17 **Q** Such as what? The door? Those type things?

18 **A** The door. Wherever he was; in line, at the register,
19 at the counter.

20 **Q** So you made sure that after you entered that nobody
21 touched the door or any of the areas that he could
22 have touched. Is that correct?

23 **A** I tried to prevent as best as I could for no one to
24 touch the scene, yes.

25 **Q** As far as you know, nobody did?

1 **A** As far as I'm concerned.

2 **Q** But officers are generally taught not to touch an
3 area or move any of the clothing? Like if they find
4 clothes in any certain location, they are taught not
5 to move it. Is that correct?

6 **A** Yes. Unless there's need to.

7 **Q** But it would have -- when you say need to, would it
8 be safety concerns, things of that nature?

9 **A** Safety. Or if you need to find out information or
10 something like that. But for the most part, you do
11 not want to touch or contaminate the area any more.

12 **Q** Until the -- what you call it -- the tech, the CSI?

13 **A** The CSI, yeah. ID tech.

14 **Q** CSI tech. Okay. And the only other reason you would
15 move anything is just for safety or some legitimate
16 other reason to move it?

17 **MR. ROGERS:** Objection, Your Honor. It calls
18 for speculation.

19 **THE COURT:** Overruled. If she can answer it.

20 **A** Repeat it? Sorry.

21 **Q** I said the only other reason that you were taught or
22 you're aware of to move anything would be like safety
23 or something, like you say to get information off it
24 that was needed at that time. Is that correct?

25 **A** Yes.

1 **Q** Okay. No other questions.

2 **MR. ROGERS:** No further questions for this
3 witness.

4 **THE COURT:** You can step down.

5 **MR. JOHNSON:** Your Honor, I know it's out of
6 procedure, but I do have one other question.

7 **THE COURT:** Okay. We'll consider you to state
8 your question before you say no other questions. Go
9 ahead.

10 **MR. JOHNSON:** Thank you, Your Honor. And truly,
11 it's just one question.

12 **Q** You have on your statement that the witness or the
13 victim in this case told you it was a football
14 jersey, correct?

15 **A** Apparently, yes.

16 **Q** And if you wrote that down, that's what she told you,
17 correct?

18 **A** Correct.

19 **MR. JOHNSON:** No other questions.

20 **THE COURT:** Any other questions by the State?

21 **MR. ROGERS:** The State has no further questions
22 for this witness, Your Honor.

23 **THE COURT:** Okay. You can step down and be
24 excused. Thank you, ma'am. Ladies and gentlemen of
25 the jury, we're going to take our lunch break now.

1 I'm going to remind you not to discuss the case in
2 any shape, form or fashion. And I have a legal
3 matter I'll need to take up with some parties, not
4 these parties. So I'm going to ask you to report to
5 your jury room at -- one moment. The court reporter
6 matters, so let me ask her about the appropriate
7 time. Of the jurors, report back to your jury room
8 at 2:30. Thank you. I remind you not to discuss the
9 case.

10 (Jury out at 1:15 p.m.)

11 **THE COURT:** Any issues the Court needs to take
12 up with the parties?

13 **MR. JOHNSON:** I have nothing from the defense,
14 Your Honor.

15 **MS. GARFIELD:** Not that I can think of.

16 **THE COURT:** You all can be at ease. The
17 courtroom staff, we'll be here at 2 because I have
18 two death pleas. And they are working on them. And
19 so I just told them I would take them up during our
20 break here. All right. You all be at ease.

21 (Whereupon, a lunch break is taken)

22 **THE COURT:** Are you all ready?

23 **MR. JOHNSON:** They said they were going to bring
24 him. I told them 2:30.

25 **THE COURT:** Can you check on that? We need the

1 defendant.

2 **MR. ROGERS:** He's right here, Your Honor.

3 (Pause)

4 **THE COURT:** Are you all ready for the jurors?

5 **MS. GARFIELD:** Yes.

6 **THE COURT:** Mr. Johnson, are you ready for the
7 jurors?

8 **MR. JOHNSON:** Yes, Your Honor.

9 **THE COURT:** Okay. Jurors, please. And we put
10 proposed jury charges over there.

11 **MR. ROGERS:** We've got them, Your Honor. I
12 haven't had a chance to look at them.

13 **THE COURT:** That's okay. I didn't expect you
14 to. I just wanted to let you know we were trying to
15 help you all out.

16 (Jury in at 2:35 p.m.)

17 **THE BAILIFF:** The jurors are all present, Your
18 Honor.

19 **THE COURT:** Okay. Thank you, ladies and
20 gentlemen of the jury. State, are you ready for your
21 next witness?

22 **MR. ROGERS:** The State calls Sergeant Taurus
23 Sanders.

24 **THE COURT:** Okay.

25 TAURUS D. SANDERS, after being duly sworn,

1 testifies as follows:

2 **THE CLERK:** Thank you. Have a seat in the
3 witness stand and give the court reporter your name.

4 **THE WITNESS:** Taurus D Sanders.

5 DIRECT EXAMINATION

6 **BY MR. ROGERS**

7 **Q** Good afternoon, sir.

8 **A** Good afternoon.

9 **Q** Where are you currently employed?

10 **A** City of Columbia Police Department.

11 **Q** How long have you been employed there?

12 **A** Since '96. Let's see. Thirteen-and-a-half years.

13 **Q** What is your current position, Sergeant?

14 **A** Patrol sergeant.

15 **Q** What does a patrol sergeant do? What does that mean?

16 **A** I have a group of officers that we work rotating
17 shifts. We respond to calls. And as a supervisor, I
18 maintain pretty much the schedules and make sure that
19 everyone does their job.

20 **Q** Do you spend a lot of time on the road?

21 **A** Yes, I do.

22 **Q** Are you assigned a particular area?

23 **A** Yes, I am.

24 **Q** And what is that area?

25 **A** South region.

1 **Q** And would you describe to the Court where the south
2 region is?

3 **A** South region is comprised of Five Points, Devine
4 Street, Garners Ferry, the southeast side of town,
5 also to include Wildewood area near Kershaw.

6 **Q** Were you employed with the police department in July
7 of 2008?

8 **A** Yes, I was.

9 **Q** And were you working on the evening of July 19th,
10 2008?

11 **A** Yes, I was.

12 **Q** How were you employed at that time?

13 **A** I was the community response team sergeant at the
14 time which was the Five Points area. We also handled
15 neighborhood issues and complaints.

16 **Q** And the community response team, is that a special
17 team within the department?

18 **A** Yes, it is.

19 **Q** Can you describe that region for the court?

20 **A** It's a group of officers that our primarily function
21 is working Five Points. A lot of evening hours. We
22 did a lot of aggressive patrol outside of Five Points
23 whenever we had complaints or concerns.

24 **Q** Do you have any specialized training with the police
25 department?

1 **A** I do. At the time I was a member of the SWAT team as
2 well.

3 **Q** And what kind of duties did the SWAT team have?

4 **A** We did warrants looking for wanted people, murder
5 suspects. We performed all the drug search warrants.

6 **Q** And did you execute your duties with the SWAT team in
7 addition to your community response team duties?

8 **A** Yes, I did.

9 **Q** I'm going to bring you back to July 19th, 2008. You
10 said you were working that evening?

11 **A** Yes, I was.

12 **Q** Do you remember where or you were at approximately
13 8:00 that evening?

14 **A** I was in the general Five Points area around Harden
15 and Devine Street.

16 **Q** Is it safe to say you were on patrol?

17 **A** Yes.

18 **Q** Were you in a marked vehicle?

19 **A** I was.

20 **Q** Were you in uniform, sir?

21 **A** Yes, I was..

22 **Q** As a member of the SWAT team, do you have a special
23 uniform that you wear?

24 **A** We do when we're actively working in that role. But
25 I was on my patrol functions that day.

1 Q So just a regular police uniform?

2 A Yes, sir.

3 Q Were you made aware of a burglary -- or excuse me --
4 an a armed robbery call on the evening of July 19th,
5 2008?

6 A Yes, I was.

7 Q And how were you made aware of that call?

8 A It came across the radio as a 2020 Gervais confirmed
9 hold-up, gave out the suspect description and
10 direction of travel.

11 Q Do you remember what that suspect description was,
12 sir?

13 A I do not know, no.

14 Q Do you remember what the direction of travel was?

15 A It was towards -- if I remember correctly, it's
16 towards the right of the store, which would have been
17 Gervais, Harden Street area.

18 Q Did you respond to this call?

19 A I did respond to the area.

20 Q Was this a call that you responded to with blue
21 lights and sirens?

22 A Yes.

23 Q When you responded to that call, where did you go?

24 A I went into the Martin Luther King area which is
25 pretty much east of the store. It's the adjacent

1 neighborhood.

2 Q And did you respond to the actual incident location?

3 A Not at that time I didn't.

4 Q What was the reason behind that?

5 A I was acting as a support function and looking for
6 the suspect at the time.

7 Q When you started your search, as you described it as
8 the support function, approximately how long after
9 the call were you searching for the suspect?

10 A I was in the area within a minute of receiving the
11 call.

12 Q All right. Did you go to a particular location that
13 evening?

14 A Afterwards I did. Yes, sir.

15 Q And where was that location?

16 A

17 MR. ROGERS: Your Honor, if I may approach the
18 witness?

19 A Yes.

20 Q Sir, I'm going to show you a couple of pictures. For
21 the record, I'm going to show you State's Exhibit 24,
22 State's Exhibits 12, 13 and 14. And I'm going to
23 show them a little out of order for you. If you
24 could please look at State's Exhibit 12 for me.

25 A All right.

1 Q Do you recognize that house?

2 A Yes, sir.

3 Q What is that house?

4 A That is

5 Q Is that the residence that you responded to that
6 evening?

7 A Yes, sir.

8 Q Can you look at State's Exhibit 13?

9 A Yes, sir.

10 Q And do you recognize that?

11 A The same address.

12 Q Is that a different picture of the same address?

13 A Yes, sir. It's the left side of the house.

14 Q Okay. And State's Exhibit 14, do you recognize that,
15 sir?

16 A Yes, sir.

17 Q And is that the same location?

18 A Yes. That's the front of the house.

19 Q Different picture?

20 A Yes.

21 Q Okay. Sir, I'm also going to show you another
22 exhibit. I show you State's Exhibit 25. Okay. This
23 is kind of difficult to show. Your Honor, can he
24 step down for a second?

25 **THE COURT:** Yes, you may.

1 Q I'll grab this pointer. If you could stand closer to
2 the table. Sergeant Sanders, I'm a visual person, so
3 I need pictures. If you could help me, grab that
4 pointer for a second. Let's get a visible
5 description for the jury about the actual incident
6 location where the armed robbery occurred. Do you
7 recognize that on this exhibit?

8 A Yes, sir. The Exxon gas station is right here on the
9 corner.

10 Q Okay. So the jury can get a layout, can you show the
11 main streets that are depicted in this?

12 A This is Gervais Street, Main Street. This is Harden
13 Street. This is going into the Five Points area
14 here. This is the Martin Luther King area
15 neighborhood. And this is the Waverly neighborhood
16 area.

17 Q Now, is this area in your normal patrol area?

18 A Yes, it is.

19 Q It's on the edge of your patrol area?

20 A It is.

21 Q Can you show the jury in relation to this, where
22 would your normal patrol area be generally?

23 A If you're familiar with Five Points, the Food Lion
24 shopping center is just the next block down. And
25 generally, that's where we begin our immediate area

1 as far as Five Points is concerned. So it is on the
2 edge.

3 Q That Food Lion, is that in close proximity to the
4 Exxon?

5 A Yes, it is.

6 Q Okay. On this picture do you also see the
7 address?

8 A Yes.

9 Q Can you point that out to the jury?

10 A It's right here.

11 MR. ROGERS: Your Honor, for the record, the
12 witness is pointing at the bottom right corner of the
13 exhibit.

14 THE COURT: Okay.

15 Q Sir, approximately how far would you estimate from
16 the Exxon to

17 A A little over a block. This is the block here. And
18 just a couple, maybe 100 feet or so.

19 Q When you arrived at the scene, do you remember where
20 you parked?

21 A I parked in the roadway right down here.

22 Q Were you the first officer on the scene at the
23

24 A I was one of the first officers. Myself and Officer
25 Turner and Officer Bowman arrived around the same

1 time.

2 Q Okay. Thank you, sir. That's all the questions I
3 for you right now for this one. You can take the
4 stand. When you arrived on the scene, did you notice
5 anything important when you arrived on the scene at

6 Did you see a suspect?

7 A No, I didn't.

8 Q What did you do when you arrived on the scene?

9 A We approached the house and knocked on the door to
10 try to make contact.

11 Q Did anybody answer the door?

12 A No, sir.

13 Q Did you observe any lights on inside the building?

14 A Yes, sir. There were a couple of lights on inside
15 the house, specifically the bathroom.

16 Q And what drew your attention to

17 A Officer Bowman had received information that the
18 suspect that committed the robbery had went to that
19 address.

20 Q The address at

21 A Yes, sir.

22 Q And so you were following up on that information?

23 A Yes, sir. He relayed that over the radio.

24 Q When you arrived on the scene, after knocking on the
25 door, did you observe anybody inside the building?

1 **A** We surrounded the house on all four sides; and the
2 officer on that side of the house, the right side,
3 said he observed a white male in the bathroom area.

4 **Q** Now, for the jury, just so we're clear, I think
5 Exhibit 14 shows from the right-hand
6 side. Is that accurate?

7 **A** It's actually 12.

8 **Q** Exhibit 12 does?

9 **A** Yes.

10 **Q** Okay. Do you see the area on that picture where the
11 defendant was observed in the building?

12 **A** Yes, sir. The bathroom is this area right here.

13 **MR. ROGERS:** Your Honor, for the record, the
14 witness is pointing at a portion of the house on the
15 right side of

16 **THE COURT:** Okay.

17 **Q** Were the windows drawn at that time, sir?

18 **A** I'm not sure if they were drawn or not. It was open
19 enough where the officer could see that someone was
20 definitely inside.

21 **Q** Do you know if there were lights on inside that
22 bathroom?

23 **A** At the time it was; yes, sir.

24 **Q** Could you see anybody else inside that residence?

25 **A** No, sir.

1 Q Did you attempt to get that individual to come
2 outside the residence?

3 A Yes, sir. We made verbal commands for him to come
4 out and open the door.

5 Q Is it your belief that he could hear you?

6 A Oh. There is no doubt he could hear us.

7 Q Did he respond to your requests?

8 A No. He turned off the light.

9 Q He turned off the light?

10 A Yes, sir.

11 Q What happened then?

12 A We were still in the meantime trying to local a
13 keyholder. There was a lady nextdoor that knew the
14 tenants and also the owner. So she was attempting to
15 find a key for us.

16 Q I want to give the jury a good picture at the scene.
17 At this time were more officers showing up?

18 A Yes, sir, they were.

19 Q At the height of the scene, approximately how many
20 officers would you say were on the scene?

21 A About ten to fifteen.

22 Q And how were those officers positioned in relation to
23 the house?

24 A We all surrounded the house.

25 Q All on foot?

1 **A** Yes, sir.

2 **Q** And what was your purpose of surrounding the house?

3 **A** Just to make sure no one could come out without being
4 detected.

5 **Q** Sir, when the defendant was seen inside the bathroom,
6 was he seen doing anything in particular?

7 **A** He was changing his shirt at the time.

8 **Q** And did you personally observe this?

9 **A** No, sir. It was relayed across the radio.

10 **Q** Were you able to locate a keyholder for that
11 residence?

12 **A** Yes, sir. We were.

13 **Q** And how were you able to find that resident?

14 **A** The female that we had made contact with that lived
15 nextdoor was able to eventually get one of the
16 tenants that lived in the house.

17 **Q** And that tenant, did they provide you with a key to
18 the house?

19 **A** Yes, sir. He did.

20 **Q** Did you ask that tenant for permission to search that
21 residence?

22 **A** Yes, we did.

23 **Q** And what was their response?

24 **A** He let us in.

25 **Q** Could you please describe this individual?

1 **A** A black male, mid-thirties to early forties.

2 **Q** And what was your -- after your obtaining the key and
3 the consent to search from the tenant, --

4 **A** Yes, sir.

5 **Q** -- what did you do?

6 **A** We entered the home.

7 **Q** You entered the home. You had previous testimony
8 that you're on a SWAT team?

9 **A** Yes, sir.

10 **Q** I want to give the jury a visual image of what's
11 happening here. How many people made entry in the
12 residence?

13 **A** I'm not sure of the exact number, but myself and
14 Officer Turner were the only two SWAT members at the
15 scene. So we made entry first just because we are
16 trained and we know how each other responds. So we
17 made entry first and cleared the house.

18 **Q** Is this like something we've seen on TV, kicking down
19 doors?

20 **A** No. There was no forced entry or anything like that.
21 No, sir.

22 **Q** But you and the other SWAT member taking the lead?

23 **A** Yes, sir.

24 **Q** Were you able to clear the residence?

25 **A** Yes, sir, we did.

1 **Q** While clearing the residence, did you personally
2 observe any suitcases?

3 **A** Yes, I did.

4 **Q** Where did you observe those suitcases?

5 **A** The suitcases were on the left side of the house,
6 like a sunroom area.

7 **Q** I think Exhibit 13 shows the other side view of the
8 house. Is that accurate, sir?

9 **A** It is.

10 **Q** Do you see the sunroom --

11 **A** Yes.

12 **Q** -- depicted in that picture?

13 **A** It is. It's this room right here.

14 **MR. ROGERS:** Okay. Your Honor, I'd just like
15 the record to reflect the defendant -- excuse me --
16 the witness is using Exhibit 14. 13 --

17 **A** 13.

18 **MR. ROGERS:** Exhibit 13 as pointing to the
19 sunroom in that picture.

20 **THE COURT:** Okay.

21 **Q** Sir, can you describe to the Court the relation, the
22 physical relation from the sunroom to the bathroom?

23 **A** They were opposite sides of the house.

24 **Q** When you observed these suitcases in the sunroom,
25 what drew your attention to it?

1 **A** They were stacked and they had tags on them like from
2 an airport or bus station, travel tags.

3 **Q** Did you find anyone else inside that residence?

4 **A** Well, we eventually focused on the bathroom of course
5 after we cleared the rest of the house. And the door
6 was locked. And we eventually made entry into the
7 bathroom.

8 **Q** Now, you say the door was locked. Are you talking
9 dead bolts? What kind of locks?

10 **A** It was locked from the inside, one of those hook
11 locks.

12 **Q** When you say you gained entry, did you kick down the
13 door?

14 **A** No, sir. An officer used a credit card or a driver's
15 license and flipped it up.

16 **Q** Who was found inside that room?

17 **A** The defendant.

18 **Q** When you were making entry into -- were trying to
19 unlock that bathroom door, were officers instructing
20 the defendant anything?

21 **A** We gave him verbal commands to open the door before
22 we did that. Yes, sir.

23 **Q** Did he respond to those commands?

24 **A** No, he didn't.

25 **Q** Sir, after making entry into the bathroom, was the

1 defendant secured?

2 **A** Yes, he was. He was detained.

3 **Q** At that time did you find anything of evidentiary
4 value inside that room?

5 **A** Yes, sir. There was a white -- excuse me -- a yellow
6 shirt on the floor along with some one-dollar bills
7 on the floor as well.

8 **MR. ROGERS:** If I may approach the witness, Your
9 Honor?

10 **THE COURT:** Sure.

11 **MR. JOHNSON:** Your Honor, may we approach?

12 **THE COURT:** Yes, you may.

13 ..(Whereupon, a bench conference is had)

14 **MR. ROGERS:** Your Honor, may I approach the
15 witness?

16 **THE COURT:** Yes.

17 **Q** Sir, I'm going to show you what has been previously
18 marked as State's Exhibits 26 for identification
19 purposes. Do you recognize this, this piece of
20 clothing?

21 **A** A yellow shirt.

22 **Q** It's a yellow shirt?

23 **A** Yes, sir.

24 **Q** Does this resemble the yellow shirt that you saw in
25 the bathroom?

1 **A** It looks very similar. Yes, sir.

2 **Q** Were you the person -- did you take this piece of
3 clothing into evidence, sir?

4 **A** I did not. No, sir.

5 **Q** Okay. Was your responsibility at the scene to
6 collect evidence?

7 **A** It was not.

8 **Q** What was your responsibility at the scene?

9 **A** To make entry and apprehend the suspect.

10 **Q** And to do that safely?

11 **A** Yes, sir.

12 **Q** Was anybody injured during this?

13 **A** No, sir.

14 **Q** I'm sorry?

15 **A** No, sir.

16 **Q** Are you aware as to -- were you present when this was
17 taken into evidence, sir?

18 **A** I was not present when it was collected. No.

19 **Q** But do you remember seeing this in the residence?

20 **A** It was in the bathroom on the floor. Yes, sir.

21 **Q** Is this the same bathroom that the defendant was
22 found in?

23 **A** That's correct.

24 **Q** And also just to kind of give the jury a better
25 understanding visually, how big is this bathroom?

1 **A** It's not big at all. I don't think you could fit
2 five people in there comfortably.

3 **Q** Does it have a shower?

4 **A** To the best of my knowledge, I think it is a
5 tub/shower type situation.

6 **Q** Would you describe it as a small, single-person
7 bathroom?

8 **A** It is very small.

9 **Q** After the defendant was secured, are you aware of
10 whether or not any witnesses were taken to the scene?

11 **A** Yes, sir.

12 **Q** And who was brought to the scene?

13 **A** The cab driver.

14 **Q** The cab driver?

15 **A** Yes, sir.

16 **Q** Before the cab driver was brought to the scene for
17 identification --

18 **A** The clerk was brought first and then the cab driver.

19 **Q** I'm sorry. The who?

20 **A** The clerk.

21 **Q** Yes, sir. Do you remember approximately how long
22 after the defendant was taken into custody was the
23 clerk brought to the scene?

24 **A** Within ten minutes.

25 **Q** Do you remember who brought her to the scene?

1 **A** Investigator Thomas.

2 **Q** And just for the record, do you see Investigator
3 Thomas in the courtroom?

4 **A** Yes.

5 **Q** Is that him sitting at the table?

6 **A** Sitting next to Ms. Justice, yes.

7 **Q** Thank you. Are you aware -- when the clerk was
8 brought to the scene for identification, how was the
9 defendant situated?

10 **A** He was in the back of a patrol car at the time. And
11 he was removed and the spotlight was shined on him
12 for illumination.

13 **Q** So he was pulled out of the vehicle and put next to
14 the vehicle?

15 **A** In front of the vehicle.

16 **Q** What type of spotlight?

17 **A** It's just one of these halogen spotlights. It's very
18 pink looking, too.

19 **Q** But the intent wasn't to blind anybody. Is that
20 accurate?

21 **A** Correct.

22 **Q** Was this spotlight enough to adequately illuminate
23 the suspect?

24 **A** Yes, sir.

25 **Q** Are you aware of whether or not the victim, the

1 clerk, was able to give an identification of the
2 suspect?

3 **A** She was.

4 **Q** And was that a positive identification?

5 **A** Yes. With some hesitation I understood.

6 **Q** Okay. Based on the way the scene had unfolded thus
7 far, did you take further action?

8 **A** Yes, sir, I did.

9 **Q** What was that?

10 **A** I knew the cab driver was also a witness prior to the
11 actual robbery.

12 **Q** And how did you learn about that?

13 **A** That came across the radio. I can't remember at what
14 point during the situation. But that was relayed
15 across the radio. So I knew we had another witness
16 that could also positively ID the suspect.

17 **Q** Is it safe to say that there's a lot of information
18 coming back and forth on the radio, sir?

19 **A** Oh, very. Very.

20 **Q** I see the radio on your shoulder now. Is that how it
21 was situated at the time?

22 **A** It was.

23 **Q** Is that how you commonly wear your radio?

24 **A** Yes.

25 **Q** And why is that?

1 **A** It's just a better location to hear.

2 **Q** So after you became aware of the cab driver, --

3 **A** Yes.

4 **Q** -- what action did you take?

5 **A** I went to the bus station where he was prior to the
6 robbery.

7 **MR. ROGERS:** Your Honor, if I may approach one
8 last time? Or one more time?

9 **THE COURT:** Yes.

10 **Q** Sir, I'm not going to ask you to get down this time.
11 But I'm going to show you State's Exhibit 25.

12 **A** All right.

13 **Q** Can you grab that pointer for me?

14 **A** Sure.

15 **Q** For the jury, do you see the Greyhound station here,
16 sir?

17 **A** Yes, sir. Right here.

18 **Q** Okay. And where do cab drivers usually sit?

19 **A** This parking lot right here.

20 **Q** And again, just for context, do you see, where is the
21 Exxon?

22 **A** It's right here across the street.

23 **Q** When you went to go get the cab driver, did you go to
24 this Greyhound location?

25 **A** I did.

1 Q Thank you, sir. You can have a seat. Were you able
2 to locate the cab driver?

3 A He wasn't there when I went back. And I made contact
4 with our dispatch. And she called him on the phone.
5 And he advised that was on a fare at the time and he
6 was returning back. And I waited for him.

7 Q Did you have to wait long?

8 A Not too much. No. About 10, 15 minutes.

9 Q When he arrived back what happened?

10 A I informed him that we may have someone and I wanted
11 him to look at him to see if he can ID him.

12 Q Did you make any suggestions as to this was the guy
13 who did it?

14 A No, I did not.

15 Q What kind of instructions did you give him, as
16 specifically as you can remember?

17 A Well, when we arrived to Pine Street, I told him
18 they're going to bring him out the car and I wanted
19 him to look at him; and don't do it right away, don't
20 give me an answer right away, but just look at him
21 and make sure it's the guy. And I said, if you're
22 not sure let me know. But if you are sure let me
23 know as well. And he said, that's him. He changed
24 his shirt but that's him.

25 Q Did you tell this cab driver anything about the

1 suspect changing clothing?

2 A No, I did not.

3 Q Did you tell him that he was observed in the house
4 changing clothes?

5 A No, I did not.

6 Q Did you give him any more additional information as
7 to the investigation at the scene?

8 A No.

9 Q Did you drive him from the Greyhound station to Pine
10 Street?

11 A I did.

12 Q Was he in the front seat or the back seat?

13 A He was in the front.

14 Q I believe you said that he was able to identify the
15 suspect. Is that accurate?

16 A That is accurate.

17 Q Did he seem certain of his identification?

18 A He was very certain. Yes, sir.

19 Q And despite the color of the defendant's shirt, did
20 that seem to throw him off?

21 A No, it did not.

22 Q Did the surrounding lighting on the defendant, did
23 that seem to impede his identification?

24 A No.

25 Q Sir, I'm going to approach you once again. Your

1 Honor, with permission?

2 **THE COURT:** Yes.

3 **Q** I'm going to show you State's Exhibit 24. Do you
4 recognize the person in that picture?

5 **A** Yes, sir.

6 **Q** Who is the person in that picture?

7 **A** That's the defendant.

8 **Q** Do you see the -- is that the same defendant seated
9 at the table?

10 **A** That's correct.

11 **Q** Sir, does that picture accurately look like what the
12 defendant looked like?

13 **A** Yes, sir.

14 **Q** During the identifications?

15 **A** Yes.

16 **Q** Did he look like that during both the cab driver and
17 the clerk's identification?

18 **A** Yes, he did.

19 **Q** Sir, if you could please -- Your Honor, permission to
20 publish that to the jury for a second?

21 **THE COURT:** Yes.

22 **Q** Can you just hold that up for them so they can see?
23 And what color shirt is he wearing, for the record?

24 **A** That's the red shirt there.

25 **Q** Thank you, sir. After the cab driver made an

1 identification of the defendant at Pine Street, did
2 you take him back to the Greyhound station?

3 **A** I did.

4 **Q** And are you aware of whether or not he gave a
5 statement?

6 **A** I instructed him that Investigator Thomas wanted him
7 to come down to provide a written statement. He
8 agreed to do that. And to the best of my knowledge,
9 he did.

10 **Q** But again, it was not your responsibly to take
11 statements at the scene?

12 **A** That's correct.

13 **Q** With so many officers on the scene, is there a -- how
14 do officers know who does what?

15 **A** Communication basically.

16 **Q** Is there a hierarchy of duties?

17 **A** Well, with me being a sergeant at the time, I have to
18 make sure that certain things are taken care of. But
19 it was pretty much information being communicated
20 back and forth between the investigator and also the
21 the incident scene just to make sure all the bases
22 were covered.

23 **Q** It's safe to say it's a group effort?

24 **A** It is.

25 **Q** Sir, were you present at the scene when a crime scene

1 investigator tech showed up?

2 **A** I believe I was still at the scene at the time.

3 **Q** Do you remember who that tech was?

4 **A** CSI Nelson.

5 **Q** Have you worked with Nelson before?

6 **A** Yes. He used to work for me.

7 **Q** Okay. When Nelson showed up -- is it Investigator
8 Nelson? Corporal?

9 **A** A crime scene investigator; yes, sir.

10 **Q** Crime Scene Investigator Nelson. When he arrived at
11 did you observe him taking any
12 evidence or taking pictures of anything?

13 **A** Not specifically. I can't remember if he did or not.
14 I know he was inside the house looking around.

15 **Q** Would this be -- when he arrives on the scene he --
16 do you remember personally observing him collecting
17 evidence or walking around inside the house?

18 **MR. JOHNSON:** Your Honor, objection. He is
19 leading the witness again. He can ask what he
20 remembered. If he doesn't remember, then he can't --

21 **THE COURT:** Sustained. Just rephrase.

22 **Q** Did you observe Crime Investigator Tech Nelson
23 working that evening over at Pine Street?

24 **A** Not collecting evidence, no. I didn't see him
25 personally collecting evidence.

1 Q After the cab driver made the identification you took
2 him back --

3 A Right.

4 Q -- to the Greyhound station?

5 A I did.

6 Q Did you return to -----

7 A I believe I did. Yes, I did.. I did.

8 Q What did you do next at -----

9 A Basically we were wrapping up, making sure the
10 suspect was taken care of and making sure my guys
11 were taken care of as well to see if anyone needed to
12 be relieved because we also had our other
13 responsibilities to take care of as well.

14 Q So you were still performing work in a supervisory
15 function?

16 A Correct.

17 MR. JOHNSON: Your Honor, objection again. He's
18 leading the witness.

19 THE COURT: Sustained.

20 Q Would you describe your function at -----
21 as investigative or supervisory in nature?

22 MR. JOHNSON: Your Honor, once again, he is
23 leading the witness. He can't describe what his
24 service was, but he's giving options.

25 MR. ROGERS: Your Honor, my understanding of

1 what a leading question is is where the question
2 implies the answer. My question has two possible
3 answers, investigative --

4 **THE COURT:** Well, but there could be another
5 answer.

6 **MR. JOHNSON:** There could be a third.

7 **THE COURT:** So sustained. Just ask him what his
8 role was.

9 **Q** What was your role at when you
10 returned?

11 **A** At that point it was a supervisory role.

12 **Q** Thank you, sir. I have no further questions for you
13 at this time. Please answer any questions opposing
14 counsel may have.

15 **THE COURT:** Okay.

16 CROSS EXAMINATION

17 **BY MR. JOHNSON:**

18 **Q** Good afternoon, Officer.

19 **A** Good afternoon.

20 **Q** A couple of questions. Officer, do you know -- I
21 mean -- I'm sorry -- Sergeant. Do you know an
22 Officer D. R. Bowman?

23 **A** Yes, sir.

24 **Q** Who was he?

25 **A** He was working for me at the time.

1 Q Was he present at the scene?

2 A He was.

3 Q Isn't it true that he was actually the first officer
4 to be there? Is that correct?

5 A Just before I was. Yes, sir.

6 Q Okay. And he obtained a certain amount of
7 information to help you find that house. Is that
8 correct?

9 A Yes, sir. He did.

10 Q What was one of the most significant first pieces of
11 information he obtained to help you find that house?

12 A Communicating with a female where the suspect was.

13 Q It was a female?

14 A Yes, sir.

15 Q And what did the female say?

16 A I don't know specifically the conversation.

17 Q But as a result of that you determined that there was
18 a person -- now, correct me if I am misstating it.

19 But you determined that there was a person that fit
20 the description of the suspect, correct?

21 A Correct.

22 Q That from my understanding had supposedly changed
23 into a red shirt. Is that correct? Well, let me go
24 about it this way. Your Honor, can I approach the
25 witness?

1 **THE COURT:** Yes, you may.

2 **Q** I present this to you. Take your time and take a
3 look at it and especially at the bottom of the
4 signatures and stuff.

5 (Pause)

6 **A** All right.

7 **Q** Okay. Now, that's a statement that Officer Bowman
8 wrote. Is that correct?

9 **A** That's correct.

10 **Q** And that's a statement that you gave him a copy of.
11 Is that correct? That's what your signature says at
12 the bottom?

13 **A** Yes, sir.

14 **Q** Do you remember that? Did that help clear up some
15 information in your mind? Or do you disagree with
16 anything that's written on it?

17 **A** All it says is I notarized it.

18 **MR. ROGERS:** Objection. I'm sorry. Withdrawn.

19 **THE COURT:** Okay.

20 **Q** You can answer.

21 **A** All I can infer from that is that I notarized it.

22 **Q** Okay. So when it says that you gave him a copy of
23 this, it doesn't mean you gave him a copy?

24 **A** I gave him a copy. But I never kept any originals or
25 any copies for myself.

1 Q Okay. Did you review it?

2 A I can't say if I did or not.

3 Q Okay. But Officer Bowman apparently gave information
4 over the radio that there was a suspect that had
5 changed into a red shirt. Is that the information
6 that you got?

7 A I can't remember exactly that information. I just
8 know that I gave the location of where the suspect
9 was.

10 Q But according to this statement, that's what it says,
11 correct?

12 A Yes, sir.

13 MR. ROGERS: Objection, Your Honor. The
14 statement is not in evidence. The witness is not
15 here to testify. Anything from the statement is
16 improper foundation.

17 MR. JOHNSON: Your Honor, may I approach?

18 THE COURT: Yes, you may.

19 (Whereupon, a bench conference is had)

20 THE COURT: The objection is sustained.

21 Q Today or this afternoon when you testified to the
22 distance you said between where the crime happened
23 and where the defendant was located, you said it was
24 a block. Earlier you said it was a block and a half.
25 So which is it?

1 **A** I said a block and maybe 100 feet up the road. So
2 that's about the same.

3 **Q** Okay. Now, when you mentioned there was a thing made
4 about you knocking on the door and the defendant not
5 coming to the door?

6 **A** That's correct.

7 **Q** Did he have to come to the door?

8 **A** Well, we were instructing him to come to the door.

9 **Q** Well, but under the law, did he have to come to the
10 door?

11 **A** No, sir. He didn't.

12 **Q** So he wasn't violating any laws by not coming to the
13 door, was he?

14 **A** No, sir.

15 **Q** And there was a reason you didn't go into the house.
16 Isn't that correct?

17 **A** That's correct.

18 **Q** What was the reason?

19 **A** Our policy doesn't allow us to force entry unless
20 it's stated in the search warrant.

21 **Q** Without a search warrant. Right?

22 **A** Unless it's stated in a search warrant.

23 **Q** And you didn't have any probable cause to go in that
24 house at that time, did you, without a legal search
25 warrant?

1 **MR. ROGERS:** Objection, Your Honor. That calls
2 for a legal determination.

3 **THE COURT:** I apologize. What was the question?

4 **MR. JOHNSON:** I asked did -- I can't remember
5 exactly. I asked did he --

6 **MR. ROGERS:** Your Honor, may we approach?

7 **THE COURT:** Yes, you may.

8 (Whereupon, a bench conference is had)

9 **THE COURT:** Objection sustained as to the
10 grounds for a legal conclusion.

11 **MR. ROGERS:** Your Honor, we ask for that
12 question be stricken from the record and the jury be
13 instructed to disregard that.

14 **THE COURT:** That question will be stricken. The
15 jury is to disregard it and not to listen to any
16 comment about that by the witness.

17 **Q** You didn't go into the house, right?

18 **A** Not immediately, no.

19 **Q** That was against policy, correct?

20 **A** Yes, sir.

21 **Q** And you wanted to go get a warrant?

22 **A** We wanted to find a keyholder.

23 **Q** A keyholder. Well, let's talk about this keyholder.
24 Would you agree there's a difference between a
25 keyholder and a resident?

1 **A** Well, we use the term interchangeably. So a
2 resident, keyholder.

3 **Q** Okay. So you're assuming that the keyholder is the
4 resident since you're using them interchangeably and
5 there's no difference, right?

6 **A** Unless stated otherwise.

7 **Q** Who was the person you talked to?

8 **A** Like I said, it was a black male, mid to late
9 thirties.

10 **Q** So you got no identification from this person to
11 allow you in that house?

12 **A** No, sir. He said he was a resident and he had a key.

13 **Q** You didn't ask him his name?

14 **A** I can't remember if I did or not or if someone else
15 did.

16 **Q** Did you get an ID?

17 **A** Not me personally, no.

18 **Q** Is there any record or do you have any knowledge that
19 anybody else did it?

20 **A** Like I said, no.

21 **Q** Are there any policies as to how you determine who a
22 keyholder is just because a person has got a key?

23 **A** No. There is no policy with regard to that.

24 **Q** So you entered her house without a warrant from
25 permission of somebody that you can't tell the jury

1 who he is you and you don't know yourself?

2 **A** We relied on his word that he was a resident, and he
3 had a key.

4 **Q** Okay. Let's go through this one again. What makes a
5 man's word worth something?

6 **A** Until it's proven otherwise that he's not.

7 **Q** Don't you consider the person as who he is, that's
8 what makes a man's word what it is, his past record,
9 things of that nature?

10 **A** Well, I don't know that. I didn't know the guy
11 previously. So I don't know what his record was.
12 But I took his word that he was a resident, and he
13 had a key in his hand that worked.

14 **Q** Have you later found out that he was a resident?

15 **A** I did not do any follow-up to confirm if he was or
16 was not.

17 **Q** Let's talk about the suitcases. How many
18 suitcases -- you say you saw two suitcases in this
19 room, this sunroom, right?

20 **A** I didn't give a number, sir. I just said I saw
21 suitcases in that sunroom.

22 **Q** How many?

23 **A** I can't recall, but there were two or three or four.

24 **Q** So you don't even know if they belonged to my client?

25 **A** No, sir. I did not check to see if they belonged to

1 anyone.

2 **Q** So when you're saying you saw these suitcases, you
3 don't know if the evidence that was taken even came
4 out those suitcases, do you?

5 **A** If you're referring to the yellow shirt, it was on
6 the floor, like I have said.

7 **Q** I'm referring to all the evidence. There was other
8 stuff found, right?

9 **A** But I did not collect that.

10 **Q** And you didn't collect the yellow shirt either, did
11 you?

12 **A** No, sir, I didn't.

13 **Q** Now, this yellow shirt that was on the floor, you
14 said that when you made entry into the bathroom, he
15 wouldn't open the bathroom door?

16 **A** I said when we instructed him to open the door, he
17 would not open the door.

18 **Q** Right.

19 **A** And an officer used a card or driver's license to
20 jimmy the lock, to flip it up. And that's when we
21 made entry.

22 **Q** Okay. Now, when you testified earlier today, do you
23 remember we had a pre-trial hearing earlier today?

24 **A** I do remember that.

25 **Q** And you talked about going in there and going inside.

1 You said that it was jimmied by -- and I wrote it
2 down. You said it was jimmied by a clothes hanger.
3 Do you remember saying that?

4 **MS. GARFIELD:** Objection, Your Honor. I believe
5 that was another person's testimony.

6 **A** That wasn't mine.

7 **MR. JOHNSON:** That was his testimony, Your
8 Honor.

9 **MS. GARFIELD:** I believe that was Investigator
10 Thomas's yesterday.

11 **THE COURT:** Okay. The jury will recall what
12 this witness specifically testified to.

13 **MR. JOHNSON:** Well, but, Your Honor, he didn't
14 testify before the jury as far as this question. I'm
15 asking him previously.

16 **THE COURT:** Okay.

17 **MS. GARFIELD:** That wasn't his question though.

18 **MR. JOHNSON:** This was in pre-trial.

19 **THE COURT:** But you need to ask him a question.

20 **MR. JOHNSON:** I did. I was waiting for the
21 answer because she objected to it.

22 **THE COURT:** All right. Re-ask the question.

23 **MS. GARFIELD:** The question was, wasn't your
24 testimony in a pre-trial hearing?

25 **THE COURT:** Right.

1 **MR. JOHNSON:** And he has a right to answer. He
2 can say yes or no.

3 **MS. GARFIELD:** But --

4 **THE COURT:** But that information is not before
5 the jury. But go ahead. And the State is indicating
6 we might not have the right witness. But he'll know
7 whether or not he testified or not.

8 **MR. JOHNSON:** Exactly.

9 **THE COURT:** Go ahead.

10 **Q** Weren't you asked about how they gained entry in
11 there this morning?

12 **A** I did.

13 **Q** Do you remember? And didn't you say it was a clothes
14 hanger?

15 **A** No, sir. That was not me.

16 **Q** What did you say?

17 **A** I said it was -- we used a credit card or driver's
18 license. That was another witness that made that
19 statement.

20 **Q** Now, you said that ten minutes after you got custody
21 of the individual you had the show-up ID. Is that
22 correct?

23 **A** Within ten minutes; yes, sir. Of the clerk.

24 **Q** About what time was that?

25 **A** I do not know the specific time.

1 Q So that wasn't ten minutes after the robbery, was it?

2 A Oh, no. Oh, no.

3 Q This was about what? About two hours later?

4 A No, sir. It was not two hours later.

5 Q Was it an hour later?

6 A I would say to the best of my knowledge between 35,
7 maybe 40 minutes at the most. Maybe.

8 Q Well, a witness testified earlier that came to the
9 scene with the witness. Do you remember a young
10 lady, Ms. Taylor, coming to the scene with the
11 witness, riding in the car?

12 A I remember her, another woman being in the car.

13 Q So if she had testified earlier that it took her 40
14 minutes to get there and then they came over, it
15 couldn't have took 30 minutes, could it?

16 MR. ROGERS: Objection, Your Honor. May we
17 approach?

18 THE COURT: Yes.

19 (Whereupon, a bench conference is had)

20 MS. GARFIELD: Thank you.

21 THE COURT: Sustained.

22 MR. ROGERS: Your Honor, we ask that any
23 questions related to the other witnesses's statements
24 be stricken and the jury be instructed to disregard.

25 THE COURT: That will be the instruction of the

1 Court.

2 Q When you took my client out the car, was he
3 handcuffed?

4 A Yes, he was.

5 Q Did you have officers on both sides of him?

6 A I had at least one officer controlling him.

7 Q And you stood him up and shined lights on him?

8 A Yes.

9 Q Is that correct?

10 A That's correct.

11 Q With two officers standing beside him?

12 A I don't know if it was two.

13 Q Well, at least one officer being there?

14 A At least one.

15 Q And you asked the witness, is this the person that
16 robbed you or whatever?

17 A Which witness are you referring to now?

18 Q The store clerk.

19 A I didn't instruct the witness. At that point I was
20 outside the car. I don't know what the conversation
21 was inside the car.

22 Q Okay. Now, did he have -- there is some questions
23 about this. Did he have any type of jeans on,
24 trousers on, shorts on? What did he have on?

25 A I know he had on a bottom, but I don't know the

1 specific, if it was jeans or khakis or whatever.

2 **Q** Do you know who picked this yellow shirt up off the
3 floor?

4 **A** I do not.

5 **Q** How do you know there was six dollars on the floor if
6 you didn't go inside?

7 **A** I didn't say there was six dollars. I said there
8 were dollar bills on the floor.

9 **Q** Dollar bills on the floor. Do you know how the
10 dollar bills got off the floor or who picked those
11 up?

12 **A** No. Someone did pick them up though.

13 **Q** And that was prior to the CSI guy coming in?

14 **A** Yes, sir, it was.

15 **MR. JOHNSON:** I have no other questions.

16 **THE COURT:** Okay.

17 **MR. ROGERS:** Sir, we've got no further questions
18 for you at this time. Your Honor, no further
19 questions for this witness.

20 **THE COURT:** Okay. You can step down. Next
21 witness.

22 **MS. GARFIELD:** The State calls Investigator Paul
23 Nelson.

24 PAUL J. NELSON, after being duly sworn,
25 testifies as follows:

1 **THE CLERK:** Thank you. Have a seat in the
2 witness stand and give the court reporter your name.

3 **THE WITNESS:** Officer Paul Joseph Nelson.

4 **COURT REPORTER:** Thank you.

5 DIRECT EXAMINATION

6 **BY MS. GARFIELD**

7 **Q** Investigator Nelson, where are you employed?

8 **A** The City of Columbia Police Department.

9 **Q** And how long have you been employed at the police
10 department?

11 **A** Fourteen years.

12 **Q** And you live here in Columbia?

13 **A** I live in --

14 **Q** Columbia area?

15 **A** -- the Columbia area.

16 **Q** And do you have family?

17 **A** I do.

18 **Q** And what are your current duties in the Columbia
19 Police Department?

20 **A** I'm assigned to the crime scene unit at the City of
21 Columbia Police Department.

22 **Q** Was that also your duties back in July of 2008?

23 **A** That's correct.

24 **Q** Can you just please briefly explain to the jury what
25 the crime scene unit does at the Columbia Police

1 Department?

2 **A** Photographs, photography, collection of evidence, as
3 well as fingerprint.

4 **Q** Have you had training in collecting fingerprints?

5 **A** I have.

6 **Q** And where has that training taken place?

7 **A** Here in South Carolina.

8 **Q** Specifically where?

9 **A** The South Carolina Law Enforcement Division as well
10 as the academy.

11 **Q** And what entails that training?

12 **A** Identifications of fingerprints, characteristics,
13 pretty much pattern identification as well.

14 **Q** How many years have you been with crime scene unit?

15 **A** Two and a half years.

16 **Q** In that two and a half years, Investigator Nelson,
17 how many times have you collected prints?

18 **A** Thousands.

19 **Q** Have you had the opportunity to compare those prints
20 to known samples?

21 **A** Yes.

22 **Q** And --

23 **A** I have.

24 **Q** -- are you able to explain to a jury or whoever the
25 conclusions of those analyses?

1 **A** I have.

2 **Q** And as well the exclusion of comparisons?

3 **A** Correct.

4 **MS. GARFIELD:** Your Honor, at this time I'd like
5 to offer Investigator Nelson as an expert in
6 fingerprint analysis. Any voir dire?

7 **MR. JOHNSON:** I have no objection, Your Honor.

8 **THE COURT:** Okay. So qualified in this court.

9 **MS. GARFIELD:** Thank you, Your Honor.

10 **Q** Investigator Nelson, were you asked to respond to a
11 call for a crime scene investigation at 2020 Gervais
12 Street on July 19th, 2008?

13 **A** I was.

14 **Q** And what was the nature of that call that you were
15 asked to respond to?

16 **A** Notified of an armed robbery that occurred at a
17 convenience store.

18 **Q** And when you got to the store, what did you first do?

19 **A** I photographed the exterior of the business as well
20 as the interior.

21 **Q** Investigator Nelson, I want to just show you some
22 photographs, Nos. 2 and 3. Do you recognize these
23 photographs?

24 **A** That's correct. It's a photograph of the exterior of
25 2020 Gervais Street that I had taken.

1 Q And that's how it appeared when you responded?

2 A Correct.

3 Q And when you first got there, after you photographed
4 the scene of the Exxon station, what was the next
5 thing for you to do?

6 A Work my way on into the convenience store where the
7 robbery had taken place.

8 Q And once you went inside the convenience store, what
9 did you first do?

10 A Photographed the interior.

11 Q And several photographs that we see here are in
12 Exhibit 1-A through 1-G?

13 A That's correct. That's photographs of the interior
14 that I took at 2020 Gervais Street.

15 Q And after completing photographing the inside of this
16 Exxon station, what was your next course of action?

17 A I then processed the scene for latents.

18 Q And please just briefly explain to the jury what
19 latents are?

20 A Latents are basically fingerprints.

21 Q And can you explain to the jury a little bit about
22 what the process is of collecting and finding such
23 prints?

24 A We use a fingerprint powder on a brush. Once we go
25 over all surfaces and whatever the brush and the

1 powder reveal, we lift that partial.

2 Q And where did you go and look for these fingerprints?

3 A On the interior, the countertops, as well as the
4 interior glass door, as well as handles, door frames
5 of this business.

6 Q And were you able to collect any fingerprints?

7 A I did.

8 Q And how would you classify that particular print?

9 A I lifted several partial latents.

10 Q And will you explain to the jury what a partial
11 latent is?

12 A A partial latent is not the full part of the
13 fingerprint. It's just a quarter or a piece of that
14 fingerprint.

15 Q Can you kind of explain that by using your hands?

16 A Just in certain areas, as far as where touch would
17 be, as far as the core, core is dead center, it was
18 partial latents. So it could be anywhere from within
19 the minutia of the print. This is called the
20 minutia. It's everything pertaining to on the
21 inside.

22 Q So you were able to lift some partial prints. And
23 where were these partial prints lifted from?

24 A The interior glass door just above the handle.

25 Q The interior?

1 **A** Interior.

2 **Q** Were you at any time able to compare the latent
3 prints you took off that glass handle with the
4 defend's prints?

5 **A** I did.

6 **Q** And were you able to make a conclusion?

7 **A** I did not match anything.

8 **Q** And do you know if there was anyone else to have left
9 the Exxon after the suspect?

10 **A** Yeah.

11 **Q** And who would that have been?

12 **A** It could have -- the clerk, officers.

13 **Q** There were several other people that left afterwards?

14 **A** Other people.

15 **Q** But the print that you lifted was never compared to
16 any other person?

17 **A** No.

18 **Q** Correct?

19 **A** No, it was not.

20 **Q** Were you able to look for any sort of DNA collection
21 in the Exxon?

22 **A** DNA is just -- it's very hard. It's got to be
23 something that we'd known that they would have
24 touched. You could swab that whole door as well as
25 the handle, but you're looking at everybody and

1 anybody that came inside that business. You're going
2 to get DNA from everybody.

3 **Q** Would that have been a probable thing to try to
4 collect?

5 **A** It wouldn't, because you're just going to combine all
6 DNA of just hands, everybody touching over and
7 touching over. You would have no results.

8 **Q** So did you swab the door for any DNA?

9 **A** I did not.

10 **Q** And did you attempt to collect DNA from anywhere else
11 in the convenience store?

12 **A** I did not.

13 **Q** Is there anything else that you did in your crime
14 scene investigation at the Exxon station?

15 **A** I went and responded over to which
16 is just about a block and a half away from the
17 business of 2020 Gervais Street Handy Pantry/Exxon.

18 **Q** And was the nature of you going to that scene?

19 **A** Officers had notified me over to that area to collect
20 several articles of some clothing as well as some
21 currency that they had discovered.

22 **Q** Investigator Nelson, I'll show you what's been marked
23 as State's evidence -- here we go -- 12, 13 and 14.
24 Can you identify what's in those photographs?

25 **A** These are photographs of the exterior of

1

2 Q And that is the location that you responded to?

3 A That's correct.

4 Q And when you got to that location, you photographed
5 it as well?

6 A I did.

7 Q And did you make entry into

8 A I did.

9 Q I want to show you what's been pre-marked State's
10 Exhibit No. 7. Can you please explain to the jury
11 what this photograph reflects?

12 A This is with my back on Pine Street towards the
13 Exxon/Handy Pantry, Gervais and Harden.

14 Q Does that record reflect the proximity between those
15 two locations?

16 A That's correct.

17 Q And approximately how far is it?

18 A A block and a half.

19 Q I'll hand you --

20 A 1500 feet maybe.

21 MS. GARFIELD: Your Honor, at this time we'd
22 like to introduce State's Exhibit No. 7.

23 MR. JOHNSON: No objection.

24 (WHEREUPON, State's Exhibit No. 7 is admitted
25 into evidence.)

1 **Q** I'll hand you what's been marked as State's Exhibit
2 No. 8. And what is that picture reflecting?

3 **A** A photograph in the middle of Gervais Street. And it
4 looks to be at the intersection of cross street of
5 Pine Street towards the Exxon gas station, 2020
6 Gervais Street.

7 **Q** So is that a picture going onto Gervais Street from
8 where?

9 **A** From Pine.

10 **MS. GARFIELD:** Your Honor, may we now introduce
11 State's Exhibit No. 8 into evidence? No. 8.

12 **MR. JOHNSON:** Oh. No objection.

13 **MS. GARFIELD:** Thank you.

14 (WHEREUPON, State's Exhibit No. 8 is admitted
15 into evidence.)

16 **Q** All right. And I'll hand you what's been marked as
17 State's Exhibit No. 10. What does this photograph
18 reflect?

19 **A** The photograph of the street sign at Pine and Harden.
20 I mean, Pine and Gervais. Excuse me.

21 **Q** And that is facing what direction?

22 **A** I'd say north.

23 **MS. GARFIELD:** Your Honor, may we please
24 introduce State's Exhibit No. 10 into evidence?

25 **MR. JOHNSON:** No objection, Your Honor.

1 **THE COURT:** Okay.

2 (WHEREUPON, State's Exhibit No. 10 is admitted
3 into evidence.)

4 **Q** And I will stand you what's been marked as State's
5 Exhibit No. 11. Can you please identify that
6 photograph?

7 **A** A photograph of Gervais Street up Pine Street towards
8 the residence of

9 **MS. GARFIELD:** Your Honor, may we please
10 introduce State's Exhibit No. 11 into evidence?

11 **MR. JOHNSON:** No objection, Your Honor.

12 (WHEREUPON, State's Exhibit No. 11 is admitted
13 into evidence.)

14 **Q** And, Investigator Nelson, if you'll just show me,
15 what is this building in this photograph?

16 **A** This building here, residence of

17 **Q** That is the boarding house you responded to?

18 **A** That's correct.

19 **Q** And just to kind of backtrack; if you can look at
20 State's Exhibit No. 9, can you identify what is a
21 picture of?

22 **A** The intersection of Gervais and Harden Street,
23 Gervais Street up towards Pine Street.

24 **Q** And that is looking at it from what direction? I
25 mean, where would you be if that picture was taken --

1 **A** Back to the gas station. My back to the gas station,
2 Exxon gas station/Handy Pantry.

3 **MS. GARFIELD:** Thank you. We'd like to move
4 State's Exhibit No. 9 into evidence.

5 **MR. JOHNSON:** No objection, Your Honor.

6 **THE COURT:** Okay.

7 (WHEREUPON, State's Exhibit No. 9 is admitted
8 into evidence.)

9 **Q** Investigator Nelson, you say that you did go inside
10 the residence?

11 **A** I did.

12 **Q** Of

13 **A** That's correct.

14 **Q** Okay. I'm just going to take you one-by-one through
15 these photographs that I believe you took. State's
16 Exhibit No. 15, what is this a photograph of?

17 **A** A photograph of the interior of the
18 first living room that I encountered.

19 **Q** And is that when you first make entry into the
20 boarding house?

21 **A** Correct. First entry.

22 **Q** And I'll hand you State's Exhibit No. 16. And what
23 is this photograph reflecting?

24 **A** Just to the right, a locked room. And the main
25 entry, front door is right here in that first living

1 room.

2 Q So if you're looking to the right, you'd see the
3 locked doors. But if you're looking straight, is
4 this the view you would see --

5 A That's correct.

6 Q -- in picture No. 15?

7 A That's right.

8 Q Okay. And I'll hand you State's Exhibit No. 17. Can
9 you identify this photograph?

10 A Entry into the second living room portion of that
11 residence referred to as middle interior picture that
12 I'd taken of living room number
13 two.

14 Q Okay. And I'm moving on to State's Exhibit No. 18.
15 What is this picture reflecting?

16 A Just to the right a little bit of the middle section
17 of the living room of a bedroom off to the right.

18 Q Okay. And if you'll hold that up, I'm also going to
19 hold up State's Exhibit No. 17. Is the sofa that
20 it's reflecting in Exhibit 17 in the picture in 18?

21 A Correct. If I may switch them with you.

22 Q Okay.

23 A It would be like that.

24 Q Okay. So you see these two doors to the right of the
25 couch?

1 **A** Yeah. You can see this door here. It would be just
2 the arm of that couch would be here. Here is the
3 chair.

4 **Q** Thank you. All right. And did you go into this
5 bedroom that we see in this photograph with clothing
6 on the bed?

7 **A** I did.

8 **Q** And what was your purposes for going in there?

9 **A** For collection of a yellow shirt and some currency
10 that was out on the bed.

11 **Q** And at that time did you photograph it as well?

12 **A** I did.

13 **Q** And I will show you State's Exhibit No. 21. Can you
14 identify that exhibit?

15 **A** This is bedroom number two, middle bedroom of the bed
16 and the yellow shirt with some currency as well as
17 several articles of clothing throughout the floor and
18 onto the bed.

19 **Q** And you photographed that as well?

20 **A** I did.

21 **Q** When you got to this location, were the items that
22 you photographed already on that bed?

23 **A** Yes, they were.

24 **Q** And do you know how they got there?

25 **A** Officers had placed them there.

1 Q And I'll show you State's Exhibit No. 23. What is
2 this a photograph of?

3 A This is a photograph of the master -- or bedroom
4 number two, the bathroom.

5 Q And bedroom number two, if you will just show me the
6 picture of bedroom number two? So that is the
7 bathroom off of bedroom number two? Correct?

8 A Correct.

9 Q Is that correct?

10 A Like that. That's the door or and this is the door.

11 Q Thank you, Investigator Nelson. Your Honor, at this
12 time we will move Exhibits No. 21, 23, 18, 15, 17 and
13 16 into evidence.

14 MR. JOHNSON: No objection, Your Honor.

15 MS. GARFIELD: Thank you.

16 (WHEREUPON, State's Exhibit No. 15 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 16 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 17 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 18 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 21 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 23 is admitted
2 into evidence.)

3 Q Investigator Nelson, were you able to provide a
4 sketch or diagram of

5 A I did. I completed the sketch of that location.

6 MS. GARFIELD: May the witness step down, Your
7 Honor?

8 THE COURT: Yes.

9 Q If you can just explain to the jury your diagram and
10 what it represents?

11 A The living room area is what I referred to living
12 room number two as well as bedroom number two with
13 the bathroom.

14 Q And the bedroom, where were the items that you
15 photographed located?

16 A Right here on the bed.

17 Q Thank you. And does this reflect the entire house?

18 A No, it does not.

19 Q Okay. And where would the rest of house be?

20 A The living room number one when I first entered would
21 be down here as well as several bedrooms. This
22 kitchen is back in through here.

23 Q This just primarily centralizes a reflection of the
24 bedroom that you then photographed?

25 A The reason why is because the evidence collection,

1 not to confuse anybody, just where I collected.

2 Q Okay. And what does the letters A represent?

3 A A's are representing as the windows. B was a couch,
4 as well C is a bed, F meaning fireplace.

5 Q Okay. While I've got you standing there, I took them
6 a little bit out of order. I'm going to show you
7 also State's Exhibit No. 25. And you've seen this
8 map before, haven't you?

9 A I have.

10 Q And can you just show us where the Exxon station was?

11 A Exxon gas station right here.

12 Q And then how would you have traveled to go to the
13 boarding house?

14 A (Witness points)

15 Q And that's the boarding house where you're
16 indicating?

17 A Right here.

18 Q In the bottom right corner. And, Investigator
19 Nelson, how long do you think it would take you to
20 get there?

21 A Minutes.

22 Q And that would be by car?

23 A Yes.

24 Q And how long do you think it would take you to get
25 there by foot?

1 **A** A couple of minutes.

2 **Q** Okay. All right. Thank you. Please take the stand.
3 Investigator Nelson, I'm going to show you some
4 pieces of evidence.

5 **A** Do you want me to step down?

6 **Q** Yes. If you'd stand up, probably that would be fine.
7 The first item -- I'll give you gloves -- I'm going
8 to show you what's been marked as State's Exhibit
9 No. 28. Do you recognize this envelope?

10 **A** I do.

11 **Q** And can you explain to the jury what this is an
12 envelope of?

13 **A** Containing the fingerprint partials that I lifted
14 from the scene.

15 **Q** And those would be the fingerprints that did not
16 match the defendant?

17 **A** That's correct.

18 **Q** If you'll just show those to the jury?

19 **A** All right.

20 **MS. GARFIELD:** And at this time we'll introduce
21 State's Exhibit No. 28.

22 **MR. JOHNSON:** No objection.

23 **THE COURT:** Okay.

24 (WHEREUPON, State's Exhibit No. 28 is admitted
25 into evidence.)

1 Q And that's what you lifted off the door?

2 A Off the interior glass door I dusted off the handle.

3 Q Can you date fingerprints?

4 A No.

5 Q Like do you know how old a fingerprint is?

6 A There has been some -- I've read some stories about
7 that. They have lifted 20-year-old fingerprints.

8 Q But there is no way to look at it --

9 MR. JOHNSON: Your Honor, objection.

10 MS. GARFIELD: I'm sorry. I agree.

11 THE COURT: Okay.

12 Q Investigator Nelson, can you look at a fingerprint
13 and specify when it was left?

14 A You can. You can tell by a partial fingerprint. If
15 it's been old, it's a very blotchy and spotty. If
16 it's a fresh print, it would be -- it would contain a
17 pretty good lift.

18 Q Can you give it a specific date, however, as to when
19 it's left?

20 A I try to best of my ability as of whether it may be a
21 week or a week or two.

22 Q And was your impression in your expert opinion of
23 when those prints were left?

24 A What I noticed is on the older prints, when I say
25 they're blotchy, which means there is dust that has

1 fallen over them, and that's where you see those
2 spotty type prints; these ones I lifted did not have
3 any type of blotches or spots on them.

4 **Q** So in your opinion, would they be fresh?

5 **A** They were fresh.

6 **Q** Okay. Thank you. And I'll just put those back here.

7 **A** Sure.

8 **Q** All right. I'm going to also show you State's
9 Exhibit No. 27 and will ask you if you recognize this
10 package?

11 **A** I do.

12 **Q** And what is that package containing?

13 **A** This is the currency that I collected from the
14 bedroom number two of

15 **Q** And can you tell us how much money is in that
16 package?

17 **A** Six dollars U.S. currency one-dollar bills.

18 **Q** Is that the money that's reflected in this
19 photograph, Exhibit No. 21?

20 **A** That's correct.

21 **Q** And would you have packaged it into this envelope?

22 **A** Yes.

23 **Q** And then what would you have done?

24 **A** Sealed the envelope and then placed into it our
25 evidence room.

1 Q At this time would you now open the envelope?

2 A Oh, boy. I need scissors.

3 MS. GARFIELD: Do you have scissors, Ms. Becky?

4 THE CLERK: I think I do.

5 Q And that's the six dollars?

6 A Correct.

7 Q That was found at

8 A Correct.

9 Q Thank you. If you'll just put that back into the
10 container. I can't remember if I introduced it or
11 not. We'd move to introduce State's Exhibit No. 27
12 into evidence.

13 MR. JOHNSON: No objection.

14 (WHEREUPON, State's Exhibit No. 27 is admitted
15 into evidence.)

16 Q And, lastly, did you also collect a yellow shirt that
17 was found on that bed?

18 A Yes, I did.

19 Q And that's the shirt laying on the bed right there?

20 A That's correct.

21 Q And that's State's Exhibit 21?

22 A Mm-hmm (affirmative).

23 Q I'm going to show you what's been marked as State's
24 Exhibit No. 26. Do you recognize this packaging?

25 A I do.

1 **Q** I believe it was initially in this bag. Is that
2 correct?

3 **A** That's correct. Inside here.

4 **Q** It's been taken out?

5 **A** Yes, ma'am.

6 **Q** And can you tell me what's in that bag?

7 **A** Yellow shirt.

8 **Q** And that's the shirt that was collected?

9 **A** From

10 **MS. GARFIELD:** Your Honor, at this time I would
11 move the yellow shirt into evidence, Exhibit No. 26.

12 **MR. JOHNSON:** No objection, Your Honor.

13 **THE COURT:** Okay.

14 (WHEREUPON, State's Exhibit No. 26 is admitted
15 into evidence.)

16 **MR. JOHNSON:** Your Honor, for the record, I
17 guess to keep the record fresh, I still would like
18 the rest of my objection concerning the search and
19 the seizure of the evidence just to protect it for
20 the record.

21 **THE COURT:** Certainly. The Court will stand by
22 its prior rulings.

23 **MS. GARFIELD:** Thank you. Beg the Court's
24 indulgence.

25 **THE COURT:** Okay.

1 Q Investigator Nelson, as a crime scene investigator,
2 do you interview witnesses?

3 A I do not.

4 Q Did you have any contact with the defendant in this
5 case?

6 A I did not, except for a photograph that I'd taken of
7 him.

8 Q That's right. And you took a photograph of him at
9

10 A

11 Q And is that the person you photographed?

12 A That is correct.

13 MS. GARFIELD: Your Honor, just reflecting he's
14 identified the defendant in Exhibit No. 24.

15 MR. JOHNSON: No objection, Your Honor.

16 THE COURT: Thank you.

17 Q Investigator Nelson, I think that's all I have for
18 you. Thank you.

19 A Thank you.

20 Q Please answer any questions Mr. Johnson has.

21 A Yes, ma'am.

22 MR. JOHNSON: May it please the Court, Your
23 Honor?

24 THE COURT: Yes.

25 CROSS EXAMINATION

1 **BY MR. JOHNSON**

2 **Q** Good afternoon, Officer Nelson.

3 **A** Sir.

4 **Q** How you doing?

5 **A** Good.

6 **Q** I want to go over a couple of things. You came to
7 the crime scene first. Is that correct?

8 **A** That's correct.

9 **Q** And when you got to the crime scene, you went to the
10 door and in different places looking for possible
11 fingerprints. Is that correct?

12 **A** After photography and photographs, yes.

13 **Q** Was there another officer there or any other officers
14 there?

15 **A** There was.

16 **Q** Was the scene preserved for you?

17 **A** Correct.

18 **Q** So when you said that other officers and different
19 people could have touched the door, most officers are
20 informed that they shouldn't be touching the door in
21 areas like that until you have done your service. Is
22 that correct?

23 **A** That's correct.

24 **Q** So when you told the jury earlier that the officer
25 touched the door, you have no knowledge of that, do

1 you?

2 **A** No.

3 **Q** And in most cases, if you was asked, most officers
4 would know not to touch that door. Is that correct?

5 **A** That's right. That's correct.

6 **Q** The prints that you got are relatively fresh prints.
7 Is that correct?

8 **A** Yes.

9 **Q** And one thing we do know, because you checked, they
10 don't match my client, do they?

11 **A** That's correct.

12 **Q** Now, did you check them in some type of -- I don't
13 know what your procedures are. But just say you've
14 got fingerprints and you didn't know who they
15 belonged to. How would you check to see, match
16 fingerprints?

17 **A** We could enter them through our computer system,
18 Automatic Fingerprint --

19 **Q** Did you?

20 **A** I did not on this one.

21 **Q** Why didn't you?

22 **A** The reason why I didn't is because the partial
23 latents were not acceptable to be entered into that
24 Automatic Fingerprint Identification System. They
25 were so small an area that there was not enough for a

1 counting.

2 Q But you were able to look at those and confirm that
3 they did not belong to my client?

4 A That's correct.

5 Q Okay. So there were no fingerprints at the scene
6 that you found connected with my client, correct?

7 A Correct.

8 Q Okay. Let's go to the house. Well, when you look
9 for evidence, do you get a synopsis of what happens
10 so that you can like narrow your search of what
11 you're looking for? Is that how you do it?

12 A I try to as best as I can.

13 Q So you were told there was an armed robbery, correct?

14 A Correct.

15 Q And you were told that there was a knife used,
16 correct?

17 A Correct.

18 Q You were told that there was approximately about \$360
19 taken? Or there was a sum of money taken?

20 A At that time I did not have the approximate amount of
21 money that was taken.

22 Q But you knew that money was taken?

23 A Yes.

24 Q Okay. You also knew that I guess that some
25 cigarettes were taken?

1 **A** That was -- I did not know that.

2 **Q** Did not know that. They didn't tell you that?

3 **A** No.

4 **Q** All right. Did you know that one of the witnesses
5 described the perpetrator as having a white hat on?

6 **A** Not really. No.

7 **Q** Nobody told you that?

8 **A** Nobody told me that.

9 **Q** What did they tell you?

10 **A** They just advised me that it was an a Caucasian male
11 wearing a yellow shirt, giving me the height and
12 weight description.

13 **Q** So the whole thing was you were going to find a white
14 male with a yellow shirt on?

15 **A** That was my whole reason why I was there, was to
16 process the scene.

17 **Q** And then once they found a white male with a yellow
18 shirt, the case was closed, right?

19 **A** (Shakes head negatively).

20 **Q** Nothing else to do?

21 **A** I don't know.

22 **Q** Okay. Well, let me ask you about this. You searched
23 both scenes and you collected all the evidence in
24 this case, right?

25 **A** Correct.

1 Q And if there was any evidence collected related to
2 this crime, you would be the person, right?

3 A Correct.

4 Q Did you find a white hat?

5 A No, I did not.

6 Q Did you find Newport cigarettes?

7 A Did not.

8 Q Did you find a cigarette lighter to indicate that my
9 client even smoked cigarettes?

10 A I did not.

11 Q Did you find \$360?

12 A I did not.

13 Q The six dollars that you found, were you able to
14 connect it to the store to say it came from that
15 store?

16 A Did not.

17 Q Did you find a knife that was connected to the crime?

18 A I found a knife on the interior of the residence at
19 in a couch cushion.

20 Q And later that knife was found not to be connected to
21 the crime, correct?

22 A That's correct.

23 Q So you didn't find a knife that was connected to the
24 crime. You did not find fingerprints that connect my
25 client to the crime. The only thing you found was a

1 yellow shirt, correct?

2 A That's correct.

3 Q That's the only evidence you found?

4 A That's it.

5 Q Out of all of this?

6 A Six dollars currency.

7 Q Everything over here, all the pictures, everything
8 that you just showed the jury, the only thing you
9 have is a yellow shirt?

10 A That's correct.

11 Q That was described as being a yellow football jersey?

12 A That's correct.

13 Q Let me ask you this. When you took the picture of my
14 client, this picture here?

15 A Correct.

16 Q Do you remember that night?

17 A I do.

18 Q Do you remember, what did he have on below that, that
19 first pants?

20 A He had on some jeans.

21 Q Let me ask you this. Do you remember a blue pair of
22 shorts, that that's all he had on below that?

23 A Blue pair of ...?

24 Q Shorts?

25 A Shorts?

1 Q Mm-hmm (affirmative).

2 A It appeared at that time to be jeans.

3 Q Excuse me?

4 A Jeans.

5 Q Jean shorts?

6 A Yeah.

7 Q But they were shorts?

8 A Jeans. Yeah. Shorts. Jean shorts.

9 Q So they wasn't the long jeans? They were shorts?

10 A Correct.

11 Q So they didn't even -- the clothes he had on didn't
12 even match the description at the scene, did it?

13 A That's correct.

14 Q And you didn't find any jeans to match the
15 description, did you?

16 A I did not.

17 Q So of all this evidence the State just showed the
18 jury, the only thing you have is a yellow t-shirt?

19 A That's correct.

20 MR. JOHNSON: No other questions.

21 MS. GARFIELD: Briefly, Your Honor.

22 THE COURT: Sure.

23 REDIRECT EXAMINATION

24 BY MS. GARFIELD

25 Q I show you State's Exhibit 21. Are there other

1 articles of clothing on that bed?

2 **A** There are. There are other articles of clothing on
3 that bed.

4 **Q** And are there blue jeans on that bed?

5 **A** There are blue jeans on that bed.

6 **Q** And, Investigator Nelson, were they collected?

7 **A** They were not.

8 **Q** And why is that?

9 **A** In my opinion, I felt that they were not necessary
10 because I was described at that time there would be a
11 yellow shirt from the scene.

12 **Q** Had you been told that the suspect was possibly
13 wearing jeans, would you have collected them?

14 **A** Yes.

15 **Q** I have nothing further. Oh, I'm sorry. Just one
16 question. You did also collect the videotape in this
17 case?

18 **A** I did collect the videotape. Correct.

19 **Q** And you've seen that videotape?

20 **A** Yes. I did.

21 **Q** And it reflects a white male with a yellow shirt?

22 **A** Correct.

23 **Q** Thank you. Nothing further.

24 **MR. JOHNSON:** Just follow up, Your Honor?

25 **THE COURT:** Sure.

RECROSS EXAMINATION

BY MR. JOHNSON

Q The clothes that's on that bed, my client didn't put those clothes on that bed, did he?

A I was not there.

Q But you're aware that the police officers laid those things out there. Is that correct?

A I was informed the other day, yes, about that.

Q So that would mean that my client didn't do it if the police did it, right?

A That's correct.

Q Okay. So my client didn't put those clothes on that bed. The police did it?

A That's correct.

Q Before you got there?

A Before I got there.

Q They laid it out on the bed and propped it up for you to take pictures, correct?

A That's correct.

Q And that was not following procedure, was it?

A To the best of my knowledge, no.

Q They didn't follow procedure, did they?

A No.

Q But they spread that yellow shirt out on that bed and wanted you to take pictures of it, didn't they?

1 **A** That's right.

2 **Q** One moment, Your Honor.

3 **THE COURT:** Sure.

4 **Q** Thank you. One other question. The videotape?

5 **A** Yes, sir.

6 **Q** The videotape you collected, did you review it?

7 **A** I did not.

8 **Q** No other questions.

9 **THE COURT:** Okay, sir. You can step down.

10 **THE WITNESS:** Thank you.

11 **MS. GARFIELD:** May this witness be excused?

12 **THE COURT:** Yes, you may.

13 **MS. GARFIELD:** The State calls Margaret Thomas.

14 **THE COURT:** One moment. I believe we need a
15 break. Ladies and gentlemen of the jury, we're going
16 to take a short break at this time. I remind you not
17 to discuss the case.

18 (Jury out at 3:53 p.m.)

19 **THE COURT:** Any issues the Court needs to take
20 up at this time?

21 **MR. JOHNSON:** I have none, Your Honor.

22 **THE COURT:** Okay. How many more do you have?

23 **MS. GARFIELD:** We've got three witnesses, one of
24 which we do have to talk about his record.

25 **MR. JOHNSON:** Yes, we do.

1 **THE COURT:** Okay. All right. I recall
2 yesterday Mr. Thomas's testimony from yesterday. My
3 point is, do you think the State will rest today, get
4 through all of them?

5 **MR. JOHNSON:** I don't think so, Your Honor.

6 **MS. GARFIELD:** I think we can if you're willing
7 to go 'til about 5:30 or so. What do you think?

8 **THE COURT:** Okay.

9 **MR. JOHNSON:** That's fine with me.

10 **MS. GARFIELD:** The next two witnesses are pretty
11 short, and then Thomas.

12 **THE COURT:** All right.

13 **MR. JOHNSON:** That's fine.

14 **THE COURT:** Okay. I just need to let Jim know
15 so we can deal with the jury about a trial tomorrow.
16 That's fine.

17 **MR. JOHNSON:** Well, then I guess we'll be doing
18 him tomorrow.

19 **THE COURT:** Yeah. I anticipated him. So the
20 other trial wouldn't start before tomorrow afternoon.
21 Okay. All right. Thank you all. Be at ease.

22 (Whereupon, a break is taken)

23 **THE COURT:** Are the parties ready to proceed?
24 Mr. Johnson, we're getting your excuse done.

25 **MR. JOHNSON:** Oh. Thank you, Your Honor.

1 (Off the record)

2 **THE COURT:** Are you all ready to proceed?

3 **MS. GARFIELD:** Yes, Your Honor. We just need to
4 talk about our second witness's record. That's Mr.
5 Rogers.

6 **THE COURT:** Do you want to do that now?

7 **MS. GARFIELD:** Yes. Because the next witness is
8 going to be very short.

9 **THE COURT:** Okay. Let's do this. I'm going to
10 call the jurors out just to allow them to pick a
11 foreperson. And they can go back in there. And then
12 we'll talk about the record. And then that way we
13 can deal with all that. Okay? Let's do that.

14 **MS. GARFIELD:** Your Honor, do you want to just
15 inquire, too, if anybody has issues with working late
16 or anything like that?

17 **THE COURT:** Okay. Sure. And I'm not pushing
18 you to be done because I understand --

19 **MS. GARFIELD:** And we might get to a point where
20 I don't think we should call Thomas. I'll just see
21 how the next with two witnesses go.

22 (Jury in at 4:18 p.m.)

23 **THE BAILIFF:** The jury is all present, Your
24 Honor.

25 **THE COURT:** Okay. Ladies and gentlemen of the

1 jury, is there anyone who is not able to work a
2 little past 5 today, between 5:15 and 5:30 if we need
3 to go there? I just don't want to cut a witness off
4 if we can be finished with them. Okay. No juror is
5 indicating that they cannot.

6 Then I'm going to ask you all to do an
7 assignment. I'm going to have you step back to your
8 jury room because I'd like for you to select a
9 foreperson. It just cannot be one of the alternates
10 at this time.

11 That person has no more votes, so to speak, but
12 they will guide the deliberations just insofar as
13 making sure the verdict form is filled out
14 appropriately and then just guiding the discussion
15 with the deliberations in terms of making sure
16 everybody has an opportunity to speak freely, place
17 their positions on the record with respect to each of
18 you and then each person to make sure that they all
19 get a vote in the room and have their say.

20 So if you would indicate by just putting your
21 juror number down on a piece of paper and then submit
22 that to the Court. And we'll be with you shortly.
23 Thank you. I remind you not to discuss the case.

24 (Jury out at 4:20 p.m.)

25 **THE COURT:** Okay. Let's discuss the issue about

1 the record.

2 **MR. ROGERS:** Your Honor, as we discussed
3 earlier, one of our witnesses does have a -- well,
4 he's got a record.

5 **THE COURT:** Okay.

6 **MR. ROGERS:** I'm sure Mr. Johnson would like to
7 get into much more of it. Your Honor, I think the
8 only relevant convictions that can be brought to
9 light during the trial date back to 1999.

10 **THE COURT:** Okay.

11 **MR. ROGERS:** He has a conviction for lewd act on
12 a minor as well as CSC with a minor and a check
13 fraud. The CSC and lewd act are from 1999. The
14 check fraud case was from 2002. And he was in Alvin
15 S. Glenn Detention Center at the relevant time. He
16 was in on a probation violation.

17 **THE COURT:** On a probation violation when?

18 **MR. ROGERS:** When he overheard the conversation
19 in question from the defendant.

20 **THE COURT:** Oh. Okay. All right. Mr. Johnson,
21 is there anything else that you're aware of on the
22 record that you are attempting to get in?

23 **MR. JOHNSON:** Yes, ma'am. Let's start with, he
24 has a lewd act. I'm not sure if this is the 1999 one
25 or not. But I have a 2006.

1 **MS. GARFIELD:** That was the probation rev for
2 that.

3 **MR. JOHNSON:** That was the probation rev for the
4 lewd act?

5 **MR. ROGERS:** Correct.

6 **MS. GARFIELD:** Mm-hmm (affirmative).

7 **MR. JOHNSON:** Okay.

8 **MR. ROGERS:** For clarification, it shows up as a
9 conviction on his rap sheet.

10 **THE COURT:** Okay.

11 **MR. ROGERS:** But it's a duplicative charge.
12 It's one charge that appears later at the probation
13 violation order.

14 **THE COURT:** So you all are speaking about the
15 same matter on that one?

16 **MR. JOHNSON:** He has -- so we're in agreement
17 concerning the criminal sexual conduct with a minor.

18 **THE COURT:** Yes.

19 **MR. JOHNSON:** From '99. The lewd act from '99.

20 **THE COURT:** And the check fraud.

21 **MR. JOHNSON:** Is that the forgery, six counts?
22 Is that what we're talking about?

23 **MS. GARFIELD:** That was -- I'm sorry.

24 **MR. ROGERS:** No, sir. It's a fraudulent check
25 under \$500. It's from December 3rd, 2002. He

1 received 30 days.

2 **MR. JOHNSON:** I must be missing that. I don't
3 show that on my --

4 **MR. ROGERS:** It's at the bottom of the same page
5 as the CSC and the lewd act from 1999.

6 **MR. JOHNSON:** Oh. The fraudulent check under
7 500?

8 **MR. ROGERS:** Correct. It's at the very bottom
9 of the page.

10 **MR. JOHNSON:** And then I've got the fraud, six
11 counts, in '98. I think that's admissible.

12 **MR. ROGERS:** Your Honor, it's the State's
13 position it's too old. It's not relevant in time.
14 It's after ten years.

15 **THE COURT:** But I'm not sure. Let me look at
16 this again. Because crimes of dishonesty might not
17 have that same kind of penalty.

18 **MR. JOHNSON:** I don't believe they do, Your
19 Honor.

20 **THE COURT:** Any other ones while I'm looking for
21 that rule?

22 **MR. JOHNSON:** Yes, ma'am. He has a shoplifting
23 in '98. He has a shoplifting in '97. He has a
24 forgery in '96. He has a larceny in '96. I believe
25 at least all those can come in, Your Honor. I'm

1 checking to see what else he has there.

2 **THE COURT:** Okay. Under Rule 609, impeachment
3 of evidence by conviction of a crime, you can allow
4 in evidence of any witness convicted of a crime
5 involving dishonesty regardless of the punishment.
6 However, when you get down to 609(a)(b), then it does
7 indicate not admissible after a period of more than
8 ten years unless proponent gives adverse party
9 sufficient advance notice of intent to use it. Has
10 that occurred?

11 **MR. JOHNSON:** Yes, ma'am.

12 **MS. GARFIELD:** No, ma'am.

13 **MR. ROGERS:** No, ma'am.

14 **MR. JOHNSON:** I thought I told you all we were
15 going to use his criminal record. No, ma'am? I'm
16 glad you're not under oath.

17 **THE COURT:** So that the record reflects
18 correctly, has defense counsel given you notice? Are
19 you all contesting any notice on the issue? I
20 suppose it was within your abilities, too, as the
21 State, since you would have the records, more
22 successful than the defense anyway.

23 **MR. ROGERS:** We were aware that he would be
24 challenging -- that he had plenty of information he
25 wanted to use, but we didn't discuss specifically how

1 far back defense counsel intended to go.

2 **THE COURT:** Okay. And so then assuming notice,
3 it has been met, then the issue is whether or not the
4 probative value of the conviction is supported by
5 specific facts and circumstances that substantially
6 outweighs its prejudicial effect. So I guess I would
7 have the State -- well, defense, you can go ahead and
8 argue why it's probative.

9 **MR. JOHNSON:** Well, it's probative, Your Honor,
10 because this goes to his credibility. His whole
11 statement is about credibility, whether the jury is
12 going to believe that my client admitted to this
13 robbery. And credibility goes to -- I mean, the
14 whole thing is about credibility. And he has an
15 extensive record dealing with falsehood and larceny
16 and forgery, and I think that it is admissible.

17 **THE COURT:** All right. The State response.

18 **MR. ROGERS:** Your Honor, the purpose of the
19 ten-year limit in the rules is to allow witnesses to
20 have some time to regain their credibility back. This
21 witness, while he has been convicted within the last
22 ten years, the last conviction was 2002, the
23 conviction is from 1996 that defense counsel is
24 trying to argue, I believe they did it back to as
25 early as 1996 if I was correct, those are just so far

1 away in time; the State's position is they're not
2 relevant to the defendant or to the witness's
3 credibility from 1996. That's a long time ago.

4 **MR. JOHNSON:** Your Honor.

5 **MR. ROGERS:** It's too far. Its prejudicial
6 value firmly outweighs any probative value that it
7 may have in relation to his character. Furthermore,
8 there is credibility. And we don't have any
9 certified convictions of those convictions either.
10 But it doesn't -- going back that far, Your Honor,
11 doesn't aid defense any further than merely throwing
12 mud.

13 At this point the jury will be aware that he is
14 a -- he has convictions on his record for CSC, lewd
15 act and forgery. Your Honor, those three convictions
16 alone are enough to give the jury an idea of his
17 criminal record. There is no sense in going back
18 through every jaywalking conviction he's ever had.

19 I understand defense counsel just wants to go
20 back to 1996 to the forgery counts, but those added,
21 those additional counts don't gain any probative
22 value over and above the CSC, the lewd act and the
23 forgery conviction from 1999 and 2002.

24 **MR. JOHNSON:** Your Honor.

25 **THE COURT:** Okay.

1 **MR. JOHNSON:** It is my position that that's a
2 determination made by the jury. The State cannot
3 determine what's effective or not what's effective,
4 if it's three, if it's four, if it's five. There is
5 no cut off in the law. The law allows me to do
6 whatever the laws allow me to do.

7 The law allows me to use any crime of falsehood,
8 of larceny or things of that nature to impeach a
9 witness. I can't help it if their witness has
10 over -- numerous counts that, now looking back, Your
11 Honor, there is even things in here from Mecklenburg
12 County from 1991. There is property by false
13 pretenses. There is another larceny. There is
14 another larceny.

15 **THE COURT:** These are beyond this ten-year
16 period?

17 **MR. JOHNSON:** This is beyond '96, Your Honor.
18 This man is a career criminal. And just as the ten
19 years is meant to like give a person an opportunity
20 to rehabilitate himself [sic], he has been consistent
21 almost every year since 1992 up until now.

22 **THE COURT:** Okay. All right. This rule then
23 requires the Court to do a balancing test. So we're
24 going to go through that. The impeachment value of
25 the prior crime, basically the more the crime seems

1 related to veracity, the greater its probative value.
2 So that certainly weighs in favor of the defense.

3 And then the point in time of the conviction and
4 the witness's subsequent history, basically that
5 tries to make sure that these weren't youthful
6 aberrations. And I don't believe so, given the
7 subsequent history, that you have similar crimes. So
8 that weighs in favor of the defense.

9 The similarity between the past crime and the
10 charged crime.

11 **MS. GARFIELD:** I believe that's for the accused.

12 **THE COURT:** The accused, right. And then the
13 importance of the -- well, it says the defendant's
14 testimony. Basically you're looking at what would
15 make somebody feel like they could not take the stand
16 or you would be somehow deterred by the stand. But
17 again, that one refers more to the defendant's
18 testimony.

19 And then the other one is the centrality of the
20 credibility issue, basically the explanation as to
21 whether or not it's going to come down to a swearing
22 contest between the defense and a witness. And in
23 this case, at least at this juncture without the
24 defendant having been advised of his rights, there is
25 a chance the defendant may take the stand; I would

1 find this factor in favor of the defense as well.

2 So I'm going to allow these prior crimes of
3 dishonesty in on this witness.

4 **MR. JOHNSON:** Thank you, Your Honor. And, Your
5 Honor, just for clarification, I just want to go over
6 the offenses that I intend on entering.

7 **THE COURT:** Okay. Are you going beyond the '98
8 six counts of fraudulent, '98 shoplifting, '96
9 forgery and larceny?

10 **MR. JOHNSON:** Yes. I would like to go to '91.

11 **THE COURT:** Okay. What's the '91?

12 **MR. JOHNSON:** It is what it is, Your Honor. He
13 has obtaining property by false pretenses. February
14 the 1st of 1991.

15 **THE COURT:** Okay.

16 **MR. JOHNSON:** It then goes to a --

17 **MR. ROGERS:** Wait a second, Your Honor. I want
18 to make sure we're on the same page. Obtaining? In
19 which state?

20 **MR. JOHNSON:** That's Mecklenburg County. No.
21 Henderson County. What is that? North Carolina?

22 **MR. ROGERS:** Mm-hmm (affirmative). Your Honor,
23 we don't have certified convictions of these,
24 particularly since they're out of State convictions.

25 **THE COURT:** Okay.

1 **MR. ROGERS:** If defense -- arguably, if defense
2 counsel wants to use these convictions, he should
3 have a certified conviction.

4 **MR. JOHNSON:** I was given this information from
5 the State, Your Honor.

6 **THE COURT:** I know. But does the State have
7 any -- because we're not in the same jurisdiction, do
8 they have any way to really validate that
9 information?

10 **MS. GARFIELD:** I can just speak on the side. I
11 know if I were trying to attack the defendant with
12 this, I would have to contact the individual clerk's
13 office and get certified convictions, which I have
14 done so on the defendant.

15 **THE COURT:** I understand. But your point is
16 no -- I was giving you a chance -- sometimes
17 questions are helpful to you.

18 **MS. GARFIELD:** Basically like if we had an in?
19 Is that what you're asking?

20 **THE COURT:** Yes.

21 **MS. GARFIELD:** I mean, in some jurisdictions we
22 do. In Mecklenburg, I do not have a contact. That's
23 only from my former Knack days.

24 **THE COURT:** So the are the ones that we talked
25 about up until '96, are these all South Carolina?

1 **MR. JOHNSON:** Yes, Your Honor.

2 **THE COURT:** Okay. And then the other ones that
3 go further than that are in another jurisdiction?

4 **MR. ROGERS:** And the obtaining property by false
5 pretenses, Your Honor. The rap sheet only lists an
6 arrest. It doesn't list --

7 **THE COURT:** That's also North Carolina, right?

8 **MR. ROGERS:** Yes, ma'am.

9 **THE COURT:** Okay. My point is that you all
10 cannot independently verify that these are the case
11 and Mr. Johnson does not have certified convictions.
12 So I'm only willing to allow him to go into up to
13 '96, the South Carolina ones that you all don't have
14 any problem with other than noting that you don't
15 think that they are relevant or probative.

16 **MR. ROGERS:** Well, I mean, --

17 **THE COURT:** I'm not going to allow the North
18 Carolina ones, is my point.

19 **MR. ROGERS:** Yes, ma'am. And I understand.

20 **THE COURT:** Okay.

21 **MR. ROGERS:** I'm not arguing with you about
22 that.

23 **THE COURT:** Okay.

24 **MR. ROGERS:** But as far as the 1996 convictions,
25 even back to those convictions, we still don't have

1 certified convictions on those.

2 **THE COURT:** But these are all South Carolina
3 ones, right?

4 **MR. ROGERS:** They are.

5 **THE COURT:** But do you have any reason to
6 dispute the rap sheets on them?

7 **MR. ROGERS:** I have no good faith basis to
8 dispute them.

9 **THE COURT:** Okay.

10 **MR. JOHNSON:** And, Your Honor.

11 **THE COURT:** Because I'm not going to allow him
12 to go into another State's database if you all don't
13 have a way to verify that.

14 **MS. GARFIELD:** It's just, and I actually can
15 even refer to my paralegal who I always get to
16 confirm these convictions..

17 **THE COURT:** Sure.

18 **MS. GARFIELD:** They are often, often incorrect.

19 **THE COURT:** Okay.

20 **MS. GARFIELD:** Especially a lot of these are
21 magistrate offenses, and those are --

22 **THE COURT:** Well, let me ask you this. Have you
23 conferred with your witness to know if that is the
24 case or not?

25 **MS. GARFIELD:** I have not. We have not done

1 that. And A great example with this is the rap sheet
2 is really hard to read. When you look at the rap
3 sheet, it does reflect several CSCs. But when we go
4 to get certified convictions, it is only one CSC in
5 that. That's just an example of how problems often
6 arise with regard to rap sheets.

7 **MR. JOHNSON:** Your Honor, I've been practicing
8 in this court for 15 years. This is the first time I
9 have ever heard the State argue that their rap sheets
10 is not correct, especially when they use their rap
11 sheets against my client. Now because it's a witness
12 of theirs, now all of a sudden there's a problem with
13 the rap sheets. Their procedures have always been
14 that they have provided the rap sheets to defense
15 counsel. Now because he's their witness, now they're
16 saying that they can't do it. Now, I'm a little
17 confused here. But are we changing procedures or are
18 we just looking for the truth or are we just trying
19 to prevent it?

20 **MS. GARFIELD:** I have never been allowed to ask
21 anybody that's charged with a crime without having a
22 certified conviction in hand, whether it be
23 magistrate court or whether it be state court, out of
24 the state.

25 **THE COURT:** But you don't have the certified

1 conviction for the ones that you agree on either.

2 **MS. GARFIELD:** Yes, ma'am, I do.

3 **THE COURT:** But you're fine with those. You do?

4 **MS. GARFIELD:** I've got certified convictions
5 for CSC and the lewd act.

6 **THE COURT:** Okay. And the check fraud?

7 **MS. GARFIELD:** I do not have one for that.

8 **THE COURT:** Are you going to object to that one?

9 **MS. GARFIELD:** I won't object to it.

10 **THE COURT:** Okay.

11 **MS. GARFIELD:** Because in fairness I think it
12 should come in.

13 **THE COURT:** Okay. Generally the method of proof
14 is that you're going to elicit it on cross
15 examination from the witness or establish it through
16 the introduction of a public record.

17 **MR. JOHNSON:** I can solicit it from her, Your
18 Honor. But then I ask the Court then to give me time
19 to get the certified convictions. If they're going
20 to put the person up and not going to give me the
21 means to get it, I've got to do it myself and then
22 that's going to call for a delay.

23 **THE COURT:** Okay. And how much of a delay is
24 that?

25 **MR. JOHNSON:** I'm not sure, Your Honor. I've

1 never had to do it myself. I've always gotten it
2 from the State.

3 **THE COURT:** Okay.

4 **MR. JOHNSON:** I also request that the Court
5 authorize me funds to get it since the State is not
6 going to assist me.

7 **MS. GARFIELD:** I don't think you have to pay for
8 it.

9 **MR. JOHNSON:** I don't know.

10 **MS. GARFIELD:** Did we just have to pay for that?

11 **MR. JOHNSON:** The State doesn't have to pay for
12 anything.

13 **STATE'S PARALEGAL:** Yes. Technically, yes.

14 **THE COURT:** What's the time period on how it
15 could get done?

16 **MS. GARFIELD:** If you'll ask Ms. Trapp. I don't
17 know. She does them from me.

18 **STATE'S PARALEGAL:** If it's here, I can get it
19 in about five minutes. If I can find it in the
20 clerk's office, it's no problem.

21 **THE COURT:** Okay. So I would direct that you
22 just go ahead and look for these and see if they are
23 true or not.

24 **MS. GARFIELD:** And if Mr. Johnson can like
25 highlight exactly the ones on the rap sheet you're

1 interested in.

2 **MR. JOHNSON:** His South Carolina rap sheet. All
3 of them are the same thing. There's nothing
4 different. I have it highlighted. I have them for
5 you.

6 **STATE'S PARALEGAL:** Well, if it's more than one,
7 it's going to take me a while.

8 **THE COURT:** Only up to '96.

9 **MR. JOHNSON:** That's correct. I haven't checked
10 them off yet.

11 (Pause)

12 **THE COURT:** Okay. Is this the first or second
13 witness? The person?

14 **MS. GARFIELD:** The second.

15 **THE COURT:** Okay. All right. So we've got a
16 little time. All right. Do you all need anything
17 else?

18 **MR. JOHNSON:** I have nothing else, Your Honor.

19 **MS. GARFIELD:** I don't think so.

20 **THE COURT:** Okay. Jurors, please.

21 (Jury in at 4:38 p.m.)

22 **THE BAILIFF:** The jury is all present, Your
23 Honor.

24 **THE COURT:** Thank you. And thank you, juror
25 number 176, for serving as the foreperson. State,

1 you may continue with your case.

2 **MS. GARFIELD:** Thank you, Your Honor. The State
3 calls Margaret Thomas Land.

4 MARGARET T. LAND, after being duly sworn,
5 testifies as follows:

6 **THE CLERK:** Thank you. Have a seat in the
7 witness stand and give the court reporter your name.

8 **THE WITNESS:** Margaret Thomas land.

9 DIRECT EXAMINATION

10 **BY MS. GARFIELD**

11 **Q** Ms. Land, how are you this afternoon?

12 **A** Fine.

13 **Q** Where do you reside, Ms. Land?

14 **A** -----

15 **Q** And that's here in the City of Columbia?

16 **A** Yes, it is.

17 **Q** And, Ms. Land, do you own any other properties on
18 Pine Street?

19 **A** Five other properties.

20 **Q** Specifically, do you own -----

21 **A** Yes, I do.

22 **Q** I'm going to show you a photograph. Tell me if you
23 recognize this picture. Do you recognize this
24 property as a picture of Exhibit No. 12?

25 **A** That's -----

1 Q And you are the owner of that?

2 A Yes.

3 Q And can you tell me, what do you do with that home?

4 A I have at the time two guys that rent the rooms.

5 Q It's a rental house?

6 A Yes, it is.

7 Q Is it safe to characterize it as a boarding house?

8 A Yes. You can.

9 Q And back in July of 2008, specifically July 19th,
10 2008, did you have borders at that house?

11 A Yes, I did.

12 Q And can you share with the jury who your tenants
13 were?

14 A A gentleman by the name of Sylvester Roberson and a
15 gentleman by the name of Alvin Johnson.

16 Q And were they black males or white males?

17 A They were both black.

18 Q Did you at any time that summer rent your house to a
19 white male?

20 A No.

21 Q Have you ever rented to a white male at that
22 location?

23 A No.

24 Q Are you familiar with the exact rooms those tenants
25 resided in?

1 **A** Yes. Yes.

2 **Q** And can you tell me who lived in -- well, first let
3 me show you State's Exhibit No. 21. Do you recognize
4 this photograph?

5 **A** Yes.

6 **Q** And is that a bedroom at

7 **A** Yes, it is.

8 **Q** And can you tell me who was living in that bedroom on
9 July 19th, 2008?

10 **A** Roberson.

11 **Q** Roberson? Mr. Roberson?

12 **A** Mm-hmm (affirmative).

13 **Q** And he was a black male you indicated?

14 **A** Yes.

15 **Q** Do you recall about what his age would have been?

16 **A** Probably about 38.

17 **Q** Okay.

18 **A** Forty. I really can't remember.

19 **Q** Okay. Have you ever seen the defendant before?

20 **A** No. Not before yesterday.

21 **Q** Okay. Thank you. I have no further questions.

22 Please answer anything Mr. Johnson may have.

23 CROSS EXAMINATION

24 **BY MR. JOHNSON**

25 **Q** Good afternoon, ma'am.

1 **A** How you doing?

2 **Q** Good to see you again. Just a couple of questions.
3 The tenants there were allowed to have guests there,
4 correct?

5 **A** Correct.

6 **Q** And you do not know if my client was a guest there or
7 not, do you?

8 **A** No, I don't know.

9 **Q** And you do not have any idea who robbed that store
10 that day, whether it was my client or anybody else,
11 do you?

12 **A** No, I don't know.

13 **Q** I have no other questions.

14 **MS. GARFIELD:** May Ms. Land be excused, please?

15 **THE COURT:** You may be excused. Thank you for
16 coming. The State's next witness.

17 **MS. GARFIELD:** May we approach, Your Honor?

18 **THE COURT:** Yes.

19 (Whereupon, a bench conference is had)

20 **THE COURT:** Just give us a moment. There is
21 something they need to confer on.

22 (Pause)

23 **MR. JOHNSON:** Your Honor, can we approach?

24 **THE COURT:** Sure.

25 (Whereupon, a bench conference is had)

1 **THE COURT:** You may call your next witness, the
2 State. Thank you all for your patience.

3 **MR. ROGERS:** The State calls Mr. Billy Kirkland.

4 WILLIAM H. KIRKLAND, after being duly sworn,
5 testifies as follows:

6 **THE CLERK:** Thank you. Have a seat in the
7 witness stand, please. Give the court reporter your
8 name.

9 **THE WITNESS:** William H. Kirkland.

10 DIRECT EXAMINATION

11 **BY MR. ROGERS**

12 **Q** Good afternoon, sir.

13 **A** Good afternoon.

14 **Q** Where are you from?

15 **A** Columbia.

16 **Q** You born here?

17 **A** Born and raised, Columbia, South Carolina.

18 **Q** You lived here your whole life?

19 **A** All of my life.

20 **Q** I'd like you to tell the Court a little bit about
21 yourself. Are you married?

22 **A** I am separated.

23 **Q** Okay. Do you have family here in Columbia?

24 **A** Yes.

25 **Q** What kind of jobs have you held in the past?

1 **A** What kind of jobs have I had in the past?

2 **Q** Yes, sir.

3 **A** I've gone from one extreme to the other. I used to
4 be a police officer. Then I into the construction
5 field with painting. That and driving a truck,
6 that's about it.

7 **Q** You've had a lot of different jobs over the years?

8 **A** Yes, sir.

9 **Q** In the spring of 2009 were you at Alvin S. Glenn
10 Detention Center?

11 **A** I was.

12 **Q** And specifically I'm referring to April and May of
13 2009.

14 **A** I was there.

15 **Q** Okay. Why were you there?

16 **A** A probation violation. Actually, technically, the
17 word used was community supervision violation, which
18 is the same thing, just a different name.

19 **Q** While you were in Alvin S. Glenn Detention Center,
20 did you have any interactions with the defendant?

21 **A** I did.

22 **Q** Did you know him before going into Alvin S. Glenn?

23 **A** No, sir, I didn't.

24 **Q** Have you had any interaction with him since you've
25 left Alvin S. Glenn?

1 **A** No, I haven't.

2 **Q** Were you two stationed in the same dorm?

3 **A** We were. Foxtrot Dorm in the minimum security part
4 of the jail.

5 **Q** And now, for the jury, housing in the dorm or housing
6 in the Alvin S. Glenn Detention Center, how are
7 inmates housed?

8 **A** In this particular dorm it's an open dorm and you've
9 got two beds per cubicle with no door. Then you have
10 a common area in the middle of the dorm where tables
11 are there where you can play board games, interact.

12 **Q** Pretty much a big open area?

13 **A** It is.

14 **Q** And is there an area where people can congregate and
15 talk?

16 **A** Oh, yes.

17 **Q** Are there tables and chairs there?

18 **A** Yes, sir. That's the only place you're allowed to
19 congregate and talk because you're not allowed to go
20 into anyone else's cubicle.

21 **Q** Now, while you were in Foxtrot Dorm, did you have any
22 conversations with the defendant?

23 **A** I did.

24 **Q** Did you overhear any conversations of the defendant?

25 **A** I did.

1 Q Do you recall any specific conversations that you
2 overheard from the defendant?

3 A Yes, I do.

4 Q And when do you recall hearing those statements?

5 A It was one day when we were out in the common area.
6 We was all sitting at a table. I was right next to
7 the table with some other guys. I guess the tables
8 were probably two and a half, three feet apart. We
9 were kind of all talking at our table, interacting
10 back and forth at that table.

11 Q I want to slow you down a little bit. This is in
12 April or May of 2009?

13 A Yes.

14 Q Now, the tables, were you all sitting at the same
15 table?

16 A I was not at the same table with the defendant.

17 Q Were your tables close by each other?

18 A Yes. Within three feet.

19 Q How many people typically sit at a table?

20 A Four.

21 Q So you're sitting at a table next to him?

22 A I am.

23 Q Please go on from there. You overheard a
24 conversation?

25 A A conversation, was talking with two other inmates.

1 His words were: I need you guys to help me with
2 something because they've got me.

3 Q Do you know what he was referring to?

4 A I had heard him say that he was in jail for armed
5 robbery. And his words were: They got me and I need
6 your help. Are you all going to --

7 Q I'm sorry, sir. What kind of help was he looking
8 for?

9 A He asked the guys if they were willing to do a
10 statement that he was nowhere in the Five Points area
11 at the time in question of the armed robbery.

12 Q Did he ask you this?

13 A He did not.

14 Q But you were close enough to overhear his
15 conversation?

16 A I was.

17 Q Any doubt in your mind that it was the defendant who
18 said that?

19 A None whatsoever.

20 Q Do you see the person you overheard make those
21 statements?

22 A Do I see this person?

23 Q Do you see him in the courtroom?

24 A Yes, I do.

25 Q Where is he sitting?

1 **A** He's sitting right there.

2 **Q** At the table?

3 **A** Yes, sir.

4 **MR. ROGERS:** Your Honor, I'd like the record to
5 reflect he's identified the defendant.

6 **THE COURT:** So reflected.

7 **Q** Sir, did you tell anybody about this statement?

8 **A** I wrote a letter to the Solicitor's Office from the
9 jail.

10 **Q** Do you remember when you wrote that statement?

11 **A** It's right about the same time. Somewhere around
12 April, late March or early April.

13 **MR. ROGERS:** Okay. Your Honor, I'd like the
14 record to reflect I'm showing defense counsel a
15 State's Exhibit. It's a letter.

16 **THE COURT:** Okay.

17 **MR. ROGERS:** If I may approach the witness?

18 **THE COURT:** Yes, you may.

19 (WHEREUPON, State's Exhibit No. 35 is marked for
20 identification.)

21 **Q** Sir, I'm going to show you a letter. Take a second
22 to look that over for me. See if you recognize that.

23 **A** Yes, I do.

24 **Q** And is that a letter that you wrote?

25 **A** It is.

1 Q Is that your handwriting?

2 A Definitely my handwriting.

3 Q On the back of that envelope, is there a letter? Or
4 excuse me. On the back of that letter, is there an
5 envelope?

6 A Yes.

7 Q Who is that envelope addressed to?

8 A Okay. This is addressed to the Columbia Police
9 Department, No. 1 Justice Square. I made a mistake
10 in remembrance of where I mailed the letter to. Now
11 that I see this, it refreshes my memory that I found
12 out that the crime was committed in the City of
13 Columbia, and so I sent the letter to the City of
14 Columbia Police Department.

15 Q I'm sorry. I didn't mean to interrupt you, sir.
16 Were you done?

17 A Yes, sir.

18 Q Is there a postmark date on that?

19 A This one is 1 May '09.

20 Q Thank you very much, sir. Did you sign that letter?

21 A Yes, I did.

22 Q And is that your signature at the bottom?

23 A That is my signature at the bottom.

24 MR. ROGERS: Your Honor, at this time we'd like
25 to introduce State's Exhibit No. 35 into evidence.

1 **MR. JOHNSON:** No objection, Your Honor.

2 **THE COURT:** Okay.

3 (WHEREUPON, State's Exhibit No. 35 is admitted
4 into evidence.)

5 **Q** Sir in that letter, what was the purpose of your
6 writing that letter?

7 **A** My purpose of writing this letter was at the time I
8 was afraid I was going back to prison. I was
9 grasping at many things. I'm a heavy cigarette
10 smoker, and I thought if I turned this information
11 over to the police department that I might get some
12 help when I go to court. And I said in the letter
13 that when you got me out to talk with me I'd like to
14 smoke a cigarette.

15 **Q** And does your letter mention the statement made by
16 the defendant?

17 **A** Yes.

18 **Q** Does your letter ask for any specific assistance from
19 the State?

20 **A** Under one condition, that I must be picked up from
21 jail and taken to the Columbia Police Department. I
22 will not talk to anyone here at the jail. I want to
23 be picked up.

24 **Q** And why would you make that a requirement?

25 **A** Although the statement that I was willing to give to

1 the police department was very true, I knew if they
2 come down there for the statement that I wouldn't be
3 able to smoke a cigarette.

4 Q Okay. I think you also request a cigarette in that
5 letter?

6 A Yes, sir.

7 Q Sir, as a result of this letter and your testimony
8 here in court today, has the State helped you with
9 any of your charges?

10 A No, sir.

11 Q Have we dismissed anything?

12 A No, sir.

13 Q Have we made any recommendations, any negotiations?

14 A No, sir.

15 Q Have we made you any promises of help?

16 A No, sir.

17 Q Okay. And, sir, before we wrap this up, there's a
18 couple of things that I need to take care of just for
19 housekeeping. I don't mean to introduce this to
20 embarrass you in any manner. But is it safe to say
21 you have a criminal record, sir?

22 A Yes, I do.

23 Q Now, I don't need go through every one of those
24 individually, but I'm going to ask you about some of
25 your convictions. Do you remember having a petit

1 larceny conviction?

2 **A** I'm sorry. Have a what?

3 **Q** A petit larceny conviction?

4 **A** Yes.

5 **Q** Do you remember having eight counts of forgery on
6 your record?

7 **A** Yes.

8 **Q** Do you remember having a check fraud?

9 **A** Yes.

10 **Q** There is two more, sir. Do you remember having a CSC
11 with a minor conviction?

12 **A** I do.

13 **Q** And a lewd act on a minor?

14 **A** I do.

15 **Q** Sir, when was the last time you were convicted of a
16 crime?

17 **A** January -- oh, correction. Correction. November of
18 1999 was my last conviction. My last conviction was
19 the CSC and the lewd act which were of the same
20 incident with the same victim. I have not -- oh.
21 Correction. I've had a trespassing charge since then
22 in Lexington County. I pled guilty to it and paid a
23 fine. That was like six months ago.

24 **Q** Okay. Sir, I just want to make a couple more things
25 clear. Your probation revocation hearing, you had

1 one while you were in jail?

2 **A** I did.

3 **Q** At that time was anybody from the Solicitor's Office
4 there on your behalf?

5 **A** Nobody.

6 **Q** Was anybody from the City of Columbia Police
7 Department there?

8 **A** Nobody.

9 **Q** Was anyone related to this case there?

10 **A** No, sir.

11 **Q** Did you receive any assistance on that probation
12 revocation or the community supervision as you said?

13 **A** No, I didn't.

14 **Q** Is that case closed at this point?

15 **A** It is closed.

16 **Q** You are no longer out on community supervision for
17 that?

18 **A** No longer on any type of supervision. All I have to
19 do is register once a year with the Sheriff's Office.

20 **Q** Are you here because of your own free will?

21 **A** I am.

22 **Q** Have we made you any kind of promises, deals or
23 assistance to you?

24 **A** No.

25 **Q** For your testimony?

1 **A** No.

2 **Q** Thank you, sir. I have no further questions.
3 Defense counsel is going to ask you some questions.

4 **MR. JOHNSON:** May it please the Court.

5 **THE COURT:** Yes, you may.

6 CROSS EXAMINATION

7 **BY MR. JOHNSON**

8 **Q** Mr. Kirkland.

9 **A** Yes, sir.

10 **Q** Let's go over this criminal record. In 1995 you have
11 a forgery you were convicted for, correct?

12 **A** Yes, sir.

13 **Q** 1996, you have a petit larceny you were convicted
14 for, correct?

15 **A** Yes, sir.

16 **Q** 1996, again you have another forgery you were
17 convicted of, correct?

18 **A** Yes, sir.

19 **Q** 1998, you've got six counts of forgery?

20 **A** Yes, sir.

21 **Q** And you was convicted, right?

22 **A** Yes, sir.

23 **Q** 1999, you committed lewd act upon a child under 16
24 and you was convicted, correct?

25 **A** Yes, sir.

1 Q 1999, you have a criminal sexual conduct with a minor
2 less than 11 years old first degree, and you was
3 convicted of that, correct?

4 A Both charges were with the same victim. It was not
5 two separate incidents.

6 Q So you injured one victim twice?

7 A Yes, sir.

8 Q 2002, fraudulent check under \$500. You pled to a
9 first. That was another conviction, right?

10 A Yes, sir. I'm sorry. That one did slip my mind.
11 Yes, sir. I do remember now.

12 Q Well, with so many, I can understand.

13 A Sure.

14 Q Let me ask you this. In the letter that you wrote,
15 you wrote this. It was the letter that the State
16 used. Do you have it up there?

17 A Yes, sir.

18 Q It has a date on the back of it, I guess May 1st?

19 A Yes, sir.

20 Q That's the date that you mailed it?

21 A I turned the letter into the correctional officer at
22 the jail. Now, when it got post marked, I can't --
23 you know, I assume it was mailed soon after I handed
24 it to the officer.

25 Q Within a day or so of you handing it to the officer?

1 **A** I handed it to the officer right after I wrote it.

2 **Q** When did you write it?

3 **A** It was my recollection that -- I'm not that good on
4 dates and stuff. My fiancée has to remind me a lot
5 of things. I do remember it was the spring of '09.

6 **Q** But just now you said it was May?

7 **A** No, sir; I did not. I said it was April.

8 **Q** You said it was April?

9 **A** Yes, sir. I said it was early April or late March.
10 So this being post dated May 1st makes my testimony
11 correct because I did write it in April.

12 **Q** But a few minutes ago you said the spring. You
13 consider March and April spring?

14 **A** Yes, I do, sir.

15 **Q** But the letter is dated May 1st?

16 **A** Yes, it is, sir.

17 **Q** So if you turned it in in March, they kept it for a
18 month and a half before they turned it over? They
19 kept it for a month and a half?

20 **A** No, sir. That's incorrect. I wrote the letter in
21 April, like I said, and turned it over to them. It
22 could have been April 31st or April 30th, however
23 many days are in April. It just so happened to get
24 post dated on May 1st.

25 **Q** A few minutes ago you say that you overheard him

1 talking to somebody, right?

2 A Yes, sir.

3 Q And that he didn't talk to you direct, right?

4 A No, sir. Not about that.

5 Q Why do you have in your letter -- and I want you to
6 look at your letter to make sure I don't say anything
7 wrong -- if you go down about one, two, three, four,
8 five, six; on the sixth line, do you see where you
9 have "me" on it? I'll point it out to you.

10 A Yes, sir. I do see it.

11 Q Well, as a matter of fact, could you just read your
12 whole letter?

13 A Sir, I have spent some time with an inmate named
14 Richard Kough. He is in here for armed robbery.
15 There are some things I feel you might need to know.
16 Subject Kough asked me to be an alibi for him and
17 asked me to write a statement. I refused. However,
18 he did get someone here to do it.

19 Q Let me stop you, stop you right there. In that
20 letter you say he asked you?

21 A Yes, sir. And --

22 Q But now you're saying he didn't talk to you?

23 A Oh. We talked quite a bit in jail.

24 Q Well, which is it now? I'm confused. You say he
25 didn't talk to you about this incident.

1 **A** He never talked to me about this incident like he
2 talked with those other guys. His superficial
3 conversation with me, because he had made the
4 statement later on after being in jail that he did
5 not trust me.

6 **Q** But in your letter you say he asked you to furnish
7 him an alibi?

8 **A** Yes, sir. I do see that.

9 **Q** So that's wrong?

10 **A** No, sir. It's not wrong. He did approach me. I
11 just forgot to bring that up in court.

12 **Q** You forgot to bring it up in court?

13 **A** Yes, sir.

14 **Q** All right. At the top of your letter, on the
15 right-hand corner, you have reference. Right?

16 **A** Yes, sir.

17 **Q** You referenced what you were talking about, right?

18 **A** Right.

19 **Q** What do you have on there?

20 **A** Food Lion on Harden Street armed robbery.

21 **Q** A Food Lion on Harden Street armed robbery?

22 **A** Yes, sir.

23 **Q** You do not say anything about a service station on
24 Harden or anything like that. You put Food Lion?

25 **A** No, sir. Because the defendant told me that it was a

1 Food Lion that he was charged with. I did not know
2 what he was accused of robbing except what he told
3 me.

4 Q So, in short, you don't know if he was confessing to
5 robbing the store that we're talking about today?
6 Well, let me put it this way. He told you a Food
7 Lion, right?

8 A Yes, sir.

9 Q So if we're in court today concerning the robbery of
10 a gas station, an Exxon gas station on Harden Street,
11 you have no information about it?

12 A The information that I got is what he said to the
13 other individuals, that I need your help on this,
14 they've got me, because I did this.

15 Q And the information you got is related to a Food
16 Lion. That's what you put on here, right?

17 A Yes, sir.

18 Q So it would have nothing to do with a gas station on
19 Harden Street, would it?

20 A I ventured not to investigate what he was actually
21 charged with. I just went on the information that I
22 heard.

23 Q And the information you heard was about a Food Lion
24 on Harden?

25 A The information I heard him talking about was an

1 armed robbery. He did not specify in what I overheard
2 what he was accused of robbing.

3 **Q** If that letter was sent out within a couple of days,
4 you said that you met my client in the F Dorm?

5 **A** Yes, sir.

6 **Q** Would it surprise you that he's never been in F Dorm?

7 **A** It would surprise me how you find that information
8 because I know that we were in F Dorm together. I
9 know he later on had got taken out of the dorm for
10 some disciplinary reason and was placed in another
11 dorm, it's my understanding. I haven't seen him
12 since.

13 **Q** You say you were a police officer one time?

14 **A** Yes, sir.

15 **Q** How long ago was that?

16 **A** About 30 years ago, sir.

17 **Q** And what stopped you from being a police officer?

18 **A** I did not get my high school diploma. It was time --

19 **MR. ROGERS:** Objection, Your Honor. Relevance.

20 **MR. JOHNSON:** They asked him about it, Your
21 Honor. I can cross examine on it.

22 **THE COURT:** Continued. Overruled. Go ahead.

23 **A** Your question was why did I stop being a police
24 officer?

25 **Q** Mm-hmm (affirmative).

1 **A** At the time I was there as a police officer with the
2 City of Forest Acres and it was time for me to go to
3 the academy to get my certification and I hadn't
4 gotten my equivalent to a high school diploma at that
5 time. So I left there and went back into the
6 construction field.

7 **Q** All right. Now, you say that the State hasn't given
8 you anything, right?

9 **A** I said they have not made any promises to me.

10 **Q** Well, what's the difference?

11 **A** Well, there's a big difference. If you're promising
12 me help with this or help with that, they didn't give
13 me anything other than they bought me breakfast one
14 day.

15 **Q** Oh. They bought you breakfast?

16 **A** Yes, sir.

17 **Q** That was when they met with you when you agreed to
18 testify?

19 **A** Yes, sir.

20 **Q** What happened if they hadn't brought you breakfast?
21 Would you still testify?

22 **A** Sir, somebody buying me breakfast and not getting me
23 to tie up my whole week up here in this courtroom, I
24 can get breakfast free if I go out and ask for it.

25 **Q** Let me ask you this. In your letter it states that

1 you want to smoke a cigarette?

2 **A** Yes, sir.

3 **Q** And you needed help with your drug rehab?

4 **A** Yes, sir.

5 **Q** So you wanted something?

6 **A** Sure.

7 **Q** But now you don't want anything?

8 **A** Sir, I have been clean from drugs a pretty good while
9 now and I don't need help with rehab. I'm not behind
10 bars. And so any help that I get now is on my own.

11 **Q** 2009, you was there for --

12 **A** Two and a half months.

13 **Q** For two and a half months?

14 **A** Yes, sir.

15 **Q** For what?

16 **A** For a revocation of community supervision.

17 **Q** And what was that?

18 **A** How did I violate?

19 **Q** Yes, sir.

20 **A** I quit reporting.

21 **Q** Why did you quit?

22 **A** I quit reporting because at the time I got back on
23 drugs.

24 **Q** So when you heard or allegedly overheard my client
25 confess, you was on drugs?

1 **A** No, sir. I'd been in jail almost a month.

2 **Q** So you was in withdrawal from drugs?

3 **A** No, sir. Crack cocaine withdrawals is something
4 that, the Department of LRADAC, Alcohol and Drug
5 Addiction Rehab Center won't even take you in for
6 that. So, I mean, crack cocaine is bad enough, but
7 it's not like I was incoherent. Withdrawals of crack
8 cocaine is nothing but hunger and getting caught up
9 on some sleep.

10 **Q** Because you've done it over many years, haven't you?

11 **A** I'm ashamed to say I have. Yes, sir.

12 **Q** So you're a crackhead?

13 **A** No, sir. I'm not. I'm a recovering drug addict.

14 **MR. JOHNSON:** I've got no other questions, Your
15 Honor.

16 **MR. ROGERS:** No further questions, sir.

17 **THE COURT:** Okay, sir. You can step down and be
18 excused. Would the parties like to proceed in the
19 morning?

20 **MS. GARFIELD:** Actually that's in the best
21 interest.

22 **THE COURT:** All right. Ladies and gentlemen of
23 the jury, you'll be excused for this evening. Thank
24 you so much for your time and allowing us to go a
25 little past 5. You all a safe evening. And I'll

1 remind you not to discuss the case. You're excused '
2 until 9:30 in the morning. Thank you.

3 (Jury out at 5:11 p.m.)

4 **THE COURT:** Are there any issues that the Court
5 can take up this evening?

6 **MS. GARFIELD:** Not that I can think of.

7 **THE COURT:** Okay. I do have two pleas I believe
8 in the morning at 9, but I'll tell them to cut it to
9 9:20 or so.

10 **MS. GARFIELD:** Do you go home? Do you live
11 here?

12 **THE COURT:** Sometimes I wonder. But it's about
13 to come to an end.

14 (Off the record)

15 **THE COURT:** You've been given the jury charges.
16 Take a chance to look at those, see if there's
17 anything else that has to be added. Of course we'll
18 do so. But then I'll go over with your witness his
19 rights and see if they intend to put up a case. But
20 be ready for your closing come tomorrow morning
21 obviously after the jury charges.

22 **MS. GARFIELD:** Yes, ma'am.

23 **THE COURT:** But we will give you, you know,
24 however long the trial takes.

25 **MS. GARFIELD:** Thank you.

1 **THE COURT:** You all have a good evening.

2 (Off the record)

3 (Whereupon, the proceedings are concluded for
4 the day, to be reconvened tomorrow morning)

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Wednesday, December 9, 2009

THE COURT: All right. Do I have jurors?

THE BAILIFF: Are you ready for the jury, Your Honor?

THE COURT: Are they here?

THE BAILIFF: Yes, ma'am. I'll check it right now.

THE COURT: Okay. Yeah. Check. Are the parties ready to proceed?

MS. GARFIELD: Yes, ma'am.

MR. JOHNSON: Yes, ma'am.

THE COURT: Okay.

THE BAILIFF: Yes, ma'am, we do.

THE COURT: Okay. I need the defendant and then we can proceed.

(Pause)

THE COURT: While the jurors are getting their lunch orders in, have you all had a chance to look at the charges?

MR. JOHNSON: Yes, Your Honor.

THE COURT: Does the State have any objections?

MS. GARFIELD: No objections.

THE COURT: Any additions?

MS. GARFIELD: I just saw one typo, Judge.

THE COURT: Thank you very much. I'd like you

1 to point that out to my clerk. Thank you very much.
2 Do you have any, Mr. Johnson?

3 **MR. JOHNSON:** I don't have any, Your Honor.

4 **THE COURT:** Do you have any additions?

5 **MR. JOHNSON:** None that I can think of.

6 **THE COURT:** Okay. And obviously the one dealing
7 with the defendant's testimony we'll deal with at a
8 later date. But I just want to put them all in.

9 **MR. JOHNSON:** Your Honor, can we approach? I
10 just want to ask you one quick question.

11 **THE COURT:** Okay.

12 (Whereupon, a bench conference is had)

13 **THE COURT:** Are we ready, Becky?

14 **THE CLERK:** Yes, ma'am.

15 **THE COURT:** All right. Jurors, please. Of
16 course, Mr. Johnson, at the appropriate time you'll
17 place on the record what was at our side bar
18 conversation.

19 **MR. JOHNSON:** Okay.

20 **THE COURT:** You don't have to right now.

21 (Whereupon, a bench conference is had)

22 (Jury in at 9:49 a.m.)

23 **THE BAILIFF:** Your Honor, the jury is present.

24 **THE COURT:** Thank you, ladies and gentlemen. We
25 are ready to proceed with the State's case. You may

1 continue.

2 **MS. GARFIELD:** Thank you, Your Honor. The State
3 calls Investigator Arthur L. Thomas.

4 ARTHUR L. THOMAS, after being duly sworn,
5 testifies as follows:

6 **THE CLERK:** Thank you. Have a seat in the
7 witness stand, please, and give the court reporter
8 your name.

9 **THE WITNESS:** Investigator Arthur L. Thomas.

10 DIRECT EXAMINATION

11 **BY MS. GARFIELD**

12 **Q** Investigator Thomas, where are you employed?

13 **A** I'm employed with the City of Columbia Police
14 Department.

15 **Q** What are your duties with the Columbia Police
16 Department?

17 **A** I'm a homicide investigator, a major crime
18 investigator for the department.

19 **Q** And can you explain for the jury what entails major
20 crimes?

21 **A** Major crimes entails any crime against persons:
22 Robbery, home invasion, murder, assault with intent
23 to kill, and any high assault with a felony attached.

24 **Q** Are you assigned to investigate crimes throughout all
25 the city, or are you assigned a specific region?

1 **A** I am city wide, unfortunately.

2 **Q** How many investigators do this type job?

3 **A** We have only a team of eight in my unit as far as the
4 homicide unit.

5 **Q** And that includes major crimes as well?

6 **A** Correct.

7 **Q** And were these your duties also back in June? I'm
8 sorry. July 2008?

9 **A** That's correct.

10 **Q** And how does it work? How do you get assigned a
11 specific case?

12 **A** In this case I was working an on-call status where
13 anything in the city that occurred I would be the
14 investigator that responds for that week. And this
15 case was one of those cases that while on duty I was
16 could by a supervisor to respond to the Exxon.

17 **Q** Do you recall the day of the week?

18 **A** Yes. It was on 7-19 of 2008 at approximately 20:45
19 hours.

20 **Q** And would you agree with me that was a Saturday?

21 **A** Yes.

22 **Q** And do you know where you physically were located
23 when you got the call about this case?

24 **A** I was at headquarters, 811 Washington street which is
25 approximately a mile and a half, two miles away from

1 the actual incident location.

2 Q Is the headquarters near the Vista location?

3 A That's correct.

4 Q And at that time what did you do?

5 A Once receiving the call from Sergeant O'Connell, I
6 immediately left the headquarters and headed toward
7 the scene.

8 Q And the scene being what?

9 A 2020 Gervais Street which was the Exxon gas station.

10 Q And when you arrived at the Exxon gas station, what
11 did you immediately observe?

12 A Upon arrival there were officers already on the scene
13 securing the gas station, ensuring that no other
14 clients come in and tried to purchase gas. There was
15 a clerk that one of the officers was speaking to
16 giving a description of the possible perpetrator. I
17 believe that officer had already put the description
18 out because I could hear that on radio as I am
19 approaching the scene. Officers, other officers are
20 already starting to circulate the area.

21 Q How many officers would you say were at the Exxon?

22 A Upon my arrival, I want to say about four or so cars
23 were already there. The other cars were circulating.

24 Q And that would have been four police cars?

25 A That's correct. Approximately.

1 Q And as an investigator, what was the first thing you
2 do upon entering the store?

3 A Just trying to assess who the victim was, if I had
4 any other witnesses outside of the victim that was
5 willing to speak with me. I had O'Connell and the
6 reporting officer brief me on what allegedly had
7 happened. After speaking to them I spoke to the
8 victim briefly and I inquired about the video. She
9 advised me that they did have video in the store. I
10 provided her with a robbery sheet that I use, a
11 little format sheet and give me a description of the
12 suspect, also fill this out for me and also fill out
13 a statement form.

14 While she was doing that I went into the back
15 room to view the video footage. I wanted to get a
16 better view of the potential suspect if I could and
17 get a better description. And I did.

18 Q Investigator Thomas, is that the video that we have
19 been showing in the courtroom?

20 A Yeah. The quality that you guys got to see is very
21 poor quality. Their system actually played the video
22 much more clearly. It was off their system. The
23 pigments were better. I could actually see in great
24 detail the defendant's receding hairline, the bald
25 spot in the back of his head. I could see that it

1 was a yellow shirt. The victim said it was a jersey.
2 That's what she called it at the time, but it was
3 just a yellow shirt that he was wearing.

4 The facial hair, he had a mustache, beard. And
5 all that was much clearer on their system than it was
6 on the video that you guys got to view. I studied
7 the video pretty carefully and then I was interrupted
8 by Sergeant O'Connell and Sergeant Sanders. They
9 communicated over the radio that Officer Bowman had
10 received information that the suspect was in a house
11 on Pine Street. Bowman immediately went over to the
12 Pine Street area along with other officers. And they
13 did observe the subject.

14 **Q** If I can just interrupt you.

15 **A** That's fine.

16 **Q** First regarding the video, --

17 **A** Yes.

18 **Q** -- were you able to see an object in the defendant's
19 hand?

20 **A** Oh. With the video? There was an object. It wasn't
21 much clearer than this. There was something in his
22 hand that he would move. And as he's moving it and
23 demanding money, she would hurriedly give him money.
24 So I believe that she said it was a knife. And I
25 couldn't really see what it was, but it was some type

1 of object in his hand. It's clearer on their system
2 than what it was on what you viewed. But there was
3 an object in his hand. And he would motion
4 accordingly. Give it up, this is for real, I'm
5 serious. And that motion indicated that he was using
6 some type of weapon as well.

7 Q And officer -- and let me jump back to where you
8 were.

9 A Yes.

10 Q You said you're getting over your radio, you're
11 getting broadcasts from an Officer Bowman?

12 A Yeah. Officer Bowman broadcast over the radio that a
13 witness observed the defendant going into a house on
14 Pine Street. And Bowman and several officers went
15 over to that particular location.

16 Q Why was Officer Bowman in that area?

17 A That is his area of patrol. He patrols that sector.
18 Each car has a number; 321, what have you, and that's
19 their territory. So Bowman is actually quite
20 familiar with that territory. He actually has a
21 number of people that confide in him because he works
22 that area so frequently.

23 Q And was he able -- did Bowman through your
24 investigation reveal to you anything he observed
25 regarding the defendant?

1 **A** Yeah. Upon his arrival on the scene he observed the
2 defendant moving around in the house. They knocked
3 on the door vigilantly trying to get him to come to
4 the door and open the door. He refused to do so. He
5 went into a room area and then into a restroom area
6 where Bowman observed him changing clothes. He kept
7 sight on him and asked for assistance, other officers
8 to assist to secure the perimeters of the house.

9 At the time we knew he had a knife at the scene
10 but did not know what weapons may have been in the
11 house at the time. So we wanted to secure the
12 perimeter for the officers' safety. We also didn't
13 know if there was anyone in the house that he
14 wouldn't let open the door at that time.

15 And so he observed this movement, observed him
16 going into the restroom, observed him changing out.
17 And then while he's giving these descriptions, I
18 don't know if the suspect could hear him, but the
19 sect cuts the lights out so we could no longer see
20 the individual.

21 **Q** Investigator Thomas, just explain to the jury, when
22 this armed robbery call goes out over you all's
23 radio, are other units responding as well?

24 **A** Yes. Whenever it's a confirmed armed robbery you
25 respond with lights and sirens. And you may even

1 have units that respond from other regions, depending
2 upon the nature of the robbery. Yes.

3 **Q** And are there units that respond just to the Exxon
4 station?

5 **A** There were several units that responded there, and
6 then the other units did support.

7 **Q** Okay. The units that respond in support, what areas
8 of the City of Columbia are they responding to?

9 **A** Well, normally we're going to try to do an
10 eight-block radius, particularly if the subject is on
11 foot. So that would be Waverly Street, Pine Street,
12 Five Points area, so forth. But we try to do an
13 eight-block and come in, not knowing the suspect's
14 travel, information given at the time that we
15 responded that he went to the right on Gervais
16 Street, and that's all we had. And I believe that
17 was the clerk herself as she was watching him run
18 off.

19 **Q** Investigator Thomas, I'm going to ask if you'll step
20 down.

21 **A** Certainly.

22 **Q** And refer to State's Exhibit No. 25. Can you just --
23 if you'll get on that side so the court reporter can
24 see you.

25 **A** Yes.

1 Q If you can just show the jury where all units would
2 be responding. If you have to go outside the map,
3 that's fine.

4 A That's fine. This is the Exxon station, the area in
5 which the crime was committed. Officers would be
6 responding from this parameter, around approximately
7 an eight-block radius and then start coming in.
8 Officers that are already in the sector would then
9 branch out. And we kind of meet one another to kind
10 of do a sweep, if you would say.

11 Information that was provided to us by Bowman
12 and by his source was that the individual was
13 observed going into which is the
14 house here which is approximately a block and a half
15 away from the actual crime scene. And then this
16 house was then converged on by the officers and
17 surrounded and secured.

18 Q Okay. And just if you'll stay right there, I've got
19 one more photograph.

20 (WHEREUPON, State's Exhibit No. 36 is marked for
21 identification.)

22 Q I'm sorry. I show you what's been marked as State's
23 Exhibit No. 36. It's another of that particular
24 area. If we can orient yourself, can you find the
25 Exxon on this map?

1 **A** All right. Let me see. Gervais.

2 **Q** Or about where it would be?

3 **A** Over in this sector back here.

4 **Q** And this area is showing more towards the Five Points
5 area?

6 **A** Correct.

7 **Q** And would officers also be responding into this area?

8 **A** Correct. We actually -- Taurus Sanders who was the
9 sergeant that spoke to you earlier this week actually
10 had specialized units concentrating in the Five
11 Points area. That was another reason why they were
12 able to respond so quickly. During certain seasons
13 they kind of saturate that area. And he was
14 responsible for the CRT unit. So they were already
15 in this sector.

16 **Q** And just to orient the jury, if you would continue
17 down Harden Street in this direction past the Ford,
18 what direction would that be?

19 **A** That would be heading toward the Food Lion back
20 toward in the clubs and what have you on Harden
21 Street.

22 **Q** In the five points area?

23 **A** In the Five Points area. Yes.

24 **MS. GARFIELD:** Thank you. Your Honor, at this
25 time I'd like to introduce State's Exhibits 36 and 25

1 into evidence.

2 **MR. JOHNSON:** No objection, Your Honor.

3 **THE COURT:** Okay.

4 (WHEREUPON, State's Exhibit No. 25 is admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 36 is admitted
7 into evidence.)

8 **Q** Thank you. Investigator Thomas, there's a lot of
9 mention about this Officer Bowman.

10 **A** Yes.

11 **Q** Do you know where Officer Bowman is presently?

12 **A** Officer Bowman is currently supporting our country in
13 Iraq. He was shipped out.

14 **Q** Okay. Thank you. Okay. So while you're at Exxon,
15 you're reviewing the videotape?

16 **A** That's correct.

17 **Q** And you get that call from Bowman?

18 **A** Correct.

19 **Q** And at that time what do you do?

20 **A** After getting a call, I had the person get with
21 Nelson on the videotape. I wanted to get a copy of
22 the tape, gave orders to get me a copy of that tape.
23 I asked the young lady to continue writing her
24 statement and I'll be back. And I immediately went
25 to the incident location at to

1 assess what we had there.

2 Q When you arrived there at Pine Street, how long did
3 it take you to get there?

4 A Again, it's only a block. Just a minute, a minute
5 and a half. You could see it from the gas station.

6 Q And when you in fact -- let me show you a photograph.
7 Investigator Thomas, State's Exhibit 13, is that the
8 house on Pine Street?

9 A Yes, it is.

10 Q And this, State's Exhibit No. 9, what is that
11 photograph reflecting?

12 A That's the photograph reflecting the shot from like
13 Gervais Street heading up toward Pine, what it
14 appears to be.

15 Q Where would that photograph have been taken?

16 A Like from the corner of the Exxon station would be
17 just behind it heading up.

18 Q And, in fact, when you look towards Pine Street, what
19 is that right back there?

20 A Yeah. That was like the house. You can see it.

21 Q That's

22 A

23 Q When you got to what is the first
24 thing you do?

25 A When I first arrived on the scene, Sergeant Sanders

1 and a number of officers, approximately eight or
2 more, had already had the perimeter of the house
3 surrounded. We were -- they assessed that we did not
4 have any keyholder to make entry.

5 **Q** And I'm going to stop you again. I apologize for
6 continuing to interrupt you.

7 **A** That's quite all right.

8 **Q** You say you got the perimeter surrounded?

9 **A** Mm-hmm (affirmative).

10 **Q** Using State's Exhibit No. 12, can you just explain to
11 the jury what it means to have the perimeter
12 surrounded?

13 **A** Pretty much the perimeter surrounded is all corners
14 and areas of the house that we cover by body and
15 observe. Officers were aligned. So the entire house
16 had officers placed in particular positions, in safe
17 positions but in positions to observe windows, doors
18 any opportunity for exiting or fleeing or any
19 opportunity for harm to come back towards the
20 officers. So it's completely surrounded. Again,
21 since he cut the light off, we became a little more
22 hesitant to make moves because we didn't know where
23 he was or what he was doing at the time.

24 **Q** And how many officers would you say were there?

25 **A** Approximately eight or more at that time.

1 Q All right. Then proceed.

2 A Speaking with Sergeant Sanders and O'Connell about
3 what we had, what Bowman had observed, the changing
4 of clothes and so forth, I advised them that we
5 wanted to get a keyholder, find the owner of the
6 property, make some calls. There was a resident in
7 the area that apparently knew the owner of the
8 property. She made attempts to locate her. She
9 wasn't home.

10 A keyholder finally arrived. The gentleman
11 stated that he actually was a resident of

12 . We asked permission to go in. We told him
13 what we had. He gave consent for us to go in and
14 actually gave us the key. He informed me that there
15 was a Caucasian male who asked could he place his
16 bags in the house for security measures earlier that
17 day or something of that nature prior to us going in.
18 We went in with the key.

19 Q What did the keyholder look like?

20 A The keyholder was an African-American male in his
21 thirties, mid to late thirties, slimly built. He
22 also gave us information about the house saying that
23 one of the rooms would be locked, the other room
24 would be opened which apparently was his room. At
25 the time --

1 **MR. JOHNSON:** Your Honor, I've kind of like let
2 it go for a while, but he is using a lot of hearsay.
3 He can't be saying what somebody else said if they're
4 not here.

5 **THE COURT:** Sustained.

6 **MS. GARFIELD:** It's not offered for the truth of
7 the matter. It's offered for why he's going into the
8 home.

9 **THE COURT:** But I think he has gone a little bit
10 beyond that. Sustained.

11 **Q** For your investigation, before you entered the house,
12 were you able to ascertain a description of the
13 inside?

14 **A** Yes.

15 **Q** And can you explain to the jury what your
16 investigation revealed to be the description?

17 **A** The description is that we have approximately two
18 rooms, an open area, one room may be locked,
19 padlocked, and then there would be a kitchen in the
20 back. There is a bedroom with a bathroom on the
21 right-hand side, the home on the right-hand side. We
22 got that information so when we made entry we could
23 send each officer to cover those areas for safety
24 measures as we cleared the house. So we tried to get
25 as much as information as we could prior to entry.

1 Q And the individual that provided the information to
2 you, did you seek his name?

3 A Actually I did not seek his name at the time. He had
4 knowledge of the house. He had keys to the house.
5 We were focusing on the primary interest which was
6 the gentleman that had barricaded himself in the
7 house. So, no, I didn't get his information.

8 Q And you never had an opportunity go back and get his
9 name?

10 A No, I did not.

11 Q Once you were able to enter the house with the key,
12 what did you and the officers do at this time?

13 A Sergeant Sanders and one of his officers are on the
14 SWAT team. So they took point. They actually
15 entered first. I and several other officers entered
16 behind them. And then we went through, made a sweep
17 of the entire house prior to trying to make contact
18 with the defendant in the bathroom. So we cleared
19 the house. We couldn't find any other subjects in
20 the house. We deemed the house safe to enter, then
21 approached the defendant.

22 Q And please share with the jury how you went about
23 doing that?

24 A Bowman had already observed the defendant in the
25 restroom area. So we knew which area he would be.

1 We went into the bedroom, took up safety positions to
2 the bathroom door. We knocked on the door, bammed on
3 the door, ordered the subject to come out. He
4 refused to do so. We did it again. He refused to
5 open the door.

6 One of the officers took what I thought was a
7 clothes hanger or something of that nature. There
8 was just one of those latches that hook over to keep
9 the door secured. We took protective stances, armed,
10 as he unlatched the door, made entry. We took the
11 defendant into custody, pretty much detained him at
12 that home and brought him out of the bathroom. The
13 officers brought him out. When they brought him out,
14 I walked off with him into the living room area.

15 **MS. GARFIELD:** Okay. May I approach the
16 witness?

17 **THE COURT:** Yes, you may.

18 **Q** I'm showing you State's Exhibit No. 14. Investigator
19 Thomas, is that the door that you entered?

20 **A** Yes, it is.

21 **Q** When you first entered, I'm showing you State's
22 Exhibit No. 16. What do you he see in that
23 photograph?

24 **A** This is one of the rooms described by the gentleman,
25 the keyholder, advising that there would be a lock on

1 that door. And there's a little padlock on the door,
2 as he said it would be.

3 Q And can you show us and tell the jury what is
4 reflected in State's Exhibit 15?

5 A This is -- this looks like a common area in the
6 house. There's a foyer when you first come in, a
7 den, living area, common area.

8 Q And through that common area, do you see another
9 room?

10 A Yes. That looks like -- I can't see if that's the
11 kitchen or what have you. I think that's the
12 kitchen.

13 Q It might help you to look at State's Exhibit No. 17.
14 Does that refresh your memory?

15 A Okay. Yeah. That's another kind of common area that
16 has a couch and what have you in it.

17 Q So if you walk through the room that you see in
18 State's Exhibit 15, you will then enter the room,
19 State's Exhibit 17?

20 A That's correct.

21 Q Right? Okay. And then from State's Exhibit No. 18,
22 what is that a picture of?

23 A This shows a shot of actually the kitchen and then
24 the bedroom that we went in and located the
25 defendant.

1 Q Located the -- was he in the bedroom?

2 A No. He was in the bathroom. But the bathroom was in
3 that bedroom area.

4 Q You just made a mistake, right?

5 A Okay.

6 Q And what is State's Exhibit No. 21?

7 A Okay. This is actually the bedroom itself.

8 Q And State's Exhibit No. 23?

9 A And this is the bathroom area that we located him in.

10 Q Once Sergeant Sanders get the -- he gets the
11 defendant out of the bathroom?

12 A I believe it was one of the officers. Again, we were
13 all in defensive stance and angles and so forth. So
14 we had one of the patrolman unlock it. Then they
15 went in, pulled him out. Once he was pulled out,
16 again, we had him cuffed and detained, I asked them
17 to come to me.

18 When I did so, I observed his physical
19 appearance. He was a stocky, white male. He had the
20 receding hairline that I observed in the video. He
21 had the bald spot in the back of the head that I
22 observed in the video. He also had the mustache,
23 goatee, and just the body build was similar to what
24 was described to me. At that time I believe we had
25 the person of interest for the robbery.

1 Q And I'm going to show you one more. I think. Yes.
2 I'm showing you State's Exhibit No. 32.

3 A Yes.

4 Q Do you recognize this board?

5 A Yeah. This is an sketch that CSI Nelson did of the
6 place itself.

7 Q You were present in the courtroom when Investigator
8 Nelson testified to this board?

9 A I was.

10 Q If you can show us where the defendant was located?

11 A All right. You have the restroom area here. There's
12 like a tub shower area there. He was back up in
13 there when the officers apprehended him.

14 MS. GARFIELD: Your Honor, the State moves to
15 introduce State's Exhibit No. 32.

16 THE COURT: Any objection?

17 MR. JOHNSON: No objection, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, State's Exhibit No. 32 is admitted
20 into evidence.)

21 Q What was the defendant wearing when you found him in
22 the bathroom?

23 A He had on a red, bright red shirt and I believe some
24 shorts or something of that nature, different from
25 what he had had on in the video.

1 Q At that time what was your main focus?

2 A At that time trying to secure him, secure the scene.
3 I had officers just make sure they keep everything as
4 is. Officers recovered money and a shirt. I placed
5 those things, because those were things of interest
6 at that point, on the bed. We decided that we would
7 contact the clerk and have her do a drive-up ID to
8 see if she can identify the individual.

9 Q Okay. And did you do so?

10 A Yes. I left the scene. I left the officers
11 protecting the scene. I went and actually picked the
12 clerk up from the Exxon station.

13 Q Was anyone with the clerk?

14 A A young lady, manager or something of that nature
15 with us with her, yes.

16 Q And at any time, Investigator Thomas, did you tell
17 her: This is the guy that robbed you?

18 A No, I did not.

19 Q Did you make any sort of suggestion?

20 A No, I did not.

21 Q What did you instruct her was about to happen?

22 A I advised her that we had a gentleman that we wanted
23 her to take a look at and was she willing to come and
24 ride with us to view this individual. She advised me
25 that she was. She just asked that the young lady