

VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Brooks P. Goldsmith, Circuit Court Judge

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S.C. SUPREME COURT

RANDOLPH ASHFORD,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002509

APPENDIX

WANDA H. CARTER
Deputy Chief Appellate Defender

ALAN WILSON
Attorney General

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

JESSICA KINARD
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 Wednesday, September 24, 2008

2 **MS. SPEARS:** You added number 9 to the docket
3 which is waiting for you now, Randolph Ashford, a
4 Motion to Relieve Counsel with Carolyn Gripp.

5 (Off-the-record in another matter)

6 (Ms. Spears leaves the courtroom)

7 **THE COURT:** All right. Ms. Gripp.

8 **MS. GRIPP:** Thank you, Your Honor. May it
9 please the Court. Your Honor, this is my client,
10 Randolph Ashford. He is charged with a number of
11 counts, Your Honor, including two counts of
12 carjacking. There is a kidnapping, a CSC first.
13 There are a number of charges, Your Honor.

14 But I think the issue at hand is that it's my
15 understanding that Luck Campbell intends to call this
16 case to trial the week of October the 6th, if not the
17 week following. My client has a number of concerns
18 that he would like to address to the Court. He has
19 asked me to move to be relieved as counsel. I
20 believe one of his concerns is that I have not filed
21 for a motion with DMH that I believe probably should
22 be filed.

23 Also another one of his concerns is that he has
24 had a lot of different public defenders, different
25 public defenders. And I have only been on this case

1 for just over two months, Your Honor. That being
2 said, I'll let him address the Court as to his
3 particular concerns.

4 **THE COURT:** Okay. All right, sir.

5 **MR. ASHFORD:** Yes, Your Honor. I feel that
6 there's a conflict of interest by me having all those
7 public defenders and that a lot of my evidence that
8 I'm going to need at trial, by having them waiting,
9 and I'm just getting a private investigator about
10 three weeks ago after 17 months, and I'm not going to
11 have them at my trial. I've got some serious
12 charges. And so I feel like, you know, --

13 **THE COURT:** You've been incarcerated 17 months?

14 **MR. ASHFORD:** Yes.

15 **THE COURT:** Hmm.

16 **MR. ASHFORD:** And I just got a private
17 investigator.

18 **THE COURT:** You mean -- has one been working on
19 the case?

20 **MS. GRIPP:** Well, Your Honor, if I may, he was
21 arrested January 29th of '07, and the file was
22 originally assigned to Renee Lipson in our office.
23 Due to the seriousness of the charges and there was I
24 think a lot of publicity in this case, Doug Strickler
25 took over this case. He had it for about a year and

1 he did work on it. There were some mental health
2 evaluations done privately and things of that nature.
3 He filed the Rule 5's. It was then reassigned in
4 March of '08 to Danielle Payne. She left our office.
5 It was then resigned to Christine Grafton in May.
6 She left our office. And then in July it was
7 reassigned to me. So each of us have had it for a
8 couple of months, Your Honor.

9 When I got the case I did make that a priority
10 to get a private investigator. He's right. It's
11 been about three weeks. Also there are some mental
12 health issues. We would like to request a Department
13 of Mental Health criminal responsibility and criminal
14 responsibility evaluation, Your Honor.

15 Another one of his concerns is that the 911
16 tapes that we had requested in the original Rule 5 we
17 do not have. The reason we don't have that is
18 because the State doesn't have it, Your Honor. And
19 this is an ongoing problem, Your Honor, not just with
20 Mr. Ashford here. But the problem is that the City
21 of Columbia won't allow us to obtain the 911 tapes on
22 our own. They refuse our subpoenas and they won't
23 let us go get them via the Freedom of Information
24 Act. Without that, we have to go through the State.
25 If the State fails to obtain them within 90 days,

1 they are destroyed. And Mr. Ashford believes this is
2 an integral part of his defense. I think that's
3 another one of his concerns that he's dissatisfied
4 with. I don't think it's just me as a public
5 defender. It's as a whole, Your Honor.

6 **THE COURT:** Okay. All right, sir. And the case
7 has been going on a while. So that means you also
8 stay incarcerated until we get you back on the docket
9 for the trial of this case.

10 **MR. ASHFORD:** That's right.

11 **THE COURT:** But obviously you want to be
12 provided a good defense and have all those things
13 taken care of. So it's your desire that you come off
14 the public defenders list?

15 **MR. ASHFORD:** Mm-hmm (affirmative).

16 **THE COURT:** Okay. Ms. Gripp, do you have any
17 response to his request in terms of whether you think
18 it's legitimate?

19 **MS. GRIPP:** Your Honor, I think he has some
20 valid concerns. I do believe that I could represent
21 him, but I think that's up to him and I think it's up
22 to the discretion of the court. You know, what I'm
23 comfortable with and what my client is comfortable
24 with is not always the same thing.

25 **THE COURT:** Okay. Has the evaluation already

1 started in terms of the process?

2 **MS. GRIPP:** No, Your Honor.

3 **THE COURT:** Okay.

4 **MS. GRIPP:** I was going to wait for this motion
5 to be heard and then have the evaluation determined.

6 **THE COURT:** Okay. And your name, sir, is
7 Jonathan Porter?

8 **MS. GRIPP:** No, Your Honor. This is Randolph
9 Ashford.

10 **THE COURT:** I'm sorry.. I don't have him down
11 for the week of October 6th. Why did you all think
12 that was a trial date?

13 **MS. GRIPP:** Because Luck Campbell told us that.

14 **THE COURT:** Oh.

15 **MS. GRIPP:** And she also told us if it didn't go
16 that week that it would go the next week.

17 **THE COURT:** Randolph Ashford? I don't know
18 anything about it. What are the charges?

19 **MS. GRIPP:** Your Honor, specifically, he is
20 charged with one, two, three counts of carjacking.
21 He is charged with kidnapping. He is charged with
22 burglary in the first degree, criminal sexual conduct
23 in the first degree and assault with intent to kill.
24 He has two assault with intent to kills and another
25 kidnapping, Your Honor.

1 **THE COURT:** All right. I will grant the motion
2 to relieve, and then I will need to assign this. And
3 I'm going to give it to Jonathan Milling.

4 **MS. GRIPP:** We'll send him the file, Your Honor.

5 **THE COURT:** Excuse me. Okay. And then we'll
6 just have the clerk do a form order in that regard.
7 And then I'm going to say set for a status conference
8 just so Mr. Milling has a chance to have met you and
9 all for October the 20th. You won't be at that
10 conference. It's ones that I hold most Monday
11 mornings. And then that way he has an opportunity to
12 see about the case and let's get it back on the trial
13 docket. And you've been incarcerated since January?

14 **MR. ASHFORD:** Yes.

15 **MS. GRIPP:** Of '07.

16 **MR. ASHFORD:** '07.

17 **THE COURT:** Okay. So we'll need to get to it.
18 And I'll try to get this on as quick as we can,
19 because I'll have to give the other lawyer a chance
20 to come up to speed.

21 **MR. ASHFORD:** Okay. Thank you.

22 (Whereupon, the proceedings are concluded for
23 the day and then reconvened later in the week as
24 follows)
25

1 Thursday, September 25, 2008

2 **MS. CAMPBELL:** May it please the Court, Your
3 Honor.

4 **THE COURT:** Yes.

5 **MS. CAMPBELL:** This is Randolph Ashford. He
6 apparently came before you without me knowing
7 yesterday for a Motion to Relieve Counsel. I did put
8 him on. She had asked me to do it, but then I didn't
9 realize you were going to actually hear it last
10 night. So I was not present. Your Honor, his trial
11 is scheduled. We have noticed the defense attorney
12 for the weeks of October the 6th and 13th. It's
13 likely to go over into the week of October the 13th
14 as a lead trial.

15 **THE COURT:** Okay.

16 **MS. CAMPBELL:** Our position is, Your Honor, that
17 this has been happening. People are coming forward.
18 He has had the same lawyer for months. And suddenly
19 as we are approaching trial, and he is facing
20 multiple charges, including burglary in the first
21 degree, armed robbery, two counts of carjacking, two
22 counts of assault with intent to kill, criminal
23 sexual conduct in the first degree and kidnapping are
24 some of his charges that he is facing out of this.

25 **THE COURT:** And let me just ask you that.

1 Because we've got this status conference and all
2 that. And, quite frankly, I didn't know that this
3 trial was on. It's not on my list.

4 **MS. CAMPBELL:** And I apologize about that. I'll
5 talk to Mr. Ross.

6 **THE COURT:** Okay. But apparently you all have
7 worked it out. And that will be fine because you've
8 obviously looked ahead. But, Ms. Gripp, were you in
9 any way surprised about the trial date?

10 **MS. GRIPP:** Your Honor, I was on notice of the
11 trial date. And we did discuss that yesterday. My
12 feeling is that the hearing would have been held in
13 camera. We did go over everything yesterday,
14 including that. I don't think this is a delay
15 tactic. I think his concerns were addressed to the
16 Court. I've been on the case for just over two
17 months, Your Honor.

18 **THE COURT:** How many attorneys have you actually
19 had, sir?

20 **MR. ASHFORD:** Four.

21 **THE COURT:** Because you've been in since January
22 of '07. But all in the public defender's office.

23 **MR. ASHFORD:** Right.

24 **THE COURT:** And why none to your satisfaction?

25 **MR. ASHFORD:** Because first of all they've

1 waited too late.

2 **THE COURT:** I'm not talking about Ms. Gripp.

3 **MR. ASHFORD:** They waited too late to get me a
4 private investigator and some things that --

5 **THE COURT:** How do you know that though?

6 **MR. ASHFORD:** Because I've just been appointed
7 an investigator three weeks ago. And it took 17
8 months. And so I feel it's a conflict of interest.
9 I no longer want the public defender's office to
10 represent me in this case.

11 **MS. GRIPP:** Your Honor, there were a number of
12 concerns that we discussed yesterday.

13 **THE COURT:** Right. But has there never been an
14 investigator on this case since January of '07?

15 **MS. GRIPP:** Not until I got the case, Your
16 Honor.

17 **MS. CAMPBELL:** However, she did remedy that
18 situation and got him an investigator. And I know
19 that his investigator is out there interviewing
20 people.

21 **MR. ASHFORD:** Yeah. But that's not consistent
22 with what I feel --

23 **THE COURT:** And like I told you yesterday, I
24 mean, January the 7th is a long time to be in. And
25 that raises my radar because I'm trying to get those

1 cases to come to trial quicker so you don't just have
2 to sit there.

3 **MR. ASHFORD:** Well, I'll just have to sit.

4 **THE COURT:** I understand. I want you to have
5 due process, no doubt. But the investigator was one
6 issue and then an evaluation was another issue.

7 **MR. ASHFORD:** Yeah.

8 **THE COURT:** That's been done? We had a long
9 week. So just refresh my memory.

10 **MS. GRIPP:** No, Your Honor. That has not been
11 done.

12 **MR. ASHFORD:** No.

13 **THE COURT:** Even through all the other four?

14 **MS. GRIPP:** Your Honor, there was --

15 **THE COURT:** You all approach. You, too.

16 (Whereupon, a bench conference is had)

17 **THE COURT:** Sir, I want to hear more about the
18 case in light of the Solicitor's position as well,
19 because everybody is supposed to know about motions.
20 Even though I had an in camera, which means outside
21 the presence of everyone else, hearing with you, I
22 need to dig a little deeper and hear more information
23 about your concerns and then taking into
24 consideration the solicitor's concerns as well. But
25 I don't want to have to clear the whole courtroom to

1 do that now. Since both Ms. Gripp and Ms. Campbell
2 have other matters out here, we'll try to get some of
3 these other matters done first and then we'll come
4 back to you. Okay?

5 **MR. ASHFORD:** Thank you.

6 (Whereupon, the proceedings are concluded for
7 the day and then reconvened later in the week as
8 follows)

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1 Friday, September 26, 2008

2 **THE COURT:** Next. How you doing, sir?

3 **MR. ASHFORD:** Good morning.

4 **THE COURT:** Good. Okay. Let me tell you why
5 we're revisiting the motion. And I haven't decided,
6 you know, which way I'll go one way or the other.
7 When we have any type of motion, even if it's a
8 Motion to be Relieved, we just have to make sure the
9 Solicitor's Office is aware, too. They get to come
10 in and just put their say on about the case or any
11 information or history that they have. And so this
12 just happened to slip through the cracks and didn't
13 get done. So Ms. Campbell was not aware of it.

14 So then she got an opportunity to speak with me,
15 put things on the record insofar as what she was
16 concerned about. Then I had a chance to chat with
17 the attorneys yesterday, including a potential new
18 counsel, just to discuss everything.

19 As you've heard me speak with the other
20 gentleman, on any motions, they have to come through
21 the court, but it's not -- it has to meet a legal
22 standard, too. And my understanding that the two
23 reasons why we're here for yours is a Motion to be
24 Relieved but then also dealing with whether or not
25 the Court would grant you the ability to have a

1 mental evaluation. Is that your two issues?

2 **MR. ASHFORD:** Right.

3 **THE COURT:** Okay. Let's start in the reverse,
4 the mental evaluation. Because you've been
5 incarcerated since January of '07.

6 **MR. ASHFORD:** Right.

7 **THE COURT:** But you've also had some prior
8 offenses. Is that correct? Meaning like you've got
9 a prior record.

10 **MR. ASHFORD:** Yes, ma'am.

11 **THE COURT:** Throughout your prior record have
12 you ever been evaluated?

13 **MR. ASHFORD:** No.

14 **THE COURT:** Okay. What is the reason that you
15 perceive is the need for your evaluation at this
16 time?

17 **MR. ASHFORD:** Because the things that they
18 accused me of doing this time, Ms. Childs, that ain't
19 me. And, I mean, I know that myself. And I feel
20 that maybe there is something wrong with me that
21 needs to be --

22 **THE COURT:** Okay. When you say it's not you,
23 meaning like it's not something you'd do?

24 **MR. ASHFORD:** Right.

25 **THE COURT:** Or you weren't there?

1 **MR. ASHFORD:** Yeah. Things that have happened
2 and charges and stuff that I don't normally do.

3 **THE COURT:** Okay. So are you saying that you
4 don't have any memory of the events?

5 **MR. ASHFORD:** Well, yes. That is correct.

6 **THE COURT:** You do?

7 **MR. ASHFORD:** No, I don't.

8 **THE COURT:** You don't?

9 **MR. ASHFORD:** That's right. A lot of it.

10 **THE COURT:** Oh, okay.

11 **MR. ASHFORD:** There's two portions of it.

12 **THE COURT:** Okay. Tell me what happened so I
13 can understand his comments better.

14 **MS. GRIPP:** Your Honor, there is -- he
15 essentially -- it's my understanding there was some
16 kind of breakdown several days before the incident
17 that he had, whether it was a physical or emotional,
18 you know, breakdown. He goes to the emergency room.
19 He gets a shot of sorts. And once he leaves there --
20 he hasn't slept in days. Once he leaves there he has
21 this medication and these incidents occur.

22 You know, this isn't a competency. I don't have
23 any questions about his competency, Your Honor. This
24 would be an ex parte criminal responsibility
25 evaluation.

1 **THE COURT:** Okay. Now State that again, that
2 he --

3 **MS. GRIPP:** Do you want to explain it?

4 **MR. ASHFORD:** Well, what she's saying is I went
5 to the hospital because I hadn't slept in about a
6 week or almost two. And they gave me a shot. And at
7 the same time I was under the doctor for, my arm had
8 been crushed in a machine. And I was taking some
9 other kind of medicine. And then this happened.
10 And --

11 **THE COURT:** Okay. And what is it that you're
12 accused of?

13 **MR. ASHFORD:** Carjacking, kidnapping, assault
14 with intent to kill, CSC.

15 **THE COURT:** Which is criminal sexual conduct.

16 **MR. ASHFORD:** Yeah. Burglary.

17 **MS. GRIPP:** First.

18 **MR. ASHFORD:** First.

19 **THE COURT:** Did it all occur at one time?

20 **MR. ASHFORD:** Yeah.

21 **THE COURT:** So you're saying that you don't have
22 much memory of the events of that night.

23 **MR. ASHFORD:** Of that day.

24 **THE COURT:** That day. You talking about the
25 morning of after being in the emergency room? Did it

1 happen in the day?

2 **MR. ASHFORD:** Yes, ma'am. I went to the
3 emergency room earlier that week. This happened on
4 Saturday. I had went to the emergency room earlier
5 that week and got the shot. I think it was like on
6 -- I think it was on a Thursday.

7 **THE COURT:** So between the shot up until the
8 alleged events, that's when you had trouble sleeping
9 or potentially a reaction to this medicine?

10 **MR. ASHFORD:** Right.

11 **THE COURT:** Okay. So do you then have much in
12 the way of knowledge of the events of that day?

13 **MR. ASHFORD:** Of the day that all this happened?

14 **THE COURT:** Of the incidents.

15 **MR. ASHFORD:** No, I didn't, ma'am.

16 **THE COURT:** When did this realization come?
17 Again, you've been incarcerated since January of '07.

18 **MR. ASHFORD:** Mm-hmm (affirmative).

19 **THE COURT:** So when did this realization come
20 that this might be a potential defense for you?

21 **MR. ASHFORD:** When did it come? I had it when I
22 -- when all of this happened, after I first got
23 locked up. But every time -- I've had five lawyers
24 and a public defender. Every time they give me one,
25 before I could even tell them about it or talk to

1 them about it, then they would relieve them and
2 appoint someone else.

3 **THE COURT:** Okay.

4 **MR. ASHFORD:** So, up until Ms. Gripp lately,
5 last month that she have taken my case, I just got a
6 chance really to say anything about it.

7 **THE COURT:** Okay.

8 **MS. GRIPP:** Your Honor, he was privately
9 evaluated prior to my representation.

10 **COURT REPORTER:** I'm sorry. I didn't understand
11 what you said.

12 **MS. GRIPP:** He was privately evaluated prior to
13 my representation.

14 **THE COURT:** Okay. And that evaluation occurred
15 when?

16 **MS. GRIPP:** I believe March of '07.

17 **THE COURT:** '07?

18 **MR. ASHFORD:** I can't even remember when that
19 happened.

20 **THE COURT:** Okay. But you had an evaluation; in
21 other words, one that apparently has not been shared
22 with the Solicitor's Office.

23 **MR. ASHFORD:** Right.

24 **THE COURT:** But when you were represented by the
25 public defender by another lawyer they got you an

1 evaluation.

2 **MR. ASHFORD:** I -- I think so.

3 **THE COURT:** Okay. Have you had a chance to see
4 it?

5 **MS. GRIPP:** A new report was created as a result
6 of it.

7 **THE COURT:** Oh, okay. Well, have you had a
8 chance to discuss that with the other lawyer who got
9 you evaluated?

10 **MR. ASHFORD:** No. They got relieved and
11 somebody else took it.

12 **THE COURT:** Do you know, Ms. Gripp, what the
13 findings were?

14 **MS. GRIPP:** Your Honor, I have Ms. Danielle
15 Payne's notes. My understanding was that he -- the
16 findings were that he would be criminally responsible
17 and criminally competent. And that's why the report
18 wasn't written. But I don't know, you know, what
19 their results are as a whole. I didn't speak with
20 the doctor.

21 **THE COURT:** But there was underlying findings?

22 **MS. GRIPP:** Right.

23 **THE COURT:** Okay. So that evaluation has
24 occurred and that's what they found then.

25 **MR. ASHFORD:** Right.

1 **THE COURT:** Okay. While you -- and you remember
2 undergoing that evaluation?

3 **MR. ASHFORD:** Yeah. I remember talking to
4 somebody about it, yeah.

5 **THE COURT:** Okay. Why do you -- are you
6 challenging the results of that?

7 **MR. ASHFORD:** Well, yes. I would like to.

8 **THE COURT:** Okay. And again, this would be for
9 criminal responsibility, understanding whether you
10 know legal right from wrong. Is that what you're
11 challenging, your ability to have actually -- in
12 other words, whether or not you have some underlying
13 condition that makes you not be aware of whether you
14 are committing legal right and wrong?

15 **MR. ASHFORD:** Yes.

16 **THE COURT:** Okay. But are you challenging your
17 competency, your ability to clearly understand?

18 **MR. ASHFORD:** That, too. I guess. Right? I
19 really don't know.

20 **THE COURT:** What would be the purpose of the
21 evaluation at this point?

22 **MS. GRIPP:** Merely criminal responsibility. I
23 don't think there's any question as to his
24 competency. I think he's a very intelligent person.

25 **MR. ASHFORD:** I don't know about that.

1 **THE COURT:** But, I mean, intelligence doesn't
2 mean you're a college grad or you're working on your
3 Ph.D or something like that. It just means that you
4 can speak clearly, think clearly.

5 **MR. ASHFORD:** Oh, I can.

6 **THE COURT:** And perhaps read.

7 **MR. ASHFORD:** I can.

8 **THE COURT:** You're speaking quite well to me
9 today.

10 **MR. ASHFORD:** Right. But I'm doing all I can.
11 But it don't work like that all the time. Sometimes
12 I just don't.

13 **THE COURT:** But are you as his attorney seeing
14 any need for a competency evaluation?

15 **MS. GRIPP:** Your Honor, I don't think that
16 there's a need for a competency evaluation. I
17 think --

18 **MR. ASHFORD:** Ms. Gripp, you are a paralegal.
19 You are not one of the doctors.

20 **MS. GRIPP:** No. I'm an attorney.

21 **THE COURT:** She's a lawyer.

22 **MR. ASHFORD:** Yeah. I mean, that's what I'm
23 saying.

24 **MS. GRIPP:** I'm a lawyer. I'm not a doctor.

25 **MR. ASHFORD:** Okay. So I wouldn't --

1 **THE COURT:** Well, way back when, was that
2 evaluation done for competency as well as criminal
3 responsibility?

4 **MS. GRIPP:** Your Honor, I assume that, but I do
5 not have that information.

6 **THE COURT:** Okay. But once you got that report,
7 did you not go with another lawyer to try to -- even
8 when you got the next lawyer, why didn't you
9 challenge it back then? This is a last year
10 evaluation.

11 **MR. ASHFORD:** I never kept a lawyer long enough.
12 The lawyer, all he did was came down and see me one
13 time and was telling me, you know, that they have
14 been representing -- well, appointed to represent me
15 and stuff like that. And my motion of discovery,
16 they was trying to get it. I never got it, you know.
17 And that's what they was after. And I never got a
18 chance. And they would be back to see me. But
19 before they could come back to see me, then they'd
20 appoint me another one. I've had five.

21 **THE COURT:** Then my other question would be from
22 January of '07 until now; this is your first Motion
23 to be Relieved. You have had more than one attorney
24 through the public defender's office, but why haven't
25 you requested anyone else?

1 **MR. ASHFORD:** Why?

2 **THE COURT:** Yeah. Why before now did you not
3 request anyone else?

4 **MR. ASHFORD:** Another public defender?

5 **THE COURT:** Another attorney or ask the public
6 defenders to be relieved.

7 **MR. ASHFORD:** Because I didn't have a chance,
8 Ms. Childs. When they appointed me one, I said,
9 okay, I've got a lawyer now that's going to represent
10 me. Okay. By the time the lawyer came to see me,
11 and like I said, talked to me a little bit about
12 they're representing me and stuff like that, they're
13 waiting on some part of the discovery, and then they
14 would be back to talk to me when they got some of the
15 discovery; and the next thing I know they was gone.
16 I mean, like I was getting a letter saying that,
17 okay, I'm fixing to leave, somebody else is going to
18 be to see you. Another month or something gone by
19 until someone else came to see me. And it happened
20 the same all the way through. It will be 17 months
21 up until now that, you know, ...

22 **THE COURT:** Okay. And now Ms. Gripp has had the
23 case since July of 2008. Had you all discussed this
24 evaluation during this period of time?

25 **MR. ASHFORD:** Yes. What? The last time you

1 came to see me?

2 **MS. GRIPP:** Yes. The last time we had discussed
3 it. But we also discussed being relieved.

4 **MR. ASHFORD:** Yeah.

5 **THE COURT:** Okay. But then, I mean, we're just
6 getting to this now when a trial date has already
7 been set.

8 **MR. ASHFORD:** Yeah. But, Your Honor, I just got
9 an investigator three weeks ago. And if it took 16
10 months for the Solicitor's Office to give me my
11 motion of discovery which was eight --

12 **THE COURT:** Is that true?

13 **MS. GRIPP:** Well, Your Honor, I did get more
14 discovery yesterday, or the day before yesterday.

15 **MR. ASHFORD:** Yeah. If it took them 16
16 months --

17 **MS. GRIPP:** I think there's additional discovery
18 that's still coming in.

19 **THE COURT:** Okay. And they're going to have
20 discovery coming in all the way up to the trial.
21 That's natural. As they're investigating their case
22 and they find witnesses who have said whatever, they
23 have to then turn it over. But that happens upon
24 receiving it. So that's going to be a continuing
25 thing and they have to do that all the way up to the

1 date of and through the trial.

2 **MR. ASHFORD:** Okay. But it's still the fact
3 that they took 16 months for them to get it.

4 **THE COURT:** But not your original discovery,
5 whatever they had to do with the case.

6 **MR. ASHFORD:** No, no. My original discovery,
7 yes, I just got it last month, the eighth month.

8 **THE COURT:** You're trying to say with all the
9 other attorneys you've never gone over anything that
10 shows what they're bringing their case about?

11 **MR. ASHFORD:** I never had a chance to, no. I
12 just got this last one. I never had a chance.
13 Because, like I said, the whole five attorneys, they
14 was going every time.

15 **THE COURT:** Any of the notes indicate that the
16 attorneys discussed discovery or did anything of that
17 nature?

18 **MR. ASHFORD:** Well, let's see. Ms. Grafton, I
19 think she got one of them. She got one before she
20 discussed it with me. And she was going somewhere
21 else.

22 **MS. GRIPP:** Your Honor, I have a notation that
23 March 28th of '08 they sent his discovery.

24 **MR. ASHFORD:** March? I got May.

25 **MS. GRIPP:** Okay.

1 **MR. ASHFORD:** May 5th. That was the first part
2 of the motion of discovery. The last part, the last
3 part, the Solicitor's Office got it together I guess
4 8-8-08. And I don't know if you brought it down the
5 same day or not. I'm pretty sure you didn't though.
6 You probably had more clients that you had to see and
7 you just couldn't leave the court. And it probably
8 took a week or so before you could bring it down to
9 me. So that would be like the middle of August.
10 This is September.

11 **THE COURT:** And then how did you all come up
12 with this trial date?

13 **MR. ASHFORD:** I have no idea. Tuesday for the
14 first time the investigator that they got me --

15 **THE COURT:** But part of it is because the case
16 is so old. So that's why we had to get it on the
17 docket. But, Ms. Gripp, you and Luck discussed the
18 trial date?

19 **MS. GRIPP:** Yes, Your Honor. But I don't have a
20 say on when she wants to call the case.

21 **THE COURT:** Right.

22 **MS. GRIPP:** You know, she told me she was going
23 to call the case on October the 6th or the 14th.

24 **THE COURT:** Okay. But you didn't have any
25 conflicts with those dates.

1 **MS. GRIPP:** I didn't have any conflicts with
2 those dates.

3 **THE COURT:** Okay.

4 **MS. GRIPP:** At this point, you know, pending the
5 evaluation and depending on, you know, some of the
6 other things, I would be seeking a motion to continue
7 the case. Because at this point I think that an
8 expert in drug use and effects might be required.

9 **THE COURT:** Okay. And then if I was to grant
10 the continuance beyond October 13th, then what?

11 **MR. ASHFORD:** I would wish that -- I feel that,
12 you know, the public defender's office, I don't feel
13 comfortable with them, any of them representing me
14 due to the fact that I had five public defenders in
15 the 17 months. And from the beginning there was
16 things that would affect my case on my behalf that
17 should have been gotten when Mr. Doug Strickler had
18 my case from the beginning. And due to the statute
19 of limitation on those things, I don't think I'm
20 going to be able to get them now due to the fact that
21 the investigator, I didn't have --

22 **MS. GRIPP:** He's talking about the 911 tapes
23 that were destroyed.

24 **MR. ASHFORD:** Yeah. I should have had an
25 investigator then. And so all of this is pertaining

1 to the Department. I mean, --

2 **THE COURT:** But if you say you couldn't get the
3 911 tapes, what's going to make them available if I
4 move the trial?

5 **MR. ASHFORD:** Well, that's right. It's not.
6 But I still feel affected by the public defender's
7 office due to the fact that I've had five public
8 defenders. I don't trust anything about them as of
9 right now because I feel that it is not appropriate.

10 **THE COURT:** If the Court was going to give you a
11 new lawyer, and I'm not saying that I will, but the
12 private bar, then what's a sufficient amount of time
13 for a private bar to come up to speed? I would think
14 within 60 days.

15 **MR. ASHFORD:** Well, I would have to leave that
16 up to them, you know, because I'm not a lawyer and I
17 don't know what they would say how long it would take
18 them to get it together. So I couldn't speak on
19 that, Ms. Child's.

20 **THE COURT:** How long is this case supposed to
21 take?

22 **MS. GRIPP:** This case will probably take three
23 to four days to try.

24 **THE COURT:** You think it's longer than that?

25 **MR. ASHFORD:** Yeah.

1 **THE COURT:** Why?

2 **MR. ASHFORD:** Because I just gave the
3 investigator about eight people to investigate.

4 **THE COURT:** You mean to assist, investigate in
5 terms of on your side.

6 **MR. ASHFORD:** Yeah.

7 **MS. GRIPP:** But, Your Honor, let me say this.
8 It would take three to four days for the State to
9 finish their case. If there's going to be a defense
10 in this, you know, I don't know at this point.

11 **THE COURT:** So a week. And then of course,
12 because people always think that you can have a
13 witness that will come testify about your good
14 character when you were in kindergarten and all that
15 stuff, those witnesses don't tend to be allowed to
16 speak in court because they don't know anything about
17 what's at hand. So it just depends on what those
18 witnesses have to offer in terms of --

19 **MR. ASHFORD:** Oh. They was on the scene when --

20 **THE COURT:** Okay. Well, then those will be
21 potentially legitimate witnesses.

22 **MS. GRIPP:** Well, there is ballistics experts.
23 And we'll have DNA issues and things of that nature.
24 So --

25 **THE COURT:** So we're talking about you needing

1 an evaluation and then also potentially to, you know,
2 relook at the one that you already got done. Is that
3 what you're saying?

4 **MR. ASHFORD:** I'm really not aware of what's
5 been done.

6 **THE COURT:** Well, you had a private one, and
7 they found criminal responsibility and competency.

8 **MR. ASHFORD:** Yeah. Well, I -- well, I really
9 would rather another evaluation because I don't --

10 **THE COURT:** But through the Department of Mental
11 Health which then will put it in writing, correct?

12 **MR. ASHFORD:** That's what I want.

13 **THE COURT:** Okay. And then you're also looking
14 at the need for the experts. And then the third
15 issue is about whether another attorney could do it.
16 When we spoke with Mr. Milling, I don't know that we
17 defined his time period in terms of what his fall
18 schedule is like.

19 **MS. GRIPP:** I think he said he had something in
20 November.

21 **THE COURT:** November.

22 **MS. GRIPP:** It was a federal date.

23 **THE COURT:** Okay. And you don't know what date
24 he could be available after?

25 **MS. GRIPP:** I don't know.

1 **THE COURT:** Okay. Because this may just be a
2 two-judge week that I'd have to do that. Let me look
3 at the calendar. Okay. Let me just think about this
4 some more. But I'll give you an answer today. Okay?

5 **MR. ASHFORD:** (Nods head affirmatively).

6 **THE COURT:** Are you okay? I'll give you an
7 answer today. I just want to contemplate what's the
8 realistic piece of this. Because you understand that
9 it only keeps you incarcerated that much longer, too.

10 **MR. ASHFORD:** Ms. Childs, I understand that.

11 **THE COURT:** But you also want your fairness and
12 a good lawyer.

13 **MR. ASHFORD:** That's correct.

14 **THE COURT:** Okay. And I apologize on behalf of
15 the system for the delay in terms of you feeling like
16 you've had a good representation. You've heard me
17 say with the other gentleman, I believe that all
18 Defendants are entitled to very good and competent
19 representation. While lawyers, that's not their only
20 case, is it your only case. And so you want somebody
21 all over it and being competent with the nuances and
22 any, you know, strategies and just all of that. So,
23 I totally understand where you're coming from on
24 that.

25 Let me just check into a couple of things in

1 terms of, if I were to grant you the evaluation, then
2 how long would it take, you know; just where we would
3 stand in terms of if I granted the motion, then
4 what's the plan behind it in terms of where the trial
5 could fit in, what's a fair time for a new lawyer to
6 come up to speed, you know, just all those things.
7 Because I need to not just grant it but then also I
8 need to say here's the other part of that, it must be
9 done by then. I've got to put some conditions in it.

10 **MR. ASHFORD:** Okay. And so when would I be --

11 **THE COURT:** She will notify you somehow through
12 the jail. Or I don't know when you're going back
13 next or whatever.

14 **MS. GRIPP:** Well, I had intended to go this
15 afternoon, Your Honor.

16 **THE COURT:** Okay.

17 **MS. GRIPP:** He may not be back at the dorm by
18 the time I get there.

19 **MR. ASHFORD:** Well, I'm sorry.

20 **MS. GRIPP:** I don't know when transport goes.

21 **MR. ASHFORD:** If I go back now, we'll probably
22 leave right about now.

23 **DEPUTY:** Well, the jail is on its way. They're
24 still contemplating if you're going to be here by the
25 time if they bring those other people.

1 **THE COURT:** Right. They should be on their way
2 then.

3 **DEPUTY:** I told them 1:00.

4 **THE COURT:** Right.

5 **DEPUTY:** But they said they may. So I don't
6 know.

7 **THE COURT:** Well, check on that for me.

8 **DEPUTY:** All right.

9 **THE COURT:** But in any regard, you'll get the
10 notification I assume between now and Monday. Even
11 if she has to find out who in her office is going
12 down there, then she can give you the motion in
13 writing and have that delivered to you.

14 **MR. ASHFORD:** Okay.

15 **THE COURT:** Okay. Thank you. Have a good
16 weekend.

17 **MR. ASHFORD:** Thank you, Ms. Childs.

18 (Whereupon, the proceedings are concluded)
19
20
21
22
23
24
25

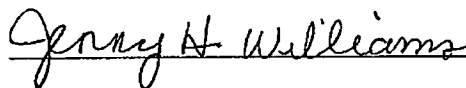
CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the motions of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 24th, 25th and 26th days of September, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 22, 2009



Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND	—)	2007-GS-40-1938
		2007-GS-40-1939
		2007-GS-40-1940
		2007-GS-40-1941
		2007-GS-40-2000
		2007-GS-40-2001
		2007-GS-40-2002
		2007-GS-40-2003
		2007-GS-40-2048

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
RANDOLPH ASHFORD	)	
_____ DEFENDANT	—)	

March 30, 2009
Columbia, South Carolina

B E F O R E:

THE HONORABLE G. THOMAS COOPER, JUDGE; and a jury.

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

KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
WILL BRYANT, ASSISTANT SOLICITOR
Attorneys for the State

DEON O'NEILL, ASSISTANT PUBLIC DEFENDER
NICOLE SINGLETARY, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

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1 THE COURT: Call your case, Ms. Campbell.

2 MS. CAMPBELL: May it please the Court, Your
3 Honor.

4 The State calls the State versus Randolph
5 Ashford, Indictment Nos. 2007-2000, 2002, 2001, 1941,
6 1939, 2003, 1938, 2048, and 1940. He is charged with
7 carjacking, three counts of kidnapping, two counts of
8 assault and battery with intent to kill, two counts of
9 burglary in the first degree, and criminal sexual conduct
10 in the first degree.

11 THE COURT: All right. The State ready to
12 proceed?

13 MS. CAMPBELL: State's ready, Your Honor.

14 THE COURT: Defense ready to proceed?

15 MR. O'NEILL: Yes, sir.

16 THE COURT: All right. Bring the jury, please.

17 (The jury came into open court at approximately
18 2:11 p.m.)

19 THE COURT: Good afternoon, ladies and
20 gentlemen.

21 THE JURORS: Good afternoon.

22 THE COURT: Welcome to the Court of General
23 Sessions. This is the criminal division of our court
24 system.

25 As I just told you, we call our criminal court

1 division the Court of General Sessions. We call our civil
2 court division the Court of Common Pleas. These are names
3 that have been with us here in South Carolina since our
4 colonial days and we've just elected not to change the
5 names.

6 Those of you who are selected on this jury this
7 afternoon will be sitting on a criminal case, and I'm
8 going to tell you a little bit about it in just a few
9 minute. But first I'm going to introduce the parties to
10 you and try to find out something from you, whether you
11 know these people or whether you have any connection with
12 this case one way or the other.

13 Now, I'm going to ask you a series of questions
14 very similar to what was asked of you in qualification
15 this morning, but this will be more specific, and that is,
16 directly concerning this case and the allegations in this
17 case and the people that are involved in this case. And
18 when you answer, if you answer, I'm going to ask you to
19 stand because the court reporter needs to hear your
20 response and I'm going to ask you to identify yourself by
21 your jury number, your juror number so that we -- we've
22 begun sort of an experiment here in Richland County, and
23 it's frankly happening all over the state.

24 In criminal courts, the jurors we find are more
25 comfortable identifying themselves by number than they are

1 by names. So if you'll do that for me, I would appreciate
2 it. I have all your numbers here so I can record what you
3 have to say.

4 Now, as you probably know, any case that's
5 presented in the criminal court system is presented by the
6 State's attorney, or in this case or in South Carolina, we
7 call it the State Solicitor's Office.

8 And you may have met Solicitor Giese this
9 morning when you were first qualified this morning, but
10 Mr. Giese, Barney Giese is your Fifth Judicial Circuit
11 Solicitor, your elected Solicitor, and he is in charge of
12 all prosecutions in both Richland and Kershaw Counties.

13 However, Mr. Giese will not actually be handling
14 the case today. The case will be handled by two of his
15 deputy solicitors. They are Ms. Catherine Luck Campbell
16 and Mr. Will Bryant.

17 If you'll stand, please.

18 Any member of the jury panel related by blood,
19 connected by marriage or employment or close personal
20 acquaintance of Ms. Catherine Luck Campbell or Mr. Will
21 Bryant? If so, please stand.

22 Anybody know either of these two attorneys?

23 (There was no response.)

24 THE COURT: All right. Thank you very much.

25 Any member of the jury panel or any member of

1 your family connected in any way with the Solicitor
2 himself; that is, Mr. Barney Giese? Anybody know
3 Mr. Giese or have any personal relationship with
4 Mr. Giese?

5 (There was no response.)

6 THE COURT: All right. We'll carry that one
7 step further.

8 Any member of the jury panel or any member of
9 your family employed within the office of the Solicitor's
10 office here in Richland County or in Kershaw County, any
11 member of the jury panel?

12 THE JUROR: Judge, I need to go back to one
13 question.

14 THE COURT: All right.

15 THE JUROR: No. 65.

16 My daughter is a close friend of Mr. Giese's
17 daughter.

18 THE COURT: All right. Mr. 65, would that fact
19 in any way interfere with your ability to give both the
20 State and the defendant a fair and impartial trial in this
21 case?

22 THE JUROR: No, Your Honor.

23 THE COURT: Thank you very much.

24 Anybody else?

25 (There was no response.)

1 THE COURT: All right. Because law enforcement
2 deals closely and frequently with law enforcement, I need
3 to know if any member of the jury panel or any member of
4 your family is employed in law enforcement? And that
5 could be anything from the Richland County Sheriff's
6 Department to the State Law Enforcement Division; City of
7 Columbia Police Department; Irmo Police Department; any
8 military police force; SLED, the State Law Enforcement
9 Division, or any federal agency, any FBI or any of those
10 agencies that are law enforcement agencies. Any member of
11 the jury panel or any member of your family?

12 Yes, ma'am, and your number, please?

13 THE JUROR: No. 82.

14 My son is a corrections officer at the Lexington
15 County Detention Center.

16 THE COURT: Ms. 82, would that fact in any way
17 interfere with your ability to give both the State and the
18 defendant a fair and impartial trial?

19 THE JUROR: No, sir, it would not.

20 THE COURT: Thank you very much, ma'am.

21 Anybody else?

22 Yes, ma'am, your number?

23 THE JUROR: 134.

24 THE COURT: Yes, ma'am.

25 THE JUROR: SLED. Heidi Dixon.

1 THE COURT: And how is she related to you?

2 THE JUROR: Aunt.

3 THE COURT: Okay. Do you know what section she
4 works in?

5 THE JUROR: No.

6 THE COURT: Ms. 134, would that fact in any way
7 interfere with your ability to give both the State and the
8 defendant a fair and impartial trial?

9 THE JUROR: No, sir.

10 THE COURT: Thank you very much.

11 Anybody else?

12 (There was no response.)

13 THE COURT: All right. I'm going to take that
14 even one step further.

15 Any member of the jury panel a regular
16 contributor to or supporter of groups which have as their
17 primary function the support of law enforcement or
18 victim's rights, things of that nature; in other words,
19 groups such as Mothers Against Drunk Driving or Students
20 Against Drunk Drinking or Citizens Against Violence or the
21 troopers' association or the sheriff's association or
22 things like SisterCare where you may either donate to or
23 volunteer for activities within those kinds of groups? So
24 whether you support them financially or with your services
25 or with your time, I need to know if any member of the

1 jury panel supports such groups.

2 Yes, ma'am, your number, please?

3 THE JUROR: Eighteen.

4 THE COURT: And --

5 THE JUROR: I am an actual supporter of
6 SisterCare.

7 THE COURT: All right. Thank you very much,
8 Ms. 18.

9 Yes, ma'am.

10 THE JUROR: No. 114, and I contribute to United
11 Way and that's -- SisterCare is under that group.

12 THE COURT: All right. Thank you very much,
13 ma'am.

14 THE JUROR: Eighty-four.

15 THE COURT: Eighty-four?

16 THE JUROR: Uh-huh. SisterCare, I contribute.

17 THE COURT: Yes, ma'am.

18 THE JUROR: Ninety-three. SisterCare
19 contributor.

20 THE COURT: Thank you very much, ma'am.

21 Yes, sir.

22 THE JUROR: One seventy-four, South Carolina
23 Troopers' Association.

24 THE COURT: Finally got one. People in the
25 courtroom know what I'm about to do.

1 Mr. 174, when you contribute to the troopers'
2 association, did you get the little sticker to go on the
3 back of your car?

4 THE JUROR: Yes, I did.

5 THE COURT: Did you put it on your car?

6 THE JUROR: No, I did not, sir.

7 THE COURT: Have you ever gotten a ticket?

8 THE JUROR: No, I have not.

9 THE COURT: That shoots my theory down. You're
10 the first one that's ever told me that.

11 Thank you very much, Mr. 174.

12 Anybody else?

13 (There was no response.)

14 THE COURT: Sheriff's association, any of those
15 type groups?

16 (There was no response.)

17 THE COURT: How about the Austin Wilkes Society?
18 I neglected to mention that one. Any member of the jury
19 panel either volunteer for or contribute to the Austin
20 Wilkes Society? In other words, works with prisoner
21 groups, that type of thing.

22 (There was no response.)

23 THE COURT: All right. The defendant in this
24 matter today is Mr. Randolph Ashford.

25 Mr. Ashford, will you stand and face the jury,

1 please.

2 Any member of the jury panel related by blood,
3 connected by marriage or employment or close personal
4 acquaintance of Mr. Randolph Ashford? If so, please
5 stand. Anybody know Mr. Ashford?

6 THE JUROR: I went to high school with him. I
7 know him.

8 THE COURT: And your number, please, ma'am?

9 THE JUROR: One thirteen.

10 THE COURT: Ms. 113, let me just inquire. You
11 indicated you went to school with him or at the same
12 school.

13 Since that time, have you had any contact with
14 him; in other words, socially or in church or any other
15 business relationship?

16 THE JUROR: No, sir.

17 THE COURT: You just recall him from high
18 school?

19 THE JUROR: Just remember the name.

20 THE COURT: All right. Ms. 113, let me ask you
21 this: Would that fact in any way -- you feel, would that
22 fact in any way interfere with your ability to give both
23 the State and the defendant a fair and impartial trial?

24 THE JUROR: No, sir.

25 THE COURT: Thank you very much.

1 Anybody else?

2 (There was no response.)

3 THE JUROR: The defense counsel in this matter
4 today are Mr. Deon O'Neill and Ms. Nicole Singletary.

5 If you'll stand and face the jury.

6 I need to know if any member of the jury panel's
7 related by blood, connected by marriage or employment or a
8 close personal acquaintance of Mr. Deon O'Neill or Ms.
9 Nicole Singletary? Anybody know either of these two
10 lawyers?

11 (There was no response.)

12 THE COURT: Thank you very much, Counsel.

13 Any member of the jury panel or any member of
14 your family related to any employee of the Richland County
15 Public Defender's Office?

16 (There was no response.)

17 THE COURT: All right. Thank you very much.

18 Now, ladies and gentlemen, I'm going to go over
19 what are known as the indictments. These are the
20 documents that I hold in my hand are called indictments.
21 These are the formal charges by which a case is brought
22 into court. They're not evidence of anything. They're
23 not evidence of the guilt or innocence of the defendant.
24 These are merely the charging documents that are brought
25 by the State and accuse or charge the defendant of

1 commission of a crime.

2 In this United States, in this county, any
3 individual charged with a crime is presumed innocent --
4 I'm serious about that -- is presumed innocent until the
5 State proves the allegations contained in these
6 indictments beyond a reasonable doubt. So as I say,
7 you're not to assume or presume anything from my reading
8 of these indictments to you, but it's important that I
9 tell you what the defendant is charged with so we'll know
10 if you know anything about the case, may have heard about
11 it, seen it on television.

12 I don't even know if it was covered in the
13 newspaper. It may or may not have been.

14 But the indictments -- let me make sure here --
15 charge the defendant with a series of events, all which
16 occurred on -- alleged to have occurred on February 24th,
17 2007; in other words, just over two years ago these
18 charges arose, in that the defendant is charged with, and
19 there are several, so I'll go over each one of them.

20 He's charged with -- this is all on the same day
21 now.

22 He's charged with carjacking, in that he
23 attempted -- took or attempted to take a motor vehicle
24 from Barry Taylor -- and if anybody knows any of these
25 names that I'm referring to, please raise your hand or

1 stand and let me know -- Barry Taylor by force, violence,
2 or intimidation while Barry Taylor was operating that
3 vehicle.

4 He's charged in a second count of carjacking, in
5 that he took or attempted to take the motor vehicle of
6 Pearl Kelly by force and intimidation while Pearl Kelly
7 was operating the vehicle.

8 He's charged with carjacking an automobile
9 belonging to Malachi James, all on the same day, by force
10 or intimidation while Malachi James was operating the
11 vehicle, or his vehicle.

12 He's then charged with kidnapping Evelyn Worthy
13 by attempting to or actually seizing her or abducting her
14 on that same day.

15 He's charged also with the kidnapping of Debbie
16 Anne Simmons on the same day by seizing or abducting or
17 carrying away Debbie Anne Simmons.

18 He's charged with assault with intent to kill
19 Deputy Nate White on that same day.

20 He's charged with attempting to kill or assault
21 with intent to kill Deputy Unger on that same day.

22 He's charged with burglary in the first degree
23 when he allegedly entered the dwelling of Debbie Simmons
24 without her consent with intent to commit a crime therein
25 during the hours of darkness and was armed with a deadly

1 weapon or what appeared to be a deadly weapon.

2 And finally he's charged with criminal sexual
3 conduct against Debbie Anne Simmons on that same day in
4 that he threatened to use a pistol on Debbie Anne Simmons
5 in some manner and forced or committed or submitted --
6 committed a sexual battery on Debbie Anne Simmons.

7 All of these allegedly took place on
8 February 24th, 2007.

9 So I need to ask if any member of the jury --
10 allegedly what's the central location of these events?

11 MS. CAMPBELL: Your Honor, these events started
12 on Oakland Street near North Main at the Washing World
13 right there on Two Notch -- no, it's not Two Notch. On
14 North Main. He ended up at the Gill Creek Baptist Church
15 on Cushman and finally at Booth Street which is nearby the
16 church.

17 THE COURT: All right. Ladies and gentlemen, so
18 that's the area where this took place. I've told you --
19 allegedly took place. I've told you what the defendant is
20 charged with.

21 Now you've anticipated my question. Any member
22 of the jury panel know anything about this case, heard
23 anything about this case, read anything about the case,
24 saw it on television or in anyway have any connection with
25 the case?

1 Yes, sir. And your number, please?

2 THE JUROR: One sixty-eight.

3 MR. O'NEILL: Your Honor, can we do it at side
4 bar?

5 THE COURT: Yes.

6 Come on up here, Mr. 168, because whatever you
7 know about it, I'd rather not disclose that to the
8 remainder of the jury panel.

9 And anybody else that may also have any
10 knowledge of the case, heard anything about it, let me
11 talk to you up here.

12 THE JUROR: Gill Creek Baptist Church, my
13 stepdaughter's involved there.

14 THE COURT: Your daughter or your stepdaughter?

15 THE JUROR: Right, my stepdaughter.

16 THE COURT: Just have a seat. I'm not going to
17 call you.

18 Yes, sir. You're No. 65?

19 THE JUROR: Yes, Your Honor. I remember the
20 news reports about it.

21 THE COURT: That's all?

22 THE JUROR: Yes.

23 THE COURT: You saw it on the news?

24 THE JUROR: Yes, sir.

25 THE COURT: All right. No other opinion about

1 it?

2 THE JUROR: No, sir.

3 THE COURT: Would that interfere with your
4 ability to give both the State and the defendant a fair
5 and impartial trial?

6 THE JUROR: No.

7 THE COURT: Thank you, Mr. 65.

8 Hello. What's your number, please?

9 THE JUROR: No. 32.

10 THE COURT: No. 32?

11 THE JUROR: Uh-huh.

12 THE COURT: Yes, ma'am.

13 THE JUROR: I just heard yesterday that the case
14 was coming up.

15 THE COURT: You did what?

16 THE JUROR: I heard at lunch today that the
17 criminal case was coming up about a man that sexually
18 assaulted a woman and a carjacking and no detail or
19 anything.

20 THE COURT: Can I ask who you heard that from?
21 Was it a fellow juror?

22 THE JUROR: Yes.

23 THE COURT: And how they knew about it.

24 THE JUROR: It's 168, I think. We had lunch
25 together. There was three of us.

1 THE COURT: Oh, all three of you, okay.
2 Come on up. 113. Do you know the people?
3 THE JUROR: No.
4 THE COURT: Okay. Thank you. Have a seat.
5 No. 113 and 32.
6 THE JUROR: We were all having lunch.
7 THE COURT: Is he on this jury panel?
8 THE JUROR: Yes.
9 THE COURT: What's your number, please?
10 THE JUROR: No. 130.
11 THE COURT: The ladies are telling me that you
12 all had lunch together --
13 THE JUROR: Yes.
14 THE COURT: With Mr. 168. The gentleman came up
15 first and these ladies said there was some discussion
16 about the case, this case. Do you recall that?
17 THE JUROR: I wasn't, what you said --
18 THE COURT: Well, what I'm trying to find out is
19 if he offered some opinion.
20 THE JUROR: He said he'd have to decline.
21 THE COURT: He said he was involved in a case
22 and he would have to decline?
23 THE JUROR: Right.
24 THE COURT: But he didn't offer -- he didn't
25 talk about the case?

1 THE JUROR: No. They didn't talk about it, no.

2 THE COURT: All right. Mr. 130, given the fact
3 that you did have lunch with this gentleman, do you still
4 think you could be fair and impartial to both the State
5 and defendant?

6 THE JUROR: Yes, sir.

7 THE COURT: And Ms. 113, do you still think you
8 can be fair and impartial to the State and the defendant?

9 THE JUROR: Yes.

10 THE COURT: And Ms. 32 --

11 THE JUROR: Yes, sir, I do.

12 THE COURT: You do?

13 THE JUROR: Yes, sir.

14 THE COURT: Thank you very much.

15 THE JUROR: You're welcome.

16 THE COURT: Let the record reflect before we go
17 any further that certainly 168 is out. I think you have
18 to at least make a motion.

19 What's the State's position?

20 MS. CAMPBELL: Just that they said they're fair
21 and impartial and they got no information other than what
22 you've told them is how she equated it.

23 THE COURT: That gets you down to seven strikes.

24 MS. SINGLETARY: Your Honor, we'd like to make a
25 motion for us to have a new jury panel based on the

1 outburst when you were reading the charges about Ms.
2 Simmons.

3 THE COURT: I don't even know who she is.
4 Somebody made an outburst?

5 MS. SINGLETARY: Yes. Our motion is for a
6 mistrial. Basically we want a new jury panel based on the
7 fact that Ms. Debbie Simmons, who's the actual alleged
8 victim of the CSC, once the judge read the indictment for
9 the CSC, she -- there was an outburst in court and what I
10 understood about the outburst is she started crying during
11 the reading that Mr. Randolph Ashford allegedly did commit
12 the sexual --

13 THE COURT: I read the indictment.

14 MS. SINGLETARY: Yes. And she said yes and she
15 started crying.

16 THE COURT: I didn't hear that.

17 MS. CAMPBELL: I didn't hear that.

18 THE COURT: I didn't hear her say yes. I heard
19 her burst out crying.

20 But I'd note for the record that she's far back
21 in the courtroom and, in my opinion, no jurors saw her.
22 The jurors were promptly startled and turned around, but
23 by that time she'd ducked her head. I doubt if anybody
24 even saw it, in my opinion, saw this lady, whoever she is,
25 so I respectfully deny the motion.

1 MS. SINGLETARY: Thank you.

2 THE COURT: All right. Thank you very much,
3 ladies and gentlemen.

4 Let me go a little bit further and ask you a few
5 more questions.

6 Has any member of the jury panel or any member
7 of your family ever been the victim of a violent crime?
8 And by that I mean one that generally got law enforcement
9 involved.

10 And what I need to know is was it you or a
11 member of your family and how long ago and if the matter's
12 been resolved at this time.

13 And anybody that would feel uncomfortable about
14 standing up and disclosing this information, again I'll
15 allow you to come forward and talk to me personally.

16 Any member of the jury panel?

17 Your number?

18 THE JUROR: One twenty-seven.

19 THE COURT: I'm sorry?

20 THE JUROR: No. 127.

21 THE COURT: Are you sure? I've got 247.

22 THE JUROR: It says right here, 127.

23 THE COURT: I'm sorry. I thought you said 147.

24 I beg your pardon.

25 THE JUROR: One twenty-seven.

1 THE COURT: All right, sir.

2 You or a member of your family?

3 THE JUROR: Both.

4 THE COURT: And how long ago, sir?

5 THE JUROR: Probably eight or ten years now.

6 THE COURT: Okay. So it's resolved at this
7 point?

8 THE JUROR: Oh, yes.

9 THE COURT: Was that in Richland County?

10 THE JUROR: Yes.

11 THE COURT: You don't have to, but do you care
12 to tell me what it was?

13 THE JUROR: My son threatened to kill my wife
14 and my daughter and our granddaughter that stayed with us.

15 THE COURT: Okay.

16 THE JUROR: It's been resolved and it would not
17 permit me from being impartial.

18 THE COURT: Well, obviously that's my next
19 question.

20 Would that fact in any way interfere with your
21 ability to give both the State and the defendant a fair
22 and impartial trial?

23 THE JUROR: I can do that to the best of my
24 ability.

25 THE COURT: Thank you very much, Mr. 127.

1 Anybody else?

2 (There was no response.)

3 THE COURT: Sometimes a lot of people respond to
4 that question, but I'm happy that no more than one of you
5 has had to respond to that question.

6 Let me turn that around.

7 Any member of the jury panel or any member of
8 your family been accused of committing a violent crime?
9 And, again, that means to the point that law enforcement
10 was involved, not just back-fence talk.

11 Any member of the jury panel?

12 And Ms. 113?

13 THE JUROR: Yes.

14 THE COURT: I got it now. Do you want to come
15 up? Yes, ma'am.

16 THE JUROR: My son is doing time.

17 THE COURT: Where is he? The Department of
18 Corrections?

19 THE JUROR: Lee County, uh-huh.

20 THE COURT: How long has he been in?

21 THE JUROR: Six years.

22 THE COURT: Six years?

23 THE JUROR: Uh-huh.

24 THE COURT: What's he in there for?

25 THE JUROR: Assault and battery.

1 THE COURT: Assault and battery?

2 THE JUROR: Uh-huh.

3 THE COURT: Do you still think you can be fair
4 and impartial?

5 THE JUROR: Well, not really because of it
6 happening the way that it happened.

7 THE COURT: Was it in Richland County?

8 THE JUROR: It was in Richland County. It was a
9 very, very bad experience with law enforcement.

10 THE COURT: A bad experience with law
11 enforcement?

12 THE JUROR: Uh-huh.

13 THE COURT: All right. Thank you very much,
14 113.

15 Anybody else?

16 (There was no response.)

17 THE COURT: Ladies and gentlemen, I'm going to
18 read a list of potential witnesses in this case and the
19 question is the same as to each.

20 Is any member of the jury panel related by
21 blood, connected by marriage or employment or a close
22 personal acquaintance of any of the following, and there
23 are quite a few names here, as you can imagine. So just
24 bear with me and stand if you know any of the following
25 witnesses.

1 And if any of the witnesses are present in the
2 courtroom, I'll ask you to stand so the jury can identify
3 you.

4 Barry Taylor.

5 I'll tell you what: To save your necks, if
6 somebody stands up in the back I'll tell you, okay?
7 Because this is a long list.

8 Pearl Kelly.

9 Ms. Kelly is in the back of the courtroom.

10 Ms. 32.

11 THE JUROR: I am a church member with Ms. Kelly.

12 THE COURT: All right. Is that the extent of
13 your relationship with her?

14 THE JUROR: Yes.

15 THE COURT: So it's pretty much confined to
16 church and church activities?

17 THE JUROR: Yes, it is.

18 THE COURT: Ms. 32, again, the fact that this
19 lady may be a witness in this case, and I can't
20 remember -- oh, I did call her name. She is one of the
21 people that is involved in one of the carjackings
22 allegedly.

23 Ms. 32, based on the fact that you have a
24 relationship with Pearl Kelly, would that fact in any way
25 interfere with your ability to give both the State and the

1 defendant a fair and impartial trial?

2 THE JUROR: No, it does not.

3 THE COURT: You could be fair to both parties?

4 THE JUROR: Yes, sir.

5 THE COURT: Olin King Kelly.

6 Ms. 32, you also know from the same
7 relationship?

8 THE JUROR: Yes.

9 THE COURT: All right. Again, can you be fair
10 and impartial?

11 THE JUROR: Yes.

12 THE COURT: All right. Thank you very much,
13 Ms. 32.

14 Wilma McQueen, Evelyn Worthy.

15 THE JUROR: I know all of them.

16 THE COURT: Mr. 168, I understand your
17 situation. You need not stand.

18 THE JUROR: All right.

19 THE COURT: Malachi James, Shanta Martin,
20 Gregory Fleming.

21 As to Mr. Fleming, yes, sir, and your number,
22 please?

23 THE JUROR: One twenty-two.

24 THE COURT: Mr. 122, how do you know
25 Mr. Fleming?

1 THE JUROR: We grew up together here in Columbia
2 and there's a family affiliation with my uncle and his
3 mother.

4 THE COURT: Okay. So you have a family
5 relationship plus you've known him most of your life, all
6 of your life?

7 THE JUROR: Yes, sir.

8 THE COURT: All right, sir.

9 Mr. 122, again, would that fact in any way
10 interfere with your ability to give both the State and the
11 defendant a fair and impartial trial?

12 THE JUROR: No, it wouldn't.

13 THE COURT: Thank you very much, sir.

14 Roberta Neil, Joyce Brewer, Jasmine Prince, Keri
15 McQueen, Kelli McQueen, Kimberly Gilliard.

16 This is Ms. Gilliard. Anybody know
17 Ms. Gilliard?

18 (There was no response.)

19 THE COURT: Thank you very much, ma'am.

20 Ollie Harrison, Kenyatta Wilson, Sabrina
21 Jackson, Deborah Anne Simmons.

22 Ms. Simmons is in the back of the courtroom.

23 Anybody know Ms. Simmons? Not Mr. 168. Anybody
24 else?

25 (There was no response.)

1 THE COURT: Thank you very much, ma'am.

2 Jamin Leslie.

3 Where does she work, at one of the hospitals?

4 MS. CAMPBELL: She works at Post Trauma Services
5 on Laurel Street.

6 THE COURT: Okay. Post Trauma Services on
7 Laurel Street.

8 Linda Morphis, Jennifer Blair with 911.
9 Florence McCants at the Criminal Justice Academy. Daniel
10 Russnyak at the Lexington County Sheriff's Office. Deputy
11 Rowland with the Columbia Police Department. Deputy
12 Allmann, Robert Allmann with the Columbia Police
13 Department. Officer Michael Walsh, Columbia Police.
14 Raphael Douglas with the Columbia Police. Investigator
15 Felicia Williams with the Columbia Police. Sergeant Dana
16 Oree, Columbia police.

17 THE JUROR: Excuse me.

18 THE COURT: Yes, ma'am.

19 THE JUROR: Dana Oree is my sister.

20 THE COURT: Who is? Dana Oree?

21 THE JUROR: Yes.

22 THE COURT: All right. And how's she kin to
23 you, ma'am?

24 THE JUROR: Sister.

25 THE COURT: What's your number, please?

1 THE JUROR: Twenty-five.

2 THE COURT: All right. And how's she kin to
3 you, ma'am?

4 THE JUROR: My mother and her mother are
5 sisters.

6 THE COURT: Your mother and her mother are
7 sisters?

8 THE JUROR: And my grandmother adopted my mom
9 into their family.

10 THE COURT: Okay. Ms. 25, would that interfere
11 with your ability to give both the State and the defendant
12 a fair and impartial trial?

13 THE JUROR: No, sir.

14 THE COURT: Thank you very much, ma'am.

15 Investigator Arthur Thomas. Sergeant Kermit
16 Scott. Officer Brian Carroll. Lieutenant Alec Sharp.

17 These are all Columbia Police Department, ladies
18 and gentlemen.

19 Officer W.D. Jones. Officer William Scott.
20 Captain Estelle Young. Lieutenant Joe Rowson. Sergeant
21 John Passmore. Corporal Chris Williams. Sergeant
22 Shannon. Officer Steven Taylor. Officer James Fisher.
23 Officer Ernest Reynolds. Officer Price. Officer Rogers.
24 Officer Leon Sealey. Officer Jamie Isphording. Corporal
25 Glenn Gates.

1 Sounds like the whole police department, doesn't
2 it?

3 Sergeant or Officer James Bradley.

4 All right. Ladies and gentlemen, that concludes
5 the Columbia Police Department. Now we'll move on to the
6 sheriff's office.

7 Tamara Cook who's with EMS.

8 Yes, sir. Number?

9 THE JUROR: It's 273.

10 THE COURT: Yes, sir, and how do you know
11 Ms. Cook?

12 THE JUROR: Friend of our family.

13 THE COURT: Friend of the family?

14 THE JUROR: Yes.

15 THE COURT: And is it business or social or
16 religious? More social?

17 THE JUROR: More social.

18 THE COURT: All right. Mr. 273, would that fact
19 in any way interfere with your ability to give both the
20 State and the defendant a fair and impartial trial?

21 THE JUROR: No, sir.

22 THE COURT: Thank you very much, Mr. 273.

23 Tena Goff.

24 These are all, as I said, Richland County
25 Sheriff's Office.

1 Tena Goff.

2 Sheriff Leon Lott. He'd be disappointed.

3 Lieutenant David Okinaga. Investigator Marcus
4 Brown. Investigator Tonda Scott.

5 Ms. 113.

6 THE JUROR: She's an ex. He was married to my
7 niece.

8 THE COURT: This is Marcus Brown?

9 THE JUROR: Tonda Scott.

10 THE COURT: Okay. Thank you very much, Ms. 113.

11 Investigator James Abraham. Lieutenant Michael

12 Pritchett. Investigator Chris Alexander. Dr. Gray

13 Amick. Deputy Nathan White. Deputy David Unger.

14 Investigator Thomas Croxton. Investigator Eric Barnes.

15 Patricia Reed-Enzon. Investigator Don McRae.

16 Investigator David Goff. Investigator Morris Davis.

17 Sergeant Flynn Tanner. Deputy Christina Pope.

18 Investigator Ruben Santiago. Deputy Kelly Randal. Deputy

19 Gerald Adkins. Lieutenant Randy Benson. Kristen Polis.

20 David Collins. John Barron. Joy Delatoree.

21 And the final two are with SLED, Shana Shells
22 and Gianna Williams.

23 MR. BRYANT: Your Honor, if I please the Court.
24 I apologize. There's a mistake on the witness list. It
25 should be Shana Sorrells, S-O-R-R-E-L-L-S, the

1 toxicologist.

2 THE COURT: All right. Shana Sorrells also
3 again with SLED.

4 THE JUROR: Your Honor, Ms. Sorrells, I
5 subpoenaed her before based on some other cases.

6 THE COURT: Thank you very much. That's Mr. 65.

7 All right. Ladies and gentlemen, I've told you
8 about as much as I know about this case. You've met the
9 principals and the parties involved. We've called the
10 list of witnesses out to you. I need to ask you one final
11 question.

12 Is there any, any factor that because of the
13 nature of the case or the people involved -- and those of
14 you who have already spoken to me, you need not respond to
15 this -- but is there any reason why any member of the jury
16 panel could not be fair and impartial and give both the
17 State and the defendant a fair trial? Any member of the
18 jury panel feel for any reason that they could not be fair
19 and impartial to both parties in this case?

20 (There was no response.)

21 THE COURT: Anything further from the State?

22 MS. CAMPBELL: Nothing, Your Honor.

23 THE COURT: From the defense?

24 MR. O'NEILL: No, Your Honor.

25 THE COURT: All right. Madam Clerk, give us a

1 jury, please.

2 THE CLERK: Ladies and gentlemen of the jury
3 panel, as I call your number, please come to the
4 microphone up here at the center of the courtroom. At the
5 microphone please restate your number and your place of
6 occupation.

7 Juror No. 285.

8 Please bring any personal items that you may
9 have with you.

10 THE COURT: Two eight five. Look at your
11 badges.

12 THE CLERK: The initials are L.W.

13 THE COURT: Call the next name.

14 THE CLERK: Juror No. 186. (White female.)

15 THE JUROR: My name is Janice Nickerson and I'm
16 retired from Richland County R&E.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. O'NEILL: Please excuse the juror.

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

23 THE COURT: All right. Counsel, we're going to
24 use numbers. Everybody remember that.

25 THE CLERK: Juror No. 25. (Black female.)

1 Your number and place of occupation.

2 THE JUROR: Kiwana Branch. Nowhere.

3 THE CLERK: What says the State?

4 MS. CAMPBELL: Please excuse the juror.

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

7 Juror No. 130. (Black male.)

8 THE JUROR: Juror 130. Retired United States
9 Navy, stay-at-home dad.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. O'NEILL: Please excuse the juror.

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

16 Juror 122. (Black male.)

17 THE JUROR: Maurice Hill, trucking industry.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says defense?

21 THE JUROR: Please excuse the juror.

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

24 Juror No. 199. (White female.)

25 THE COURT: State your number, ma'am.

1 THE JUROR: Juror 199. AT&T two months ago.

2 THE CLERK: What says the State?

3 MS. CAMPBELL: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. O'NEILL: Please seat the juror.

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

7 Juror No. 32. (Black female.)

8 THE JUROR: Juror No. 32, Department of
9 Insurance regulator.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. O'NEILL: Please excuse the juror.

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

16 Juror No. 208. (Black female.)

17 THE JUROR: No. 208, and I'm self-employed.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. O'NEILL: Please seat the juror.

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

23 Juror No. 149. (White female.)

24 THE JUROR: Juror No. 149. I'm a stay-at-home
25 mom.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. O'NEILL: Please excuse the juror.

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

7 Juror No. 172. (Black female.)

8 THE JUROR: Juror No. 172. Customer service,
9 Blue Cross Blue Shield.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. O'NEILL: Please seat the juror.

14 THE CLERK: Please have a seat in the jury box.
15 Juror No. 240. (White male.)

16 THE JUROR: Juror No. 240. I am a real estate
17 agent with Home Shop Realty.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. O'NEILL: Please seat the juror.

22 THE CLERK: Please have a seat in the jury box.
23 Juror No. 65. (White male.)

24 THE JUROR: Juror No. 65. I'm an attorney here
25 in Richland County.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. O'NEILL: Please excuse the juror.

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

7 Juror No. 174. (White male.)

8 THE JUROR: One seventy-four. John Mikula.
9 Howden Buffalo.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. O'NEILL: Please seat the juror.

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

15 Juror No. 278. (White female.)

16 THE JUROR: Juror 278. Disability benefits
17 specialist.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. O'NEILL: Please excuse the juror.

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

24 Juror No. 293. (White male.)

25 THE JUROR: Two ninety-three. Retired.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says defense?

4 MR. O'NEILL: Please seat the juror.

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

6 Juror No. 20.

7 Juror No. 282. (White male.)

8 THE JUROR: Juror 282. Self-employed auto
9 mechanic.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please excuse the juror.

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

14 Juror No. 72. (White male.)

15 THE JUROR: Juror No. 72. Account manager,
16 AT&T.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. O'NEILL: Please excuse the juror.

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

23 Juror No. 1. (White male.)

24 THE JUROR: Juror No. 1, self-employed.

25 THE CLERK: What says the State?

1 MS. CAMPBELL: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. O'NEILL: Please seat the juror.

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

5 Juror No. 250. (White female.)

6 THE JUROR: 250, Scana Corporation.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says defense?

10 MR. O'NEILL: Please seat the juror.

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

12 Juror No. 18. (White female.)

13 THE JUROR: No. 18, Ameris Bank.

14 THE CLERK: What says the State?

15 MS. CAMPBELL: Please present the juror.

16 THE CLERK: What says defense?

17 MR. O'NEILL: Please excuse the juror.

18 THE CLERK: Please return to the back of the
19 courtroom.

20 Juror No. 286. (Black female.)

21 THE JUROR: No. 286, housewife.

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please present the juror.

24 THE CLERK: What says defense?

25 MR. O'NEILL: Please seat the juror.

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

2 Juror 200. (White male.)

3 THE JUROR: Juror 200. Advertising sales.

4 THE CLERK: What says the State?

5 MS. CAMPBELL: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. O'NEILL: Please seat the juror.

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

9 Juror No. 134. (Black female.)

10 THE JUROR: One thirty-four, assembly associate.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. O'NEILL: Please seat the juror.

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

16 Juror 273. (White male.)

17 THE JUROR: 273, parts coordinator, Flint

18 Equipment.

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says defense?

22 MR. O'NEILL: Please excuse the juror.

23 THE CLERK: Please return to the back of the

24 courtroom.

25 Juror No. 73. (Black male.)

1 THE JUROR: Seventy-three, security officer.

2 THE CLERK: What says the State?

3 MS. CAMPBELL: Please excuse the juror.

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

6 Juror 127. (White male.)

7 THE JUROR: Juror 127, quality control.

8 THE CLERK: What says the State?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: Does defense challenge for cause?

11 MR. O'NEILL: Please seat him.

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

13 THE COURT: Two alternates.

14 THE CLERK: Juror No. 265. (Black male.)

15 THE JUROR: Two sixty-five. Retired Marine
16 working at Blue Cross Blue Shield as a project manager.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please excuse the juror.

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

21 Juror No. 114. (Black female.)

22 THE JUROR: No. 114. Bank of America, teller.

23 THE CLERK: Does the State challenge for cause?

24 MS. CAMPBELL: Please present the juror.

25 THE CLERK: What says defense?

1 MR. O'NEILL: Please excuse the juror.

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

4 Juror No. 247. (White male.)

5 THE JUROR: No. 247. Unemployed.

6 THE CLERK: Does the State challenge for cause?

7 MS. CAMPBELL: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. O'NEILL: Please seat the juror.

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

11 Juror No. 58. (Black female.)

12 THE JUROR: Juror No. 58. Retired.

13 THE CLERK: What says the State?

14 MS. CAMPBELL: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. O'NEILL: Please seat the juror.

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

18 THE COURT: Any objections to the jury selection
19 process from the State?

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

21 No objection from the State, Your Honor.

22 THE COURT: From the defense?

23 MS. SINGLETARY: Nothing from the defense, Your
24 Honor.

25 (The jury is impaneled at 3:24 p.m)

1 THE COURT: Thank you very much.

2 All right. Remaining members of the jury panel
3 who were not selected on this case, I appreciate you
4 coming. I'm going to ask you now to return to the jury
5 assembly room for further instructions. Good luck to all
6 of you. Again, thank you for coming. Please report back
7 to the jury assembly room.

8 (The jury venire left open court at
9 approximately 3:24 p.m.)

10 THE COURT: All right. Ladies and gentlemen of
11 the jury, due to the hour and the fact that you've been
12 here all day, we have a number of pretrial matters to take
13 up before the trial actually starts, and it's Monday. You
14 know, Mondays are a little hectic in terms of getting
15 started around here. So I think the best use of our time
16 and your time is to excuse you now until 9:30 in the
17 morning, at which time I'm going to ask you to return to
18 the jury room and that will give us time to iron out a
19 number of things so that we'll be ready to go in the
20 morning.

21 So I'm going to ask you to do several things --
22 well, just a few things for me.

23 First, I'm going to ask you not to discuss this
24 case with anyone, even your family members or friends or
25 anything like that over the evening, because you never

1 know, as you saw from the question-and-answer period, a
2 number of jurors had seen or heard something about this
3 case. You never know when you're talking to somebody that
4 they may also know something about it and may offer an
5 opinion to you and you are going to be charged to make a
6 decision based on what you hear in court, not what
7 somebody else tells you, so I think the best rule of thumb
8 is to always just if you have to tell somebody you're on a
9 jury, that's fine, but I'm going to ask you not to discuss
10 it one way or the other in terms what the case is or who's
11 involved, that sort of thing.

12 The second thing I'm going to ask you to do is
13 when you return to the jury room in the morning, select
14 one of your members. Doesn't matter who it is. It cannot
15 be the last two jurors seated because they're going to be
16 our alternates in the case of some unexpected event that
17 for some reason a juror could not continue in this case.

18 I anticipate this case will last most of the
19 week. I can't -- I don't have a good handle on the length
20 of time we're going to be here, but we'll do what is
21 necessary to give the defendant a fair and impartial trial
22 in this case.

23 You saw or heard from the list of witnesses it
24 may be somewhat lengthy, but all of those witnesses
25 invariably will not testify. So these are all potential

1 witnesses that were listed for the case.

2 So I will ask you, as I started to say, to
3 select one of your members to be the foreperson of the
4 jury. That person will take the seat where the lady with
5 the tan jacket is seated at the present time and will
6 maintain that seat throughout the trial here on the front
7 row. The rest of the seats don't have any names on them.
8 I just want you to sit where you're most comfortable. The
9 witnesses will be testifying from this witness stand, and
10 if you, for example, have a hearing problem, you may want
11 to sit closer to the front, that type of thing, during the
12 course of the trial.

13 I'll explain to you more about the procedure of
14 the trial tomorrow when we get started, but for now I'm
15 going to ask you to have a pleasant evening. If you'll go
16 with the bailiffs to your jury room. You're going to
17 be -- I'm going to ask you that when you come back in the
18 morning, I'm going to ask you to come back up here to the
19 third floor. A specific jury room has been set aside for
20 you. Don't go back down to the jury assembly room because
21 we'll just have to come looking for you.

22 So I'll expect all of you at 9:30 in the
23 morning. Have a pleasant evening and we'll see you at
24 that time.

25 The bailiffs are going to show you where your

1 jury room is. You'll have to exit out the back door.

2 (The jury was excused from open court at
3 approximately 3:28 p.m.)

4 THE COURT: Let's take five minutes, after which
5 we'll begin with pretrial motions.

6 MR. O'NEILL: Thank you, Your Honor.

7 MS. CAMPBELL: Thank you, Your Honor.

8 (A break was taken.)

9 THE COURT: You can stay right there, ma'am.
10 Ms. Walker, I called your name out a little
11 while ago. Why didn't you answer?

12 THE JUROR: Yes. I have hearing problems and
13 don't hear, so I didn't hear it. If you talk real low I
14 can't hear you.

15 THE COURT: Okay. I called your number. Did
16 you hear me call your number?

17 THE JUROR: No.

18 THE COURT: All right. Do you wear hearing
19 aids?

20 THE JUROR: No, I can't afford one. They cost
21 too much.

22 THE COURT: All right. Thank you, ma'am. You
23 can go back downstairs.

24 THE JUROR: Thank you.

25 THE COURT: What can you do. Sometimes we're

1 lucky to get 12.

2 All right. Anything of a pretrial nature from
3 the State?

4 MS. CAMPBELL: Your Honor, there was a statement
5 made by the defendant after he was arrested.

6 THE COURT: Written or verbal?

7 MS. CAMPBELL: Written and verbal.

8 THE COURT: Does defense challenge the
9 voluntariness of the statement?

10 MR. O'NEILL: Yes, Your Honor, I guess for the
11 record we challenge both of the oral and written
12 statements gave to Investigator Barnes by Mr. Ashford and
13 we also challenge the presence of Investigator Thomas as
14 well. But we would also challenge any verbal statements
15 Mr. Ashford made to law enforcement while at [REDACTED]
16 [REDACTED] during the hours of 12:30 to 7:30 during the
17 hostage standoff.

18 THE COURT: What street? Booth?

19 MR. O'NEILL: [REDACTED].

20 THE COURT: Is that the standoff?

21 MR. O'NEILL: Yes, Your Honor.

22 THE COURT: And who were the first set of
23 statements made to?

24 MS. CAMPBELL: After his arrest, a statement was
25 made to Sergeant Barnes and I believe Investigator Thomas

1 with the City was also present for at least most of that
2 statement.

3 THE COURT: And that's oral and written to
4 Barnes?

5 MS. CAMPBELL: It was orally and then reduced to
6 writing.

7 THE COURT: But it's the same? Not two
8 statements, only one statement?

9 MS. CAMPBELL: Yes.

10 THE COURT: All right. And then who do you
11 allege was the hearer of verbal statements at [REDACTED]
12 [REDACTED]?

13 MR. O'NEILL: That one is not clear. There's no
14 written report of the statements of -- there's no audio of
15 the conversation between Mr. Ashford and the hostage
16 negotiators at the scene on Booth Street and there's no
17 written report of the conversations held between Mr.
18 Ashford and --

19 THE COURT: But you know there were statements?

20 MR. O'NEILL: Yes, Your Honor. Upon speaking
21 with Ms. Campbell, I think some of the officers who were
22 there, I think they remember statements and conversations
23 they had with Mr. Ashford, but from my understanding, none
24 of those statements were reduced to writing.

25 THE COURT: Were they inculpatory?

1 MR. O'NEILL: I don't know the substance of
2 those statements.

3 THE COURT: Oh, okay. So you just challenge the
4 statements generally?

5 MR. O'NEILL: Yes, Your Honor. I challenge them
6 on the basis of Miranda without even knowing the substance
7 of those statements.

8 THE COURT: Okay. Call Sergeant Barnes.

9 MS. CAMPBELL: The State calls Sergeant Barnes.

10 ERIC BARNES, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please have a seat and state your
13 full name for the record.

14 THE WITNESS: Eric Kevin Barnes.

15 IN CAMERA DIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q Sergeant Barnes, were are you employed?

18 A Richland County Sheriff's Office.

19 Q What do you do there, sir?

20 A I'm a sergeant in the investigative division.

21 Q I want to turn your attention back to February 24th,
22 2007. Did you have an occasion to come in contact with
23 the defendant, Randolph Ashford?

24 A I did.

25 Q Can you explain to the judge how that happened?

1 A I was the supervisor for the evening shift. I was
2 coming on to do my duties with the team that I had on
3 board for that evening, one of them being Investigator
4 Croxson.

5 I was advised by the day shift, Investigator,
6 Goff, about the situation occurring on Booth Street where
7 Mr. Randolph Ashford was in a standoff situation with a
8 hostage and wanted to trade one of those hostages for his
9 girlfriend.

10 I monitored the situation. I sent Investigator
11 Croxson out to the scene after awhile and then
12 subsequently Mr. Ashford was arrested and brought to me
13 for questioning.

14 Q And when he was brought to you, where were you
15 located?

16 A At Richland County Sheriff's Office, 5623 Two Notch
17 Road.

18 Q And you initially made contact with him there?

19 A Yes, ma'am.

20 Q Prior to talking to him and asking any questions
21 about what had happened during the course of that day, did
22 you have an occasion to advise him of his Miranda rights?

23 A I did.

24 Q And explain that to the judge.

25 A When he initially was brought to me by the officers

1 from the scene on Booth Street, I introduced myself to
2 him. He acknowledged the fact that he had messed up. I
3 verbally Mirandized him at that point. We started a
4 conversation.

5 He was very coherent to me. It was a
6 give-or-take. I got his background from him about what
7 happened. He wanted to talk about where this all -- how
8 it transpired, how this jumped off, and then after awhile
9 we took a formal statement with a formal Miranda and a
10 formal statement in writing.

11 Q Okay. And during the course of this conversation,
12 you're initially talking to him and he's relating to you
13 the information that he wanted you to understand about the
14 background about how this occurred, did another
15 investigator from the City join your conversation?

16 A Yes. I believe Investigator Thomas from the City.

17 Q And at that point had you already verbally Mirandized
18 him?

19 A I had.

20 Q And he basically came in as the defendant was
21 explaining his side of the story to you?

22 A Correct.

23 Q Once you had initially Mirandized him, specifically
24 what rights did you go through with him prior to asking
25 him any questions when you verbally Mirandized him?

1 A Usually when I verbally Mirandize them I asked him if
2 he understood that he had a right to remain silent,
3 anything he said can and will be used against him in
4 court. He had the right to talk to a lawyer and have him
5 with you during questioning. If you cannot afford a
6 lawyer, and I just say it like I told it to him, a general
7 appointed lawyer will be appointed to you before
8 questioning if you wish. If you decide to answer
9 questions now without a lawyer present, you still have the
10 right to stop answering at any time. You also have the
11 right to stop answering at any time until you talk to a
12 lawyer.

13 And after I read that statement or after I
14 verbally advised him of those, I asked him if he wanted to
15 talk and he acknowledged that he did and we continued our
16 conversation.

17 Q And, in fact, would you characterize -- he wanted to
18 tell his side of the story?

19 A He did.

20 Q After you verbally Mirandized him, at any point did
21 he ask for a lawyer?

22 A No.

23 Q At any point did he say he didn't want to talk with
24 you?

25 A No.

1 Q Did you force him to talk to you?

2 A No.

3 Q Did you force him in any way?

4 A No.

5 Q Did you use any pressure?

6 A No.

7 Q Was he mistreated in any way?

8 A No, ma'am.

9 Q And who was present as you initially verbally
10 Mirandized him?

11 A When I initially verbally Mirandized him, it was me.
12 As I recall, it was just me there.

13 Q And then later during the conversation did
14 Investigator Thomas join you?

15 A Investigator Thomas did join us later, yes, ma'am.

16 (WHEREUPON, State's Exhibit No. 1 was marked for
17 identification only.)

18 BY MS. CAMPBELL:

19 Q I'll show you what's been marked as State's Exhibit
20 1. Do you recognize that?

21 A Yes. That is the formal advise of rights that the
22 county has that we go through when we read them their
23 advise of rights and have them waive their rights for our
24 formal statement.

25 Q And I notice that in the top of that, whose

1 handwriting is that?

2 A That is my handwriting.

3 Q And when you initially made contact with the
4 defendant, did you misunderstand what his name was?

5 A I did.

6 Q And what did you write his name down as?

7 A Randall Ashford.

8 Q And it's actually what?

9 A Randolph Ashford.

10 Q Randolph Ashford?

11 A Yes, ma'am.

12 Q And the officer was present with you and this was
13 done at 7:50?

14 A That's correct.

15 Q And who was -- it was you and him at the time that
16 you actually Mirandized him?

17 A That is correct.

18 Q And tell the judge about how you went through this.
19 Using State's Exhibit 1, how you went through and advised
20 him of his rights and had it reduced -- signed off on it.

21 A In the formal advise of rights, each line is separate
22 and apart and has a checkmark for when you go through that
23 line.

24 When I would go through this form I would say,
25 before we ask you any questions you must understand your

1 rights and I would check that box. You have the right to
2 remain silent and I'd check that box.

3 Anything you say can be used against you in
4 court, you have the right to talk to a lawyer for advice
5 before we ask you any questions, you may have a lawyer
6 with you during any questioning, and we go through this
7 whole advise of rights checking the boxes as we read them.

8 And the second part of it is the waiver of your
9 rights which also has a box: I have read this statement
10 of my rights. I understand what my rights are and I'm
11 willing to talk and answer questions. I understand and
12 know what I'm doing. No promises have been made to me.
13 There's been no pressure or coercion of any kind that's
14 been used against me. I go through that and I check that
15 as well.

16 On each one of these lines as we've gone through
17 the advise of rights I check those boxes and then he
18 acknowledges those rights in the waiver of his rights by
19 his signature.

20 Q Okay. And this was done at what time?

21 A 1950 hours, which is 7:50 in the evening.

22 Q After you had advised him for the second time of his
23 rights, at any point did he ask for a lawyer?

24 A No.

25 Q At any point did he tell you he didn't want to talk

1 to you?

2 A No.

3 Q Did you use any pressure or coercion?

4 A No.

5 Q Deprive him of his creature comforts?

6 A No.

7 Q Did you in any way threaten the man to make him talk?

8 A No.

9 Q In fact, it's your opinion -- how long have you been
10 in law enforcement?

11 A Twenty-three years.

12 Q Did he want to tell you his side of the story?

13 A He did.

14 I'm sorry, it's 22 years.

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

17 BY MS. CAMPBELL:

18 Q And at that point I'll show you what's been marked as
19 State's Exhibit No. 2. Did you reduce into typewritten
20 form the information he gave you?

21 A I did.

22 Q At some point during the course of this conversation
23 with the defendant, did you ask him specifically about
24 certain acts of a sexual nature that may have taken place
25 inside?

1 A I did.

2 Q And when you first asked him about that what did he
3 tell you?

4 A He did not have any sex with the victim in the case.

5 Q And did you give him information that he then changed
6 his story?

7 A I did.

8 Q And what did you tell him?

9 A I set up a scenario whereby I asked him in the
10 technological age that we're in with the amount of
11 technology that we have, being able to look into buildings
12 and hear different things and video-record events, would
13 there be any reason for us to have pictures of the victim
14 naked on the floor.

15 Q At that point did he change his story about any sex
16 acts that occurred inside?

17 A Yes, ma'am, he acknowledged he did have sex with her.

18 Q Other than that change from what he had told you
19 verbally to begin with, what you reduced into a written
20 form, was his story pretty much the same as what he
21 verbally advised you of when you first advised him of his
22 rights?

23 A Yes.

24 Q And was Investigator Thomas present when you went
25 through the story the second time?

1 A Yes.

2 Q And what's the time on the top of the statement when
3 you actually began taking that?

4 A Twenty hundred hours, which would be 8 p.m.

5 Q And, again, that was the second time.

6 Once you had done what you call a formal
7 statement or put it into typewritten form, did the
8 defendant then have an opportunity to review the
9 statement?

10 A He did.

11 Q How did that happen?

12 A We went back over the statement with him as I had
13 printed it out and read it back with him, had him review
14 that, and if he agreed with the statement then he would
15 sign off on that, and he did. He agreed with the
16 statement as we had written it.

17 Q And did you actually witness and sign off on it
18 agreeing that that was his statement?

19 A I did.

20 Q And did Investigator Thomas also?

21 A He did.

22 Q At any point when you were talking with him that
23 evening, did he ask for a lawyer?

24 A No, ma'am.

25 Q At any point did he indicate he didn't want to talk

1 to you any longer?

2 A No, ma'am.

3 Q And, in fact, in your opinion, was he talking to your
4 freely and voluntarily?

5 A Yes, ma'am.

6 MS. CAMPBELL: Thank you. That's all I have.

7 THE COURT: Cross-examination.

8 MR. O'NEILL: Thank you, Your Honor.

9 IN CAMERA CROSS-EXAMINATION

10 BY MR. O'NEILL:

11 Q Investigator Barnes, this statement took place in
12 your office at the sheriff's department?

13 A My cubicle.

14 Q Your cubicle. And your cubicle's relatively small?

15 A Unfortunately, yes.

16 Q Would five-by-five be accurate?

17 A I think it's a bit more than that, but it's bigger
18 than our table here.

19 Q Okay. How about six-by-six? And when I say
20 six-by-six, I mean six feet by six feet.

21 A There's enough room for a file cabinet, a desk, and
22 my chair and an interview chair.

23 Q Was Mr. Ashford handcuffed at this particular point?

24 A I think -- I don't recall.

25 Q You don't recall?

1 A We had to have taken the cuffs off for him to sign
2 the forms. You know, he was very cooperative, I felt. It
3 would not surprise me if he was not handcuffed.

4 Q But you would agree at this point he wasn't free to
5 go?

6 A No, ma'am -- no, sir, he wasn't free to go.

7 Q And it was just you and I think Investigator Thomas
8 that overheard Mr. Ashford's statement to you?

9 A That's correct.

10 Q And only Mr. Thomas -- Mr. Thomas was not there when
11 you verbally -- when you say you verbally Mirandized
12 Mr. Ashford?

13 A That's correct.

14 Q And you had -- at some point you say you had
15 Mr. Ashford do a written waiver of his rights?

16 A True.

17 Q This is going to be later marked as State's Exhibit
18 No. 1.

19 A Correct.

20 Q Now, let's have you take a look at that.

21 You didn't have Mr. Ashford initial by each
22 right, did you?

23 A No.

24 Q Is that a common practice, to have suspects initial
25 by each right that is waived on the waiver form?

1 A In regards to that, there's no written protocol
2 that's written down anywhere in the Constitution or
3 otherwise.

4 This is a form that the sheriff's office has
5 used to try to help us work through what we're required to
6 do by law to go through and each investigator or each
7 detective has a different way of doing things. Sometimes
8 detectives will have them initial, sometimes they won't.

9 In my particular case, over the course of years
10 this has been a tried-and-true method for me. This is the
11 way I work it.

12 Q So it's your practice not to have the suspect initial
13 by the waiver?

14 A That's correct. He signs it as an acknowledgment of
15 that and we work through them line by line.

16 Q Now, were you aware that Mr. Ashford only attended, I
17 guess, a couple of days of high school?

18 A No, sir, I was not aware.

19 Q Did you ask him how far he went in high school?

20 A No, I didn't.

21 Q Were you aware at some point in time Mr. Ashford was
22 committed to a mental facility?

23 A No, sir.

24 Q Did you ask him about his mental health history?

25 A No, sir.

1 Q Did you ask Mr. Ashford whether he could read or
2 write?

3 A I don't recall those questions, that particular
4 question as a formal question, so I can't answer that. I
5 do have the habit of trying to engage a person as they're
6 sitting down with me, but I don't recall that question
7 specifically.

8 Q Were you aware that Mr. Ashford usually utilizes
9 reading glasses when he reads? Were you aware of that?

10 A I'm not aware of that, no.

11 Q Did you ask Mr. Ashford has he taken any illicit
12 drugs that day?

13 A No, sir.

14 Q Did you ask him whether or not he'd had any
15 prescription drugs that day?

16 A No, sir.

17 Q Now, you're aware that Mr. Ashford was, I guess,
18 inside this trailer with Ms. Simmons; is that correct?

19 A Yes, sir.

20 Q And were you also aware that law enforcement from
21 Richland County Sheriff's Department utilized certain
22 chemical gas in that trailer that evening? Are you aware
23 of that?

24 A I am aware of that.

25 Q Were you aware of the type of chemical gas that they

1 used that day?

2 A I'm not familiar with that, no.

3 Q But are you aware of the purpose of using this
4 chemical gas in these kind of situations?

5 A Yes, sir.

6 Q What's that?

7 A That is to get the person who has barricaded
8 themselves in the particular place that they're at to get
9 them to come out and give themselves up.

10 Q Are you aware of the effect that this gas has on
11 individuals once they come in contact with it?

12 A I have been exposed to some of these chemicals.

13 Q And what's the effect it had on you personally?

14 A If it's tear gas, it causes your mucus membranes to
15 start activating, it causes your eyes to swell and water,
16 and it can be frustrating to work in a situation like
17 that.

18 Q Would it be fair to say that this gas causes
19 disorientation?

20 A I guess it all depends on what your definition of
21 disorientation is.

22 Q Being disoriented?

23 A It would be enough to cause somebody not to be able
24 to read at that particular point, but after receiving
25 treatment, after a few minutes of receiving treatment

1 you're able to go about your life in a fairly relatively
2 normal fashion.

3 Q You didn't mention anything about Mr. Ashford getting
4 treatment. Is that correct, he didn't get any treatment?

5 A I'm sorry?

6 Q You didn't mention the fact that Mr. Ashford got any
7 treatment for this tear gas.

8 A My understanding after reviewing what was done, EMS
9 did treatment on the scene as to when they brought him out
10 of the home.

11 Q Did you witness that treatment?

12 A No, I was at the office.

13 Q Okay. And Mr. Ashford didn't write the statement, I
14 think, which is State's 2, correct?

15 A No, sir.

16 Q That's not in his handwriting?

17 A No.

18 Q You typed that statement?

19 A That's correct, sir.

20 MR. O'NEILL: Beg the Court's indulgence.

21 No further questions, Your Honor.

22 MS. CAMPBELL: Just a couple follow-up.

23 IN CAMERA REDIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q He asked about your cubicle. Your cubicle, did it

1 have a door on it?

2 A No, ma'am.

3 Q And, in fact, the walls themselves come up to kind of
4 shoulder height, doesn't it?

5 A That's correct.

6 Q And other than that, it's open?

7 A Correct.

8 Q He asked you about the defendant's background,
9 whether he had gone to high school, could he read and
10 write.

11 Did the defendant appear coherent when you
12 talked with him?

13 A He did.

14 Q Did he respond appropriately when you asked him
15 questions?

16 A He did.

17 Q And, in fact, did he actually initially when you
18 first made contact to introduce yourself, he initiated the
19 conversation?

20 A He did.

21 Q At any point did you notice him crying
22 uncontrollably?

23 A No.

24 Q Did he appear to have his faculties about him?

25 A He did.

1 Q And was there anything about him when you came in
2 contact with him sometime after 7 p.m. on that night that
3 made you concerned that he could not understand you?

4 A No.

5 Q Was he slurring?

6 A No.

7 Q Did he answer appropriately?

8 A He did.

9 Q And, in fact, was he coherent?

10 A Yes.

11 Q And, in fact, was he anxious to tell you his version
12 of what had gone on that day?

13 A He was.

14 Q And, in fact, if he didn't remember something, did he
15 tell you he couldn't remember?

16 A He did.

17 Q Without going into the substance of everything, he
18 basically gave you a rendition of what happened verbally
19 and then you had it reduced to writing and you went over
20 it with him again; is that correct?

21 A Correct.

22 Q And he was able to give you all that information that
23 night coherently and in a manner responsive to your
24 questions?

25 A Yes, ma'am.

1 Q Was there anything about your time with Randolph
2 Ashford that night that made you worry about his ability
3 to understand what was going on?

4 A Nothing caused me concern.

5 Q Or his ability to waive his rights?

6 A I understood him to waive them freely and voluntarily
7 and coherently.

8 Q Based on your 22 years of experience?

9 A Yes, ma'am.

10 Q Have you, in fact, become in contact with people
11 where it wasn't appropriate and they weren't able to
12 understand what's going on?

13 A Yes, ma'am, I have.

14 Q And you made that assessment and that wasn't the
15 situation?

16 A No.

17 MS. CAMPBELL: Thank you, sir.

18 THE COURT: Anything further?

19 MR. O'NEILL: Not from this witness, Your Honor.

20 THE COURT: All right. You may come down.

21 Anything further?

22 MS. CAMPBELL: No, sir.

23 THE COURT: Anything from the defendant?

24 MR. O'NEILL: Your Honor, the defense calls

25 Randolph Ashford.

1 RANDOLPH ASHFORD, after being duly sworn,
2 testified as follows:

3 THE CLERK: Please have a seat. State your full
4 name for the record.

5 THE WITNESS: Randolph Ashford.

6 IN CAMERA DIRECT EXAMINATION

7 BY MR. O'NEILL:

8 Q Randolph, I have a couple of questions for you, okay?

9 A Okay.

10 Q Randolph, how old are you?

11 A Forty-three.

12 Q And how old would you have been back on
13 February 24th, 2007?

14 A Forty-one.

15 Q And how far did you go in school?

16 A Eighth grade.

17 Q And why is it that you didn't go any further than the
18 eighth grade?

19 A Started working.

20 Q Now, had you repeated any of the grades prior to
21 coming out of high school, dropping out of school in
22 eighth grade?

23 A I did.

24 Q Which ones? What grades were those?

25 A Fourth or fifth.

1 Q You repeated it once, twice?

2 A Once.

3 Q What kind of student were you in school?

4 A Slow learner.

5 Q Slow learner.

6 Back in February 24th, 2007, could you read or
7 write?

8 A A little.

9 Q What do you mean by "a little?"

10 A Well, I'm limited with big words and I can't really
11 read big words.

12 Q Let me show you what --

13 MR. O'NEILL: Permission to approach, Your
14 Honor?

15 THE COURT: Yes, sir.

16 BY MR. O'NEILL:

17 Q Let me show you what's been marked as State's Exhibit
18 No. 1.

19 Back in February 24th, 2007, did you read that
20 statement or did Investigator -- I'm sorry. Did you read
21 that document or did Investigator Barnes read that
22 document?

23 A No, I didn't read it. I don't remember him reading
24 it.

25 Q You don't remember Investigator Barnes reading that

1 statement to you?

2 A No.

3 Q Do you remember Investigator Barnes explaining to you
4 anything -- explaining to you what those words on that
5 paper mean?

6 A He said something, but at the time I really didn't
7 know what he was talking about.

8 Q Now, prior -- do you remember about what time -- in
9 speaking to Investigator Barnes, do you remember what time
10 of day it was?

11 A Yeah, it was in the evening time.

12 Q Now, had you used any illegal drugs that day, that
13 Saturday?

14 A No.

15 Q Were you under the influence of any prescription
16 drugs on that Saturday?

17 A Yes.

18 Q What kind of prescription drugs had you taken?

19 A Pain medication.

20 Q What was the pain medication for?

21 A For my right arm.

22 Q And what kind of effect did that medication have on
23 you?

24 A It was supposed to be for pain, that's all I can say.
25 It had a tendency -- it would make you a little drowsy.

1 Q And when had you been between -- scratch that.

2 Had you been exposed to any chemical agents
3 prior to talking to Investigator Barnes?

4 A Yes.

5 Q And what kind of effect did those chemical agents
6 have on you?

7 A Well, I couldn't see. I was kind of confused about
8 what was going on.

9 Q So you couldn't see and you were confused about what
10 was going on?

11 A Yes.

12 Q How long did those effects last?

13 A Well, several days after I'd gotten down here in
14 Richland County in the cell.

15 Q So those effects lasted from Saturday out to a couple
16 of days after Saturday?

17 A Right.

18 Q Were you feeling those effects when you were speaking
19 with Investigator Barnes?

20 A Yes, I was.

21 Q Now, do you utilize reading glasses when you read?

22 A Yes, sir.

23 Q Did you have your reading glasses on that particular
24 day?

25 A No, sir.

1 Q And you can read somewhat but you just can't read
2 bigger words; is that correct?

3 A Correct.

4 Q And at some point prior to this incident had you ever
5 been committed to a mental facility?

6 A Yes, I had.

7 Q And what facility was that?

8 A Bryan.

9 Q Where is that located at?

10 A On Farrow Road.

11 Q Did you understand the rights you were giving up on
12 that day?

13 A No, sir, I did not.

14 Q And why didn't you understand those rights?

15 A I was disoriented from the gas that they brought in
16 the house for five, six, seven hours.

17 MR. O'NEILL: Beg the Court's indulgence.

18 No further questions, Your Honor.

19 THE COURT: Cross.

20 IN CAMERA CROSS-EXAMINATION

21 BY MS. CAMPBELL:

22 Q Mr. Ashford?

23 A Yes, ma'am.

24 Q You understood all the questions your lawyer just
25 asked you?

1 A Yes, ma'am.

2 Q And if you don't understand me, you let me know,
3 okay?

4 You say you went how far in school?

5 A Eighth grade.

6 Q And how old are you now?

7 A Forty-three.

8 Q Do you have any children?

9 A No.

10 Q Do you know a lady named Roberta?

11 A Yes.

12 Q And what was your relationship with Roberta?

13 A Girlfriend.

14 Q And how long were you and Roberta together?

15 A Three or four years.

16 Q And during this time period when you were with
17 Roberta did you work?

18 A At one point I did.

19 Q What kind of work did you do?

20 A Construction.

21 Q Do you have a driver's license?

22 A No, I do not. It's suspended.

23 Q You had a driver's license at one point?

24 A Yes, I have.

25 Q So you were able to take the test and get a driver's

1 license?

2 A Yes.

3 Q And doing construction, were you able to follow
4 directions and do all that?

5 A Yes, I was.

6 Q And on the day in question here, do you remember
7 Sergeant Barnes?

8 A A little.

9 Q Do you remember going to the sheriff's department
10 that night?

11 A Yes.

12 Q And do you remember him advising you of your rights?

13 A Not really.

14 Q Do you know what advise of rights is?

15 A I guess it's this paper right here.

16 Q Have you been advised of your rights before?

17 A Not that I can remember.

18 Q You don't ever remember people telling you that you
19 have the right to remain silent?

20 A Oh, yes, I do. Yes, I do.

21 Q And you've been arrested ten or twelve times before
22 this incident?

23 A That's right.

24 Q And on those occasions have you been advised of your
25 rights?

- 1 A Sometimes. Most times not.
- 2 Q But you understood what your rights were?
- 3 A No.
- 4 Q Do you understand when I tell you you have the right
5 to remain silent?
- 6 A Yes.
- 7 Q And you've had lawyers before?
- 8 A Right.
- 9 Q So you knew you had the right to have a lawyer?
- 10 A Right.
- 11 Q And you aren't up here saying that Sergeant Barnes
12 didn't go through those rights with you?
- 13 A Yes, I am.
- 14 Q Okay. Let me ask you this: Why would you sign that
15 piece of paper?
- 16 A I was disoriented.
- 17 Q You were disoriented?
- 18 A I was.
- 19 Q How were you disoriented?
- 20 A I couldn't see and I couldn't really think. I
21 couldn't focus, stuff like that.
- 22 Q I want to point right here on State's Exhibit No. 1.
23 Is that your signature?
- 24 A That's my signature.
- 25 Q And would you agree with me that that's pretty

1 legible?

2 A Yes.

3 Q And then on the second part, on the waiver of rights,
4 is that your signature?

5 A Right.

6 Q And you'd agree with me that it's pretty legible?

7 A Yes.

8 Q And you'd agree with me that that's your signature
9 where you signed?

10 A Yes, I did.

11 Q And you signed that, your testimony is here today,
12 not because you were waiving your rights?

13 A That's because I was waiving my rights, is that what
14 you're asking me?

15 Q I'm asking you why you signed that piece of paper.

16 A Because I -- I signed it because he asked me to sign
17 it really.

18 Q He didn't beat you, did he?

19 A No. He asked me to sign it so I signed it. I was
20 doing what he asked me.

21 Q But he didn't threaten you in any way?

22 A No.

23 Q And he and Investigator Thomas were nice to you that
24 night?

25 A I couldn't answer that question because I was

1 disoriented.

2 Q Okay. So you were disoriented. So you just didn't
3 have any ability to understand anything?

4 A Correct.

5 Q Including why, perhaps, that you had gone on this
6 crime spree?

7 A Correct.

8 Q You were so disoriented?

9 A No. I was -- I really didn't know what I was doing
10 when the crime spree happened.

11 Q Okay. But you were able to give a lot of detail in
12 State's Exhibit No. 2 that can only come from you?

13 A Some.

14 Q All the background about you and Roberta, how she
15 stole your four thousand dollars, how she called you up
16 and was making sex sounds on the phone, all that kind of
17 information could only come from you and that would only
18 be if you were oriented enough to be able to recall that?

19 A I did not say that.

20 Q You didn't say any of this?

21 A No.

22 Q So you didn't tell the police officers that started
23 last night about 9:15 that you and Roberta were sitting
24 around the house?

25 A Yes, I did tell them that.

1 Q Okay. Did you tell them you watched Smackdown?

2 A I did tell them that.

3 Q Did you tell them Roberta was scratching off lottery
4 tickets?

5 A I did tell them that.

6 Q Did you say you were going to run to the store and
7 get some more something before the store closed?

8 A I did.

9 Q And you got on your bicycle and went to the store and
10 came on back?

11 A Lottery tickets. For lottery tickets.

12 Q Lottery tickets, okay. See, that's a detail I didn't
13 get.

14 That when you got back the door was cracked?

15 A I told them that.

16 Q Roberta was gone?

17 A That's correct.

18 Q You thought she'd been kidnapped?

19 A That's correct.

20 Q And the night before you called 911?

21 A The night before? No, I didn't tell him that.

22 Q Okay. You said that you got scared and thought she'd
23 been kidnapped and I called 911 and had a car come out to
24 take a missing person report?

25 A That night.

1 Q The officer came out and said Roberta was all right.
2 Is that what you told them?

3 A Yes, that she was all right.

4 Q That the officer said that?

5 A He said that she went at a girlfriend's house.

6 Q Okay.

7 A Don't worry about her, she'll be back in the morning.

8 Q Is that what you told them? At that point did you
9 realize she had taken your four thousand dollars?

10 A She didn't take four thousand dollars.

11 Q And I understand you've met with her since you've
12 been arrested, but at that time that's what you told the
13 officers?

14 A No.

15 Q Did you tell them about how she called you at 1:35
16 a.m. and it sounded like sex noises?

17 A No.

18 Q Did you tell them her cell phone -- your home number?

19 A Yes.

20 Q Did you tell them her cell number?

21 A I think I did. I was -- I couldn't really --

22 Q They wouldn't have any other way to get it.

23 A I couldn't really remember the number and I'm not
24 sure if the number on there is the correct number.

25 Q Don't worry, they checked on it.

1 Do you remember telling them that you asked her
2 about the four thousand dollars and she hung up on you?

3 A No, I didn't tell them that.

4 Q Did you tell them about how that pushed you over the
5 edge?

6 A No, I didn't tell them that.

7 Q Did you talk about how you walked to the store with a
8 gun in your pocket?

9 A No, I didn't tell him that.

10 Q The Citgo on North Main.

11 A Citgo on North Main? I told him that I did go to the
12 store.

13 Q And that you saw a middle-aged lady with a big car?

14 A Yes.

15 Q You yelled at her to get out of the car?

16 A Yes.

17 Q You jumped in. You were very specific, you never
18 pulled a gun on her?

19 A I don't remember having a gun in my hand at that
20 point.

21 Q That you drove to Cushman Road?

22 A The car got loose -- I'm not sure.

23 Q That's when you wrecked?

24 A I'm not sure if it was or wasn't.

25 Q And I can go through this, but you go on and on and

1 on with details that you were too disoriented to know; is
2 that your testimony?

3 A Huh?

4 Q Is that your testimony?

5 A Repeat the question.

6 Q You were too disoriented to be able to give them all
7 that detail that we just went through, and more?

8 A I was able to give them the part that I agreed to and
9 the part that I did not.

10 Q That's why it's important for you to make sure they
11 understood the part you agreed with and the part you did
12 not?

13 A No.

14 Q Did you want to go through the statement and figure
15 out which parts you agreed to and which you did not?

16 A No, I do not.

17 Q And where are your reading glasses here today?

18 A In my pocket.

19 MS. CAMPBELL: Nothing further, Your Honor.

20 MR. O'NEILL: Nothing further, Your Honor.

21 THE COURT: You may come down. Thank you very
22 much.

23 Anything further?

24 MR. O'NEILL: No, Your Honor.

25 THE COURT: Anything in reply?

1 MS. CAMPBELL: Your Honor, the only thing I
2 could offer is Investigator Thomas will be here in the
3 morning. I can put him up then on the same issue.

4 THE COURT: You would put him up for the same
5 issue?

6 MS. CAMPBELL: I can put him up in reply. I
7 would submit that Sergeant Barnes' testimony is enough.

8 THE COURT: All right. You'll rely on Sergeant
9 Barnes?

10 MS. CAMPBELL: Yes, sir, I'll rely on Sergeant
11 Barnes.

12 THE COURT: All right. Anything from the
13 defense?

14 MR. O'NEILL: Your Honor, I would move that
15 Mr. Ashford's statement be suppressed. I think it's
16 uncontroverted that he was actually in custody and was
17 interrogated.

18 THE COURT: No question about it.

19 MR. O'NEILL: I'm sorry, Your Honor?

20 THE COURT: No question about it. I agree with
21 you.

22 MR. O'NEILL: Your Honor, I guess the question
23 becomes whether or not he was afforded his Miranda rights
24 and whether or not -- if he was afforded Miranda rights,
25 whether or not a waiver of those rights were knowingly and

1 intelligently made.

2 I would first contend that the State has the
3 burden of proving based upon a preponderance of evidence
4 that he was read his Miranda rights and, one, Investigator
5 Barnes said he gave them to him orally. We only have his
6 testimony on that. There's no other -- nobody witnessed
7 that or the presentation of Miranda rights. Mr. Ashford
8 claims that he doesn't remember that happening.

9 The only other piece of evidence the State has
10 that Mr. Ashford was given his Miranda rights, of course,
11 is the waiver. And on that waiver, I think it's State's
12 Exhibit No. 1, there's no indication by Mr. Ashford that
13 he initialed those, that waiver form. We still only have
14 Investigator Barnes' testimony that Mr. Ashford checked
15 those boxes and actually waived those rights.

16 THE COURT: He actually signed it, though. You
17 agree with that?

18 MR. O'NEILL: Yes, I agree he signed it, Your
19 Honor.

20 Even given that, I would state that it would be
21 our position that those Miranda warnings and the waiver of
22 those Miranda rights were not knowingly and intelligently
23 made, Your Honor. I think in the US Supreme Court case
24 Moran versus Burbine, 475 U.S. 412, says that the
25 defendant has to have full awareness of both the nature of

1 the right being abandoned and the consequences of the
2 decision to abandon it.

3 I think the Court also has to take into
4 consideration the wishes of Mr. Ashford in terms of
5 whether or not he knowingly and intelligently waived those
6 rights.

7 I think Mr. Ashford testified he only went to
8 the eighth grade in school, that in school he was a slow
9 learner, that he could not read or write very well, Your
10 Honor, and that on this particular day he couldn't see and
11 was confused by the tear gas that he had and plus that he
12 was on medication that made him, in his words, I think
13 drowsy, Your Honor.

14 I think based on all that and the totality of
15 the circumstances, I think the State hasn't met their
16 burden by a preponderance of evidence that Mr. Ashford
17 knowingly and intelligently waived his Miranda rights and
18 on that basis we ask that the statement be suppressed.

19 THE COURT: What's the State's position?

20 MS. CAMPBELL: The State's position is, Your
21 Honor, that he knowingly and intelligently as testified to
22 by Sergeant Barnes was able to understand what was going
23 on, that he signed off waiving his rights and he then
24 volunteered a statement and information that he wanted to
25 give the police. He even testified that he wanted to make

1 sure they understood the parts he agreed with and the
2 parts he didn't.

3 Your Honor, I just respectfully ask the Court we
4 feel like we have proven that his rights were waived
5 voluntarily as to the statement, Your Honor.

6 THE COURT: All right. Well, I think it's a
7 jury issue.

8 I find by a preponderance of the evidence that
9 he was given his Miranda warnings, Miranda rights. His
10 Constitutional rights were explained to him as evidenced
11 by the fact that he signed not only the understanding of
12 the rights but the waiver of rights.

13 He also, of course, signed the statement dated
14 February 24th in which he also says he understood he had
15 the right to remain silent and again repeated the
16 Constitutional rights as protected by Miranda.

17 And I find the statement is freely and
18 voluntary, but that's only the Court's decision. I find
19 that by a preponderance of evidence. The State will still
20 have to prove it to a jury.

21 All right. Anything further?

22 MS. CAMPBELL: Not on that issue, Your Honor.

23 THE COURT: Anything further?

24 MS. SINGLETARY: Yes, Your Honor. A Neil v
25 Biggers for the photo lineups, Your Honor.

1 THE COURT: Do we have those witnesses? Are we
2 going to do those witnesses now or are we going to do them
3 when they appear?

4 MS. CAMPBELL: I've got four of them here we can
5 do now.

6 THE COURT: And what else was there?

7 MS. CAMPBELL: That would be it.

8 MS. SINGLETARY: Your Honor, we also have a
9 motion for the courtroom to be closed to any media
10 coverage, Your Honor.

11 THE COURT: Why?

12 MS. SINGLETARY: Your Honor, we don't want the
13 fact that -- at the time that this incident occurred back
14 on February 24th of 2007, due to the alleged hostage
15 situation, there was a whole lot of media coverage.
16 Sheriff Lott was out there himself, Your Honor, and there
17 was newspaper coverage and it was evidenced by some of the
18 jury members who came up here, especially the lawyer, Your
19 Honor, Juror 65.

20 THE COURT: Yes.

21 MS. SINGLETARY: He stated that he remembered
22 reading it in the newspaper. And also --

23 THE COURT: He said he could be fair and
24 impartial. Go ahead.

25 MS. SINGLETARY: Yes, Your Honor. I understand

1 that. But we don't want the current jurors that we have
2 to be tainted by any media coverage that they may see when
3 they leave the courtroom in the afternoon.

4 THE COURT: I will so instruct them, but I don't
5 see how I can keep the media out. They have -- it's a
6 public courtroom; they have free access to the courtroom.

7 Certainly if either you call it to my attention
8 or I observe the media being present, they have rules and
9 regulations that govern their behavior in court. And I
10 will instruct the jury that they're not to avail
11 themselves of press coverage, whether it's video or by --
12 do you have some anticipation that the press is going to
13 be here?

14 MS. SINGLETARY: Your Honor, we think that
15 because of the media coverage that the story was initially
16 given that there may be some media coverage.

17 THE COURT: You may be right. I'll just deal
18 with it if they appear.

19 MS. SINGLETARY: Okay, Your Honor.

20 THE COURT: Okay. I'll do that.

21 MS. SINGLETARY: Thank you, Your Honor.

22 THE COURT: Now, Mr. O'Neill, you had a motion
23 regarding the standoff statements?

24 MR. O'NEILL: Yes, your Honor.

25 I would move to have any statements Mr. Ashford

1 made to law enforcement through the negotiators suppressed
2 based on the fact he was not afforded any Miranda rights.

3 THE COURT: Well, I would probably agree with
4 you that theoretically, at least if not actually, he's in
5 custody; if a typical hostage situation was in effect at
6 that time, that as you said in chambers, that the police
7 were there in force when this occurred. I've yet to
8 understand where the interrogation comes from. I mean, it
9 has to be both; there has to be custody and interrogation,
10 and I haven't heard where people were asking him to give
11 up his Miranda rights or something like that; in other
12 words, I don't know what was said or by whom or when. We
13 can probably deal with that during the course of the
14 trial.

15 MR. O'NEILL: Yes, Your Honor. I'm basing it on
16 behalf of phone records from the house. On that
17 particular day there were countless calls by law
18 enforcement.

19 THE COURT: Phone records?

20 MR. O'NEILL: Yes, Your Honor.

21 THE COURT: So they were talking to him on the
22 phone?

23 MR. O'NEILL: Yes, Your Honor.

24 THE COURT: Was there anything inculpatory in
25 there that you know of?

1 MR. O'NEILL: I've spoken with him, my client
2 about what was some of the conversations that he made
3 between him and the police officers, and based on what he
4 told me, I think some of the things that could have been
5 said to law enforcement would be inculpatory, Your Honor.

6 Basically this phone conversation lasted
7 between -- I mean this incident lasted between 12:30 and
8 7 o'clock that day, so it's a period of six-and-a-half or
9 seven hours that I have constant phone calls from law
10 enforcement to the residence on that particular day.

11 THE COURT: Well, you know, at this point it's
12 hard to make a decision based on just a general assumption
13 that there's something in there that may be inculpatory.
14 I don't think I can make a blanket ruling.

15 Now, if something's going to come up and
16 somebody's going to testify, we can take that up in camera
17 and deal with it, but let me hear from the State.

18 MS. CAMPBELL: Your Honor, I don't understand
19 how when he puts himself into a hostage situation, that he
20 has been in custody, I can't quite grasp that concept. He
21 is the one that --

22 THE COURT: Well, I said assume he's in custody.
23 What did he do? I mean, do you have statements that were
24 made by him that are going to be testified about?

25 MS. CAMPBELL: He made statements to the victim

1 threatening her. He made statements in the presence of
2 the victim to the police over the phone; there was contact
3 made. It's a hostage negotiation. I've never heard of a
4 hostage negotiation not coming in.

5 But as far as the majority of it is when he was
6 trying to barter the witness for -- he wanted Roberta, and
7 the threats that he made to the victim herself.

8 THE COURT: Is there a transcript of these? Is
9 there a transcript of these conversations?

10 MS. CAMPBELL: No, sir, there's no transcripts.

11 THE COURT: Well, how do you plan to get them in
12 evidence?

13 MS. CAMPBELL: Through the people that heard
14 them. The victim heard a lot of it. Sheriff Lott heard
15 some of it. There was a hostage negotiator that heard
16 some of it.

17 THE COURT: Well, the statements he made to the
18 victim or victims would not -- I mean would be admissible.

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: I'm just not --

21 MS. CAMPBELL: This isn't a situation where he's
22 taken into custody, he's not free to go.

23 THE COURT: I understand that. I understand
24 what hostage negotiations are. I understand what a
25 standoff is. I'm trying to protect the record, and we'll

1 find out who said what to whom when you're ready to offer
2 that.

3 MS. CAMPBELL: Okay.

4 THE COURT: Anything further?

5 And, by the way, Mr. O'Neill, if you've got some
6 case law to support that, I'd like to see it.

7 MR. O'NEILL: Yes, Your Honor.

8 THE COURT: Anything further today? Oh, just
9 the Neil v Biggers?

10 MR. O'NEILL: Yes, Your Honor.

11 THE COURT: You said there are four witnesses?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: How many IDs are there?

14 MS. CAMPBELL: There's six IDs total. We've got
15 four here today and then the investigator and the two
16 others will be here in the morning.

17 THE COURT: Call your first witness.

18 MS. CAMPBELL: State calls Pearl Kelly.

19 PEARL KELLY, after being duly sworn, testified
20 as follows:

21 THE CLERK: Have a seat. Please state your full
22 name.

23 IN CAMERA DIRECT EXAMINATION

24 BY MS. CAMPBELL:

25 Q Ms. Kelly, do you live here in the Columbia area?

1 A I do.

2 Q And what do you do for a living, ma'am?

3 A I'm a housewife.

4 Q I want to turn your attention back to February 24th
5 of 2007. Were you and your husband at the Wash World that
6 day on North Main Street?

7 A Yes, we were.

8 Q And approximately what time of day was it, do you
9 recall?

10 A I believe it was 12, 12:30.

11 Q Somewhere around lunchtime?

12 A Yes.

13 Q And while you were there at the Wash World, what was
14 your purpose that day in going there?

15 A Cleaning our clothes.

16 Q Okay. At some point were you out in the parking lot
17 sitting in the car with your husband outside the car?

18 A Yes.

19 Q And what was he doing and what were you doing at that
20 point?

21 A I was sitting in the driver's seat listening to the
22 radio. He was in the back trunk of the car looking for
23 something.

24 Q At some point did something catch your attention or a
25 man approach you?

1 A I heard talking behind the car so I looked back for a
2 moment to see my husband talking to a man.

3 Q And were you able to see the man's face at that
4 point?

5 A Momentarily, yes.

6 Q And did you continue to watch what was going on
7 between your husband and this man?

8 A No. I just glanced back to see he was talking to
9 him.

10 Q And were you able to hear what they were saying at
11 that point?

12 A No.

13 Q Shortly thereafter did you see the man again?

14 A When I saw him again he was coming around the
15 driver's side of the car at the rear to the side mirror.

16 Q So you actually looked in the mirror to be able to
17 look back and see him?

18 A Yes.

19 Q At that point what did you notice?

20 A I noticed that the man that was coming, you know, to
21 the car, around the car, had a handgun.

22 Q And was he coming towards you?

23 A He was.

24 Q And at that point was he saying anything?

25 A I really was minding my own business, but when I saw

1 the gun that frightened me so I got out of the car at that
2 point in time. I really asked just what was going on and
3 I got out of the car and was running and I never looked
4 back.

5 Q This is pretty upsetting. I'm sorry. But at that
6 point, though, you did get a look at his face that day?

7 A I looked at him.

8 Q For a few seconds?

9 A Yes.

10 Q And during the time period when you looked at his
11 face and you saw the gun -- this is a stupid question --
12 were you paying attention to what he looked like?

13 A Not really, but, you know, I glanced at him.

14 Q You glanced at him?

15 A Uh-huh.

16 Q And was it sunny out? Were you able to see?

17 A Yes.

18 Q Was there anything obstructing your view when you
19 looked back in the mirror?

20 A No.

21 Q Once you ran inside, what happened to your car?

22 A I think that he took the car. I was really upset and
23 I didn't look back outside and see what was going on then.
24 I called the police at this point.

25 Q Okay. And was your husband still outside?

1 A Yes.

2 Q And you called the police because you were worried
3 about your husband?

4 A Yes. And he had the handgun. It frightened me.

5 Q Did the police respond?

6 A They did.

7 Q And your car was gone?

8 A Yes.

9 Q And at that point that afternoon did they ask you to
10 write out a statement?

11 A They did.

12 Q And the next day, I believe, did you go down to the
13 Columbia Police Department?

14 A I think it was the next day.

15 Q And did you go down with your husband?

16 A I did.

17 Q And when you got down there, did you meet with
18 Investigator Thomas?

19 A Yes.

20 Q And at that point did he separate the two of you all?

21 A He did.

22 Q And did he tell you -- what did he tell you he wanted
23 you to look at?

24 A Some photographs, you know.

25 Q Some photographs?

1 A Some photographs.

2 Q And when he showed you some photographs, what I want
3 to show you is what hasn't been marked yet, but this
4 lineup is marked one, two, three, four, five, and six.
5 It's six photos.

6 A Uh-huh.

7 Q Is this a copy of the photo lineup he actually showed
8 you?

9 A It appears to be.

10 Q And when he showed it to you, did he tell you to pick
11 anyone?

12 A No.

13 Q Did he tell you who to pick?

14 A No.

15 Q Do you remember what, if anything, he asked of you?

16 A The only thing he asked me was to try to identify the
17 man.

18 Q But he didn't tell you he had to be in there and he
19 didn't tell you who to pick?

20 A No, he didn't.

21 Q And when you looked at those six photographs, were
22 you able to narrow it down or make an identification?

23 A Yes. At first I narrowed it down to two and then he
24 asked me to look at them again and see if I could narrow
25 it down to one.

1 Q And the two that you narrowed it down to is recorded
2 here on the second piece of paper. What numbers were
3 those?

4 A You don't have your glasses?

5 A If it's indicated on here it would be four or
6 six which would be this one; is that right?

7 A This one and this one, uh-huh.

8 Q Is that right?

9 A Uh-huh.

10 Q And those were the two you were able to narrow it
11 down to?

12 A Yes.

13 Q But you weren't able to say positively which one it
14 was?

15 A When I looked at them again I pointed to one that I
16 thought it was for sure. I pointed to that one.

17 Q No. 6?

18 A Uh-huh.

19 Q But initially, in all fairness, you were able to
20 narrow it down to the two?

21 A Uh-huh.

22 Q And that man, had you ever seen him before that day?

23 A Never.

24 Q And you don't have any bias or prejudice towards him?

25 A No.

1 Q Other than he robbed you?

2 A Uh-huh.

3 Q At any time did anyone suggest which one to pick out?

4 A Never.

5 Q Did Investigator Thomas ever push you to narrow your
6 choice more?

7 A No.

8 Q And the reason that you narrowed it down first to
9 four and six and then ultimately to six, you recognized
10 this man because of he was who?

11 A Because he was the man I saw with the gun, and when I
12 looked back he was talking with my husband and I think
13 he's the one.

14 Q That robbed you of your car?

15 A Yes.

16 Q And you're basing that identification just on what
17 you saw that day at Wash World?

18 A That's all.

19 Q Thank you, ma'am.

20 Oh, just one more question.

21 And there was some press coverage of this case,
22 but you didn't see his picture on the TV or anything, did
23 you?

24 A No.

25 MS. CAMPBELL: Thank you.

1 MS. SINGLETARY: Thank you, Your Honor. May it
2 please the Court.

3 IN CAMERA CROSS-EXAMINATION

4 BY MS. SINGLETARY:

5 Q Good afternoon, Ms. Kelly.

6 A Good afternoon.

7 Q I'm just going to ask you a few questions.

8 Now, Ms. Campbell brought up the fact of whether
9 or not you wear glasses today. Do you wear glasses?

10 A I don't wear glasses. They're only for reading.

11 It's just for reading up close.

12 Q Okay. So you wear glasses for reading?

13 A Just for reading.

14 Q Okay. So you wouldn't have your glasses on -- you
15 didn't have on your glasses on November (sic) the 24th?

16 A No, I didn't need any glasses at that time.

17 Q Okay. And you just testified to the fact that you
18 were initially sitting in the car, correct?

19 A I was.

20 Q And you were listening to music?

21 A Uh-huh.

22 Q And when the person came up that you saw with the
23 gun, initially you didn't pay him that much attention?

24 A I just looked back and saw him talking to my husband.

25 Q You looked back and saw him talking to your husband?

1 A Yes.

2 Q And you said you looked back through the rearview
3 mirror?

4 A No. When he was coming around the side of the car,
5 the side mirror there, that's where I saw him the second
6 time I saw him.

7 Q Yes. And you were looking through the mirror?

8 A Yes, I happened to look through the mirror and saw
9 him.

10 Q And you said you just glanced?

11 A Yes. When I saw him in the mirror, yes, I saw him
12 and I glanced because I was frightened when I saw the
13 handgun, so I was done looking at anything and then I
14 jumped out of the car and ran.

15 Q And you jumped out of the car and you ran away
16 because you saw that handgun?

17 A Yes. I think he said get out of the car or
18 something, you know.

19 Q Okay. And you just have a brief second to look at
20 his face? That's what you just testified to.

21 A Yes. I wasn't trying to get a good look at anything.
22 You know, I just heard a man talking to my husband and I
23 looked back and saw him and I didn't know anything was
24 going on at this point.

25 Q I understand that, ma'am. I understand.

1 And you said you were minding your own business?

2 A I was.

3 Q And you got out of the car?

4 A I did.

5 Q And you weren't trying to look back, you were trying
6 to get out of there?

7 A Once I saw him, I saw him, then I think he said
8 something like get out of the car, you know. It's just,
9 you know, a very upsetting day. So I heard him say
10 something, get out of the car or something, I think, and I
11 got out of the car and didn't take anything else, I just
12 ran.

13 Q And you just ran, you didn't look back?

14 A I didn't.

15 Q And your husband was still outside at this point?

16 A He was.

17 Q So Ms. Campbell, the last question she asked you, she
18 said that you didn't see any media coverage at all about
19 this incident?

20 A Uh-huh.

21 Q Is that correct?

22 A I did not.

23 Q That night on the news you didn't hear anything about
24 a hostage standoff?

25 A I don't think so. I don't think I did.

1 Q Okay. That morning before you went to the police
2 station to see the photo lineup, you didn't see anything
3 in the newspaper?

4 A No. I don't look at the newspapers every morning.

5 Q You don't look at newspapers, okay.

6 A Not much.

7 Q And she also said that on that date, you gave a
8 statement, on February 24th, 2007?

9 A Uh-huh.

10 Q Gave a statement to law enforcement?

11 A Yes, I did.

12 Q And do you remember what you told law enforcement
13 about the appearance of the man that you saw with the gun?

14 A I told her what I thought that I saw the short moment
15 that I saw him.

16 Q Okay. The short moment that you saw him?

17 A Uh-huh.

18 Q Okay. And I know that was a long time ago. Do you
19 want me to show you the statement that you actually gave
20 law enforcement? It says you just sort of blurted out --

21 A You can.

22 Q -- what you said.

23 A You can.

24 Q I can show you or do you just want me to recap what
25 you said?

1 A You want to read it?

2 Q Yes.

3 A That's fine.

4 Q All right. You said that the man had on jeans, had a
5 tannish-green jacket, a cap, he was medium to dark skin
6 complexion, and he looked hairy?

7 A Uh-huh.

8 Q Do you remember that on that day that you didn't
9 mention anything about a gun in that statement?

10 A I didn't.

11 Q Okay. And then that next day when you went to the
12 police station, which was the 25th of February, you said
13 that when you were shown that lineup, you narrowed it down
14 between number four and number six?

15 A I did.

16 Q And then you said that Investigator Thomas told you,
17 hey, could you look at this and narrow it down to just
18 one?

19 A Yes, out of the two that I first picked out, uh-huh,
20 yes.

21 Q Okay. And you said at that point when he brought
22 that to your attention to narrow it down between number
23 four and number six, that's when you picked number six?

24 A Yes, I did.

25 Q Now, did you know -- do you know whether or not he

1 annotated that anywhere, that you finally narrowed it to
2 number six? Do you know if he wrote that down anywhere?

3 A It wasn't noted.

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

5 BY MS. SINGLETARY:

6 Q And I think, Ms. Campbell -- and if I can show you
7 this. And this is the form that he actually had you to
8 fill out. And where it says, I picked out a picture, does
9 that still say four or six?

10 A Yes, it does.

11 Q So it says -- it doesn't say just six, it says four
12 or six?

13 A Yes, it says four or six.

14 MS. SINGLETARY: Your Honor, I have no further
15 questions at this time.

16 THE COURT: All right. Redirect.

17 MS. CAMPBELL: Nothing further from this
18 witness, Your Honor.

19 THE COURT: Thank you very much, ma'am. You may
20 come down.

21 Next witness.

22 MS. CAMPBELL: The State calls Olin Kelly.

23 OLIN KELLY, after being duly sworn, testified as
24 follows:

25 THE CLERK: Have a seat and state your full name

1 for the record.

2 THE WITNESS: My name is Olin King Kelly.

3 IN CAMERA DIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q Mr. Kelly, where are you employed? Where do you
6 work?

7 A I work at Shaw Industries.

8 Q How long have you been there?

9 A I have been there for 37 years. It was Allied
10 Chemical before.

11 Q I want to turn your attention back to February the
12 24th of 2007, that day around lunchtime, around noon, were
13 you and your wife at Wash World?

14 A We were.

15 Q And were you driving an automobile that day?

16 A Yes.

17 Q And what kind of automobile did you have?

18 A It was a Lincoln Towncar.

19 Q At some point you all were in the Wash World and then
20 you were out in the parking lot and you were towards the
21 rear of your car?

22 A Yes.

23 Q Can you tell the judge what you observed?

24 A Okay. Me and my wife was sitting in the car
25 listening to the radio. I got out of the car and went to

1 the trunk of the car. And while looking in the trunk of
2 the car, this car pulled up behind me. So I turned to see
3 what was going on. The guy in the car was saying
4 something to me, but I couldn't hear what he was saying.

5 Q Uh-huh.

6 A So he gets out of the car, he comes to me, he pulls
7 his gun and said, Tell your wife to get out of the car,
8 I'm taking the car. Don't do nothing foolish if you value
9 your life.

10 After having the gun pointed at me, all right, I
11 walked to the driver's side -- or no, the passenger's side
12 of the car and said to my wife, Honey, get out of the car.
13 And while he's standing there with the gun, he said,
14 Ma'am, get out of the car, get out of car. She didn't
15 really hear what he was saying because she was listening
16 to the radio and so she didn't know.

17 All right. So he backs around the car with the
18 gun still pointed at me --

19 Q Uh-huh.

20 A -- and walks up to my wife with the gun and tells
21 her, Ma'am, get out of the car.

22 Well, he had gotten up close to her. I guess
23 she noticed him through that mirror and she gets out of
24 the car. And she said she was looking at the expression
25 on my face and she knew something was wrong, too, and

1 that's why she ran into the laundromat.

2 Q And what happened after she ran into the laundromat?
3 Where did the man go?

4 A Okay. He jumps in the driver's seat and pulls off,
5 and I'm standing there watching him as he goes.

6 Q During this period of time, this whole exchange, do
7 you know how long you got an opportunity to look at him?

8 A I don't know how long, but I was looking in his face
9 when he was in the car and I was looking in his face when
10 he came and pointed the gun at me. I kept my eyes on him.

11 Q Was it light enough so that you could see his face
12 clearly?

13 A Yes, the light was enough.

14 Q And, in fact, when he approached with the gun, did he
15 get within a few feet of you?

16 A Yes.

17 Q So you got a good look at his face?

18 A I did.

19 Q And were you paying attention to what he was doing
20 because he had a gun?

21 A I was paying very close attention to what he was
22 doing.

23 Q Had you ever seen him before?

24 A No.

25 Q Was there anything obstructing your view of his face,

1 anything between you?

2 A Nothing between us.

3 Q Did the police respond shortly after your car got
4 stolen?

5 A Yes, they did.

6 Q And that afternoon did they come out and take a
7 statement?

8 A They took a statement right there on the spot.

9 Q On the spot --

10 A Yes.

11 Q -- that day?

12 A Yes.

13 Q And then the next day you go down to the police
14 department?

15 A Yes.

16 Q And did you take your wife with you?

17 A Yes.

18 Q And when you got down there did you meet Investigator
19 Thomas?

20 A Yes.

21 Q And once you got there, were you all separated?

22 A Yes, we separated.

23 Q And what was the purpose of you going that day, did
24 you know?

25 A I didn't know at the time.

1 Q Once you got there, did he show you some photographs?

2 A Yes, he did.

3 Q I'm going to show you what's -- we can't mark it
4 today -- this document, which is a copy of the photographs
5 he showed you.

6 A Yes.

7 Q Is that it, a copy?

8 A That's it.

9 Q And when he showed you these photos, this circle
10 wasn't on it, was it?

11 A No.

12 Q Okay. But the numberings were, the one, two, three
13 four, five, six, right?

14 A That's correct.

15 Q And when you looked at those photographs, did he tell
16 you who to pick?

17 A No.

18 Q Did anyone influence what you were viewing or tell
19 you that you should pick somebody?

20 A No.

21 Q And, in fact, when he showed you those photographs,
22 did you look at all six of them?

23 A I did.

24 Q And when you looked at all six, did you recognize
25 anyone in those photos?

1 A Yes.

2 Q And that's the one marked number two, right?

3 A Number two, right.

4 Q And why did you recognize that person in that photo
5 lineup?

6 A I knew that's the man I stared in the face.

7 Q The day before, the man that had stolen your car?

8 A That's correct.

9 Q At gunpoint?

10 A Yes.

11 Q And once you recognized him, did you tell
12 Investigator Thomas you recognized him?

13 A I did.

14 Q And, in fact, did he then memorialize it and reduce
15 it to writing in a copy of this?

16 A That's correct.

17 Q And that indicates you recognize number two?

18 A That's correct.

19 Q And you also circled it in addition?

20 A Yes.

21 Q And you recognize this man because that's the man
22 that robbed you at gunpoint and threatened your wife at
23 gunpoint?

24 A That's correct.

25 Q In between the time that he robbed you and the next

1 day when Investigator Thomas showed you these six photos,
2 did you see any pictures of the defendant?

3 A No, not at all.

4 Q Not at all. And are you basing your recommendation
5 of that one that's number two on that photo lineup, is
6 that based on what you saw at Wash World?

7 A Yes.

8 Q And nothing else?

9 A That's correct.

10 MS. CAMPBELL: Thank you, sir.

11 THE COURT: Cross-examination.

12 MS. SINGLETARY: Thank you, your Honor.

13 IN CAMERA CROSS-EXAMINATION

14 BY MS. SINGLETARY:

15 Q Good afternoon, Mr. Kelly.

16 A Good evening.

17 Q Now, when you gave a statement back on
18 February 24th, and I'm going to ask you some of the
19 similar questions that I asked your wife.

20 A Okay.

21 Q Do you remember some of the description that you
22 actually gave to the police officers who responded on that
23 day?

24 A Yes.

25 Q And if I state them aloud right now, will that

1 refresh your memory of it since you don't have the actual
2 statement in front of you?

3 A Okay.

4 Q Okay. Do you remember telling them that the suspect
5 had on a green jacket?

6 A Yes.

7 Q Gray pants?

8 A I believe so.

9 Q Light brown, that his complexion was light brown with
10 a mustache?

11 A Not light. Well, I may have said light brown. He
12 wasn't a dark skin color.

13 Q Okay. And that was all the description you gave to
14 the police officers on February 24th?

15 A Maybe.

16 Q All right. And I'm not trying to trip you up.

17 A Okay.

18 Q That's all that was in your statement. I'm not
19 trying to trip you up at all.

20 And then that next day, that's when you went to
21 the police station, which would be February 25th of 2007?

22 A Okay.

23 Q And you stated that your wife Ms. Kelly and you were
24 separated by Mr. Thomas?

25 A That's correct.

1 Q And that Mr. Thomas or Investigator Thomas didn't
2 suggest anyone to pick out of this lineup?

3 A That's correct.

4 Q Now, let's go back to your recollection of the actual
5 incident occurring.

6 A Okay.

7 Q Now, you testified to the fact that initially you and
8 your wife were both sitting in the car listening to music.

9 A That's right.

10 Q Correct? And if I get anything wrong, don't be
11 scared to tell me, okay?

12 A All right.

13 Q And then you get out of the car and you go to the
14 trunk of the car?

15 A That's correct.

16 Q Okay. Now, you open up the trunk of the car?

17 A Uh-huh.

18 Q Is the trunk all the way up?

19 A Yes, it is.

20 Q And while this trunk is all the way up, that's when
21 you say that the suspect pulls up in a car?

22 A Yes. Yes, behind me.

23 Q Okay. And when he pulls up, he's saying something
24 but you don't understand what he's saying?

25 A Right. Because the vehicle's running and he's

1 sitting in the driver's seat and he pulls up behind me and
2 he's on the far side of the vehicle and he's saying
3 something. I don't know if he had car trouble. I don't
4 know what his problem is.

5 Q Uh-huh.

6 A Matter of fact, when he pulled up, he attempted to
7 get out of the car before putting it in park.

8 Q So the car kept moving?

9 A So the car kept moving.

10 Q Uh-huh.

11 A He stopped for a moment and threw it into park. And
12 I'm sitting there looking at him saying, What's going on?

13 Q Uh-huh.

14 A I'm trying to figure out what's going on. And then
15 he comes to me with this gun.

16 Q Okay. Now, I just want to get the position straight.

17 A Okay.

18 Q Now, let's say --

19 MS. SINGLETARY: Your Honor, may I approach?

20 THE COURT: Sure.

21 BY MS. SINGLETARY:

22 Q Let's say that this is your car, okay?

23 A Okay.

24 Q And I'm going to say that your car is parked this way
25 in the parking lot, okay?

1 A Okay.

2 Q And so I'm you and I have the trunk open.

3 A Uh-huh.

4 Q Okay. So when the suspect pulls up, does he pull up
5 directly behind your car or to the side of the back of
6 your car?

7 A He's directly behind my car.

8 Q Directly behind your car. So if I'm pulling up
9 directly behind your car and the trunk is up, because that
10 trunk is up, can I tell whether or not someone is inside
11 the car?

12 A I believe you could see through there.

13 Q So he could see through the trunk or would he have to
14 like put himself to the side?

15 A He drove up. So with the car parked facing this way
16 and he pulls up behind like that, he has an opportunity to
17 see who is sitting in that car.

18 Q But you said he was parked directly behind your car.

19 A Well, okay, at an angle then --

20 Q Okay.

21 A -- but behind the car.

22 Q Okay. At an angle but behind. Because my question
23 was, if the trunk was up, then it would be hard for
24 someone to see -- like if you're inside, if you're inside
25 a car and say, for instance, like your wife was and you're

1 at the trunk of the car, with the trunk being fully up,
2 it's going to be hard to see that person looking inside
3 the trunk. Do you understand what I'm trying to say?

4 A Yes.

5 MS. SINGLETARY: Your Honor, I have no further
6 questions.

7 THE COURT: All right. Anything further?

8 MS. SINGLETARY: Oh, no, I'm sorry, Your Honor.
9 One more question.

10 THE COURT: Go ahead.

11 BY MS. SINGLETARY:

12 Q Now, after this incident, did you and your wife that
13 night or sometime after this, did you actually talk about
14 what happened on that day?

15 A Yes, we talked about it.

16 MS. SINGLETARY: I have no further questions,
17 Your Honor.

18 THE COURT: Anything further?

19 MS. CAMPBELL: No, sir.

20 THE COURT: All right. You may come down.
21 Can we do the next two in the morning?

22 MS. CAMPBELL: Sure.

23 THE COURT: All right. Let's do that. 9:15.

24 MS. CAMPBELL: Yes, Your Honor.

25 MR. O'NEILL: Yes, Your Honor.

1 THE COURT: All right. We'll stand at ease
2 until 9:15.

3 MS. SINGLETARY: Thank you, Your Honor.

4 (The proceedings were concluded.)

5 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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4 CERTIFICATE OF REPORTER5
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7
8 STATE OF SOUTH CAROLINA)
9)
10 COUNTY OF RICHLAND)11
12 I, CAROL M. THUEME, RPR, Official Court Reporter for
13 the 11th Judicial Circuit of the State of South Carolina,
14 do hereby certify that the foregoing is a true, accurate
15 and complete Transcript of Record of the proceedings had
16 and evidence introduced in the trial of the captioned
17 case, relative to appeal, in the Court of General Sessions
18 for Richland County, South Carolina, on the 30th day of
19 March, 2009.20
21 I do further certify that I am neither of kin,
22 counsel nor interest to any party hereto.
23
24
25

April 25, 2010



23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 07-GS-40-1938-1941;
2000-2003; 2048

State of South Carolina)
)
 vs.) TRANSCRIPT OF RECORD
) (Trial)
)
 Randolph Ashford,)
)
 Defendant.)

March 31, 2009 through April 3, 2009
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

KATHRYN LUCK CAMPBELL, DEPUTY SOLICITOR
WILL BRYANT, ASSISTANT SOLICITOR
Attorneys for the State

DEON O'NEIL, DEPUTY PUBLIC DEFENDER
NICOLE SINGLETARY, DEPUTY PUBLIC DEFENDER
Attorneys for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

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3 Direct By Ms. Campbell 672

4 Cross By Ms. Singletary 705

5 Redirect By Ms. Campbell 716

6 Recross By Ms. Singletary 721

7 **ARTHUR L. THOMAS**

8 Direct By Ms. Campbell 723

9 Cross By Ms. Singletary 748

10 Redirect By Ms. Campbell 752

11 **RANDOLPH ASHFORD**

12 Direct By Mr. O'Neil 777

13 Cross By Ms. Campbell 817

14 Redirect By Mr. O'Neil 855

15 Recross By Ms. Campbell 856

16 **STATE'S EXHIBITS**

17	NO.	DESCRIPTION	ID	EV
18	1	Advice of Rights Form		688
19	2	Statement		692
20	3	Line-up	13	
21	4	Line-up	13	194
22	5	Line-up	13	218
23	6	Line-up	13	234
24	7	Photograph	50	
25	8	Line-up	54	256

1	9	Line-up	58	
2	10	Photograph	124	185
3	11	Photograph	124	163
4	12	Photograph	124	164
5	13	Photograph	124	164
6	14	Photograph	124	164
7	15	Photograph	124	164
8	16	Photograph	124	185
9	17	Photograph	124	210
10	18	Photograph	124	209
11	19	Photograph	125	669
12	20	Photograph	125	670
13	21	Photograph	125	670
14	22	Photograph	125	190
15	23	Photograph	125	190
16	24	Photograph	125	190
17	25	Photograph	125	670
18	26	Photograph	125	670
19	27	Photograph	125	670
20	28	Photograph	125	670
21	29	Photograph	125	670
22	30	Photograph	125	257
23	31	Photograph	126	257
24	32	Photograph	126	257
25	33	Photograph	126	257

1	34	Photograph	126	257
2	35	Photograph	126	257
3	36	Photograph	126	257
4	37	Photograph	126	257
5	38	Photograph	126	314
6	39	Photograph	126	496
7	40	Photograph	126	496
8	41	Photograph	126	496
9	42	Photograph	126	528
10	43	Photograph	127	619
11	44	Photograph	127	
12	45	Photograph	127	619
13	46	Photograph	127	620
14	47	Photograph	127	620
15	48	Photograph	127	496
16	49	Photograph	127	496
17	50	Photograph	127	496
18	51	Photograph	127	496
19	52	Photograph	127	620
20	53	Photograph	127	620
21	54	Photograph	127	318
22	55	Photograph	128	323
23	56	Photograph	128	323
24	57	Photograph	128	323
25	58	Photograph	128	323

1	59	Photograph	128	323
2	60	Photograph	128	362
3	61	Photograph	128	623
4	62	Photograph	128	623
5	63	Photograph	128	623
6	64	Photograph	128	623
7	65	Photograph	128	324
8	66	Photograph	128	324
9	67	Photograph	129	324
10	68	Photograph	129	324
11	69	Photograph	129	324
12	70	Photograph	129	324
13	71	Photograph	129	324
14	72	Photograph	129	324
15	73	Photograph	129	360
16	74	Photograph	129	360
17	75	Photograph	129	361
18	76	Photograph	129	537
19	77	Photograph	129	538
20	78	Photograph	129	361
21	79	Photograph	130	533
22	80	Photograph	130	620
23	81	Photograph	130	496
24	82	Photograph	130	
25	83	Photograph	130	

1	84	Photograph	130	420
2	85	Photograph	130	420
3	86	Photograph	130	420
4	87	Photograph	130	185
5	88	Photograph	130	185
6	89	Photograph	130	185
7	90	Photograph	130	421
8	91	Photograph	131	670
9	92	Photograph	131	670
10	93	Photograph	131	445
11	94	Photograph	131	445
12	95	Photograph	131	259
13	96	Photograph	131	430
14	97	Photograph	131	430
15	98	Photograph	131	421
16	99	Photograph	131	421
17	100	Photograph	131	670
18	101	Gun	131	165
19	102	Photograph	240	362
20	103	Photograph	240	289
21	104	Photograph	241	289
22	105	Photograph	241	289
23	106	Photograph	241	289
24	107	Photograph	241	289
25	108	Photograph	241	289

1	109	Rape Kit	382	403
2	110	Clothes	382	404
3	111	Report	598	598
4	112	Report	644	
5	113	Photograph	669	704

DEFENDANT'S EXHIBITS

7	NO.	DESCRIPTION	ID	EV
8	1	Clothing	790	791

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Tuesday, March 31, 2009

THE COURT: Is the State ready to proceed?

MS. CAMPBELL: Kind of, Your Honor. Just a second.

(Pause)

MS. CAMPBELL: Your Honor, with the Court's permission, I never put numbers on yesterday because the court reporter didn't have stickers. On those two numbers that are already in, can I just number those?

MS. SINGLETARY: We have no objection, Your Honor.

THE COURT: Without objection.

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

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

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

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

THE COURT: The State ready to proceed?

MS. CAMPBELL: Yes, Your Honor.

THE COURT: Call your next witness.

MS. CAMPBELL: We would call Gregory Fleming.

1 GREGORY FLEMING, after being duly sworn,
2 testifies as follows:

3 **THE CLERK:** Please have a seat. State your full
4 name for the record.

5 **THE WITNESS:** My name is Gregory Fleming.

6 DIRECT EXAMINATION

7 **BY MS. CAMPBELL:**

8 **Q** Mr. Fleming, do you live here in the Columbia area?

9 **A** Yes, ma'am.

10 **Q** And do you work?

11 **A** Yes, ma'am.

12 **Q** What do you do, sir?

13 **A** Work with the City of Columbia.

14 **Q** The City of Columbia?

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

16 **Q** I want to turn your attention back to February 24th
17 of 2007. Were you here in the Columbia area that
18 day?

19 **A** Yes, ma'am.

20 **Q** And tell the jury what happened to you at the Baptist
21 church that day, Gill Creek Baptist Church?

22 **A** On that day me and my girlfriend was coming from
23 Wal-Mart.

24 **Q** From Wal-Mart?

25 **A** Mm-hmm (affirmative). Off Cushman Drive. We was

1 coming to the stop sign and we seen a Lincoln fly
2 around the corner and hit the median and lost control
3 and hit the telephone pole. So what I did, I turned
4 around in the church park lot to see if he was all
5 right. When we got to the -- when we parked into the
6 parking lot, he got out of his car with the gun and
7 came up to our car and told us to get the out the
8 car.

9 Q Mm-hmm (affirmative).

10 A And I took off. And when I took off, he went around
11 to a white SUV that was parked in the parking lot and
12 four girls was in there listening to the music. He
13 went to their car and he couldn't get in their car so
14 he went inside the church and he grabbed a lady named
15 Ms. Worthy out of the church at gunpoint. She was
16 crying. Then he let her go. Then he went out back
17 on Cushman Drive, which he tried to flag down two
18 cars, but they sped off, you know. And when Blue
19 Ribbon cab came, then he had stopped him and took his
20 car and took off. And I followed him and I was
21 calling 911 at the time.

22 Q Let me back up a little bit. You said that you were
23 in your car?

24 A I was in my car.

25 Q When you saw the wreck of the Lincoln Town Car?

1 **A** Yes, ma'am.

2 **Q** And at that point you said that you pulled into

3 the --

4 **A** Church parking lot.

5 **Q** To see if the person who was driving was okay?

6 **A** Was all right.

7 **Q** Did he then get out of that car?

8 **A** He got out of the car with a gun.

9 **Q** At that point did he come towards you?

10 **A** Yes, ma'am.

11 **Q** What was the lighting like that day?

12 **A** It was sunny.

13 **Q** Sunny?

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

15 **Q** And were you able to get a good look at the person

16 who got out of the car, having just wrecked it?

17 **A** Yes, ma'am.

18 **Q** And how close? You said that he came up and came

19 towards your car?

20 **A** He came to the driver's window.

21 **Q** And you were driving that day?

22 **A** I was driving.

23 **Q** Who else was in your vehicle?

24 **A** My girlfriend.

25 **Q** What's her name?

1 **A** Kimberly Gilliard.

2 **Q** Kimberly Gilliard?

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

4 **Q** When he had came up, he came towards the driver's
5 side first?

6 **A** Yes.

7 **Q** And you were driving?

8 **A** Yes, ma'am.

9 **Q** How close did he actually get to you that day? You
10 noticed he had a gun?

11 **A** Yes, ma'am.

12 **Q** How close did he actually get to you that day?

13 **A** To the window.

14 **Q** To the window?

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

16 **Q** So was he as close as you and I are right here?

17 **A** Yes, ma'am.

18 **Q** So within basically almost an arm's length?

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

20 **Q** And at that point did you get a good look at his
21 face?

22 **A** Yes, ma'am.

23 **Q** Were you paying attention to what he looked like?

24 **A** Yes, ma'am.

25 **Q** Had you ever seen him before?

1 **A** I seen him over to Roberta's trailer.

2 **Q** Roberta's trailer?

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

4 **Q** Who is Roberta?

5 **A** His girlfriend.

6 **Q** And did you know Roberta, or did you know him?

7 **A** I know Roberta.

8 **Q** But you had seen him on a prior occasion?

9 **A** Yes, ma'am.

10 **Q** So when he approached you, you knew you had seen him

11 before. Did you even know his name though?

12 **A** I didn't know his name.

13 **Q** So you didn't know his name?

14 **A** (Shakes head negatively).

15 **Q** How long did you get an opportunity to look at his

16 face?

17 **A** When he came up to the car with the gun, I'm looking

18 at both of them. I'm looking at the gun and him.

19 **Q** Both the gun and him?

20 **A** And him.

21 **Q** So you got a good look at him at that point?

22 **A** Yes, ma'am.

23 **Q** You mentioned then you saw him go somewhere else in

24 the parking lot?

25 **A** He went to a white SUV right next, not too far in

1 from me. And the four girls was in the car listening
2 to the music. He went there to try to get this SUV
3 and scared them and they ran off in the church, and
4 then he went into the church and grabbed Ms. Worthy.

5 Q So did you get a good look at him when he came out of
6 the church?

7 A Yes, sir.

8 Q Then you mentioned that he went onto Cushman Road and
9 started flagging down cars?

10 A Yes, ma'am.

11 Q He was much further away from you at that point?

12 A Mm-hmm (affirmative).

13 Q But could you tell it was still the same guy?

14 A Yes, ma'am.

15 Q You mentioned that you then followed -- he got into
16 the Blue Ribbon cab?

17 A Into the Blue Ribbon cab.

18 Q And at that point which direction did the Blue Ribbon
19 cab go to?

20 A Went back up like it's going towards Two Notch Road
21 and made the first right on Maurice Street.

22 Q On Maurice Street?

23 A And Maurice Street will take you straight to Booth
24 Street.

25 Q And are you familiar with this area?

1 **A** Yes, ma'am.

2 **Q** How are you familiar with it?

3 **A** I was raised up in that area.

4 **Q** You were raised up in that area?

5 **A** Yes, ma'am.

6 **Q** You said you followed him to an address on Booth

7 Street. Did know who lived there?

8 **A** Yes, ma'am.

9 **Q** Who lived there?

10 **A** Debbie Ann Simmons.

11 **Q** Debbie Ann Simmons?

12 **A** Yes, ma'am.

13 **Q** Did you know Ms. Simmons?

14 **A** Yes, ma'am.

15 **Q** Did you actually though get to see her that day?

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

17 **Q** He parked the Blue Ribbon cab in front of

18 Ms. Simmons's house?

19 **A** Yes, ma'am.

20 **Q** And did you see him get out of the car at that point?

21 **A** When I turned the corner the cab was right there.

22 And he was already in the house. Because she had her

23 son, her brother, three kids was in the house, too,

24 two girls and a --

25 **Q** Did you find that out it later?

1 **A** Yeah. When they ran out the door crying.

2 **Q** So you were there actually when he let some of the
3 hostages go?

4 **A** Yes, ma'am.

5 **Q** You mentioned that you were on the phone trying to
6 call the police?

7 **A** Yes, ma'am.

8 **Q** And did you make contact -- did the police respond to
9 the address on Booth Street?

10 **A** Yes, ma'am.

11 **Q** While you were there?

12 **A** Yes, ma'am.

13 **Q** And did you make contact with them?

14 **A** I talked to 911.

15 **Q** To 911?

16 **A** Yeah. The dispatch.

17 **Q** Did the police actually make contact with you that
18 afternoon though wanting to get information from you?

19 **A** No.

20 **Q** The next day did they make contact with you?

21 **A** The city police.

22 **Q** The city police did?

23 **A** That's right.

24 **Q** Did you actually give them a statement about what had
25 happened with you?

1 **A** Yes, ma'am.

2 **Q** Beg the Court's indulgence. And I believe I'm going
3 to show you a copy of a statement. Do you recognize
4 that?

5 **A** Yes, ma'am.

6 **Q** And is that the statement you give to the city
7 police?

8 **A** Yes, ma'am.

9 **Q** And I believe you gave it that day on the 24th around
10 3:30 p.m.?

11 **A** Yes, ma'am.

12 **Q** And you were actually on Maurice Street when you gave
13 it to them?

14 **A** That's my address. I was at home. I had just moved
15 to Holmes Avenue.

16 **Q** Okay. And you gave them that statement that
17 afternoon. The next day, on the 25th, did you and
18 your girlfriend have an occasion to go to the city
19 police department?

20 **A** Yes, ma'am.

21 **Q** And did you meet with an Investigator Thomas when you
22 went to the city police department?

23 **A** Yes, ma'am.

24 **Q** And once you got there, tell the judge what happened?

25 **A** We got there and he sat us in two different rooms.

1 Q Mm-hmm (affirmative).

2 A And he gave us a line-up of six people and he asked
3 me to pick out do I know the person that's involved
4 in the hostage, and I picked out the right person.

5 Q Did he tell you who to pick?

6 A No, ma'am.

7 Q Did he suggest that you had to pick someone?

8 A No, ma'am.

9 Q Did he just ask you to look at all the pictures?

10 A Just asked me to look at all the pictures.

11 Q I want to show you what's been marked as State's
12 Exhibit No. 5, the second page of that. Do you
13 recognize that?

14 A Yes, ma'am.

15 Q And is that the actual photo line-up that he showed
16 you that day?

17 A Yes, ma'am.

18 Q I notice now it has some initials on it. Whose
19 initials are those?

20 A That's mine.

21 Q When he showed you this line-up, were those initials
22 there?

23 A No, ma'am.

24 Q And when you looked at all six of the pictures, did
25 you recognize anyone?

1 **A** I recognized him.

2 **Q** What's the number on that one?

3 **A** Number 4.

4 **Q** Why did you recognize him?

5 **A** Because that's the one who did the crime.

6 **Q** Who approached you and the girls, the one we've been

7 talking about here today?

8 **A** Yes, ma'am.

9 **Q** And you indicated that you recognized him and then

10 you circled the number next to his name?

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

12 **Q** I mean next to his picture. I'm sorry. And then you

13 initialed?

14 **A** Put my initials.

15 **Q** Which number is that?

16 **A** That's number 4.

17 **Q** Number 4?

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

19 **Q** And that's the person that you saw wreck the Town

20 Car, try to get your car, the white Tahoe where the

21 girls were?

22 **A** And took the Blue Ribbon cab.

23 **Q** And that you followed to Booth Street?

24 **A** Yes, ma'am.

25 **Q** The same person?

1 **A** Yes, ma'am.

2 **Q** Did he then have you memorialize on this photo,
3 line-up affidavit?

4 **A** Yes, ma'am.

5 **Q** And that indicates that you picked out number 4?

6 **A** Yes, ma'am.

7 **Q** And you signed it right there?

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

9 **Q** At any point did anyone tell you who to pick?

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

11 **Q** And were you making this identification based on what
12 you saw the day before?

13 **A** Yes, ma'am.

14 **Q** Did you watch any of the news that night?

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

16 **Q** So you hadn't seen an additional picture of the
17 Defendant prior to seeing these photos?

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

19 **MS. CAMPBELL:** Your Honor, I'd approach. It's
20 been marked State's Exhibit No. 5, Deon or Nicole.

21 **MS. SINGLETARY:** No objection.

22 **Q** You mentioned that your girlfriend, Kimberly, was in
23 a separate room?

24 **A** Yes, ma'am.

25 **Q** And so you didn't know who she picked?

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

2 **Q** Or if she recognized anyone at all?

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

4 **Q** But she was with you during this entire time from
5 when you went to the --

6 **A** Wal-Mart.

7 **Q** -- Wal-Mart until it ended up on Booth Street?

8 **A** Yes, ma'am.

9 **MS. CAMPBELL:** I don't have anything else, Your
10 Honor.

11 **THE COURT:** Cross examination.

12 **MS. SINGLETARY:** Thank you, Your Honor. If it
13 please the Court.

14 CROSS EXAMINATION

15 **BY MS. SINGLETARY:**

16 **Q** Good morning, Mr. Fleming.

17 **A** Good morning.

18 **Q** I just want to recap some of the testimony that you
19 just gave. You stated that you had seen my client
20 prior to February the 24th?

21 **A** I seen him at the church when he wrecked the car.

22 **THE COURT:** Say that again?

23 **A** I seen him at the church when he wrecked the car.

24 **Q** That was on the 24th, correct?

25 **A** Yes, ma'am.

- 1 Q But you said that you had seen him prior to the 24th?
- 2 A At the trailer, at Roberta's trailer.
- 3 Q Do you live in that location?
- 4 A I stay on Maurice Street.
- 5 Q You stay on what street?
- 6 A Maurice, right down Maurice Street.
- 7 Q How many times had you seen my client previously?
- 8 A About once.
- 9 Q Only once? And you said that you know Roberta Neil?
- 10 A Yes, ma'am.
- 11 Q Correct? And you know Debbie Simmons?
- 12 A Yes, ma'am.
- 13 Q Correct?
- 14 A Mm-hmm (affirmative).
- 15 Q Are you of any relation to them?
- 16 A No, ma'am.
- 17 Q But you just know them from the neighborhood?
- 18 A I just know them.
- 19 Q Okay. Now, you said that you were traveling on
- 20 Cushman Road?
- 21 A Yes, ma'am.
- 22 Q And then you came to a stop sign?
- 23 A To the stop sign on Cushman and -- it's on Cushman
- 24 Drive by the AME church.
- 25 Q So you came to that stop sign and you see a gray car

1 that's out of control, correct?

2 **A** It was a Lincoln. Yeah. The brown -- I think it was
3 like a brown Lincoln, I think. If I'm not mistaken,
4 it was Lincoln.

5 **Q** It was brown?

6 **A** It was a midsize Lincoln. Yes, ma'am.

7 **Q** But you see a car that's out of control?

8 **A** Yes, ma'am.

9 **Q** And you see that car hit a telephone pole?

10 **A** Yes, ma'am.

11 **Q** And while you're at the stop sign, is this occurrence
12 happening behind your vehicle, behind you at the stop
13 sign?

14 **A** Yes, ma'am. I was looking in the mirror and I saw
15 the car fishtail and hit the telegram (sic) pole.

16 **Q** Okay. So you were looking in the mirror?

17 **A** Yes, ma'am.

18 **Q** And once you saw this occur, then you decide to pull
19 into the Gill Creek Baptist Church parking lot?

20 **A** Yes, ma'am.

21 **Q** And when you got into the parking lot you say that
22 you saw a man get out of the car with a gun?

23 **A** Yes, ma'am.

24 **Q** And then at this point you said that this man comes
25 to the driver's side door of your car?

1 **A** Yes, ma'am.

2 **Q** Okay. And about how long was he at the driver's side
3 door?

4 **A** It wasn't long. Because when I saw the gun and he
5 told me to get out, out of the car, and I just took
6 off. And my girlfriend said, he got a gun, you know
7 take off. And I took off. But he tried to -- he was
8 holding onto the door handle and when I took off he
9 ran to the white SUV.

10 **Q** Okay. So he was holding onto the door handle and
11 ya'll took off?

12 **A** Yes, ma'am.

13 **Q** Now, when you took off and you testified that you
14 could see him going to the white vehicle, were you
15 again looking --

16 **A** Yes, ma'am.

17 **Q** -- in the mirror?

18 **A** Because I stopped before. This is where you get back
19 on Cushman Drive. When I pulled it of the church
20 parking lot I stopped right there, looked into the
21 mirror; he went to the white SUV. Then when I came
22 back around to the same stop sign I was at before, he
23 went from the SUV to inside the church. Then when I
24 came back around he had Ms. Worthy coming out the
25 outside of the door and she was crying and saying,

1 Lord, help me, please, help me.

2 Q You were at the stop sign but you could hear what
3 Ms. Worthy was saying?

4 A Yeah. I let my window down.

5 Q Oh. You let your window down?

6 A Mm-hmm (affirmative).

7 Q Was your window down before?

8 A No. It wasn't. When he came to my car, the window
9 was not down.

10 Q It was up. Okay. How far would you say this stop
11 sign is from this church?

12 A The stop sign right here; the church right here.

13 Q So it was that close, the stop sign and the church?

14 A Yes, ma'am.

15 Q Like arm's length away from each other?

16 A Well, not arm's length. But the stop sign right here
17 on the Main Street. Then you bear off. You make a
18 right turn. Or you can make a left turn, but I made
19 a right turn. You go into the church parking lot.
20 You can just turn around in the church parking lot.
21 It's right next to the stop sign.

22 Q And so you said the duration of time that he was at
23 your window wasn't that long because as soon as you
24 saw the gun --

25 A I took off.

1 Q -- you took off? And the whole entire time you're
2 looking at what's actually happening through the
3 window of the car, correct?

4 A Through my rearview mirror.

5 Q Through your rearview mirror?

6 A Mm-hmm (affirmative).

7 Q And you said that on the 25th you actually went to
8 Columbia Police Department headquarters?

9 A Yes, ma'am.

10 Q And at that time you went with the individual that
11 was in your car with you?

12 A Yes, ma'am.

13 Q And you all were in separate locations?

14 A Yes, ma'am.

15 Q And it was your testimony that no one told you the
16 person to pick out?

17 A I looked at the -- he had the gun pointed at me. I
18 don't forget a face. I looked at his face and I saw
19 who he was, and that was the person I picked out.

20 Q So no one told you to pick out the person?

21 A Nobody told me. Nobody ever told me.

22 Q All right. And when you actually gave your statement
23 to police -- and I don't know. Do you have a copy of
24 your statement up there?

25 A It's in my car.

- 1 Q Okay. It's in your car?
- 2 A It's in my truck.
- 3 Q So you reviewed your statement in preparation for
- 4 your testimony?
- 5 A No.
- 6 Q You didn't?
- 7 A (Shakes head negatively).
- 8 Q You just keep your statement in your car?
- 9 A I just put it in there. I don't look at it.
- 10 Q All right.
- 11 A But I know what I said.
- 12 Q So would you agree with me that you told the police
- 13 officers that the individual you saw was wearing a
- 14 brown leather coat?
- 15 A It might have been brown. You know, I don't -- I
- 16 think it was brown.
- 17 Q And that the individual had blue jeans or slacks on?
- 18 A He had on blue jeans.
- 19 Q So you're sure now that it was blue jeans?
- 20 A I think it was blue jeans. I'm not positive.
- 21 Q Okay. You think it was blue jeans and that he was a
- 22 skinny black man?
- 23 A Yes, ma'am.
- 24 Q About five-foot-nine?
- 25 A About five -- around five-nine.

1 Q Weighing about 175 to 180 pounds?

2 A I think so.

3 Q And he was wearing a hat?

4 A Yes, ma'am.

5 Q But you didn't give him any description about whether
6 or not he had a mustache?

7 A He had -- I didn't give them no description of a
8 mustache. But, you know --

9 Q And you didn't give any other facial descriptions at
10 all?

11 A No.

12 Q Did you?

13 A No.

14 **MS. SINGLETARY:** Beg the Court's indulgence,
15 Your Honor. Your Honor, may I approach the witness?

16 **THE COURT:** Sure.

17 Q I just want you to identify these three pictures that
18 I'm showing you right now.

19 A Okay.

20 Q Now, do you see the sign for Gill Creek Church in
21 those pictures?

22 A Right there.

23 Q Gill Creek. You're going to have to speak up so that
24 she can --

25 A Oh. Right here.

1 Q So there is a sign for the Gill Creek?

2 A Yes, ma'am.

3 Q And you see the stop sign?

4 A Yes, ma'am.

5 Q Right there. Now, is that the stop sign that you
6 were at?

7 A There's another stop sign. There's a median right
8 over here. There's two stop signs, the stop sign
9 right here and the stop signs at the median. I was
10 at the one in the median fixing to make a left turn
11 on the road.

12 Q Look at this picture right here. That's a better
13 picture right there. Which stop signs were you at?

14 A Right there.

15 Q So the church would be right here?

16 A That's right.

17 MS. SINGLETARY: I have no further questions.

18 THE COURT: Redirect.

19 MS. CAMPBELL: None.

20 THE COURT: You may come down, sir. Thank you
21 very much. Next witness.

22 MS. CAMPBELL: The State would call Kimberly
23 Gilliard.

24 KIMBERLY GILLIARD, after being duly sworn,
25 testifies as follows:

1 **THE CLERK:** Please have a seat. State your full
2 name for the record.

3 **THE WITNESS:** Kimberly Gilliard.

4 DIRECT EXAMINATION

5 **BY MS. CAMPBELL:**

6 **Q** Ms. Gilliard, you live here in the Columbia area?

7 **A** Yes, I do.

8 **Q** Do you work?

9 **A** Yes, I do.

10 **Q** Where are you employed?

11 **A** CVS.

12 **Q** CVS?

13 **A** Yes.

14 **Q** I want to turn your attention back to February the
15 24th of 2007. What were you doing around noon that
16 day?

17 **A** We were coming back from the Wal-Mart.

18 **Q** And when you say we, who is that?

19 **A** Me and Mr. Fleming.

20 **Q** Mr. Fleming?

21 **A** Yes.

22 **Q** Who was driving that day?

23 **A** Mr. Fleming was driving.

24 **Q** What kind of car were you all in?

25 **A** Ford Taurus, blue.

1 Q And which Wal-Mart had you all been to that day?

2 A Forest Drive.

3 Q The forest Drive one?

4 A Yes.

5 Q And in order to get back to wherever you all were
6 going after the Wal-Mart, did you all end up nearby
7 Cushman Road?

8 A Yes. We had to come down Cushman Road to get home.

9 Q Are you aware where the Gilchrist Baptist Church is?

10 A Yes.

11 Q Can you tell this judge what happened to you all as
12 you all approached the Gill Creek Baptist Church?

13 A We were coming down Cushman Road, when we got just
14 before the stop signs, the car came around the curb
15 coming from Farrow Road and he was driving out of
16 control. So I said, well, he is going to crash, he's
17 going to crash. So, you know, I said, well, okay.
18 After he crashed we -- I told him, I said, well, we
19 need to see if he okay, you know, check to see if he
20 okay. So he turns around. And as he's turning, the
21 guy is running to the car. I'm like, okay. Well,
22 maybe he want to use the phone or something like
23 that.

24 He gets to the car and I could see the gun and
25 then he puts the gun up to the window and tells us to

1 get out of the car. So I'm like, I tell him to
2 drive, just drive, drive, drive. There is a gun,
3 drive. So after he couldn't get our car he ran to
4 the parking lot and some kids out by their white SUV.
5 And I guess one of the girls couldn't get the car.
6 started or something and he wound up -- they wound up
7 running into the church and he ran behind them and
8 then he comes out of the church with a lady holding a
9 gun to her head and running down to the back where we
10 were at in the street.

11 And it's two other cars, a couple of cars came
12 up and they wouldn't get out of their car. So the
13 cab driver finally pulled up and he stood in front of
14 the cab driver pointing the gun at the cab driver
15 telling him to get out of the car, get out of the
16 car. So I guess he got out. The cab driver got out
17 and he got into the car, into the cab and drove where
18 he was going and we followed him.

19 And I don't know where he was going. So I'm
20 like, you know, telling him, well, we need to call
21 somebody. And he's like well, call 911. We called
22 the 911 and trying to explain where we're going. And
23 we wound up in front of the trailer. I didn't
24 know -- I don't know the person in the trailer. I
25 didn't know -- all I knew is, you know, Mr. Fleming

1 used to stay in that area. And, you know, we're
2 going past. As we're going past where he stopped at,
3 we noticed kids come out of the trailer. And I said,
4 oh. I said, it's kids right there, it's kids right
5 there. So they ran past. Then another came out with
6 another little baby and she was crying. He is in the
7 trailer, he is in the trailer. I'm like --

8 **Q** And at that point he was in the trailer?

9 **A** Yes.

10 **Q** And that afternoon did you end up staying there on
11 the other end of Booth Street for a while?

12 **A** Yes.

13 **Q** Did you kind of get barricaded in?

14 **A** I got caught at the back end of that street because
15 they came, the police officers came and took
16 Mr. Fleming back to the precinct. And I was at the
17 back end of it and he got caught at the top. So I
18 was there throughout almost the whole thing.

19 **Q** And sometime after dark, shortly after dark, did the
20 police end up going in?

21 **A** Yes.

22 **Q** And then did you see him them bring out a man?

23 **A** Well, where they told me to move back at, because
24 actually I was -- I had to go to one of the
25 neighbors. I was at the one of the neighbor's houses

1 there and they told me to move back over there. And
2 I -- they was trying to explain that I was a part of
3 it.

4 But through all the commotion, you know, they
5 wound up going in and we heard a couple of shootings.
6 We heard shooting. It was just gunfire going around
7 and then the biggest explosion. And next thing I
8 know they were saying they was bringing him out. And
9 that was the most that I got.

10 Q Let me back up. You mentioned that when you all were
11 pulling up in front of the Gill Creek Baptist
12 Church --

13 A Mm-hmm (affirmative).

14 Q -- he approached you all?

15 A Yes.

16 Q And which side of the car did he go to?

17 A To the driver's side.

18 Q Were you able to get a good look at him then?

19 A Yes.

20 Q Was he within feet, a few feet of you?

21 A Yes.

22 Q Was there anything obstructing your view?

23 A No.

24 Q Were you paying attention to what he was doing?

25 A You couldn't help but pay attention. You couldn't.

- 1 Q And did you get a good look at his face?
- 2 A Yes.
- 3 Q And then you also saw him -- and I believe you've
- 4 gone through -- you saw him go over to where the
- 5 girls were in the white car?
- 6 A Yes.
- 7 Q Then go into the church and come back out?
- 8 A Come back out with the lady.
- 9 Q And then he actually flagged down the Blue Ribbon
- 10 cab?
- 11 A Well, the other two cars wouldn't stop. The cars was
- 12 looking at him and blowing and he wouldn't stop. He
- 13 stood in front. He got in direct, like in front of
- 14 the Blue Ribbon cab, so he had no choice but to stop.
- 15 Q And the same man that approached you with the gun
- 16 initially, that was the same person that ended up
- 17 getting into the Blue Ribbon cab?
- 18 A Yes.
- 19 Q Then you all followed it down to the trailer that you
- 20 weren't familiar with?
- 21 A No.
- 22 Q So during this time period you got to see him
- 23 multiple times?
- 24 A Well, --
- 25 Q Two or three?

1 **A** Well, well, I seen him when he was at the car, at the
2 cab.

3 **Q** Mm-hmm (affirmative).

4 **A** And that was about it.

5 **Q** When you got to see him up close?

6 **A** Right.

7 **Q** But you got to see him go over places in the parking
8 lot as well?

9 **A** Yes.

10 **Q** You paid attention you said to what he looked like?

11 **A** Yes.

12 **Q** That next day did you go down to the Columbia Police
13 Department with Mr. Fleming?

14 **A** Yes.

15 **Q** And did you make contact with Investigator Thomas?

16 **A** Yes.

17 **Q** Once he made contact with you all, what happened?

18 **A** We got separated. He separated us. And he said,
19 well, we need you to ID the person. So he took me in
20 and I ID'd, I recognized the person.

21 **Q** Let me back up a little bit. I had that happen. He
22 took you into a separate room from Mr. Fleming?

23 **A** Yes.

24 **Q** So you weren't there when Mr. Fleming was shown any
25 pictures?

1 **A** No.

2 **Q** And Mr. Fleming wasn't there when you were shown
3 pictures?

4 **A** No.

5 **Q** He showed you I believe six photographs?

6 **A** Yes.

7 **Q** When he showed you these photographs, did he in any
8 way tell you who to pick out?

9 **A** No.

10 **Q** Did he tell you had the pick out anyone?

11 **A** No.

12 **Q** In fact, what did he ask you to do? Just look at
13 pictures?

14 **A** Just look at the pictures and see if I recognized
15 anybody.

16 **Q** I'm going to show you what's been marked as State's
17 Exhibit No. 6 and ask you, do you recognize that
18 number of pictures?

19 **A** That person right there.

20 **Q** And when you looked at those six pictures you
21 recognized one?

22 **A** Yes.

23 **Q** Which number is he on this photo line-up?

24 **A** Number 1.

25 **Q** Number 1?

1 **A** (Nods head affirmatively).

2 **Q** When you were shown this photo line-up I noticed it's
3 got your initials and a circle on it?

4 **A** Yes.

5 **Q** But that wasn't there when you were shown the
6 line-up?

7 **A** No.

8 **Q** Again, did anyone tell you who to pick?

9 **A** No.

10 **Q** The person that you recognize as number 1, is that
11 the person that you recognized based on the day
12 before?

13 **A** Yes.

14 **Q** Had you seen any news coverage or anything that
15 influenced you?

16 **A** No.

17 **Q** And did you tell Investigator Thomas who you
18 recognized?

19 **A** Yes.

20 **Q** And that's the one that you initialed here?

21 **A** Yes.

22 **Q** And then after you recognized that, did he then fill
23 out this form and have you sign it?

24 **A** Yes.

25 **Q** And that's the photo line-up affidavit?

1 **A** Yes.

2 **MS. CAMPBELL:** Your Honor, may I approach?

3 **THE COURT:** Sure.

4 **MS. SINGLETARY:** No objection.

5 **Q** Did anyone ever tell you who you needed to pick or
6 that you had to pick anyone?

7 **A** No.

8 **Q** And you recognized this person based on what happened
9 to you at the church the day before?

10 **A** Yes.

11 **Q** I don't have anything further.

12 **THE COURT:** Cross examination.

13 **MS. SINGLETARY:** Thank you, Your Honor. If it
14 pleases the Court.

15 CROSS EXAMINATION

16 **BY MS. SINGLETARY:**

17 **Q** Good morning, Mrs. Gilliard.

18 **A** Good morning.

19 **Q** Now, on February the 24th, did you ever give any
20 descriptions to the police officers about the man you
21 saw?

22 **A** No. Just -- just maybe he might have been wearing a
23 jacket or anything like that. That's basically what
24 I saw, the gun and his face and the jacket.

25 **Q** Okay. So you just saw the gun, his face and a

1 jacket?

2 A Mm-hmm (affirmative).

3 Q And you didn't give the police officers any statement
4 at all, did you?

5 A No. They didn't ask me.

6 Q Okay. And you said that basically on Booth Street
7 you were kind of outside the entire time?

8 A Well, when we were in the -- I was in the car. We
9 was -- I was sitting in the car, and Mr. Fleming got
10 out. But I stayed in the car the whole time until
11 the police told me that the car had to be moved.

12 Q Mm-hmm (affirmative).

13 A And when that occurred, because they said what he
14 said is gunfire, you know, we don't want you to be in
15 and out of fire, so you have to move; so that's when
16 they told me get out of the car and I went to the
17 nextdoor neighbor's house, and later they moved me
18 down, a little down further.

19 Q Now, you were actually there when they brought a man
20 outside of that trailer, weren't you?

21 A Well, I was nextdoor, but I seen when he came out and
22 that was it. I didn't see anything else because
23 after that I had moved.

24 Q Okay. So you just saw him when you came out, when he
25 was brought out?

1 **A** Yes.

2 **Q** And nobody asked you to ID him at that point, did
3 they?

4 **A** No.

5 **Q** Okay. And you said that you and Mr. Fleming were
6 just right before that stop sign?

7 **A** Yes.

8 **Q** When you actually saw the accident occur?

9 **A** Right. Because he came barreling around the corner,
10 and I said, well, he's going to crash. So my
11 immediate instinct was, you know, to help, to help
12 the person if he does crash. And he did crash. And,
13 you know, we went around to help him but he came
14 running to us.

15 **Q** Okay. And you said that on the 25th you went down to
16 the Columbia Police Department headquarters?

17 **A** Yes.

18 **Q** And you said that you and Mr. Fleming were placed in
19 separate rooms?

20 **A** Yes.

21 **Q** Now, let me take you to the night before which would
22 be the 24th. Did you and Mr. Fleming talk at all
23 about the man that you had saw come up to the Ford
24 Taurus you guys were in?

25 **A** I mean, we talked about it was a scary situation. I

1 mean, mostly my main thing was to get home because my
2 child was home with his child. And, you know, they
3 are small kids, and I didn't want to -- you know, I
4 was already upset. So, I mean, I really didn't say
5 too much of anything because I do remember my
6 daughter asking me what was the matter and I didn't
7 want to talk about it. I didn't want to say nothing.
8 I actually went and laid down.

9 Q But let me rephrase that question. I'm sorry. I
10 think it was an open-ended question.

11 A Okay.

12 Q That night, you and Mr. Fleming, did you guys talk
13 about the description?

14 A No.

15 Q -- of the man?

16 A (Shakes head negatively).

17 MS. SINGLETARY: Your Honor, I have no further
18 questions.

19 THE COURT: Redirect?

20 MS. CAMPBELL: None, Your Honor.

21 THE COURT: You may come down. Thank you very
22 much, ma'am. Next witness.

23 MS. CAMPBELL: The State would call Kelli
24 McQueen.

25 KELLI MCQUEEN, after being duly sworn, testifies

1 as follows:

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

4 **THE WITNESS:** My name is Kelli McQueen.

5 DIRECT EXAMINATION

6 **BY MS. CAMPBELL:**

7 **Q** Kelli, how old are you?

8 **A** Seventeen.

9 **Q** Are you attending high school?

10 **A** Yes, ma'am.

11 **Q** And what high school do you go to?

12 **A** W. J. Keenan.

13 **Q** And what church do you all attend?

14 **A** Gill Creek Baptist Church.

15 **Q** Gill Creek Baptist Church?

16 **A** Yes, ma'am.

17 **Q** And is your mom here in the courtroom?

18 **A** Yes, ma'am.

19 **Q** Is your sister here in the courtroom?

20 **A** Yes, ma'am.

21 **Q** I want to turn your attention back to February the
22 24th of 2007. You would have been how old then?

23 **A** Sixteen.

24 **Q** Sixteen?

25 **A** Yes, ma'am.

1 Q And were you at the church that Saturday morning?

2 A Yes, ma'am.

3 Q And I want to turn your attention to around
4 lunchtime. Was your mother -- were there a group of
5 girls who were out in the parking lot listening to
6 some music?

7 A Yes, ma'am.

8 Q And who all was in the car with you that day?

9 A It was Keri McQueen, Jasmine Prince, Sabrina Jackson,
10 Lisa Milling, Zaria McFadden and Brittany Stearnes.

11 Q And who was actually the oldest one out there that
12 day?

13 A Myself.

14 Q You were the oldest?

15 A Yes, ma'am.

16 Q And how old -- like Zaria, how old is she?

17 A Six.

18 Q She is six years old?

19 A Yes, ma'am.

20 Q And what were you all doing out there in the parking
21 lot?

22 A Just listening to music, dancing outside the car.

23 Q And who was actually driving the car that day?

24 A My mother drove it there. But no one at the time.

25 Q Where was your mother while you all were out in the

1 parking lot listening to music?

2 **A** In choir practice.

3 **Q** She was in choir practice?

4 **A** Yes, ma'am.

5 **Q** And that morning did you see an actual automobile
6 wreck while you all were there in the parking lot?

7 **A** Yes.

8 **Q** And do you remember what kind of car it was?

9 **A** I am not sure.

10 **Q** And did it wreck near the church that day?

11 **A** Yes, ma'am.

12 **Q** Beg the Court's indulgence. I'm going to show you a
13 photograph. Does that look like where the car
14 wrecked?

15 **A** Yes, ma'am.

16 **Q** Is that near the church?

17 **A** Yes, ma'am.

18 **MS. CAMPBELL:** Your Honor, at this time we'd
19 mark it and hand it up.

20 (WHEREUPON, State's Exhibit No. 7 is marked for
21 identification.)

22 **THE COURT:** Admitted for identification.

23 **MS. SINGLETARY:** That's fine.

24 **MS. CAMPBELL:** Identification is fine.

25 **THE COURT:** Identification. All right.

1 Q Once the car wrecked, did you see someone get out of
2 the car?

3 A Yes, ma'am.

4 Q And did you see them go over and approach another car
5 that was actually at a stop sign?

6 A Not at that time.

7 Q You didn't see that at that time?

8 A No, ma'am.

9 Q Okay. At some point did the person that got out of
10 the car come towards you?

11 A Yes.

12 Q And tell the judge what you saw.

13 A I seen at first, well, I seen someone limping towards
14 me saying, I'm hurt, I'm hurt. So I told my sister
15 and Jasmine to go in the church to get help. So when
16 they came back and they got help, that someone was
17 hurt, and --

18 Q Are you a little nervous today?

19 A Yes, ma'am. I am nervous.

20 Q Take your time.

21 A Okay. And they came back outside. And so the next
22 thing we know, we see he has a gun. So I tell them
23 he has a gun. So they run in the church. He has a
24 gun, he has a gun. Okay. At that time everyone
25 except me, Sabrina and Zaria, we run. Everyone

1 except me, Sabrina, Zaria, they run to the church.

2 And so I try to close my mom's doors. But I see the
3 gun, and so I just run back to the church, leaving
4 Sabrina Jackson and Zaria McFadden still in the back
5 seat of the car.

6 Q Okay. And do you know what happened after you ran in
7 the church?

8 A No, ma'am.

9 Q Okay. The person that you saw get out of the car
10 that said he was hurt and then had the gun, did you
11 get a good look at him that day?

12 A Yes, ma'am.

13 Q How close did he actually get to you?

14 A Maybe about five feet or so.

15 Q Maybe about five feet?

16 A (Witness nods head affirmatively).

17 Q So maybe about as far as I am?

18 A A little further.

19 Q A little further?

20 A Yes, ma'am.

21 Q Did you get a good look at his face that day?

22 A Mm-hmm (affirmative).

23 Q Were you paying attention to what he looked like?

24 A Yes, ma'am.

25 Q Was it sunny out? Was it cloudy?

1 **A** It was I guess sunny.

2 **Q** Was there anything blocking your view of his face?

3 **A** No.

4 **Q** You saw the gun, so you weren't paying attention to
5 what he looked like?

6 **A** Yeah. Vaguely.

7 **Q** Had you ever seen him before?

8 **A** No.

9 **Q** Once you went back inside the church after you saw
10 him, he got that close to you, did the police come?

11 **A** Yes, ma'am.

12 **Q** And the next day did you go down to the police
13 station?

14 **A** Yes, ma'am.

15 **Q** And when you went down to the police station did you
16 make contact with Investigator Thomas?

17 **A** Yes, ma'am.

18 **Q** Sitting right here?

19 **A** (Nods head affirmatively).

20 **Q** And when you made contact with Investigator Thomas,
21 who all was with you when you went to the police
22 station the next day?

23 **A** My mom and my sister.

24 **Q** Let me back up. When the police came that afternoon
25 when it happened, did you give them a statement?

1 **A** Yes, ma'am.

2 **Q** And I'm going to show you a copy of this. Is that
3 your statement?

4 **A** Yes, ma'am.

5 **Q** The next day when you went down and made contact with
6 Investigator Thomas, did he separate you and your
7 sister?

8 **A** Yes, ma'am.

9 **Q** And did you go into a different room from your sister
10 to look at some photographs?

11 **A** Yes, ma'am.

12 **Q** And when you went in that room to look at the
13 photographs, had anyone told you that you had to pick
14 anyone or who to pick?

15 **A** No.

16 **Q** And when you looked at what hasn't been marked -- let
17 me mark it.

18 (WHEREUPON, State's Exhibit No. 8 is marked for
19 identification.)

20 **Q** I'm going to show you what's been marked as State's
21 Exhibit No. 8 for I.D. purposes. Is there six
22 photographs in this?

23 **A** Yes, ma'am.

24 **Q** When Investigator Thomas showed you that photo
25 line-up, did he tell you who to pick?

- 1 **A** No.
- 2 **Q** Did anyone influence your decision?
- 3 **A** No way.
- 4 **Q** Did you recognize someone based on what had happened
- 5 to you the day before?
- 6 **A** Yes, ma'am.
- 7 **Q** Which one did you recognize?
- 8 **A** That one.
- 9 **Q** What number is beside his picture?
- 10 **A** 3.
- 11 **Q** Number 3?
- 12 **A** Yes, ma'am.
- 13 **Q** And you recognized him from what you'd seen the day
- 14 before?
- 15 **A** Yes.
- 16 **Q** Had you seen any newscasts or anything of the
- 17 defendant?
- 18 **A** No, ma'am.
- 19 **Q** So that was all based just on what happened and what
- 20 you saw at the church?
- 21 **A** Yes, ma'am.
- 22 **Q** Once you recognized number 3 as it's marked on here,
- 23 did you then initial next to the picture?
- 24 **A** Yes, ma'am.
- 25 **Q** And circle the number?

1 **A** Yes, ma'am.

2 **Q** And then after you told Investigator Thomas who you
3 recognized, did he have you fill out or sign this
4 photo line-up affidavit?

5 **A** Yes, ma'am.

6 **MS. SINGLETARY:** Without objection, Your Honor.

7 **Q** After you went in the church that day, you didn't see
8 anything else that happened down the street or
9 anything like that?

10 **A** Yes, ma'am.

11 **Q** You didn't see anything?

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

13 **Q** Thank you. Please answer any questions defense may
14 have. Okay?

15 **A** Okay.

16 **MS. SINGLETARY:** Thank you, Your Honor. If it
17 pleases the Court.

18 CROSS EXAMINATION

19 **BY MS. SINGLETARY:**

20 **Q** Hey, Kelli. How you doing?

21 **A** Fine.

22 **Q** And I understand that you're nervous, so I'm not
23 going to ask you that many questions. Okay?

24 **A** (Nods head affirmatively).

25 **Q** On that date you stated that you were -- were you

1 sitting inside of your mother's car or were you
2 outside of her car?

3 **A** I was outside the car.

4 **Q** Okay. And you guys were listening to music?

5 **A** Yes, ma'am.

6 **Q** And then when you saw the car crash, that's when you
7 noticed the man that got out of the car?

8 **A** No. When the car crashed my first thought was like
9 somebody is hurt. So I sent my sister and Jasmine to
10 go into the church to get help.

11 **Q** Okay. And when you talked to the police the
12 description that you gave to the police wasn't a
13 detailed description, was it?

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

15 **Q** The only thing you told the police was that it was a
16 black man?

17 **A** And I described what he was wearing.

18 **Q** And that's it. That he was a black man. Is that
19 correct?

20 **A** That's correct.

21 **Q** Okay. I'm sorry. Your Honor, I have no further
22 questions.

23 **MS. CAMPBELL:** Nothing further.

24 **THE COURT:** Come down, ma'am. Thank you very
25 much.

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

3 **MS. CAMPBELL:** The State calls Keri McQueen.

4 KERI MCQUEEN, after being duly sworn, testifies
5 as follows:

6 **THE CLERK:** Please have a seat. State your full
7 name for the record.

8 **THE WITNESS:** My name is Keri McQueen.

9 DIRECT EXAMINATION

10 **BY MS. CAMPBELL:**

11 **Q** Keri, how old are you?

12 **A** Twelve.

13 **Q** And you go to school here?

14 **A** Yes, ma'am.

15 **Q** What school do you go to?

16 **A** W. G. Sanders.

17 **Q** W. G. Sanders. What grade are you in?

18 **A** The seventh.

19 **Q** The seventh grade?

20 **A** (Nods head affirmatively).

21 **Q** I want to turn your attention back to February the
22 24th of 2007. Do you remember being at Gill Creek
23 Baptist Church that day?

24 **A** Yes, ma'am.

25 **Q** Were you all out in the parking lot?

1 **A** Yes, ma'am.

2 **Q** Was your sister one of the people out there with you?

3 **A** Yes, ma'am.

4 **Q** What were you all doing in the parking lot that day

5 around lunchtime?

6 **A** Listening to music and dancing.

7 **Q** And dancing?

8 **A** Yes, ma'am.

9 **Q** And where were you? Were you inside the car or

10 outside the car?

11 **A** I was outside the car.

12 **Q** And were several of the doors open on the car?

13 **A** Yes, ma'am.

14 **Q** And did something catch your attention that day

15 involving a car wreck?

16 **A** Yes, ma'am.

17 **Q** And tell the judge what you saw about the car wreck?

18 **A** I saw the car coming down the bridge and it swerved

19 and it hit the pole and turned around.

20 **Q** Turned around?

21 **A** Yes, ma'am.

22 **Q** And did you see anybody get out of that car?

23 **A** Yes, ma'am.

24 **Q** Did that person eventually come towards your car?

25 **A** Yes, ma'am. But I had ran in the church by that

1 time.

2 Q Okay. When the person got out of the car, did you

3 get a look at him?

4 A Yes, ma'am.

5 Q And why did you run into the church?

6 A To get help. They said that someone had wrecked in

7 the car.

8 Q Did come back out of the church?

9 A Yes, ma'am.

10 Q Where did you go when you came back out of the

11 church?

12 A I came halfway back to the car, but then I saw him

13 with a gun so I ran back in the church.

14 Q How much away were you from him when you saw him that

15 time?

16 A It wasn't too far, but I'm not sure.

17 Q Were you able to see his face?

18 A Yes, ma'am.

19 Q And you were able to see he had a gun?

20 A Yes, ma'am.

21 Q Were you paying attention to what he looked like?

22 A Yes, ma'am.

23 Q So that was the second time that day you got to see

24 him?

25 A Yes, ma'am.

1 Q At first when he got out of the car, did you see the
2 gun?

3 A No, ma'am.

4 Q But the second time you saw the gun, that's why you
5 went back in the church?

6 A Yes, ma'am.

7 Q Was it sunny enough to be able to see that day?

8 A Yes, ma'am.

9 Q Was anything obstructing your view of his face?

10 A No, ma'am.

11 Q Did you get a good look at his face at that point
12 when you ran back out?

13 A Yes, ma'am.

14 Q Were you paying attention to what he looked like?

15 A Yes, ma'am.

16 Q Had you ever seen him before?

17 A No, ma'am.

18 Q Who was with you when you ran back in the church that
19 second time?

20 A Jasmine and Brittany.

21 Q And Brittany?

22 A Yes, ma'am.

23 Q The next day did you go down to the police department
24 with your sister?

25 A Yes, ma'am.

1 Q And your mother?

2 A Yes, ma'am.

3 Q Your mother is here in the courtroom?

4 A Yes, ma'am.

5 Q And when you went down to the police department, did
6 you meet with an Investigator Thomas?

7 A Yes, ma'am.

8 Q And when you met with Investigator Thomas, were you
9 by yourself?

10 A Yes, ma'am.

11 Q Was he or was your mother with you?

12 A Officer Thomas was with me.

13 Q Officer Thomas. And when you met with Investigator
14 Thomas, did he show you some photographs?

15 A Yes, ma'am.

16 Q I'm going to show you what's been marked as State's
17 Exhibit No. 9, a second page of this document. Do
18 you recognize that?

19 A Yes, ma'am.

20 Q And is that the actual photographs he showed you that
21 day on the day after this happened?

22 A Yes, ma'am.

23 Q And when you looked at those photographs, did he tell
24 you had to pick anybody?

25 A He said pick who you thought was the person.

1 Q Did he tell you which one to pick?

2 A No, ma'am.

3 Q And when you looked at those six photographs, did you
4 recognize anyone?

5 A Yes, ma'am.

6 Q And who did you recognize?

7 A Number 4.

8 Q When you recognized number 4, did you tell
9 Investigator Thomas that?

10 A Yes, ma'am.

11 Q Did you recognize him based on what you'd seen in the
12 parking lot the day before?

13 A Yes, ma'am.

14 Q That night after this happened, did you watch the
15 news or anything?

16 A No, ma'am.

17 Q So between the time it happened and when you were
18 shown these photographs, did you see any pictures of
19 the Defendant?

20 A No, ma'am.

21 Q So this is based on what you saw in the parking lot
22 that day?

23 A Yes, ma'am.

24 Q After you recognized him and picked out his picture,
25 did you initial next to the picture?

1 **A** Yes, ma'am.

2 **Q** And circle the number?

3 **A** Yes, ma'am.

4 **Q** Then after that did he have you sign off on this
5 photo line-up affidavit?

6 **A** Yes, ma'am.

7 **Q** Indicating who you recognized?

8 **A** Yes, ma'am.

9 **Q** And the person you recognized is the person you saw
10 in the parking lot the day before?

11 **A** Yes, ma'am.

12 **MS. SINGLETARY:** No objection, Your Honor.

13 **THE COURT:** Ms. Campbell, for the record.

14 **MS. CAMPBELL:** Yes, sir.

15 **THE COURT:** These last two witnesses, which
16 indictment do they --

17 **MS. CAMPBELL:** They don't have an indictment,
18 Your Honor. They're witnesses.

19 **THE COURT:** All right. Go ahead.

20 **Q** That person, you had never seen him before?

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

22 **Q** Or since then?

23 **A** (Shakes head negatively).

24 **Q** And you don't know what happened after you ran back
25 in that church the second time, do you?

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

2 **Q** Thank you. I don't have anything further.

3 **MR. O'NEIL:** Thank you, Your Honor. If it
4 pleases the Court.

5 CROSS EXAMINATION

6 **BY MS. SINGLETARY:**

7 **Q** Hey, Keri. How you doing?

8 **A** Good.

9 **Q** I'm going to do you just like I spoke to your sister.
10 I'm not going to ask you that many questions. But
11 you said that you were outside listening to music and
12 dancing?

13 **A** Yes, ma'am.

14 **Q** And you said as soon as you saw the car wreck then
15 you ran in the church?

16 **A** Yes, ma'am.

17 **Q** Because you wanted to get some help?

18 **A** Yes, ma'am.

19 **Q** And so you didn't get to see the man's face the first
20 time, did you?

21 **A** Not a good look.

22 **Q** Not a good look. But then you came back out of the
23 church?

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

25 **Q** And then you got to see the man's face then?

1 **A** Yes, ma'am.

2 **Q** About how long would you say that you got see the
3 man's face the second time?

4 **A** It was like a dramatic pause. So I got to see it for
5 a minute.

6 **Q** It was a dramatic pause?

7 **A** Because I was in shock that he had a gun.

8 **Q** Okay. How long would you say a dramatic pause lasts?
9 Because I don't know what a dramatic pause is.

10 **A** About two minutes maybe.

11 **Q** About two minutes?

12 **A** (Nods head affirmatively).

13 **Q** Okay. And then you ran back inside the church?

14 **A** Yes, ma'am.

15 **Q** Okay. And you said the next day that you, your
16 mother and your sister went down to the police
17 station?

18 **A** Yes, ma'am.

19 **Q** And when you initially spoke to the police, you gave
20 them a description of the person that you saw, the
21 man that you saw?

22 **A** Yes, ma'am.

23 **Q** And was that description just a photo line-up, or did
24 you actually give them -- did you tell them he's
25 black, he's this height, he's this weight? Did you

1 do that?

2 **A** I don't think so.

3 **Q** Okay. So you didn't do that?

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

5 **Q** You only picked him out of the photo line-up?

6 **A** Yes, ma'am.

7 **Q** And you had only seen him for -- but the dramatic
8 pause which is two minutes plus the other time,
9 probably about less than three minutes you had seen
10 his face the day before?

11 **A** Yes, ma'am.

12 **Q** I have no further questions, Your Honor.

13 **THE COURT:** Redirect?

14 **MS. CAMPBELL:** Nothing.

15 **THE COURT:** You may come down, ma'am. Thank you
16 very much. Next witness.

17 **MS. CAMPBELL:** The State would call Investigator
18 Thomas.

19 ARTHUR L. THOMAS, after being duly sworn,
20 testifies as follows:

21 **THE CLERK:** Please have a seat. State your full
22 name for the record.

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

24 DIRECT EXAMINATION

25 **BY MS. CAMPBELL:**

1 Q Investigator Thomas, where are you employed?

2 A The City of Columbia Police Department.

3 Q And how long have you worked there, sir?

4 A Approximately 19 years.

5 Q I want to turn your attention back to February 24th
6 of 2007. Were you aware of a series of carjackings
7 that happened in the city jurisdiction?

8 A Yes.

9 Q And did you actually get assigned to those cases
10 after they occurred?

11 A Yes, I did.

12 Q Are you also aware that there was a county hostage,
13 kidnapping, burglary?

14 A Yes, I was.

15 Q Rape case?

16 A (Nods head affirmatively).

17 Q And that evening on the 24th, did you actually go
18 down and participate in an interview of the
19 Defendant, Randolph Ashford?

20 A Yes, I did.

21 Q Based on the information, did you actually respond
22 out to the scene that day?

23 A No, I did not. I was called in a little later after
24 the incidents had occurred.

25 Q So there were other city officers that took

1 information of what happened at the church, what
2 happened at The Wash World and what happened on
3 Oakland Street?

4 A That is correct.

5 Q And that information was forwarded to you?

6 A That's correct.

7 Q The next day did you have an occasion to show a
8 series of photo line-ups?

9 A That's correct.

10 Q And turning your attention, were you aware of a
11 carjacking that occurred at the Wash World on Two
12 Notch?

13 A Yes.

14 Q Did you make contact with Mr. and Mrs. Kelly?

15 A Yes, I did.

16 Q Did you have them come down to the police department?

17 A Yes.

18 Q And once you got to the police department, did you
19 show them a photo line-up?

20 A Yes, I did.

21 Q And tell the judge how you did that?

22 A I separated the two parties and showed them a line-up
23 of six individuals, one photo including the suspect
24 and asked them if they can identify the individual
25 that approached the car. And Mr. Kelly I believe

1 positively identified. I think Mrs. Kelly chose
2 between two.

3 Q Between two?

4 A Number 4 and number 6. That's correct.

5 Q Was she later able to be a little more sure but she
6 had initially told you 4 and 6?

7 A That's correct.

8 Q That same day did you also meet with Mr. Gregory
9 Fleming and Ms. Kimberly Gilliard?

10 A Yes.

11 Q And did they also come down to the police department
12 on the 25th?

13 A That's correct.

14 Q And tell the judge what you did when you made contact
15 with them?

16 A Similar to the other witnesses, I separated the two
17 parties, showed them a line-up of six individuals. I
18 would switch the number of the actual subject around
19 so that the numbers would be different. Those
20 parties also positively identified the suspect.

21 Q And again, as with the Kellys, did anyone tell them
22 who to pick?

23 A No.

24 Q Did you intimate to them who they had to pick?

25 A No, I did not.

1 Q In fact, while they were separated, did they say they
2 recognized someone?

3 A That's correct.

4 Q The person they identified in each of those line-ups
5 was whom?

6 A Was the Defendant.

7 Q Randolph Ashford?

8 A That's correct.

9 Q Did you also make contact with the McQueen girls?

10 A Yes.

11 Q And did they come down to the police department the
12 next day?

13 A They did as well.

14 Q When they came down, tell the judge what you did with
15 them?

16 A Similar to the other witnesses, separated the
17 parties, showed them line-ups which included the
18 Defendant, and they were able to identify the
19 Defendant as the person who they observed commit the
20 crime.

21 Q And again, did you in any way tell them or intimate
22 to them who they should pick?

23 A Oh, no.

24 Q Did you suggest anyone?

25 A No, I did not.

1 Q Were you there when they actually reviewed the
2 photographs and indicated they recognized someone?

3 A Yes, I was.

4 Q And was anything suggestive of any nature in those
5 photo line-ups?

6 A Nothing at all.

7 Q And again, as with the Kellys, Mr. Fleming,
8 Ms. Gilliard, the person that the McQueen girls
9 recognized was who?

10 A Was the Defendant.

11 Q Randolph Ashford?

12 A Randolph Ashford.

13 Q I don't have anything further, Your Honor.

14 MR. O'NEIL: May it please the Court, Your
15 Honor.

16 THE COURT: Yes, sir.

17 CROSS EXAMINATION

18 BY MR. O'NEIL:

19 Q Investigator Thomas, I think you showed a total of
20 six people the line-up that day?

21 A Probably so. At least that many.

22 Q Two of the McQueen sisters, Mr. and Mrs. Kelly,
23 Mrs. Gilliard and Mr. Fleming, correct?

24 A That's correct.

25 Q Did you show anybody else a photo line-up on that

1 particular day?

2 A I may have. I can't recall. I would have to
3 actually look in my files. I showed a number of
4 line-ups. We had a number of witnesses.

5 Q Do you remember showing a Mr. Barry Taylor a line-up?

6 A Barry Taylor? Possibly, but I don't recall.

7 Q Okay. How about a Ms. Evelyn Worthy? Did you show
8 her a line-up?

9 A Again, I don't recall either one of those. Again,
10 I'd have to check my file.

11 Q Okay. Did you write a report in this, a photo
12 line-up report?

13 A Yeah.

14 Q Do you have that report with you?

15 A I just have a series of notes. Let's see. I have
16 the Kellys, the Flemings, McQueens, Kimberly
17 Gilliard, Keri McQueen; and they picked him out of a
18 photo line-up.

19 Q Let's talk about the Kellys first. Do you remember
20 what time the Kellys got there to your office?

21 A Truthfully, I couldn't tell you a time. I'd probably
22 have to refer to the line-up if I had that on them.

23 Q But you do remember that the Kellys arrived at the
24 same time? The Kellys arrived together?

25 A I believe they did.

1 Q Okay. And were they the first witnesses that arrived
2 to your office on that particular day?

3 A Truthfully, I can't -- I don't know the rotation.
4 All parties came in as they were called to come in.
5 I merely took them in the interview rooms as they
6 arrived to headquarters. So I can't be precise on
7 what the rotation was on showing them the line-up, to
8 be honest.

9 Q Now, Investigator Thomas, I'm going to show you
10 what's been marked as State's Exhibit No. 3 and
11 State's Exhibit No. 4. I think the line-ups are Mr.
12 and Mrs. Kelly here.

13 A Okay. Thank you.

14 Q Now, does either one of those have a time on it?

15 A No. I don't see a time.

16 Q Are you aware whether or not the Kellys or the
17 McQueens or Mrs. Gilliard or Mr. Fleming would have
18 been in your lobby at the same time that particular
19 day?

20 A I do not recall all gathering at the same time.
21 Everybody came at different timeframes that I can
22 recall due to their schedules. Everybody either
23 worked or was in church or something of that nature.
24 So they just came in at different timeframes. But to
25 my recollection, I don't recall them sitting in one

1 group area for any length of time.

2 Q Let's talk about Ms. Pearl Kelly's identification.
3 You gave her -- you showed her a paper with six
4 pictures on it, correct?

5 A That's correct.

6 Q And of those six pictures, she was able to narrow it
7 down between two of those pictures?

8 A That's correct.

9 Q And you also gave her an affidavit to go along with
10 her photo line-up?

11 A That's correct.

12 Q On the affidavit she indicated she could only narrow
13 it down between picture number 4 and picture number
14 6?

15 A That's correct.

16 Q You also wrote a report in this case, correct?

17 A Mm-hmm (affirmative).

18 Q Did you note on your report she could only narrow it
19 down between two pictures?

20 A And that was Pearl?

21 Q Yes, sir. Ms. Pearl Kelly.

22 A Well, no. I didn't differentiate. Pearl identified
23 4 but was stronger with 6. And so I just made her
24 indicate on her line-up that, you know, she felt
25 strongly with 6. Because she told me initially 4 and

1 6, I had her indicate both.

2 **Q** Did she give you any kind of percentages or anything
3 like that?

4 **A** At that time, no. She just toward the end went
5 stronger with 6.

6 **Q** Now, Mr. or Mrs. Kelly, in their original statements
7 to law enforcement, did they give law enforcement a
8 physical description of the assailant?

9 **A** I did not -- I don't have those statements in front
10 of me and I can't recall exactly what they may have
11 had in the statements.

12 **Q** I guess let's do it this way then. Normally when you
13 have witnesses who have seen the suspect, sometimes
14 those witnesses know the suspect by name and sight,
15 correct?

16 **A** That's correct.

17 **Q** And sometimes they give physical descriptions, like
18 height and weight, facial features, things of that
19 nature?

20 **A** That's correct.

21 **Q** And depending on what the witnesses know, that
22 determines how you build your photo line-up?

23 **A** Yeah. Depending upon the information that's provided
24 to me about the time I'm ready to generate the
25 line-up, yes.

- 1 Q But in this particular case you already had a suspect
- 2 that you were considering in this case, correct?
- 3 A That is correct.
- 4 Q So you didn't base your line-up on the information
- 5 you got from the witnesses?
- 6 A No, I did not.
- 7 Q And you say that you switched the numbers of Mr.
- 8 Ashford's picture in the different line-ups you
- 9 showed to the different witnesses?
- 10 A Yeah. I intentionally shifted them around in each
- 11 line-up as I could for the number of people that were
- 12 coming in to ensure that if he is identified he is
- 13 identified by different numerical numbers.
- 14 Q Now, you switched the numerical numbers but you
- 15 didn't switch the actual line-ups of Mr. Ashford
- 16 himself?
- 17 A No.
- 18 Q So Mr. Ashford's was always on the bottom, right on
- 19 the last row?
- 20 A I believe so.
- 21 Q Okay. And were you aware of any media coverage of
- 22 the hostage standoff involving Richland County?
- 23 A Truthfully not. I was too engaged in trying to get
- 24 the information for the case itself. So I really had
- 25 no coverage of the hostage situation.

1 Q Were you aware of any media accounts?

2 A I would assume that there was some, and I think
3 sometime later I may have seen something.

4 Q Did you ask any of the Kellys, Fleming, the McQueens
5 or Mr. Fleming or Mrs. Gilliard had they seen any
6 media coverage?

7 A No, I did not.

8 MR. O'NEIL: Okay. Beg the Court's indulgence.
9 No further questions, Your Honor.

10 THE COURT: Anything further?

11 MS. CAMPBELL: Just a couple.

12 REDIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q When you do a photo line-up, you had Randolph Ashford
15 in custody from the hostage taking?

16 A That is correct.

17 Q And you'd also participated in his statement where
18 he'd admitted to a number of these?

19 A Oh. That is correct.

20 Q And when you generate a photo line-up, you have to
21 get a photograph of the Defendant. Is that correct?

22 A That's correct.

23 Q Then the line-up is generated based on the
24 photograph?

25 A That's correct.

1 Q Not necessarily the description but what the
2 Defendant actually looks like?

3 A That's correct.

4 Q You had a basis at that point to put him in the
5 line-up?

6 A That's correct.

7 Q Thank you. I don't have anything further.

8 THE COURT: You may come down, sir. Thank you
9 very much.

10 THE WITNESS: Thank you, Your Honor.

11 THE COURT: Next witness.

12 MS. CAMPBELL: No, sir.

13 THE COURT: All right. These six witnesses the
14 State intends to ask for an in-court identification.
15 Is that correct?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: Any objection?

18 MS. SINGLETARY: Yes, Your Honor. We would
19 object to the identification of Pearl Kelly, Olin
20 Kelly, to Kimberly Gilliard and to Gregory Fleming
21 and to Keri and Kelli McQueen, Your Honor. As the
22 Court knows, that out-of-court identifications should
23 be suppressed if they are unnecessarily suggestive
24 and could cause irreparable mistaken identification,
25 Your Honor.

1 We think that in this case if you are to look at
2 the five factors in determining the reliability of
3 identifications, Your Honor, which reliability is the
4 lynchpin of determining the admissibility of
5 identification, if you start with number one, the
6 opportunity of the witnesses to view the criminals at
7 the time of the crime; and if you would like for me
8 to recap the testimony --

9 **THE COURT:** I think I've got it pretty well
10 down. But go ahead.

11 **MS. SINGLETARY:** Your Honor, basically all of
12 the witnesses said that they had a short amount of
13 time to actually view the suspect in this case. The
14 most time was being Keri McQueen who said that it was
15 about three minutes, Your Honor. If we go on to
16 number two, the witness's degree of attention, Your
17 Honor, and it would be my argument that the actual
18 descriptions that the witnesses gave to the police
19 such as a black man --

20 **THE COURT:** There's very little of that.

21 **MS. SINGLETARY:** Yeah. Very little. And it
22 could be attributed to a large percentage of the
23 population. If we look at number 3, the accuracy of
24 the witness's description, this goes with number two.

25 **THE COURT:** Not much.

1 **MS. SINGLETARY:** They just don't meet that. The
2 level of certainty demonstrated by the witness at the
3 confrontation, Your Honor, I will argue that the
4 other witnesses -- I will concede that the other
5 witnesses did pick out my client, except for Pearl
6 Kelly who narrowed it down to number 4 or 6, Your
7 Honor. The amount of time between the crime and the
8 confrontation, 24th, the 25th. Your Honor, based on
9 those factors, I ask that all of the out-of-court
10 identifications be suppressed.

11 **THE COURT:** All right. State's position.

12 **MS. CAMPBELL:** Your Honor, the totality of the
13 circumstances, you have to look to see whether or not
14 the procedure has been suggestive. She did go
15 through the levels. I would note in State v. Stewart
16 that is when a witness who was not an actual victim
17 but just a witness in a crime saw a person's face
18 from five or seven seconds before he put on the mask
19 and two weeks later she could not pick him out. She
20 said that she could identify him if she saw him in
21 person. The next day they did a physical line-up.
22 At that point he was the only one of course that was
23 repeated from the photo line-up in the physical
24 line-up. She was able to identify him there. They
25 said under the totality of the circumstances that was

1 not suggestive.

2 I would rely on other cases such as State v.
3 Drayton. And I can get my file, Your Honor.
4 Blassingame, Patterson and --

5 **THE COURT:** Biggers.

6 **MS. CAMPBELL:** Thank you. Biggers. Your Honor,
7 under the totality of the circumstances here, I think
8 it's clear that there is no indication that any of
9 these witnesses were in any way, you know, it was
10 suggested that anyone was told to pick. They did not
11 see any media coverage of the Defendant that would
12 then implant his picture in their head.

13 They are basing it, Your Honor -- none of these
14 witnesses have a bias or a reason to pick him. They
15 are basing it on when they saw that day as either
16 witnesses to the crimes or victims of these crimes.
17 Your Honor, I don't think in any way that you could
18 say that these are suggestive by nature.

19 **THE COURT:** Okay. Anything further?

20 **MS. SINGLETARY:** No, Your Honor.

21 **THE COURT:** All right. Well, I think what you
22 have to do is look at each of these witnesses
23 individually and try to determine if that witness
24 were the sole witness, is that identification
25 sufficient to allow an in-court identification?

1 And I feel that as to Pearl Kelly and Keri
2 McQueen, both of those identifications are very
3 sketchy in terms of the facts at the scene. Ms.
4 Kelly said she glanced at him. She saw the handgun.
5 She was sitting in the car. The Defendant or whoever
6 was there had a handgun pointed at Olin Kelly and she
7 saw the gun and she glanced at him in her mirror as
8 he approached the car. I think that's an
9 insufficient opportunity for the witness to view the
10 accused.

11 As to Olin Kelly, I feel certainly his
12 opportunity to view the accused was prominent in
13 terms of the fact that the gun was in his face. He
14 was certain of his information, and Ms. Kelly was not
15 certain in her line-up identification. So I think
16 her testimony with regard to identification, I would
17 not allow her to make an in-court identification of
18 the Defendant. Olin Kelly is a different situation.

19 Gregory Fleming, that's another face-to-face
20 confrontation with the Defendant. And he was very
21 positive. He saw the Defendant and he even had seen
22 him on a prior occasion which makes his
23 identification even more certain or reliable.

24 As to Kimberly Gilliard, again, her observation
25 of the Defendant was not as face-to-face as was

1 Gregory Fleming, but she saw -- she witnessed several
2 events. I mean, she followed several events
3 throughout the course of the afternoon or
4 afternoon/evening even up to the point of seeing him
5 being escorted from the scene of the hostage taking.
6 And she had no obvious hesitation in identifying him
7 at the photo line-up.

8 Kelli McQueen, that was a brief encounter.
9 Although she says it was two minutes and there was no
10 challenge to that, she saw him face-to-face with a
11 gun. And I think her positive identification at the
12 police station was sufficient.

13 Keri McQueen, I really sympathize with her, a
14 12-year-old. She's 12 today; is that correct?

15 **MS. CAMPBELL:** Yes, sir.

16 **THE COURT:** She would have been ten at the time.
17 She came out of the church. She did not get a good
18 look at him. I don't think any court would sustain
19 that sort of in-court identification. When she came
20 out of the church, back out of the church, she saw
21 him briefly with a gun and turned around and ran back
22 in the church. I mean, that's just insufficient
23 opportunity to view the accused.

24 So I grant the Defendant's motions as to Pearl
25 Kelly and Keri McQueen; deny the motions as to Olin

1 Kelly, Gregory Fleming, Kimberly Gilliard, Kelli
2 McQueen. Anything further?

3 **MS. CAMPBELL:** Yes, Your Honor. Respectfully,
4 we would like to submit some case law that would
5 support our position on those two identifications.

6 **THE COURT:** I'll be glad for you to. But, I
7 mean, if you don't observe to start with --

8 **MS. CAMPBELL:** But they said they observed and
9 they said they were positive about their
10 identifications.

11 **THE COURT:** I have ruled. I have ruled.

12 **MS. CAMPBELL:** I understand you have ruled, Your
13 Honor. I would like to submit more case law that
14 would support our position.

15 **THE COURT:** Yes, ma'am. Go ahead. Any time.

16 **MS. CAMPBELL:** Thank you.

17 **THE COURT:** Now, anything else before we bring
18 the jury?

19 **MS. CAMPBELL:** Yes, sir. I need to go get the
20 case law so you can make a decision.

21 **THE COURT:** For what?

22 **MS. CAMPBELL:** Appealing.

23 **THE COURT:** I don't understand.

24 **MS. CAMPBELL:** On the identifications before the
25 jury is sworn. It's an appealable issue.

1 **THE COURT:** Are you --

2 **MS. CAMPBELL:** I don't know. I've just got to
3 go make an inquiry.

4 **THE COURT:** Well, I'm asking you, are there any
5 other issues?

6 **MS. CAMPBELL:** Oh, as far as the pre-trial?

7 **THE COURT:** That involve pre-trial. We're going
8 to take a five-minute break.

9 **MS. SINGLETARY:** Yes, Your Honor.

10 **THE COURT:** All right.

11 **MS. SINGLETARY:** And it's just briefly, Your
12 Honor.

13 **THE COURT:** On the --

14 **MS. SINGLETARY:** It's going to be based on the
15 testimony that was elicited from Kimberly Gilliard
16 and Gregory Fleming during their Neil v. Biggers
17 testimony. We just would like a motion to suppress
18 any mentioning of any prior bad acts, such as the
19 attempted armed carjacking of their Ford Taurus that
20 they were in and the attempted carjacking of the
21 white Tahoe. We feel that if they are allowed to
22 bring up that information, it's allowing for the
23 State to backdoor in prior bad acts that were
24 allegedly made by my client.

25 **THE COURT:** You mean that day?

1 **MS. SINGLETARY:** Yes, Your Honor.

2 **THE COURT:** Prior to what?

3 **MS. SINGLETARY:** Prior to court. Prior bad acts
4 are any acts that my client is accused of prior to
5 him actually going to trial on the accused acts or on
6 the charged acts, Your Honor.

7 **THE COURT:** Well, I've got nine indictments up
8 here. I'm not sure that -- you're saying it's prior
9 to the third indictment or the fourth indictment?

10 **MS. SINGLETARY:** It's prior to basically
11 indictment -- it's prior to all indictments.
12 Kimberly Gilliard and Gregory Fleming are not victims
13 at all. They are witnesses, Your Honor.

14 **THE COURT:** Well, we're going to have to get
15 into this trial. Because, listen, I don't know -- I
16 know there's an indictment with regard to Pearl
17 Kelly, and I don't know who Malachi James is.

18 **MR. O'NEIL:** Your Honor, basically there's an
19 attempted carjacking for Mr. Barry Taylor. I'm
20 sorry. There's a carjacking for Barry Taylor at
21 Oakland Street, there's a carjacking for the Kellys
22 at Wash World, and there's a carjacking of Mr. James
23 who was a cab driver.

24 **THE COURT:** I haven't heard any of that
25 testimony.

1 **MR. O'NEIL:** Yes, Your Honor. Well, what Ms.
2 Singletary was addressing was there was testimony
3 from Mr. Fleming and Ms. Gilliard about Mr. Ashford
4 attempting to take their car as well. He's not
5 charged for attempted carjacking of Mr. Fleming's or
6 Mrs. Gilliard's car, nor is he charged with attempted
7 carjacking of the Tahoe that the McQueens were
8 associated with.

9 **THE COURT:** I just don't know that I can rule on
10 that at the stage of the proceeding. The McQueens
11 had the Tahoe?

12 **MR. O'NEIL:** Yes, Your Honor. The car that they
13 were referring to that they were listening to the
14 music in and Mr. Ashford came up to them with a
15 fireman, he is not charged, there is no indictment
16 for that vehicle.

17 **THE COURT:** So that becomes what?

18 **MR. O'NEIL:** That becomes a prior bad act at
19 that point if there's testimony elicited about him
20 attempting to steal that vehicle on that particular
21 day.

22 **THE COURT:** So what are you asking to exclude?

23 **MR. O'NEIL:** Exclude any testimony of Mr.
24 Ashford's attempt to carjack either Mr. Fleming and
25 Mrs. Gilliard and their vehicle --

1 **THE COURT:** So the Kelly vehicle -- you object
2 to the McQueens's testimony.

3 **MR. O'NEIL:** Just concerning Mr. Ashford's
4 attempt to take their vehicle.

5 **MS. SINGLETARY:** Your Honor, we have no problem
6 with them actually testifying to them seeing the
7 actual car crash and seeing my client into the actual
8 church yard, but we do have -- we do a take a --

9 **THE COURT:** That's one of them. What's the
10 other one?

11 **MS. SINGLETARY:** The actual Ford Taurus that was
12 actually driven by --

13 **THE COURT:** Who's got the Taurus?

14 **MS. SINGLETARY:** Gregory Fleming and Kimberly
15 Gilliard.

16 **THE COURT:** And what do you object to about
17 their testimony?

18 **MS. SINGLETARY:** To them testifying to the fact
19 that our client attempted to carjack their Ford
20 Taurus.

21 **THE COURT:** He comes up with a gun, puts it in
22 their face, and you think that's not -- they can't
23 testify to that?

24 **MS. SINGLETARY:** Well, that's not what I'm
25 saying, Your Honor. While they testified, they said

1 that he came up to the car with a gun in their face
2 and attempted to carjack their car, that was their
3 testimony. And the attempt to carjack their car,
4 that is what we want to be suppressed. We have no
5 problem with them testifying to what they observed,
6 but as to categorizing it as a crime, carjacking or
7 he attempted to take our car, that's a prior bad act,
8 Your Honor.

9 **THE COURT:** Prior to what?

10 **MS. SINGLETARY:** Prior to him actually allegedly
11 taking the cab from James Malachi or prior to the
12 actual burglary first and the kidnapping and the CSC
13 first.

14 **THE COURT:** James Malachi had a cab.

15 **MS. SINGLETARY:** Yes, Your Honor.

16 **THE COURT:** He did carjack that allegedly.

17 **MS. SINGLETARY:** Allegedly, yes, Your Honor.

18 **THE COURT:** That's what the indictments say.

19 **MS. SINGLETARY:** Yes, Your Honor.

20 **THE COURT:** Are those the only two?

21 **MS. SINGLETARY:** Yes, Your Honor.

22 **THE COURT:** Two prior bad acts?

23 **MS. SINGLETARY:** Yes.

24 **THE COURT:** One with the Flemmings and one with
25 the McQueens.

1 **MR. O'NEIL:** One other thing, we've already
2 spoken to the State about this. Mr. Ashford was
3 under investigation for a carjacking that occurred
4 the day before. I think the State has agreed that
5 they're not going into the facts that Mr. Ashford was
6 under investigation for.

7 **MS. CAMPBELL:** Clearly we are not going into
8 what happened the day before. We are going into the
9 surrounding incidents of what happened on this date.

10 **MR. O'NEIL:** Just for the record I just want to
11 make a motion to suppress any testimony of the
12 allegations of the conduct from the day before.

13 **THE COURT:** Prior bad acts.

14 **MS. CAMPBELL:** Under state vs. Broadus, Your
15 Honor, and I believe State vs. Adams, it's res jecti.
16 It says evidence of other crimes is admissible when
17 such evidence is part of the context of the crime or
18 is necessary to a full presentation of the case or is
19 so intimately connected with an explanatory crime
20 charged against the Defendant and is so much a part
21 of the setting of the case that it is at trial that
22 it is appropriate in order to put the story of the
23 crime on trial by proving it.

24 In addition, Your Honor, Ms. Singletary referred
25 to the fact they were getting carjacked. I don't

1 recall them ever using those words. Basically what
2 they stated was that he approached their car, this is
3 with Mr. Fleming, that she said he had a gun and she
4 said, go, go, go.

5 **THE COURT:** Well, I agree I don't recall that
6 testimony. But the elicited testimony was only as to
7 identification. So I don't know what else they may
8 intend to say.

9 **MS. CAMPBELL:** I don't think they -- I think
10 they just said they based it on the testimony that
11 came out here in this hearing.

12 **THE COURT:** All right. Okay.

13 **MS. CAMPBELL:** I just think they have to present
14 a complete picture. I mean, that's how they base
15 their identification, that's what he was doing that
16 day.

17 **THE COURT:** I understand. All right. The jury
18 wants a break. They've been sitting in there for an
19 hour and 15 minutes. Mr. Broome.

20 **THE BAILIFF:** Yes, sir.

21 **THE COURT:** Tell the jury they can take a break.

22 **THE BAILIFF:** All right.

23 **THE COURT:** How about the McQueens? Was there
24 any testimony that they thought or that they
25 perceived that they were being carjacked?

1 **MS. SINGLETARY:** No, Your Honor. That
2 testimony, actually, all the testimony that we're
3 actually trying to exclude all came from Kimberly
4 Gilliard and Gregory Fleming. The latter prior bad
5 act just involved the car that the McQueens owned.

6 **THE COURT:** So Fleming and Gilliard testified
7 that they saw the Defendant go to this other car.

8 **MS. SINGLETARY:** Yeah. And, Your Honor, they
9 testified that they saw him go to the car and they
10 were trying to take the car and when he couldn't take
11 the car he went inside the church.

12 **THE COURT:** So you say they assumed he was
13 trying to take the car, not just frighten the girls.

14 **MS. SINGLETARY:** Yes. And that was their
15 testimony.

16 **THE COURT:** Okay.

17 **MS. SINGLETARY:** And, Your Honor, if I may just
18 respond to something that Ms. Campbell said.
19 "Evidence of other distinct crimes committed by the
20 accused may not be adduced merely to raise an
21 inference or to corroborate the prosecution's theory
22 of the Defendant's guilt of the crimes that he's
23 charged with." And if I heard Ms. Campbell
24 correctly, they want to use this testimony to
25 corroborate what they're saying that my client is

1 actually guilty of.

2 **MS. CAMPBELL:** I never said that.

3 **MS. SINGLETARY:** Well, then I misunderstood Ms.
4 Campbell.

5 **THE COURT:** Well, he's not charged with
6 attempted carjacking of the McQueens's car. He's not
7 charged with attempted carjacking of the Fleming car.
8 So that testimony can't survive. That's just the way
9 things are. It gets confusing when you have nine
10 different indictments.

11 But I'll take your -- it does seem to me that
12 this is a series of events that's more like a spree
13 and that the testimony from these witnesses with
14 regard to what happened that day is admissible
15 subject to my prior rulings.

16 But as to any inference that there is a
17 carjacking of the McQueens' car or an inference that
18 there is a attempted carjacking, he's not charged
19 with attempted carjacking of the Fleming car. Is
20 that correct?

21 **MS. CAMPBELL:** Correct.

22 **THE COURT:** So any testimony with regard to
23 whether he is trying to carjack the car, would that
24 not become a prior bad act to the hostage situation?

25 **MS. CAMPBELL:** No. It would be res jecti of

1 what happened that day, directly as to these events.

2 **THE COURT:** This is a big res jecti.

3 **MS. CAMPBELL:** No, sir; it's not.

4 **THE COURT:** Sure it is. It's an all-day --

5 **MS. CAMPBELL:** It occurs at the same time that
6 he's committing these different offenses.

7 **THE COURT:** Well, you could have charged him
8 with attempted carjacking of both Fleming and
9 McQueen. You didn't do it.

10 **MS. CAMPBELL:** No, sir. Because he
11 approaches -- in their testimony, they didn't use the
12 word "carjack". They said he approached them with a
13 gun in his car and then she yells, go, go, go.

14 **THE COURT:** We're saying the same thing. She's
15 not moving to exclude the testimony.

16 **MS. CAMPBELL:** I'll make sure that she doesn't
17 use the word "carjack".

18 **THE COURT:** That may satisfy it.

19 **MS. SINGLETARY:** Or take the car or try to take
20 the car. That's all I need.

21 **THE COURT:** I think that satisfies it.

22 **MS. SINGLETARY:** Yeah.

23 **MS. CAMPBELL:** Thank you.

24 **MS. SINGLETARY:** Thank you, Your Honor.

25 **THE COURT:** As long as it's a factual recitation

1 and the opinion that there is an attempt to carjack,
2 I think it's pretty clean.

3 **MS. CAMPBELL:** Thank you.

4 **THE COURT:** Now, as I said, anything else
5 pre-trial?

6 **MR. O'NEIL:** Your Honor, just for the record, I
7 always like to renew my Rule 5 discovery requests.
8 There's not anything that I'm aware of that --

9 **THE COURT:** Okay. I think at this point I'm
10 prepared, unless you have something to show me, some
11 law that will show me that the hostage conversations,
12 I assume they're all by phone, could be excluded, I
13 think the public safety exception to Miranda; and
14 although there's no South Carolina case law on this
15 point, there is certainly law in other states that
16 indicates that -- and I'm quoting specifically from
17 People v. Mayfield, a California case, that says:
18 "Although the issue appears not to have arisen very
19 often, every court that has faced it has decided that
20 telephone conversations between police negotiators
21 and an armed suspect who has taken refuge in a
22 building that is surrounded by law enforcement
23 officers do not" -- do not -- "constitute custodial
24 interrogation for the purposes of Miranda."

25 And I think that unless you can show me

1 something different, counsel, I think those
2 conversations are all admissible and do not require
3 exclusion of the Miranda rule.

4 **MR. O'NEIL:** The only thing I'd like to put on
5 the record, Your Honor, is as it relates to the
6 public safety exception. The purpose of that
7 conversation has to be a course in this instance to
8 secure the safety of Ms. Simmons that would have been
9 in the house. I would argue --

10 **THE COURT:** And perhaps the Defendant's own
11 safety, too.

12 **MR. O'NEIL:** Yes, Your Honor. Obviously that as
13 well. But in my reviewing the phone records, between
14 1:26 and 6:47, there were over 93 calls by law
15 enforcement to the residence of Ms. Simmons where Mr.
16 Ashford and Ms. Simmons were located in.

17 My only quarrel at this point would be I think
18 there should be some kind of showing that the purpose
19 of those phone calls was restricted to securing the
20 safety of Mr. Ashford and Ms. Simmons and not to
21 elicit inculpatory statements from Mr. Ashford.

22 **THE COURT:** I don't know how you do that.

23 **MR. O'NEIL:** I just would ask for at the
24 appropriate time a proffer of the questions that were
25 asked of Mr. Ashford before we initially play what

1 Mr. Ashford said.

2 **THE COURT:** All 90 of them?

3 **MR. O'NEIL:** Well, I don't know how much of
4 those 93 conversations the State intends to
5 introduce.

6 **THE COURT:** Let's take it up at the appropriate
7 time.

8 **MS. CAMPBELL:** Yes, sir.

9 **MR. O'NEIL:** Okay.

10 **THE COURT:** Is the State ready to proceed?

11 **MS. CAMPBELL:** No, sir. I need to get these
12 cases real quick and I'll give it to you.

13 **THE COURT:** All right. We'll take a ten-minute
14 break.

15 **MS. CAMPBELL:** Thank you.

16 **THE COURT:** We'll stand at ease for ten minutes.
17 (Whereupon, a break is taken)

18 **MS. CAMPBELL:** May I approach?

19 **THE COURT:** Yes, ma'am.

20 **MS. CAMPBELL:** Your Honor, I've gotten some
21 additional cases including Martuchi on the res gesti
22 issue and then State vs. Drayton, State vs. Stewart,
23 State vs. Johnson and two other cases on the
24 identification issue.

25 **THE COURT:** Well, this is a prior bad acts

1 issue.

2 **MS. CAMPBELL:** Additionally, Your Honor, as to
3 it also addresses res jecti. I'm getting State vs.
4 Martuchi as well.

5 **THE COURT:** Well, I thought we were talking
6 about in-court identification.

7 **MS. CAMPBELL:** I'm getting identification cases,
8 too. I just didn't know where you were going with
9 the res jecti issue.

10 **THE COURT:** Oh, I agree with you on the res
11 jecti issue --

12 **MS. CAMPBELL:** Okay. I apologize.

13 **THE COURT:** -- with the exception of testimony
14 about carjackings. All right. Are you ready for the
15 jury?

16 **MS. CAMPBELL:** Can I just get these -- I mean,
17 can we take this up at the next break then? I mean,
18 it's a pre-trial issue, is my only issue with
19 swearing the jury.

20 **THE COURT:** Well, you know I've got to leave at
21 12.

22 **MS. CAMPBELL:** Yes, sir.

23 **THE COURT:** So do you want to send the jury
24 home?

25 **MS. CAMPBELL:** Could I just have leave to

1 re-argue at least as to Ms. Kelly's identification at
2 a later time? And then we can go ahead and swear the
3 jury and get rolling.

4 **THE COURT:** That's fine. I've got no problem
5 with that. Ms. Kelly. That's the one you want to
6 continue on?

7 **MS. CAMPBELL:** Yes, sir. I think there is cases
8 on point. Your Honor, if I can just move these
9 witnesses right here, we're ready to go.

10 **THE COURT:** And then let me see you at the
11 bench, counsel, when you're ready.

12 (Whereupon, a bench conference is had)

13 **MS. CAMPBELL:** Thank you, Your Honor.

14 **THE COURT:** All right. Come to order, please.
15 The State ready to proceed? Are you ready for the
16 jury?

17 **MS. CAMPBELL:** The State's ready.

18 **THE COURT:** Defense ready?

19 **MR. O'NEIL:** Yes, Your Honor.

20 **THE COURT:** Bring the jury, please.

21 (Jury in at 11:12 a.m.)

22 **THE BAILIFF:** Your Honor, the jury is present.

23 **THE COURT:** Thank you. Good morning, ladies and
24 gentlemen. Juror number 1, I want to thank you for
25 agreeing to serve as the foreperson of this jury.

1 Ladies and gentlemen, probably because there are nine
2 different indictments in this case, the pre-trial
3 process has taken a little longer than I anticipated.
4 We have been here since 9 this morning going through
5 all of these indictments just to make sure everything
6 was in order and prepared to move forward with the
7 trial. So that's the explanation.

8 And sometimes these things happen. And all of
9 that discussion involved legal matters and they must
10 be put on record; in other words, for preservation
11 purposes. So that's why we have to keep you out of
12 the courtroom while all that's going on, because some
13 of it involves factual issues. Some of it involves
14 just legal issues. But I hope you -- I appreciate
15 your patience. I guess that's what I'm getting
16 around to say.

17 Now, another thing that I need to advise you of
18 is the fact that one of my closest and dearest
19 friends died over the weekend and his funeral this
20 afternoon and I feel compelled to be there. And so
21 we're not going to have testimony this afternoon.
22 And it's getting late in the morning at this point.
23 So what we are going to do is go through the process
24 of my preliminary instructions and the attorneys'
25 opening statements to you after which I'll dismiss

1 you for the day and we'll hit the ground running in
2 the morning. And I'm going to ask you tomorrow
3 morning to be here at 9, just another half an hour
4 earlier, so that we can utilize the full day
5 tomorrow.

6 And if any of you have child care problems for
7 the afternoon, please let the bailiffs know so we'll
8 try to accommodate your schedule with regard to any
9 of those type things that you absolutely have to do.
10 All right. Thank you very much. Ms. Pendergrass,
11 will you swear the jury, please.

12 **THE CLERK:** Ladies and gentlemen of the jury,
13 please stand and raise your right hand to be sworn.
14 At the end of the statement please respond by saying,
15 "I do".

16 (Whereupon, the jury is sworn).

17 **THE CLERK:** You may be seated.

18 **THE COURT:** All right, ladies and gentlemen.
19 You've now received your oath as jurors in this case.
20 We're ready to begin the trial. And I just want to
21 take a few minutes to explain the process of a trial
22 to you so you'll know up front what is expected of
23 you and what your role is and what my role is and
24 what the roll of these attorneys is.

25 My purpose in doing so is to set you at ease as

1 best I can in what may be an unfamiliar setting to
2 most if not all of you. In this court a criminal law
3 violation is presented in a legal document known as
4 an indictment, and I told you a little bit about that
5 yesterday. There are nine indictments in this case.
6 Please remember that an indictment is not evidence.
7 An indictment is merely a document containing a
8 specific charge against a particular individual.

9 The Defendant in this case has pled not guilty
10 to these indictments; and, therefore, the State has
11 the burden of proving the elements of each indictment
12 beyond a reasonable doubt to you. And it will be my
13 duty to decide whether the State has -- I'm sorry.
14 It will be your duty to decide whether the State has
15 met that burden.

16 Now, please do not infer from anything that I
17 say as to what your verdict ought to be. You are to
18 determine the innocence or guilt of the Defendant
19 based on the evidence that will be introduced during
20 the course of the trial.

21 I have no opinion about the facts in this case
22 which I may share with you at this time. In fact,
23 the Constitution of the state of South Carolina
24 provides that no trial judge shall make any comment
25 or statement to a jury about the facts of a case.

1 Consequently, do not infer from anything I might
2 say to you in these instructions or anything that I
3 might say to you during the course of the trial in
4 ruling on the admissibility of evidence or otherwise
5 that I have any opinion about the facts in the case.
6 You and you alone will determine what the facts are.
7 You are the sole and exclusive judge of the facts in
8 this case.

9 While you will determine the facts in this case
10 from the evidence, I will preside and be the judge of
11 the law in this case, and you are required to accept
12 and apply the law precisely as I state it to you.

13 Now, let me remind you of two legal principles
14 that guide our process here in the criminal court.
15 First is what's known as the legal yardstick you will
16 use in judging or measuring the evidence in this
17 case. That legal yardstick is known as the burden of
18 proof. And in this case the burden of proof is on
19 the State to prove beyond a reasonable doubt, to
20 prove guilt beyond a reasonable doubt. Should the
21 State fail to meet that burden of proof, it will be
22 your duty to find the defendant not guilty.

23 There is absolutely no burden whatsoever on the
24 Defendant to prove or disprove anything. There is no
25 burden on the Defendant to testify or present any

1 evidence because the burden is and remains on the
2 state of South Carolina to prove guilt beyond a
3 reasonable doubt.

4 Secondly, you may recall my earlier comment to
5 the entire jury panel concerning the presumption of
6 innocence. This is a cardinal and fundamental rule
7 of law that a Defendant will always be presumed
8 innocent of the crime or crimes for which he or she
9 is indicted. The presumption of innocence in other
10 words is not just a simple legal theory or a legal
11 phrase. It is a substantial right to which any
12 accused, including this Defendant, is entitled.

13 And as we begin the trial your role lies
14 essentially in the oath which you took, part of which
15 requires you to well and truly try this case. Your
16 oath requires you to find facts, to find the truth
17 from the evidence presented to you during the course
18 of the trial.

19 You are not to consider anything you have read,
20 heard or seen about this case either before or during
21 the trial outside of the courtroom. You must make
22 your determination of the facts of this case based
23 only on the evidence presented during the course of
24 this trial.

25 Now, what is evidence? In South Carolina

1 evidence comes from three sources. The most common
2 example of evidence is testimony of a witness. A
3 witness will testify from this witness stand. You
4 will see and hear and observe the witness, including
5 the demeanor of the witness, as you determine the
6 credibility of each witness.

7 The second source of evidence is known as an
8 exhibit. An exhibit may be a photograph or a chart
9 or a diagram. An exhibit is a tangible document that
10 will have an exhibit label attached to it. And at
11 the end of the case when you retire to begin your
12 deliberations in the jury room, all of the exhibits
13 received in evidence will go with you to the jury
14 room.

15 The third source of evidence is what the law
16 calls a stipulation. A stipulation is basically an
17 agreement between the parties as to the existence of
18 some certain fact. If there is such a stipulation,
19 you would be required to accept that stipulation as
20 conclusively determined for purposes of this trial.
21 So, ladies and gentlemen, that's what evidence is,
22 testimony, exhibits and any stipulations.

23 And as the trial judge I will preside over the
24 trial of the case, rule on the admissibility of
25 evidence and at the end of the case explain to you

1 the law applicable to this case. Now, please
2 understand what I tell you is not evidence. By the
3 same token, what these attorneys tell you is not
4 evidence. The attorneys may make opening statements
5 and closing statements to you, but those statements
6 are not evidence. The attorneys will ask questions
7 of the witnesses, but the questions are not evidence.
8 It is the responses of the witnesses to those
9 questions which constitute evidence.

10 Now, you and I, ladies and gentlemen, do not ask
11 questions of the witnesses and we do not offer
12 exhibits. Your duty is to listen closely, openly and
13 honestly to the evidence and keep an open mind. Do
14 not form any conclusions or judgments until you have
15 received and considered all of the evidence in the
16 case, the arguments of the attorneys and my final
17 instructions to you on the law.

18 Consistent with your oath do not discuss this
19 case with fellow jurors or with anyone else during
20 the course of the trial. The first opportunity you
21 will have to discuss this case is at the end of the
22 trial when I authorize you to begin your
23 deliberations. I trust you will honor my
24 instructions and your oath in this regard.

25 Now, let's look briefly at the trial process.

1 Each side may make an opening statement to you.
2 After the opening statements we will begin with the
3 receipt of evidence. The State goes first and
4 presents the evidence. The State goes first because
5 the State brought the charges and it's their burden
6 of proof. After we've heard and received evidence
7 from the State, the same opportunity is given to the
8 defendant, bearing in mind, however, that there is
9 absolutely no burden on the Defendant to present any
10 evidence at all.

11 Once we have received all the evidence in the
12 case, each side is permitted to make a final argument
13 or summation to you, after which I will instruct you
14 on the law applicable to this case. It is at that
15 point at the end of the trial when you will be
16 permitted to begin your deliberations.
17 Mr. Foreperson, it will be your duty to preside in
18 the jury room at that time, be the jury's
19 spokesperson here in court and to write the verdict
20 if that becomes necessary.

21 Now, let me close with just a couple of
22 housekeeping matters. We generally run court for
23 about an hour and a half to two hours between breaks.
24 However, things frequently happen during the course
25 of the trial which may require us to deviate from a

1 normal schedule, as you've seen probably already.

2 For example, we'll break whenever you need a
3 break. If you need to take a break, just raise your
4 hand, get my attention and we will take a break.
5 Also from time to time legal questions come up which
6 may require me to send you back to the jury room more
7 frequently than I would like and I'm certain perhaps
8 more frequently than you would like.

9 Also from time to time you may hear one of the
10 attorneys say something like, "I object" for some
11 reason. Now, the attorneys are not trying to hide
12 anything from you. They are merely following what
13 are known as the rules of evidence which are
14 basically the rules of the road that govern all
15 trials and they are asking the Court to rule on
16 whether or not the other side has violated one of
17 these rules either intentionally or inadvertently.

18 If you cannot hear a particular witness or
19 myself or one of the attorneys, please let us know so
20 we can speak up more clearly. If your view of an
21 exhibit is obstructed, please let us know. We'll
22 correct that. If you need to bring anything to my
23 attention during the course of the trial please
24 notify one of the bailiffs. If you do need to
25 contact me, it they be necessary for the bailiff to

1 require you to put that request or question in
2 writing so that we can have a record of it. I'll
3 respond as quickly as I can to the extent the law
4 permits me to do so.

5 All right, ladies and gentlemen. I want to
6 thank you for your kind attention. I trust you will
7 give the same undivided attention to these attorneys
8 and the parties in this case. We will now begin with
9 opening statements. Solicitor.

10 **MR. BRYANT:** If it pleases the Court, Mr.
11 O'Neil, Ms. Singletary. February 24th of 2007 was
12 not a good day to be giving a friend a ride home, was
13 not a good day to be at the Wash World, was not a
14 good day to be at the church, was not a good day even
15 to be in your home.

16 Ladies and gentlemen, the evidence will show
17 that on February 27th (sic) the Defendant seated
18 right there behind you started a crime spree that
19 started on Oakland Street here in Richland County,
20 Oakland Street where he took the car of Barry Taylor.
21 From Oakland Street it was to Wash World which was
22 located on North Main Street where he took the car of
23 Pearl Kelly. Both of these were when the Defendant
24 had a gun. From Wash World and the Kellys's car it
25 was on to Cushman Road where the church was located,

1 also in Richland County. When he was circling coming
2 down Cushman, he wrecked the car, wrecked the Lincoln
3 into a telephone pole.

4 The driver of another vehicle, Mr. Fleming was a
5 driver, Ms. Gilliard who was seated there were coming
6 from Wal-Mart, a day at Wal-Mart, when they see that
7 car wreck. They come around, see if the person is
8 okay. The person comes up to them with a gun on the
9 driver's side. Mr. Fleming was the driver. Mr.
10 Fleming drives off but stays so that he can watch
11 what is happening.

12 Then you'll hear testimony from other witnesses
13 who were in the church parking lot as to what the
14 Defendant did next. You'll hear testimony from some
15 of the children who were there that Saturday
16 afternoon, who were there listening to music, ready,
17 getting ready for choir practice. And you're going
18 to hear some of those children testify. A couple of
19 them at the time were very young, ten years, now
20 she's 12 years old. One was 14, I believe now is 16.

21 You're going to hear testimony how they ran in
22 the church screaming about what they'd seen. While
23 they were running into the church telling what had
24 happened, Ms. Worthy who was at the church that day,
25 one of the young women called her a deaconess,

1 Ms. Worthy was on the phone trying to call 911. And
2 you're going to hear from Ms. Worthy how someone came
3 up behind her, reached over her and she drops the
4 phone and she sees the gun and she has to go back
5 outside with the Defendant back into the parking lot,
6 then back into the street where he is trying to flag
7 down a passing car. He lets Ms. Worthy go and she
8 runs back into the church and locks the door. She is
9 going to testify to all that.

10 Then you're going to hear about the driver of a
11 Blue Ribbon taxi who is taking his granddaughter with
12 him, doing nothing but minding his own business when
13 the Defendant comes up to the taxi with a gun, again
14 with the same gun, takes that taxi and then proceeds
15 to Booth Street, to the home of Debbie Ann Simmons.

16 But the Defendant did not proceed by himself
17 because Mr. Fleming and Ms. Gilliard who were in that
18 same car followed him to Booth Street and called the
19 police keeping the police informed. It was at Booth
20 Street, the home of Ms. Simmons that the Defendant
21 begins committing a burglary, burglary first. We'll
22 discuss that more during the trial and at the end
23 when the judge charges you.

24 He breaks in. There are children there. There
25 is Kenyata Wilson who is there. The children and

1 Ms. Wilson are eventually let go, but Debbie Ann
2 Simmons is not allowed to be let go. She is held
3 there against her will by the Defendant who has a
4 gun.

5 And that begins the standoff, ladies and
6 gentlemen. Because during this time police are
7 arriving, the deputy sheriff's who are arriving,
8 Deputy Unger and White are arriving. Eventually
9 Sheriff Leon Lott comes to the scene. Hostage
10 negotiators are there. While they are setting up a
11 perimeter Ms. Simmons is being sexually assaulted.
12 You will hear testimony from Ms. Simmons about that
13 very, very painful day and that painful incident.

14 You will hear testimony from the responding
15 officers. You will hear testimony from Deputies
16 Unger and White who will tell you that as they're
17 trying to get behind the house to set up a perimeter
18 going from one van to another trailer, shots rang
19 out, that they were being shot at by the Defendant
20 who was inside.

21 That gives rise to the assault with intent to
22 kill charges, ladies and gentlemen. Much later,
23 much, much later, ladies and gentlemen, this
24 situation was only resolved through the hostage
25 rescue team from the Sheriff's Department after they

1 fired tear gas and what are called flash bangs into
2 the residence.

3 And then they went in and were able to arrest
4 the Defendant who was charged with the carjackings
5 from earlier in the day, who was charged with the
6 burglary first and criminal sexual conduct with what
7 went on in that trailer, and was charged with the
8 kidnapping of Ms. Worthy from the church from taking
9 her outside at his side with the gun and who was
10 charged with two counts of assault with intent to
11 kill.

12 And you'll hear from members of the Sheriff's
13 Department, members of the hostage rescue team who
14 went in there that day. You'll also hear from the
15 investigators who took a statement from the
16 Defendant. Investigator Barnes, Investigator Thomas.
17 You'll hear testimony from the witnesses who were
18 there: Mr. Fleming, Ms. Gilliard, who pick him out
19 of a photo line-up, as well as other identifications,
20 who pick him out from these photo arrays. You'll
21 hear all of that, ladies and gentlemen, presented
22 here over the course of the next few days.

23 Please understand, I know that a lot of you have
24 seen CSI; you've seen all these shows. It's not
25 often flashy. It's not often fun and pleasing. You

1 don't get to watch all these great technical devices.
2 But what you're going to see unfold over the next few
3 days is hard, old-fashioned police work involving
4 situations where there was a hostage, there was a
5 Defendant, and there was no TV shows, no commercial
6 breaks because it's real life, ladies and gentlemen.

7 It is our burden as representatives of the State
8 of South Carolina, the Fifth Circuit Solicitor's
9 Office, it's our burden to prove the Defendant
10 guilty. He is presumed innocent until proven guilty.
11 We submit that we will prove beyond a reasonable
12 doubt to each and every one of you that he is guilty
13 of the crimes charged and he is guilty of
14 carjackings, guilty of the kidnappings, guilty of the
15 burglary first, the criminal sexual conduct and the
16 two assault with intent to kills on Deputies Unger
17 and White.

18 At the end of the testimony, ladies and
19 gentlemen, Luck Campbell from our office will stand
20 up here and deliver closing arguments. She will ask
21 you to return a verdict, as would I, to each and
22 every one of the indictments, a verdict that speaks
23 to the evidence and what transpired over the course
24 of February 27th (sic), 2007, a date that it wasn't
25 safe to do any of the things I mentioned; verdicts

1 that come back guilty. Thank you.

2 **THE COURT:** Ms. Singletary.

3 **MS. SINGLETARY:** Thank you, Your Honor. If it
4 pleases the Court. Good morning. What the State
5 expects for you all to believe is that Randolph
6 Ashford, my client, woke up on the morning of
7 February the 24th, 2007 and he decided to do some
8 unspeakable acts for no rational reason at all.

9 Now, the State has told you that he has been
10 charged with actually forcibly making Debbie Simmons
11 have sex with him. But let me tell you who Debbie
12 Simmons is. Debbie Simmons is actually Roberta Neil,
13 and Roberta Neil's cousin which is the girlfriend,
14 the live-in girlfriend of my client, Mr. Ashford.

15 The State expects you to believe that on that
16 date that he woke up that Ms. Neil was not there and
17 that \$4,000 was missing. And so because \$4,000 was
18 missing and because Ms. Neil wasn't there, he decided
19 to go to Debbie Simmons' house, her cousin, and hold
20 her hostage for over seven hours and to force her to
21 have sex and before that take three different cars
22 from three different locations.

23 Now, I know you're probably thinking what is
24 this? I mean, does the State really expect us to
25 believe that because of \$4,000 someone in their right

1 mind would commit these acts? Well, I tell you;
2 don't fall for the story that the State is trying to
3 tell you. Because it doesn't make any sense at all.

4 Now, I'm not going to sit up here and try to
5 tell you exactly what happened on February the 24th,
6 2007. And neither is the State. Because guess what?
7 I wasn't here. I wasn't there. Mr. O'Neil wasn't
8 there. And none of the prosecutors for the State was
9 there.

10 But what I will tell you is that after you
11 listen to the testimony of all the witnesses that the
12 State brings in here and they testify on this stand,
13 it's going to become clear to each and every one of
14 you all, clear exactly what happened on February the
15 24th, 2007 and what didn't happen. And what I want
16 you to do is pay attention to what didn't happen on
17 that day.

18 Now, the State has the burden. They told you
19 that. The Honorable Judge Cooper has told you that.
20 They have the burden of proving Mr. Ashford guilty
21 beyond a reasonable doubt. Now, Mr. Ashford doesn't
22 have to prove anything at all. But guess what? The
23 State has to prove each and every charge that they
24 brought against Mr. Ashford beyond a reasonable
25 doubt.

1 Now, I want to tell you all that a lot of legal
2 scholars throughout the years have tried to come up
3 with different definitions, different ways to explain
4 to people exactly what reasonable doubt means or what
5 it is. Let me tell you all this. Each and every one
6 of you all are reasonable people. You come into this
7 courtroom with life experiences and common sense, and
8 you know what makes sense and what doesn't make sense
9 at all. We ask that you use your common sense when
10 you listen to the testimony of the witnesses that the
11 State actually brings in here today.

12 Now, let's talk about the carjackings. Okay?
13 Now, the State told you that the first carjacking
14 happened on Oakland Street. And they're telling you
15 that my client, Mr. Ashford, went to Oakland Street
16 and took a car from Barry Taylor. But what they
17 didn't tell you is, and what you will see throughout
18 the duration of this trial is, pay attention to where
19 the locations of these carjackings allegedly
20 occurred.

21 Now, I want you to remember where I'm standing
22 at right now is Oakland Street. Okay? Now, Mr.
23 Ashford lives right over here at Muir Street. So
24 what the State is trying to tell you is that Mr.
25 Ashford went to Oakland Street took the car from

1 Barry Taylor and he takes that car from Oakland
2 Street and then he goes to North Main at the Wash
3 World.

4 Now, a car that has nothing wrong with it at
5 all, because he drove it from Oakland Street to Wash
6 World, but when he goes to Wash World he decides,
7 hey, I don't want this car any more. Let me many
8 just go ahead and get another car. So he gets the
9 car from the Kellys. And remember again, I want to
10 go back to where Mr. Ashford lives, he lives right
11 here on Muir Street.

12 Now, let me tell you where Debbie Simmons lives.
13 She lives over here at Booth Street. Now, do you see
14 what I'm saying? Does it make sense for a person to
15 backtrack and go the opposite direction of a location
16 that they're saying that that person is trying to get
17 to? Pay attention to those locations.

18 Now, let's talk about an issue that many people
19 don't like to talk about. It makes them squeamish.
20 It's something that you really don't talk about in
21 public. And it's sex. I'm going to tell you that
22 Randolph Ashford did not, would not, could not force
23 Ms. Simmons to have sex with him in that trailer on
24 Booth Street.

25 After all, that was his girlfriend's cousin. It

1 was someone he knew. It was someone who he used to
2 talk to all the time on the phone, someone where he
3 had been a welcome guest at their house before. But
4 on this day, because of that infamous \$4,000, he is
5 going to go over there and rape her. It doesn't make
6 any sense at all.

7 Now, I will tell you another thing, too. There
8 is going to be a nurse who is going to come up here.
9 There is going to be a nurse. Pay attention to the
10 physical evidence. Was there any semen found? Was
11 there any abrasions found? Was there any marks, any
12 restraints shown on her body? No. There was no
13 physical evidence. Because guess what? It just
14 didn't happen.

15 Now, let's go to the assault with intent to
16 kill. Now, you're going to hear testimony from Ms.
17 Simmons. Ms. Simmons is going to say while she was
18 in that home for seven hours that Mr. Ashford shot
19 once in the door and then he shot once out of the
20 front of the trailer.

21 Now, you heard the solicitor just tell that you
22 Deputy Unger, Deputy White, they were at the back of
23 the trailer. So if he shot out the front, how could
24 he be charged with assault with intent to kill out
25 the back of the trailer?

1 And let me tell you. The type of gun that was
2 actually found, it was what they call a six-shooter.
3 Now, inside that home there was no extra bullets
4 found in there. But I will tell you when that gun
5 was recovered, guess how many bullets were found
6 inside that six-shooter? Four. Now, I'm going to
7 tell you, I'm not a math genius, but guess what?
8 Four plus two equals six. So the assault with intent
9 to kill just did not happen. Look at the evidence.

10 The easy answer is not always the right answer,
11 and I know that you all will pay close attention to
12 all the testimony, all the physical evidence and that
13 you know that my client is innocent when he comes in
14 this courtroom and it's not until the State proves
15 him guilty beyond a reasonable doubt.

16 And I'm going to tell you, the State normally
17 likes to say, hey, well, we welcome the burden. We
18 welcome this burden. Well, I'm going to tell you
19 another thing. Welcoming the burden and proving the
20 burden, totally different things. And I know that
21 you will hold them to that burden and at the end of
22 this trial when you go back there to deliberate that
23 you will make the right decision and justice will be
24 served. Thank you, ladies and gentlemen.

25 **THE COURT:** All right, ladies and gentlemen. As

1 I indicated to you before, I guess maybe some of you
2 had a question, I am a resident judge of the Fifth
3 Judicial Circuit and this is my home office, but I
4 actually live in Camden. And when I said I had to
5 attend a funeral, it's in Camden. It's not here. So
6 some of you may have thought, well, why can't we just
7 take a long lunch break. But it's a little more
8 complicated than that.

9 So I'm going to excuse you now until 9:00 in the
10 morning. In the morning, just so you -- if you think
11 about it overnight, you might think how am I going to
12 keep up with all of this evidence over the course of
13 the next several days. I'm going to provide you with
14 pencils and pads so that you can make notes
15 throughout the course of the trial because you're
16 going to have to try to keep the evidence straight as
17 to each of the indictments because you're going to be
18 asked to make a decision on each of the separate
19 indictments.

20 So I think it will facilitate things if you have
21 some pads and pencils. And I will ask you when you
22 come to deliberating when the evidence is concluded
23 that those note pads are for your own recollection,
24 your own purposes, not to try to persuade somebody
25 else that you took a note that they didn't take and

1 try to, you know, use the notes to try to influence
2 somebody else's decision. They're for your own
3 benefit. And I hope you'll respect that instruction
4 also.

5 All right, ladies and gentlemen. I'm going to
6 excuse you now until 9:00 in the morning at which
7 time the evidence will -- the witnesses will be
8 called and the evidence will begin. Thank you very
9 much. Again, don't discuss the case among yourselves
10 when you return to the jury room or with anyone else
11 over the evening hours. I don't think there is going
12 to be any press coverage, but I never know. Thank
13 you very much.

14 (Jury out at 11:47 a.m.)

15 **THE COURT:** Anything further?

16 **MS. CAMPBELL:** No, sir.

17 **MR. O'NEIL:** No, Your Honor.

18 **MS. SINGLETARY:** No.

19 **THE COURT:** 9:00. Thank you very much.

20 **MS. SINGLETARY:** Thank you, Your Honor.

21 (Whereupon, the proceedings are concluded for
22 the day, to be reconvened tomorrow morning)

23

24

25

1 Wednesday, April 1, 2009

2 **THE COURT:** Where is the Defendant?

3 **MR. DEPEW:** He's on the way up, sir.

4 **THE COURT:** On the way up?

5 **MR. DEPEW:** Yes, sir.

6 (Pause)

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22 for identification.)

23 **MS. SINGLETARY:** Your Honor, may we approach the
24 bench?

25 **THE COURT:** Yes, ma'am.

1 (Whereupon, a bench conference is had)

2 **THE COURT:** You ready to proceed?

3 **MR. O'NEIL:** Your Honor, at this time I spoke
4 with Mr. Ashford probably about 45 minutes or an hour
5 ago this morning. At this time on his behalf he has
6 informed me that he would ask for me to ask the Court
7 to have a motion to relieve counsel and also a motion
8 for a continuance. I would ask that the motion to
9 relieve counsel be heard first in camera.

10 **THE COURT:** I understand. Mr. Ashford, is that
11 correct?

12 **MR. ASHFORD:** Yes, sir.

13 **THE COURT:** And what are you asking me to do?

14 **MR. ASHFORD:** I'm asking you to relieve counsel
15 that I have and if possible get me more counsel due
16 to the fact, Your Honor, that they've only been on my
17 case two months. I'm still lacking discovery.

18 **THE COURT:** Okay. All right. Let's clear the
19 courtroom of all personnel, I mean, all spectators
20 and anybody that's not law enforcement that is
21 involved in this case. I need to hear this matter
22 what we call in camera; in other words, without
23 everybody else in the courtroom. So it will just be
24 a few minutes. We need law enforcement to stay.

25 (Pause)

1 **THE COURT:** All right, Mr. Ashford. Now I've
2 cleared the courtroom. So it's just between you and
3 me. I mean, the security officers are here and
4 they're going to stay here. And I need to -- if Ms.
5 Singletary comes back, I'll allow her in here when
6 she comes back.

7 **THE BAILIFF:** Yes, sir.

8 **THE COURT:** All right. Tell me -- here is the
9 situation. And you know this. This case came about
10 on May 23rd, 2007, almost two years ago. And I'm not
11 familiar with the lawyers that you've had in this
12 case. And I'll talk to the lawyers. But I need to
13 know from you why you think these lawyers are not
14 prepared to handle your case. The case is going
15 forward. Do you understand that? I'm not going to
16 continue the case unless -- well, only under extreme
17 circumstances would I consider continuing the case.
18 And that's even difficult because we've got a jury
19 here and the jury is ready to go.

20 You've pled not guilty. You have a right to
21 present your evidence and let the jury decide. I'm
22 not going to decide whether you're guilty or not
23 guilty. The jury is going to decide. You've been
24 communicated somewhat of a plea offer or at least a
25 potential for a plea and what a potential sentence

1 might be. And that's the only thing I participated
2 in during the preparation for this trial.

3 So I need you to put on the record, you need to
4 tell me and you need to put on this record why you
5 feel your attorneys are not capable or prepared to
6 handle this case.

7 **MR. ASHFORD:** Okay. Your Honor, first of all, I
8 would like to say that I've had that motion of
9 discovery that I feel is very important in my case,
10 and we haven't gotten it yet.

11 **THE COURT:** All right. Let me write these down.
12 Discovery. Okay. What is that discovery that you've
13 asked from that you have not gotten?

14 **MR. ASHFORD:** Telephone records, records from a
15 previous attorney documenting stuff that will be
16 brought up in this trial.

17 **THE COURT:** Telephone records of what? Who?
18 What? What kind of telephone records?

19 **MR. ASHFORD:** AT&T.

20 **THE COURT:** I mean, your phone?

21 **MR. ASHFORD:** Yeah. Yes, sir.

22 **THE COURT:** Is that a cellphone?

23 **MR. ASHFORD:** Sir?

24 **THE COURT:** Cellphone?

25 **MR. ASHFORD:** No, sir.

1 **THE COURT:** Home phone?

2 **MR. ASHFORD:** Yes, sir.

3 **THE COURT:** All right. What else?

4 **MR. ASHFORD:** Documents by my previous lawyer
5 that I had.

6 **THE COURT:** Who was that?

7 **JUROR:** McWhirter, Bell & Associates.

8 McWhirter, Bell & Associates.

9 **THE COURT:** Yeah. Which one of them?

10 **MR. ASHFORD:** Joseph Gasiti (sp).

11 **THE COURT:** Joseph -- who is this?

12 **MR. ASHFORD:** Gasiti.

13 **THE COURT:** Gasiti?

14 **MR. ASHFORD:** Gasiti.

15 **THE COURT:** He was your criminal lawyer?

16 **MR. ASHFORD:** No, sir. No, sir. I had him
17 representing me on something prior.

18 **THE COURT:** Oh. So a civil case?

19 **MR. ASHFORD:** Yes, sir.

20 **THE COURT:** Is it an automobile accident or
21 something like that?

22 **MR. ASHFORD:** No, sir.

23 **THE COURT:** What kind of case?

24 **MR. ASHFORD:** Work injury. A work injury.

25 **THE COURT:** Work injury?

1 **MR. ASHFORD:** Mm-hmm (affirmative).

2 **THE COURT:** So it's Workmen's Comp. All right.
3 What else?

4 **MR. ASHFORD:** And records that I feel are
5 important to my case concerning the identity of who I
6 were at the time that people had been identifying me,
7 which is, well, my clothes that I had on when I came
8 in. And they haven't gotten them from the jail.
9 They don't have any record of them.

10 **THE COURT:** You mean when you were arrested?

11 **MR. ASHFORD:** Yes, sir. I feel that that was
12 important. Okay. Your Honor, I have talked with Mr.
13 O'Neil and --

14 **THE COURT:** Ms. Singletary?

15 **MR. ASHFORD:** -- Ms. Singletary. And everything
16 that I've talked to them and told them that I felt
17 was very important in my case, they have told me it
18 wasn't.

19 **THE COURT:** Mm-hmm (affirmative).

20 **MR. ASHFORD:** I mean, there is not one single
21 thing that I have suggested that I think should be
22 important should be brought up in my case that they
23 have agreed on. So from that point I don't feel that
24 I'm being treated fair. They've only had me two
25 months, not quite two months. And so, you know, it's

1 like to me it's not important whether I have proper
2 information and stuff like that to present to the
3 jury and stuff for the time they're deliberating.
4 Basically from the way I see it, Judge, they want to
5 go forward without me having all my stuff presented.

6 **THE COURT:** All right. Let me hear from Mr.
7 O'Neil. Mr. O'Neil, you need Ms. Singletary here?

8 **MR. O'NEIL:** No, Your Honor.

9 **THE COURT:** You're prepared?

10 **MR. O'NEIL:** Yes, Your Honor.

11 **THE COURT:** All right. Mr. O'Neil, I need to
12 first examine the issue of discovery. Let me get the
13 history of his representation. Do you know anything
14 about that?

15 **MR. O'NEIL:** Yes, Your Honor. He was first
16 filed in our office first in February of 2007, Your
17 Honor. At that time Mr. Ashford was represented by
18 Doug Strickler of my office.

19 **THE COURT:** Doug Strickler?

20 **MR. O'NEIL:** Yes, Your Honor.

21 **THE COURT:** Okay.

22 **MR. O'NEIL:** At some point later in 2007 his
23 case was transferred to Ms. Danielle Payne of my
24 office.

25 **THE COURT:** Payne?

1 **MR. O'NEIL:** Yes, Your Honor.

2 **THE COURT:** All right.

3 **MR. O'NEIL:** Then it looks like I believe May of
4 2008 this case was transferred to Ms. Kristy Grafton
5 in our office.

6 **THE COURT:** All of whom are no longer there.

7 **MR. O'NEIL:** Yes, Your Honor. That was the
8 basis of the transfers. The attorneys would leave
9 the office. Then in July of 2008 his case got
10 transferred to Ms. Carolyn Gripp. And then in
11 October of 2008 Ms. Gripp filed a motion to be
12 relieved as counsel Mr. Ashford's case and his case
13 was transferred at that time outside to Mr. Jonathan
14 Milling. And then later, December, early in January
15 Mr. Milling approached the court and because of
16 issues with OID and funding at that time, because of
17 attorney/client conflict he asked to be relieved of
18 Mr. Ashford's case and Mr. Milling was relieved from
19 representing Mr. Ashford on January 13th of 2009.
20 That's when the case was transferred to me.

21 **THE COURT:** January 13th, 2009?

22 **MR. O'NEIL:** Yes, Your Honor.

23 **THE COURT:** So over the course of this event Mr.
24 Ashford has had one, two, three, four, five, six,
25 seven lawyers, including you and Ms. Singletary?

1 **MR. O'NEIL:** Yes, Your Honor.

2 **THE COURT:** Okay. Now, what about the
3 discovery? If you can tell from the file, when was a
4 Rule 5 process initiated?

5 **MR. O'NEIL:** The Rule 5 was filed February 27th
6 of 2007.

7 **THE COURT:** All right. Did the State respond to
8 that discovery?

9 **MR. O'NEIL:** Yes, Your Honor.

10 **THE COURT:** In a timely manner?

11 **MR. O'NEIL:** Yes, Your Honor. What Mr. Ashford
12 is referring to is we had an investigator assigned to
13 the case, Ms. Lee Connelly. And Ms. Connelly --

14 **THE COURT:** That was your investigator?

15 **MR. O'NEIL:** My investigator, Your Honor. And
16 Mr. Ashford has had troubles with Ms. Connelly and
17 other attorneys prior to my representation about
18 getting certain phone records.

19 **THE COURT:** How about the general discovery?
20 Was that supplied by the State?

21 **MR. O'NEIL:** Yes, Your Honor.

22 **THE COURT:** And you've continued to request the
23 State to supplement that discovery up until today?

24 **MR. O'NEIL:** Yes, Your Honor.

25 **THE COURT:** All right. As far as you know, is

1 there anything that you've requested that the State
2 has not given you that they have?

3 **MR. O'NEIL:** The only thing that was requested
4 from our perspective that the State has been unable
5 to produce was any record of 911 calls made from the
6 residence of [REDACTED].

7 **THE COURT:** Is that the incident location?

8 **MR. O'NEIL:** That's the stand-off location.
9 I've addressed this with Ms. Campbell on at least
10 three occasions and I had my investigator talk with
11 911 as well, and at this time they have no further
12 records of any phone calls made from [REDACTED]
13 [REDACTED] addressing 911, Mr. Ashford's 911 calls.

14 And I explained to Mr. Ashford when I first
15 started representing him that those tapes are usually
16 kept only for a 90-day period. And by the time I was
17 representing Mr. Ashford it had already been two
18 years after the incident had occurred and I told him
19 that there's no possibility of any audio tapes being
20 saved at this point.

21 There may be a possibility of a closed incident
22 report from 911. But upon Ms. Connelly, my
23 investigator, speaking with 911 and my talking with
24 the State concerning whether or not there is any
25 incidents of any additional closed incident reports,

1 the State says that there's not and 911 indicates
2 that there's no further closed incident reports they
3 haven't turned over.

4 **THE COURT:** Well, of course if they produce such
5 during the course of the trial, they would be
6 inadmissible at this point, would not be able to be
7 used against your client. So with no records
8 available --

9 **MR. O'NEIL:** No, Your Honor.

10 **THE COURT:** And is that the only deficiency, as
11 we'll call it, in the discovery?

12 **MR. O'NEIL:** From the State's perspective, yes,
13 Your Honor.

14 **THE COURT:** All right. Now, it seems that Mr.
15 Ashford is seeking records of his own home phone
16 usage.

17 **MR. O'NEIL:** Yes, Your Honor.

18 **THE COURT:** Do you know what that would or would
19 not tend to prove in terms of this case?

20 **MR. O'NEIL:** He is concerned about his home
21 phone records to indicate to the jury when was the
22 last time a call was made from his residence. This
23 would in turn tend to prove his departure time from
24 his residence, meaning if he was home using his phone
25 during a time where one of the carjacking victims

1 claimed they were carjacked, those phone records
2 would prove that he was at home and unable to have
3 been the assailant that did any of the carjackings or
4 that particular carjacking.

5 **THE COURT:** And has anybody investigated that?

6 **MR. O'NEIL:** Yes, Your Honor. Like I said, Mr.
7 Ashford, he has been speaking with my investigator
8 for longer than I have been representing him. From
9 all my talks with Mr. Ashford, he always inquired of
10 me didn't we have the phone records. I assumed in
11 speaking with my investigator she was getting phone
12 records from Deborah Simmons, the [REDACTED]
13 address. She was in the process of subpoenaing those
14 records. She has subpoenaed those records from AT&T.

15 It was only brought to my attention from Mr.
16 Ashford's perspective this last weekend that we
17 actually didn't have the I think March 25th of 2009,
18 on our jail visit on that day that he was actually
19 concerned about with getting his own phone records.
20 It was his position that he had told former attorneys
21 that he thought that I knew that that's the records
22 he was seeking. And I didn't. It was just
23 miscommunication between me, former attorneys and my
24 investigator and Mr. Ashford.

25 **THE COURT:** No record of that in the file?

1 **MR. O'NEIL:** I'm sorry, Your Honor?

2 **THE COURT:** Is there no notation in your file as
3 to his request for home phone records?

4 **MR. O'NEIL:** There's a notation in my file that
5 he wanted phone records, and that was I think by
6 Ms. Danielle Payne.

7 **THE COURT:** All right. What about his --

8 **MR. O'NEIL:** And we have --

9 **THE COURT:** Go ahead.

10 **MR. O'NEIL:** We have -- since Mr. Ashford told
11 me he wanted those records, I have communicated that
12 request to my investigator. She has overnighted a
13 fax to AT&T to get those phone records. She has
14 informed me that that usually takes 30 days to get
15 those phone records. I've informed Mr. Ashford we're
16 still trying to get records, but it normally takes
17 about 30 days to get records. And we're trying to
18 get it within a week, but I told him we'd make all
19 efforts to try to get those records nonetheless.

20 **THE COURT:** All right. What about this
21 Workmen's Comp claim?

22 **MR. O'NEIL:** The issue with the Workers' Comp
23 claim, my investigator has been in contact with
24 McWhirter. My investigator contacted McWhirters and
25 told them they needed information concerning Mr.

1 Ashford's Workmen's Comp claim. What they have
2 provided for us was only proof that Mr. Ashford
3 borrowed \$4,000. Just to try to put this in context,
4 a part of Mr. Ashford's statement says that the night
5 before Mr. Ashford and Ms. Roberta Neil, his live-in
6 girlfriend were arguing about the fact that
7 Ms. Roberta Neil took the \$4,000 from him.

8 Mr. Ashford wanted information from the lawyer's
9 office proving that he borrowed the \$4,000 from the
10 lawyer's office and he paid that money back.
11 Therefore, there was an argument that night over
12 approximately \$4,000. We've been in contact with his
13 civil attorneys on that issue, and what my
14 investigator got faxed to her from the attorneys was
15 just proof that Mr. Ashford borrowed the \$4,000 and
16 not proof that he had paid the money back.

17 Your Honor, I presented Mr. Ashford with what we
18 had gotten from his civil attorneys on this past
19 Saturday. He informed me that he needed some
20 indication that he had paid that money back. I
21 called my investigator that Saturday, left a message
22 on her telephone. She called me back on Sunday. She
23 faxed over on this past Sunday to McWhirters a
24 request not only that proof that not only that Mr.
25 Ashford had borrowed money but that he had paid that

1 money back.

2 As late as yesterday she has been corresponding
3 with one of the paralegals over there at McWhirters,
4 and this morning my parallel sent me a fax saying she
5 would attempt to get a handwritten letter from one of
6 the lawyers at McWhirter that handled Mr. Ashford's
7 case saying that he had paid that money back, and
8 we're trying to get that.

9 **THE COURT:** And the time he paid it back?

10 **MR. O'NEIL:** Yes, Your Honor.

11 **THE COURT:** A simple subpoena can bring those
12 people here.

13 **MR. O'NEIL:** Yes, Your Honor.

14 **THE COURT:** If you need that as a portion of the
15 defense.

16 **MR. O'NEIL:** Yes, Your Honor.

17 **THE COURT:** And I don't see that happening
18 today, your needing them today.

19 **MR. O'NEIL:** Yeah. I have informed Mr. Ashford
20 that any records that we obtained would not be used
21 in our case in chief which probably at the earliest
22 would be k.

23 **THE COURT:** And even then you're going to have
24 to decide whether you wish to present a defense.

25 **MR. O'NEIL:** Yes, Your Honor.

1 **THE COURT:** All right. How about the -- he says
2 the clothes that he wore when he was arrested bear
3 some evidentiary value in the case. What do you know
4 about that?

5 **MR. O'NEIL:** I think Mr. Ashford would tell you
6 in all honesty the first he mentioned that to me was
7 this morning, Your Honor, in holding. And I told him
8 essentially, when I told him that the people who
9 identified him, there are discrepancies in their
10 identification of Mr. Ashford and his clothes would
11 indicate a discrepancy in those identifications.

12 **THE COURT:** But that was very sketchy from what
13 I heard in terms of the description prong of the
14 identification process.

15 **MR. O'NEIL:** Right. And I told Ms. Singletary
16 mostly. But Ms. Singletary informed him essentially
17 that when suppressing both the in-court and
18 out-of-court identification of those two of those
19 witnesses of the six that the identification wasn't
20 going to be an issue in Mr. Ashford's trial.

21 I informed him that our strategy, that we were
22 not contesting his presence at the Wash World or his
23 presence at Gill Creek Baptist Church and all the
24 identification of these witnesses really prove was
25 that he was at these locations and that's not what we

1 were contesting. Mr. Ashford disagreed with my
2 assessment on that and he wanted still to bring up
3 the fact that they brought up discrepant
4 identifications of him.

5 **THE COURT:** Well, you can certainly argue that
6 to the jury.

7 **MR. O'NEIL:** I told Mr. Ashford we could argue
8 that, but I told him that our strategy was not to
9 argue that the witnesses made inconsistent
10 identification of him because we were not contesting
11 that issue. And I told Mr. Ashford that we were
12 trying to focus on the bigger things and not get the
13 jury bogged down in smaller details.

14 And that's what some of our back and forth and
15 disagreement really revolved around with Mr. Ashford.
16 That was a big issue and he wanted that to be
17 addressed. And I told him in my legal training and
18 trial strategy, I didn't agree that that was a big
19 issue that needed to be an issue and that would only
20 be a distraction.

21 **THE COURT:** Well, in the event he were convicted
22 he would raise those issues in post conviction
23 relief. But if you say that those are strategic
24 decisions, then the Court is unlikely to grant him
25 relief in that regard.

1 Now, Ms. Singletary, I've heard from Mr. O'Neil
2 in terms of the work he's put in on this case and it
3 appears to me that he's fully informed as to the
4 nature of the case and has done a lot of work
5 certainly with you and your investigators in
6 preparation for this trial. I know you weren't here
7 for the first few minutes of his response to Mr.
8 Ashford. But do you have anything you wish to add in
9 terms of trial preparation?

10 **MS. SINGLETARY:** Your Honor, I don't mean to
11 repeat anything that Mr. O'Neil has previously
12 stated, but I will tell you that we have met since I
13 have been on this case, which has been probably a
14 month, a month and a half; we have met with Mr.
15 Ashford I would say about five times. Every time
16 that we have met with Mr. Ashford in preparation for
17 trial I would say that we have stayed no than a
18 minimum of an hour, Your Honor.

19 We have actually did role playing as it relates
20 to his testimony in the trial, Your Honor. We have
21 actually went over on Saturdays, Your Honor, went
22 over all the discovery that we've had. And I have
23 taken constant notes of our meetings with Mr.
24 Ashford, Your Honor. So we are fully prepared to go
25 forth with this case, Your Honor, and I think that we

1 know this case backwards and forwards.

2 And I would agree with Mr. O'Neil. The
3 information that Mr. Ashford is actually requesting
4 and the information that he wants us to bring out is
5 a strategic move on our point not to highlight those
6 issues, Your Honor, because we think it would confuse
7 the jury and it would be detrimental to our client if
8 we were to bring those issues out, Your Honor.

9 **THE COURT:** Okay. Thank you.

10 **MR. O'NEIL:** Thank you, Your Honor.

11 **THE COURT:** Well, Mr. Ashford, a couple of
12 things. You've got good attorneys. Let me just tell
13 you that because I work in this courtroom every day,
14 I know these attorneys and I know that they're
15 dedicated to their job and to the defense of their
16 clients. It appears to me from what you've told me,
17 what they've told me that they have done everything
18 they can do to get prepared for this trial. Some
19 things that you might think are important they might
20 not think are important.

21 And in any courtroom your lawyers are probably
22 your best friends. And you might not believe that,
23 but I can tell you in terms of the judicial system,
24 if you were up here without a lawyer; and you've had
25 a private lawyer, too, and for some reason even he

1 didn't feel that he could defend you, but the fact
2 that you've been through seven lawyers in two years
3 and you have two lawyers now who are prepared and
4 willing to go forward with this case, I'm not going
5 to relieve them. I'm going to deny your motion to
6 relieve them and I'm going to deny your motion for a
7 continuance. We're going to trial.

8 Now, if you don't, if you don't, you may not,
9 and if you don't choose to follow your lawyers'
10 advice and conduct yourself in a manner appropriate
11 for this courtroom, this trial is still going ahead.
12 I want you to realize that. Even if you have to
13 be -- if you have to spend the entire trial process
14 in the holding cell, I don't want that. It's not the
15 best thing for you. It's not the best thing for any
16 case. It's either you are going to, as I say,
17 cooperate with your attorneys, follow their advice,
18 or we'll just have to deal with it.

19 But the trial is going forward. It's going
20 forward today. As a matter of fact, it's going
21 forward as soon as I can re-assemble the courtroom.
22 I've got a jury sitting back there, been sitting back
23 there for an hour already this morning. And they're
24 wondering what's going on. And I'll try to -- as a
25 matter of fact, I probably won't even explain to them

1 what's going on. But the floor is yours. I'll be
2 glad to hear you.

3 **MR. ASHFORD:** Well, I disagree with you telling
4 me that I've got to go along with these attorneys and
5 what I'm saying is detrimental to what they present.
6 I feel that these issues that I am raising with them
7 to present are important. So if you feel that way
8 about it, Your Honor, this Court may just have to go
9 on without me. I'd rather sit in the tank and try to
10 do it without me being present, because I've got a
11 right to be able to voice to my attorneys what I feel
12 is important and what they should do concerning my
13 case. This is my life.

14 **THE COURT:** I understand. But you understand
15 that the fact that they disagree with you does not
16 mean that they don't have your interest at heart,
17 that they have a responsibility under our code of
18 ethics to defend you as best they can. Do you
19 understand that?

20 **MR. ASHFORD:** I understand that, Your Honor.
21 But I also want you to know that the issues I'm
22 talking about, they seem to me, it's concerning the
23 Solicitor's Office contacting the victim, informing
24 the victim about me, my girlfriend visiting me, among
25 other things. There is a second statement that she

1 have given, and my attorneys want to keep that out,
2 that they've given the investigator and to where the
3 statement clearly points out several different things
4 concerning the shooting at the officers and how
5 did --

6 **THE COURT:** So she contradicts the State?

7 **MR. ASHFORD:** Yes, sir.

8 **THE COURT:** You can call her as a witness.

9 **MR. O'NEIL:** Your Honor, but also Debbie Ann
10 Simmons gave a statement to law enforcement and then
11 I had my investigator go talk to Ms. Simmons as well.
12 She's given in the -- she gave law enforcement a
13 different statement than she gave my investigator.
14 One issue we're concerned with, in her statement to
15 law enforcement she said that Mr. Ashford while
16 inside the house shot only in the floor and out the
17 front window. She gave her statement to my
18 investigator that changes that and says he shot out
19 one of the other windows, not the back window.

20 What I informed Mr. Ashford, I was not going to
21 bring up what she told my investigator because what
22 she told my investigator about him shooting out the
23 back window would be the only way that the police
24 were stationed in the back of the yard. So I told
25 Mr. Ashford it would be better for us to stay with

1 what she said to law enforcement about him shooting
2 out the front window which would make it impossible
3 for him to have shot at law enforcement out the back
4 window.

5 **THE COURT:** Well, those are matters for cross
6 examination and your decision how to cross examine
7 the witness or whether to call a witness and impeach
8 that witness or however you wish to do it. All
9 right.

10 **MR. ASHFORD:** Those are the -- things like that.

11 **THE COURT:** Well, you know, this trial hasn't
12 even started; and, in effect, you're criticizing the
13 lawyers for something that hasn't happened yet.

14 **MR. ASHFORD:** Well, no, sir. I'm not
15 criticizing them. It's just the fact that I brought
16 it up to let them know that I wanted this to be
17 implemented in the trial and from that point I was
18 told no, I mean, it wouldn't be.

19 **THE COURT:** You have the right to testify. You
20 understand that?

21 **MR. ASHFORD:** Yes, sir.

22 **THE COURT:** Okay. Now, as far as your decision
23 to not participate in the trial, I'm going to ask,
24 since he just appeared, Mr. Strickler who is the
25 Chief Public Defender for this judicial circuit to

1 advise you of your rights and the dangers of your
2 election not to be present at trial. You understand?
3 I think you need to know that.

4 **MR. ASHFORD:** Yes, sir. I understand that.

5 **THE COURT:** Okay. Let Mr. Strickler speak with
6 him for just a minute. You understand,
7 Mr. Strickler?

8 **MR. ASHFORD:** Yes, sir.

9 **MR. STRICKLER:** We know each other.

10 **MR. O'NEIL:** Mr. Strickler represented Mr.
11 Ashford for a good portion of this.

12 **THE COURT:** I know that. That's why ...

13 (Pause)

14 **MR. ASHFORD:** Thank you, sir.

15 **THE COURT:** Mr. Strickler, do you have anything
16 you want to put on the record?

17 **MR. STRICKLER:** Your Honor, just for the sake of
18 the record, I've advised Mr. Ashford that in my
19 opinion for a variety of reasons both as to the
20 appearance to the jury were he not here, and as to
21 his ability to communicate with his attorneys
22 regarding issues that arise during the course of the
23 trial, because things may look very difficult when
24 they're presented in the courtroom than they do in
25 black and white when rereviewing discovery, that his

1 absenting himself from this courtroom during the
2 trial would be not beneficial to his case. I have
3 advised him to go ahead and remain in the courtroom
4 and participate in his defense. But I'm of the
5 opinion based on speaking with him that he does not
6 want to do so. And I have advised him of that vital
7 mistake at this point.

8 **THE COURT:** All right.

9 **MR. STRICKLER:** Thank you, sir.

10 **THE COURT:** All right. Mr. Ashford, I'm going
11 to ask you for your decision as to whether you wish
12 to remain in the courtroom or not remain in the
13 courtroom?

14 **MR. ASHFORD:** I'll remain.

15 **THE COURT:** You will?

16 **MR. ASHFORD:** Yes, sir.

17 **THE COURT:** All right. All right, sir. Let's
18 reconvene the trial. Open the doors.

19 (Pause)

20 **THE COURT:** Is the State ready to proceed?

21 **MS. CAMPBELL:** Yes, Your Honor. Now would be an
22 appropriate time before we put up Mr. Kelly, the
23 second or third witness, to talk about that case. I
24 handed up some cases to the Court last night.

25 **THE COURT:** Yes. We looked at the cases.

1 **MS. CAMPBELL:** Your Honor, specifically State
2 vs. Stewart and other cases, basically the courts
3 talk about whether or not the out-of-court
4 identification procedure was so suggestive as to
5 incur the likelihood of any kind of --

6 **THE COURT:** That's not the point. That's not
7 the point. That's not why I ruled those in-court
8 identifications would be inadmissible. Why I ruled
9 they're inadmissible, because of the lack of
10 identification at the scene, the opportunity for the
11 witness to have viewed the accused. I didn't say --
12 my ruling didn't in any way imply that the line-up
13 procedure was unduly suggestive. I ruled based on
14 both -- let me get the names, Ms. Kelly and
15 Ms. McQueen, Keri McQueen, that I felt there was not
16 a sufficient opportunity to view the witness (sic)
17 and that their identifications were flawed in that
18 respect.

19 Ms. Kelly said she only glanced at him. She
20 said she didn't want to look at him. She said he had
21 a gun in his hand and a gun was at her husband's car
22 window. And of course the same was almost similarly
23 true with Keri McQueen. I've ruled based on their
24 out-of-court identifications which I think is flawed
25 and does not meet the Biggers test.

1 **MS. CAMPBELL:** Your Honor, and I understand
2 you're referring to one prong of the totality of the
3 circumstances which are referred to in Biggers, but I
4 have handed up case law where the people testify they
5 have seen his face for three to seven seconds or less
6 in which the courts did find that it was admissible
7 based on the out-of-court procedures and the
8 testimony of the witness.

9 **THE COURT:** Well, I find in this case it is not
10 that case and it is not reliable, and Ms. Kelly will
11 not be able to either identify the Defendant in court
12 or be able to point to his picture in a photo line-up
13 because that's the same thing. I mean, she can point
14 to a photo line-up picture of him that's in evidence
15 or she can point to him, that's the same thing, she's
16 not going to be able to do it.

17 **MS. CAMPBELL:** So when we go through the
18 questions of whether or not you are shown a photo
19 line-up --

20 **THE COURT:** Ma'am, don't argue. I'm not going
21 to prolong this argument. For all intent and
22 purposes, she didn't see him. I don't care how good
23 the photo line-up process was. If she didn't see him
24 in the first place, if she didn't make a sufficient
25 identification, she cannot identify him in court.

1 And, I mean, that's pretty simple eye witness law,
2 eye witness testimony law. And I have ruled and I'm
3 not going to argue it any more.

4 **MS. CAMPBELL:** And respectfully, Your Honor, we
5 disagree.

6 **THE COURT:** I understand that. Now, are you
7 ready for the jury?

8 **MS. CAMPBELL:** The State's ready.

9 **THE COURT:** Are you ready?

10 **MR. O'NEIL:** Yes, Your Honor.

11 **THE COURT:** Bring the jury, please.

12 (Jury in at 10:10 a.m.)

13 **THE BAILIFF:** The jury is present, Your Honor.

14 **THE COURT:** All right. Thank you very much,
15 ladies and gentlemen. Again, I appreciate your
16 patience. We've been here since 9. Some other legal
17 matters came up that we had to deal with and we're
18 now ready to begin the trial. But before we do, and
19 I told you I'd furnished you all with papers and
20 pencils.

21 It may be helpful; it may not, but I'm going to
22 go back through the indictments in the order in which
23 the State has indicated to me they plan to -- their
24 burden of proof or the order of their proof. Now, it
25 may not go exactly this way. It may. But remember

1 there are nine different indictments and the State
2 has to prove the elements of each indictment to you
3 beyond a reasonable doubt in order to warrant a
4 conviction.

5 The first is the carjacking of Barry Taylor.
6 The second is the carjacking of Pearl Kelly, the
7 carjacking charge regarding Pearl Kelly. The third
8 is the kidnapping charge involving Evelyn Worthy.
9 The fourth is the carjacking charge involving Malachi
10 James. The fifth is the burglary in the first degree
11 involving the dwelling of Debbie Ann Simmons. The
12 sixth is the kidnapping of Debbie Ann Simmons. The
13 seventh is the criminal sexual conduct with Debbie
14 Ann Simmons. The eighth is the assault with intent
15 to kill Deputy Unger. And the ninth is the assault
16 with intent to kill Deputy Nate White.

17 All right, Solicitor. Call your first witness.

18 **MR. BRYANT:** Thank you, Your Honor. If it
19 pleases the court, the State calls Barry Taylor.

20 BARRY TAYLOR, after being duly sworn, testifies
21 as follows:

22 **THE CLERK:** Please have a seat. State your full
23 name for the record.

24 **THE WITNESS:** State my full name?

25 **COURT REPORTER:** State your full name, please.

1 **THE WITNESS:** Barry Taylor.

2 DIRECT EXAMINATION

3 **BY MR. BRYANT**

4 **Q** Good morning, Mr. Taylor.

5 **A** Good morning.

6 **Q** You need to speak up so everybody in the courtroom
7 can hear clearly if you can and clearly speak so the
8 court reporter can understand your answers, please,
9 sir. Could you tell this jury a little bit about
10 yourself?

11 **A** I'm 23. I work at Bojangle's. In April it will be
12 almost a year. I've got a little boy.

13 **COURT REPORTER:** I can't hear.

14 **THE BAILIFF:** Your Honor, they cannot hear him.

15 **Q** I need you to speak into the microphone.

16 **THE COURT:** Speak up a little bit so people on
17 the back row can hear what you say.

18 **A** All right. Can you all hear me? All right. I'm 23.
19 I've got a little boy. He's two. I've been working
20 at -- I work at Bojangle's. I've been there for
21 almost a year now.

22 **Q** Mr. Taylor, I want to turn your attention back to
23 February of 2007, specifically February 24th of 2007.
24 Do you remember that date?

25 **A** Yes, sir.

1 Q Could you tell this jury what you were doing?

2 A I was -- you talking about when I ran into --

3 Q Yes, sir.

4 A All right. I was going to drop one of my friends
5 off, you know what I'm saying, and going to get
6 something to eat at the Wing Basket. And I seen a
7 couple of people in the street, you know what I'm
8 saying. I slowed down a little bit. And one of them
9 came to my driver's side window, you know what I'm
10 saying, pulled out a little gun and was like, "Get
11 out the car."

12 Q All right. And I know that you're speaking a little
13 bit slowly and you're soft-spoken. So you were
14 driving down Oakland Avenue?

15 A Yes, sir.

16 Q Coming from the Wing Basket?

17 A No. I was going to the Wing Basket.

18 Q Going to the Wing Basket?

19 A Yeah.

20 Q Now, where is the Wing Basket?

21 A The Wing Basket on North Main.

22 Q About how far away from North Main were you?

23 A Probably about, I'd say about from here to that door,
24 right about that distance.

25 Q Were you on your way to drop off your friend at the

1 Wing Basket?

2 **A** Hmm-mm (negative).

3 **Q** You had already done so?

4 **A** Yeah, I had dropped him off.

5 **Q** As you were coming from the Wing Basket on Oakland,
6 did you encounter two people in the street?

7 **A** No. It was when I was going towards the Wing Basket.

8 **Q** Going towards the Wing Basket. Were two of them I
9 believe crackheads?

10 **A** Looked like it.

11 **Q** Did you see a third person there?

12 **A** Yeah.

13 **Q** What did the two crackheads do?

14 **A** Oh, they kept walking. You know what I'm saying,
15 they kept moving.

16 **Q** Tell this jury what the third person did?

17 **A** He was -- I ain't ever really seen him come to the
18 side of the car. You know what I'm saying. I'm
19 looking and he was there. He had what looked like a
20 little .32 or something, .38, you know what I'm
21 saying. He pointed it at me, was like, "Get out the
22 car." I just got out the car.

23 **Q** Do you remember what the gun looked like?

24 **A** It was a revolver.

25 **Q** Sir?

1 **A** It was a revolver.

2 **Q** Do you remember the color of the gun?

3 **A** I want to say like looked like some nickel plated.

4 It looked like it was old or something.

5 **Q** When he came up to the driver's side, did he point
6 the gun at you?

7 **A** Yes, sir.

8 **Q** And he said what?

9 **A** "Get out of the car."

10 **Q** Now, exactly at this point how far away were you from
11 Main Street while you were on Oakland Avenue?

12 **A** I was -- it was probably about same distance. I
13 wouldn't say it was even a block away. I was close
14 to North Main, real close, like right by Duran Run
15 Apartment, if you know that.

16 **Q** Is that in Richland County?

17 **A** Yes, sir.

18 **Q** I'm going to hand you --

19 **MS. SINGLETARY:** No objection, Your Honor.

20 **MR. BRYANT:** Your Honor, State's 11, 12, 13, 14
21 and 15.

22 (WHEREUPON, State's Exhibit No. 11 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 12 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 13 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 14 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 15 is admitted
6 into evidence.)

7 Q If you'd take a moment and look at those pictures,
8 please, sir. Have you looked through them?

9 A Yes.

10 Q What are those pictures?

11 A Of the car I used to have.

12 Q What kind of car is it?

13 A An Oldsmobile, Delta 88.

14 Q Delta 88?

15 A (Nods head affirmatively).

16 Q After the gentleman pointed his gun at you, told you
17 get out of the car, did you get out of the car?

18 A Yes, sir.

19 Q What did he do?

20 A He got in it and took off.

21 Q Did he drive away immediately?

22 A I want to say it kind of like stalled on him. It
23 needed a tune up. It didn't run in like, you know
24 what I'm sayin', no great edition. Like it might
25 have stalled at first; but, you know what I'm saying,

1 it fired right up after that.

2 **Q** So you'd been having some trouble with the car?

3 **A** Yeah.

4 **Q** Okay. The location where you were, is that in
5 Richland County?

6 **A** Yes, sir.

7 **MS. SINGLETARY:** No objection, Your Honor.

8 **MR. BRYANT:** Your Honor, State's No. 101.

9 (WHEREUPON, State's Exhibit No. 101 is admitted
10 into evidence.)

11 **Q** If I may approach, if you would look in that for me,
12 please, sir. Do you recognize that?

13 **A** Yeah. That look like it.

14 **Q** Can you tell the jury what that is?

15 **A** Like a little .32 revolver.

16 **Q** And this .32 revolver which, Your Honor, just for the
17 Court has the secure mechanism through the chamber I
18 guess or the muzzle --

19 **THE COURT:** It's called a trigger lock.

20 **MR. BRYANT:** Thank you, Your Honor.

21 **Q** Is that the gun you saw that day?

22 **A** It look like it.

23 **Q** It looks like it's kind of rusted I guess?

24 **A** Yeah.

25 **Q** Is that the gun he came up to the car with?

1 **A** Yeah.

2 **MR. BRYANT:** Your Honor, at this time I'd offer
3 the gun in evidence, I believe without objection from
4 Ms. Singletary.

5 **MS. SINGLETARY:** No objection, Your Honor.

6 **THE COURT:** Without objection.

7 (State's 101 previously received in evidence).

8 **THE COURT:** Is it marked?

9 **MR. BRYANT:** Yes, sir.

10 **THE COURT:** Do you have the number?

11 **COURT REPORTER:** 101.

12 **THE COURT:** Thank you.

13 **Q** After he drove off, what did you do?

14 **A** I went to -- I got with the home boys and I went to
15 Arnold's apartments, used his house to use his phone.

16 **Q** Why did you use his phone?

17 **A** To call the police.

18 **Q** How did you find out where your car was?

19 **A** It was like -- you know, like I stay right there
20 around the area, you know what I'm saying. A lot of
21 people know my car. And a couple of home boys came
22 by, said, "We just saw your car at the laundromat."

23 **Q** A couple of friends. Do you know the --

24 **A** Wash World.

25 **Q** Do you know where Wash World is?

1 **A** I want to say the corner of Main and Prescott Road.

2 **Q** How far was that from your location?

3 **A** Probably about two blocks.

4 **Q** How did you get there?

5 **A** I walked, just like, you know what I'm saying, right
6 around the corner.

7 **Q** Did you talk to the police that day?

8 **A** Yeah. They asked me for like my information or
9 whatever.

10 **Q** Did you give them an identification?

11 **A** No.

12 **Q** Could you tell them what that person was wearing?

13 **A** Nope.

14 **Q** Do you remember giving -- I know it's been a long
15 time. Do you remember giving a statement to the
16 police?

17 **A** Nope.

18 **Q** I'm going to hand you a copy of your statement.

19 **MS. SINGLETARY:** And without objection, Your
20 Honor.

21 **THE COURT:** Without objection, what? Are you
22 offering it in evidence?

23 **MS. SINGLETARY:** Identifying the statement.

24 **THE COURT:** He's identifying it.

25 **Q** Will you read that, please, sir?

1 **THE COURT:** You don't need to object to that.

2 **A** You said read it?

3 **Q** Read it to yourself, please, sir. And refresh your
4 memory.

5 (Pause)

6 **A** Oh, yeah. I've read it.

7 **Q** Did you get a good look at the person's face?

8 **A** Not really.

9 **Q** Do you remember the description you gave police?

10 **A** Yeah. I remember, you know what I'm saying, from
11 this. Yeah, I remember it.

12 **Q** Speak up. You've got to speak up speak into the
13 microphone, please.

14 **A** I said yeah, from this description right here, what I
15 wrote, I remember now.

16 **Q** What was the description you gave to police?

17 **A** I said he was tall, looked kind of dirty, you know
18 what I'm saying, just --

19 **Q** What about his clothing?

20 **A** It was brown, you know what I'm saying, dark colors.

21 **Q** Dark colored jacket?

22 **A** Yeah.

23 **Q** Okay. The person you saw that day, does a person --
24 is the person, physical description consistent with
25 the Defendant seated at the table between his

1 attorneys?

2 **A** Yeah.

3 **Q** Did you get a good look at the person's face?

4 **A** Not really. I mean, not really. I ain't really pay
5 attention to his face; but, you know what I'm saying,
6 he was tall and slim.

7 **Q** Okay. I don't have any further questions at this
8 time. Please answer any questions Ms. Singletary
9 might have.

10 **MS. SINGLETARY:** Thank you, Your Honor.

11 **THE COURT:** Yes, ma'am.

12 **MS. SINGLETARY:** May it please the Court?

13 CROSS EXAMINATION

14 **BY MS. SINGLETARY**

15 **Q** Good morning, Mr. Taylor.

16 **A** Hey. How you doing?

17 **Q** My name is Nicole Singletary and I'm going to ask you
18 a few questions. Okay?

19 **A** All right.

20 **Q** All right. Now, you just testified that you didn't
21 get a good look at the person's face who took your
22 car on that date, correct?

23 **A** Correct.

24 **Q** And the solicitor asked you to read your statement a
25 few minutes ago?

1 **A** Yes, ma'am.

2 **Q** And based on the description that you gave in that
3 statement, you said that my client was consistent
4 with that description you gave, correct?

5 **A** Yes, ma'am.

6 **Q** But you didn't say it was my client, correct?

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

8 **Q** Okay. And the description that you gave on that
9 day -- and do you still have your statement up there?

10 **A** Yes, ma'am.

11 **Q** And you said that the person was tall. You said that
12 the person was about six foot to six-foot-one?

13 **A** Yes, ma'am.

14 **Q** And you said that they were brown skinned?

15 **A** Yes, ma'am.

16 **Q** You said that they had a dirty looking face?

17 **A** Yes, ma'am.

18 **Q** Looked like they needed to shave?

19 **A** Yes.

20 **Q** And that their clothes looked dirty and their clothes
21 looked old?

22 **A** Yes, ma'am.

23 **Q** And now, the next part, I don't really understand
24 that part. It said it had a real -- is it D-U-N?

25 **A** No. Junky.

1 Q Junky. Okay. All right. A real junky look and that
2 that person had on a hat?

3 A Yes.

4 Q And you weren't sure whether or not that person had
5 on a sweater or a coat?

6 A No, ma'am.

7 Q Okay. And now, let me ask you about you being at
8 this location. The solicitor referred to them as
9 crackheads. But I'm going to just say that there
10 were two people that you saw.

11 A Yeah.

12 Q Okay. Now, when you saw these two people, were you
13 at a stop sign?

14 A No. I was -- they was like I want to say, I mean,
15 they was in the street, you know what I'm saying,
16 like they was not really trying to cross or nothing,
17 whatever, but they just was just, you know, in the
18 street, you know what I'm saying. So I slowed up,
19 you know what I'm saying.

20 Q You slowed up. Now, when that man that came to your
21 car actually came to the window, was your car stopped
22 at that moment?

23 A Yes, ma'am.

24 Q Now, were you at a stop sign at that point?

25 A No, ma'am.

1 Q Or did you just stop in the middle of the road?

2 A Yeah. Let them get out of the street.

3 Q To let them get out of the street. Okay. And now,
4 was your window up or was your window down?

5 A Down.

6 Q It was down?

7 A Yes, ma'am.

8 Q And you were the only person in the car at this
9 point?

10 A Yes, ma'am.

11 Q Okay. And again, you couldn't see the person's face
12 really?

13 A No, ma'am.

14 Q And you were asked the distance from Wash World, the
15 place you were told your car was at, from the place
16 that you were at?

17 A Yes, ma'am.

18 Q And when you said two blocks, were you referring to
19 your friend's house that you were at, the distance
20 between your friend's house and Wash World?

21 A Nah. It's like really about two blocks.

22 Q From your friend's house or from where you had
23 stopped in the middle of the road?

24 A From where I stopped in the middle of the road.

25 Q Okay. From where you stopped in the middle of the

1 road. And do you know what street that Wash World is
2 on?

3 **A** Main and Prescott.

4 **Q** Okay. And you were actually -- when you -- when a
5 man approached your car, you were on Oakland Avenue?

6 **A** Yes, ma'am.

7 **Q** Okay. Now, I have no further questions, Your Honor,
8 at this time.

9 **THE COURT:** Redirect?

10 **MR. BRYANT:** Nothing, Your Honor.

11 **THE COURT:** All right. You may come down. This
12 witness be excused?

13 **MR. O'NEIL:** No objection, Your Honor.

14 **THE COURT:** Without objection.

15 **MS. CAMPBELL:** The State calls Olin Kelly.

16 OLIN KELLY, after being duly sworn, testifies as
17 follows:

18 **THE CLERK:** Please have a seat. State your
19 full name for the record.

20 **THE WITNESS:** My name is Olin Kelly. I am
21 employed with Shaw Industries.

22 DIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 **Q** Mr. Kelly, how old are you?

25 **A** I'm 58.

- 1 Q Okay. And you live here in the Columbia area?
- 2 A Yes, I do.
- 3 Q How long have you lived in Columbia?
- 4 A About 30 years I imagine, 40 years.
- 5 Q Are you married?
- 6 A Yes, I am.
- 7 Q Who are you married to?
- 8 A Ms. Pearl.
- 9 Q Ms. Pearl?
- 10 A Pearl Kelly, yes.
- 11 Q Is she in the courtroom here today?
- 12 A Yes, she is.
- 13 Q How long have you all been married?
- 14 A For 37 years.
- 15 Q Do y'all have any children?
- 16 A Yes, we do.
- 17 Q And how many children do you all have?
- 18 A We have five kids.
- 19 Q And you mentioned that you were employed?
- 20 A Thereabouts.
- 21 Q Where do you work, sir?
- 22 A Shaw Industries.
- 23 Q How long have you been with Shaw Industries?
- 24 A Shaw Industries just took over about five years ago.
- 25 Q And prior to that what was it called?

1 **A** Prior to that it was Allied Chemical.

2 **Q** And how long have you worked for Allied Chemical or
3 Shaw Industries since they took over?

4 **A** For 37, 38 years almost.

5 **Q** What part of town? Just certainly don't say where
6 your address is. But what part of town do you live
7 in?

8 **A** Off of 321.

9 **Q** And are you familiar with the Wash World over on
10 North Main Street?

11 **A** Yes.

12 **Q** And did you and your wife back in 2007 frequent the
13 Wash World?

14 **A** Yes, we did.

15 **Q** Why would you all go to Wash World there on North
16 Main Street?

17 **A** To wash our clothes.

18 **Q** Makes sense. I want to turn your attention to a
19 Saturday, February 24th, 2007. Were you and your
20 wife at the Wash World that morning?

21 **A** That's correct.

22 **Q** And as it's approaching up to around noon, were y'all
23 there?

24 **A** Yes.

25 **Q** And at some point was your wife out sitting in the

1 car?

2 A We both were sitting in the car prior to the
3 incident.

4 Q Prior to the incident?

5 A Yeah.

6 Q Were you all waiting on some stuff to get done in the
7 Wash World?

8 A That's right. We were just listening to the radio.

9 Q At that point when you were both sitting listening to
10 the radio waiting for your laundry to get done, which
11 seat were you sitting in?

12 A I was sitting in the passenger seat.

13 Q Where was your wife?

14 A She was sitting in the driver's seat.

15 Q Is she the driver?

16 A Yes.

17 Q That morning around noon did you get out of the car
18 to go check something in the --

19 A I did, yes.

20 Q As you were going around that trunk, tell this jury
21 what you observed?

22 A Okay. I actually had the trunk open.

23 Q Yes, sir.

24 A I just opened the trunk. And as I'm facing in this
25 direction --

1 Q You're behind the car looking in the trunk?

2 A Behind the car looking in the trunk, a vehicle pulled
3 up behind me, sort of like this rope is behind me.

4 Q Yes, sir.

5 A Not quite that close but behind me.

6 Q In that area behind you?

7 A Yes. So I turned to look and the driver was saying
8 something. I was kind of curious why in the world
9 he'd pull up behind me like that.

10 Q Were you all parked in a parking place?

11 A Yes, we were.

12 Q Okay.

13 A And he was saying something out of his window. I
14 couldn't hear what he was saying --

15 Q So at that point --

16 A -- my car.

17 Q -- he's seated in the driver's seat side in the other
18 car?

19 A Yes. He is sitting in the driver's seat of the other
20 car.

21 Q What happened next?

22 A Okay. Then he goes to get out of the car without
23 putting it in gear, I mean, putting it in park. So
24 the car pulled off. So he gets in it and pushes it
25 in park and then gets out. Meanwhile I closed the

1 trunk. And he came up to me, pulled out his -- well,
2 he had the weapon.

3 Q Okay. When you say he had the weapon --

4 A And pointed it at me.

5 Q -- what kind of weapon did you see?

6 A I seen a revolver.

7 Q Did he have it in his pants? In his hand?

8 A No. He had it in his hand.

9 Q Okay.

10 A Pointed at me and told me that he was going to take
11 my car, told me to tell my wife to get out of the
12 car. And I am kind of stalling. I'm talking to him
13 and kind of stalling before going to my wife,
14 meanwhile looking at him and really looking for an
15 opportunity to try to disarm him. It probably wasn't
16 the right thing to be doing, but that's the thought
17 that I had in my mind.

18 And he told me, "Don't try nothing stupid. If
19 you value your life, don't try anything stupid." So
20 I walk over to, I mean, the passenger's side of the
21 car, asked my wife to get out, asking her to get out
22 the car and he proceeded to tell her, "Ma'am, get out
23 of the car." Well, she didn't really hear him. She
24 was listening to the radio. She knew something was
25 being said.

1 **MS. SINGLETARY:** Objection, Your Honor.

2 Speculation.

3 **THE COURT:** Overruled. Go ahead.

4 **Q** You can go ahead.

5 **A** So he backs around with the gun pointed at me to the
6 driver's side.

7 **Q** He's goes over to the driver's side?

8 **A** Yes.

9 **Q** And you're on the passenger's side at this point?

10 **A** I am on the passenger's side. And he tells my wife
11 to get out of the car. But at that time she was on
12 the way out and she ran to the laundromat.

13 **Q** Once she got out of the car and she ran to the
14 laundromat, at that point he is over on the driver's
15 side?

16 **A** That's correct.

17 **Q** He is still pointing the gun at you or between the
18 two of you?

19 **A** No. I'm between, you know, the car and him.

20 **Q** So the car is between you the two of you?

21 **A** He is backing around the car. I am standing there.
22 I didn't follow him.

23 **Q** Okay.

24 **A** And he gets around there and she gets out. He jumps
25 in the car. He takes off.

- 1 Q And your car is gone?
- 2 A And my car is gone. I was standing and watched.
- 3 Q What kind of car were you all driving that day?
- 4 A It's a '97 Lincoln Town Car.
- 5 Q Lincoln Town Car?
- 6 A Yes.
- 7 Q Once he drove off with the car, did you see what
- 8 direction he went in?
- 9 A Yeah. He went down Prescott.
- 10 Q Down Prescott?
- 11 A Yes.
- 12 Q Okay. And was that the last time you saw him in your
- 13 car that day?
- 14 A That was the last time I saw him in the car, yeah.
- 15 Q After he drove off in your car, what did you do?
- 16 A I went in the laundromat. My wife was talking to the
- 17 police at that time I imagine. And shortly after
- 18 that a policeman came.
- 19 Q And when the policemen came and everything, did you
- 20 talk to them?
- 21 A Yes, I did.
- 22 Q And ultimately later that day did you give them a
- 23 brief statement and a description of the man?
- 24 A That's correct.
- 25 Q I want to back up a little bit. You said that the

1 first time you saw him, his car actually pulled up
2 behind yours. Is that correct?

3 A That's correct.

4 Q And at that point, the first time you saw him -- and
5 what was the lighting like that day?

6 A Oh. It was sun-shining. It was a beautiful day.

7 Q When he first pulled up and was still in his car,
8 because that's before he had to go back in and put it
9 in park, did you get a good look at his face?

10 A Yes, I did.

11 Q And about how far away from you was he at that point?

12 A About as far as you are from me.

13 Q At that point you got a look at his face and you said
14 you were paying attention because you just didn't
15 understand what was going on?

16 A That's right.

17 Q And then at some point you see the gun?

18 A Yeah.

19 Q And is that after he's gotten out of the car?

20 A After he has gotten out of the car and walked up to
21 me approximately about as far as you are.

22 Q Right now?

23 A With his gun pointed.

24 Q A couple of arm's lengths away?

25 A That's right.

- 1 Q And when you say his gun was pointed, tell this jury
2 exactly how he pointed that gun at you before he told
3 you to get your wife out of the car?
- 4 A When he came around his car he pointed his gun and
5 said, "I'm going to take your car. Tell your wife to
6 get out of it and don't try anything stupid if you
7 value your life."
- 8 Q If you value your life?
- 9 A That's right.
- 10 Q And at that point he had the gun pointed at you?
- 11 A Pointed at me.
- 12 Q About as far away as I am from you?
- 13 A Yeah.
- 14 Q And he pointed it at your chest?
- 15 A Actually more at my belly I guess.
- 16 Q And at that point what was going through your mind?
- 17 A At that point I was looking at the gun and the gun
18 looked rather rusty. And I was wondering is this
19 thing real; should I try to take it or what? You
20 know, those are the thoughts that were going through
21 my mind.
- 22 Q But your wife is in the car?
- 23 A But meanwhile I am moving toward doing he asked me to
24 do, but I'm doing it rather slowly. I'm not rushing.
25 So once we made it toward the passenger door and

1 asked my wife to get out of the car and he repeated
2 what I said. And then he said, "Ma'am, get out of
3 the car", pointing his pistol at me and at her.

4 Q And you complied. You did what he told you to --

5 A Yes.

6 Q -- because he had the gun?

7 A That's correct.

8 Q During this period of time -- this is going to be a
9 really stupid question -- were you paying attention
10 to what he looked like?

11 A Oh, yes.

12 Q Had you ever seen him before?

13 A Never seen him.

14 Q But during this period of time he got within a couple
15 of arms' lengths on several occasions, so you got a
16 good look at his face?

17 A That's right.

18 Q You mentioned that he pulled up in a car. Had you
19 ever seen that car he pulled up in before?

20 A I'd never seen the car.

21 Q And I'm going to show you State's Exhibits 11 through
22 14 that are already in evidence, specifically 11, 12
23 and 13. Do you recognize that?

24 A Yes, I do.

25 Q And does that show the car that he drove up in that

1 day?

2 A Yes, that does.

3 Q It does?

4 A That's the car.

5 Q And that's the car?

6 A Yes.

7 Q And I'll show you a better picture in a minute. But
8 is that kind of how it was parked in the parking lot
9 after he got it in park?

10 A That's right.

11 Q And this just shows the front and the back of that
12 car, correct?

13 A That's correct.

14 Q You mentioned that you were at the Wash World that
15 day. I show you what's been marked as State's
16 Exhibits 87. Do you recognize that?

17 A Yes.

18 Q And does that show kind of the sign for the Wash
19 World?

20 A That's correct.

21 Q And State's Exhibit number 88, do you recognize that?

22 A Yes.

23 Q Does that show the front of the Wash World?

24 A That's correct.

25 Q State's Exhibit 89, do you recognize that?

1 **A** Yes.

2 **Q** Finally State's Exhibits 10 and 16. And 16 -- I
3 believe you referred to this -- was at North Main and
4 Prescott?

5 **A** That's correct.

6 **MS. CAMPBELL:** Your Honor, at this time we'd
7 offer these into evidence.

8 **MS. SINGLETARY:** No objection, Your Honor.

9 **THE COURT:** Without objection.

10 **COURT REPORTER:** Could you just say the numbers
11 again for me?

12 **MS. CAMPBELL:** Sure. The numbers would be 87
13 through 89 and 10 and 16.

14 (WHEREUPON, State's Exhibit No. 87 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 88 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 89 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 10 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 16 is admitted
23 into evidence.)

24 **Q** I want to show you State's Exhibit No. 16. Tell the
25 jury, what does that show?

- 1 **A** That shows Main Street and Prescott.
- 2 **Q** And is the Wash World actually located on the corner
3 of Main Street and Prescott?
- 4 **A** Yes, it is.
- 5 **Q** I'm showing you State's Exhibit Nos. 87 and 88. Does
6 that just show the actual Wash World itself?
- 7 **A** That's correct.
- 8 **Q** And is the sign on the Wash World that's shown here
9 in State's Exhibit No. 87, is that actually located
10 on North Main Street?
- 11 **A** Yes, it is.
- 12 **Q** State's Exhibit No. 89, what does that show?
- 13 **A** That's the parking lot of the Wash World.
- 14 **Q** And I notice over here in this corner you can see
15 part of a windshield and a hood?
- 16 **A** That's right.
- 17 **Q** What car is that here in this corner of this
18 photograph?
- 19 **A** That's his car.
- 20 **Q** The car that he drove off in?
- 21 **A** Well, the car that he drove off in.
- 22 **Q** And besides the police car, I noticed that you
23 mentioned you were parked in a parking place?
- 24 **A** Yes.
- 25 **Q** Do you see that parking place on here?

1 **A** Yes. This is the parking space.

2 **Q** Is my finger in the right place pointing to the
3 parking place?

4 **A** That's correct.

5 **Q** Was that where you and your wife parked that day?

6 **A** That's correct.

7 **Q** Was your car pointed towards the doors of the Wash
8 World or away from them?

9 **A** Toward.

10 **Q** Toward?

11 **A** Yes.

12 **Q** So he would have come up to you behind where this
13 police car is on there?

14 **A** Yes.

15 **Q** And that's the area where he came up behind you. And
16 finally, State's Exhibit No. 10, does that accurately
17 show where he left his car?

18 **A** That's correct.

19 **Q** Before driving off in your car?

20 **A** Right. Mm-hmm (affirmative).

21 **Q** And this is the Wash World back here?

22 **A** That's correct.

23 **Q** So that's kind of a panned view of the parking lot
24 and how it was left there that day. Once the police
25 came, they got some information from you. Were you

1 able to give them a general description of the
2 person?

3 **A** I gave them what I thought I saw that day.

4 **Q** And do you remember how you described him?

5 **A** Not word-for-word but basically.

6 **Q** I want to show you a copy of your statement. Did you
7 give them a clothing description?

8 **A** Yes, I did.

9 **Q** What kind of clothing did you recall him having on
10 that day?

11 **A** I said that he had on jeans, a dark color, that he
12 had on a cap. And I said that he had a beard.

13 **Q** Had some facial hair?

14 **A** Yes.

15 **Q** And specifically you mentioned that he had on a coat
16 or a jacket. Is that correct?

17 **A** That's correct.

18 **Q** Once the police responded later that day, did you
19 have an occasion to go down to the Gill Creek Baptist
20 Church?

21 **A** I did.

22 **Q** What was your purpose in going there?

23 **A** Well, the officer that came to the Wash World carried
24 me and my wife over to Gill Creek because he said our
25 vehicle was there.

1 Q Your vehicle was over there?

2 A Yes, it was.

3 Q And when you went over to Gill's Creek Church that
4 day, did you see your vehicle?

5 A Yes, I did.

6 Q About how long was that after you actually saw he
7 actually took the car? Do you remember?

8 A Maybe 40 minutes.

9 Q Maybe 40 minutes?

10 A Maybe 40 minutes.

11 Q How far away approximately? Was it a long drive from
12 there to go to the Gill's Creek Church?

13 A Maybe. Maybe five or six miles maybe.

14 Q Could it have been a few blocks away?

15 A Yeah.

16 Q And I want to show you some photographs, State's
17 Exhibits 22, 23 and 24. When you got over to the
18 Gill's Creek Church, is that your car?

19 A Yes, it is.

20 Q And is that how it looked when you got there that
21 day?

22 A Yes.

23 Q And just for the record, before he took your car, it
24 wasn't wrecked?

25 A No. No.

1 **MS. CAMPBELL:** Your Honor, at this time we'd
2 offer 22 through 24.

3 **MS. SINGLETARY:** Without objection, Your Honor.

4 **THE COURT:** Without objection.

5 (WHEREUPON, State's Exhibit No. 22 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 23 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 24 is admitted
10 into evidence.)

11 **Q** I show you State's Exhibit No. 24. Is that how your
12 car appeared?

13 **A** Yes.

14 **Q** And do you see any damage to your car that wasn't
15 there before he took it?

16 **A** I did, yes.

17 **Q** Describe the damage for the jury?

18 **A** Well, the wheels on the back side on the driver's
19 side; I mean, on the passenger's side is completely
20 gone. A door is smacked, windows busted.

21 **Q** And it was actually touching that pole there?

22 **A** That's correct.

23 **Q** And again, State's Exhibits No. 22 and 23, those just
24 show other shots of your car?

25 **A** That's correct.

1 Q And that was down in front of the Gill's Creek Church
2 that day. You described the gun as being kind of a
3 rusty looking gun?

4 A That's correct.

5 Q I want to show you what's been admitted into evidence
6 as State's Exhibit No. 101. And I won't point it at
7 you. But do you recognize this?

8 A That looks like the gun, yes.

9 Q That looks like the gun?

10 A Yes.

11 Q And that's the gun that he pointed at you and at your
12 wife?

13 A That is correct.

14 Q And that's the reason you gave up your car that day?

15 A That's correct.

16 Q The next day did you and your wife have an occasion
17 to go to the police department?

18 A Yes.

19 Q When you got down there, did you meet with an
20 Investigator Thomas who is sitting right here?

21 A That's correct.

22 Q And that was downtown here?

23 A That's correct.

24 Q When you got down there, did Investigator Thomas take
25 you aside and show you some photographs?

1 **A** He did.

2 **Q** I want to show you what's been marked for
3 identification purposes as State's Exhibit No. 4, a
4 second page of this document. Do you recognize that?

5 **A** Yes.

6 **Q** And did you tell Investigator Thomas that you got a
7 pretty good look at that guy's face the day before?

8 **A** I did.

9 **Q** When he showed you those photographs, were you
10 actually at the police department?

11 **A** Yes.

12 **Q** In any way when he showed you those photographs, did
13 he indicate that you had to pick out anybody?

14 **A** He told me to look at these photos and see if I
15 recognized anybody.

16 **Q** Okay. And that's what he said to you?

17 **A** Yeah.

18 **Q** Did he tell you who to pick?

19 **A** No, he did not.

20 **Q** Did he in any way influence your decision as far as
21 you recognizing anyone from that photo line-up?

22 **A** No, he didn't.

23 **Q** Did you look at all six of those pictures?

24 **A** I did.

25 **Q** When you looked at those six pictures, did you

1 immediately recognize someone?

2 A I did.

3 Q Who did you recognize?

4 A I recognized Mr. Ashford there.

5 Q And at the time did you even know his name?

6 A No, I didn't.

7 Q Did you recognize I think it's number 2?

8 A No.

9 Q It's marked number 2. Sorry.

10 A Oh. Marked number 2. I'm sorry.

11 Q The one on the lower left-hand corner?

12 A Yes. Yes.

13 Q Did you tell Investigator Thomas that?

14 A Yes.

15 Q At that point did he have you sign the front page
16 which is State's Exhibit 4, that affidavit indicating
17 you recognized that person?

18 A Yes, he did.

19 Q And did you recognize that person based on what you
20 saw of the man who carjacked you and your wife the
21 day before?

22 A That's correct.

23 MS. CAMPBELL: Your Honor, at this time we'd
24 offer State's Exhibit No.4.

25 MS. SINGLETARY: No objection, Your Honor. Oh,

1 we renew our previous objection, Your Honor.

2 **THE COURT:** Yes. Subject to the Defendant's
3 objection it's admitted.

4 (WHEREUPON, State's Exhibit No. 4 is admitted
5 into evidence.)

6 **Q** And again for the record, in State's Exhibit No. 4,
7 the person that you recognized was the one in the
8 lower left?

9 **A** That's correct.

10 **Q** And it's marked number 2. Is that correct?

11 **A** That's correct.

12 **Q** Thank you. Just for the record, too; but when you'd
13 seen him the day before you remembered him having on
14 some type of jacket. Is that correct?

15 **A** That's correct.

16 **Q** Did you get your car back?

17 **A** It was totaled.

18 **Q** The person that pointed the gun at you and that
19 carjacked -- technically your wife was in the car --
20 but you and your wife, do you see him here in the
21 courtroom?

22 **A** Yes. Yes, I do.

23 **Q** And can you identify him for the jury?

24 **A** Yes. The man sitting there with the tie on between
25 the two lawyers.

1 Q At this table over here?

2 A That's correct.

3 Q And with the creme colored shirt?

4 A That's correct.

5 MS. CAMPBELL: Your Honor, at this time let the
6 record reflect he identified the Defendant.

7 THE COURT: The record will reflect the witness
8 identified the Defendant.

9 Q Is there any doubt in your mind that's the man that
10 robbed you and your wife that day?

11 A No. No doubt.

12 Q Thank you. Please answer any questions they may
13 have.

14 MS. SINGLETARY: Thank you, Your Honor. If it
15 pleases the Court?

16 THE COURT: Proceed. Cross examination.

17 CROSS EXAMINATION

18 BY MS. SINGLETARY

19 Q Good morning, Mr. Kelly.

20 A Good morning.

21 Q Now, you testified on direct examination that you
22 gave a description to the police officers?

23 A That's correct.

24 Q And I believe you said that in your statement, you
25 said that the individual who took your car had a cap

1 on?

2 A Okay. Yes.

3 Q Can you read over your statement again to see if
4 there's anywhere in your statement that you said
5 that?

6 A No.

7 Q So it's not in your statement?

8 A Okay.

9 Q Okay. But you said that the person had on a green
10 jacket?

11 A That's right.

12 Q You said that the person had on gray pants?

13 A That's right.

14 Q That they had a light brown complexion?

15 A Right.

16 Q With a mustache?

17 A Okay.

18 Q Is that correct?

19 A That's right.

20 Q Okay. And that was the only description that you
21 actually gave the police officers on that day?

22 A Okay. Yes.

23 Q I'm not trying to rush you.

24 A That's okay.

25 Q The court reporter has to get all your responses.

1 That's all. That's why I'm looking at you like that.
2 And you said that when the person came up to you your
3 trunk was up?

4 **A** When he drove up, yes.

5 **Q** Initially it was up. And, Your Honor, may I
6 approach?

7 **THE COURT:** Yes, ma'am.

8 **Q** And you said that this gun looks like the gun --

9 **A** That's correct.

10 **Q** -- on that day?

11 **A** Yes.

12 **Q** So it looks like it?

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

14 **Q** Okay. Beg the Court's indulgence. And you also
15 testified to the fact -- and I'm trying to clear this
16 up because initially you said that Gill Creek Baptist
17 Church was five to six miles away from the Wash
18 World?

19 **A** Okay. Yes.

20 **Q** But then Ms. Campbell said, could it have been a few
21 blocks away?

22 **A** Yes.

23 **Q** So is it five or six miles away or was it a few
24 blocks away? I got kind of confused there.

25 **A** Well, I've never really looked at the mileage or

1 anything, you know, from, you know, the location of
2 the two places. But I was estimating that it was
3 about five. And I'm not sure how far three blocks
4 are.

5 **Q** So it could be blocks away or it could be miles away?

6 **A** Yeah.

7 **Q** Okay. Beg the Court's indulgence, Your Honor. Your
8 Honor, I have no further questions.

9 **THE COURT:** Redirect?

10 **MS. CAMPBELL:** No, sir.

11 **THE COURT:** You may come down, sir. Thank you
12 very much.

13 **MS. CAMPBELL:** The State would call Pearl Kelly.

14 PEARL KELLY, after being duly sworn, testifies
15 as follows:

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

18 **THE WITNESS:** My name is Pearl Kelly.

19 DIRECT EXAMINATION

20 **BY MS. CAMPBELL**

21 **Q** Ms. Kelly, are you from the Columbia area?

22 **A** I am.

23 **Q** And how long have you all been living in the Columbia
24 area?

25 **A** About 37, 38 years.

1 Q And that was your husband that just testified?

2 A Yes.

3 Q I want to turn your attention back to February the
4 24th of 2007. That morning had you all gone to the
5 Wash World to do some laundry?

6 A We did.

7 Q And around noon or so, were you all out sitting in
8 the car waiting on some stuff to get done?

9 A We were. Mm-hmm (affirmative).

10 Q Who was sitting where in this car that day?

11 A I was in the driver's seat. My husband was in the
12 passenger's side.

13 Q While you were sitting in the car, what were you
14 doing?

15 A Listening to the radio.

16 Q And tell the jury, at some point did your husband get
17 out of the car to go check on something in the trunk?

18 A He did.

19 Q And tell the jury what you noticed after he exited
20 the car and went towards the rear of the car?

21 A Repeat?

22 Q Tell the jury what you saw after he got out of the
23 car?

24 A After he'd gotten out of the car he went to the
25 trunk. He was taking a while and I heard some

1 talking. And so, you know, I could tell one of the
2 voices was his and I was like who is he talking to.
3 So I just glanced back to see and I could tell he was
4 talking to someone.

5 Q Mm-hmm (affirmative).

6 A Okay. And so I just continued listening to the
7 radio.

8 Q And at some point did someone come up on your side of
9 the car?

10 A Yes, he did.

11 Q And your husband was out in the back, but could you
12 hear him saying anything to you?

13 A I never heard anybody talking to me.

14 Q Until the person came up beside the car?

15 A Until he came on my side of the car.

16 Q And that would be the driver's side?

17 A Driver's side.

18 Q And tell this jury what you saw or observed while you
19 were sitting in the car that day on the driver's
20 side?

21 A I was sitting there in the car and for whatever
22 reason I looked, you know, out of the side mirror.

23 Q Out of the side mirror?

24 A Mm-hmm (affirmative). And I saw the man, a man
25 coming around the car. And I saw him with a gun in

1 his hand. And so, you know, I was shocked. And so I
2 just looked, you know. And at that moment I heard
3 him say, you know, get out of the car. And so I got
4 out of the car.

5 Q And where did you go?

6 A I went inside of the business, the laundry, the
7 laundromat.

8 Q You said that you saw him through the side mirror on
9 the side of car, right?

10 A Yes.

11 Q And you could see directly behind the side of the
12 car?

13 A I could see him coming, yes.

14 Q And as he was approaching you, you said he had a gun
15 in his hand, how was he holding the gun?

16 A However you hold a gun, in his hand.

17 Q I'm going to show you what's been marked as State's
18 Exhibit No. 101. Does that look like what he was
19 holding that day? I'm sorry.

20 A It does.

21 Q It does?

22 A Mm-hmm (affirmative).

23 Q And when you saw him with the gun and heard him say,
24 "Get out of the car", what was going through your
25 mind?

1 **A** So many things, you know, just to get out of the car
2 at this moment. And that's what I did.

3 **Q** And but for the fact he had a gun, would you have
4 gotten out of that car? Were you in fear of your
5 life?

6 **A** I was in fear. Definitely.

7 **Q** Once you went into the laundromat, did your husband
8 come in shortly thereafter?

9 **A** Yes.

10 **Q** And at that point did somebody call 911, or had you
11 already called?

12 **A** I did.

13 **Q** You called?

14 **A** I did or the lady that was, you know, running the
15 place there. One of us did.

16 **Q** And did the police respond that day?

17 **A** He did.

18 **Q** Once the police responded, did you give them a
19 statement and a description of the person you saw?

20 **A** Yeah. I tried the best that I could.

21 **Q** And you saw him through the mirror on the side of
22 your car. Is that correct?

23 **A** Yes.

24 **Q** Do you remember what clothing description you gave?

25 **A** I don't think I remember what I said.

1 Q I want to show you a copy of your statement if that
2 will help you refresh your memory.

3 A Thank you. I said that he appeared to have on jeans,
4 a tannish green jacket and a cap, medium to dark
5 complexion, face looked hairy.

6 Q So he had facial hair?

7 A Yes.

8 Q And you mentioned a jacket?

9 A Yes.

10 Q And how did you describe the jacket?

11 A A green jacket, a tannish green jacket. Yeah.

12 Q Once the police responded and talked to you and
13 actually gave a statement, shortly thereafter did you
14 go down to the Gill's Creek Church?

15 A Yes. The policeman took us over to the church that
16 day.

17 Q What kind of car did he take from you that day?

18 A A Town Car.

19 Q And I'm going to show you -- when you got down to the
20 Gill Creek Church, did you see your car that had been
21 taken?

22 A Yes, I did.

23 Q Was it in a different condition from when the man
24 took it from you that day?

25 A It was.

1 Q What was the condition of the car?

2 A It was wrecked.

3 Q Did you all recover the car?

4 A It was totaled. So we left it.

5 Q The next day did you and your husband go down to the
6 police department and meet with Investigator Thomas?

7 A We did.

8 Q I show you what's been marked as State's Exhibit
9 No. 24. Is that the condition your car was in when
10 you got to the church that day?

11 A It is.

12 Q And that's not the condition it was in when he took
13 it that day?

14 A No, it wasn't.

15 Q Beg the Court's indulgence. This is a stupid
16 question. Did you give that man permission to take
17 your car that day?

18 A I did not.

19 Q Thank you, ma'am. Thank you, Your Honor.

20 **THE COURT:** Ms. Singletary.

21 **MS. SINGLETARY:** May it please the Court.

22 CROSS EXAMINATION

23 **BY MS. SINGLETARY**

24 Q Good morning, Ms. Kelly.

25 A Good morning.

1 Q Now, I have very few questions to ask you. One of
2 the questions actually involves the statement that
3 Ms. Campbell gave you. Now, you testified that when
4 you saw the man through the side view mirror, at that
5 point did you see a gun in his hand?

6 A I did. Excuse me.

7 Q Do you need to get some water?

8 A Yeah. I have a problem with my throat.

9 Q Okay. We'll get it for you. Are you okay?

10 A Okay.

11 Q Okay. In your statement that you have up there in
12 front of you that you gave to law enforcement, --

13 A Mm-hmm (affirmative).

14 Q -- did you mention a gun at all in that statement
15 that you gave there?

16 A I did not.

17 Q Okay. And you said that you only had a short amount
18 of time to see that man on February the 24th?

19 A I did.

20 Q I have no further questions, Your Honor.

21 **THE COURT:** All right. Any redirect?

22 REDIRECT EXAMINATION

23 **BY MS. CAMPBELL**

24 Q But you told the police he had a gun?

25 A I did.

1 Q Thank you. No further questions.

2 THE COURT: Anything else?

3 MS. SINGLETARY: No, Your Honor.

4 THE COURT: All right. You may come down,
5 ma'am. Thank you very much.

6 MS. SINGLETARY: Your Honor, no objections to
7 the witness being excused.

8 THE COURT: Next witness.

9 MR. BRYANT: The State calls Gregory Fleming.
10 GREGORY FLEMING, after being duly sworn,
11 testifies as follows:

12 THE CLERK: Please have a seat. State your full
13 name for the record.

14 THE WITNESS: My name is Gregory Fleming.

15 DIRECT EXAMINATION

16 BY MR. BRYANT

17 Q Good morning, Mr. Fleming.

18 A Good morning.

19 Q Would you please tell this jury where you work?

20 A City of Columbia.

21 Q How long have you been there?

22 A Seventeen years.

23 Q What do you do there?

24 A Cut grass.

25 Q You're with the I guess Forestry Division?

1 **A** Forestry.

2 **Q** Of the city?

3 **A** Yes, sir.

4 **Q** Do you remember February 24th, 2007?

5 **A** Yes, sir.

6 **Q** Tell the jury what you'd been doing that morning or
7 late morning?

8 **A** That morning me and my girlfriend went to Wal-Mart to
9 get some groceries and as we was coming from Wal-Mart
10 down Cushman Road and we was at the stop sign and we
11 saw a Lincoln come up Cushman flying at a high rate
12 of speed and he lost control of the car and he
13 swerved and hit the telegram (sic) pole. So what we
14 did, we left the stop sign and pulled in the parking
15 lot, the church parking lot to see if he was all
16 right.

17 And then when we looked at the car and we seen a
18 guy get out the car running towards us with a gun and
19 he came up to my window and told me to get out the
20 car. But at that time my window was rolled up. And
21 when I saw the gun I took off, went around right back
22 on Cushman to see -- I looked in my mirror to see
23 where he was going at. And he ran to a white SUV
24 where there was I think four girls I think listening
25 to the radio. And then he tried to get their truck,

1 their SUV but he --

2 **MS. SINGLETARY:** Objection, Your Honor.

3 **MR. BRYANT:** I'm sorry?

4 **THE COURT:** Ask the question again.

5 **Q** What did you see -- let me back up. After you drove
6 off, would you tell this jury what you did so they
7 understand. Did you just leave the scene?

8 **A** No.

9 **Q** Okay.

10 **A** Huh-uh (negative). I made a -- it's like you come
11 out of one side of the church parking lot back onto
12 Cushman Road. I just went right back in the same
13 spot that I was in the first time when I saw the car
14 come around the curve. And then I pulled around in
15 the church parking lot to see if he was all right, to
16 see if the person was all right in the car. And the
17 time I stopped right there, my girlfriend said, "He
18 got a gun."

19 **MS. SINGLETARY:** Objection, Your Honor.

20 **MR. BRYANT:** Excited utterance.

21 **THE COURT:** Overruled.

22 **A** And when she said that, he came up to the window and
23 told me to get out the car.

24 **MS. SINGLETARY:** Objection, Your Honor.

25 **THE COURT:** Overruled.

1 Q Did you get out?

2 A No, sir.

3 Q So you pulled off?

4 A I pulled off.

5 Q I approach and hand you State's Exhibit No. 18. Do
6 you recognize that?

7 A Yes, sir.

8 Q Tell the jury what that is?

9 A That's Gill's Creek Church.

10 MR. BRYANT: Your Honor, at this time I move to
11 admit State's No. 18.

12 MS. SINGLETARY: Without objection, Your Honor.

13 (WHEREUPON, State's Exhibit No. 18 is admitted
14 into evidence.)

15 Q So this is Gill's Creek Church?

16 A Yes, sir.

17 Q And where exactly were you?

18 A I was on this street right here. That's Cushman
19 Road. I was right there fixing to make a left turn
20 going down Cushman.

21 Q Okay.

22 A And when I was getting ready to make that left turn I
23 seen a Lincoln come up the street. And he hit.
24 There's a median in the middle. He hit that and he
25 fishtailed the car into the telegram (sic) pole.

1 Q Okay.

2 MS. SINGLETARY: Without objection, Your Honor.

3 THE COURT: Without objection.

4 Q Is that a better view of that?

5 COURT REPORTER: What number is it?

6 MR. BRYANT: State's No. 17, without objection.

7 (WHEREUPON, State's Exhibit No. 17 is admitted
8 into evidence.)

9 Q Okay. Tell the jury, as you were coming up, you were
10 getting ready to make a left turn?

11 A Getting ready to make a left turn.

12 Q At the stop sign?

13 A Yes.

14 Q That's when you see ...?

15 A See the Lincoln.

16 Q And then you come back around into the church parking
17 lot?

18 A Yes, sir.

19 Q And that's when this guy comes up to you with a gun?

20 A Comes up to me with a handgun.

21 Q After you then move the car you don't get out of the
22 car?

23 A Yes.

24 Q What do you do next? Do you leave? Do you run?

25 A No. I just went around back in the same spot that I

1 was in. And when I seen him go to the SUV, the white
2 SUV, then when he didn't get into the SUV --

3 **MS. SINGLETARY:** Objection, Your Honor.

4 **THE COURT:** I don't know what the objection is.
5 What's the objection? He went to the white SUV.

6 **MR. O'NEIL:** May we approach, Your Honor?

7 **MS. SINGLETARY:** Yes.

8 **THE COURT:** Sure.

9 (Whereupon, a bench conference is had)

10 **Q** After the person -- after that person left you and
11 went to the white car, then you saw him go inside?

12 **A** Yes, sir.

13 **Q** After you saw him go inside, tell the jury what
14 happened next?

15 **A** When he went inside he came back out with an elderly
16 lady with a gun pointed to her head and the lady was
17 saying, "Lord, help me; please help me."

18 **MS. SINGLETARY:** Objection, Your Honor.

19 **MR. BRYANT:** Excited utterance.

20 **Q** Continue?

21 **THE COURT:** Overruled. Go ahead.

22 **A** When he got to the end of the church he let her go
23 and he ran onto Cushman Road trying to stop motorists
24 that was coming down the street. Two of them passed
25 by; and the third one, the Blue Ribbon cab, and the

1 Blue Ribbon cab he stood in front of the Blue Ribbon
2 cab pointing the gun at him. And the guy -- told the
3 guy to get out the car. And the Blue Ribbon cab gave
4 up his car. And he took off and he went on Maurice
5 Street that led to a little street, to Booth Street.
6 And I followed him from the church all the way to
7 Booth Street.

8 Q Let me stop you there. When he came back out of the
9 church with the lady, can you tell the jury using
10 State's No. 18 where that was?

11 A On the side of the building.

12 Q Okay.

13 A He went to the end of the building and let her go
14 right there and he ran out there onto Cushman Road.

15 Q So he runs -- he comes with --

16 A With the lady on the side of the church.

17 Q With the elderly lady from the side of the church?

18 A He let her go into the building.

19 Q He keeps going?

20 A Yeah. He kept going.

21 Q At that point did he still have a gun?

22 A Yes, sir.

23 Q And as has already been admitted into evidence,
24 State's 101, do you recognize that?

25 A Yes, sir.

- 1 Q Is that the gun pointed at you that day?
- 2 A Yes, sir.
- 3 Q Is that the gun he had when he walked back into
- 4 Cushman?
- 5 A Yes, sir.
- 6 Q So you see him walking to Cushman.. He flags down a
- 7 Blue Ribbon cab?
- 8 A It was coming down the street. He stood in front of
- 9 it.
- 10 Q With a gun in his hand?
- 11 A With a gun in his hand.
- 12 Q And prior to this had you seen a bunch of children go
- 13 from that white SUV into the church?
- 14 A Yes, sir. They went back in the church.
- 15 Q After you see him flag down the cab, what happens to
- 16 the cab's occupants?
- 17 A Well, the cab driver got out. When he got out he got
- 18 in the car and drove off and left the cab driver
- 19 right there. And when he took off I followed him in
- 20 my car.
- 21 Q Gill Creek Baptist Church, where you were that day,
- 22 is that in Richland County?
- 23 A Yes, sir.
- 24 Q You followed him from that location to Booth Street?
- 25 A Yes, sir.

1 **Q** Tell this jury about following this person?

2 **A** When he took the car, the cab, I followed him to
3 Booth Street. You make a left turn on Maurice Street
4 and you go around the curve and you make another
5 street which is Booth Street. And the trailer that
6 he went to was the first trailer on the right-hand
7 side. And he didn't park it right. He just hit the
8 fence, jumped out and ran in the house.

9 **MS. SINGLETARY:** Objection, Your Honor.
10 Narrative.

11 **THE COURT:** Overruled.

12 **Q** Were you behind him the whole time?

13 **A** Yes, sir.

14 **Q** Had you been calling 911?

15 **A** Yes, sir.

16 **Q** Was anyone in your car with you?

17 **A** My girlfriend.

18 **Q** After you watched him go into the house on Booth
19 Street, did you then leave?

20 **A** No, sir.

21 **Q** What did you do?

22 **A** I parked my car not too far from the trailer and got
23 out and was talking to 911 until the police got
24 there.

25 **Q** And your girlfriend is Ms. Gilliard I believe?

- 1 **A** Yes, sir.
- 2 **Q** Was she there the whole time?
- 3 **A** Yes, sir.
- 4 **Q** Are you familiar with Booth Street?
- 5 **A** Yes, sir.
- 6 **Q** Did you grow up in that area?
- 7 **A** Yes, sir.
- 8 **Q** How long did you say in that area?
- 9 **A** Since I've been three years old.
- 10 **Q** You're how old now? I'm not trying to embarrass you.
- 11 **A** Forty-three.
- 12 **Q** So you're well familiar with the area?
- 13 **A** Yes, sir.
- 14 **Q** How long did you stay in that Booth Street location?
- 15 **A** Until Investigator Williams came and got me and took
- 16 me onto the other side.
- 17 **Q** Do you remember what time it started at Cushman Road?
- 18 **A** Well, we left Wal-Mart around 11, about 11:30. By
- 19 the time we got to Cushman Road, it was like 12:00.
- 20 **Q** When you got back I believe you stated you were
- 21 brought back to Gill's Creek Church?
- 22 **A** Gill's Creek Baptist church.
- 23 **Q** Do you remember talking with one of the police
- 24 officers that day?
- 25 **A** I talked with one of the investigators.

1 Q Investigator Thomas? Or do you remember?

2 A There were so many police officers that were there
3 that day.

4 Q Do you remember the statement you gave that day?

5 A Yes. Yes, sir.

6 Q Do you remember the description of the Defendant from
7 that day?

8 A Yes, sir.

9 Q Can you tell the jury what your description of that
10 person was?

11 A It was a brown skinned fellow about five-eleven,
12 probably weighed about, I think about 175, a small,
13 little mustache and wearing blue jeans, a jacket and
14 had a hat on.

15 Q The next day did you go to the police department?

16 A Yes, sir.

17 Q Do you remember what you did at the police
18 department?

19 A Yes, sir.

20 Q Were you shown a series of photographs?

21 A Yes, sir.

22 Q Did you go with Ms. Gilliard?

23 A Yes, sir.

24 Q These photographs you were shown, you all reviewed
25 them together or separately?

1 **A** Separately.

2 **Q** Do you remember how many photos there were?

3 **A** There were six.

4 **Q** Did Investigator Thomas show you this photo line-up?

5 **A** Yes, sir.

6 **Q** I approach and hand you State's Exhibit No. 5.

7 **THE COURT:** For I.D.

8 **Q** Do you recognize that?

9 **A** Yes, sir.

10 **Q** Do you recognize the second page? Are those six
11 photographs?

12 **A** Yes, sir.

13 **Q** Similar to the description you gave Investigator
14 Thomas?

15 **A** Yes, sir.

16 **Q** Or gave the investigator the day before on the 24th?

17 **A** Yes, sir.

18 **Q** This was on the 25th you viewed this photo display?

19 **A** Yeah.

20 **Q** Did Investigator Thomas at any time suggest to you
21 that anyone from the day before might be in that
22 line-up?

23 **A** No, sir.

24 **Q** Did he suggest to you to pick out any particular
25 picture?

1 **A** No, sir.

2 **Q** Was he in any way suggestive with regard to what you
3 should do with that line-up?

4 **A** No, sir.

5 **Q** Was Ms. Gilliard in the room when you viewed this?

6 **A** No, sir.

7 **Q** Did you have a chance to look through that photo
8 line-up?

9 **A** Yes, sir.

10 **Q** Did you pick out a picture?

11 **A** Yes, sir.

12 **MR. BRYANT:** Your Honor, at this time I'd move
13 to admit State's Exhibit No. 5.

14 **MS. SINGLETARY:** Subject to prior objection,
15 Your Honor. Over the Defendant's objection.

16 (WHEREUPON, State's Exhibit No. 5 is admitted
17 into evidence.)

18 **Q** Did you pick out a picture?

19 **A** Yes, sir.

20 **Q** Could you please tell the jury what you picked out?

21 **A** I picked out number 1.

22 **Q** Number 1 down at the bottom right?

23 **A** Yes, sir.

24 **Q** Then after you did that, did you fill out that form?

25 **A** Yes, sir.

1 Q Would you tell the jury what that is?

2 A That's a police form.

3 Q Did Investigator Thomas tell you at all what photo to
4 pick?

5 A No.

6 Q And then did you write down the number of your pick?

7 A Yeah.

8 Q Did you write down number 1?

9 A Yes, sir.

10 Q Are those your initials by it?

11 A Yes, sir.

12 Q Did Investigator Thomas ever suggest anything to you?

13 A No, sir.

14 Q The person you picked out from that photo line-up
15 that day, do you see him seated in the courtroom?

16 A Yes, sir.

17 Q Could you please identify him?

18 A Sitting between his lawyers.

19 Q With the white shirt and tie?

20 A Yes, sir.

21 MR. BRYANT: Your Honor, may the record reflect
22 the witness identified the Defendant?

23 THE COURT: Let the record reflect the witness
24 identified the Defendant.

25 MR. BRYANT: The Court's indulgence. I have no

1 further questions at this time. Please answer any
2 questions Ms. Singletary might have.

3 **THE COURT:** Cross examination.

4 **MS. SINGLETARY:** Thank you, Your Honor. If it
5 pleases the Court.

6 CROSS EXAMINATION

7 **BY MS. SINGLETARY**

8 **Q** Good morning, Mr. Fleming.

9 **A** Good morning.

10 **Q** Now, I just want to go over the description that you
11 actually stated that you gave the police officers.
12 You said that -- you testified a few minutes ago that
13 you said that the person was five-eleven, correct?

14 **A** About five-eleven.

15 **Q** And you testified to the fact that you told them he
16 had a mustache?

17 **A** A small mustache.

18 **Q** A small mustache?

19 **A** Yes.

20 **Q** Do you have a copy of your statement up there?

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

22 **MS. SINGLETARY:** Your Honor, may I approach and
23 give him a copy of his statement, please?

24 **THE COURT:** Yes, ma'am.

25 **Q** And I'm just going to direct your attention to the

1 second page of your statement and the second
2 question. Now, you actually told the police officer
3 that the man that you saw on that day was actually
4 five-foot-nine, about five-foot-nine?

5 **A** I didn't say.

6 **Q** According to your statement that you gave police
7 officers you say five-foot-nine, correct?

8 **A** About five-foot-nine, five-eleven. I mean, --

9 **Q** But in your statement --

10 **A** Yeah. In the statement, yeah.

11 **Q** -- your statement says five-foot-nine.

12 **A** Yeah.

13 **Q** And also in your statement you don't mention anything
14 about facial description at all, do you?

15 **A** No.

16 **Q** You don't say anything about a mustache in that
17 statement?

18 **A** No.

19 **Q** Okay. But you said that the person was wearing a
20 brown leather coat?

21 **A** Sort of like brown, yeah. Brown leather coat.

22 **Q** Blue jeans or slacks?

23 **A** Blue jeans. Blue jeans.

24 **Q** I'm talking about in your statement.

25 **A** Yeah.

- 1 Q I'm just going by your statement. Okay. That he was
2 skinny?
- 3 A Yes, ma'am.
- 4 Q He was a black man?
- 5 A Yes, ma'am.
- 6 Q About 175 to 180 pounds?
- 7 A Yes, ma'am.
- 8 Q That he was wearing a hat?
- 9 A Yes, ma'am.
- 10 Q But no mentioning of the mustache?
- 11 A No, ma'am.
- 12 Q Or that he was five-eleven?
- 13 A No, ma'am.
- 14 Q Now, let's go back to you actually being near Gill
15 Creek Church on that day.
- 16 A Okay.
- 17 Q Now, you said that you came to a stop sign, correct?
- 18 A Yes, ma'am.
- 19 Q Okay. So when you are initially watching the man in
20 this car lose control, you are actually watching all
21 of this unfold through the mirror in your car?
- 22 A Yes, ma'am.
- 23 Q Because there's no way that you could be driving and
24 looking back at the same time?
- 25 A I was at a stop sign.

1 Q You were at the stop sign. Okay. And you stated
2 that you saw that man go inside of Gill Creek Baptist
3 Church?

4 A Yes, ma'am.

5 Q You saw him come out with a woman?

6 A Yes, ma'am.

7 Q And it's your testimony that he had a gun to her
8 head?

9 A Yes, ma'am.

10 Q He took her in the middle of the road?

11 A No. He took her to the end of the church, end of the
12 church building.

13 Q Took her to the end of the church?

14 A And then he let her go and he went out in the middle
15 of the road.

16 Q So he never took her out into traffic?

17 A No. She never went out into traffic.

18 Q Okay. And then you said that he let her go?

19 A He let her go and he ran out into the traffic, tried
20 to stop traffic.

21 Q He let her go?

22 A Yes, he did.

23 Q And you say that at that point he was in the middle
24 of the road. He stopped the cab?

25 A He stopped the Blue Ribbon cab.

1 Q Okay. And then he got into that cab?

2 A And drove off. He backed up. When he backed up he
3 took off going up toward Cushman Road going towards
4 Two Notch Road.

5 Q Okay. He got into the cab?

6 A Yes, he did.

7 Q Okay. And he drove off?

8 A Yes, he did.

9 Q And you followed him?

10 A Yes, I did.

11 Q Okay. And you are familiar with this location
12 because you grew up in this area?

13 A Yes, I did.

14 Q And as a matter of fact, you know Debbie Simmons?

15 A Yes, I do.

16 Q And as a matter of fact, you know Roberta Neil?

17 A Yes, I do.

18 Q Now, have you spoken to Debbie Simmons or Ms. Neil
19 since February the 24th of 2007?

20 A No, I have not.

21 Q You have not spoken to them at all?

22 A No.

23 Q Beg the Court's indulgence, Your Honor. Now, I
24 understand what happened that day. When you and Ms.
25 Gilliard went home that night, did you all talk about

1 what had happened earlier that day?

2 **A** No, we didn't. She went to bed because she was kind
3 of shook up about it.

4 **Q** Okay. And that's just your opinion?

5 **A** Yeah.

6 **Q** And do you know whether or not my client ever went to
7 that wrecked car that occurred right outside of Gill
8 Creek Baptist Church?

9 **A** I seen him get out that car.

10 **Q** I understand that. I understand that you testified
11 to that. But do you know if my client ever went back
12 to that wrecked car?

13 **A** No, he didn't go back to the car. He went out to the
14 main road.

15 **Q** I understand that you're saying that happened. And
16 maybe it's just me and I'm asking the wrong
17 questions.

18 **MR. BRYANT:** Objection. Objection. It's asked
19 and answered.

20 **THE COURT:** Overruled. Go ahead. It's cross
21 examination.

22 **Q** Okay. I understand that you testified that you saw
23 my client get out of that car. Correct?

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

25 **Q** Okay. And I understand that you said that my client

1 got into a cab?

2 **A** Okay.

3 **Q** And I understand that you said that you followed my
4 client to Booth Street?

5 **A** Okay.

6 **Q** Now, this is where the question is going to start.
7 After you followed my client to Booth Street and saw
8 him on Booth Street, did he ever leave Booth Street
9 and go back to --

10 **A** No.

11 **Q** That was the question. Thank you, Your Honor. I
12 have no further questions.

13 **THE COURT:** Redirect?

14 **MR. BRYANT:** Briefly.

15 REDIRECT EXAMINATION

16 **BY MR. BRYANT**

17 **Q** Ms. Singletary asked you about seeing the wreck in
18 your rearview mirror. You turned around and came
19 back to see if the person was okay?

20 **A** Yes. I pulled -- the way you come out the church
21 parking lot, there's a side, a little side part
22 entrance.

23 **Q** Right.

24 **A** You can go out and come in. I went around and came
25 back to the stop sign. When I came to the stop sign,

1 I was at the stop sign, I pulled back in the parking
2 lot to see if he was all right when he come running
3 towards me with the gun.

4 Q How close did he get?

5 A To like right -- me and this is how close. Like my
6 car right here, he right there.

7 Q Just, I mean, as close as you are to the court
8 reporter here?

9 A Yeah. Mm-hmm (affirmative).

10 Q And Ms. Singletary asked you about when he got out of
11 the gray car and went in the church. But he actually
12 got out of the gray car, went to the white SUV,
13 correct?

14 A The Lincoln. When he wrecked the Lincoln.

15 Q When he wrecked the Lincoln?

16 A Yeah.

17 Q And then you followed him to Booth Street?

18 A Yes, I did.

19 Q And you watched him force his way in?

20 A They tried to shut the door and --

21 MS. SINGLETARY: Objection, Your Honor.

22 MR. BRYANT: He's a witness to it.

23 THE COURT: I understand that. Overruled.

24 Q Go ahead.

25 A They tried to shut the door and he forced his way in,

1 into the house.

2 Q Court's indulgence. No further questions.

3 THE COURT: Anything further?

4 MS. SINGLETARY: None, Your Honor.

5 THE COURT: All right. You may come down, sir.

6 Thank you very much. Next witness.

7 MR. BRYANT: Your Honor, the State calls

8 Mrs. Kimberly Gilliard.

9 KIMBERLY GILLIARD, after being duly sworn,
10 testifies as follows:

11 THE CLERK: Please have a seat. State your full
12 name for the record.

13 THE WITNESS: Kimberly Gilliard.

14 DIRECT EXAMINATION

15 BY MR. BRYANT

16 Q Good morning, Ms. Gilliard.

17 A How you doing?

18 Q How are you?

19 A Okay.

20 Q Could you please tell this jury where you work?

21 A CVS.

22 Q How long have you been there?

23 A Seven years.

24 Q What do you do at CVS?

25 A A photo tech, pharmacy tech.

1 Q And as we've already heard, do you know Mr. Fleming?

2 A Yes.

3 Q Can you take this jury back to February 24th, 2007?

4 What were you doing that day?

5 A Well, we were coming from the Wal-Mart, just got
6 through shopping and we were on our way home. We
7 were going down Cushman Road and as we got sort of to
8 the stop sign, this car come barreling at us going
9 around the curve out of control. My first thing I
10 thought was he was going to crash because he was
11 driving so fast. The car was moving so fast. And it
12 did crash. It crashed. And I thought -- and it's a
13 bridge there, so I just thought he crashed into the
14 bridge or something like that. So I said, well, you
15 know, we might need to help that person or something
16 like that, help the person. That's what I thought.

17 Q So what did you all do? Or Mr. Fleming, I believe
18 Mr. Fleming was driving. So what did he do?

19 A Well, he stopped and we sort of semi turned around.
20 And as I'm looking at the person that is coming
21 towards the car, I said, well, he's coming to the
22 car, thinking maybe he needs to use the phone or
23 something, you know, or ask for some help. As he
24 approached the car he got to the window, I saw from
25 slightly towards the back, he put his hand up. And I

1 said, oh, he got a gun. You know, he got a gun. I
2 said drive, go, move. Something. Do something.

3 Q Did he say anything?

4 A He -- when he got to the window, he said, you know,
5 "Give me your car."

6 Q Okay. Now, I hold up State's No. 17. Do you
7 recognize that?

8 A Yes.

9 Q Is that where you all were stopped?

10 A We were sort of right here.

11 Q Okay.

12 A Right there.

13 Q About right in there a little before the stop?

14 A Right. Because you could turn into the church.

15 Q All right. After you see the wreck, you then turn
16 into the church?

17 A We saw him come. As he got to the car and we sped up
18 after he, Greg, Mr. Fleming wasn't giving up the
19 car --

20 **MS. SINGLETARY:** Objection, Your Honor.

21 **THE COURT:** All right. I'll sustain that.
22 Strike that. The jury will disregard that last
23 statement.

24 Q Okay. After you pulled back around?

25 A Right.

1 **THE COURT:** Strike it from the record.

2 **Q** And you saw the gun?

3 **A** We saw the gun and he had -- we rolled into the
4 church. We saw him go over to the other car.

5 **Q** Okay. And then did you see a bunch of kids go into
6 the church?

7 **A** The kids were over at the car and the doors were
8 open. He ran over there and --

9 **Q** Let me stop you. You saw him go to the white car.
10 Did you then see him go into the church?

11 **A** Yes.

12 **Q** Okay. Did he still have the gun?

13 **A** Yes, he does.

14 **Q** And I will hold up what's been marked as State's
15 Exhibit and admitted as 101. Is that the gun?

16 **A** Yes.

17 **Q** Okay. He came to your car with that gun?

18 **A** Yes.

19 **Q** After he went into the church, tell the jury what you
20 then saw him do?

21 **A** After he went into the church he ran in the church
22 and he was in there for a while. He came back out.
23 He had a lady and he was dragging the lady because
24 she -- he was holding her with the gun and dragging
25 her to the street. When he got to the street, he got

1 to the end of towards the street where the other cars
2 were coming, he let her go. And then he ran out in
3 the middle of the street and tried to flag down two
4 other cars and they wouldn't stop. So they actually
5 blew the horn, went around or whatever.

6 Then he came to the Blue Ribbon car, the cab.
7 He ran in front of the cab with the gun, pointing the
8 gun at the cab driver, and he was telling him to get
9 out of the car. And he got out of the car. And
10 after he got out of the car, he got in and he turned
11 around and we started to follow him.

12 Q Is Gill's Creek Church Baptist Church in Richland
13 County?

14 A Yes.

15 Q When you followed him, tell the jury about that?

16 A When we followed him, he went straight. Then he
17 turned. He made like a left and we went around, went
18 around a bunch of curves. After a while we caught
19 up. When we got to the cab, as we was following him,
20 he stopped and he had hit the fence of the house of
21 the trailer. And when he hit that fence, he got out.
22 And when he got out, I mean, he went inside the
23 house. And after a while then the lady came out
24 with, you know -- we saw kids. I saw some kids. And
25 I seen a lady come out with a baby. "He is in there,

1 he is in there." So after that I was just shaken up
2 because I saw kids. Kids was involved the first time
3 and was involved the second time. So ...

4 Q Did you stay at Booth Street all that afternoon?

5 A Yes, I did.

6 Q And eventually you left Booth Street?

7 A We left after everything had -- after he was taken
8 out into custody.

9 Q And --

10 A And after Mr. Fleming got to me. Because we were
11 separated.

12 Q You were separated at Booth Street?

13 A Yes.

14 Q That was on the 24th of February. On the 25th did
15 you go down to police headquarters?

16 A Yes, I did.

17 Q Did you meet with Investigator Thomas?

18 A Yes, I did.

19 Q And were you shown a series of photos, a photo
20 display?

21 A Yes.

22 Q Were you shown these by yourself, or was Mr. Fleming
23 with you?

24 A By myself.

25 Q What or who were you told to pick out of the photo

1 display?

2 **A** I wasn't told to pick out -- well, he just showed me
3 the pictures and --

4 **Q** Did he suggest anything?

5 **A** No.

6 **Q** Did he say you need to pick this photo or this photo?

7 **A** No. He just said could I identify anyone.

8 **Q** Do you remember the number of photos?

9 **A** It was about six pictures.

10 **Q** Do you remember if they were arranged straight down
11 the page?

12 **A** Straight down.

13 **Q** Was he at all suggestive?

14 **A** No.

15 **Q** Were the people in that photo display similar to the
16 person you'd seen the day before?

17 **A** Yes.

18 **Q** I hand you State's No. 6, I believe without
19 objection?

20 **MS. SINGLETARY:** Renew the prior objection, Your
21 Honor.

22 (WHEREUPON, State's Exhibit No. 6 is admitted
23 into evidence.)

24 **Q** Do you recognize that?

25 **A** Yes.

1 Q Can you tell the jury, is that the photographic
2 line-up you saw?

3 A Yes.

4 Q Did you remember if anyone suggested anything?

5 A No.

6 Q Did you pick another photograph out of that display?

7 A Yes, I did.

8 Q Can you tell the jury which photo you picked?

9 A It was the bottom, number 1.

10 Q You picked number 1. Are those your initials?

11 A Yes.

12 Q Is that the man you saw that day at Gill's Creek
13 Baptist Church?

14 A Yes, it is.

15 Q And after you did that, then did you write down or
16 did you tell Investigator Thomas your pick?

17 A Yes, I did.

18 Q And what pick did you tell him? What photo did you
19 tell him?

20 A I told him the bottom person. Well, I pointed to who
21 it was.

22 Q Okay. That was the person you saw the day before at
23 Gill Creek Baptist Church?

24 A Yes.

25 Q And did he write down your selection?

1 **A** Yes, he did.

2 **Q** All the people in the photo display were similar in
3 build and everything else?

4 **A** Yes, they were. But I remembered who that person
5 was.

6 **Q** The person you saw on the 24th of February, 2007 you
7 picked from that photo line-up, do you see him today
8 in the courtroom?

9 **A** Yes, I do.

10 **Q** Can you please point him out?

11 **A** He's sitting there with a black tie on, white shirt,
12 inbetween the two lawyers there.

13 **MR. BRYANT:** Your Honor, let the record reflect
14 that Ms. Gilliard has identified the Defendant.

15 **THE COURT:** The record will reflect that the
16 witness identified the Defendant.

17 **Q** At any time during that process did anybody suggest
18 who to pick?

19 **A** No.

20 **Q** The Court's indulgence. That day when the man came
21 up to your car, is that the gun, State's 101?

22 **A** Yes.

23 **Q** Was that the gun he had?

24 **A** Yes.

25 **Q** I don't have any further questions at this time.

1 Please answer any questions --

2 **THE COURT:** Cross examination.

3 **Q** -- Ms. Singletary has.

4 **MS. SINGLETARY:** Thank you, Your Honor.

5 CROSS EXAMINATION

6 **BY MS. SINGLETARY**

7 **Q** Just a few questions, Ms. Gilliard. Back on February
8 the 24th, you didn't give any statements to the
9 police officers, did you?

10 **A** No, I didn't.

11 **Q** Or either on the 25th when you went down to
12 headquarters?

13 **A** The 25th?

14 **Q** Yeah.

15 **A** No.

16 **Q** And on the 24th you didn't give a description of the
17 man that you saw on the day?

18 **A** No.

19 **Q** Or the 25th?

20 **A** No.

21 **Q** And you and Mr. Fleming lived together, correct?

22 **A** Yes.

23 **Q** And you and him didn't talk at all about what had
24 happened on the 24th when you made it home that
25 night?

1 **A** No, we didn't.

2 **Q** You didn't see anything on the news about this?

3 **A** No, I didn't.

4 **Q** You didn't read anything in the newspaper about it?

5 **A** No.

6 **MS. SINGLETARY:** And, Your Honor, I have no
7 further questions.

8 **THE COURT:** Redirect?

9 **MR. BRYANT:** Briefly.

10 REDIRECT EXAMINATION

11 **BY MR. BRYANT**

12 **Q** Ms. Singletary asked you about not giving a
13 description to the police during that day. Do you
14 remember what the person looked like?

15 **A** Yes, I did.

16 **Q** Do you remember what he was wearing?

17 **A** He had on a jacket, pants, and he might have had on a
18 hat. I really didn't -- I was focused on the gun and
19 the face because that was directly there, but I do
20 remember the top part, the jacket.

21 **Q** Is there any question of your choice in that photo
22 display?

23 **A** No.

24 **Q** Any question about your identification here today?

25 **A** No.

1 Q Thank you, ma'am.

2 THE COURT: Anything further?

3 MS. SINGLETARY: No, Your Honor.

4 THE COURT: You may come down, ma'am. Thank you
5 very much. Next witness.

6 MS. CAMPBELL: The State would call Kelli
7 McQueen.

8 THE COURT: Approach the bench, counsel. Just
9 have her hold up just a second.

10 (Whereupon, a bench conference is had)

11 THE COURT: All right, ladies and gentlemen.
12 Let's take a short break. I'm going to ask you just
13 to go to the jury room. Relax for a few minutes.
14 Don't discuss the case while we're in the jury room.
15 We'll call you in about ten minutes.

16 (Jury out at 11:40 a.m.)

17 THE COURT: All right, counsel. Just for timing
18 purposes, I plan to run to about 1:00.

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: Or maybe even would run a little
21 past then; that's fine, too. Your office has
22 scheduled a plea at 2:00. I don't know what it's all
23 about.

24 MS. CAMPBELL: I'll find out.

25 THE COURT: Hmm?

1 **MS. CAMPBELL:** I'll find out.

2 **THE COURT:** I don't know how long that's going
3 to take. So let's try to run 'til maybe 1:30 with
4 the jury, and then I can excuse the jury from 1:30 to
5 2:30.

6 **MS. CAMPBELL:** So we're going to run until 1:30?

7 **THE COURT:** Yeah. Let's try to do that just for
8 scheduling purposes. Okay. We'll stand at ease for
9 about ten minutes.

10 (Whereupon, a break is taken)

11 **THE COURT:** Counsel, just for your information,
12 the 2:00 plea is not going to go.

13 **MS. CAMPBELL:** Okay. So we need to --

14 **THE COURT:** Just move along.

15 **MS. CAMPBELL:** We're moving.

16 **THE COURT:** Okay. Ready for the jury?

17 **MS. CAMPBELL:** Yes, sir.

18 **MS. SINGLETARY:** Yes, Your Honor.

19 **THE COURT:** Bring the jury.

20 (Jury in at 12:00 p.m.).

21 (WHEREUPON, State's Exhibit No. 102 is marked
22 for identification.)

23 (WHEREUPON, State's Exhibit No. 103 is marked
24 for identification.)
25

1 (WHEREUPON, State's Exhibit No. 104 is marked
2 for identification.)

3 (WHEREUPON, State's Exhibit No. 105 is marked
4 for identification.)

5 (WHEREUPON, State's Exhibit No. 106 is marked
6 for identification.)

7 (WHEREUPON, State's Exhibit No. 107 is marked
8 for identification.)

9 (WHEREUPON, State's Exhibit No. 108 is marked
10 for identification.)

11 **THE BAILIFF:** The jury is present, Your Honor.

12 **THE COURT:** All right. Thank you, ladies and
13 gentlemen. Solicitor, call your next witness.

14 **MS. CAMPBELL:** The State calls Kelli McQueen.

15 KELLI MCQUEEN, after being duly sworn, testifies
16 as follows:

17 **THE CLERK:** Please have a seat. State your full
18 name for the record.

19 **THE WITNESS:** My name is Kelli McQueen.

20 DIRECT EXAMINATION

21 **BY MS. CAMPBELL**

22 **Q** Kelli, how old are you?

23 **A** Seventeen.

24 **Q** And do you live her in the Columbia area?

25 **A** Yes, ma'am.

- 1 Q And are you currently in school?
- 2 A Yes, ma'am.
- 3 Q What school do you go to?
- 4 A W. J. Keenan High School.
- 5 Q Are you here today with your sister and your mother?
- 6 A Yes, ma'am.
- 7 Q Are they in the courtroom?
- 8 A Yes, ma'am.
- 9 Q Would you point them out for the jury?
- 10 A My mother is right there with the black and white
- 11 shirt, and my sister is next to them in the front
- 12 row.
- 13 Q What's your sister's name?
- 14 A Keri McQueen.
- 15 Q Keri McQueen?
- 16 A Yes, ma'am.
- 17 Q Do you all attend church?
- 18 A Yes, ma'am.
- 19 Q What church are you all members of?
- 20 A Gill's Creek Baptist Church.
- 21 Q How long have you all been going to the Gill Creek
- 22 Baptist Church?
- 23 A For all my life.
- 24 Q All your life?
- 25 A Yes, ma'am.

1 Q Do you or does your family participate in certain
2 events such as choir there?

3 A Yes, ma'am.

4 Q Who all belongs to the choir?

5 A My mother, my father, my sister, everybody.

6 Q Everybody?

7 A Yes, ma'am.

8 Q I want to turn your attention back to February the
9 24th of 2007, that Saturday morning. Had you all
10 gone to the Gill Creek Baptist Church that morning?

11 A Yes, ma'am.

12 Q Why were you all going to church that morning?

13 A My mother had choir rehearsal. So we were just
14 waiting around until she finished.

15 Q When you all were waiting around on that day, when
16 you all were waiting around, where did you all wait?

17 A In the parking lot.

18 Q What were you all doing in the parking lot?

19 A Listening to music, dancing.

20 Q Who all was with you that day?

21 A Jasmine Prince, Keri McQueen, Brittany Stearnes, Lisa
22 Milling, Sabrina Jackson and Zaria McFadden.

23 Q And of all the girls out there who were waiting
24 around on your mom, who was the oldest?

25 A I was.

- 1 Q How old were you back then?
- 2 A I believe 15 or 16.
- 3 Q When is your birthday?
- 4 A October 28th.
- 5 Q Okay. So you would have been 15 back then?
- 6 A Yes, ma'am.
- 7 Q And little Zaria, how old was she?
- 8 A Four.
- 9 Q Four?
- 10 A Yes, ma'am.
- 11 Q And so everyone else was kind of inbetween those
- 12 ages?
- 13 A Yes, ma'am.
- 14 Q And that morning were the car doors open?
- 15 A Yes, ma'am.
- 16 Q And where was the car parked?
- 17 A The car might have been parked in the middle of the
- 18 parking lot.
- 19 Q In the middle of the parking lot?
- 20 A Yes, ma'am.
- 21 Q What kind of car was your mom driving that day?
- 22 A A white Tahoe.
- 23 Q And that's the car you all were hanging out in
- 24 listening to some music?
- 25 A Yes, ma'am.

- 1 Q Dancing?
- 2 A Yes, ma'am.
- 3 Q At some point did you observe a car coming down
- 4 Cushman Road?
- 5 A Yes, ma'am.
- 6 Q And it caught your attention?
- 7 A Yes, ma'am.
- 8 Q Do you remember what kind of car it was?
- 9 A A gray car.
- 10 Q Was it a sedan or an SUV, or could you tell?
- 11 A No. It was a long car.
- 12 Q A long car. And what made you pay attention to that
- 13 car?
- 14 A Because it started swerving.
- 15 Q It started swerving?
- 16 A Mm-hmm (affirmative).
- 17 Q And was it coming on Cushman? Was it coming from the
- 18 North Main Street area towards the 277 overpass
- 19 there?
- 20 A It was crossing the railroad tracks.
- 21 Q I'll get back to that in a minute. As it came back,
- 22 you said you observed swerving, did it actually go
- 23 right into the parking lot of your church that day?
- 24 A No, ma'am.
- 25 Q What happened as it passed your church?

1 **A** It swerved almost in a circle and wound up hitting a
2 bridge.

3 **Q** Hitting near the bridge?

4 **A** Yes, ma'am.

5 **Q** And when it swerved, did it change the direction the
6 car was actually pointed?

7 **A** Yes, ma'am.

8 **Q** And it ended up -- did it come to a stop?

9 **A** It did.

10 **Q** Would you tell the jury what made it come to a stop?

11 **A** It might have been the railing of the bridge.

12 **Q** The railing of the bridge?

13 **A** (Nods head affirmatively).

14 **Q** When it stopped was it pointed in the opposite
15 direction from which it came from?

16 **A** Yes, ma'am.

17 **Q** When you saw the wreck of the long car, what
18 happened? What did you all do?

19 **A** My first thought was somebody needs help. So I told
20 my sister Keri and Jasmine Prince to go on the inside
21 and get help for the person.

22 **Q** Were those two of the older girls there that day?

23 **A** They might have been middle-aged.

24 **Q** Middle?

25 **A** Yes, ma'am.

1 Q And did they in fact go inside the church to tell
2 them there had been an accident?

3 A Mm-hmm (affirmative). Yes, ma'am.

4 Q So at that point you're concerned about whoever is in
5 the car, their safety?

6 A Yes.

7 Q After you told them to run off, did you ever see
8 anybody get out of that car that day?

9 A Yes, ma'am, I did.

10 Q And how many people got out of the car?

11 A Only one person.

12 Q And could you tell what part of the car that person
13 got out?

14 A The driver's seat.

15 Q And what did that person look like? Do you remember?

16 A Not really. At that point I really --

17 Q Could you tell if it was a man or a woman?

18 A Yes, ma'am. It was a man.

19 Q It was a man?

20 A (Nods head affirmatively).

21 Q When he got out of the car, what did you see him do?

22 A Limping towards a car that had pulled up.

23 Q Right there in the street?

24 A No. Pulled up in the parking lot.

25 Q In the parking lot?

1 **A** Yes, ma'am.

2 **Q** And did he actually get into that car?

3 **A** No.

4 **Q** And where did that car go?

5 **A** The car, it drove off.

6 **Q** And at that point you didn't know that Mr. Fleming or
7 anybody else was in that car?

8 **A** No.

9 **Q** And when you saw that car drive off, where did that
10 man go?

11 **A** The man, well, he approached, started approaching in
12 the white Tahoe.

13 **Q** And you were in the white Tahoe or around it?

14 **A** Yes, ma'am. At that point I was trying to close up
15 all the doors.

16 **Q** Why was that?

17 **A** Because I was just thinking my mom's car, he might
18 take it.

19 **Q** So why would you think --

20 **MS. SINGLETARY:** Objection, Your Honor.

21 **THE COURT:** Overruled.

22 **MS. CAMPBELL:** Thank you.

23 **Q** And was there anything about the man that alarmed you
24 so that you started closing up your mom's car?

25 **A** The gun.

1 Q Okay. And you saw him with a gun?

2 A Yes, ma'am.

3 Q And where was the gun on him? Was he holding it, or
4 was it in his --

5 A Holding it. He was holding it.

6 Q He was holding it?

7 A (Nods head affirmatively).

8 Q Was it in one of his hands?

9 A Yes, ma'am.

10 Q When he reached the first car, could you tell what he
11 did with it?

12 A No.

13 Q But as he's coming towards your car, you're trying to
14 close it up?

15 A Yes, ma'am.

16 Q And where was the gun at that point?

17 A It was still in his hand.

18 Q In his hand?

19 A Yes, ma'am.

20 Q And had you ever seen that man before?

21 A Never.

22 Q How many children were still out there near the car?

23 A There were -- there was two in the back seat; and the
24 rest of them, they were like on the front porch of
25 the church.

1 Q So at that point though are you trying to just secure
2 the car?

3 A Yes, ma'am.

4 Q You're the one out there and you're the one that's
5 actually looking at him?

6 A Mm-hmm (affirmative).

7 Q And you paid attention then. It's a stupid question.
8 You paid attention to what he looked like?

9 A Yes, ma'am.

10 Q And as he approached you, how close did he actually
11 get to you that day?

12 A Maybe about five feet.

13 Q Okay. As far as me from you?

14 A A little further back.

15 Q A little further back?

16 A Yes, ma'am.

17 Q Were you able to get a clear view of his face?

18 A Yes, ma'am.

19 Q Was it sunny out?

20 A Mm-hmm (affirmative).

21 Q And were you paying attention to what he looked like?

22 A Yes, ma'am. Facial-wise.

23 Q And as he approached you, what did you do?

24 A When I had -- well, I think I might have managed to
25 close about two or three doors. I seen the gun like

1 coming up, so I ran up to the church.

2 Q What about the two little girls in the back seat?

3 A At that point I didn't know they were in there, the
4 back seat. So I guess he told them to get out.

5 Q So you didn't know they were in the back seat?

6 A No.

7 Q And the rest of the girls were out there on the
8 porch?

9 A Yes, ma'am.

10 Q Or in the church. As you ran in the church, could
11 you see where he went?

12 A No, ma'am.

13 Q And do you even know of your own personal knowledge
14 whether or not he was able to get into your mother's
15 car?

16 A No.

17 Q Once you were inside the church, did you try to tell
18 people what was going on?

19 A Yes, ma'am.

20 Q And who were you trying to tell what happened?

21 A The adults, like he has a gun. I'm not sure, you
22 know. I was just trying to explain the situation at
23 the time.

24 Q Was your mother one of the adults?

25 A Yes, ma'am.

1 Q And were there other adults in the church?

2 A Yes, ma'am.

3 Q And once you all got into the church, did the rest of
4 the girls get in the church safely?

5 A Yes, ma'am.

6 Q And once you all were in the church, did you all make
7 any move anywhere to try to be safer?

8 A Yes, ma'am.

9 Q What happened?

10 A We all ran to the back staircase of the church. At
11 that time that was the most secure place we could
12 find.

13 Q And were all the girls that had been in your car
14 earlier down there with you?

15 A Yes, ma'am.

16 Q Did you see Ms. Worthy that day?

17 A No, ma'am.

18 Q Okay. So you didn't know what went on with her?

19 A No.

20 Q And once you ran in the church you didn't see
21 anything more about what happened out there in the
22 parking lot?

23 A No, ma'am.

24 Q Did you get a good look at that man's face?

25 A Yes, ma'am.

- 1 Q Were you scared when you were looking at him?
- 2 A Yes, ma'am.
- 3 Q Did you all call the police?
- 4 A I guess.
- 5 Q But somebody did?
- 6 A Yeah. Somebody did.
- 7 Q And did the police come?
- 8 A Yes, ma'am.
- 9 Q And did they talk to you that day?
- 10 A Yes, ma'am.
- 11 Q Did they take a statement from you?
- 12 A Yes, ma'am.
- 13 Q And do you remember generally what the man had on
- 14 when he approached you that day?
- 15 A No, ma'am.
- 16 Q You said you concentrated on the gun and his face?
- 17 A Yes, ma'am.
- 18 Q And the next day did you go down to the police
- 19 department with your sister, Keri, and your mom?
- 20 A Yes, ma'am.
- 21 Q And of everyone out there, did you get the closest to
- 22 the man?
- 23 A I believe I did. Yes, ma'am.
- 24 Q As far as paying attention and looking at him?
- 25 A Yes, ma'am.

1 Q And when you went down to the police station, do you
2 remember meeting with Investigator Thomas who is
3 seated right here?

4 A Yes, ma'am.

5 Q And did he then separate you from your sister and
6 your mom?

7 A Yes, ma'am.

8 Q And did he show you some photographs?

9 A Yes, ma'am.

10 Q And when he showed you these photographs, I want to
11 show you what's been marked as State's Exhibit No. 8,
12 the second page of that. Actually it was just the
13 second page he showed you first, right?

14 A Yes, ma'am.

15 Q And when he showed you these photographs; what, if
16 anything, did he say to you about the photographs?

17 A Look through this, select a person.

18 Q If you see him?

19 A Yes, ma'am.

20 Q Did he tell you which one to pick?

21 A No.

22 Q And did you look at all six of the photographs?

23 A Yes, ma'am.

24 Q And when you looked at all six of the photographs,
25 did you recognize one of them?

1 **A** Yes, ma'am.

2 **Q** And which one did you recognize?

3 **A** The one there.

4 **Q** This one?

5 **A** Yes, ma'am.

6 **Q** And when you were shown this photographic line-up,
7 just for the record, it didn't have any of your
8 initials or that circle on it?

9 **A** No.

10 **Q** But when he showed you this photograph you recognized
11 the person on the bottom right?

12 **A** Yes, ma'am.

13 **Q** And why did you recognize that person?

14 **A** Because that's the person I had seen the day before.

15 **Q** Did you tell Investigator Thomas that?

16 **A** Yes, ma'am.

17 **Q** And at that point did he actually ask you to circle
18 that number and then put your initials on there?

19 **A** Yes, ma'am.

20 **Q** And then later did he actually fill out this form and
21 have you sign off on that one, the one you
22 recognized?

23 **A** Yes, ma'am.

24 **MS. CAMPBELL:** Your Honor, at this time we'd
25 offer State's Exhibit No. 8 in evidence.

1 **THE COURT:** Over the Defendant's objection.

2 It's admitted.

3 (WHEREUPON, State's Exhibit No. 8 is admitted
4 into evidence.)

5 **Q** Did anyone influence you or tell you who to pick?

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

7 **Q** Did you pick this person out because that's the man
8 you recognized that had had the gun before --

9 **A** Yes, ma'am.

10 **Q** -- in the church parking lot? I'm going to show you
11 some photographs which are State's Exhibits 30
12 through 37 and just have you look through them first.
13 Okay?

14 **A** Mm-hmm (affirmative). Yes, ma'am.

15 **Q** Do you recognize those photos?

16 **A** Yes, ma'am.

17 **Q** And do those photos show both the exterior and
18 interior of the car when it was parked in the parking
19 lot that day?

20 **A** Yes, ma'am.

21 **MS. CAMPBELL:** Your Honor, at this time we'd
22 offer 30 through 37 into evidence.

23 **MS. SINGLETARY:** Without objection, Your Honor.

24 **THE COURT:** Without objection.

25

1 (WHEREUPON, State's Exhibit No. 30 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 31 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 32 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 33 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 34 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 35 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 36 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 37 is admitted
16 into evidence.)

17 Q I want to show you State's Exhibit No. 30. Does that
18 show how your car was parked in relation to the
19 actual church in the background?

20 A Yes, ma'am.

21 Q And that's where you all were that day when the man
22 approached you?

23 A Yes, ma'am.

24 Q State's Exhibits No. 31 and 32, does that also show
25 the position of the car?

1 **A** Yes, ma'am.

2 **Q** And I notice that some of the doors are open. You
3 weren't able to close all the doors that day. Is
4 that correct?

5 **A** That's correct.

6 **Q** And then 33 and 34 just show generally where the car
7 was, too?

8 **A** Yes, ma'am.

9 **Q** And then the interior of the car on 35 through 37.
10 Is that correct?

11 **A** That's correct.

12 **Q** And again, once you saw him coming towards you with
13 the gun you ran and you don't know what he did after
14 that?

15 **A** That's correct.

16 **Q** You mentioned the car you saw coming down Cushman and
17 then he wrecked it. I want to show you State's
18 Exhibit Nos. 7 and 23 and 24.

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

20 **Q** Is that how the car looked after he wrecked it that
21 day?

22 **A** Yes, ma'am.

23 **Q** And you mentioned that there was a bridge over a
24 highway. Can you actually see that in the background
25 of State's Exhibit No. 24?

1 **A** Yes, ma'am. I see it.

2 **Q** So that's the automobile that the man got out of that
3 day that approached you with the gun?

4 **A** Yes, ma'am.

5 **Q** After he'd wrecked it. I want to show you what's
6 been marked as State's Exhibit No. 95. Do you
7 recognize this diagram? It's actually an overhead.

8 **A** Yes, ma'am.

9 **Q** And does that represent the area on the road right
10 there around the Gill Creek Baptist Church?

11 **A** Yes, ma'am.

12 **MS. CAMPBELL:** Your Honor, at this time we'd
13 offer 95 into evidence.

14 **MS. SINGLETARY:** Without objection, Your Honor.

15 **THE COURT:** Without objection.

16 (WHEREUPON, State's Exhibit No. 95 is admitted
17 into evidence.)

18 **MS. CAMPBELL:** Your Honor, may the witness step
19 down?

20 **THE COURT:** Certainly.

21 **Q** You can come down here. And be careful because that
22 steps down. You come on this side and talk real
23 loudly so the court reporter can hear you. Do you
24 see the church here on the diagram?

25 **A** Yes, ma'am.

1 Q And where is it?

2 A On Cushman Road.

3 Q Right there?

4 A Yes, ma'am.

5 Q And then your car would have been parked kind of in
6 the middle of that parking lot next to it?

7 A Yes, ma'am.

8 Q Can you show the jury approximately where that would
9 have been?

10 A Approximately.

11 Q Approximately there, kind of where that car is
12 parked?

13 A Yes, ma'am.

14 Q Near there. The man that you saw, you said you saw
15 come down Cushman Road going towards the overpass?

16 A Yes, ma'am.

17 Q And which direction would that have been that he was
18 traveling when you saw him start swerving?

19 **COURT REPORTER:** I can't hear her or see her.

20 A It's here.

21 Q Up towards there?

22 A Yes, ma'am.

23 Q And then going down towards 277?

24 A Mm-hmm (affirmative).

25 Q And that's when you said he was swerving?

1 **A** Yes, ma'am.

2 **Q** And then the car spun around?

3 **A** Yes, ma'am.

4 **Q** Okay. You can go back up. Kelli, the man that got
5 out of the car after he wrecked it --

6 **A** Yes.

7 **Q** -- and that approached the other car, then approached
8 you with a gun in his hand, do you see him here in
9 the courtroom?

10 **A** Yes, ma'am.

11 **Q** Can you show the jury who is he, point him out?

12 **A** Right there.

13 **Q** And what's he wearing?

14 **A** A creme shirt and a dark tie.

15 **MS. CAMPBELL:** Your Honor, may the record
16 reflect she's identified the Defendant.

17 **THE COURT:** Let the record reflect the witness
18 identified the Defendant.

19 **Q** Any doubt that's the man?

20 **A** No doubt.

21 **Q** Thank you. Please answer any questions from Ms.
22 Singletary.

23 **THE COURT:** Cross examination.

24 **MS. SINGLETARY:** May it please the Court, Your
25 Honor.

1 **THE COURT:** Yes, ma'am.

2 CROSS EXAMINATION

3 **BY MS. SINGLETARY**

4 **Q** Okay, Kelli. I'm just going to ask you a few
5 questions. Okay?

6 **A** Okay.

7 **Q** And you stated that you don't remember what the man
8 was wearing that you saw on that day?

9 **A** Yes.

10 **Q** And another thing that you said is that you didn't
11 know whether or not Ms. Worthy was there on that day
12 at the time?

13 **A** Yes.

14 **Q** And you also stated that you ran inside the church?

15 **A** Yes.

16 **Q** At some point?

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

18 **Q** And once you ran inside the church, you don't know
19 what happened outside?

20 **A** No.

21 **Q** And you said that the man that you saw on that day
22 was about five feet away from you?

23 **A** Yes.

24 **Q** And when you gave a statement to the police officer,
25 the only description you gave to the police officers

1 was that it was a black man in your statement?

2 **A** Yeah. In the statement.

3 **Q** Yeah. In the statement. Beg the Court's indulgence,
4 Your Honor. I have no further questions, Your Honor.

5 **THE COURT:** Redirect?

6 **MS. CAMPBELL:** No, sir.

7 **THE COURT:** You may come down, ma'am. Thank you
8 very much. May the witness be excused?

9 **MS. SINGLETARY:** Without objection, Your Honor.

10 **THE COURT:** Without objection.

11 **MS. CAMPBELL:** The State calls Keri McQueen.

12 KERI MCQUEEN, after being duly sworn, testifies
13 as follows:

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

16 DIRECT EXAMINATION

17 **BY MS. CAMPBELL**

18 **Q** Keri, how old are you?

19 **A** Twelve.

20 **Q** Where do you go to school?

21 **A** W. G. Sanders.

22 **Q** Is that a middle school?

23 **A** Yes, ma'am.

24 **Q** What grade are you in?

25 **A** The seventh.

1 Q I want to turn your attention back to February the
2 24th of 2007. How old would you have been back then?

3 A Ten.

4 Q And do you remember going to the church that Saturday
5 morning because your mom had choir practice?

6 A Yes, ma'am.

7 Q And do you remember who all was out there with you
8 when you all were with sitting in the car?

9 A Yes, ma'am.

10 Q And who all was out there that day?

11 A Sabrina Jackson, Janice Prince, Brittany Stearnes,
12 Zaria McFadden and Kelli McQueen and myself.

13 Q Your sister?

14 A Yes, ma'am.

15 Q And your mom actually drove you all to the church
16 that day?

17 A Yes, ma'am.

18 Q And do you remember hanging out in the parking lot,
19 what kind of car you all were in?

20 A Yes, ma'am.

21 Q And whose car was this?

22 A My mom's.

23 Q While you all were waiting there, what were you all
24 doing out there in the parking lot waiting on your
25 mom?

- 1 **A** Dancing and listening to music.
- 2 **Q** Were you inside or outside the car? Do you remember?
- 3 **A** Outside.
- 4 **Q** And were some of the other girls outside the car as
- 5 well?
- 6 **A** Yes, ma'am.
- 7 **Q** And did something catch your attention that morning?
- 8 **A** Yes, ma'am.
- 9 **Q** As far as what was happening over on Cushman?
- 10 **A** Yes, ma'am.
- 11 **Q** And tell this jury what you saw?
- 12 **A** I saw a gray long Cadillac looking car come towards
- 13 the bridge and swerve and hit by a pole and it
- 14 stopped.
- 15 **Q** And when you said you saw it, did you see it coming
- 16 down Cushman Road?
- 17 **A** Yes, ma'am.
- 18 **Q** When you say it swerved, how did it swerve?
- 19 **A** Probably it swerved once and turned almost in a
- 20 circle, like a semi circle almost.
- 21 **Q** So did it end up facing -- once it came to a stop,
- 22 was it facing the same direction it had come down in?
- 23 **A** No, ma'am. It was facing the opposite direction.
- 24 **Q** Once the car stopped when it was near the pole, did
- 25 you see anybody get out of it?

- 1 **A** Yes, ma'am.
- 2 **Q** And at that point what did you do?
- 3 **A** I ran in the church to say that someone had been
- 4 hurt, they had been in a car accident and they had
- 5 been hurt.
- 6 **Q** And at that point you just were trying to get whoever
- 7 was in the car help?
- 8 **A** Yes, ma'am.
- 9 **Q** And when you ran into the church at that point, had
- 10 you seen anybody?
- 11 **A** I see anybody?
- 12 **Q** Get out of the car?
- 13 **A** Yes, ma'am.
- 14 **Q** How many people did you see get out of the car?
- 15 **A** One.
- 16 **Q** Could you tell where this person got out?
- 17 **A** From the driver's side.
- 18 **Q** Could you tell if it was a man or woman?
- 19 **A** A man.
- 20 **Q** Once you ran in the church and told them that there
- 21 had been a wreck --
- 22 **A** Yes, ma'am.
- 23 **Q** -- and you needed to get help, did you come back out
- 24 of the church?
- 25 **A** Yes, ma'am.

1 Q And what did you see when you came back out of the
2 church into the parking lot?

3 A I saw the man who got out the car. He looked like he
4 was talking to the person who had stopped to see if
5 he was okay. And then that's when I saw him pull out
6 the gun and I ran back into the church.

7 Q You said you saw him approach whom?

8 A The person when had stopped in the car.

9 Q In the other car?

10 A Yes, ma'am.

11 Q Okay. So at that point your sister was still out in
12 the parking lot?

13 A Yes, ma'am.

14 Q Near the Tahoe. But you said that you saw a gun in
15 his hand?

16 A Yes, ma'am.

17 Q And he was approaching the other car?

18 A Yes, ma'am.

19 Q And at that point you said you ran back in?

20 A Yes, ma'am.

21 Q Could you tell what kind of gun it was?

22 A No, ma'am.

23 Q Could you tell how he was holding it?

24 A Just like that.

25 Q Was it a handgun?

1 **A** Yes, ma'am.

2 **Q** When you saw the man with the gun in his hand
3 approaching that first car, what went through your
4 mind?

5 **A** First it was like a pause, just a second. And then I
6 ran back into the church to tell everybody to stop,
7 that he had a gun.

8 **Q** Okay. And shortly thereafter did your sister and the
9 other girls come back in, too?

10 **A** Yes, ma'am.

11 **Q** So everybody ended up in the church --

12 **A** Yes, ma'am.

13 **Q** -- that had been out with you in the car?

14 **A** Yes, ma'am.

15 **Q** Did you try to tell the adults what had gone on?

16 **A** Yes, ma'am.

17 **Q** And, in fact, did you all move to another part of the
18 church for safety issues?

19 **A** Yes, ma'am.

20 **Q** And where did you all go in the church?

21 **A** To the back staircase.

22 **Q** Did you ever see Ms. Worthy that day?

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

24 **Q** So when you saw the man you had run back out in the
25 parking lot and you saw him across the parking lot in

1 the first car?

2 A Yes, ma'am.

3 Q And you didn't see anything else once you went back
4 inside, right?

5 A No, ma'am.

6 Q There is no doubt he had a gun?

7 A No, ma'am.

8 Q And that was the man you saw get out of the Cadillac
9 looking car?

10 A Yes, ma'am.

11 Q Thank you.

12 MS. SINGLETARY: Thank you, Your Honor.

13 THE COURT: Cross examination.

14 MS. SINGLETARY: May it please the Court.

15 CROSS EXAMINATION

16 BY MS. SINGLETARY

17 Q Hey, Keri. I'm going to do you just like your
18 sister. I'm not going to ask that many questions.
19 Okay? You said that almost immediately after the
20 wreck you ran inside the church?

21 A Yes, ma'am.

22 Q And at some point you came back outside?

23 A Mm-hmm (affirmative). Yes, ma'am.

24 Q And then you saw a man?

25 A (Nods head affirmatively).

1 Q And you saw that man with a gun?

2 A Yes, ma'am.

3 Q And then you ran back inside the church?

4 A Yes, ma'am.

5 Q And you don't know anything else that happened on
6 that day?

7 A No, ma'am.

8 MS. SINGLETARY: I have no further questions,
9 Your Honor.

10 THE COURT: Redirect?

11 MS. CAMPBELL: No, sir.

12 THE COURT: You may come down, ma'am. May this
13 witness be excused?

14 MS. SINGLETARY: Yes, Your Honor. Without
15 objection.

16 THE COURT: Without objection.

17 MS. CAMPBELL: The State calls Jasmine Prince.

18 JASMINE PRINCE, after being duly sworn,
19 testifies as follows:

20 THE CLERK: Please have a seat. State your full
21 name for the record.

22 DIRECT EXAMINATION

23 BY MS. CAMPBELL

24 Q Jasmine, how old are you?

25 A Sixteen.

- 1 Q Where do you go to school?
- 2 A Blythewood High School.
- 3 Q Blythewood High School?
- 4 A (Nods head affirmatively).
- 5 Q And you're very soft spoken. Can you speak up just a
- 6 little? Are you a little nervous here today?
- 7 A Yeah.
- 8 Q What grade are you in at Blythewood?
- 9 A Eleven.
- 10 Q Eleventh grade?
- 11 A Yes.
- 12 Q Do you know Kelli and Keri McQueen?
- 13 A Yes, ma'am.
- 14 Q How do you know them?
- 15 A Church members.
- 16 Q Church members?
- 17 A (Nods head affirmatively).
- 18 Q What church does your family attend?
- 19 A Gill Creek Baptist Church.
- 20 Q Gill Creek?
- 21 A Yes, ma'am.
- 22 Q And would you go to functions at Gill Creek Baptist
- 23 Church with the McQueens occasionally?
- 24 A Yes, I do.
- 25 Q I want to turn your attention back to that Saturday

1 morning, excuse me, February 24th of 2007. Did you
2 ride with Ms. McQueen and the girls and some other
3 girls over to the church that day?

4 **A** No. I rode with my mother.

5 **Q** You rode with your mother?

6 **A** (Nods head affirmatively).

7 **Q** Once you got there, did your mother participate in
8 choir practice?

9 **A** She does.

10 **Q** So once you got there, did you meet up with the
11 McQueens?

12 **A** Yes, I did.

13 **Q** What were you all doing while your mother and Kelli
14 and Keri's mother were doing that?

15 **A** I started dancing and listening to music.

16 **Q** And do you remember if this was late morning? Or
17 what time of day it was?

18 **A** No. I don't remember.

19 **Q** Okay. While you were out there in the -- and were
20 you all in the parking lot?

21 **A** Yes, ma'am, we were.

22 **Q** Whose car were you all hanging out in or around?

23 **A** Ms. McQueen.

24 **Q** Ms. McQueen's?

25 **A** (Nods head affirmatively).

1 Q While you all were out there, did you see something
2 that caught your attention?

3 A Yes, I did.

4 Q Can you tell this jury what got your attention?

5 A I saw a car coming from off the railroad track coming
6 down the road driving fast and he was like swerving,
7 and I saw him like did a semi turn and he hit a phone
8 pole.

9 Q You said he came down from the direction across the
10 railroad tracks?

11 A Yes.

12 Q And then down there towards 277 towards Gill Creek
13 Church actually?

14 A Yes.

15 Q At some point you said you saw him swerve?

16 A Yes.

17 Q Where did the car end up? Do you know?

18 A Like from -- like by the pole in front of the bridge.

19 Q By the pole in front of the bridge?

20 A (Nods head affirmatively).

21 Q And I show you what's been marked as State's Exhibit
22 No. 24. Is that how the car ended up?

23 A Yes, ma'am.

24 Q And is that the pole in front of the bridge you were
25 talking about?

- 1 **A** Yes, ma'am.
- 2 **Q** And after you saw the car wreck, did you see anybody
3 get out of it?
- 4 **A** I did.
- 5 **Q** And how many people did you see get out of it?
- 6 **A** One.
- 7 **Q** And could you tell what part of the car he got out?
- 8 **A** The driver's side.
- 9 **Q** And at that point what did you do?
- 10 **A** I -- well, we like were still listening to music.
11 But then when the other car pulled up, when they saw
12 what happened, myself and Keri ran in the church to
13 get help.
- 14 **Q** At that point you were just reporting what?
- 15 **A** That somebody wrecked and they were saying he was
16 hurt.
- 17 **Q** And at that point you hadn't seen the gun?
- 18 **A** No.
- 19 **Q** Did you all come back out of the church?
- 20 **A** I didn't.
- 21 **Q** Did Keri come back out of the church?
- 22 **A** Yes.
- 23 **Q** So all you saw was the actual wreck itself?
- 24 **A** Yes, ma'am.
- 25 **Q** And then you said you went in the church?

1 **A** Yes, ma'am.

2 **Q** Were you in the church when Keri came back in the
3 church?

4 **A** Yes, I was.

5 **Q** And do you remember what she was saying at that
6 point?

7 **A** She came back in, said he had a gun and stuff.

8 **Q** And what did you all do at that point?

9 **A** Well, we stayed in the church and my mom and them and
10 everybody else who was on the choir came running from
11 the choir.

12 **Q** And did they move you all to another part of the
13 church?

14 **A** Yes, ma'am.

15 **Q** And is your mom here today?

16 **A** Yes, ma'am.

17 **Q** And is she sitting there next to Ms. McQueen?

18 **A** Yes, ma'am.

19 **Q** And you don't know what happened in the parking lot
20 after you went in?

21 **A** No.

22 **Q** Were you there when Kelli actually came running back
23 in?

24 **A** Yes, ma'am.

25 **Q** And Keri was telling you that the guy had a gun.

1 What did Kelli say?

2 **A** Kelli said he pointed it at her.

3 **Q** Thank you.

4 **THE COURT:** Is that it?

5 **MS. CAMPBELL:** That's it.

6 **THE COURT:** Cross examination.

7 **MS. SINGLETARY:** Thank you, Your Honor.

8 CROSS EXAMINATION

9 **BY MS. SINGLETARY**

10 **Q** Jasmine, one question and one question only. Okay?

11 **A** (Nods head affirmatively).

12 **Q** You didn't see anything other than the wreck on that
13 day, did you?

14 **A** No.

15 **MS. SINGLETARY:** I have no further questions,
16 Your Honor.

17 **THE COURT:** Any redirect?

18 **MS. CAMPBELL:** No, sir.

19 **THE COURT:** You may come down, ma'am. May this
20 witness be excused?

21 **MS. SINGLETARY:** Yes, Your Honor. Without
22 objection.

23 **MS. CAMPBELL:** The State calls Evelyn Worthy.

24 EVELYN WORTHY, after being duly sworn, testifies
25 as follows:

1 **THE CLERK:** Please have a seat. State your full
2 name for the record.

3 DIRECT EXAMINATION

4 **BY MS. CAMPBELL**

5 **Q** If you can state your name for the record?

6 **A** My name is Evelyn Worthy.

7 **Q** Ms. Worthy, do you live here in the Columbia area?

8 **A** Yes, I do.

9 **Q** How long have you been living in Columbia?

10 **A** Probably about 70 something years.

11 **Q** Seventy something years?

12 **A** Yes. Because on the 11th of this month we will be
13 married 58 years.

14 **Q** Fifty-eight years?

15 **A** Yes. I'm a mother, a grandmother and a great
16 grandmother. And I'm also a member of Gill Creek
17 Baptist Church where I serve as an officer.

18 **Q** You serve as an officer?

19 **A** Yes.

20 **Q** At the Gill Creek Baptist Church?

21 **A** Yes.

22 **Q** How long have you been a member of the Gill Creek
23 Baptist Church, ma'am?

24 **A** Fifty plus years.

25 **Q** Fifty plus years?

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

2 **Q** Part of your duties as an officer of Gill Creek
3 Baptist Church, or as part of your volunteer work, do
4 you help out at the church sometimes on Saturdays?

5 **A** Yes. I'm ministry leader. At least I was during
6 that time.

7 **Q** Okay.

8 **A** For the pulpit aid. And we took care of the flowers
9 and certain things on Saturdays. So that's how I got
10 to be there.

11 **Q** And are you retired now?

12 **A** Yes. About 20 something years.

13 **Q** Okay. I want to turn your attention back to February
14 the 24th of 2007. Did you go to the church that
15 Saturday morning?

16 **A** Yes, I did.

17 **Q** Why were you going to church that Saturday?

18 **A** Because my usual thing was watering the flowers and
19 preparing around the pulpit.

20 **Q** And that day when you went in the church, you didn't
21 notice anything unusual before going into the church,
22 did you?

23 **A** No.

24 **Q** And did you proceed to go into the church and water
25 the flowers?

1 **A** Yes, I did.

2 **Q** At some point explain to this jury, are there
3 different entrances to the church?

4 **A** Yes. But I was at the front entrance. We have
5 three, well, say, four entrances; a handicapped, one
6 at the bottom and one on the other side near where
7 the car was wrecked.

8 **Q** Near where the car was wrecked?

9 **A** Yes.

10 **Q** And I believe here in the background, State's Exhibit
11 No. 33, does this show kind of the relationship in
12 the parking lot of where the main entrance is? You
13 can just barely see it?

14 **A** Yes. That's kind of the top of the church, the side
15 where the car is parked, near where the patrol car is
16 parked.

17 **Q** So near where that patrol car is parked, kind of
18 below that car?

19 **A** Right. The entrance is there.

20 **Q** That's the main entrance. You mentioned there were
21 two other entrances. Is one on another side of the
22 church?

23 **A** Yes. There is a handicapped ramp as you go around
24 that door, and at the bottom there is an entrance.
25 And also on the back --

1 Q There is an entrance?

2 A Yes.

3 Q And that day when you were in the church, were you
4 doing anything there in the main hallway?

5 A I was in the corridor of the church.

6 Q The corridor?

7 A Yes. The entrance of the church.

8 Q That entrance we just pointed out?

9 A Right.

10 Q And what were you doing there in the entrance?

11 A Well, we also, as I said, it was at that time I was a
12 ministry chairperson for pulpit aid and we had, you
13 know, promised to take care of the furniture. We'd
14 bought some new furniture for that. And so we were
15 doing that.

16 Q And, in fact, when you walk in the front entrance of
17 your church there's a hallway and then over to the
18 right is the actual --

19 A Where the furniture and stuff is as you go into the
20 sanctuary.

21 Q Into the sanctuary. That's what I was getting at.
22 The sanctuary is off to the right. Once you were in
23 that front hallway, what, if anything, unusual
24 happened that day?

25 A After a period of time the children, I'm not sure

1 which ones, came running in and they were screaming,
2 "Call 911. There's been an accident." So --

3 Q So they kind of ran right past you and were yelling
4 about the accident?

5 A The accident. And the parents were of course running
6 out to, you know, see what was happening. So I was
7 busy.

8 Q When you say the parents, they were meeting all in
9 the hallway?

10 A The parents were inside.

11 Q In the sanctuary or in the hallway?

12 A Right. Inside the sanctuary.

13 Q The sanctuary. So is that where the children went?

14 A They could hear the, you know, noise.

15 Q So that day do you remember if Ms. McQueen was there?

16 A Yes. She was there. I didn't necessarily talk to
17 the girls beforehand, but they were all there.

18 Q Okay. And choir practice was going on?

19 A Right.

20 Q After you heard the girls coming in and talking about
21 there had been an accident, what do you recall next?

22 A I called 911. I started to call 911. And
23 Ms. McQueen's sister, she is not here, but after they
24 were all inside, she proceeded to lock the door.

25 Q Okay.

1 **A** And of course I thought the door was locked. And as
2 I was calling 911 --

3 **Q** And at that point, let me back up for a minute. The
4 children first came in and said there was an
5 accident?

6 **A** Right.

7 **Q** Did more children come in saying something else?

8 **A** I'm not quite sure how all that went because I was
9 trying to get 911. So my back was to the door.

10 **Q** Okay. But you do know that Ms. McQueen's sister was
11 trying to lock that front door?

12 **A** Right.

13 **Q** And what happened next?

14 **A** The next thing I remember, something came over my
15 head and pushed the telephone, you know, took the
16 phone out my hand. And I dropped it. And of course
17 I didn't look up. I just kind of glanced to the side
18 and that was when I saw a gun in a man's hand, in
19 someone's hand.

20 **Q** In someone's hand?

21 **A** In someone's hand. Because I never looked up.

22 **Q** You never looked up?

23 **A** Hmm-mm (Negative). I never saw him.

24 **Q** When you said you felt something come over you, could
25 you tell if it was -- what it was?

1 **A** Well, when it went to the phone, I could tell it had
2 to be a hand.

3 **Q** Okay. And then you mentioned that you were looking
4 down and that you saw a gun?

5 **A** I saw the gun.

6 **Q** And where was the gun?

7 **A** It was in his hand; in the hand, I should say.

8 **Q** In someone's hand?

9 **A** Right.

10 **Q** And at this point you hadn't looked up?

11 **A** No.

12 **Q** He reached over and you said he did something to the
13 phone. What did they do to the phone?

14 **A** Well, he wanted me -- well, you know, I guess he was
15 trying to cut it off, and I just dropped the phone.

16 **Q** And you dropped the actual receiver?

17 **A** I actually dropped the receiver, but he had already
18 touched something up there.

19 **Q** And how tall are you?

20 **A** I guess about five-six.

21 **Q** Okay. So he was able to reach over you?

22 **A** Right.

23 **Q** And at that point you dropped the phone?

24 **A** Yes.

25 **Q** And you saw the gun?

- 1 **A** I did.
- 2 **Q** Then what happened?
- 3 **A** He said, "I need some keys."
- 4 **Q** So at this point you knew it was a man?
- 5 **A** Yes. "I need some keys and you're going to help me
- 6 get them."
- 7 **Q** And at this point is he standing where in relation to
- 8 you?
- 9 **A** He's still in my back.
- 10 **Q** On your back?
- 11 **A** Right.
- 12 **Q** Right behind you?
- 13 **A** He was always at my back, never facing me. At my
- 14 back.
- 15 **Q** He said what?
- 16 **A** "I need some keys".
- 17 **Q** He told you he needed some keys?
- 18 **A** "And you're going to help me get them."
- 19 **Q** And at that point did he still have the gun?
- 20 **A** I don't know. He was at my back.
- 21 **Q** What happened next?
- 22 **A** Well, you know, it seemed like I got just not a shove
- 23 but just, you know, go on.
- 24 **Q** He pushed you?
- 25 **A** Yeah. A little. Not a hard push or anything. And I

1 went and we walked on out the door, went straight
2 down the side.

3 Q You walked out the door of the church?

4 A Out the front door, yes.

5 Q And went down the side?

6 A Straight down the side of the church.

7 Q And where was he at this point?

8 A Still behind me.

9 Q And did he say anything else?

10 A He said only one thing. "You know this is not about
11 you." I didn't say anything. I just kept walking
12 until I got into the middle of the street. And I
13 started, you know, with my arms up trying to flag
14 down --

15 Q How did you know to flag down cars?

16 A He told me I was going to help him get some keys.

17 Q And at that point did you go willingly of your own
18 accord down the side into the road?

19 A After I was going out, yes. I went directly to
20 the -- I made sure I got in the road.

21 Q I know. But why did you do that?

22 A For protection. Because he had a gun.

23 Q Thank you. You didn't want to go flag down cars?

24 A Of course not.

25 Q Were you able to get away from him?

1 **A** Once in the road when I realized that he wasn't
2 there; I can't say how long he hadn't been there, but
3 when I realized he was not there, I ran up the back
4 of the church and came back in the front door and
5 locked the door.

6 **Q** And do you know how he was able to get in the front
7 door? Because you mentioned Ms. McQueen was trying
8 to shut the front door, Ms. McQueen's sister?

9 **A** Well, apparently the lock is a little tricky on the
10 door and it did not click. It did not fit into the
11 thing.

12 **Q** Once you ran back into the church -- and again, how
13 long did all this take? Do you know?

14 **A** I doubt if it was over ten minutes, less than fifteen
15 minutes I would say.

16 **Q** Did it seem like forever?

17 **A** It seemed like a long time but I know it wasn't.

18 **Q** Once you got back in the church, did you call 911 or
19 did someone call?

20 **A** Well, 911 had already been called before we went
21 outside.

22 **Q** At some point when he had taken you down, did he have
23 ahold of your hand?

24 **A** No.

25 **Q** And once you go into the roadway, as soon as you

1 realized he wasn't right with you, you got away?

2 A Right.

3 Q Did you see him actually stop any cars?

4 A No.

5 Q So you didn't see that part?

6 A No.

7 Q And as far as what happened before you got out in the
8 parking lot and after, you don't know what happened?

9 A No.

10 Q And the only person you saw with a gun out there that
11 day was the person that was --

12 A At my back.

13 Q -- making you go into the road?

14 A At my back in the lobby. That's the only person I
15 saw. And I came back in after that and of course
16 fell apart. And the girls, they came, the parents
17 came running out and we called the pastor and so
18 forth.

19 Q Did the police come?

20 A Yes.

21 Q And were you able to give them a statement that day?

22 A Yes, I did.

23 Q Did you ever get a look at the man's face?

24 A No.

25 Q The gun that you saw, was it a handgun?

1 **A** Yeah. It seemed to fit in his hand. It was just
2 kind of rusty looking or something. It may probably
3 not have been that, but it was, you know, not a new
4 gun or shiny or anything.

5 **Q** Okay. I want to show you State's Exhibit 101. And I
6 apologize. I just had it. Does this look similar to
7 what he had that day with the gun end? That's for
8 safety reasons.

9 **A** It does look something like that. I'm not saying
10 that's it, but it looks similar to that.

11 **Q** I want to show you some photographs and just first
12 ask if you can look at these, State's Exhibits 103
13 through 108. Have you got your glasses?

14 **A** Yes. This one. This is the --

15 **Q** Let me put them in evidence for -- have you had an
16 opportunity to look at these pictures?

17 **A** No. I might -- I think I saw them when you all came
18 out. But, no, not these particular ones I have here
19 because we didn't have the cross up here. That's the
20 property of the church.

21 **Q** And then the next one shows what area?

22 **A** The next one shows where the air conditioning is.
23 There is where I came down from the church and went
24 straight in the street.

25 **Q** These next four, do those show the interior of the

1 church, the areas we've been talking about?

2 **A** Yes. This is the interior. You can't -- and it
3 shows the stairway, but on these two I don't see the
4 telephone pole.

5 **Q** We're going to come back and talk about them
6 eventually. Just do they represent the interior?

7 **A** Right.

8 **MS. CAMPBELL:** Your Honor, at this time we'd
9 offer them into evidence.

10 **MS. SINGLETARY:** Without objection, Your Honor.

11 **THE COURT:** What are your numbers?

12 **MS. CAMPBELL:** 103 through 108. I'm sorry.

13 (WHEREUPON, State's Exhibit No. 103 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 104 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 105 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 106 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 107 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 108 is admitted
24 into evidence.)

25

1 Q State's Exhibit No. 103, what does that show?

2 A That's the front of the church.

3 Q And this photograph was taken at a later time?

4 A Right.

5 Q But is that pretty much how it looks?

6 A Right.

7 Q Is that where you were talking about where you were
8 inside that day when the girls came running in?

9 A Yes.

10 Q And the door that you mentioned that Ms. McQueen's
11 sister tried to lock, is that the door we're talking
12 about?

13 A That's the door you enter from.

14 Q Once you get inside, I want to show you what's been
15 marked as State's Exhibit Nos. 105 and 106; what do
16 those two show?

17 A That's just as you walk in the door. It shows the
18 stairway that's leading downstairs and the -- you see
19 just a little bit of the foyer there. But you can't
20 see too much of either one.

21 Q If you walked in the front door of 103 --

22 A Right.

23 Q -- and 105, that's what you would see?

24 A Right.

25 Q And then this is a closer up view of the stairwell

1 right there that's in 105. Is that right?

2 A Yes.

3 Q Okay. And is that the area where you were standing
4 that day?

5 A I was standing near the stairway. In fact, the
6 telephone is right inside the stairway.

7 Q I'll get to that. You mentioned that after the girls
8 came in you went to call for help, is that correct?

9 A Right.

10 Q And right inside that stairwell which is on 105,
11 State's Exhibit 107, does that show the phone?

12 A That's the phone.

13 Q And when you were testifying earlier you talked about
14 how someone reached something over you and touched
15 the phone?

16 A Yes.

17 Q And then you dropped the receiver?

18 A Yes.

19 Q Why didn't you just replace the receiver?

20 A Well, actually I was hoping it would still be on and
21 I would be heard.

22 Q And this is where you were standing when you first
23 saw the gun and the person behind you?

24 A Right. That's where I was standing when I saw the
25 gun and when I knew the person was behind me. But I

1 didn't see them.

2 Q Okay. And then State's Exhibit No. 108, is that
3 looking --

4 A Yes. That's more to the right of the church.

5 Q Is that looking down into the parking lot from the
6 main entrance?

7 A Yes.

8 Q You mentioned that once he told you he needed some
9 keys and you're going to help me get some, right?

10 A Right.

11 Q And then he walked you down to Cushman?

12 A Right.

13 Q And I show you State's Exhibit No. 104. What does
14 that show?

15 A That shows the front, the air conditioning where you
16 go straight down. But, you know, the trees there is
17 shrubbery there. And I just went through and got in
18 the middle of the street.

19 Q Okay. And so you would have walked straight down the
20 side?

21 A Well, I would have come straight down at an angle.

22 Q Onto Cushman, right kind of in front of the church?

23 A Right.

24 Q Ms. Worthy, and this is not a very good question.

25 But did you go with the man because you were scared

1 of what he'd do with the gun?

2 **A** Yes.

3 **Q** You didn't want to go with him?

4 **A** No. No.

5 **Q** You mentioned that once you got back inside after you
6 came out of the road that you collapsed?

7 **A** I just went to pieces. I'd never been, you know,
8 faced with a gun before. Like I said, even though I
9 did not, you know, see, he didn't put it in my face
10 or anything, it was in his hand to the side. I don't
11 know where it was when I went out the door.

12 **Q** So if he put it up to your head, you wouldn't have
13 seen that?

14 **A** No.

15 **Q** Did you ever look up?

16 **A** No.

17 **Q** Thank you, ma'am. Please answer any questions the
18 defense may have.

19 **MS. SINGLETARY:** Your Honor, we have no
20 questions for this witness.

21 **THE COURT:** All right. You may come down,
22 ma'am. Thank you very much. The witness be excused?

23 **MS. SINGLETARY:** Yes, Your Honor, without
24 objection.

25 **THE COURT:** Next witness.

1 **MR. BRYANT:** The State calls Malachi James.

2 MALACHI JAMES, after being duly sworn, testifies
3 as follows:

4 **THE CLERK:** Please have a seat. State your full
5 name for the record.

6 DIRECT EXAMINATION

7 **BY MR. BRYANT**

8 **Q** Please tell this jury where you work?

9 **A** I drive cab for Blue Ribbon.

10 **Q** You need to speak up a little.

11 **A** I drive a cab for Blue Ribbon.

12 **Q** Mr. James, how long have you driven a cab for Blue
13 Ribbon?

14 **A** About 25, 30 years.

15 **Q** Where were you born?

16 **A** Born here in Columbia.

17 **Q** Lived here all your rife?

18 **A** All my life.

19 **Q** You worked for Blue Ribbon 25 years?

20 **A** No. I had another job before that. I stopped. I
21 used to work from milk dairy, drove a truck for them.
22 And my father-in-law, he owned Blue Ribbon cab. He
23 didn't own the dairy farm. So I quit my job and went
24 to work for him.

25 **Q** So you've been driving pretty much all your life for

1 a living?

2 A Yeah.

3 Q Okay. Tell this jury where you were on February 24th
4 of 2007?

5 A I was coming down Cushman Drive because I had my
6 granddaughter in there. We just got her from DSS and
7 I was taking her home. I looked on the side. When I
8 got to the bridge, I seen a car there. It was
9 smoking and going on. So I'm curious. I want to see
10 what's going on. So --

11 Q Well, let me stop you. You said smoking. You mean,
12 the car off to the side?

13 A Yeah. Yes, ma'am. Yeah.

14 Q Do you remember what the car looked like?

15 A Yeah. It was a Town Car, Continental.

16 Q A Lincoln Town Car?

17 A Yeah.

18 Q I hand you State's 23. Does that look like the car?

19 A Yeah. That's it.

20 Q So you slowed down. You wanted to see what was going
21 on?

22 A Yeah. And I was looking around. And when I looked
23 back again, I seen the fellow standing in the front
24 of the car. He waived me down because I thought he
25 was the one who had the car. So he said, "I'm not

1 going to hurt you." He said, "You and your passenger
2 get out of the car."

3 Q And the passenger was your granddaughter?

4 A Right.

5 Q Let me ask you if you'd step down for a moment,
6 please, sir. Look at State's 95. Do you recognize
7 this area, Cushman Road?

8 A Yeah.

9 Q And that's the church?

10 A Yeah.

11 Q Where were you when you came up and saw that person?

12 A I was right there.

13 Q Okay.

14 A I pulled on up and I seen the car right there.

15 Q You've seen this. If you'll step to the side so the
16 jury can see this. Step by me. Yes, sir. So you
17 were coming up here. And show this jury again where
18 it is?

19 A Right along in there.

20 Q Okay. All right. And that's where you saw the wreck
21 and where you stopped?

22 A Right. Mm-hmm (affirmative).

23 Q You saw a man standing in the road?

24 A Yeah.

25 Q Okay. Did he have a gun?

1 **A** Yeah, he had gun.

2 **Q** Okay. If you'll take your seat again. And what did

3 he tell you to do?

4 **A** He told me to get out the car, said, "I'm not going

5 to hurt you. And your passenger get out. I'm just

6 going to get the car." And that's what I did.

7 **Q** So you did get out of your cab?

8 **A** Right.

9 **Q** You got out of your cab because he had that weapon?

10 **A** Yeah. He had the weapon.

11 **Q** But that's why you got out of that car?

12 **A** Hmm?

13 **Q** Hmm?

14 **A** Yeah. That's why I got out of the car.

15 **Q** And do you remember what type of gun it was?

16 **A** No. I sure don't. It looked like a rusty sort of

17 gun. I don't know.

18 **Q** Did you tell the police later that day about the

19 description?

20 **A** No, I didn't.

21 **Q** Okay. You didn't describe the gentleman at all?

22 **A** No, I didn't.

23 **Q** Okay. Do you remember talking to the police, giving

24 them a statement?

25 **A** Yeah. I gave one of the officers a statement of what

1 happened.

2 **Q** Okay. I hand you a copy of your statement to you.
3 Just read that to yourself, see if that refreshes
4 your memory. Do you remember that?

5 **A** Yeah. I remember that.

6 **Q** What was the description? I know it's been a while
7 that you told the police from that day.

8 **A** I didn't give them a description.

9 **Q** What he was wearing?

10 **A** No.

11 **Q** You didn't tell them that?

12 **A** No.

13 **Q** Let me hand you this again. Down at the bottom of
14 your statement, about the clothes he had on, what he
15 had on?

16 **A** I don't know where this came from, but I did not tell
17 the officer that. I told them what I said, what I
18 just said.

19 **Q** And you don't remember what he was wearing or
20 anything?

21 **A** No, I don't.

22 **Q** But the only reason you got out of that car was
23 because he had the gun?

24 **A** Right.

25 **Q** Okay. Court's indulgence, please. The gun we talked

1 about, where did he point the gun?

2 **A** Well, he was on the side of the car, like was right
3 on the side, right there on my side.

4 **Q** Right. Yes, sir.

5 **A** He had a gun then.

6 **Q** He pointed it at your head?

7 **A** No. He just pointed at it, period, at the car.

8 **Q** At you?

9 **A** Well, I don't know if it was at me or not, but he was
10 pointing it.

11 **Q** In your direction?

12 **A** In my direction.

13 **Q** All right. Thank you.

14 **THE COURT:** Yes, ma'am.

15 **MS. SINGLETARY:** Thank you, Your Honor. If it
16 pleases the Court.

17 CROSS EXAMINATION

18 **BY MS. SINGLETARY**

19 **Q** Hey, Mr. James. How you doing?

20 **A** I'm all right.

21 **Q** Okay. Mr. James, you stated that, what did the man
22 that came to your car tell you on that day?

23 **A** He said, "Get out of the car. I'm not going to hurt
24 and you your passenger. Just get out of the car."

25 **Q** Okay.

1 **A** So quite naturally I'm going to get out if I see a
2 man with a gun.

3 **Q** And you just got out of the car?

4 **A** Right. And when he got in it he acted like he
5 couldn't drive it because he said, "What do I do?" I
6 said, "Well, you mash the brakes and put it on." He
7 told me to come back. I told him, "I ain't coming
8 back, brother."

9 **Q** So you actually told this person how to actually
10 drive the car?

11 **A** Right.

12 **MS. SINGLETARY:** I have no further questions,
13 Your Honor.

14 **THE COURT:** Redirect?

15 **MR. BRYANT:** No, sir.

16 **THE COURT:** You may come down. Thank you very
17 much. Witness be excused?

18 **MS. SINGLETARY:** Excused without any objection,
19 Your Honor.

20 **THE COURT:** Approach the bench, counsel, please.
21 (Whereupon, a bench conference is had)

22 **THE COURT:** Call your next witness.

23 **MR. BRYANT:** The State calls Shante Martin.

24 SHANTE MARTIN, after being duly sworn, testifies
25 as follows:

1 **THE WITNESS:** My name is Shante Martin.

2 DIRECT EXAMINATION

3 **BY MR. BRYANT**

4 **Q** Good afternoon, Ms. Martin.

5 **A** Good afternoon.

6 **Q** Would you please tell the jury a little bit about
7 yourself?

8 **A** My name is Shante Martin. I work for K. G.
9 Enterprise at Colonial Center. I am 29 years old. I
10 have two boys.

11 **Q** How long have you been working for K. G. Enterprise?

12 **A** I've been working for K. G. Enterprise for the last
13 eight months and the Colonial Center for a month.

14 **Q** Okay. I want to direct your attention to
15 February 24th of 2007. What were you doing that day?

16 **A** I was leaving the DSS office heading home. My
17 granddaddy had just picked me up. Well, he had took
18 me there and was --

19 **Q** So he was giving you a ride?

20 **A** Yeah.

21 **Q** Where were you seated? I believe your grandfather
22 drives for Blue Ribbon?

23 **A** He does.

24 **Q** Where were you seated?

25 **A** In the back seat.

1 Q In the back seat?

2 A Towards the right passenger's side.

3 Q Tell the jury what then happened?

4 A At that time we was coming across Cushman Road. We
5 seen this little gray car like hit a pole. So I was
6 like, "Granddaddy, somebody been in an accident." So
7 I was like, "I hope nobody got hurt." So we were
8 just -- and I was on my cellphone at that time
9 looking down. And I looked up and I saw this man
10 with a gun, and he told me and my grandfather to get
11 out the car. He said, "I'm not going to hurt you. I
12 just want the car."

13 Q When he told your grandfather to get out of the car,
14 did you see a gun?

15 A I did.

16 Q About how far away from you was this man?

17 A If my granddaddy is sitting right there, he's like
18 right there at my granddaddy's car pointing a gun.
19 So we ain't too far away.

20 Q So about as far as from me to you?

21 A Yeah. That's good.

22 Q What did you and your grandfather then do?

23 A We got in the car and he got in. Then he asked my
24 grandfather how to put it in drive, come help him put
25 it in drive. Both of us said, "No. You should be

1 able to figure it out." At that time he had got it
2 in drive and did a u-turn, headed back towards Two
3 Notch intersection.

4 Q Was that the last you saw of him?

5 A Mm-hmm (affirmative).

6 Q Were you scared?

7 A Kind of, sort of, not really.

8 Q Okay. Now, I know that he said something to your
9 grandfather. Do you remember what he said?

10 A To my grandfather?

11 Q Yes, ma'am.

12 A When he first came he told us to get out the car. At
13 first we stalled for a second. Then he was like,
14 "Get out the car. I'm not going to hurt you. Just
15 get out the car." So then we got out of the car.

16 Q With a gun in his hand?

17 A Mm-hmm (affirmative).

18 Q Do you remember the description you gave the police?

19 A Kind of, sort of, not really. I told him he was like
20 between five-nine. He was between 30, 40 years old,
21 probably his late forties. He had on dark colored
22 clothes, a black male. That was it.

23 Q And without objection? I will hand you what's been
24 marked State's 82 and 83, I believe without
25 objection. Do you recognize these pictures?

1 **A** Yes, I do.

2 **Q** Could you tell the jury what they are?

3 **A** That's my granddaddy's cab.

4 **Q** That's the Blue Ribbon he was driving that day?

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

6 **Q** I have no further questions. Please answer any
7 questions Ms. Singletary might have.

8 **MS. SINGLETARY:** Thank you, Your Honor. If it
9 pleases the Court.

10 CROSS EXAMINATION

11 **BY MS. SINGLETARY**

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

13 **A** Good afternoon.

14 **Q** I'm just going to ask you a few questions. Did you
15 actually see the gray car hit the pole?

16 **A** No, I didn't.

17 **Q** Okay. You didn't. Okay. And you stated that when a
18 man approached the car you were actually on your
19 cellphone?

20 **A** Yeah. But I was hanging up at the same time.

21 **Q** And you said you were looking down?

22 **A** I was putting my phone in my pocket and I looked back
23 up, and that's when he was on my granddaddy's side
24 with a gun.

25 **MS. SINGLETARY:** Objection, Your Honor.

1 **THE COURT:** Approach the bench.

2 **MS. SINGLETARY:** May we approach?

3 (Whereupon, a bench conference is had)

4 **THE COURT:** All right, ladies and gentlemen.
5 Strike that last answer. Disregard the witness's
6 last statement and strike that from the record,
7 please.

8 **Q** And you stated that the man said, "Get out of the
9 car"?

10 **A** Correct.

11 **Q** And you said when you were asked whether or not you
12 were scared, you said kind of, sort of, but not
13 really scared?

14 **A** That's correct.

15 **MS. SINGLETARY:** I have no further questions,
16 Your Honor.

17 **THE COURT:** Redirect?

18 **MR. BRYANT:** Nothing further.

19 **THE COURT:** All right. You may come down.

20 Thank you very much, ma'am. All right, ladies and
21 gentlemen of the jury, that will complete the
22 morning's testimony. I'm going to ask you to be
23 back -- I don't know. Does anybody know if it's
24 raining outside? Can anybody look out the window?

25 Well, if it is or is not, I'm going to ask you

1 to be back in the jury room at let's say 2:15. 2:15.
2 That will give you a little over an hour for lunch.
3 Don't discuss the case among yourselves when you
4 return to the jury room or with anyone else over the
5 lunch hour. We'll reconvene at 2:15 at which time
6 we'll continue with the trial. Thank you very much.

7 (Jury out at 1:07 p.m.)

8 **THE COURT:** Over the lunch hour, Ms. Campbell,
9 will you do me a favor?

10 **MS. CAMPBELL:** Yes, sir.

11 **THE COURT:** Find out where those city police
12 officers get their haircut, please. We'll stand at
13 ease until 2:15.

14 **MS. SINGLETARY:** Your Honor, if we may?

15 (Whereupon, a bench conference is had)

16 (Whereupon, a lunch break is taken)

17 **THE COURT:** Do you have anything to report, Ms.
18 Campbell?

19 **MS. CAMPBELL:** No, sir. I don't. I would note
20 that there was one mistake on the witness list. The
21 name should have been Malasia Harrison rather than
22 Ali Harrison. And I've relayed that to the defense
23 and they don't have a problem with it.

24 **MS. SINGLETARY:** Yes, Your Honor.

25 **THE COURT:** Is that witness to come?

1 **MS. CAMPBELL:** Yes, sir. She'll be coming up
2 shortly.

3 **THE COURT:** You ready for the jury?

4 **MS. CAMPBELL:** Yes, sir.

5 **MR. O'NEIL:** Your Honor, we have one small
6 matter to take up out of the presence of the jury.

7 **THE COURT:** Yes, ma'am.

8 **MS. SINGLETARY:** Your Honor, at this time the
9 defense would move for a mistrial based on the
10 testimony of Shante Martin. I asked her the question
11 of whether or not she was looking down. Her response
12 was, "I was looking down at my cellphone when he came
13 to the car with a gun", and pointed to my client
14 twice, Your Honor, causing that to be an in-court
15 identification, Your Honor. And there was basically
16 no description given of the man prior to that. So
17 based on that, Your Honor, we respectfully move for a
18 mistrial in this matter.

19 **THE COURT:** What's the State's position?

20 **MR. BRYANT:** Judge, clearly it wasn't elicited
21 on direct. Ms. Singletary asked a question. She got
22 the answer. I believe she lives with the answer.
23 And the Court ordered that the answer be stricken
24 from the record. I believe that no mistrial is
25 warranted as a result of that.

1 **THE COURT:** I frankly don't -- I wasn't watching
2 her in terms of if she pointed or not. Were you
3 watching her, Solicitor?

4 **MR. BRYANT:** I saw her motion with her hand;
5 but, honestly, whether it was a point or not, I saw
6 it as a motion in response to the question asked.
7 But once the question was asked, I believe you've got
8 to live with it.

9 **THE COURT:** Well, you know, witnesses can give
10 nonresponsive answers. You know that. The question
11 probably elicited more than defense counsel
12 anticipated would be the answer. But I think it's
13 sufficient to tell the jury to disregard it. They're
14 an intelligent group of people. I ordered it
15 stricken from the record and ordered that they
16 disregard the response. I'll respectfully deny your
17 motion.

18 **MS. SINGLETARY:** Thank you.

19 **THE COURT:** Are you ready for the jury?

20 **MS. SINGLETARY:** Yes, Your Honor.

21 **THE COURT:** Bring the jury, please.

22 (Jury in at 2:25 p.m.)

23 **THE BAILIFF:** The jury is present, Your Honor.

24 **THE COURT:** All right. Thank you very much,
25 ladies and gentlemen. I hope you had a pleasant

1 lunch. We're now ready to continue with the trial.
2 Solicitor, call your next witness.

3 **MS. CAMPBELL:** May it please the Court.

4 **THE COURT:** Yes, ma'am.

5 **MS. CAMPBELL:** The State calls Kenyata Wilson.

6 KENYATA WILSON, after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Please have a seat. State your full
9 name.

10 **THE WITNESS:** My name is Kenyata Wilson.

11 DIRECT EXAMINATION

12 **BY MS. CAMPBELL**

13 **Q** Kenyata Wilson?

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

15 **Q** Can you speak up a little bit. It's a little bit
16 hard to hear in here.

17 **A** Okay. Kenyata Wilson.

18 **Q** Ms. Wilson, how old are you?

19 **A** Thirty-two.

20 **Q** And you live here in the Columbia area?

21 **A** Yes.

22 **Q** Where did you grow up?

23 **A** Eastover.

24 **Q** And do you know a man named Ali Harrison?

25 **A** Yes.

- 1 Q And how do you know Mr. Harrison?
- 2 A That's my husband.
- 3 Q That's your boyfriend?
- 4 A My husband.
- 5 Q Husband?
- 6 A (Nods head affirmatively).
- 7 Q And how long have you been with Mr. Harrison?
- 8 A Twelve years.
- 9 Q Do you all have any children?
- 10 A Yes.
- 11 Q And how many children do you all have?
- 12 A Three.
- 13 Q And how old are your children?
- 14 A Ten, eight and two.
- 15 Q And you've got I believe two girls and a little boy.
- 16 Is that correct?
- 17 A Yes.
- 18 Q Do you know Ms. Debbie Ann Simmons or Deborah Ann
- 19 Simmons?
- 20 A Yes, I do.
- 21 Q How do you know Ms. Simmons?
- 22 A That's Ali Harrison's mother.
- 23 Q It's Ali's --
- 24 A That's Ali Harrison's sister.
- 25 Q Sister. And do you know what part of town she lives

1 in?

2 A Yes.

3 Q And are you familiar with Booth Street?

4 A Yes.

5 Q And is that where Ms. Simmons lives?

6 A Yes.

7 Q So you aren't directly related to Ms. Simmons but

8 your husband is?

9 A Yes.

10 Q I want to turn your attention back to February the

11 24th of 2007. That morning, it was a Saturday

12 morning, did you go over to visit Ms. Simmons?

13 A Yes.

14 Q And about what time was it when you got there, if you

15 remember?

16 A Around about 11.

17 Q What was the purpose of your visit that day?

18 A To go over and visit with the kids like we always do.

19 Q And is Ms. Simmons fond of children? Is that kind of

20 what she does?

21 A Yes.

22 Q And it's not unusual for her to babysit neighborhood

23 children?

24 A She do, you know.

25 Q On that morning when you got over there, was

1 everything okay as far as you could tell?

2 A Yes.

3 Q And did you all actually go inside the trailer and
4 visit Ms. Simmons?

5 A Yes.

6 Q Who else was there besides Ms. Simmons and you and
7 your three children that day?

8 A When it happened?

9 Q Yeah. That morning before it happened.

10 A Okay. No. It was his brother. I mean her brother.

11 Q Okay. And at some point did her brother leave prior
12 to anything else happening?

13 A Yeah. He left to go do something.

14 Q You can't say what was told you.

15 A Okay.

16 Q But was a series of events related to you involving a
17 lady named Roberta?

18 A Repeat that again?

19 Q You can't say what was told to you, but did you get
20 some information about a lady named Roberta?

21 A Yes, I did.

22 Q I want to turn your attention to around 12:30 that
23 afternoon. Did something come up in the front yard
24 that caught your attention?

25 A Yes.

1 Q And tell the jury what you saw when you looked out
2 that window?

3 A When I looked out the window, out the door window, it
4 was a blue cab car with a man getting out of the car
5 with a gun.

6 Q And you saw him actually as he was getting out of
7 that blue cab?

8 A Yes.

9 Q And had you ever seen that man before?

10 A No, I hadn't.

11 Q And where was the blue cab car?

12 A Parked right in the gate, in the parking -- where you
13 pull up in the yard, the gate.

14 Q I want to show you what's been marked as State's
15 Exhibit No. 38. Does that show where the blue cab
16 was parked that day?

17 A Yes.

18 Q And other than the police personnel being in it, is
19 that accurately how it was parked when he got out of
20 it?

21 A Yes.

22 MS. CAMPBELL: Your Honor, at this time I offer
23 State's Exhibit 38.

24 MS. SINGLETARY: Without objection.

25 THE COURT: Without objection.

1 (WHEREUPON, State's Exhibit No. 38 is admitted
2 into evidence.)

3 Q And what kind of home does Ms. Simmons have?

4 A A mobile home.

5 Q A mobile home?

6 A Mm-hmm (affirmative).

7 Q And I want to show you this photograph. Does this
8 show Booth Street?

9 A Yes.

10 Q And is this the blue cab we're talking about?

11 A Yes.

12 Q Is my finger right above, doesn't quite reach it?

13 A Yes.

14 Q And is that how it was parked when the person that
15 you had never seen got out of it with a gun that day?

16 A Yes.

17 Q When you saw the man get out of the blue cab, which
18 direction did he go?

19 A He came straight to the door.

20 Q Could you tell what type of gun it was?

21 A I don't know the type of gun. It was a pistol.

22 Q Handgun?

23 A Pistol.

24 Q He came straight to the door?

25 A Straight to the door.

- 1 Q Was the door open as he was approaching?
- 2 A Yes. The screen door was shut but the door was open.
- 3 Q So what did you do?
- 4 A What did I do? Was get up. Me and Debbie Ann got up
- 5 and tried to hold it shut, the door, and he burst it
- 6 back open.
- 7 Q So you and Debbie Ann tried to shut the door?
- 8 A Tried to shut the door.
- 9 Q Where were you and your children then?
- 10 A My two girls were sitting in the floor playing or
- 11 coloring, and my baby was around the table. Around
- 12 the table.
- 13 Q And how old was your little one?
- 14 A I would say about nine or ten months.
- 15 Q Nine or ten months?
- 16 A Yes.
- 17 Q As far as your girls, how old were they back then?
- 18 A The youngest, she was five.
- 19 Q And the oldest?
- 20 A The oldest was about eight years old.
- 21 Q And they were playing on the floor there of the
- 22 living room area?
- 23 A Yes.
- 24 Q And your little boy you said was at the table?
- 25 A Yeah. He wasn't walking yet but just learning how to

1 walk.

2 Q To pull up and that stuff?

3 A Yes.

4 Q As you and Ms. Simmons went to the door, Debbie Ann,
5 as you call her --

6 A Mm-hmm (affirmative).

7 Q -- were you all able to shut the door before he got
8 in?

9 A We were able to shut the door but as he burst it back
10 open, he burst it back open and had the gun in the
11 door.

12 Q And at this point had he said anything that you could
13 understand?

14 A Yes. He was looking for Roberta.

15 Q That's what he said, he was looking for Roberta?

16 A Yeah, he was looking for Roberta. And we told him
17 that Roberta was not here.

18 Q Did you know who Roberta was?

19 A Yes, I knew who Roberta was.

20 Q You didn't know him though?

21 A No.

22 Q Was anybody named Roberta in that house that day?

23 A No.

24 Q Did Debbie Ann tell him that Roberta wasn't there?

25 A Debbie Ann told him Roberta wasn't there neither.

1 Q What was his demeanor? How did he appear as he was
2 coming in the door that day?

3 A Like he wanted to shoot somebody, kill somebody.

4 MS. SINGLETARY: Objection, Your Honor.

5 A Like he wanted to harm somebody.

6 THE COURT: I'm going to sustain it. Just
7 rephrase your question.

8 Q Was he angry?

9 A Yes.

10 Q Once he came into the front door, does that open up
11 into the living room area?

12 A Yes.

13 Q And I show you what's been marked as State's Exhibit
14 No. 54. Does that show the front door?

15 A Yes.

16 Q And does that go straight in the living room area?

17 A Yes.

18 Q In fact, is this a couch here?

19 A Yes.

20 MS. CAMPBELL: Your Honor, at this time we'd
21 offer State's Exhibit 54.

22 MS. SINGLETARY: Without objection, Your Honor.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit No. 54 is admitted
25 into evidence.)

1 Q And the door you're referring to, that's the door he
2 came in through this day when you say he bursts the
3 door in?

4 A No. The edges of the door are burst open. It busted
5 the side of the door, the panel on the door.

6 Q I'm sorry. Once he got inside, what did you do?

7 A I dropped -- I mean, I moved and grabbed my baby
8 because he was around the table and I didn't want him
9 to get hurt because he couldn't walk or nothing.

10 Q What did your girls do?

11 A They cluttered around the door, I mean, right where I
12 was, and then in a quick moment they had ran in the
13 back.

14 Q And they ran in the back towards what end of the
15 trailer?

16 A In the master bedroom.

17 Q In the master bedroom?

18 A (Nods head affirmatively).

19 Q What were you saying to this man as he's coming in
20 the door?

21 A I said, I was like whoever he was looking for wasn't
22 here, you know. I really didn't say too much.

23 Q What was he doing with the gun as he entered the
24 house?

25 A He grabbed Debbie Ann.

1 Q He grabbed Debbie Ann?

2 A He grabbed Debbie Ann.

3 Q How did he grab her?

4 A He just grabbed her and was hitting her and waiving
5 his little gun.

6 Q What was Debbie Ann doing?

7 A She was hollering and screaming and saying, "Don't,
8 don't."

9 MS. SINGLETARY: Objection, Your Honor.

10 THE COURT: Sustained.

11 MS. CAMPBELL: Your Honor, it would be excited
12 utterance. It's during the course of the commission
13 of a crime.

14 THE COURT: Who are you asking about?

15 MS. CAMPBELL: Debbie Ann Simmons who is the
16 victim.

17 THE COURT: All right. I'll allow it. Go
18 ahead.

19 MS. CAMPBELL: Thank you.

20 A She was hollering and saying, "Don't kill my nieces
21 and my sister-in-law. Just let them go and keep me."

22 Q Where was the gun?

23 A In his right hand.

24 Q What was your focus on at that point?

25 A My kids.

1 Q And getting them out of there?

2 A Getting them out of there.

3 Q What happened next?

4 A I had no choice but to leave because he wouldn't let

5 me go past him.

6 Q And explain that to the jury?

7 A He wouldn't let me go past. He kept waving it, and

8 when I went to go past, he was keeping his eye on me.

9 Q Were you trying to get to your girls?

10 A Yeah. I was trying to go and get them but he

11 wouldn't let me.

12 Q You still had the baby in your arms?

13 A And I left.

14 Q And you left with your baby?

15 A And my kids came behind. After a while my kids came

16 behind me.

17 Q And those would be your two little girls?

18 A Yes.

19 Q What door did you leave out?

20 A I left out the front.

21 Q Debbie Ann, was she able to come with you?

22 A No.

23 Q Why not?

24 A Because he was still holding her.

25 Q After you got outside, where did you go --

- 1 **A** I went --
- 2 **Q** -- with the girls?
- 3 **A** Well, the girls didn't come. They came running
- 4 behind me. I went down the street.
- 5 **Q** Down the street?
- 6 **A** Talking to the people that was outside.
- 7 **Q** And what kind of people were outside?
- 8 **A** The neighbor people, the people that live in the
- 9 neighborhood. And I was telling them Debbie Ann was
- 10 in the house and a man was in there with her with a
- 11 gun.
- 12 **Q** And did the police respond shortly thereafter?
- 13 **A** Yes. They got there fast.
- 14 **Q** They got there fast?
- 15 **A** Mm-hmm (affirmative).
- 16 **Q** And did you talk to the police, too?
- 17 **A** Yes. I talked to the police after the fact. I had
- 18 went around the other side.
- 19 **Q** Were you able to -- your girls came shortly after you
- 20 did?
- 21 **A** Yeah. My girls came shortly after.
- 22 **Q** And you were able to get them to safety?
- 23 **A** Yeah.
- 24 **Q** Where did you all go?
- 25 **A** We went straight to a house down the street on the

1 side and then a lady took us into her house.

2 Q So she got you into her house so you'd be safe?

3 A Yeah.

4 Q That afternoon the police responded?

5 A Yes.

6 Q They came?

7 A They came.

8 Q And there were a lot of police out there?

9 A Mm-hmm (affirmative).

10 Q How long did you stay out there that afternoon?

11 A I stayed out there a long time, about -- it wasn't
12 over until about 8, 9.

13 Q And you weren't looking at your watch. That's an
14 approximation?

15 A Yeah. Yeah.

16 Q But were you there until in fact the SWAT team or SRT
17 team was able to go in and get them out?

18 A Yeah.

19 Q And were you there when they actually brought out the
20 Defendant?

21 A Yeah. But they took him the other way.

22 Q They took him the other way?

23 A Yeah.

24 Q Were you there when they were actually able to rescue
25 Debbie Ann?

1 **A** Yes.

2 **Q** And then she was taken immediately to the hospital.
3 Is that correct?

4 **A** To the hospital.

5 **Q** I want to show you a series of photographs, State's
6 Exhibit 55 through 59. I'd just first ask you if
7 you'd review those. And do those show the interior
8 of the house on Booth Street?

9 **A** Yes.

10 **MS. CAMPBELL:** Your Honor, at this time we'd
11 offer State's Exhibits 55 through 59 into evidence.

12 **MS. SINGLETARY:** Without objection, Your Honor.

13 (WHEREUPON, State's Exhibit No. 55 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 56 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 57 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 58 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 59 is admitted
22 into evidence.)

23 **Q** I want to show you State's Exhibits No. 65 through 72
24 and just ask you do those show the kitchen area?

25 **A** Yes.

1 **MS. CAMPBELL:** Your Honor, at this time we'd
2 offer them into evidence.

3 **THE COURT:** Without objection?

4 **MS. SINGLETARY:** Without objection, Your Honor.

5 (WHEREUPON, State's Exhibit No. 65 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 66 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 67 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 68 is admitted
12 into evidence.)

13 (WHEREUPON, State's Exhibit No. 69 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 70 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 71 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 72 is admitted
20 into evidence.)

21 **Q** When you went to Debbie Ann's house that day with
22 your children, the living room, was it in this
23 condition?

24 **A** No.

25 **Q** What was different after the man came in with the gun

1 about the appearance of the living room area?

2 **A** It didn't look like that.

3 **Q** And, in fact, the table that you talked about your
4 little boy was pulling up on, is that shown here in
5 State's Exhibit 56?

6 **A** Yes.

7 **Q** Was it upside down when he was trying to pull up on
8 it?

9 **A** Nope.

10 **Q** Were the cushions and all this stuff strewn on the
11 floor in State's Exhibit No. 59?

12 **A** None of that was on the floor.

13 **Q** You also saw the kitchen area that day when you went
14 in?

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

16 **Q** I show you State's Exhibits No. 67 and 66. Is that
17 how it looked that day --

18 **A** Nope.

19 **Q** -- when you were in there before the man came in?

20 **A** It did not look like that.

21 **Q** State's Exhibit No. 68 shows a freezer; 69 partially
22 in front of the back door?

23 **A** It didn't look like that.

24 **Q** Was the freezer like that when you came in there that
25 day --

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

2 **Q** -- prior to that man coming in? When with the man
3 had the gun and he was waving it around, you
4 mentioned that you tried to get past him but you
5 couldn't?

6 **A** Yeah. I couldn't.

7 **Q** Could Debbie Ann get past him?

8 **A** No. He had her.

9 **Q** The man that came in looking for Roberta that day
10 with the gun --

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

12 **Q** -- do you see him here in the courtroom?

13 **A** Yes, I do.

14 **Q** Can you identify him for the court?

15 **A** With the tan, with the beige shirt right there with
16 the little blue tie.

17 **MS. CAMPBELL:** Let the record reflect she's
18 identified the Defendant.

19 **THE COURT:** The record will reflect the witness
20 identified the Defendant.

21 **MS. CAMPBELL:** Thank you, Your Honor.

22 **MS. SINGLETARY:** Thank you, Your Honor.

23 **THE COURT:** Yes, ma'am.

24 **MS. SINGLETARY:** If it pleases the Court. Your
25 Honor, first may I approach the witness?

1 **THE COURT:** Yes, ma'am.

2 CROSS EXAMINATION

3 **BY MS. SINGLETARY**

4 **Q** Good afternoon. How are you doing?

5 **A** All right.

6 **Q** Now, Ms. Campbell showed you several different
7 pictures?

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

9 **Q** She showed you a picture of the refrigerator?

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

11 **Q** She showed you pictures of the kitchen?

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

13 **Q** She showed you pictures of the living room area?

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

15 **Q** And you testified that, for instance, this table
16 right here, correct?

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

18 **Q** That this table wasn't turned over when you were in
19 there?

20 **A** Hmm-mm (negative).

21 **Q** But you don't know when the table got turned over, do
22 you?

23 **A** Oh, that table, he didn't start messing with nothing.

24 **Q** Well, no. The question is, okay, you said that you
25 left out of -- when you actually left out of the

1 trailer this table wasn't turned over?

2 A That table was standing on all four legs.

3 Q And that's what I'm saying. It was standing on four
4 legs, right?

5 A Right.

6 Q So you don't know when --

7 A I don't know when that table tipped.

8 Q Yeah. That's my question. You don't know when the
9 refrigerator got moved?

10 A No, I don't.

11 Q You don't know when the picture on the wall got
12 dismantled, do you?

13 A No. Nope.

14 Q You just know how inside that trailer looked when you
15 were in there?

16 A Yes.

17 Q Okay. And you stated that you grabbed your baby
18 because you wanted to get out of there?

19 A Yes.

20 Q Okay. And your two girls came behind you?

21 A They didn't come exactly behind me. They like
22 separated. They went running like. Yeah, they went
23 running.

24 Q But this is my question. And I'm sorry.

25 A Okay.

- 1 Q Because I'm not trying to confuse you.
- 2 A Mm-hmm (affirmative).
- 3 Q You and your nine-month-old baby left?
- 4 A Mm-hmm (affirmative).
- 5 Q Outside the front door of the trailer?
- 6 A Mm-hmm (affirmative).
- 7 Q Okay. And I guess the question is, then your girls
- 8 came?
- 9 A Came.
- 10 Q Okay. Yeah. Okay. Then your girls came out of the
- 11 trailer?
- 12 A Okay.
- 13 Q Like I said, I'm not trying to confuse you. Okay.
- 14 And if I ask you a question and you don't understand,
- 15 just tell me to repeat it and I will. Okay? And you
- 16 stated that you had never seen Randolph Ashford
- 17 before?
- 18 A No. I had never seen him before.
- 19 Q And you also stated that you knew Roberta Neil?
- 20 A Oh, I knew Roberta Neil.
- 21 Q Had you ever been to Roberta's home before?
- 22 A Yes, I have.
- 23 Q But Randolph wasn't there when you went to Roberta's
- 24 home?
- 25 A Nope.

1 Q Okay. And you stated that you and Ali Harrison was
2 at the home on that day?

3 A Yes.

4 Q And that's your husband?

5 A Yes.

6 Q Okay. And I'm trying to understand. You said that
7 you saw the cab come up in the yard?

8 A Mm-hmm (affirmative).

9 Q And at the time that the cab came up in the yard, the
10 screen door was shut?

11 A (Nods head affirmatively).

12 Q Oh, you have to say.

13 A Oh.

14 Q You have to say yes or no for the court reporter to
15 get it.

16 A Yes. Yes.

17 Q But then the front door was open?

18 A Yeah. The front door was open.

19 Q Okay. And once you saw that man, you and Ms. Debbie
20 ran to check that front door?

21 A Yes.

22 Q Okay. And I'm trying to understand how the -- I
23 think the way you put it was bust in the door?

24 A Yeah.

25 Q So did he put his foot in the door to keep the door

1 from shutting?

2 A He already had his hand in the door.

3 Q Oh, he had his hand?

4 A With the gun in his hand.

5 Q So he had his hand in the door?

6 A Mm-hmm (affirmative).

7 Q And how he stopped you all?

8 A He pushed it open and he squeezed his hand through
9 there.

10 Q Okay.

11 A And that's when it bust. It busted. He bust the
12 thing.

13 Q Okay. So he put his hand through the door?

14 A (Nods head affirmatively).

15 Q When you were trying to shut the door?

16 A (Nods head affirmatively).

17 Q Okay. And he pushed it a little bit?

18 A No.

19 Q Or he pushed it?

20 A The door was already shut when he came, almost. We
21 was trying to get it shut. And at the time we were
22 trying to get it shut, it must have been open a little
23 crack and it didn't catch, the hinge, and he pushed
24 it. He bust it open and he put his hand in. We
25 still tried to shut it, but his hand was already in

1 the door.

2 Q Okay. And that was my question. His hand was in the
3 door?

4 A Yes.

5 Q Okay. I just wanted to make sure. And you -- beg
6 the Court's indulgence. And so you were actually
7 trying to get out of this home?

8 A Yes.

9 Q And when you got out of the home, you said the people
10 that were outside were just neighborhood people?

11 A Neighborhood people.

12 Q And you saw Mr. Fleming testify in here today?

13 A Yes.

14 Q Did you see Mr. Fleming?

15 A Yes.

16 Q Did you know Mr. Fleming prior to this?

17 A I don't really -- no, not really. Not really. But
18 just roughly, just through the neighborhood and
19 stuff, hanging, whatever, you know. But not actually
20 just "know him" know him.

21 Q Okay. So you just knew him through the neighborhood?

22 A Mm-hmm (affirmative).

23 Q Okay. And you said you went over to her house at
24 about 11:00 that morning?

25 A I'm roughly saying about 11:00, yeah.

1 Q And you were there for how long before the man with
2 the gun came there?

3 A We was there for about no more than about an hour or
4 two before he came.

5 Q Okay. So you were there for about until like from 11
6 to like 12 or 11 to 1?

7 A Yeah. Yeah.

8 Q Okay. And you said your girls were playing on the
9 living room floor?

10 A Yes.

11 Q And then when that man came in, your girls ran to the
12 back bedroom?

13 A No. When the man came and they were standing around
14 and he was just going on upsetting them so bad with
15 the gun, so the first thing they done was run to the
16 back bedroom, the back.

17 Q So when they saw the man with the gun, they ran back
18 to the back bedroom?

19 A They ran straight to the back bedroom.

20 Q Straight to the back bedroom. And you said that that
21 man grabbed Debbie Ann?

22 A Yes.

23 Q How did he grab Debbie Ann?

24 A He had her wrapped. He had her wrapped. He was
25 holding her. He was holding her with the gun just

1 like this.

2 **Q** With one hand? With two hands?

3 **A** He was pretty strong. He is a ma. He was holding
4 her pretty tight.

5 **Q** With one hand or with two hands?

6 **A** I mean, with one hand, because he got a gun in this
7 hand. He had one hand holding her.

8 **Q** Yeah. That was the question, just whether it was one
9 hand or whether or not it was two hands. Beg the
10 Court's indulgence, Your Honor. And at this time
11 could you tell me what was your home phone number?

12 **A** My home phone number?

13 **Q** Yes, ma'am.

14 **A** I done had too many changed home phone numbers that I
15 don't remember that from memory.

16 **Q** So you don't remember your home phone number at the
17 time?

18 **A** No.

19 **Q** What about your home cellphone number? Or what about
20 your cellphone number?

21 **A** I don't have a cellphone number. I don't remember
22 having one at that time.

23 **Q** Okay. And you remember all these other details
24 clearly?

25 **A** Yeah.

1 Q Beg the Court's indulgence, Your Honor. And just a
2 few more questions.

3 A Mm-hmm (affirmative).

4 Q At the time that the man came into the home, were you
5 standing up in the living room or were you sitting
6 down in the living room?

7 A I was sitting down right by the door where I was the
8 only one that seen him, and that's when I told her.

9 Q Okay. So let me see. I believe -- Your Honor, may I
10 approach?

11 **THE COURT:** Certainly.

12 Q Now, what I'm showing you is State's Exhibit No. 58.
13 And what's in this picture is actually that door that
14 you're referring to as the front door?

15 A Mm-hmm (affirmative).

16 Q And also a couch. Were you sitting on this couch
17 right here?

18 A Yeah.

19 Q Could you actually show us where you were sitting at
20 on this couch?

21 A Right there.

22 Q So you were sitting there on that couch. You could
23 see right of out the door. So you were looking right
24 out this door?

25 A Yeah.

1 Q You didn't look through the window or anything else?

2 A It was a screen door right there.

3 Q Okay. So you were looking out the door?

4 A Yes.

5 Q Okay. Beg the Court's indulgence. And how old was
6 your son at this time?

7 A About nine or ten months.

8 Q He was about nine or ten months old. And where was
9 he positioned in this home again?

10 A Around -- I mean, right there, like holding up on the
11 table, around the little table in the middle of the
12 floor.

13 Q So that table that was closest to you?

14 A Yes.

15 Q Could your son actually look out of the screen door?

16 A Yes. And then -- yes.

17 Q And again, he was nine months old?

18 A So he wouldn't know.

19 Q A nine-month-old, they really can't see anybody
20 coming?

21 A Yeah.

22 MS. SINGLETARY: Okay. I have no further
23 questions, Your Honor.

24 THE COURT: Redirect?

25 MS. CAMPBELL: No, sir.

1 **THE COURT:** All right. You may come down,
2 ma'am. Thank you very much. May this witness be
3 excused?

4 **MS. SINGLETARY:** Certainly, Your Honor.

5 **THE COURT:** Without objection.

6 **MS. CAMPBELL:** The State calls Malasia Harrison.
7 MALASIA HARRISON, after being duly sworn,
8 testifies as follows:

9 **THE CLERK:** Please have a seat. State your full
10 name for the record.

11 DIRECT EXAMINATION

12 **BY MS. CAMPBELL**

13 **Q** Malasia?

14 **A** (Nods head affirmatively).

15 **Q** How old are you?

16 **A** Ten.

17 **Q** Do you go to school?

18 **A** Yes.

19 **Q** What grade are you in?

20 **A** Fifth.

21 **Q** Is that your mama that was just up here a minute ago?

22 **A** Yes, ma'am.

23 **Q** And is your dad also here in the courtroom?

24 **A** Yes.

25 **Q** Can you point him out?

1 **A** (Witness points).

2 **Q** He's on the front row with the tie?

3 (No response)

4 **Q** I'm just going to ask you a few questions. Do you
5 remember back when you were over at your aunt's
6 house?

7 **A** Yes.

8 **Q** And what's your aunt's name?

9 **A** Debbie Ann.

10 **Q** Debbie?

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

12 **Q** Who were you over there with that day?

13 **A** My mom, my brother, and my sister and Debbie.

14 **Q** And were you the oldest --

15 **A** Yes.

16 **Q** -- of your three siblings?

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

18 **Q** That day do you remember whether or not anybody came
19 into the house?

20 **A** Yes.

21 **Q** And what do you remember about who came in the house?
22 What do you remember?

23 **A** He had a gun.

24 **Q** Did that make a big impression on you?

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

- 1 Q Why?
- 2 A 'cause I was scared.
- 3 Q You were scared?
- 4 A Mm-hmm (affirmative).
- 5 Q And where were you -- were you and your sister there
- 6 in the living room area when he came in?
- 7 A Mm-hmm (affirmative).
- 8 Q And once he came in with the gun, what happened?
- 9 A We ran to the back of the room.
- 10 Q Who is "we"?
- 11 A My sister and me.
- 12 Q And where did you all go when you went into the
- 13 bedroom?
- 14 A Behind the bed.
- 15 Q And what bedroom did you go into? Do you know?
- 16 A The master bedroom.
- 17 Q Did you all stay back there in the master bedroom for
- 18 a little while?
- 19 A Mm-hmm (affirmative).
- 20 Q And what's the next thing you remember?
- 21 A That he came into the bedroom.
- 22 Q He came in the bedroom?
- 23 A Mm-hmm (affirmative).
- 24 Q Did he bring anybody with him?
- 25 A Mm-hmm (affirmative).

1 Q Who?

2 A My Auntie Debbie.

3 Q Did he have the gun still?

4 A Yes.

5 Q Where was the gun?

6 A In his hand.

7 Q Where was Debbie Ann?

8 A He was holding right beside him.

9 Q Was he holding her?

10 A Mm-hmm (affirmative).

11 Q With one hand?

12 A Mm-hmm (affirmative).

13 Q Did he have the gun in the other?

14 A Mm-hmm (affirmative).

15 Q At that point was Debbie Ann saying something?

16 A Yes.

17 Q What did she say?

18 A "Let us go."

19 Q And when you say, "Let us go", who was she telling

20 him to let go?

21 A Me and my sister.

22 Q And did he still have ahold of Debbie Ann?

23 A Yes.

24 Q But did he tell you you could go?

25 A Yes.

1 Q And did you leave?

2 A Mm-hmm (affirmative).

3 Q Why did you leave?

4 A 'cause I was scared.

5 Q Did you and your sister run out the door?

6 A Mm-hmm (affirmative).

7 Q Did you find your mom shortly thereafter?

8 A Yes.

9 Q Were you upset when you found your mom?

10 A Yes.

11 **THE COURT:** Thank you. Cross examination.

12 **MS. SINGLETARY:** Your Honor, we have no
13 questions for in witness.

14 **THE COURT:** All right. Thank you very much.
15 You may come down, ma'am. Thank you. Next witness.

16 **MS. CAMPBELL:** The State calls Deborah Ann
17 Simmons.

18 DEBORAH ANN SIMMONS, after being duly sworn,
19 testifies as follows:

20 **THE CLERK:** Please have a seat. State your full
21 name for the record.

22 **THE WITNESS:** Deborah Ann Simmons.

23 DIRECT EXAMINATION

24 **BY MS. CAMPBELL**

25 Q Ms. Simmons, how old are you?

1 **A** Fifty-one.

2 **Q** And you live here in the Columbia area?

3 **A** Yes.

4 **Q** How long have you lived in Columbia, ma'am?

5 **A** Fifty-one.

6 **Q** Fifty-one years?

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

8 **Q** Are you a little nervous here today?

9 **A** A little.

10 **Q** Okay. Where do you live?

11 **A** [REDACTED] off Cushman.

12 **Q** And are you married?

13 **A** Yes.

14 **Q** And how long have you and your husband lived there?

15 **A** We've been together 30 something years, but we've

16 been staying where my mobile home is about 20

17 something.

18 **Q** Okay. Do you know -- let me ask you this. Do you

19 babysit?

20 **A** Some kids, neighbors' kids.

21 **Q** Neighbors' kids?

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

23 **Q** That's not unusual for you to do?

24 **A** Sometime I, you know, keep kids, just stay at home

25 watch television.

1 Q In fact, do you know Mr. Fleming who testified
2 earlier?

3 A Oh, yes.

4 Q And you knew him growing up when he was growing up?

5 A He was a little baby. I used to keep him,
6 Mr. Gregory.

7 Q You kept him?

8 A Mm-hmm (affirmative).

9 Q But did you see him any amount of time prior to this?

10 A No.

11 Q And you don't keep in touch with him now that he's
12 grown?

13 A No.

14 Q Do you know Kenyata Wilson?

15 A My sister-in-law.

16 Q And she's married to your brother, Ali?

17 A Yes.

18 Q I noticed today; and I don't mean to bring this up to
19 embarrass you, but you have a cane today. Do you
20 have a problem with one of your legs?

21 A Yes.

22 Q And what kind of problem is that?

23 A I have a blood clot in my right thigh.

24 Q And just to prepare the jury, sometimes you have to
25 get up and stretch it because it starts hurting so

1 bad?

2 A Yes. Yes. Yes.

3 Q Do you know a woman named Roberta?

4 A Yes, I do.

5 Q And what's Roberta's full name?

6 A The only thing I remember, my mama's cousin is
7 Roberta Neil.

8 Q Roberta Neil?

9 A Yes. She's a --

10 Q And she's your mother's cousin?

11 A First cousin.

12 Q First cousin?

13 A My mother is deceased now.

14 Q Is she here in the courtroom?

15 A Yes.

16 Q Can you point her out for the jury?

17 A Back there with the glasses on. Roberta Neil.

18 Q She's got a white shirt with the gray --

19 A Yeah. Gray jacket.

20 Q How long have you been knowing Roberta Neil?

21 A Roberta has been knowing me since I was a baby.

22 Q Prior to all this happening you and Roberta got along
23 well?

24 A Yes.

25 Q And, in fact, sometimes if she needed just to get

1 away she would come stay with you?

2 A And call me. We talks (sic) on the telephone and
3 everything.

4 Q Do you know a man named Randolph Ashford?

5 A Yes.

6 Q And prior to this happening, how did you know
7 Randolph Ashford?

8 A Well, Roberta brought him to my house one day. She
9 told me she had a friend and she introduced me to
10 him, Mr. Ashford.

11 Q So that was Roberta's friend?

12 A Yes.

13 Q And that's how you met Mr. Ashford?

14 A Yes, ma'am.

15 Q The night before all this happened on that Saturday,
16 did you talk to Roberta?

17 A That Friday.

18 Q That Friday?

19 A Yes.

20 Q And as a result of that phone call, did you expect
21 Roberta to come to your house?

22 A Yes.

23 Q Did Roberta ever come to your house and stay with you
24 on that Friday night?

25 A No.

1 Q And during the course of that night, did anyone call
2 your house looking for Roberta?

3 A Mr. Randolph Ashford.

4 Q Mr. Ashford?

5 A Yes. He called all night long to my house.

6 Q And did you tell him -- what did you tell him?

7 A I said, "Roberta is not here and don't call back here
8 no more." He called from 12:00 to 4:00 in the
9 morning.

10 Q Okay. I know this is hard. That next morning,
11 Roberta, had she still not shown up?

12 A No.

13 Q Did you however have guests over? Kenya?

14 A Kenya, my husband, he went fishing with my brother.

15 Q Your husband went fishing?

16 A Yeah, my brother. And Kenya called, said they was
17 coming over there. So I was taking a bath and
18 putting some clothes on. And the phone kept on
19 ringing. And I said, "Well, who it is?" He said,
20 "Mr. Ashford, Randy." I said, "Tell him Roberta is
21 not here." That's all I kept on saying, "She is not
22 here."

23 Q So that was your brother that actually handled that
24 phone call?

25 A Mm-hmm (affirmative).

- 1 Q And did Kenyata and Ali come over to see you?
- 2 A Yes.
- 3 Q Did they bring their children?
- 4 A Brought my two nieces and my nephew.
- 5 Q At that point did Ali, your brother, leave the house?
- 6 A Yes.
- 7 Q And was he going to come back later --
- 8 A Yes.
- 9 Q -- and get the children and Kenyata?
- 10 A Yes.
- 11 Q What part of the house were you all visiting in?
- 12 A My living room.
- 13 Q And was everything -- was it a normal Saturday up to
- 14 that point?
- 15 A Say that again?
- 16 Q It was a normal Saturday up to point?
- 17 A It was a nice Saturday because Kenyata and I was
- 18 going to take the kids for a walk because we got
- 19 neighbors and they was having a cookout. We was
- 20 planning on going down there for a while.
- 21 Q What happened that changed that?
- 22 A When I went back in my room.
- 23 Q You went back in your room?
- 24 A Back in my bedroom coming in. She said, "Debbie Ann,
- 25 a man with a gun." We was trying to hold the door,

1 hold the door, hold the door. He bust my door open
2 with the gun and he grabbed me and stuck the gun
3 right here like this here and wouldn't turn me aloose
4 (sic).

5 Q Was he saying anything?

6 A "Where Roberta? Where Roberta?"

7 Q Do you want some water?

8 A No. No.

9 Q Had you ever had any bad blood with him before?

10 A No.

11 Q When he came in and grabbed you, he's asking for
12 Roberta?

13 A Yes.

14 Q What did you tell him?

15 A "Roberta is not here." He went to my -- I have three
16 bedrooms in my mobile home. I have one bedroom in
17 the back part next to the big one.. He went in there.
18 I opened the closet. I said, "She's not in here."
19 He went in there and he opened the closet, and I
20 said, "Roberta is not here."

21 Q Had Kenya gotten out at that point?

22 A Kenyata was still standing at the door.

23 Q Then she got out the front door?

24 A She got out the front door. So my two nieces, they
25 ran in my bedroom and got up under the bed. And I