

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No: 2016-000241

NORMAN L. MITCHELL,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

APPENDIX

LAURA R. BAER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211
(803) 734-1343

ATTORNEY FOR RESPONDENT

ALAN WILSON
Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

INDEX

TRIAL TRANSCRIPT	1
POST TRIAL MOTION TRANSCRIPT.....	438
NOTICE OF APPEAL.....	448
FINAL BRIEF OF APPELLANT	450
FINAL BRIEF OF RESPONDENT	463
COURT OF APPEALS UNPUBLISHED OPINION (2012-UP-010).....	480
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	483
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS ...	497
SUPREME COURT ORDER DENYING PETITION FOR WRIT OF CERTIORARI.....	511
REMITTITUR	512
APPLICATION FOR POST-CONVICTION RELIEF	513
RETURN.....	520
MOTION FOR PAYMENT OF FUNDS AND AUTHORIZATION OF SERVICES.....	525
ORDER FOR PAYMENT OF FUNDS AND AUTHORIZATION OF SERVICES	527
SECOND ORDER FOR PAYMENT OF FUNDS AND AUTHORIZATION OF SERVICES	528
THRID ORDER FOR PAYMENT OF FUNDS AND AUTHORIZATION OF SERVICES	530
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	534
PCR HEARING TRANSCRIPT.....	536
APPLICANT EXHIBIT 1 – JAIL PHOTO	615
APPLICANT EXHIBIT 2 – DR. MCQUISTON CURRICULUM VITAE.....	616
APPLICANT EXHIBIT 3 – DR. MCQUISTON DRAFT REPORT	629
APPLICANT EXHIBIT 4 – RECEIPT FOR FILING DISABILITY	633

APPLICANT EXHIBIT 5 – DR. MCQUISTON’S REPORT	635
STATE’S PROPOSED ORDER OF DISMISSAL	639
ORDER GRANTING POST-CONVICTION RELIEF.....	649
STATE’S MOTION TO RECONSIDER	668
APPLICANT’S RESPONSE TO STATE’S MOTION TO RECONSIDER	676
ORDER DENYING STATE’S MOTION TO RECONSIDER	679
INDICTMENTS	680
WARRANTS	684
SENTENCING SHEETS.....	686

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2008-GS-40-1238, 1239

State of South Carolina,)
)
Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
Norman Lee Mitchell,)
)
Defendant)

February 4, 5 and 6, 2009
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE AND JURY.

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

RICHARD CATHCART, ASSISTANT SOLICITOR
L. EDEN HENDRICK, ASSISTANT SOLICITOR
Attorneys for The State

JAMES H. MAY, ESQUIRE
BRIAN R. SHEALEY, JR., ESQUIRE
Attorneys for the Defendant

CRYSTAL ROACH
Official Court Reporter

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	Photograph	8	
P-2	Photograph	8	191
P-3	Photograph	8	
P-4	Photograph	8	
P-5	Photograph	8	
P-6	Photograph	8	
P-7	Photograph	8	
P-8	Photograph	8	
P-9	Photograph	8	161
P-10	Photograph	8	203
P-11	Photograph	8	
P-12	Photograph	8	252
P-13	Photograph	8	
P-14	Photograph	8	152
P-15	Photograph	8	
P-16	Photograph	8	249
P-17	Photograph	8	
P-18	Photograph	8	248
P-19	Photograph	8	146
P-20	Photograph	8	146
P-21	Photograph	8	
P-22	Photograph	8	
P-23	Photograph	8	

<u>E X H I B I T S</u>			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
1	P-24 Photograph	8	204
2	P-25 Photograph	8	171
3	P-26 Photograph	8	
4	P-27 Street Map	8	201
5	P-28 Interrogation Advice of Rights	8	286
6	P-29 Duffle Bag and Contents		223
7	P-30 Pillowcase and Clothes		223
8	P-31 Pillowcase and Clothes		223
9	P-32 Closed Incident Report	235	
10	P-33 Photograph of Victim	252	253
11	P-34 DVD-911 Call		265
12	P-35 Booking Photographs	301	
13	P-36 Property Sheet	304	305
14	P-37 Statement-Corporal Ginger Sanders	381	
15	D-1 Victim's Statements	178	
16	D-2 Photograph of the Defendant	254	255
17	D-3 Current Detained Sheet	298	301
18	D-4 Photograph	324	325
19	D-5 Photograph	324	325
20	C-1 Notice of Intention to Introduce		
21	Priors	124	
22	C-2 Notice of Intention to Seek Life		
23	without Parole	124	

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
C-3	Foreman Note	435	
C-4	Juror Note	435	

I N D E X

	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1	Casha Calloway (In Camera)				
2	By Mr. Cathcart	49			
3	By Mr. Shealey		54		
4	William Gilmore (In Camera)				
5	By Mr. Cathcart	64			
6	By Mr. Shealey		70		
7	Norma Gilmore (In Camera)				
8	By Mr. Cathcart	77			
9	By Mr. Shealey		84		
10	Norman Mitchell (In Camera)				
11	By Mr. Shealey	99			
12	By Mr. Cathcart		103		
13	OPENING STATEMENTS				
14	By Ms. Hendrick	129			
15	By Mr. Shealey	136			
16	Stephanie Miller				
17	By Ms. Hendrick	142			
18	By Mr. May		148		
19	Christy Tyson				
20	By Mr. Cathcart	150		156	
21	By Mr. May		154		
22					
23					
24					
25					

1	<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Nola Gilmore			
4	By Mr. Cathcart	157		186
5	By Mr. Shealey		172	
6	Michael Murphy			
7	By Mr. Cathcart	189		
8	By Mr. May		193	
9	Ginger Sanders			
10	By Ms. Hendrick	194		209
11	By Mr. May		205	
12	Barry Small			
13	By Mr. Cathcart	213		
14	By Mr. Shealey		216	
15	Brian Vanhouten			
16	By Ms. Hendrick	217		
17	By Mr. Shealey		223	
18	Casha Calloway			
19	By Mr. Cathcart	225/245		235
20	By Mr. Shealey		232	242
21	Eric Cambre			
22	By Ms. Hendrick	246		256
23	By Mr. May		253	256
24				
25				

1	<u>I N D E X</u>			
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	William Gilmore			
4	By Ms. Hendrick	259		
5	By Mr. Shealey		274	
6	William Pegram			
7	By Mr. Cathcart	276		291
8	By Mr. May		287	
9	William Redmond			
10	By Mr. Shealey	298		305
11	By Mr. Cathcart		301	305
12	Norman Mitchell			
13	By Mr. May	315		375
14	By Mr. Cathcart		329	
15	Ginger Sanders			
16	By Ms. Hendrick	380		
17	William Pegram			
18	By Mr. Cathcart	383		
19	CLOSING ARGUMENTS			
20	By Ms. Hendrick	388		
21	By Mr. May	393		
22	By Mr. Cathcart	407		
23	CHARGE BY THE COURT	418		
24	VERDICT OF THE JURY	427		
25	SENTENCE OF THE COURT	434		

1 WEDNESDAY, FEBRUARY 4, 2009:

2 (Whereupon, State's Exhibit Numbers 1 through 28
3 were pre-marked for identification.)

4 THE COURT: Good morning, how y'all doing?

5 PROSPECTIVE JURORS: Good morning.

6 THE COURT: I hope y'all weren't cold this
7 morning, were you? Okay. Some say yes, some say no. It
8 was 22 degrees, I was cold.

9 (Pause.)

10 THE COURT: If y'all have any special voir dire
11 you want me to ask, will you pass it up, please.

12 (Complied.)

13 THE COURT: Any objections to it?

14 MR. CATHCART: Yes, Your Honor ---

15 THE COURT: Approach.

16 (Whereupon, a bench conference was held off the
17 record, in the presence of the jury panel, but out of the
18 hearing of the jury panel.)

19 THE COURT: We can put in on the record later on
20 if you object to anything. Anything else?

21 MR. CATHCART: No, sir.

22 THE COURT: All right, let's get started.

23 Now, members of jury panel, we're going select a
24 jury in the case of the State of South Carolina versus
25 Norman Lee Mitchell -- Norman Lee Mitchell. There's two

1 indictments in this case. One indictment is indictment
2 number 2008-1239, State versus Norman Mitchell. This is
3 an indictment for failure to stop for a blue light,
4 failure to stop for a blue light. And the indictment --
5 this indictment alleges that Normal Lee Mitchell did here
6 in Richland County on or about February the 1st of 2008,
7 unlawfully fail to stop while driving a motor vehicle on a
8 road, street or highway of the state, for a law
9 enforcement vehicle after being signaled to do so by a
10 duly constituted and active law enforcement officer with a
11 blue light and siren. That's a common sort of charge, you
12 may be familiar with that.

13 The second indictment, indictment number
14 2008-1238, is an indictment for carjacking. And this
15 particular indictment alleges that Norman Lee Mitchell did
16 in Richland County on or about February the 1st of 2008,
17 take or attempt to take a motor vehicle from the victim,
18 Nola Gilmore, by force and violence or by intimidation
19 while the person, Nola Gilmore, was operating the vehicle
20 or while the person was in the vehicle. And it was a 1994
21 Dodge Intrepid that the victim -- the alleged victim,
22 Norma -- I'm sorry, Nola Gilmore was operating or driving.

23 Now, to these indictments, the Defendant, Mr.
24 Mitchell, has pled not guilty. That places the burden on
25 the State of South Carolina to prove his guilt beyond

1 every reasonable doubt and I'll explain that to y'all
2 momentarily.

3 Now, at this time I would ask that the Defendant,
4 Mr. Norman Lee Mitchell, stand up and face the jury panel.
5 Mr. Mitchell, will you stand up and turn around so the
6 jurors can take a look at you.

7 (Complied.)

8 THE COURT: Mr. Mitchell is in the middle. I
9 asked Mr. Mitchell to stand up. Of course, his two
10 lawyers stood up with him. Would y'all sit down so they
11 can look at Mr. Mitchell?

12 (Complied.)

13 THE COURT: Thank you. This is the Defendant,
14 Norman Lee Mitchell. Thank you, Mr. Mitchell, you may sit
15 down, sir.

16 (Complied.)

17 THE COURT: Now, my question to you, members of
18 the panel, is this. Is any juror related by blood or
19 connected by marriage or employment or a close personal
20 acquaintance of Mr. Norman Lee Mitchell?

21 If so, please stand.

22 (There was no response.)

23 THE COURT: Anybody out there on the panel know
24 Mr. Mitchell, have you ever seen Mr. Mitchell before, ever
25 worked with Mr. Mitchell? If so, please stand.

1 (There was no response.)

2 THE COURT: Now -- I don't have your list of
3 witnesses -- potential witnesses.

4 MR. CATHCART: May I approach, Your Honor?

5 THE COURT: Yes, sir. And y'all don't have any
6 -- do you?

7 MR. MAY: Yes, sir.

8 THE COURT: All right. It's always nice to have
9 these, thank you.

10 MR. MAY: Yes, sir.

11 THE COURT: All right. Now, members of jury
12 panel, I'm going to read out a list of potential witnesses
13 in this case, they're mostly witnesses listed by the
14 State. And the same question will apply to these names
15 that I call that I just asked you about Mr. Norman
16 Mitchell, do you know him, ever worked with him, that sort
17 of thing. And I'm going to repeat these names for you.
18 Most of them are from the Columbia Police Department.

19 So the list of potential witnesses in this case
20 will be: Investigator B. Vanhouten ---

21 (Investigator Vanhouten stands.)

22 THE COURT: This is Investigator Vanhouten from
23 the Columbia Police Department.

24 INVESTIGATOR VANHOUTEN: Yes, sir.

25 THE COURT: Thank you, sir. Investigator W.

1 Pegram?

2 (Investigator Pegram stands..)

3 INVESTIGATOR PEGRAM: Yes, sir.

4 THE COURT: Is it Pegram or Pegram?

5 INVESTIGATOR PEGRAM: Pegram.

6 THE COURT: Pegram from the Columbia Police
7 Department. Thank you, sir.

8 Investigator A. Thomas. He's not present. What
9 is his first name? What does the A stand for?

10 MR. CATHCART: Arthur, Your Honor, Arthur.

11 THE COURT: Arthur Thomas from the Columbia
12 Police Department.

13 Investigator P. Currie, and what does the P Stand
14 for?

15 MR. CATHCART: Pete, Your Honor.

16 THE COURT: I'm going to ask you to come up here
17 and write out these initials for me. Some people might
18 know somebody named Bob or Pete but not by P. We'll be
19 with you momentarily, ladies and gentlemen. We see the
20 importance of name rather than an initial.

21 (Pause.)

22 THE COURT: Very few people know me as L. Manning
23 or C. Manning but most people know me by Casey. They
24 don't necessarily like me by Casey but they know me by
25 Casey.

1 (Laughter.)

2 THE COURT: Is anybody from the Pee Dee?
3 Anybody on this panel from down around the Pee Dee
4 area of the state like Florence, Myrtle Beach or
5 something like that?

6 (There was no response.)

7 THE COURT: Nobody at all? Where are you from?

8 PROSPECTIVE JUROR: Loris ---

9 THE COURT: Laurens?

10 PROSPECTIVE JUROR: Loris ---

11 THE COURT: Loris, yea.

12 PROSPECTIVE JUROR: My father was from
13 Chesterfield.

14 THE COURT: We don't count Chesterfield.

15 (Laughter.)

16 THE COURT: No, we have to count Chesterfield,
17 that's all right.

18 All right, okay. Now, let me back up a little
19 bit, members of the panel. And I'm not upset, I'm not
20 yelling at anybody but it's too important just to say
21 initials rather than names. So let me start over.

22 Investigator Pete Currie from the Columbia Police
23 Department, Captain Ginger Sanders from the Columbia
24 Police Department.

25 (Captain Sanders stands.)

1 THE COURT: Captain Sanders. Sergeant Melrose.

2 MR. CATHCART: Your Honor, I'm sorry. It says --
3 Corporal, Cpl.

4 THE COURT: It's Corporal ---

5 MR. CATHCART: Yes, sir.

6 THE COURT: --- Ginger Sanders. Stand up again
7 so we'll know you're a Corporal instead of a Captain.

8 (Complied.)

9 THE COURT: All right, thank you. Sergeant -- is
10 that Mel ---

11 MR. CATHCART: Melrod (phonetic), I'm sorry. My
12 handwriting isn't that good.

13 THE COURT: Melrod Kelly from the Columbia Police
14 Department.

15 Officer Casta ---

16 MR. CATHCART: It's Casha.

17 OFFICER CALLOWAY: Casha.

18 THE COURT: Casta (sic).

19 MR. CATHCART: Casha.

20 THE COURT: Officer Casta (sic) Calloway from the
21 Columbia Police Department.

22 Officer Barry Smalls from the Columbia Police
23 Department; Officer Davis Battiste -- Battiste, is that
24 correct, from the Columbia Police Department; Officer
25 Pierre Edwards, Pierre Edwards from the Columbia Police

1 Department. A Ms. Nola Gilmore, is Ms. Gilmore present?

2 (Ms. Gilmore stands.)

3 THE COURT: This is Ms. Gilmore. She is the
4 victim. Y'all help Ms. Gilmore. Please turn around and
5 face the panel, Ms. Gilmore, please ma'am.

6 MS. GILMORE: You want me ---

7 THE COURT: Just turn around, Ms. Gilmore. Y'all
8 help her.

9 (Complied.)

10 THE COURT: All right, thank you, Ms. Gilmore.
11 Eric Cambre.

12 (Mr. Cambre stands.)

13 THE COURT: This is Mr. Camber. Thank you, sir.
14 Michael Murphy. Is Mr. Murphy present?

15 MR. CATHCART: No, sir.

16 THE COURT: All right. William Gilmore, Mr.
17 William Gilmore.

18 (Mr. Gilmore stands.)

19 THE COURT: Thank you, Mr. Gilmore.
20 Stephanie Miller.

21 (Ms. Miller stands.)

22 THE COURT: This is Stephanie Miller. Thank you,
23 Ms. Miller.

24 Christy Tyson.

25 (Ms. Tyson stands.)

1 THE COURT: This is Christy Tyson up here. Thank
2 you, Ms. Tyson.

3 Jennifer Blair and she works with 911
4 communications.

5 MR. CATHCART: Yes, sir.

6 THE COURT: All right. She's not present. And
7 Kenneth Brown also working with 911 communications.

8 All right. My question about all these
9 witnesses, are you related by blood or connected by
10 marriage or employment or are you a close personal
11 acquaintance. I'm going to repeat these names once again.
12 What does the B stand for in Vanhouten?

13 MR. VANHOUTEN: Brian (phonetic).

14 THE COURT: Brian Vanhouten. W. Pegram, the W
15 stands for what?

16 MR. PEGRAM: William, sir.

17 THE COURT: William?

18 MR. PEGRAM: Yes, sir.

19 THE COURT: All right. We see him. A. Thomas
20 and the A stands for?

21 MS. HENDRICK: Arthur.

22 MR. CATHCART: Arthur.

23 THE COURT: Arthur Thomas. Pete Currie from the
24 Columbia Police Department, Corporal Ginger Sanders from
25 the Columbia Police Department, Sergeant Melrod -- okay,

1 Melrod Kelly from the Columbia Police Department, Officer
2 Casta (sic) Galloway (sic) -- Calloway from the Columbia
3 Police Department, Officer Barry Smalls from the Columbia
4 Police Department, Officer Davis Battiste from the
5 Columbia Police Department, Officer Pierre Edwards from
6 the Columbia Police Department, Ms. Nola Gilmore, the
7 alleged victim that you met, Eric Cambre, Michael Murphy,
8 William Gilmore, Stephanie Miller, Christy Tyson, Jennifer
9 Blair and Kenneth Brown.

10 And once again, are you related by blood or
11 connected by marriage or employment or are you a close
12 personal acquaintance of any of those names I just called
13 out.

14 If so, please stand. If you know any of these
15 people, you go to church with them, you live in the same
16 neighborhood, if you've seen them before, please stand.

17 (There was no response.)

18 THE COURT: Now, just I'll ask this and probably
19 it's not -- the answer is probably no but I'm going to ask
20 it anyway. Any member of this jury panel is a member of
21 the grand jury at any time within the last two years?

22 If so, please stand. Any of y'all served on the
23 grand jury?

24 (There was no response.)

25 THE COURT: All right. Has any member of this

1 jury panel formed or expressed any opinion about this case
2 or as to the guilt or innocence of the Defendant, Norma
3 (sic) Lee Mitchell -- Norman Lee Mitchell?

4 If so, please stand.

5 (There was no response.)

6 THE COURT: Is any member of the jury panel aware
7 of any bias or prejudice in connection with this case or
8 any of the parties thereto, that is the Defendant, the
9 victim or any of the witnesses?

10 If so, please stand.

11 (There was no response.)

12 THE COURT: Does any member of the jury panel
13 know of any reason why they could not give both the State
14 and the Defendant, Mr. Mitchell, a fair and impartial
15 trial in this case?

16 If so, please stand.

17 (There was no response.)

18 THE COURT: Any reason you cannot be a fair juror
19 in a failure to stop for a blue light and a carjacking
20 case, please stand.

21 (There was no response.)

22 THE COURT: Now, I need to ask you some
23 additional questions, members of -- but before I do that,
24 let me introduce the parties to you.

25 The State is being represented in this action by

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 Mr. Richard Cathcart. Mr. Cathcart.

2 (Mr. Cathcart stands.)

3 THE COURT: And Ms. Eden Hendrick.

4 (Ms. Hendrick stands.)

5 THE COURT: They work for the Fifth Circuit
6 Solicitor's office. You all may sit down, thank you.

7 Let me ask you this question, have you or any
8 members of your immediate family ever been a victim and as
9 a consequence been represented by the Fifth Circuit
10 Solicitor's office or any -- and of the attorneys or
11 prosecutors involved therein?

12 If so, please stand. Have you or a family member
13 been a victim of a case that was prosecuted by the Fifth
14 Circuit Solicitor's office? If so, please stand.

15 (There was no response.)

16 THE COURT: Have any of you or members of your
17 family ever been represented by Mr. Richard Cathcart or
18 Mr. (sic) Eden -- Ms. Eden Hendrick?

19 If so, please stand.

20 (There was no response.)

21 THE COURT: Now, Mr. Mitchell is being
22 represented in this case by Mr. May and Mr.?

23 (Mr. May and Mr. Shealey stand.)

24 MR. SHEALEY: Shealey, Brian ---

25 THE COURT: Shealey. Is it John May?

1 MR. MAY: Jim, Your Honor.

2 THE COURT: Jim May and?

3 MR. SHEALEY: Brian.

4 THE COURT: Brian. Now, Mr. Shealey has a twin
5 brother and sometimes we confuse the two. They work for
6 the Richland County Public Defender's office. Thank you,
7 gentlemen.

8 And my question now is this, have you or any
9 members in your immediate family ever been represented by
10 Mr. May or Mr. Shealey or any member of the Richland
11 County Public Defender's office?

12 If so, please stand.

13 (There was no response.)

14 THE COURT: Has any member of the jury panel or
15 any member of your family or close friend been a victim of
16 a violent crime? Now, I ask these questions not to
17 embarrass anybody but it's an effort to select a fair and
18 impartial jury. And if you have been, I invite you to
19 come down and speak to me privately about this situation.

20 Have you been a victim of a burglary or a
21 carjacking or armed robbery, some sort of assault? And
22 I'll repeat that question. Has any member of the jury
23 panel or a member of your immediate family or a close
24 personal friend, like a neighbor, been the victim of a
25 violent crime?

1 If so, please stand. And as you stand up, I
2 would ask you to come down here and tell me about your
3 situation privately. I've got to invite the lawyers to
4 come down too.

5 (Prospective juror comes forward.)

6 THE COURT: Wait, I need your juror number.

7 PROSPECTIVE JUROR: Number 32.

8 THE COURT: And your name.

9 PROSPECTIVE JUROR: Nicholas Brock.

10 THE COURT: All right, Mr. Brock, what was your
11 situation?

12 PROSPECTIVE JUROR: Actually there's a case in
13 the courts right now and I was a victim of assault and
14 burglary.

15 THE COURT: Okay. How long ago was that?

16 PROSPECTIVE JUROR: It's still in the courts.

17 THE COURT: But when did it happen? When did it
18 happen?

19 PROSPECTIVE JUROR: Six months ago.

20 THE COURT: Six months ago. And they broke into
21 your house?

22 PROSPECTIVE JUROR: Yep.

23 THE COURT: Okay. The fact that you were a
24 victim of an assault and burglary and someone broke into
25 your house six months ago, would that or could that affect

1 your ability to be a fair juror in the trial of this case?

2 PROSPECTIVE JUROR: I don't think so, no.

3 THE COURT: Are you sure about that?

4 PROSPECTIVE JUROR: Yeah.

5 THE COURT: You're positive.

6 PROSPECTIVE JUROR: Yeah.

7 THE COURT: All right.

8 PROSPECTIVE JUROR: I just wanted to let you know

9 ---

10 THE COURT: Okay, we need to know that.

11 PROSPECTIVE JUROR: Okay, all right.

12 THE COURT: Thank you, sir.

13 PROSPECTIVE JUROR: Okay.

14 THE COURT: Okay. Now I'll repeat that question
15 one more time and I've been around a long time. Nobody
16 else has been the victim or a family member the victim of
17 a violent crime, is that so?

18 (There was no response.)

19 THE COURT: Okay. Now, has any member of the
20 panel or any member of -- is or has any member of the
21 panel or any member of a potential juror's family been in
22 the past employed by a local, state or federal law
23 enforcement agency, including but not limited to the City
24 of Columbia Police Department, the Richland County
25 Sheriff's Department, the State Law Enforcement Division

1 or the Federal Bureau of Investigation? In other words,
2 have you or a member of your immediate family ever worked
3 in law enforcement?

4 If so, please stand.

5 (Prospective jurors stand.)

6 THE COURT: Don't be shy, come on, stand up.

7 All right. You, I'm going to take you first.

8 Ma'am, your number and name, please.

9 PROSPECTIVE JUROR: My name is Norma Baugh,
10 number 14. My son-in-law's father worked for SLED.

11 THE COURT: Your son-in-law's father worked for
12 SLED?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: The fact that your son-in-law's
15 father works -- he works there now?

16 PROSPECTIVE JUROR: No, sir, he's retired.

17 THE COURT: How long ago was it that he retired?

18 PROSPECTIVE JUROR: About 10 years ago.

19 THE COURT: 10 years ago. The fact that your
20 son-in-law's father worked with SLED and retired 10 years
21 ago, would that or could that affect your ability to be a
22 fair and impartial juror in the trial of this case?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: You're sure about that?

25 PROSPECTIVE JUROR: I'm sure.

1 THE COURT: Okay. I take your word for it.

2 Thank you, ma'am.

3 Yes, sir, your name and number, please.

4 PROSPECTIVE JUROR: Scot Fischer. I'm juror 86.

5 THE COURT: Scot Fischer?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Yes, sir, Mr. Fischer.

8 PROSPECTIVE JUROR: My father is a retired police
9 from California.

10 THE COURT: In California?

11 PROSPECTIVE JUROR: Yes, sir.

12 THE COURT: What part of California?

13 PROSPECTIVE JUROR: San Leander, San Francisco
14 Bay area.

15 THE COURT: Yeah. It's not Marin County, is it?

16 PROSPECTIVE JUROR: Alameda County.

17 THE COURT: Alameda County, okay. He's retired
18 now, you said?

19 PROSPECTIVE JUROR: He's retired.

20 THE COURT: How long has he been retired?

21 PROSPECTIVE JUROR: About eight years.

22 THE COURT: All right. The fact that your -- was
23 it your father-in-law you said?

24 PROSPECTIVE JUROR: Father.

25 THE COURT: Your father.

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Worked out in Northern California and
3 is now retired as a police officer, would that or could
4 that affect your ability to be a fair and impartial juror
5 in the trial of this case?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Are you sure about that?

8 PROSPECTIVE JUROR: Yes, sir.

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

10 Yes, ma'am, your name and number, please.

11 PROSPECTIVE JUROR: My name is Lisa Mathias. I'm
12 number 177.

13 THE COURT: Mathias?

14 PROSPECTIVE JUROR: Uh-huh.

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR: My brother used to be a City
17 of Columbia Police officer.

18 THE COURT: Your brother used to be a City of
19 Columbia Police officer?

20 PROSPECTIVE JUROR: Uh-huh.

21 THE COURT: How long ago was that?

22 PROSPECTIVE JUROR: Maybe five years.

23 THE COURT: Maybe five years ago?

24 PROSPECTIVE JUROR: He works out of the country
25 now. So I can't remember exactly how long he's been doing

1 that.

2 THE COURT: That's all right. How long did he
3 work there? Do you have any idea?

4 PROSPECTIVE JUROR: No, I don't.

5 THE COURT: All right. The fact that your
6 brother you say ---

7 PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: --- used to work for the Columbia
9 Police Department at least five years ago, as best you can
10 recall, would that or could that affect your ability to be
11 a fair and impartial juror in the trial of this case?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: And once again, you don't know any of
14 the officers involved in this case, is that correct?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: All right. Thank you, ma'am.
17 Yes, ma'am, your name and number, please.

18 PROSPECTIVE JUROR: Number 260, Mae Story.

19 THE COURT: What now?

20 PROSPECTIVE JUROR: Number 260, Mae Story.

21 THE COURT: Story?

22 PROSPECTIVE JUROR: Yes.

23 THE COURT: All right. Ms. Story, tell me your
24 connection.

25 PROSPECTIVE JUROR: My daughter works for the

1 Department of Corrections. She's a sergeant there.

2 THE COURT: Your daughter works now?

3 PROSPECTIVE JUROR: Yes.

4 THE COURT: For the Department of Corrections as
5 a correction officer?

6 PROSPECTIVE JUROR: Yes, she is.

7 THE COURT: All right. And how long has she
8 worked there?

9 PROSPECTIVE JUROR: She's been there probably
10 about 15 years.

11 THE COURT: All right. I have three children,
12 it's hard to keep up with them.

13 (Laughter.)

14 THE COURT: The fact that your daughter's worked
15 for the Department of Corrections for about 15 years,
16 would that or could that affect your ability to be a fair
17 and impartial juror in the trial of this case?

18 PROSPECTIVE JUROR: No, sir, it won't.

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

20 Yes, sir, your name and number, please.

21 PROSPECTIVE JUROR: Kyron Conner, number 53.

22 THE COURT: Mr. Conner, you said?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: All right. What's your connection?

25 PROSPECTIVE JUROR: My brother's the Sheriff in

1 Atlanta.

2 THE COURT: Your brother works for the Fulton
3 County Sheriff's Department?

4 PROSPECTIVE JUROR: That's correct.

5 THE COURT: How long had he worked there?

6 PROSPECTIVE JUROR: He just became Sheriff but
7 he's been a patrol officer and other police type duties.

8 THE COURT: He's been in police work most of his
9 life and he still is in that type of work?

10 PROSPECTIVE JUROR: Correct.

11 THE COURT: Okay, in Georgia. The fact that your
12 brother still works in law enforcement, would that or
13 could that affect your ability to be a fair and impartial
14 juror in the trial of this case.

15 PROSPECTIVE JUROR: Yes, sir.

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

17 PROSPECTIVE JUROR: I'm joking, Your Honor, it
18 wouldn't.

19 (Laughter.)

20 THE COURT: You said it would?

21 PROSPECTIVE JUROR: It wouldn't, Your Honor ---

22 THE COURT: Okay. Where are you from?

23 PROSPECTIVE JUROR: Hampton, South Carolina.

24 THE COURT: That explains it then.

25 (Laughter.)

1 THE COURT: Hampton -- you're not going anywhere,
2 sit down.

3 (Laughter.)

4 THE COURT: Now, has any member of the jury panel
5 ever testified for the State, that is for the prosecution,
6 in any criminal case?

7 If so, please stand.

8 (There was no response.)

9 THE COURT: Has any member of the jury panel ever
10 been a witness for the prosecution in any case?

11 If so, please stand.

12 (Prospective juror stands.)

13 THE COURT: You need to come down and talk to me
14 privately? All right.

15 (Prospective juror comes forwards.)

16 THE COURT: How you doing?

17 PROSPECTIVE JUROR: Fine and you?

18 THE COURT: Your name and number, please.

19 PROSPECTIVE JUROR: Charlene Brown, number 33.

20 THE COURT: All right, Ms. Brown.

21 PROSPECTIVE JUROR: My sister was sexually
22 assaulted and was a plea that was prosecuted. It was in
23 Lexington County about five years ago.

24 THE COURT: And you were a witness?

25 PROSPECTIVE JUROR: Yeah, I spoke on behalf of my

1 sister.

2 THE COURT: Okay, you said it was a guilty plea?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: Okay. Did y'all hear that? Her
5 sister was a victim in a sexual assault case in Lexington
6 County.

7 Now, I've got to ask you this. Would that or
8 could that affect your ability to be a fair juror in this
9 case?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: You're sure about that?

12 PROSPECTIVE JUROR: Yes.

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

14 (Pause.)

15 THE COURT: Now, the next question is rather
16 sensitive but I'm required to ask you in order to try to
17 get a fair jury. And I'm going to invite you to come down
18 if you need to stand in response to this question and tell
19 me about your situation privately.

20 Has any member of the jury panel or any member of
21 your family or a close friend ever been charged with a
22 violent crime? Has any member of the jury panel or member
23 of your immediate family or a close personal friend been
24 charged with a violent crime?

25 Like I said, some of these questions are

1 sensitive but there's no other way to try to pick a fair
2 jury in a case like this without asking.

3 If so, you can stand and come down and talk to me
4 privately.

5 (There was no response.)

6 THE COURT: All right. Now, is any member of the
7 jury panel a member of or a contributor to any group which
8 has as its primary concern the promotion of law
9 enforcement or victim rights? These groups would include
10 but are not limited to CAVE, CADRE, MADD, SADD or a
11 neighborhood watch group.

12 If so, please stand.

13 And I'll repeat the question. Is any member of
14 the jury panel a member of or a contributor to any group
15 which has as its primary concern the promotion of law
16 enforcement or victim rights? These groups would include
17 but are not limited to CAVE, CADRE, MADD, SADD or a
18 neighborhood watch group.

19 If so, please stand.

20 (There was no response.)

21 THE COURT: Is there anything in the nature of
22 the allegations in this case which would cause any member
23 of the panel any problem in sitting as a fair juror, that
24 is a carjacking or a failure to stop for a blue light?
25 Anything about the nature of this case and the allegations

1 I read out to you contained in these indictments make you
2 feel uncomfortable to sit as a juror?

3 If so, please stand.

4 (There was no response.)

5 THE COURT: I'm sort of repeating myself but I
6 ask you once again, does the nature of the charge of
7 carjacking make any of y'all feel uncomfortable to sit as
8 a juror in this case?

9 If so, please stand.

10 (There was no response.)

11 THE COURT: All right. Now, any further voir
12 dire on behalf of the Defense?

13 MR. CATHCART: Your Honor, if we may approach. I
14 have one thing to bring to your attention.

15 THE COURT: Yeah, sure, come on up.

16 (Whereupon, a bench conference was held off the
17 record, in the presence of the jury panel, but out of the
18 hearing of the jury panel.)

19 THE COURT: Mr. Charles Black.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: Could you come up here for a minute?
22 Help Mr. Black come up here, please.

23 (Mr. Black comes forward.)

24 THE COURT: Were y'all here during the
25 qualifications?

1 MS. HENDRICK: I was, they were not.

2 THE COURT: All right. We might have to double
3 check.

4 Good morning, Mr. Black. How you doing?

5 PROSPECTIVE JUROR: Good morning. I'm fine.

6 THE COURT: Do you have any prior record?

7 PROSPECTIVE JUROR: Yes, I do.

8 THE COURT: What's the prior record for?

9 PROSPECTIVE JUROR: Possession with intent to
10 distribute.

11 THE COURT: Okay, that's all right. That means
12 he would be excused. All right, I just need you to go
13 back and sit down.

14 PROSPECTIVE JUROR: Thank you, sir.

15 THE COURT: That means we'll have to strike
16 number three of the list. All right and we'll just drop
17 down -- we'll just drop down.

18 (Pause.)

19 THE COURT: Anything further on behalf of the
20 Defense, Mr. Shealey, Mr. May?

21 MR. MAY: Nothing from the Defense, Your Honor.

22 THE COURT: Anything further on behalf of the
23 State?

24 MR. CATHCART: No, sir.

25 THE COURT: I think the strikes are what, 10 and

1 five? I'm asking.

2 MR. CATHCART: Your Honor, I believe that on a
3 carjacking it should be five and five, if I'm not
4 mistaken.

5 MR. MAY: Yes, sir.

6 THE COURT: Five and five, reluctantly you admit
7 to that five and five.

8 MS. HENDRICK: They're five and five.

9 THE COURT: Are we sure?

10 MR. CATHCART: Yes, sir.

11 THE COURT: All right, very well. Let's see --
12 so, once again, we're all ready? Ms. Johnson, you may
13 give us a jury. Is it Pendergrass or Johnson? Either
14 one, okay.

15 THE CLERK: Ladies and gentlemen of jury panel,
16 as I call your name, please come to the microphone located
17 here at the center. At the microphone, please state your
18 name and your place of occupation. Please bring any
19 personal items that you may have with you.

20 Number 173, Thomas Mack.

21 (Thomas E. Mack, a white male, now comes
22 forward.)

23 PROSPECTIVE JUROR: My name is Thomas Mack and I
24 work with Market -- Favorite Markets (phonetic).

25 THE COURT: What says the State?

1 MR. CATHCART: Please present Mr. Mack?

2 THE CLERK: What says the Defense?

3 MR. MAY: Please seat Mr. Mack.

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

5 Juror number 14, Norma Baugh.

6 (Norma P. Baugh, a white female, now comes
7 forward.)

8 PROSPECTIVE JUROR: My name is Norma Baugh. I'm
9 a teacher by profession but I'm presently unemployed.

10 THE CLERK: What says the State?

11 MR. CATHCART: Please present Ms. Baugh.

12 THE CLERK: What says the Defense?

13 MR. MAY: Please excuse Ms. Baugh.

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

16 Juror number 32, Nicholas Brock.

17 (Nicholas E. Brock, a white male, now comes
18 forward.)

19 PROSPECTIVE JUROR: Nicholas Brock, chef at the
20 Blue Marlin.

21 THE CLERK: What says the State?

22 MR. CATHCART: Please present Mr. Brock.

23 THE CLERK: What says the Defense?

24 MR. MAY: Please excuse Mr. Brock.

25 THE COURT: Please return to the back of the

1 courtroom.

2 Juror number 177, Lisa Mathias.

3 (Lisa A. Mathias, a white female, now comes
4 forward.)

5 PROSPECTIVE JUROR: Lisa Mathias, restaurant
6 owner.

7 THE CLERK: What says the State?

8 MR. CATHCART: Please present Ms. Mathias.

9 THE CLERK: What says the Defense?

10 MR. MAY: Please excuse Ms. Mathias.

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

13 Juror number 83, Frederick Felder.

14 (Frederick J. Felder, III, a white male, now
15 comes forward.)

16 PROSPECTIVE JUROR: Frederick Felder, First
17 Citizens Bank.

18 THE CLERK: What says the State?

19 MR. CATHCART: Please present Mr. Felder.

20 THE CLERK: What says the Defense?

21 MR. MAY: Please seat Mr. Felder.

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

23 Juror 232, Elizabeth Rodgers.

24 (Elizabeth J. Rodgers, a white female, now comes
25 forward.)

1 PROSPECTIVE JUROR: I'm Elizabeth Rodgers, a
2 registered nurse at Palmetto Health Richland.

3 THE CLERK: What says the State?

4 MR. CATHCART: Please present Ms. Rodgers.

5 THE CLERK: What says the Defense?

6 MR. MAY: Please seat Ms. Rodgers.

7 THE CLERK: Please have seat in the jury box.
8 Juror number 190, Susan Moore.

9 (Susan A. Moore, a white female, now comes
10 forward.)

11 PROSPECTIVE JUROR: I am Susan Moore. I work for
12 Blue Cross Blue Shield.

13 THE CLERK: What says the State?

14 MR. CATHCART: Please present Ms. Moore.

15 THE CLERK: What says the Defense?

16 MR. MAY: Please seat Ms. Moore.

17 THE CLERK: Please have a seat in the jury box.
18 Juror number 206, Fabian Olson.

19 (Fabian L. Olson, Jr., a white male, now comes
20 forward.)

21 PROSPECTIVE JUROR: My name is Lee Olson, first
22 name Fabian. I'm a real estate agent.

23 THE CLERK: What says the state?

24 MR. CATHCART: Please present Mr. Olson.

25 THE CLERK: What says the Defense?

1 MR. MAY: Please seat Mr. Olson.

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

3 Juror number 203, Sarah Obrien.

4 (Sara A. Obrien, a white female, now comes
5 forward.)

6 PROSPECTIVE JUROR: I am Sarah Obrien. I'm
7 retired and have a part time job with Alltel.

8 THE CLERK: What says the State?

9 MR. CATHCART: Please present Ms. Obrien.

10 THE CLERK: What says the defense?

11 MR. MAY: Please seat Ms. Obrien.

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

13 Juror number 291, Rosalind Williams.

14 (Rosalind Williams, a black female, now comes
15 forward.)

16 PROSPECTIVE JUROR: Rosalind Williams, pending
17 retirement, U. S. Postal Service.

18 MR. CATHCART: Please present Ms. Williams.

19 THE CLERK: What says the Defense?

20 MR. MAY: Please seat Ms. Williams.

21 THE COURT: Please have seat in the jury box.

22 Juror number 266, Nicole Thompson.

23 (Nicole Thompson, a black female, now comes
24 forward.)

25 PROSPECTIVE JUROR: I'm Nicole Thompson,

1 unemployed.

2 THE CLERK: What says the State?

3 MR. CATHCART: Please present Ms. Thompson.

4 THE CLERK: What says the Defense?

5 MR. MAY: Please seat Mr. Thompson.

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

7 Juror number 290, Rodney Williams.

8 (Rodney E. Williams, a black male, now comes
9 forward.)

10 PROSPECTIVE JUROR: Rodney Williams, currently
11 unemployed.

12 THE COURT: What says the State?

13 MR. MAY: Please excuse Mr. Williams.

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

16 Juror number 215, Cleo Payne.

17 (Cleo Payne, Jr., a black male, now comes
18 forward.)

19 PROSPECTIVE JUROR: Cleo Payne, retired military,
20 now working in Publix.

21 THE CLERK: What says the State?

22 MR. CATHCART: Please present Mr. Payne.

23 THE CLERK: What says the Defense?

24 MR. MAY: Please seat Mr. Payne.

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

1 Juror number 158, Donna Kremlick.

2 (Donna R. Kremlick, a white female, now comes
3 forward.)

4 PROSPECTIVE JUROR: My name is Donna Kremlick.
5 I'm the Director of Activities at an assisted living
6 facility in Irmo.

7 THE CLERK: What says the State?

8 MR. CATHCART: Please present Ms. Kremlick.

9 THE CLERK: What says the Defense?

10 MR. MAY: Please excuse Ms. Kremlick.

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

13 Juror number 107, Bobbie Guinyard.

14 (Bobbie L. Guinyard, a black female, now comes
15 forward.)

16 PROSPECTIVE JUROR: Bobbie Guinyard. I work at
17 for the South Carolina Department of Transportation.

18 THE CLERK: What says the State?

19 MR. CATHCART: Please present Ms. Guinyard.

20 THE CLERK: What says the Defense?

21 MR. MAY: Please seat Ms. Guinyard

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

23 Juror number 130, Jimmie Howard.

24 (Jimmie R. Howard, a black male, now comes
25 forward.)

1 PROSPECTIVE JUROR: Jimmie Howard. I'm a
2 electronic technician, Palmetto Health Richland.

3 THE CLERK: What says the State?

4 MR. CATHCART: Please present Mr. Howard.

5 THE CLERK: What says the Defense?

6 MR. MAY: Please seat Mr. Howard.

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

8 Juror number 249, James Sistare.

9 (James B. Sistare, a white male, now comes
10 forward.)

11 PROSPECTIVE JUROR: James Sistare, pastor of
12 Bethel United Methodist Church, Forest Acres.

13 THE CLERK: What says the State?

14 MR. CATHCART: Please present Mr. Sistare.

15 THE CLERK: What says the Defense?

16 MR. MAY: Please seat Mr. Sistare.

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

18 Juror number 211, Sharon Parker.

19 (Sharon A. Parker, a black female, now comes
20 forward.)

21 PROSPECTIVE JUROR: Sharon Parker. I work in IT
22 at Blue Cross and Blue Shield.

23 THE CLERK: What says the State?

24 MR. CATHCART: Please present Ms. Parker.

25 THE CLERK: What says the Defense?

1 MR. MAY: Please seat Ms. Parker.

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

3 THE COURT: Any matters need to be taken up at
4 this time in connection with the selection of this jury?
5 Anything from the Defense?

6 MR. MAY: No, Your Honor.

7 THE COURT: Anything from the State.

8 MR. CATHCART: No, Your Honor.

9 THE COURT: All right. To the remaining members
10 of the panel, I take this opportunity to thank you, as I'm
11 sure Judge Barber did on Monday who qualified you all, for
12 being good patriotic citizens and coming here to
13 participate in this process. You know, a government of
14 the people, by the people and for the people cannot exist
15 without the people. And of course, that means your
16 participation and your presence. So I thank you all so
17 very much. Wish you all calm nights and sunshiny days.

18 Unfortunately I can't send you home. You have to
19 go back downstairs to the jury assembly room and wait --
20 await further instructions. But thank you all so very
21 much on behalf of everybody involved in this trial.

22 (The remaining members of the jury panel
23 retire from the courtroom at 11:50 a.m.)

24 THE COURT: Now, to the members of this jury, I
25 know there are some preliminary matters I need to take up

1 with these lawyers before we get started. What I'm going
2 to ask you to do is just briefly go into the jury room.
3 I'm going to tell you this now, you'll hear me repeat this
4 throughout the course of this trial, please don't talk
5 about this case. The time to do so will be at the very
6 end once you've heard all the evidence and once you've
7 heard the lawyers argue their positions to you and once I
8 tell you the law that applies to this case. Until then,
9 it would be unfair to the State and it would be unfair to
10 the Defendant, Mr. Mitchell, for you to talk about this
11 case in any way, shape or form.

12 So I'm going to ask you to go to the jury room.
13 I'm going to have a brief discussion with the lawyers
14 about logistical matters, how we're going to proceed. I
15 know we won't start right away because I have some -- some
16 preliminary hearings to hold. So I'm not sure if we're
17 going to start an hour or two hours after lunch.

18 So go to the jury room and I'll bring you back
19 out and let you know exactly what we're going to do and
20 when we're going to start. All right.

21 (The jury retires from the courtroom at
22 11:51 a.m.)

23 THE COURT: And while they do that, I'm going to
24 take a little break and go get a cough drop. I've been
25 coughing all the time. I'll be right back.

1 (The Court was in recess.)

2 THE COURT: So how many motions we got, how long
3 is it going to take?

4 MR. CATHCART: I would anticipate two motions.
5 They'll be Biggers and Jackson v. Denno. At some point we
6 need to settle the Defendant's record. I would also make
7 a motion in limine that he does not -- I do not anticipate
8 him testifying, that they do not go into his life story in
9 their opening statement.

10 THE COURT: What now? Say that again.

11 MR. CATHCART: Your Honor, I found with -- not
12 with Mr. May because I haven't tried one with him but with
13 the Public Defender's office, many times they talk about
14 the Defendant and talk about where he's from, what he's
15 done, who he is and then don't put the Defendant up to
16 testify.

17 THE COURT: What's that got to do with -- they
18 can do that, it's not evidence. I'll take -- you know, I
19 mean, you can -- I understand, you want to make your
20 motion. I'll listen to it.

21 MR. CATHCART: It will put his character at issue
22 and I have other areas as to his character.

23 THE COURT: What now?.

24 MR. CATHCART: I think if they talk about his
25 life story, who he is, it puts his character at issue as

1 to who -- what -- who he is without ---

2 THE COURT: I'll take it ---

3 MS. CATHCART: --- being able to go into his
4 prior record.

5 MR. MAY: I'm not going to talk about his life
6 story in the opening, I guarantee it.

7 THE COURT: Y'all relax.

8 MR. CATHCART: That's fine.

9 THE COURT: Calm down, calm down. All right,
10 besides that, what else do we have?

11 MR. CATHCART: Just his statement and
12 identification.

13 MR. MAY: Your Honor, I believe that we will
14 consent to the statement that was given. There is no
15 written statement. There was a statement given to the
16 investigator. We're not saying that it was involuntary.
17 So just to ease the matter along ---

18 THE COURT: So the Jackson versus Denno, we don't
19 need that?

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

21 THE COURT: We just need a Biggers, is that
22 correct?

23 MR. MAY: That's correct, Your Honor.

24 THE COURT: How long will that take?

25 MR. CATHCART: Two witnesses -- well, three

1 witnesses, Your Honor.

2 MR. MAY: And we're planning to call Mr. Mitchell
3 as well.

4 THE COURT: All right. So my question is again,
5 how long will it take, not how many witnesses?

6 MR. MAY: I would guess at least -- probably an
7 hour.

8 THE COURT: An hour. I'm just trying to decide
9 what to do with this jury. That will be 1:00. You want
10 to start back at maybe 2 or something like that. Let's
11 just send the jury to lunch, tell them to be back at 2.
12 We can cover everything and settle everything and hear
13 your motion about the opening statement, stuff like that.

14 It's 12:00 now. It's probably not going to take
15 an hour but I'll say it will take an hour.

16 MR. MAY: Your Honor, we would ask that the
17 witnesses be sequestered.

18 THE COURT: All right, we'll take that up that
19 too.

20 So let me bring this jury out and tell them that
21 this matter's going to take a while. I might as well go
22 ahead and send them to lunch or they can be back at 2:00,
23 is that good enough for everybody?

24 MR. MAY: Yes, sir.

25 THE COURT: Okay. Bring the jury back in, Mr.

1 Hollis.

2 THE BAILIFF: Be glad to, Your Honor.

3 (Pause.)

4 THE COURT: Will y'all approach please.

5 (Whereupon, a bench conference was held off the
6 record.)

7 (The jury returns to the courtroom at
8 11:57 a.m.)

9 THE BAILIFF: The jury's all present, Your Honor.

10 THE COURT: Thank you. Now, members of the jury,
11 these preliminary matters, the lawyers have informed me
12 and I'll take their word for it, it's going to take about
13 an hour. So what I'm going to do, I'm going to go ahead
14 and send you to lunch and ask that you be back at 2:00,
15 okay. I mean it's a lot of time and if you're fixing to
16 retire or something like that, you can go shopping maybe.
17 Okay, you don't have to.

18 But still the most important thing is keep your
19 juror badges on during the course of your lunch and the
20 two hour break so that no one would inadvertently come up
21 and say something to you that you shouldn't hear.

22 I trust that you'll have a pleasant lunch and
23 also -- two hours is a long time but you don't need to sit
24 here for an hour while we do this and then we're going to
25 take a lunch break anyway. So you'll have a little extra

1 time.

2 Just don't talk about this case and I'll ask you
3 to be back in the jury room at 2:00 and we'll get started
4 then. I think the lawyers have informed me this case will
5 take about a day and a half, somewhere in that range,
6 okay.

7 So y'all have a good lunch and be back at 2:00.

8 (The jury retires from the courtroom at
9 12:00 p.m.)

10 THE COURT: Y'all ready to proceed? You want to
11 start with the Biggers? This was a show up or something
12 is what y'all told me the other day, is that correct?

13 MR. CATHCART: That's correct, Your Honor.

14 THE COURT: All right.

15 MR. CATHCART: They'll need to be sequestered,
16 everybody except for Ms. Gilmore and ---

17 THE COURT: Yes, Mr. May.

18 MR. MAY: Just he's sequestering them.

19 MR. CATHCART: I'm assuming you will grant his
20 motion for sequestration, Your Honor. I ---

21 THE COURT: Oh, yeah, yeah, sure, sure.

22 (Pause.)

23 THE COURT: We got a place to keep them?

24 MR. CATHCART: Just right out there, Your Honor.

25 THE COURT: We got to find a room somewhere.

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 (Pause.)

2 THE COURT: All right, Solicitor.

3 MR. CATHCART: Your Honor, at this time the State
4 calls Officer Calloway.

5 THE COURT: It's Casta (sic) Calloway?

6 MR. CATHCART: Casha.

7 THE COURT: Casha. You've got to learn how to
8 say it right.

9 (CASHA N. CALLOWAY, after being duly sworn,
10 testified as follows:)

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

13 THE WITNESS: My name is Officer Casha Nicole
14 Calloway.

15 THE COURT: All right, Ms. Calloway, I'm going to
16 ask you to speak up a little bit.

17 DIRECT EXAMINATION

18 BY MR. CATHCART:

19 Q Where are you employed?

20 A For the City of Columbia Police Department.

21 Q In what capacity?

22 A I'm a police officer.

23 Q And was that your job back on October -- excuse me,
24 February 1st of 2008?

25 A Yes.

1 Q Okay. And on that date did you have an opportunity
2 to go to the Time Warner Building on Harden Street
3 here in Columbia?

4 A Yes, I did.

5 Q Okay. What brought you to the Time Warner Building?

6 A What brought me to the Time Warner Building was we
7 received a call, an emergency call. At that time
8 that was my current area that I was assigned to
9 patrol. They dispatched me as well as any other --
10 any other units that could respond to that location
11 in regards to a possible armed robbery.

12 Upon my arrival, myself as well as ---

13 Q Well, let me slow you down real quick. How long did
14 it take you to get there?

15 A Approximately three minutes.

16 Q Okay. And upon your arrival?

17 A Upon my arrival, when I arrived there, I went inside
18 to make contact with the -- with the victim and I was
19 stopped at the door by her. Another officer was
20 there. He went inside and found out that it was not
21 an armed robbery but in fact it was a carjacking.

22 At that time we began to get the description of
23 the vehicle ---

24 Q Uh-huh.

25 A --- we began to transmit that over the radio to tell

1 all of the other officers that were in the located --
2 in the -- within the area to be on the lookout for
3 that vehicle.

4 Q Okay. When y'all transmitted the description of the
5 vehicle, what occurred?

6 A At the time that we transmitted the description of
7 the vehicle, we advised them at which possible
8 direction that the subject was headed in. We also
9 gave a brief description of what he looked like. She
10 did state that he was a male, the victim did. And at
11 that time that's when Corporal Ginger Rogers (sic)
12 came across the radio and stated that she was behind
13 a vehicle that matched that description.

14 Q Okay. So, as you're putting out a description of the
15 -- how long after you put out the description of the
16 car and get out that it's a black male did she come
17 back?

18 A Probably less than 90 seconds.

19 Q Okay. So the initial description, somebody had
20 already come in with -- saying we have the -- we're
21 behind a car?

22 A Exactly. As soon as we gave out the description,
23 apparently Corporal Sanders was already behind the
24 vehicle located on Heidt Street.

25 Q Okay. And what occurred after that?

1 A To my knowledge, I was still at the location ---

2 Q Uh-huh.

3 A --- with the victim trying get her information. I
4 was advised over the radio that Corporal Sanders was
5 actually behind the subject. He was fleeing on foot.
6 He wasn't stopping for blue lights and sirens. He
7 was beginning to flee on foot. At that time they
8 went ahead and placed that no transmitting on the
9 radio because we lost contact ---

10 THE COURT: I'm sorry, you've got to slow down a
11 little bit, okay. You're talking too fast. I'm having
12 trouble understanding you. It's nothing personal but
13 just slow down a little bit.

14 THE WITNESS: Okay.

15 THE COURT: All right, continue.

16 Q They were transmitting that she was behind the
17 subject running on foot and then what?

18 A At that time we lost contact with her. I'm not sure
19 exactly what happened at that time but we could not
20 raise her on the radio.

21 At that time, Lieutenant Evans came across the
22 radio and placed a non-transmitting. He didn't want
23 anybody to transmit anything until we could actually
24 get her location because we had put out in the
25 description that he was armed.

1 Q Okay. And how long did that last?

2 A That approximately lasted about three minutes, three
3 to four minutes. At that time I was still at the
4 Time Warner Cable Building with the victim and
5 apparently some other officers then came in and went
6 ahead and he was captured over at 1505 Garden
7 Plaza.

8 Q Okay. And what if anything did you do at that time
9 when you found out he was captured?

10 A Once he was captured I was advised by my supervisor
11 to go ahead and get the victim, as well as her son,
12 bring her to the location to see if we could get a
13 possible identification.

14 Q Okay. And did you do so?

15 A Yes, I did.

16 Q Could you please describe how that went about?

17 A I placed the victim, as well as her son, in the back
18 of my patrol car. I have a cage that's in the back
19 of my patrol car. When I pulled up to the location
20 where the Defendant was supposed to be at, at that
21 time that's when the victim stated that she was
22 unable to see him. She asked me could I possibly get
23 a little bit closer because the cage that's in my car
24 was obstructing her view.

25 Q Okay. And did you do so?

1 A I did.

2 Q And what occurred at that point?

3 A As I moved closer, she went ahead and she looked
4 forward and that's when she stated, that's the man,
5 that's the man.

6 Q Did she seem that she was unsure in any way as to her
7 identification?

8 A No, not at all.

9 Q Did you point out to her who you wanted to pick in
10 this identification ---

11 A No, I didn't.

12 Q Okay. How long after the initial -- you got to the
13 Time Warner Cable Building to her pointing to him and
14 saying, that's the man, that's the man who did this?
15 How long was that?

16 A I would give it approximately 10 minutes from start
17 to finish.

18 Q Okay. Is the person that she pointed out, did he
19 match the description that she gave you?

20 A Yes, he did.

21 MR. CATHCART: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause.)

24 MR. CATHCART: Please answer any questions from
25 Defense counsel.

CROSS-EXAMINATION

BY MR. SHEALEY:

Q Officer Calloway, so you dispatched -- were dispatched for an emergency?

A Yes, I was.

Q You said you got there within three minutes of being dispatched?

A Approximately within three minutes.

Q Ms. Gilmore was there?

A Yes, she was.

Q And were you traveling alone or was another officer with you?

A I was traveling alone.

Q But you testified there as another officer that responded?

A Yes. Me and Officer Edwards were at the same location handling a call off of 25 -- at the 2500 block of Cherry Street. And that is approximately three minutes from the location especially when we're blue lights and sirens, everybody pretty much gets out your way.

Q Okay.

A So he was responded in his patrol car and I responded in mine.

Q The two of you?

1 A Affirmative.

2 Q And after determining it wasn't an armed robbery, you
3 put -- the radio was on and you put out the
4 description as you know it of a black male, that's
5 what you were told?

6 A Officer Edwards was the person that actually went
7 inside and made contact with the business to verify
8 if it was indeed an armed robbery. At that time I
9 was still standing at the doorway with the victim and
10 he went ahead and advised that it was a carjacking
11 and not an armed robbery.

12 At that time I began speaking with the -- with
13 the victim and she began to go ahead and tell us what
14 type of car it was, what color the car was and also a
15 brief description of what the individual looked at --
16 looked like.

17 Q So you put that out there on the radio in case any
18 patrol cars might see someone that fit the
19 description. Now, the description of the car was an
20 Intrepid, right?

21 A Correct.

22 Q The description of the suspect was a black man?

23 A Yes.

24 Q Okay. So that was out on the radio so people could
25 look for the Intrepid?

- 1 A A blue ---
- 2 Q With a black man in it?
- 3 A Correct.
- 4 Q Okay. Now, at some point you testified that it was
5 Corporal Ginger Sanders got behind this Intrepid and
6 you found out about that? That was on the radio?
- 7 A At the time she came across the radio and she stated
8 that she was behind the vehicle that matched the
9 description that the victim had stated that was --
10 that was taken from her. And at that time Corporal
11 Sanders came across the radio and stated that she was
12 behind a vehicle that matched that description and
13 the individual in it that was driving the vehicle
14 matched the description.
- 15 Q And while this is going on, I imagine you were
16 interviewing Ms. Gilmore, assessing the injuries,
17 that kind of thing, she was there with you guys?
- 18 A Correct.
- 19 Q You and the other officer?
- 20 A Correct. Just -- actually, Officer Edwards had went
21 ahead and exited the scene once Ginger Sanders came
22 across the radio.
- 23 Q So you were taking her statement -- at that time you
24 were taking ---
- 25 A I was taking her statement. I was talking to the

1 victim.

2 Q You testified that you learned that the suspect had
3 fled on foot. It was your understanding, based on
4 the radio communication, that he was running from
5 Officer Sanders at this time, correct? I mean,
6 that's how you kind of find out that the suspect was
7 being chased?

8 A Correct.

9 Q And you found out the suspect had been caught at
10 least, apprehended?

11 A Yes, I had.

12 Q And that was through the radio?

13 A Through the radio.

14 Q Okay. And at some point when you determine that he
15 was caught and the perpetrator was in custody, I
16 guess, you were told to bring Ms. Gilmore over?

17 A I was advised by my supervisor to go ahead and bring
18 the victim to the scene and she if she could possibly
19 identify him.

20 Q Who's your supervisor?

21 A Sergeant Deidre Priester.

22 Q Priester. And you said that was through your radio?

23 A Through my radio.

24 Q Okay. So you loaded up Ms. Gilmore and her son
25 William ---

- 1 A Yes ---
- 2 Q --- in the back?
- 3 A In the back seat of my patrol car.
- 4 Q Okay. And it took you a couple of minutes to get
5 over to the Gonzales Apartments?
- 6 A Just -- just a couple of minutes just to get over to
7 the location.
- 8 Q Now, y'all had Mr. Gilmore (sic) cuffed at this time?
9 When you pulled up he was cuffed? He wasn't just --
10 he wasn't still running or ---
- 11 A No, he was in handcuffs. He was being detained.
- 12 Q And you said you pulled up and Ms. Gilmore asked you
13 to pull up a little closer because there was a grate
14 in front of her view and she wanted to make sure she
15 could see?
- 16 A Yes, correct.
- 17 Q Now, when you pulled up, Mr. Mitchell was in a
18 cruiser?
- 19 A No, he was not.
- 20 Q He was outside?
- 21 A Yes, he was standing outside the vehicle.
- 22 Q And the officer that reported to Time Warner with
23 you, he was at the scene now?
- 24 A I believe Officer Edwards, it was quite a few that
25 were out there at the time at the scene.

- 1 Q Six, seven, eight, how many is quite a few?
- 2 A I couldn't speculate.
- 3 Q Okay. How many other suspects were there out there
- 4 at the time?
- 5 a There wasn't any other suspects out there. There were
- 6 other people in the area.
- 7 Q Were any of them cuffed?
- 8 A No.
- 9 Q So Mr. Mitchell was the only one cuffed?
- 10 A Yes.
- 11 Q And there were a number of -- quite a few officers
- 12 out there?
- 13 A Yes.
- 14 Q And they were, I imagine, around Mr. Mitchell?
- 15 A No, the only person that -- there wasn't a group of
- 16 officers around him. I believe some of the other
- 17 officers had exited the scene and began to canvas the
- 18 area to see if they could possibly see potential
- 19 witnesses or try to locate a weapon.
- 20 Q There were at least enough to make sure he wasn't
- 21 running anywhere?
- 22 A That's correct.
- 23 Q And quite a few officers, you said that you came in
- 24 one patrol car. And I'm not sure of the practice but
- 25 I imagine officers, there are quite a few number of

1 them, quite a few patrol cars out there as well?

2 A Actually there were probably about three to four
3 marked patrol cars and the rest were unmarked because
4 we do have investigators in narcotics that responded
5 to the scene and they in fact did not have marked
6 patrol cars.

7 Q Ms. Gilmore's blue Intrepid was at the scene, right?

8 A No, it was not at the scene. It was recovered from a
9 different location.

10 Q Okay. But when you were being communicated by -- via
11 radio, Corporal Sanders said she was behind a blue
12 Intrepid and you heard that?

13 A I heard that.

14 Q And Ms. Gilmore heard that too?

15 A No, she did not hear it. Ms. Gilmore was very upset
16 and in fact we almost had to call EMS for her because
17 she had just had surgery and she was complaining of
18 chest pains.

19 Q And how can you be certain that she didn't hear that
20 when you were tending to her?

21 A I was -- I'm just -- as far as the radio call goes,
22 normally it's very hard to decipher unless you know
23 what you're listening for.

24 Q And as far as the description of the alleged
25 perpetrator of this crime, it was black man with a

1 gun and that was the description that you
2 transmitted. And combine that with an Intrepid,
3 that's why this chase began?

4 A The chase began because the vehicle that Corporal
5 Sanders saw matched the description that was given to
6 us by the victim when I arrived on the scene.

7 Q A black male.

8 A That's what the description was.

9 MR. SHEALEY: Beg the Court's indulgence.

10 THE COURT: All right.

11 (Pause.)

12 Q Ms. Calloway, part of your work involves your radio
13 and that's how you're communicating with your fellow
14 officers. And you testified that that was on, that
15 was functioning, that's part of the reason Ms.
16 Sanders got behind this Intrepid in the first place.
17 You also testified previously that you had been
18 attending Ms. Gilmore at the time. So, you know,
19 when it came through that someone had gotten behind
20 -- and that Officer Sanders had gotten behind this
21 Intrepid, Ms. Gilmore heard all that. And she -- the
22 radio is on, it's not a headphone or anything, it's a
23 radio?

24 A (The witness nodded head.)

25 Q And she heard that?

1 MR. CATHCART: Your Honor, I would just point
2 out, it's asked and answered or now he's asking for
3 speculation.

4 THE COURT: What now?

5 MR. CATHCART: Asked and answered or speculation,
6 either way.

7 MR. SHEALEY: Your Honor, it's not speculation

8 ---

9 THE COURT: Stop. Go ahead and ask your
10 question. This is non-jury. I can sort it out, go ahead.

11 MR. SHEALEY: Thank you, Your Honor.

12 Q Do you mind answering the question?

13 A I'm assuming that she didn't -- I didn't ask her if
14 she actually heard the transmission. I'm assuming
15 that she didn't.

16 MS. SHEALEY: Okay. Nothing further.

17 THE COURT: Anything further of witness?

18 MR. CATHCART: No, sir.

19 THE COURT: You may step down.

20 (The witness leaves the witness stand.)

21 THE COURT: Call your next witness.

22 MR. CATHCART: The State calls William Gilmore.

23 (Pause.)

24 MR. CATHCART: Your Honor, while we wait for
25 Mr. Gilmore, can we approach real quick.

1 THE COURT: Yes, sir.

2 (Whereupon, a bench conference was held off the
3 record.)

4 (WILLIAM GALLOWAY, after being duly sworn,
5 testified as follows:)

6 THE CLERK: Please have seat and state your full
7 name for the record.

8 THE WITNESS: William Gilmore.

9 DIRECT EXAMINATION

10 BY MR. CATHCART:

11 Q Mr. Gilmore, you were at the Time Warner Cable on
12 Harden Street in Columbia for what purpose on
13 February the 1st of '08?

14 A To pay the cable bill.

15 Q Was anybody with you?

16 A My mother.

17 THE COURT: Stop, you've got to speak up a little
18 bit.

19 THE WITNESS: I'm sorry.

20 THE COURT: I just can't hear you.

21 THE WITNESS: My mother.

22 THE COURT: Thank you, that's better.

23 Q And when you went to the Time Warner Cable Building
24 with your mother, what did you do?

25 A I -- it was real busy. I pulled into a parking

1 place. Took the first one when somebody pulled out.
2 I went in. At first I saw there was a big long line,
3 I thought about leaving. But I didn't, I stayed and
4 ---

5 Q All right. When you went in, did you go in with
6 anyone?

7 A No, by myself.

8 Q Okay. And where was your mother at this time?

9 A Sitting in the car.

10 Q Okay. Can you describe the day, was it daytime,
11 nighttime?

12 A It was afternoon. It was beautiful. It was about 70
13 some degrees. I had the car window down.

14 Q Where was your mother when you left her?

15 A In the passenger seat.

16 Q Was the keys still in the car?

17 A Yes, sir.

18 Q Was the car running?

19 A No, sir.

20 Q What occurred as you're paying your bill or in there?

21 A I was standing in line and just waiting like
22 everybody else. And I happened to look over and I
23 just see my mom standing there. And she said, can
24 somebody help me, call the police, a man just put a
25 gun to my head and stole my car.

- 1 Q Okay. How did she appear at that time?
- 2 A Like she was about to faint.
- 3 Q What did do you at that point?
- 4 A I reached for my cell phone but I realized I left it
- 5 on the dash of the car. And I asked, can somebody
- 6 let me use the phone and they told there was one
- 7 right there on the wall. I picked it up and I called
- 8 911.
- 9 Q Okay. How long after you called 911 did it take the
- 10 police to a arrive?
- 11 A It seemed like minutes.
- 12 Q Okay.
- 13 A Quick.
- 14 Q Seemed really quick?
- 15 A I started hearing the sirens, yeah.
- 16 Q And what if anything happened when the police
- 17 arrived?
- 18 A I could hear on the officer's radio, I could hear
- 19 them -- I don't know who I was hearing but I could
- 20 hear them, they had the car in sight and ---
- 21 Q Okay. How did they know what was the car? Did you
- 22 that get a description of the car?
- 23 A Yes, I did on my 911 call.
- 24 Q Okay. Did your mother give the description of the
- 25 car?

- 1 A I can't remember.
- 2 Q Okay. How was -- how she reacting? What was her
3 demeanor and what was her condition when you were
4 talking to the police?
- 5 A If I had to describe, probably weak, probably
6 couldn't believe it just happened.
- 7 Q Was she being real talkative?
- 8 A No.
- 9 Q But you were the one that gave the description of the
10 car to the police?
- 11 A Yes.
- 12 Q Okay. And how long after you gave the description of
13 the car to the police that your hear about this,
14 they're right behind the car?
- 15 A Oh. I heard immediately when she came in to the Time
16 Warner place. I mean, she was trying to ask me
17 questions and I was like, they've got it, they've got
18 the car, you know, because -- I mean, it's just
19 commonsense, I could hear it.
- 20 Q Okay. And how long after they said they had the car
21 did y'all do anything outside of the Time Warner
22 Building?
- 23 A There was -- the officer took us, I remember -- it
24 wasn't very long. I mean, the whole process wasn't
25 very long. I mean, we just ---

1 THE COURT: Wait, hold on.

2 (Pause.)

3 GENTLEMEN: It's maintenance ---

4 THE COURT: The ghost of Gene Cooper, what was
5 that? You know who Gene Cooper is, don't you?

6 MR. CATHCART: No, sir, I don't.

7 THE COURT: Billy Hollis, tell them who Gene
8 Cooper is.

9 MR. HOLLIS: He's probably one of the greatest
10 drummers that ever lived.

11 THE COURT: Thank you. Go ahead, Solicitor. You
12 learn something new everyday, Solicitor, continue.

13 MR. CATHCART: Yes, sir.

14 Q You indicated y'all left the Time Warner Building how
15 long after you heard all this?

16 A Not long. She put us -- we got in the back of the
17 police car.

18 Q Okay. And then what occurred at that time?

19 A She just took us to this apartment complex.

20 Q Okay. And did she indicate to you that y'all were
21 going to pick out any suspect or pick out anybody in
22 particular?

23 A No.

24 Q Okay. What did she do, the officer?

25 A She took us to the apartment complex an it took a

1 while to get in there. And they said that they -- I
2 believe they had somebody arrested or something and
3 they wanted us to see if it was the person or see --
4 for my mom to see.

5 Q What did your mom do or what had happened?

6 A Well, we were in the back of a police car. My mom
7 was sitting by the window. I was kind of in the
8 middle of the hump. And we were like in the middle
9 of the road, you know, the paved road of the
10 apartment complex. And they brought him to like the
11 front of the car but we couldn't see because the
12 front seat's so high. And my mom asked them to bring
13 him a little bit closer so that we could see and then
14 she identified him.

15 Q Okay. You were there when she identified him?

16 A Yes, I was.

17 Q Would -- how would you characterize her
18 identification? Was she sure ---

19 A Oh, yeah, she was sure.

20 Q Had no doubt in her mind?

21 A No doubt. No doubt in my mind.

22 Q Did you have an opportunity to see the Defendant when
23 this all occurred?

24 A No.

25 Q I mean, I'm talking about the carjacking?

1 A No, no.

2 Q But you did see your mom's identification?

3 A Uh-huh.

4 Q What was her demeanor in the car? Was she still
5 faint and weak at that point?

6 A No, no, no. She was ready to get her car back
7 because she kept asking the officer, when could we
8 get our car, when can we get our car. That's what
9 she was asking, I want my car back, I want my car
10 back.

11 (Laughter.)

12 MR. CATHCART: Okay. Please answer any questions
13 from the Defense counsel.

14 CROSS-EXAMINATION

15 BY MR. SHEALEY:

16 Q How are you, Mr. Gilmore?

17 A All right.

18 Q You were helping your mom pay your cable bill that
19 day, right?

20 A I was paying my cable bill that day.

21 Q Okay and she was along with you ---

22 A Right. Actually we were going to buy a bulldog,
23 English bulldog. And we were going to the pet store
24 in Five Points, to get a crate and get stuff to bring
25 the dog home. And I didn't know there was a Time

1 Warner place there and I actually seen it and I said,
2 you know, the cable bill, I'm going to go in here and
3 pay it, a last minute thought.

4 Q On the way to get the bulldog, you realize you can
5 pay your bill and you can do it all in one location?

6 A Right.

7 Q Okay. But you had gone inside?

8 A I had gone inside.

9 Q Okay. And your mother was with you there just to
10 accompany you?

11 A Right.

12 Q Okay. Going to get the puppy?

13 A Uh-huh.

14 Q Okay. So you said the first time you saw her was
15 when she was kind of coming up to Time Warner and
16 that's when you learned what's happened?

17 A The first time I saw her she was actually just
18 standing there.

19 Q Just standing there?

20 A I mean, it was such a long line, I was probably half
21 way between their door and where you get to the check
22 out.

23 Q She didn't come inside the building?

24 A Right. I looked over and she was already standing
25 there.

- 1 Q You didn't have your phone but you borrowed a phone
2 from someone to call ---
- 3 A No, I used the phone, Time Warner phone that's right
4 there on the wall.
- 5 Q On the wall?
- 6 A Uh-huh.
- 7 Q Okay. So you used the Time Warner phone to call 911?
- 8 A Yes, sir.
- 9 Q And you said your mom was a little shook-up at that
10 time. Did she faint -- feel faint ---
- 11 A Well, I mean, she was just a little shook-up, I mean,
12 like you would be if you just had somebody rob you,
13 take your ---
- 14 Q And you called and I've got the 911 dispatch. And
15 you told them that she about passed out?
- 16 A Well, I -- you know, I was like probably as far we
17 are apart from each other and, you know, someone was
18 helping her and she sat down. I didn't know if she
19 was going to pass out, I thought.
- 20 Q You told them she was going to pass out?
- 21 A Right.
- 22 Q She was faint and didn't look too good. You said
23 soon after the Columbia units arrived. How many
24 units were there at Time Warner?
- 25 A There was none there at the time but as soon as I

- 1 hung up the phone and went over to my mom you could
2 almost hear the sirens already. And then an officer
3 got there and she was trying to ask us more questions
4 but I could -- you know, all we were concerned then
5 -- by that time my mom was fighting mad. She, you
6 know, wanted her car back and she came to and ---
7 Q She came to?
8 A Well, not came to. You know, got her senses
9 together, I mean ---
10 Q She didn't ---
11 A If you fell down on the ground, you know, she brushed
12 herself off and she wanted her car back.
13 Q Sure, sure.
14 A It was obvious, I mean, you could hear it, you know.
15 Q Okay. How many officers were there at Time Warner?
16 A I just remember the one lady because that's the one
17 that was questioning us.
18 Q She was tending to your mom?
19 A No, she wasn't tending to her. She was just trying
20 to get more information so they could help us.
21 Q You called in 911, you were giving the description of
22 the vehicle?
23 A Yes, sir.
24 Q And so when the officer arrived and questioned you
25 and your mother, she put that on the radio and let --

- 1 let the officer know what was going on?
- 2 A I -- I ---
- 3 Q Well, they knew and you and your mom were able to
- 4 hear when the officer -- Officer Sanders got behind
- 5 this vehicle?
- 6 A Excuse me?
- 7 Q You testified that you were able to hear when they
- 8 located the vehicle, the officer?
- 9 A Right, right. I don't know what officer ---
- 10 Q Right.
- 11 A I could -- you know, it's commonsense ---
- 12 Q You heard on the radio ---
- 13 A Uh-huh.
- 14 Q --- that they've got the car, they're following it?
- 15 A They were following it, uh-huh.
- 16 Q Okay. And then you were able to determine based on
- 17 the radio and the cops putting you in -- these
- 18 officers putting you in their vehicle to take you
- 19 over to the location, you knew they had someone?
- 20 A No, I didn't even know if they had the car for sure.
- 21 It just -- you know, because we kept asking, did you
- 22 find our car and she wouldn't tell us, the officer
- 23 wouldn't tell us.
- 24 Q You didn't know where you were going?
- 25 A No.

- 1 Q Okay. Eventually you figured out, you were at
2 Gonzales Gardens Apartments, they brought you over
3 for the purpose of trying to identify a suspect?
- 4 A Uh-huh.
- 5 Q You and your mother, you didn't see anything but your
6 mother ---
- 7 A Right.
- 8 Q -- you were there with her?
- 9 A Uh-huh.
- 10 Q You testified that you were in the back seat of the
11 officer's cruiser?
- 12 A Uh-huh.
- 13 Q There was a grate?
- 14 A No, there wasn't a grill, there was just a high seat,
15 back seat.
- 16 Q So there wasn't a grate?
- 17 A No.
- 18 Q Okay, it was high seat then?
- 19 A Right. But there was a clear view.
- 20 Q You were in the middle, she was on the right?
- 21 A She was on my left.
- 22 Q Okay. You're in the middle, she was on the left?
- 23 A Uh-huh.
- 24 Q How many officers did you see there?
- 25 A It seemed like a bunch of police cars. I didn't

1 count. Lots of residents coming out of their
2 apartments.

3 Q A lot of flashing lights and police cars?

4 A I heard a lot of sirens, not so many flashing lights.

5 Q And they had a suspect and he was in handcuffs?

6 A I believe he was.

7 Q Okay. Did they -- I mean, they had to bring him to
8 the front of your vehicle, you testified. Where did
9 they get him from? Did you see where they got him
10 from?

11 A No.

12 Q How many officers were with him when they brought him
13 in front of the vehicle?

14 A I don't remember.

15 Q A couple?

16 A Yeah, it's hard to remember that, I mean.

17 Q Okay.

18 A There was a bunch of law there.

19 Q Okay. Did you at any time ever see the blue Intrepid
20 when you pulled up?

21 A No. At this time we still didn't know where the car
22 was.

23 MR. SHEALEY: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. SHEALEY: No further questions, Your Honor.

1 THE COURT: Anything further of this witness?

2 MR. CATHCART: Nothing else.

3 THE COURT: You may step down, sir.

4 (The witness leaves the witness stand.)

5 MR. CATHCART: Your Honor, the State calls Norma
6 Gilmore.

7 THE COURT: Yes, I think she's got it.

8 Well, we're going to have to swear her, I do
9 believe, before she testifies.

10 MR. CATHCART: Yes, sir.

11 (NORMA GILMORE, after being duly sworn,
12 testified as follows:)

13 THE CLERK: Okay ---

14 THE COURT: And Solicitor, she's going to have to
15 speak so I can hear her. I had trouble hearing the first
16 two witnesses. Put the microphone closer to her.

17 DIRECT EXAMINATION

18 BY MR. CATHCART:

19 Q Ms. Gilmore, you're going to have to talk louder,
20 okay?

21 A Okay, I'll try.

22 Q Speak into these microphones.

23 A Yes, sir.

24 Q Ms. Gilmore, when you went with your son to the Time
25 Warner Cable place, did you stay in the car?

- 1 A No, I did not stay -- yes, I did stay in the car.
- 2 Q Okay.
- 3 A Yes.
- 4 Q Where did your son go?
- 5 A He went in to Time Warner to pay the cable bill.
- 6 Q Okay. And where were you situated? Where were you?
- 7 A I was situated in the front seat in the passenger
- 8 side, on the right hand side?
- 9 Q Okay. Was it a clear day?
- 10 A Yes it was, very clear.
- 11 Q Okay. What if anything unusual happened while you
- 12 were sitting in that car?
- 13 A Well, I was sitting in the car and all of a sudden
- 14 this gentleman came and pulled the door open on the
- 15 driver's -- the driver's door.
- 16 Q The door -- not your door but the other one?
- 17 A No, he didn't pull my door. He did pull it up later
- 18 but ---
- 19 Q Okay.
- 20 A He had -- I was sitting there and he said -- kept
- 21 saying to me, he said, get out of the car, get out of
- 22 the car. If you don't get out of the car I'm going
- 23 to shoot you, I've got a gun. And he -- at that time
- 24 he had put the gun right there (indicating) in my
- 25 ear.

1 Q Okay, did you hop out of the car right then?

2 A No, sir. I could not hop out of the car because I
3 had just -- was trying to recover from back surgery.
4 I had back surgery, I had a broken back.

5 Q So you were stuck right there in that seat?

6 A Yeah. I was sitting in the passengers side on the
7 seat.

8 Q Were you looking at him while he was doing all this
9 to you?

10 A Yes. Yes, I was looking at him.

11 Q How far away from him were you?

12 A Well, the car seat ---

13 Q Yes.

14 A And he had -- my son had left the keys in the car.
15 He said, mamma, you might need to shut it off or
16 something and he left the keys in the car for me.

17 Q Okay. So how close is the Defendant or the person
18 who did this to you, how close was he to you when he
19 had a gun to your face?

20 A He wasn't very -- I don't know the feet or -- but I
21 know he come in and put the gun to my -- he hit me
22 then the next time he put it in my ear.

23 Q And you were looking at his face during that entire
24 time?

25 A I was looking at his face and then I turned my head

- 1 to look to see where my son was. I thought perhaps
2 he would have been out by now, so ---
- 3 Q And when you noticed your son wasn't there, what
4 occurred next?
- 5 A He -- he ran around the car.
- 6 Q Who ran around the car?
- 7 A The man that put the gun to my ear.
- 8 Q Okay.
- 9 A And he opened my door and he pulled me by my -- this
10 arm (indicating) -- he pulled me by this arm. He
11 pulled me out of the car. And he -- the door was
12 open. He left the door open and I couldn't turn
13 around ---
- 14 Q Wait, wait. When he grabbed you by the arm, what did
15 he do then?
- 16 A He went back around the car and he got in the car.
- 17 Q When he grabbed you by the arm, did he pull you out
18 of the car?
- 19 A Yes, sir.
- 20 Q Okay. And he left you standing right there by the
21 door?
- 22 A I was standing right there, yes, sir.
- 23 Q Okay. Did you -- were you able to see his face at
24 that time?
- 25 A Yes, I was, sir.

- 1 Q Did get a good clear look at him?
- 2 A I certainly did.
- 3 Q Okay. And then what occurred after he left you there
- 4 in the open door?
- 5 A He opened -- well, he went back around the car and
- 6 got in the -- driver's car (sic) and he went off very
- 7 fast.
- 8 Q Okay.
- 9 A I mean, he was very fast.
- 10 Q And what happened when he went back really fast?
- 11 A Well, he -- after he -- I was trying to get into Time
- 12 Warner to get some help and -- because I knew my son
- 13 was in there.
- 14 Q Okay. Now when he backed up the car, did the car hit
- 15 you in any way?
- 16 A Yes, it hit -- the car door hit me in the back.
- 17 Q Okay, did it knock you to the ground or did it just
- 18 bump you?
- 19 A He bumped me. You know, I never did fall or anything
- 20 like that. He just bumped me hard.
- 21 Q Okay. And the man that did all this, you were able
- 22 to see him clearly inside the car?
- 23 A Yes, sir.
- 24 Q And you saw him clearly outside of the car?
- 25 A Yes, sir.

1 Q And then you went to the Time Warner Building?

2 A Yes, sir.

3 Q Okay. And what did do you in there?

4 A Well, I hollered for help. There was somebody, I
5 can't tell you whether it was a man or a woman,
6 opened the door and I was dirty and all -- I had
7 blood coming out of my ear and everything.

8 Q Okay. And did -- what happened when you got in
9 there?

10 A When I got in there I hollered and Bill said, that's
11 my mom. I could hear him hollering, that's my mom.
12 And some of the ladies in Time Warner helped me in a
13 chair.

14 Q Okay.

15 A And Bill called on the house phone. They let him
16 have the courtesy phone and he called the police at
17 that point.

18 Q And did the police come and ---

19 A Immediately.

20 Q They were there quickly?

21 A Very quickly.

22 Q Okay. And how long was it until you were able to see
23 the man who did this to you again? How long did it
24 take for them -- for you to see the man who took your
25 car again?

1 A Well, it wasn't too long because they caught him and
2 they put my son and I in the back seat of the car.

3 Q Okay.

4 A Of the police car and took me over to -- I think they
5 said it Gonzales Gardens or some place over there. I
6 had never heard or seen the place before.

7 Q Okay.

8 A And they brought him up to the car for me to see who
9 it was and it was definitely him.

10 Q Were you able to see him clearly at first?

11 A Yes, I was.

12 Q Did you ask them to move the car at all?

13 A Yeah, I asked them to bring him up a little closer
14 because I wanted to make sure. The seats on the
15 police car was real high, the back -- you know, the
16 front seat, we was in the back seat. And they
17 brought him up there and it was definitely the same
18 man that took my car.

19 Q And you're positive of that?

20 A I am very, very, very, positive.

21 Q A hundred percent positive?

22 A One hundred.

23 Q Did you have an ample opportunity to see him there
24 when they had him at the scene? I mean, when they
25 asked you -- when you looked at the guy this time,

1 did you have a good opportunity to see him then?

2 A Yes, sir, I did.

3 MR. CATHCART: Okay. Please answer any questions
4 from the Defense counsel.

5 CROSS-EXAMINATION

6 BY MR. SHEALEY:

7 Q Hi, Ms. Gilmore. I'm going to bring this a little
8 closer so we can hear each other, okay?

9 A That will be fine.

10 Q Okay. Ms. Gilmore, you just testified to Mr.
11 Cathcart that they caught him. When did you know
12 they caught him?

13 A I can't hear you, sir.

14 Q I said, Ms. Gilmore, you just testified to Mr.
15 Cathcart that they caught him. When did you hear
16 that they caught him?

17 A When did I see the car again?

18 Q I'm sorry, no. When you realized they had caught
19 him, when did you realize -- when did you hear that
20 they had caught the man who took your car?

21 A Just a few minutes after my son had went into -- oh,
22 I guess it was less than five minutes, maybe five
23 minutes or more, I wasn't exact on that. And all of
24 a sudden the door opened on the driver's side and I
25 looked ---

- 1 Q Yes, ma'am.
- 2 A I said to myself, I said ---
- 3 Q Let me ask you one question.
- 4 A Yes, sir.
- 5 Q Who did you hear, who told you they caught the man?
- 6 Who told you they caught the man? Who did you hear
- 7 that from?
- 8 A Oh, I heard it from -- oh, there was so many people
- 9 around there at that moment. They -- everybody knew
- 10 -- everybody told me he caught. And then the police
- 11 officer, there was a lady police officer, put us in
- 12 the car and took us down to Gonzales Gardens.
- 13 Q Did you hear the police officer that she put you in
- 14 her car, did you hear her radio? Did you hear about
- 15 the chase that happened?
- 16 A Huh?
- 17 Q Did you hear about the chase that happened on the
- 18 radio, the police officer's radio, they wear radios?
- 19 A I heard -- I heard it, yes.
- 20 Q And you heard they got behind a blue Intrepid that
- 21 you thought was your car?
- 22 A Yeah.
- 23 Q And you were sure they got him?
- 24 A They -- they took the car down to Gonzales, that's
- 25 where they brought him up for me to identify him.

1 Q And when you heard that they had recently found that
2 blue Intrepid that matched your car, you were pretty
3 sure that was him?

4 A Yeah.

5 Q Okay. Ms. Gilmore, how old are you?

6 A (No response.)

7 Q How old are you?

8 A 75.

9 Q Were you 75 at the time of this incident or ---

10 A Yeah, I was 75.

11 Q Okay. And you mentioned that you had recently had
12 back surgery, you had broken your back?

13 A I had broken my back. I had back surgery. I went
14 into a diabetic comma and fell and broke my back.

15 Q Okay, I'm sorry about that. What was the date of
16 that back surgery? What date did you have back
17 surgery, do you remember?

18 A I can't remember the exact date I had the back
19 surgery.

20 Q How far before this incident, the carjacking was that
21 surgery?

22 A It was -- it was maybe a month -- a month or
23 something like that.

24 Q You had a back surgery about a month before the
25 carjacking happened?

- 1 A Yeah, yeah ---
- 2 Q Okay.
- 3 A --- about a month.
- 4 Q Are you prescribed any medication to deal with the
- 5 pain of the back surgery?
- 6 A No, I don't.
- 7 Q You don't take any medications?
- 8 A No.
- 9 Q Were you prescribed any medication after --
- 10 immediately after the surgery?
- 11 A I had -- if I need it. I have the pain medicine if I
- 12 need it but I don't need it right -- all -- everyday.
- 13 Q Right but I imagine like immediately after the
- 14 surgery, if you had broken your back, it probably was
- 15 very painful?
- 16 A (No response.)
- 17 Q I'm asking you, after the back surgery, I would
- 18 imagine -- it sounds pretty painful?
- 19 A Back surgery is painful.
- 20 Q What medication were you prescribed for that?
- 21 A I wasn't sure what it was. They just said it was my
- 22 pain pills and I took it. The doctor gave it to me
- 23 and I took it.
- 24 Q How many times a day did you take that?
- 25 A Maybe one time, two times, it depends on ---

- 1 Q So it was as needed, it was as needed, whenever ---
2 A As needed, yes.
3 Q As needed?
4 A As needed.
5 Q Okay. And how was your back feeling that day?
6 A How was my back feeling that day?
7 Q Uh-huh.
8 A I was feeling real well.
9 Q That's good, that's good. Because of your surgery,
10 are you allowed to drive?
11 A Oh, of course I am. I have my driver's license.
12 Q Right. So that didn't affect your driving? That
13 wasn't why you were in the passenger seat?
14 A No.
15 Q Okay. So you can drive?
16 A Yes, I can drive.
17 Q I notice you're wearing glasses.
18 A Well, of course I do.
19 Q I do too. Today I'm wearing contacts. But were you
20 wearing your glasses that day?
21 A Yes, I was.
22 Q Okay. Do you keep your glasses on or do you take
23 them off? Is it for all time vision correction or
24 just sometime?
25 A I take them off sometimes and do the cleaning and put

- 1 them back on.
- 2 Q Okay. But you definitely had them on that day?
- 3 A I definitely had my glasses on. I wear my glasses.
- 4 Q Okay. When you take them off, do you put them in
- 5 your purse and kind of leave them with you or?
- 6 A I do.
- 7 Q I said when you do happen to take your glasses off do
- 8 you take them off and put them in your purse or
- 9 anything, when you travel around?
- 10 A No, I don't take my glasses off very often.
- 11 Q Okay, very good. Do you remember giving a statement
- 12 to Investigator Pegram? This would have been at the
- 13 Columbia Police Headquarters after this incident.
- 14 A Yes, I did.
- 15 Q And it's important to give a statement kind of after
- 16 these things because your memory is more fresh at
- 17 that time as opposed to what it would be today, is
- 18 that safe to say?
- 19 A Are you trying to think -- are you trying to make me
- 20 think I'm crazy?
- 21 Q No, ma'am. I am asking you if your memory would be
- 22 fresher on the day you gave the statement, that's
- 23 when your memory was the most fresh, when you gave
- 24 the statement?
- 25 A Yes.

1 Q Okay. And you remember giving a statement, is that
2 ---

3 A I remember the day from ---

4 Q You remember -- okay.

5 MR. SHEALEY: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q Ms. Gilmore, I'm going to show you what is your
8 statement. Do you recognize this? Now I've
9 highlighted it a little bit but is that your
10 statement? Is that the statement you gave to
11 Investigator Pegram?

12 A Let's see, this is my signature. Yes, sir, that is.

13 Q Okay.

14 A And here.

15 Q And you see the date?

16 A Okay, and here it is again.

17 Q Okay. So you recognize that to be your statement?
18 It's not anyone else's but yours?

19 A That is the statement that he wrote.

20 Q Okay.

21 A Because I was too upset to write it.

22 Q Okay, I'll just take that.

23 A And that is my son, William Gilmore is my son.

24 Q Yes, ma'am. Yes, ma'am. I just want to confirm
25 that. Before I -- before I talk to you about this

- 1 though, your son did mention that you passed out, you
2 were feeling faint. How did you feel immediately
3 after this carjacking? You said ---
- 4 A Well I didn't feel wonderful.
- 5 Q You didn't feel wonderful. Did you faint for a
6 little bit there after that? You were on the ground,
7 you had to get up, did you faint at all?
- 8 A I didn't feel wonderful. I didn't wonderful. I went
9 home after that and...
- 10 Q Yes, ma'am, at Time Warner there, did you have to sit
11 down, were you feeling like you were going to faint
12 after ---
- 13 A Yeah, I still have the pain in my ear here.
- 14 Q Okay. You said blood was coming out of your ear?
- 15 A It was this ear (indicating).
- 16 Q Is that from the gun?
- 17 A That's where he put the -- this one here (indicating)
18 is the ear he put the gun in.
- 19 Q Uh-huh and that's where you were bleeding from?
- 20 A Bleeding here?
- 21 Q You were bleeding from your left ear, is that what
22 you're showing me?
- 23 A No, he was on my right -- the left ear.
- 24 Q Okay.
- 25 A That's what I'm showing. Well he put -- this is

1 where he put the gun (indicating), in my right --
2 left ear.

3 Q From the driver's side?

4 A Yes because I was in the front seat -- in the front
5 seat, yes.

6 Q Yes, ma'am. And what I'm trying to ask you is, after
7 this ordeal, you felt a little faint, didn't you?

8 A Well, yeah, of course, you do.

9 Q I'm just trying to get all the details, yes, ma'am.

10 A Okay. I'm just telling you the details.

11 THE COURT: Just ask the question, don't argue
12 with the witness. Just ask the question

13 MR. SHEALEY: I wasn't.

14 THE COURT: You can ---

15 THE WITNESS: I'm not arguing.

16 THE COURT: No, No, no, ma'am. I'm telling him
17 not to argue with you. Relax. Just ask a question.
18 Don't go back and forth with the witness.

19 MR. SHEALEY: Certainly, Judge.

20 THE WITNESS: Oh.

21 Q You gave a statement and in that statement you
22 described the man that carjacked you. And I'll read
23 this to you.

24 A I have one of them.

25 Q Yes, ma'am, I'm sure you do.

1 THE COURT: Give her a copy of it.

2 (Pause.)

3 THE COURT: Do you have a copy?

4 MR. CATHCART: Yes, sir, but I would like to
5 follow along with it. They have an extra copy as well, if
6 I may.

7 MR. SHEALEY: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes.

10 THE WITNESS: I have mine. Sir, I have mine.

11 MR. SHEALEY: The Judge just wants you to follow
12 along with it.

13 THE COURT: That's a copy of your statement.

14 THE WITNESS: Oh, that will be fine. I will.

15 Q Okay. I'm just going to read you a portion of this
16 statement ---

17 A Yes, sir.

18 Q --- related to this incident.

19 (Reading) I waited outside and was sitting in the
20 front passenger -- passenger's while I was waiting
21 for William to return. A black man snaps the
22 driver's door open. He put a gun to the side of my
23 head -- and pardon my language -- told me, bitch, get
24 out of the car or I'll shoot you. He said this many
25 times as I was getting out of the car. I was having

1 trouble getting out of the car because I had had back
2 surgery. The black man didn't wait for me to get out
3 before he started backing up. He almost knocked me
4 down. He drove away very fast.

5 That's all I -- do you remember giving that
6 statement to Investigator Pegram?

7 A Yes, sir.

8 Q Okay. Now, you testified that he came around the
9 other side of the car?

10 A He did. He went round the -- he got -- he run around
11 the front of car, opened my door and pulled on me.

12 Q Yes, ma'am?

13 A Because I couldn't get out of the car very fast
14 because I had my cane and all of that.

15 Q But you didn't put that in your statement to
16 Investigator Pegram?

17 A Well, I did, I couldn't get out of the car fast.

18 Q But it wasn't in your statement. Now, when this man
19 approached you ---

20 A Yes, sir.

21 Q --- did you notice what he looked like other than a
22 black man?

23 A Yes, he was.

24 Q He was a black man?

25 A Yes, sir.

- 1 Q Did you notice his hair?
- 2 A I'm sorry, I didn't hear you.
- 3 Q Did you notice his hair?
- 4 A Yes, I did.
- 5 Q Did you notice how tall or short he was?
- 6 A (No response.)
- 7 Q I'm sorry, did you notice how tall or short he was?
- 8 A I can't hear you, son.
- 9 Q Did you notice how tall or short he was?
- 10 A Yes -- yes, I did.
- 11 Q Did you notice the clothes he was wearing?
- 12 A Yes, I did.
- 13 Q But that's not in your statement to Investigator
- 14 Pegram?
- 15 A Well, I -- I'm telling you though.
- 16 Q Yes, ma'am. Yes, ma'am. And you saw this gun when
- 17 he put it to your ear?
- 18 A He put it in my ear.
- 19 Q In your left ear. So coming from the driver's side,
- 20 he put it in your left ear?
- 21 A Yes.
- 22 Q And you weren't able to really describe the gun, were
- 23 you? I'm sorry, you weren't ever able to describe
- 24 the gun, were you, Ms. Gilmore?
- 25 A Drive again?

- 1 Q Were you able to describe the gun to anyone?
- 2 A No. I'm sorry, I can't -- I don't know one gun from
3 the other one.
- 4 Q Okay. Okay.
- 5 A But I know it was a gun.
- 6 Q Yes, ma'am. Now, when they took you to Gonzales
7 Gardens, you knew why you were going there, right,
8 Ms. Gilmore?
- 9 A Yes, I was going there to identify the gentleman
10 because they told me he was -- they had him and they
11 -- that lady taking my son and I down there.
- 12 Q Okay. And the seat was high?
- 13 A The seat, the front seat back was high, yes.
- 14 Q Did you see your vehicle when you came in there?
15 Were you able to see your Intrepid when you came in
16 there?
- 17 A No. When I came in there, no, sir, I didn't. They
18 brought it up to me. They brought it up.
- 19 Q Okay.
- 20 A And they took it down to I think it was the city
21 garage or something.
- 22 Q Okay. Now, when they brought you in there, you were
23 in the back seat and they brought a man to your
24 window ---
- 25 A They brought the man that hit me and taken my car to

1 the window.

2 Q And he was handcuffed?

3 A Huh?

4 Q He was handcuffed?

5 A Yes, he was.

6 Q And were there any other men handcuffed there other
7 than him?

8 A I didn't see any other man handcuffed.

9 Q And there were a number of officers there with him?

10 A I couldn't tell you how many officers was there.
11 There was lots of people gathered around. Why, I
12 don't know.

13 Q Okay. And you looked at him through the window of
14 the vehicle?

15 A I looked at him, yes, I did very clearly and I could
16 see him very good.

17 Q Okay.

18 A 100 percent good.

19 Q Yes, ma'am. Do you remember giving a statement to
20 Investigator McDougall from the Richland County
21 Public Defender's office at any time?

22 A Well...

23 Q This would have been on August the 11th, 2008, a man
24 would have come and said, I'm from -- I'm an
25 investigator for the Richland County Public

1 Defender's office. Do you remember that?

2 A He was -- I think he was at the house or something.
3 I don't know where I was at, I couldn't tell you.

4 Q Yes, ma'am?

5 A Or whether I did or not.

6 Q Yes, ma'am. And you told him that this made the
7 news, this carjacking made the news?

8 A Oh, did it?

9 Q I'm asking you, that's what you told him, that it
10 made the news?

11 A Well, I didn't know it made the news.

12 Q You don't remember watching it on the news at all?

13 A I do watch the news, yes, I do.

14 Q You remember the story about this carjacking on the
15 news?

16 A Yes, I remember but I didn't...

17 Q And how long did that story run, do you remember?

18 A I have no idea ---

19 Q Okay.

20 A --- how long it run.

21 MR. SHEALEY: Beg the Court's indulgence.

22 (Pause.)

23 MR. SHEALEY: Thank you, Ms. Gilmore, no further
'24 questions.

25 THE COURT: Anything further of this witness?

1 MR. CATHCART: No, sir.

2 THE COURT: All right. You may step down, Ms.
3 Gilmore, help her down.

4 (The witness leaves the witness stand.)

5 MR. CATHCART: That's all the State has as to
6 identification on this point, Your Honor.

7 THE COURT: All right. Any motions?

8 MR. SHEALEY: Your Honor, we'd like to call
9 Mr. Mitchell.

10 THE COURT: All right.

11 (NORMAN MITCHELL, after being duly sworn,
12 testified as follows:)

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

15 THE DEFENDANT: Actually my name is Norman Carol
16 (phonetic) Mitchell, Jr.

17 DIRECT EXAMINATION

18 BY MR. SHEALEY:

19 Q Norman, February 1st, 2008, when you were arrested,
20 they brought Ms. Gilmore to ID you. When they
21 brought her up, where were you? Tell me where you
22 were.

23 A I was in the back seat of the police car.

24 Q You were in the back seat of the police car. Were
25 there any officers in the car with you?

1 A The transportation officer was in the front seat.

2 Q Okay. How many officers did you see at Gonzales
3 Gardens Apartments?

4 A Around -- I know for a fact, it was at least six
5 because I remember the faces along with the K-9
6 officer who snatched me out the car.

7 Q Okay. Did they tell you someone was coming to look
8 at you? Did you know why you were being taken from
9 the car?

10 A I could hear on the front seat on the radio they said
11 that they're bringing the victim around right now.

12 Q Okay. Did you see her approaching?

13 A No, sir.

14 Q Okay. How many officers escorted you from the
15 vehicle?

16 A I told them I wasn't getting out of the car because I
17 didn't do anything wrong. I said, you have the wrong
18 man. So they said, yes, you are getting out the car.
19 The K-9 investigator works for the state police and I
20 recognized his face frankly because he used to work
21 in the Eau Claire area. He was the one that snatched
22 me out of the car along with Mr. Smalls, he was
23 standing there.

24 Q So you were in handcuffs, the two officers ---

25 A Yes, sir.

1 Q --- as you say, snatched you out of the car?

2 A Yes, sir.

3 Q And you said there were about eight other officers,
4 six to eight?

5 A Maybe from five to eight officers.

6 Q Okay. Now, Ms. Gilmore came up, where was she? Did
7 they bring her to you or you to her?

8 A Actually it was a car, they told me to get out the
9 car, as I got out the car, the car was coming -- they
10 told me to look this way (indicating) and I had to
11 look behind me because our car was parked like this,
12 this way (indicating). And I was in the back seat.
13 So they told me to turn around.

14 So when then they snatched me out of the car
15 still I didn't have any shirt on, he said -- I heard
16 on the radio, I said, well, I'm sorry, y'all got the
17 wrong man and ---

18 Q I'm sorry, who said that?

19 A I was telling -- I was telling the investigators, I'm
20 sorry, y'all got the wrong man, we can just get this
21 over with now. And he took my jacket because my
22 jacket was on the back seat of the car. I didn't
23 have no shirt on. They took my shirt and put my
24 shirt on the back seat of the car.

25 And I was handcuffed when he told me, look this

1 way. So I had to turn around and look. When I
2 looked this way (indicating) someone came on the
3 radio and said, I'm not sure if that's him. And I
4 could hear on the radio because the officers -- the
5 transportation officer was standing there along with
6 Mr. Smalls and maybe about four or five other
7 officers and along with the K-9 officer. And they
8 told me to turn to the side, so I had to look behind
9 me and then I turned to the side and they told me to
10 turn around this way (indicating). So I was in two
11 positions.

12 Q So at first you heard someone say, that's not him.
13 And did you turn around and show the other side?

14 A Yes, sir.

15 Q Okay. Now, Ms. Gilmore, the victim, did she ever get
16 out of the car?

17 A No, sir.

18 Q She was always in the car?

19 A I could barely see her, like this right here to the
20 door, but I could look up and see someone grabbing or
21 holding her up to the back -- back of the window, the
22 back seat to sliding part of the window.

23 Q Excuse me. Was anyone else handcuffed other than
24 you?

25 A No, sir.

1 Q No other black man handcuffed other than you?

2 A No, sir.

3 MR. SHEALEY: Nothing further.

4 THE COURT: Mr. Cathcart.

5 MR. CATHCART: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. CATHCART:

8 Q Mr. Mitchell, when you ran from the Intrepid, you ran
9 across this way (indicating) towards Gonzales
10 Gardens, is that correct?

11 MR. SHEALEY: Objection, Your Honor, this is ---

12 THE COURT: Basis of the objection?

13 MR. SHEALEY: It's an evidentiary hearing about
14 the ID. He's getting into the chase, factual matters ---

15 THE COURT: Overruled. This is nonjury,
16 gentlemen, calm down. Ask the question.

17 Q When you ran out of the Intrepid, you ran across,
18 passed this Harley's Barber Shop into the Gardens,
19 correct?

20 (Pause.)

21 A Yes, sir, that's correct.

22 Q That's correct?

23 A (The witness nodded head.)

24 Q And when you ran that way you were taking off your
25 jacket, taking off your shirt, correct?

- 1 A No, sir, that's not correct.
- 2 Q That's not correct. And you dropped the victim's
3 cell phone right beside the barber shop, correct?
- 4 A Yes, sir.
- 5 Q You did do that?
- 6 A (The witness nodded head.)
- 7 Q Okay. And they found you hiding behind the storm
8 door behind C-3 in building C in Gonzales Gardens,
9 correct?
- 10 A I'm not sure of the building, sir.
- 11 Q But you were hiding behind the storm door?
- 12 A I was standing in the doorway.
- 13 Q Standing in the doorway. And did you know the people
14 in C-3?
- 15 A The building next door, the house next door to it --
16 the apartment building next door to it.
- 17 Q But you were hiding -- you were standing this way in
18 -- you weren't hiding from anybody, you were just
19 standing there?
- 20 A Yes, sir. I was hiding from someone.
- 21 Q Who were you hiding from?
- 22 A The Columbia Police Department.
- 23 Q Okay. And they caught you there, correct?
- 24 A Yes, sir.
- 25 Q Okay. How long after they placed you in custody did

1 the victim come up and take a look at you, about five
2 minutes or so, right?

3 A Maybe, so.

4 Q They were pretty quick, right?

5 A Yes, sir.

6 Q Okay. Were the cops pointing at you like this
7 (indicating)?

8 A No, sir.

9 Q Did they give you any indication that they wanted to
10 pick you out? They didn't, did they? They just had
11 you standing there, correct?

12 A No, sir. I refused to get out of the car repeatedly
13 the first time.

14 Q But they didn't drag you out in front of the victim,
15 they had you out the car, correct?

16 A The K-9 officer actually pulled -- snatched me out of
17 the car, Mr. Cathcart.

18 Q Before the victim came in?

19 A I was ---

20 Q Or what's your story, or was it after the victim came
21 in?

22 A The car was behind me. I couldn't see where the car
23 was. I told them I wasn't getting out the car.

24 Q Okay. But so you have no idea where the victim was
25 when you were taken out of the car, is what you're

- 1 saying?
- 2 A No, sir.
- 3 Q Did you have your jacket back on at that point?
- 4 A No, sir.
- 5 Q Okay. And you heard Ms. Gilmore on the radio -- or
- 6 a -- who did you hear on the radio?
- 7 A I heard somebody questioning, somebody saying, is
- 8 that him?
- 9 Q And all that's on the radio, the questioning and the
- 10 answering on a police radio?
- 11 A I don't know whether it was answering. I just heard
- 12 somebody say, I'm not sure. I'm not -- the guy, the
- 13 transportation officer in the front seat.
- 14 Q A man saying that, woman saying that?
- 15 A It was a woman response.
- 16 Q Old woman?
- 17 A I'm not sure.
- 18 Q You were running from the police -- from the police
- 19 why, Mr. Gil -- Mr. Mitchell? Why were you running
- 20 from the Intrepid all the way across this thing
- 21 (indicating) taking your clothes off, dropping the
- 22 victim's phone and hiding in the Gonzales Gardens,
- 23 why were you doing that?
- 24 A I was scared, sir.
- 25 Q Scared of what?

1 A I knew I'd be going to jail for driving under
2 suspension if I was caught.

3 Q So you gave all this entire chase for driving under
4 suspension?

5 A Yes, sir.

6 Q The victim's cell phone was just on your person
7 because you were driving under suspension?

8 A Actually while I was in the car the phone was
9 ringing. When I got into the car, I decided to slow
10 down because I was scared I might hurt somebody or
11 kill myself so I said, let me stop.

12 Q And then put the phone in your pocket and ran?

13 A No, sir. It wasn't in my pocket. I grabbed the
14 phone and just ---

15 MR. SHEALEY: Your Honor, I would object. Again
16 beyond the scope of the identification.

17 THE COURT: All right.

18 Q Mr. Gilmore, your record goes back as to 1988, auto
19 breaking ---

20 MR. SHEALEY: Objection, Your Honor, again beyond
21 the scope of the record for ID here.

22 THE COURT: This is cross-examination. This is
23 non-jury, gentlemen, do you understand that?

24 MR. SHEALEY: Yes, Your Honor.

25 THE COURT: Continue, Solicitor.

1 MR. CATHCART: Thank you, Your Honor.

2 Q April 14th, 1988, you have three counts of pointing
3 and presenting a firearm, carrying a pistol
4 unlawfully, three counts of burglary first, four
5 counts of burglary second, six counts of grand
6 larceny and an attempted burglary second, correct?

7 A Yes, sir.

8 Q 1998 ---

9 MR. SHEALEY: Your Honor, I'm sorry --

10 THE COURT: If do you that again you're going to
11 regret it. Don't you ever do that again, do you
12 understand, Mr. Shealey?

13 MR. SHEALEY: Yes, sir.

14 THE COURT: Sit down. Now, you do that again and
15 you're going to have a trip to Alvin S. Glenn Detention
16 Center ---

17 MR. SHEALEY: I apologize ---

18 THE COURT: You listen to me. If you have an
19 objection you politely stand up and you make it but if you
20 slam -- let me take a break. Let's take a break.

21 MR. CATHCART: Yes, sir.

22 THE COURT: Don't you ever do that again.

23 MR. SHEALEY: Yes, Your Honor. I apologize.

24 (The Court was in recess.)

25 THE COURT: All right. Continue, Solicitor.

1 MR. CATHCART: Thank you, Your Honor.

2 DIRECT EXAMINATION CONTINUES

3 BY MR. CATHCART:

4 Q 1998 convicted of attempted strong armed robbery,
5 correct?

6 A Yes, sir.

7 Q '99 petty larceny, correct?

8 A Yes, sir.

9 Q '99 auto breaking, petty larceny -- excuse me, 2001
10 auto breaking, petty larceny, correct? In 2003, you
11 got 10 separate counts of bank fraud, correct?

12 A Yes, sir.

13 Q 2004 petty larceny?

14 A Yes, sir.

15 Q 2005 another petty larceny?

16 A Yes, sir.

17 Q 2005 -- excuse me, 2007 shoplifting under a thousand
18 and on August 13th of 2007, you're also charged with
19 and being convicted of possession of a stolen motor
20 vehicle before this incident occurring, correct?

21 A Yes, sir.

22 Q Basically, the only time that you have not committed
23 a crime that's been -- of dishonesty is when you've
24 been in the Department of Corrections, correct?

25 A Can you say the again, Mr. Cathcart?

1 Q The only time you spent one year without committing a
2 crime of dishonesty is when you were housed in the
3 Department of Corrections, correct?

4 A No, sir, that's not correct.

5 MR. CATHCART: No further questions, Your Honor.

6 THE COURT: All right. Anything on redirect?

7 MR. SHEALEY: No, Your Honor.

8 THE COURT: You may step down, sir.

9 (The witness leaves the witness stand.)

10 THE COURT: Be happy to here any motions now.

11 MR. SHEALEY: Thank you, Your Honor. May it
12 please the Court. You know, Biggers and its progeny, as
13 you know, deal with suggestive identifications. At this
14 time I am moving to suppress the unduly suggestive show-up
15 identification as well as moving to suppress any in-court
16 identification that may happen later on.

17 Basically, Biggers and its progeny speak to the
18 fact that unnecessary suggestive ID procedures create a
19 harm of irreparable misidentification. Our juris prudence
20 in the State of South Carolina says show-up ID's in The
21 State v. Moore, a 2000 Supreme Court case, are disfavored
22 in the law, Your Honor. Our United States Supreme Court
23 says the practice of showing a suspect singly the persons
24 for the purpose of ID as opposed to using a line-up has
25 been widely condemned.

1 Our Court of Appeals in 1996, In the Interest of
2 Rashee, this was a case where the victim was taken to the
3 detention center. The young man was there in handcuffs
4 and he was the only person there. They found that to be
5 patently unduly suggestive, Your Honor. And Moore also
6 suggests the show-up ID's are just generally disfavored.

7 Now Biggers is a two prong test. The first prong
8 is, is this identification unduly suggestive? I would
9 argue, yes, Your Honor, it is based on the fact that it's
10 a show-up ID. I think the law is very clear on that.

11 After the first prong is satisfied, Biggers and
12 its progeny say, all right, we've got a suggestive ID, is
13 it nevertheless so reliable based on these five factors
14 considering them in their totality?

15 And, Your Honor, as in what's in the brief, the
16 five factors are: the witness's opportunity to view the
17 perpetrator at the time of the crime; the witness's degree
18 of attention; the accuracy of the witness's prior
19 description of the perpetrator; the level of certainty
20 demonstrated at the confrontation; and, finally, the
21 length of time between the crime and the confrontation.
22 I'd like to go into these a little bit, if you wouldn't
23 mind.

24 These are all considered in the totality of the
25 circumstances and if you consider the totality, if they

1 make this so reliable, this already inherently suggestive
2 ID, show-up ID, which our courts say is, you know,
3 suggestive and creates a problem of irreparable
4 misidentification. If you consider these factors in their
5 totality and if you can deem them to make that inherently
6 suggestive show-up ID reliable, then so be it. And I
7 would argue, they don't make it reliable.

8 The witness's opportunity to view the perpetrator
9 at the time of the crime. It's her testimony that it
10 happened -- everyone said it happened very very quickly.
11 As Ms. Gilmore testified to, it was a black man that
12 snatched the driver's door open. There was a gun to her
13 head. I'm quoting her -- her statement, the black man
14 didn't wait for me to get out before he started backing
15 up. He almost knocked me down. He drove away very fast.

16 Our juris prudence says that when things happen
17 very very quickly, they're inherently unreliable. This is
18 In the Interest of Rashee which is the 1996 Court of
19 Appeals. The Court said, when things happen quickly, it's
20 unreliable. Our Court -- Court of Appeals here, of
21 notable importance in this case is the fact that the
22 witness's opportunity to view the accused was poor.
23 Although Mr. McKnight (phonetic) was within approximately
24 four feet of the individuals, his observation was of no
25 significant duration and Mr. McKnight indicated, things

1 were happening very quickly, things were happening very
2 quickly, Your Honor.

3 And in contrast to State v. Scipio, a South
4 Carolina Supreme Court from '84, where they found that
5 when you have a long chance to view the perpetrator, that
6 would make it more reliable. The Court found that
7 identification to be reliable and they placed great
8 emphasis on the fact that the victim observed the
9 perpetrator standing within arm's length for four to four
10 and a half minutes. That is in contrast to what we have
11 here. I believe that factor considered in its totality
12 would be going for the move to suppress, Your Honor.

13 Number two, the witness's degree of attention.
14 We know from the testimony the suspect had a gun to her
15 left ear as she was sitting in the passenger side. Enough
16 -- enough pressure there to make it bleed. I would
17 suggest that she didn't get a good look at him with a gun
18 pointing to her. She can't describe the gun. She
19 mentioned that she had back surgery, she was taking pain
20 medication for that surgery. And at the time she only
21 described the perpetrator as a black man. She never
22 described him as anything else until today, as anything
23 else other than a black man. Your Honor, this vague
24 description, I would argue, would indicate a small level
25 of attention. It happened quickly, it was vague. The

1 problem too, the witness's degree of attention, I would
2 suggest, was extremely limited.

3 Then prong three, the accuracy of the witness's
4 prior description of the perpetrator. Well, Your Honor,
5 inaccurate vague descriptions of the perpetrator are held
6 to be unreliable as a matter of law by our courts. This
7 is a vague description. This is -- and again, I'll quote
8 to you the court case In the Interest of Rashee, in the
9 Court of Appeals, and show a case where the Court found
10 the identification unreliable and they recognized, and I'm
11 quoting, McKnight's prior description was vague, and as
12 previously noted, somewhat inaccurate. Again, here we had
13 a vague description, a black man with a gun.

14 The State v. Moore, our Supreme Court case here
15 in this state in 2000, the Court found, and I'll quote,
16 substantial likelihood of irreparable misidentification
17 such that the identifications are unreliable as a matter
18 of law where the victim, and I'll quote, gave no
19 description of him other than the fact that he was shorter
20 and wore a black hat. We did not have that in the
21 statement. We had a black man with a gun, Your Honor.
22 And our courts, our Supreme Court and our Court of Appeals
23 have held the inaccuracy of the witness. It was vague,
24 it's unreliable as a matter of law.

25 Finally -- or not finally, the next to the last,

1 the fourth prong to be considered is the level of
2 certainty demonstrated by the witness at the
3 confrontation. Now, she testified here that she was
4 certain and you can't get past that. But in her
5 testimony, she admitted to hearing on the radio they had
6 -- they apprehended the suspect. And I asked her, I said,
7 and when did you know they had that suspect? She told us,
8 are you sure, and she said, yeah, I'm sure, before she
9 even viewed him.

10 And I would also bring to the attention of the
11 Court, it happened so quickly that it would take away from
12 the level of certainty. Now she can tell you that she was
13 certain but yet it was a vague description. And she knew
14 when she heard on the radio, Officer Calloway's radio, you
15 know, they got him and bring them over for the ID. She
16 was -- she was certain they had the guy as she testified.

17 Your Honor, finally the length of time between
18 the crime and confrontation. Typically our courts
19 consider short amounts of time to be favorable for
20 reliability. Ms. Gilmore, as she indicated, was in -- in
21 my terms, a disoriented stated. She said she didn't feel
22 very well. Her son as she -- asked her if she felt like
23 she was going to pass out. She didn't exactly say passed
24 out but she didn't feel too well. You know, her son did
25 on the 911 call say, you know, my mom is passed out.

1 That combined with the pain medications -- and
2 she's an elderly lady that just had back surgery. And
3 this happened so quickly, I would suggest that the
4 timeframe would almost do her a disservice because she
5 didn't have time to recognize what was going on as far as
6 pulling herself together. And the disoriented state of
7 the victim would lead to an inaccurate ID, given the fact
8 that she went up there and there were no other suspects
9 handcuffed. There was a black man. She knew they had
10 been chasing her vehicle. She went up there to ID him,
11 the only man they had in custody.

12 And, Your Honor, I would argue that considering
13 those five factors, given that the show-up ID under our
14 law is apparently suggestive, those five factors would
15 lead not to a more reliable ID, even though it's already
16 inherently reliable, they would, in this county, suggest
17 definitely, definitely unreliable ID, you know, which
18 could cause some serious problems.

19 And what I'm asking for, Your Honor, is to
20 suppress the show-up identification. And The State v.
21 Moore makes it clear what happens. And any in-court
22 identification of an accused, is inadmissible if a
23 suggested out-of-court ID procedure played a very
24 substantial likelihood of irreparable misidentification.
25 Our courts say these show-up ID's lend themselves to be,

1 you know, irreparable misidentification.

2 And based on our Supreme Court in South Carolina
3 in Moore, I'd ask that you not -- that you suppress that
4 show-up ID and also in this Court, any potential in-court
5 ID based on these facts, Your Honor.

6 THE COURT: Thank you, sir. Solicitor, I will be
7 happy to hear from you.

8 MR. CATHCART: May it please the Court, Your
9 Honor. The South Carolina Supreme Court does not say that
10 a show-up ID is ---

11 THE COURT: Unconstitutional.

12 MR. CATHCART: Unconstitutional or in fact that
13 it's improper. It specifically states in State v. --
14 excuse me, State v. Brown, a 2003 case, that it is the
15 proper way to do a procedure in certain cases, cases like
16 this where -- a show-up is proper where it occurs shortly
17 after the alleged crime, near the scene of the crime, and
18 if the memory -- the witness's memory is still fresh, the
19 subject had not had time to alter his looks and dispose of
20 evidence, and the show-up may expedite the release of an
21 innocent suspect.

22 This happened, this show-up was within 10 minutes
23 of the crime. The victim gave an indication that she had
24 an ample opportunity to see him, not as in relying on the
25 Defendant's memo which talks about her -- relies on her

1 statement as to the description but what she said to the
2 officers. His memo continues to talk about this -- a
3 description that was listed in a statement she gave after
4 the identification as to what happened as opposed to what
5 she told the officers at the scene. Officer Calloway
6 indicated that her description was -- she found her at the
7 scene, the victim said that she was able to see him, not
8 only in the car but outside of the car. She had ample
9 opportunity to see him and that she was unable to leave
10 the car when he ordered her to do so.

11 She indicated the only time she took her eyes off
12 of him was when she looked for her son to help her. And
13 the Defendant then went around the car where he pulled her
14 out of the car. And again, she had an ample opportunity
15 to see his face once more, again, 10 minutes before the
16 identification with the police.

17 She -- the police indicated that there was no
18 improper suggestion as to who they wanted her to pick out.
19 She identified -- also indicated that she was not given
20 any improper prodding as to who she should pick out.

21 I would also point out when they got there she
22 asked, could they move up closer because she could not see
23 over the headrest, again showing that she wished to make
24 the proper identification. She said that she was 100
25 percent positive as to identification of this man.

1 I think under the totality of the circumstances
2 and under the five prongs of Neil v. Biggers, this is a
3 proper identification of this Defendant.

4 THE COURT: Thank you, sir. Looking at the prong
5 where the witness's opportunity to view the perpetrator at
6 the time of the crime, she was in the passenger seat when
7 some gentleman opened up the driver's side door. She was
8 looking at him the whole time. He sticks a gun in her
9 left ear. She's looking at him the whole time. She
10 wouldn't get out of the car soon enough. He walks around
11 in front of the vehicle, comes and opens the door. She
12 testified that she had an opportunity to observe the
13 perpetrator at the time. So her -- she had an ample
14 opportunity to view the perpetrator at the time of the
15 crime. Her degree of attention that she's testified was
16 specific and direct. A little bit weak maybe, the
17 accuracy of the witness's prior description. But the
18 level of certainty she demonstrated at the confrontation
19 was high and the length of time between the crime and the
20 confrontation was very little.

21 So considering the totality of the circumstances,
22 especially in view of the light of the Defendant's
23 testimony, in camera, I find and conclude that the ID was
24 proper. I'm going to allow it.

25 See y'all at 2:00.

1 (The Court was in recess.)

2 THE COURT: I'm going to stop possibly around
3 4:30, 4:45 at the latest. There's a single parent on the
4 jury that's got to pick his daughter up right at 5.

5 MR. CATHCART: Your Honor, we have an officer who
6 is unable to be here tomorrow and I guess -- she can tell
7 you why or not. I guess, is there any way we can take her
8 out of order to ---

9 THE COURT: Sure, we'll take her out of order. I
10 mean they can object, I'm going to take her out of order.

11 MR. CATHCART: Thank you, fine.

12 THE COURT: I'm trying to accommodate the single
13 parent who has to pick his daughter up and that's
14 important, so. I mean, that's the only reason.

15 MR. CATHCART: Yes, sir.

16 THE COURT: So what order will she usually fit
17 in?

18 MR. CATHCART: She would have been more in the
19 middle. She is Corporal Sanders who is the person who
20 picked up the car after the 911 call, she chased him down.

21 THE COURT: All right. Well ---

22 MR. MAY: Yes, sir, we will be objecting as ---

23 THE COURT: Okay, overruled.

24 MR. MAY: Well, I ---

25 THE COURT: I mean, calling her out of order?

1 MR. MAY: No, sir, I mean just -- I mean, during
2 her testimony if she starts saying stuff that might
3 present a Crawford issue, we will object at that time.

4 MR. CATHCART: Each of the witnesses that she
5 will be testifying with are available for cross-
6 examination, some of which have already been available for
7 cross-examination. It would be a proper objection later
8 on in the trial if we did not put them up, I agree.

9 THE COURT: I'm sorry, go ahead, Mr. May.

10 MR. MAY: Just under the contemporaneous
11 objection rule, we have to object at the time they make
12 the improper statement which is when she's testifying out
13 of order. I'm just alerting the Court to that.

14 THE COURT: Well, I can't accommodate everybody.
15 I'm trying to. But I'm going to accommodate this juror
16 first.

17 MR. MAY: Yes, sir.

18 THE COURT: And anything else, we can work
19 around. If she can't be here tomorrow, can she be here
20 the next day? I mean, I can delay the trial.

21 MR. CATHCART: No, sir, I don't think she can.

22 THE COURT: Huh?

23 MR. CATHCART: I do not believe she can. The
24 only way she can -- If I may, Your Honor, let me ---

25 THE COURT: Relax.

1 MR. CATHCART: I would be happy to go get her and

2 ---

3 THE COURT: Go get her, go get her.

4 MR. CATHCART: --- and have her explain it to
5 you.

6 THE COURT: You know, we haven't sworn the jury
7 yet.

8 MR. CATHCART: Yes, sir.

9 THE COURT: But I mean...

10 (Pause.)

11 MR. CATHCART: She tells me she will make herself
12 available tomorrow, Your Honor, if need be.

13 THE COURT: Beg your pardon?

14 MR. CATHCART: She says she will make herself
15 available if need be tomorrow.

16 THE COURT: All right. Look, I'm trying to
17 accommodate everybody. Now how will this logistically
18 affect your presentation?

19 MR. CATHCART: Other than -- I mean, it just
20 takes it out order. But other than that, it doesn't
21 bother me.

22 THE COURT: All right. But ---

23 MR. CATHCART: I'm just trying to work around
24 everybody ---

25 THE COURT: We all try to do that. I mean, you

1 know, I try to do it, we try to accommodate everybody.

2 We're only going to go 2:30, 3:30. I ain't going to go
3 too long because I'm going to let this juror, he's a
4 single parent, I'm going to let him go get his daughter.

5 Now, I mean, what's your time limit, help me out
6 a little bit? We're going to accommodate everybody we
7 possibly can.

8 MR. CATHCART: Your Honor, she would -- I would
9 anticipate, I would think -- I would like to put three
10 witnesses before her. I would like to put like five but
11 three would be good just to make it ---

12 THE COURT: What now?

13 MR. CATHCART: Three would be good to make it
14 understandable ---

15 THE COURT: Okay.

16 MR. CATHCART: --- just as to what occurred and
17 why she was called.

18 THE COURT: How long will those three take with
19 direct and cross?

20 MR. CATHCART: Pretty short, very short.

21 THE COURT: And then ---

22 MR. CATHCART: Ms. Gilmore will be one of those
23 three. Actually, we don't have to do Ms. Gilmore, we can
24 do it without Ms. Gilmore.

25 THE COURT: Y'all come back here for a minute.

1 Come on back here.

2 (The Court was in recess.)

3 MR. CATHCART: Your Honor, also, if I may.

4 THE COURT: Yes, sir.

5 MR. CATHCART: For the record, the State did
6 serve the Defendant with our intention to seek life
7 without parole and that was done back on January 12th of
8 2009, in front of you, Your Honor.

9 THE COURT: All right.

10 MR. CATHCART: It was served upon him. Also, the
11 notice of intention to introduce the Defendant's prior
12 convictions over ten years of age. These are listed as
13 Court's Exhibits 1 and 2.

14 THE COURT: All right.

15 (WHEREUPON, Court's Exhibit Number 1, Notice of
16 Intention to Introduce Priors, is marked for
17 identification.)

18 (WHEREUPON, Court's Exhibit Number 2, Notice of
19 Intention to Seek Life without Parole, is marked
20 for identification.)

21 THE COURT: Any thing further we need to take up
22 before the jury comes in?

23 MR. MAY: Just at sometime -- at sometime we need
24 to settle his record. That doesn't need ---

25 THE COURT: We'll do that. We'll do that before

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 we go forward. Bring them in.

2 (The jury returned to the courtroom at
3 2:35 p.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Thank you, sir. Welcome back, Mr.
6 Foreman and members of the jury. Is Ms. Pendergrass here?
7 Oh, there she is. You may swear them.

8 THE CLERK: Mr. Foreman and ladies and gentlemen
9 of the jury, please stand and raise your right hands to be
10 sworn.

11 (The jury was duly sworn.)

12 THE CLERK: You may be seated.

13 THE COURT: All right. Now, Mr. Foreman and
14 members of the jury, what I will now say is intended to
15 serve as introduction in the trial of this case. It is
16 not a substitute for the detailed instructions of the law
17 which I will give you at the close of the case and before
18 you retire to consider your verdict.

19 This is a criminal case commenced by the State,
20 which is sometimes referred to as the prosecution, against
21 Norma -- Norman Lee Mitchell. Now this case is based on
22 two indictments which I read to you earlier, one is for
23 carjacking, one is for failure to stop for a blue light.
24 You should distinctly understand that the indictments are
25 simply a charge or charges and that they are not in any

1 sense evidence against the Defendant or evidence of the
2 allegations that I read to you.

3 The Defendant has plead not guilty to these
4 indictments. The State therefore has the burden of
5 proving each of the essential elements of these
6 indictments beyond a reasonable doubt. The purpose of
7 this trial is to determine whether the State has met this
8 burden.

9 Your purpose as jurors is to find and determine
10 the facts. Under our system of criminal procedure, you
11 are the sole judges of the facts. If at any time I make
12 any comments regarding the facts, you are at liberty to
13 disregard it. It is especially important that you perform
14 your duties or your duty of determining the facts
15 diligently and conscientiously. Ordinarily there is no
16 means of correcting an erroneous determination of the
17 facts by a jury.

18 On the other hand, and on equal emphasis, I
19 instruct you that the law as given by the Court
20 constitutes the only law for your guidance and it is your
21 duty to accept the law and follow it. It is your duty to
22 follow the law as I give it to you, even though you may
23 disagree with the law. Even though I may disagree with
24 the law, you've got to accept what I tell you the law is,
25 members of the jury.

1 You are to determine the facts from the testimony
2 you hear and the other evidence introduced in court. It
3 is up to you to determine the inferences which you feel
4 may properly be drawn from the evidence. You must not
5 consider anything you may have read or heard about the
6 case outside the courtroom, whether before or during the
7 trial, until this case is submitted to you, you must not
8 discuss it with anyone, even with your fellow jurors.
9 After it is submitted to you, you must discuss it only in
10 the jury room with your fellow jurors. It is important
11 that you keep an open mind and not decide any issue in the
12 case until the entire case has been submitted to you under
13 the instructions of the Court. It is your added duty, Mr.
14 Foreman, to preside in the jury room and be the jury's
15 spokesman here in court.

16 Now, the prosecution has the burden of proof,
17 they will go first, even with the opening statements.
18 Now, these opening statements are not evidence. It is
19 what the lawyers tell you their version of the facts, as
20 the closing arguments in the case -- the closing arguments
21 are not evidence, it is what the lawyers will try to
22 persuade you to agree with their version of the facts.

23 From time to time it may become necessary for me
24 to send you out of the jury -- out of the courtroom to
25 hear some more formal or lengthy arguments on the law from

1 the attorneys involved. The only way I can do that is in
2 your absence.

3 Now sometimes during the course of this trial, I
4 might invite the lawyers up here, we may whisper over here
5 at the side. It's not that I'm trying to hide anything
6 from you but under our system, I'm trying to make sure
7 that what you hear is what you should hear under the
8 rules. So, from time to time, one side or the other would
9 object to some testimony or evidence that's sought to be
10 presented. And you should not conclude how I rule on an
11 objection that I favor one side or the other. My only
12 interest in this case is that I have no interest except to
13 try to ensure that the State receives a fair trial as well
14 as Mr. Mitchell.

15 Now, if I have to send you out, take no special
16 attention to that nor should you think or put too much
17 emphasis on who objected and why I have to send you out or
18 things along that line.

19 If I rule on an objection, somebody objects, I
20 say sustained, that means the objection is proper in my
21 opinion and you need to disregard the answer that's given.
22 If somebody objects and I say overruled, then it's proper
23 for that witness to answer that question and you've got to
24 accept it as proper evidence in this case.

25 So I'm sure you've all watched trials on TV, have

1 some vague idea of how things may unfold. But the most
2 important thing is to be fair, keep an open mind until the
3 very end and listen to everything carefully and base your
4 decision on what you hear here in the courtroom and not
5 from some outside sources.

6 So with that in mind, I'm going to invite, I
7 assume it's Ms. ---

8 MS. HENDRICK: Hendrick.

9 THE COURT: --- Hendrick to make the opening
10 statement on behalf of the State to be followed by an
11 opening statement by Mr. Shealey on behalf of Mr.
12 Mitchell.

13 Ms. Hendrick.

14 MS. HENDRICK: May it please the Court.

15 THE COURT: Yes, ma'am.

16 OPENING STATEMENT ON BEHALF OF THE STATE

17 BY MS. HENDRICK:

18 Good afternoon. Paying your cable bill is a
19 pretty mundane boring activity. Something that we do
20 every month. Some people pay it online. Some people mail
21 in a check and other people go to the actual Time Warner
22 Cable, or whoever provides your cable, and pays the bill.
23 It's just something we do every month that we don't
24 remember. However, when Ms. Nola Gilmore, that lady
25 sitting right there in the red jumpsuit, went to pay her

1 cable bill on February 1st, 2008, with her son William
2 Gilmore, is a day she will never forget. She will never
3 forget going to pay that cable bill because of the actions
4 of the Defendant, Mr. Norman Mitchell.

5 Now, Ms. Gilmore and her son William Gilmore were
6 out running errands and they decided to go to the Time
7 Warner Cable Building on Harden Street and pay their bill
8 since they were in the area. Ms. Gilmore sits in the car.
9 She's an elderly lady, just had back surgery. She's a
10 choir lady as you'll hear about. She's just going to sit
11 in the car while her son runs in and pays the cable bill.
12 He leaves the keys in the car because it's a beautiful
13 day, the windows are rolled down, she might want to roll
14 them up.

15 So as she's sitting in the car waiting on her son
16 to come back from paying the cable bill, this Defendant
17 snatches open the car door and points a gun at her head
18 and uses some profane language and says, get out of the
19 car, get out of the car or I'll shoot, while pointing a
20 gun to her head.

21 Just like I said, she's an elderly lady who just
22 had back surgery. She can't get out of the car fast
23 enough for this man. So he gets out of the car, walks
24 around the front and drags her out and then he runs and
25 gets back in the car and speeds out of the parking lot.

1 While he's speeding out of the parking lot, he goes so
2 fast he even accidentally bumps her with the car door
3 still open.

4 Now, after this happens, Ms. Gilmore is pretty
5 shook up. She makes her way into the Time Warner Cable
6 Building, finds her son who's still standing in line and
7 tells him what happened.

8 He manages to immediately call 911 and tell the
9 911 operator that someone has taken his mom's blue
10 Intrepid. A blue Intrepid is missing. A few moments
11 later, Columbia Police Department officers respond to the
12 Time Warner Cable Building. They confirm this information
13 that the blue Intrepid has gone missing and that someone
14 took it from -- from Ms. Gilmore.

15 As soon as that information gets out on the
16 radio, Corporal Sanders, who is driving downtown from her
17 other location, decides to come over to the incident
18 location, make her way towards the Time Warner Cable
19 Building on Harden Street. She is driving downtown down
20 Laurens (phonetic) Street and happened to see a blue
21 Intrepid being driven by, as the State will show you, that
22 man, Norman Mitchell.

23 She decides to turn around and try to follow this
24 man, to try to pull him over to see why a blue Intrepid is
25 so close to this incident location. And when she does

1 that, she puts on her blue lights and her siren to try to
2 pull him over, he doesn't stop. They go on a chase for
3 several blocks of downtown Columbia, through Taylor
4 Street, Hampton Street and eventually he gets out of the
5 car, stops and abandons this blue Intrepid at the
6 intersection of Hampton and Heidt Streets.

7 He gets out of the car and flees on foot running
8 out the door through -- towards Gonzales Gardens.
9 Corporal Sanders has been on her radio the whole time and
10 tells everybody what's going on so other officers can come
11 back and help her.

12 She immediately gets out of the car and chases
13 this man up the hill. While he's running, he's changing
14 clothes, throwing items on the ground -- throwing an item
15 on the ground and eventually her and some other officers
16 are able to actually apprehend him and catch him at
17 Gonzales Gardens.

18 Meanwhile, the victim is still at the Time Warner
19 Cable, Ms. Gilmore, with other police officers. They
20 bring her down to where the victim -- to where the
21 Defendant is being held and she is able to identify and
22 confirm that that man that didn't stop for Corporal
23 Sanders, that was seen in the blue Intrepid near the
24 incident location, that was running from the police, was
25 the same man that put the gun to her head and told her to

1 get out of the car.

2 My name is Eden Hendrick and I along with Richard
3 Cathcart work in the Richland County Solicitor's Office.
4 Our job is to prove to you that this man did this beyond a
5 reasonable doubt.

6 Now he's charged with two separate crimes from
7 this incident from February 1st, 2008. He is charged
8 first with failure to stop for a blue light. Failure to
9 stop for a blue light is very simple. We have to show
10 that he was driving a motor vehicle within the State of
11 South Carolina. A law enforcement agent put on her blue
12 lights and sirens and that he did not stop.

13 Next he is charged with carjacking. Carjacking
14 is an attempt to take or the taking of a motor vehicle of
15 another by force or intimidation while someone is in the
16 car or operating the motor vehicle. He is charged with
17 those two crimes for the events that happened on February
18 1st.

19 Now, like I said, it is our job to prove to you
20 each element of these crimes beyond a reasonable doubt.
21 Now, what's reasonable doubt? I'm sure you've heard it
22 all on TV before. I don't have to prove to you beyond all
23 doubt just beyond a reasonable doubt. I have to leave you
24 firmly convinced that this man did this. An unreasonable
25 doubt for example would be a doubt that the sun would

1 rise. That would be an example of an unreasonable doubt.
2 We simply have to prove to you beyond all reasonable
3 doubt.

4 And how are we going to do that? Well, most of
5 the evidence is going to come from the witness stand.
6 You're going to hear from several several witnesses over
7 the next couple of days. You're going to of course hear
8 from Ms. Gilmore. She was the eye witness to this crime.
9 You're going to hear from her in her own words what
10 happened during that day. She's going to describe to you
11 the terror that she felt and how she was able to -- manage
12 to walk into the building and tell everyone what happened
13 so they could call 911.

14 You're also going to hear from the Time Warner
15 Cable employees there who were working that day this
16 happened. You're going to hear from several Columbia
17 Police officers, including Corporal Sanders who was in the
18 car chase and foot chase with this man.

19 You're also going hear from her son Mr. William
20 Gilmore who also was there that day.

21 Now, you're going to also hear me and Mr.
22 Cathcart talk a lot about the law in this case. If I ever
23 say anything about the law that is different from what the
24 Judge says about the law or co-counsel does, always listen
25 to the Judge. Judge Manning is the ultimate judge of the

1 law in this case. That is his role.

2 It is your role as the jury to be the ultimate
3 finders of fact in this case. Each of you is as important
4 as the Judge -- as the Judge. You are the finders of
5 fact, he is the finder of law.

6 Now, how -- when all these people take the stand,
7 it is up to you as the finders of fact to judge their
8 credibility, their believability. You can believe all,
9 part or none of what those witnesses say. You can judge
10 their credibility based on their demeanor on the stand.
11 Were they forthright or hesitant? Were they consistent?
12 Was their testimony corroborated by other testimony? Do
13 they have any reason to lie, any bias or prejudice? It is
14 your job to judge these witnesses' credibility.

15 Now, ladies and gentlemen, this is not Law and
16 Order. This is not CSI. This is real life. We are
17 dealing with a real victim here, Ms. Nola Gilmore.

18 I want you to listen to everything the State has
19 to say and at the conclusion of this case, please find the
20 Defendant guilty of carjacking and failure to stop for a
21 blue light.

22 Thank you.

23 THE COURT: All right, Mr. Shealey.

24 MR. SHEALEY: Thank you, Your Honor. May it
25 please the Court.

1 THE COURT: Yes, sir.

2 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

3 BY MR. SHEALEY:

4 Good afternoon, thank you for being here.

5 Now, you've heard the government lawyer there say
6 a lot of nasty things about Mr. Mitchell there. And be
7 prepared for that because that's what they're going to do
8 in the course of this trial. They're going to be angry.
9 You're going to see a lot of yelling, a lot of hands
10 waving. Be ready for that.

11 Now, there's no getting around this. Ms.
12 Gilmore, what happened to her was terrible. Carjacking is
13 a terrible crime. What happened to her on February the
14 1st, 2008, is absolutely terrible. Norman Mitchell did
15 not do that crime. And what they're going to try to do,
16 the government lawyers, is paint him as a bad man, the
17 type of man that would try to do that. But that's all
18 right because this is America. It's not Pakistan and we
19 don't convict people in this country on allegations, on
20 conjecture, but be ready for that. Be ready for what
21 they'll be trying to do. Because in their minds, if you
22 believe he is a gun toting carjacker, they've won. But
23 you know what? Norman Mitchell didn't have a gun on
24 February 1st, 2008. In this case, no one found a gun and
25 without a gun, he's not the one.

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 Ladies and gentlemen of the jury, I want to
2 introduce you to Norman Mitchell. And he sits here before
3 you an innocent man and he's innocent because our
4 Constitution says he's innocent. It requires it until
5 he's otherwise proven guilty by a jury. Thank God for
6 that. As he sits here before you, he's as innocent as I
7 am or your are. He's completely innocent of the
8 allegations of the government attorneys.

9 And I tell you what, for Mr. Mitchell, this is
10 the most important day of his life and these are going to
11 be the most important days of his life, today and
12 tomorrow.

13 And this is the indictment, this is a charging
14 paper of the State. It doesn't make him any more guilty.
15 Neither will the lack of credible evidence in their case
16 make him guilty of this crime.

17 Now, as we go long the course of this trial,
18 you're going to be exposed and hear some things that you
19 may not be familiar with. You're going to be hearing a
20 different culture, and it's a culture of poverty and it's
21 sad. There are people in this town that can't afford a
22 vehicle and they never will in their entire lives. And
23 what they do to get around is they rent vehicles from
24 other people. It is called car rental but not the kind of
25 car rental you and I are thinking about. These are poor

1 people that need to get some place, they'll rent a vehicle
2 from someone with a car. They may rent it for money.
3 They may rent it for sex. They may rent it for drugs.
4 It's a reality in this town. You're going to hear about
5 this during the course of that trial because that's what
6 Norman Mitchell did that day. He didn't carjack anyone.
7 What he did, and you're going to hear this, rent a
8 vehicle.

9 Now, you're going to hear about the facts of
10 this case. And it's a fact Ms. Gilmore was carjacked on
11 February 1st, 2008. It's a fact. It's a terrible fact.
12 And you're also going to hear that on the day she was
13 carjacked she gave a statement and she described the man
14 as a black man, a black man with a gun. She didn't
15 describe how tall he was. She didn't describe what he
16 looked like, just a black man with a gun.

17 And you're going to hear that she had recently
18 had back surgery. She had broken her back and had surgery.
19 She was taking medication. And you're also going to hear
20 that shortly after this terrible incident, she passed out,
21 she fainted. And all she was able to tell the police
22 officers was it was a black man with a gun. Well, ladies
23 and gentlemen, Norman Mitchell on February 1st, 2008, he
24 didn't have a gun. Without a gun, he's not the one.

25 Now, Mr. Gilmore -- excuse me, Mr. Mitchell, he

1 came to town February 1st, 2008, from Charleston. You
2 will hear that. He came to town for the Super Bowl, just
3 like we all watched a couple of days ago. This time last
4 year he was coming to town. And he bought a bus ticket,
5 and you're going to hear this, bought a bus ticket into
6 town and was waiting on a ride. And that ride never came
7 for whatever reason, and you're going to hear about that.
8 But a man approached him, rode up, offering him a ride for
9 the day, to rent this vehicle for the day. All right,
10 he'd get where he was going.

11 And you're going to hear that shortly after he
12 rented this vehicle, blue lights came on. Well, Norman,
13 he'll tell you, he was scared. He didn't do the right
14 thing. He kept on going a little bit. And then he pulled
15 over and he ran from the officer. And you're going to
16 hear this, he came on a bus, he didn't have a driver's
17 license. He was coming for the Super Bowl, he was driving
18 through a bad neighborhood, he was a black man without a
19 license. He knew he was going to the County for 90 days.
20 He knew that. He knew the purchase price of that ticket
21 and that bus fare, gone. So he panicked and he ran and
22 you're going to hear that. But that doesn't make him
23 guilty of this crime.

24 You know what? The officer that pulled him over,
25 she was a good officer. She chased him down, she caught

1 him. He was trying to run from her. And you will hear,
2 she didn't find a gun on him. She didn't find a gun in
3 the vehicle that he ran from. She didn't find a gun
4 anywhere. And there's not a gun in this case. And,
5 ladies and gentlemen, without the gun, he's not the one.

6 Now, during the course of the trial you're going
7 to be instructed on the law by Judge Manning. But I'm
8 going to briefly tell you a little bit about the law. The
9 burden in this case always remains at this table with the
10 government's attorneys. They have the burden of proving
11 to you beyond a reasonable doubt the allegations they're
12 trying to sell to you. It's always their burden, it never
13 leaves there. They must prove to you beyond a reasonable
14 doubt.

15 Now you've heard a little bit already what
16 reasonable doubt it. And I will tell you, it's really
17 simple and you're going to get it because y'all are
18 reasonable folks. A reasonable doubt is a doubt which
19 would cause a reasonable person to hesitate to act. If
20 any one of you have a doubt in this case about the
21 allegations they're trying to sell here, you can't find
22 Norman Mitchell guilty. And I know it's going to be
23 really easy for y'all because Mr. May and I picked you on
24 this jury because you're reasonable, you're all reasonable
25 folks. And you have to use your commonsense in this case

1 because they're selling it, they're selling the lie here
2 and they're hoping you'll buy in. They want you to
3 believe that Norman Mitchell is a gun toting carjacker.
4 They want you to believe that with all their heart.

5 But when they're selling this line, and I implore
6 you use your commonsense, I want you to think about a
7 couple of questions during the course of this trial. This
8 trial may last till Thursday or Friday, I'm not sure but
9 think about a couple of these questions.

10 Norman Mitchell is a man that you're going to
11 hear took a bus trip from Charleston to Columbia. Why
12 would a man like that get into town just to carjack
13 someone and to get to a friend's house? Think about that.
14 I want you to think about that. Is that what a reasonable
15 person would do? Use your commonsense.

16 And I want you to think about one more thing.
17 Would someone that would commit the heinous crime of
18 carjacking in the middle of Five Points, would he be
19 hanging around a couple of blocks away for some officers
20 to catch him, within 10 minutes of the crime? A couple of
21 blocks away or would he be 10 miles down I-20? Or would a
22 man that would be willing to do a crime like that in broad
23 daylight in the middle of Five Points try to off-load that
24 vehicle as soon as possible? I want you to think about
25 that.

1 Don't let them tell you this line that he's a gun
2 totting carjacker. Don't let them. They never found a gun
3 in this case. Norman Mitchell never had a gun. And
4 without the gun, he can't be the one. He can't be the one
5 without the gun. Use your commonsense and you're going to
6 come back not guilty.

7 Thank you.

8 THE COURT: All right call your first witness.

9 MS. HENDRICK: The State calls Stephanie
10 Mueller(sic). Stephanie Miller.

11 (STEPHANIE MILLER, after being duly sworn,
12 testified as follows:)

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

15 THE WITNESS: Stephanie Miller.

16 DIRECT EXAMINATION

17 BY MS. HENDRICK:

18 Q Good afternoon, Ms. Miller.

19 A Good afternoon.

20 Q Where are you currently employed?

21 A At Time Warner Cable.

22 Q And what do you do for Time Warner Cable?

23 A I'm a customer service representative.

24 Q And does that mean you stand behind the counter and
25 take payments or help people with their cable?

1 A Yes, ma'am.

2 Q And were you employed for Time Warner Cable back on
3 February 1st of 2008?

4 A Yes, ma'am.

5 Q And were you working that day?

6 A Yes, I was.

7 Q And what was the location you were working at?

8 A At the Harden Street location.

9 Q And what were you doing that day?

10 A Standing behind the counter assisting customers with
11 payments.

12 Q And do you remember anything unusual that happened
13 that day?

14 A As usual, it was a very busy day but during the
15 course of our day we had a lady, an older lady, come
16 in and say that ---

17 MR. MAY: Objection, Your Honor, hearsay.

18 THE COURT: What was the question again?

19 MS. HENDRICK: I asked her if anything unusual
20 happened that day.

21 MR. MAY: And she to proceeded to say, an old
22 lady entered the store and said, at which time I objected.

23 THE COURT: She can't say what someone said. The
24 objection is sustained if that was the objection.

25 Go ahead.

1 Q Let's back up.

2 A Okay.

3 Q When this lady comes into -- into Time Warner Cable,
4 what was her demeanor?

5 A She was very nervous, very agitated and -- and upset.

6 Q Was she excited?

7 A Yes, very.

8 Q And then what did she relay happened to her?

9 A It was her son that was standing in the lobby waiting
10 to make his -- his payment. And ---

11 THE COURT: This is the victim walking in?

12 MS. HENDRICK: Yes.

13 THE COURT: Right after she was robbed?

14 Objection is overruled, excited utterance, she can
15 testify.

16 MS. HENDRICK: Thank you, Your Honor.

17 Q Go ahead and say what she said.

18 A The victim walked in and she was very upset and she
19 -- she proceeded to tell -- say out loud that she was
20 -- she was just robbed. That someone had put a gun
21 to her head.

22 MR. MAY: Objection, Your Honor.

23 THE COURT: Your objection is overruled.

24 MR. MAY: Furthermore for Crawford, Your Honor.

25 THE COURT: Beg your pardon?

1 MR. MAY: Also for Crawford, Your Honor.

2 THE COURT: What?

3 MR. MAY: Also under Crawford.

4 THE COURT: Overruled, continue.

5 MS. HENDRICK: Okay, thank you.

6 A She said that someone had just put a gun to her head
7 and stole her car.

8 Q And who was she saying this to?

9 A She was telling -- actually she was just saying --
10 she was just taking out loud. She was very upset,
11 very nervous, agitated. And she was so upset that we
12 actually thought she was going to faint. She looked
13 like she almost ---

14 Q Did you go to her? Did you help her?

15 A I did not personally go to her. I told her son that
16 there was a phone in our lobby that he could use to
17 dial 911. And ---

18 Q Did you see him use the phone?

19 A I did see him go to the phone and use it.

20 Q Okay and what happened to Ms. Gilmore when he went to
21 use the phone?

22 A One of our other -- my other co-workers actually
23 assisted her to a seat in the lobby and she sat down.

24 Q Did you ever see her actually pass out?

25 A She did not pass out, no, ma'am.

1 MS. HENDRICK: Permission to approach the
2 witness, Your Honor?

3 THE COURT: Yes, ma'am.

4 Q Ms. Miller, I'm going to show you what's been marked
5 as State's Exhibits 19 and 20. Do you recognize
6 these photos?

7 A Yes, that's our lobby.

8 Q That's the lobby of the Time Warner Cable?

9 A Yes, ma'am.

10 Q On -- where is it?

11 A It's at 1030 Harden Street.

12 Q Okay. And is this a fair and accurate representation
13 of what the lobby looked like last year this time?

14 A Yes.

15 MS. HENDRICK: Your Honor, the State now moves to
16 enter State's Exhibits 19 and 20 into evidence?

17 THE COURT: Any objections?

18 MR. MAY: Without objection, Your Honor.

19 (WHEREUPON, State's Exhibit Number 19,
20 Photograph, was moved into evidence.)

21 (WHEREUPON, State's Exhibit Number 20,
22 Photograph, was moved into evidence.)

23 Q Okay. Using these pictures, can you kind of show the
24 jury where you were standing, where you were?

25 A This is actually my station right here (indicating).

- 1 Q Okay. And can you show us where Mr. Gilmore might
2 have been?
- 3 A He was in the line standing here (indicating).
- 4 Q Okay.
- 5 A Probably about right here.
- 6 Q And do you know what phone he used to call 911?
- 7 A There's a phone that sits on this desk right here
8 (indicating).
- 9 Q Okay.
- 10 A And he used -- I don't remember which one. It's two
11 of them. There's one on either side.
- 12 Q Is that actually the phone right there in the
13 picture?
- 14 A Not this phone.
- 15 Q Okay.
- 16 A There's one that sits on the table ---
- 17 Q Why do y'all have phones out there?
- 18 A For our customers to use.
- 19 Q Okay. And after he called 911, how soon after did
20 the police arrive?
- 21 A Oh, immediately because I -- I also -- I believe that
22 I was the one that actually depressed the panic
23 button, because we have panic buttons under our
24 stations ---
- 25 Q Okay.

1 A --- in case we got robbed. And when the victim came
2 in, was so very upset and said that she had just been
3 robbed, I -- I pressed the panic button to alert the
4 police and they came within a matter of -- I mean,
5 not a minute.

6 Q Okay. And then you went back to your station?

7 A Yes, ma'am. Well, it's at my station so I never
8 really left the station.

9 Q Okay. But after the police arrived, did you have any
10 other interaction with the police or the victim?

11 A No, ma'am. Just the victim's son. Just -- I did
12 speak to him afterwards.

13 Q Okay.

14 MS. HENDRICK: Beg the Court's indulgence. I
15 have no further questions. Please answer any questions
16 Defense counsel may have.

17 THE WITNESS: Okay.

18 CROSS-EXAMINATION

19 BY MR. MAY:

20 Q Hello, Ms. Miller, how are you doing?

21 A Hi, fine, thank you.

22 Q I have just a few brief questions, if you don't mind.

23 MR. MAY: Your Honor, may I approach to grab
24 these pictures?

25 THE COURT: Yes, sir.

- 1 Q At your station right here -- sorry, at your station
2 over here.
- 3 A Yes, sir.
- 4 Q Can you see out the door?
- 5 A I can.
- 6 Q You can?
- 7 A Uh-huh.
- 8 Q That day did you see anybody carjack Ms. Gilmore?
- 9 A No, sir.
- 10 Q You didn't see anybody carjack Ms. Gilmore?
- 11 A (The witness nodded head.)
- 12 Q You say when she came in she was -- she was visibly
13 shaken?
- 14 A Yes.
- 15 Q She was nervous, she was, I mean, terrified?
- 16 A Yes.
- 17 Q So you pushed that panic button, right?
- 18 A Yes.
- 19 MR. MAY: Beg the Court's indulgence.
- 20 THE COURT: Yes, sir.
- 21 MR. MAY: No further questions of this witness,
22 Your Honor.
- 23 THE COURT: Anything on redirect?
- 24 MS. HENDRICK: No further questions for this
25 witness.

1 THE COURT: You may step down.

2 MS. HENDRICK: May this witness be excused.

3 THE COURT: Any objection?

4 MR. MAY: No, sir.

5 THE COURT: She may be excused.

6 (The witness leaves the witness stand.)

7 THE COURT: Call your next witness.

8 MR. CATHCART: At this time, Your Honor, the
9 State calls Christy Tyson.

10 (CHRISTY TYSON, after being duly sworn,
11 testified as follows:)

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

14 THE WITNESS: Christy Tyson.

15 DIRECT EXAMINATION

16 BY MR. CATHCART:

17 Q Ms. Tyson, where are you employed?

18 A Time Warner Cable.

19 Q Okay. And which of the Time Warners you working at
20 this time?

21 A On Harden Street.

22 Q You were still at Harden Street?

23 A Yes, at the time.

24 Q At the time, you're not there now?

25 A Right. I'm in West Columbia right now.

- 1 Q But you're still with the same company?
- 2 A Yes, sir.
- 3 Q Okay. Just a different section?
- 4 A That's correct.
- 5 Q Okay. And back on February the 1st of last year, you
- 6 were at the -- which location?
- 7 A Harden Street.
- 8 Q And that's in the city limits of Columbia?
- 9 A Yes, sir.
- 10 Q Richland County?
- 11 A Yes, sir.
- 12 Q And do you recall anything unusual happening that day
- 13 around noontime?
- 14 A Yes, sir.
- 15 Q What if anything happened unusual?
- 16 A At the time I was pregnant. I was on my way back
- 17 from lunchtime.
- 18 Q Okay.
- 19 A I was walking across the street.
- 20 Q Where do you park?
- 21 A I park across the street in the fenced area.
- 22 Q Okay. Let me show you what's been marked as State's
- 23 Exhibit Number 14. Do you recognize what that is a
- 24 picture of?
- 25 A Yes, sir.

1 Q What is that a picture of?

2 A Time Warner Cable.

3 Q The Time Warner Cable that we're talking about?

4 A Yes, sir.

5 Q Okay.

6 MR. CATHCART: Your Honor, at the time the State
7 seeks to introduce State's Exhibit Number 14.

8 MR. MAY: Without objection, Your Honor.

9 THE COURT: Without objection, 14.

10 (WHEREUPON, State's Exhibit Number 14,
11 Photograph was moved into evidence.)

12 Q An you were parked -- I know it's not on the picture
13 but which direction were you coming from?

14 A I was coming from this direction over here. The
15 fenced area is across the street.

16 Q Just straight across the street?

17 A Yes.

18 Q And as you were walking -- which way?

19 A I was walking towards the building because I have to
20 go in over here (indicating).

21 Q Uh-huh.

22 A As I was walking toward the building, a couple was
23 walking down the street. I seen the car run up on
24 the curb. I looked at the couple. Me and the couple
25 had eye contact and we just kind of shook our head.

1 I went in the building, got in the building and then
2 there was a lady in there panicking, telling her son
3 that someone had put a gun to her head.

4 Q What drew your attention ---

5 MR. MAY: Objection, Your Honor.

6 THE COURT: Overruled.

7 MR. MAY: I ask for a standing objection on the
8 issue.

9 THE COURT: Overruled.

10 Q What drew your attention to that car?

11 A Running on the curb.

12 Q Was it going at a slow speed or?

13 A Kind of at a slower speed.

14 Q Okay. And it popped over ---

15 A The curb.

16 Q The curb?

17 A Uh-huh.

18 Q Okay. Did you -- were you able to see the driver in
19 the car?

20 A No, sir. I didn't actually get to see the driver as
21 far as the face but I could see the back of the head.
22 I noticed that whomever it could have been, it had to
23 be someone short because the seat looked like it had
24 been really pulled back and I know for sure that her
25 son comes into the office all the time to pay his

1 cable bill and he's kind of a tall looking guy.

2 Q Okay. Could you tell if it was a white person or a
3 black person?

4 A I could tell that it was a black person.

5 Q So you couldn't see his face but you ---

6 A I couldn't see his face -- I couldn't see his face I
7 just seen the back of the head.

8 Q And it was a black short person?

9 A Yes, sir.

10 Q Okay.

11 MR. CATHCART: Please answer any questions from
12 Defense counsel.

13 CROSS-EXAMINATION

14 BY MR. MAY:

15 Q Hi, Ms. Tyson, how are you doing?

16 A I'm fine.

17 Q Did you tell this to the police there?

18 A No, sir.

19 Q You never gave a statement to the police?

20 A Well, to the people that came to my office to talk to
21 me.

22 Q Okay, but not that day when the police arrived and
23 the blue lights were out there, you didn't say, hey,
24 I saw somebody in the car?

25 A No, sir.

- 1 Q You didn't?
- 2 A (The witness shakes head.)
- 3 Q And you saw just the back of somebody's head as they
4 were driving away?
- 5 A Just the back of his head.
- 6 Q And where exactly did this happen? I'm sorry, I
7 couldn't see Mr. Cath -- I couldn't see through Mr.
8 Cathcart. Where ---
- 9 A The curb that he ran over was this curb right here
10 (indicating).
- 11 Q Okay. You were walking back ---
- 12 A I was walking from across the street. There's a
13 fenced area where we have to park at.
- 14 Q Yes, ma'am.
- 15 A It's right directly across the street.
- 16 Q It's just across this street and not across ---
- 17 A No, not the ---
- 18 Q Not across Harden ---
- 19 A Not ---
- 20 Q Okay. But you saw somebody, you just don't know who
21 it was?
- 22 A Exactly. I didn't see his face.
- 23 Q And this is the first time -- I mean, you never told
24 the police that day that it was a short person?
- 25 A No, I did not.

1 MR. MAY: Thank you. No further questions of
2 this witness at this time.

3 THE COURT: Anything further of this witness?

4 MR. CATHCART: Just two more questions, Your
5 Honor.

6 REDIRECT EXAMINATION

7 BY MR. CATHCART:

8 Q Which way did the car go?

9 A The car went up this street here (indicating).

10 Q Away from Harden Street?

11 A Yes, sir.

12 MR. CATHCART: Okay, thank you.

13 THE COURT: Anything further?

14 MR. MAY: No, Your Honor.

15 THE COURT: All right, you may step down, ma'am.

16 MR. CATHCART: May this witness be excused, Your
17 Honor?

18 THE COURT: Any objection.

19 MR. MAY: No, sir.

20 THE COURT: All right.

21 (The witness leaves the witness stand.)

22 MR. CATHCART: At this time the State calls Nola
23 Gilmore.

24 (NOLA GILMORE, after being duly sworn, testified
25 as follows:)

1 THE CLERK: Please have a seat. State your full
2 name for the record.

3 THE WITNESS: Nola Gilmore.

4 DIRECT EXAMINATION

5 BY MR. CATHCART:

6 Q Ms. Gilmore?

7 A Yes, sir.

8 Q Where are you from?

9 A Huh?

10 Q Where you are from?

11 A West Virginia.

12 Q When did you move down to Columbia, South Carolina?

13 A 10 years ago.

14 Q What brought you down here?

15 A My son. He was telling me the good things about the
16 weather and all the work and the stores and all that
17 good stuff and I immediately got a job.

18 Q Doing what?

19 A I'm a nurse.

20 Q Okay. And what kind of nurse?

21 A I'm a regular R.N.

22 Q And you do what as an R.N.?

23 A Well, I just do everything that needs to be done with
24 my patients.

25 Q Okay. And you moved in with your son?

- 1 A I moved in with my son, yes, I did.
- 2 Q And that was 10 years ago?
- 3 A About 10 years ago. That's the only family I have is
4 that one son.
- 5 Q And in your -- other than you and your son, do y'all
6 have any other animals living in that house?
- 7 A Yeah, I have two babies.
- 8 Q Two babies?
- 9 A Uh-huh, two baby dogs.
10 (Laughter.)
- 11 Q What kind of dogs are they?
- 12 A English Bulls.
- 13 Q English bulldogs?
- 14 A English bulldogs. One of them is a year old, the
15 other one is two years old. And they're big old
16 couch potatoes.
- 17 Q Now, back in last year, back in February ---
- 18 A Yes, sir.
- 19 Q How many dogs did you have?
- 20 A At that time I had just one dog and I was on my way
21 down to the pet store in Five Points and Bill says,
22 Mother, I forgot to pay our cable. I said, you
23 better stop and get in there and get it.
- 24 Q Now, but you were going to the pet store to do what?
- 25 A To get a crate for the other one.

- 1 Q What other one?
- 2 A The second dog that I bought.
- 3 Q Y'all were getting a puppy?
- 4 A Yeah, we got a puppy. When we got him he was six
- 5 weeks old.
- 6 Q How much did he weigh then?
- 7 A 17 pounds.
- 8 Q How much does he weigh now?
- 9 A 83.
- 10 Q And this is an English bulldog?
- 11 A It's an English bulldog.
- 12 Q Is it related to Uga?
- 13 A I'm sorry?
- 14 Q It's related to Uga, the Georgia mascot?
- 15 A No, I just got the two.
- 16 Q Okay.
- 17 (Laughter.)
- 18 A I just got them to play with. I just got them to
- 19 play with.
- 20 Q Yes, ma'am. Y'all went to the Time Warner Cable that
- 21 was located where?
- 22 A It was there -- Time Warner is there on that street
- 23 going down towards the pet store.
- 24 Q Okay. And that's in Five Points?
- 25 A Yes, sir.

1 Q Okay. On Harden Street.

2 A Yes, sir.

3 Q Okay. I'm going to show you what's been marked
4 Exhibit Number 14. Is that the Time Warner Cable
5 we're talking about?

6 A Yes, sir, and right here (indicating) is where I was
7 parked.

8 Q Okay. If you would, please show me.

9 A Right here, sir (indicating). See my car was headed
10 right in this way right here (indicating), see these
11 spaces marked off?

12 Q Let me get you better picture so you can show it
13 better, okay?

14 A Okay.

15 (Pause.)

16 Q I'm going to show you what's been marked as State's
17 Exhibit Number 9. Does that show a close-up about
18 where you were parked?

19 A Right here is the exact spot (indicating).

20 Q Okay. Hold on a second. But that is a picture that
21 shows the exact spot. Wait please.

22 A That spot.

23 Q This picture shows that exact spot?

24 A The exact spot.

25 MR. CATHCART: Your Honor, at this time the State

1 seeks to introduce State's Exhibit Number 9.

2 THE COURT: Any objection?

3 MR. MAY: Without objection, Your Honor.

4 THE COURT: All right.

5 (WHEREUPON, State's Exhibit Number 9, Photograph,
6 was moved into evidence.)

7 Q Now, if you would show the jury the exact spot where
8 y'all were parked?

9 A Right -- right there (indicating).

10 Q Where that silver car is?

11 A Right over -- the car right there and he picked --
12 there was no car sitting here in this spot. This
13 spot was empty when I was there and it was this --
14 there was no car parked there. But now there was
15 other cars down in this area (indicating).

16 Q Now, when y'all went to the Time Warner Cable?

17 A Yes, sir.

18 Q Who else was in the car besides you and your son?

19 A That was it.

20 Q That was it?

21 A That was it.

22 Q And your son -- who was driving?

23 A My son was driving.

24 Q Okay. Can you drive?

25 A Oh, yes, I can.

- 1 Q You have a driver's license?
- 2 A Yes, I do.
- 3 Q Okay. But that day he was?
- 4 A That was my car.
- 5 Q But he driving your car?
- 6 A He was driving my car. That is my car.
- 7 Q And after he parked in that spot, did you go with him
8 or where did you stay?
- 9 A No, I stayed in the car because it was a nice day and
10 the sun, I was enjoying that.
- 11 Q Okay.
- 12 A And that's why I stayed in the car. He just run in
13 to pay his bill.
- 14 Q Okay. Were the keys still in the car?
- 15 A Yes. Yes, sir, they was.
- 16 Q Were your windows up or windows down?
- 17 A A window -- the windows on the driver's side was down
18 and the driver and over on the passenger side was
19 also down.
- 20 Q Okay. Enjoying the weather?
- 21 A Sir?
- 22 Q Enjoying the day, enjoying the weather?
- 23 A Yeah, uh-huh. Yes, sir.
- 24 Q What if anything occurred while you were sitting
25 there in the car?

- 1 A The only thing that occurred was the gentleman -- my
2 son hadn't been gone maybe three to five minutes, in
3 that area, and somebody just grabbed my door open on
4 the driver's side.
- 5 Q Okay.
- 6 A And they started yelling at me, get out of the car,
7 get out of the car, I'm gonna shoot you, I'm gonna
8 shoot you. I mean, about that time he put a gun ---
- 9 Q Okay.
- 10 A --- right, there, in my left ear ---
- 11 Q Did you jump out the car right then?
- 12 A No, I didn't -- I couldn't do it because I was just
13 getting out of the hospital. I'd been out of the
14 hospital a short time with surgery on my back and I
15 fell and broke my back.
- 16 Q So you were stuck there?
- 17 A Yes, sir.
- 18 Q Were you looking at the man telling you to get out of
19 the car?
- 20 A Yes, I did and he called me a...
- 21 Q He called you some pro -- some bad names?
- 22 A He called me -- I could tell the people what he
23 called me. He called me a bitch.
- 24 Q And you were able to see his face clearly?
- 25 A Yes.

1 Q How far away were you from him when he was doing this
2 to you?

3 A From the -- I was sitting in the passenger side of
4 the car and he came up and jerked the door open on
5 the driver's side. I was trying to get out as fast
6 as I could but I -- as you can see, I still can't
7 walk well.

8 Q Uh-huh.

9 A And ---

10 Q And he -- when he put the gun to your head, was
11 actually this close touching you, were you looking at
12 him?

13 A I looking at him, yes. I was looking at him and I was
14 remembering every bit of it.

15 Q What happened when you couldn't get out the car fast
16 enough for him?

17 A Well, he just ran around the car. He ran around the
18 front of the car and yanked the passenger side door
19 open and he pulled this arm and said, get out of the
20 car, get out of the car, get out of the car, real
21 loud. And just like it was a song. And he pulled me
22 out and the car door almost got me down. He didn't
23 check the door.

24 Q Okay. Now when it almost knocked you down, where was
25 that?

- 1 A Well, I was out there at the door.
- 2 Q After he pulled you out the car, you were standing
- 3 there with the door still open?
- 4 A Yeah, he hadn't shut the door.
- 5 Q Uh-huh.
- 6 A And when he pulled out he hit me in the back here.
- 7 Q Did he run back around the other side getting into
- 8 the driver's side?
- 9 A Yeah and took off -- he took off real real real fast
- 10 like you -- when I was a teenager, spinning tires.
- 11 Q Okay. And the car door did what to you now?
- 12 A It hit me in the back and I still got bruises and
- 13 bangs on it.
- 14 Q Now, did that happen -- did it knock you to the
- 15 ground?
- 16 A He knocked -- yes he almost knocked me to the ground.
- 17 Q Almost but you ---
- 18 A But I -- I finally got myself straightened out that I
- 19 could stand up and that's when I went into Time
- 20 Warner.
- 21 Q Okay.
- 22 A And someone opened the door for me because I had a
- 23 bloody face and blood coming out of my ear and he --
- 24 he -- then after he spinned off real fast I went in
- 25 to holler -- and hollered for my son and he said, oh,

1 God, that's my mom. And the ladies from Time Warner
2 gave me a hand. They came, washed my face and got me
3 a glass of water.

4 Q Okay.

5 A I still haven't seen them ladies since and I wouldn't
6 know them if is seen them. I would love to meet them
7 though. They was so good to me.

8 Q Okay. Now, were the police called?

9 A I'm sorry? Yes, the police was called and he had my
10 son's cell phone in the car.

11 Q But were the police called to your location?

12 A Yes.

13 Q Okay. How long did it take the police to get there?

14 A Oh, just -- just seconds. It just seemed like they
15 all of just come down on us right good.

16 Q Okay. And what if anything happened after the police
17 got there and talked to you for a bit?

18 A Well, I heard them talking on the radios, you know.
19 And they -- they was talking and one said, they're
20 goes that Intrepid now, says it's a flying. And I
21 guess it was still -- so then somebody -- the next
22 thing I could hear on the radio was they've -- I've
23 got him, I've got him, he's -- I'm on his bumper.
24 And they said -- she was hollering saying, give me
25 back up. And so I -- we just stood there because

- 1 people -- the press was there ---
- 2 Q How long after you were assaulted ---
- 3 A Uh-huh.
- 4 Q --- did you hear the police, the person on the radio
- 5 say, I'm behind the car, was it a few minutes or ---
- 6 A Just a few minutes.
- 7 Q Okay.
- 8 A And they really was -- I mean, they ---
- 9 Q And at some point did they -- did they take you
- 10 somewhere?
- 11 A Yes, they did.
- 12 Q Okay, where?
- 13 A At some point that lady police officer took us down,
- 14 said that -- to Gonzales Gardens. I never heard of
- 15 it or seen or know anything about it but I smelled
- 16 it. Anyway, they took us down there and they -- the
- 17 lady police officer that had pursuit of him, she
- 18 brought him out and I -- she said, the lady police
- 19 officer -- another lady police officer had took us
- 20 down there. And I asked her to -- can you bring him
- 21 up just a little bit closer because of that headboard
- 22 by the police car, the back seat head -- you know.
- 23 And I said, oh, that's him, that's him. And I ---
- 24 Q Were you sure that was him?
- 25 A I was 110 percent sure.

- 1 Q How -- was it more than 10 minutes from the time that
2 you saw him when he assaulted you to when you picked
3 him out for the police, about that much time or how
4 much time
- 5 A Oh, it was not very long.
- 6 Q Okay.
- 7 A Just -- just a very short time.
- 8 Q It was very fresh in your mind what he just did to
9 you?
- 10 A I'm sorry?
- 11 Q Was it very fresh in your mind what he ---
- 12 A Yes, I did -- yes, it was still fresh in my mind. I
13 dream of it now.
- 14 Q No doubt in your mind that the person that you
15 pointed out to as the guy who did it was the guy who
16 did this to you?
- 17 A 110 percent sure.
- 18 Q Do you see that person present in the courtroom
19 today?
- 20 A Yes, I do.
- 21 Q Would you please point him out?
- 22 A Will I please 'point him out?
- 23 Q Yes, ma'am.
- 24 A May I stand up?.
- 25 Q You may.

1 A Oh he's ---

2 Q There you go.

3 A He's the gentleman sitting right there. He's got the
4 green stripes around his shirt.

5 MR. SHEALEY: Objection, Your Honor ---

6 THE COURT: Overruled.

7 MR. CATHCART: Let the record reflect she's
8 identified the Defendant.

9 Q Does he look exactly as he looked the day he did this
10 to you?

11 A Well, he has changed his looks some, but not ---

12 Q In what way?

13 A Well, he -- he looks like he's put on maybe a little
14 weight.

15 Q Okay.

16 A And another reason, he put a little -- his hair is
17 differently.

18 Q Is his longer or ---

19 A He doesn't have as much as he did.

20 Q He has more hair now or less hair now?

21 A He has less hair.

22 Q Okay. And that would be the person that you picked
23 out on the lineup -- I mean, excuse me. The person
24 you saw at Gonzales Gardens?

25 A Uh-huh.

- 1 Q Correct?
- 2 A Yes, sir.
- 3 MR. CATHCART: Beg the Court's indulgence.
- 4 Q After the identification, did you go to the Columbia
5 Police Department?
- 6 A Yes, I did.
- 7 Q Okay. And did you subsequently finally get to see
8 your car again?
- 9 A No, they -- they took it down to -- I think they --
10 they pulled it down to a garage and they had a lot of
11 cars in there. And they let us in the gate and we
12 opened the car door and it was definitely our car.
13 They had fingerprinted all over -- the powder and
14 stuff that you fingerprint with was all over it.
15 That was the only thing that was done to it wrong.
- 16 Q And was there any items in the car that were not
17 yours?
- 18 A Yes, sir.
- 19 Q What was that?
- 20 A Well, there was two -- I'm sure there's two duffel
21 bags, you know duffel bags?
- 22 Q Uh-huh.
- 23 A And they was in -- I don't know how they got in
24 there, wasn't ours.
- 25 Q Okay.

1 A And there was a pillowcase in there and the
2 pillowcase had -- it looked like it had clothes or
3 something in it. We didn't examine it, we just saw
4 what was on the top.

5 Q And did they also return your son's phone to you at
6 some point?

7 A Yes, they did.

8 Q And you identified that as his phone?

9 A Yes, that was his phone.

10 Q Okay. Let me show you what's been marked as Exhibit
11 Number 25. Do you recognize what this is?

12 A Oh, that's my telephone.

13 Q Is that the picture -- is that the phone ---

14 A That's -- that's ---

15 Q --- that was recovered by the police?

16 A Uh-huh, that is -- that's his telephone.

17 Q Okay.

18 MR. CATHCART: Let the record -- excuse me, at
19 this time the State seeks to introduce State's Exhibit
20 Number 25.

21 MR. SHEALEY: Without objection.

22 THE COURT: All right, without objection.

23 (WHEREUPON, State's Exhibit Number 25,
24 Photograph, was moved into evidence.)

25 Q You gave a statement to the police, did you not?

1 A I did.

2 Q And that was after all this occurred?

3 A All this occurred, I just gave him the statement.

4 Q So a year ago was when this happened, right ---

5 A Yes, sir.

6 Q Almost to the day?

7 A Yes, sir.

8 Q And just within a few minutes after your assault, you
9 had no doubt who -- that the man that was before you
10 was the man who did this, correct?

11 A I had no doubt. I still don't have any doubt, it's
12 the man that did it and I'm 110 percent sure.

13 MR. CATHCART: Thank you. Please answer in
14 questions from Defense counsel.

15 THE COURT: Mr. Shealey.

16 CROSS-EXAMINATION

17 BY MR. SHEALEY:

18 Q Hi, Ms. Gilmore?

19 A Hi.

20 Q Now you testified that you heard they got your guy on
21 the radio, the police radio, they got behind the
22 Intrepid, is that correct?

23 A I can't hear you, sir.

24 Q I'm sorry, I'll speak a little louder. You testified
25 a moment ago that you heard them on the police radio

1 say, we got behind the vehicle, the Intrepid, you
2 heard that, correct?

3 A Yes.

4 Q I'm sorry?

5 A I heard -- thank you, sir, for moving up.

6 Q You heard that on the radio, on the officers' ---

7 A Yes, the officers, there was many officers out there.
8 I can't tell you how many because they was moving
9 around. And I heard ---

10 Q And you knew they got him?

11 A Yeah.

12 Q And you heard that?

13 A Well, at the moment I didn't know for sure so I just
14 kept quiet. Then I listened again and it was -- they
15 said, I've got him, I'm on his bumper.

16 Q Uh-huh.

17 A And she asked for backup. So therefore they caught
18 him -- well, it wasn't very long until they caught
19 him. He never -- he never bumped my car against a
20 tree or nothing. He just took the car.

21 Q Yes, ma'am. Now, Ms. Gilmore, how old are you, about
22 75?

23 A I am 75.

24 Q Okay. And you were 75 years of age at the time of
25 this?

- 1 A Yes, I was 75 at the time that that was happening.
- 2 Q Okay. And you mentioned you had some back surgery?
- 3 A I had back surgery not since then but I had it
- 4 before, yes, I did.
- 5 Q You had it about a month prior?
- 6 A Something like that.
- 7 Q Okay.
- 8 A I'm not exactly sure on that but it was before that
- 9 and about that, yes.
- 10 Q What was wrong with your back, what happened ---
- 11 A It was broke.
- 12 Q It was a broken back?
- 13 A I had a broke -- I fell and Dr. Gunter operated on me
- 14 over at Lexington Hospital for it.
- 15 Q And why did you fall, what was the occasion?
- 16 A I just fell down.
- 17 Q Okay. And how is your health ---
- 18 A How's my health, I'm fine.
- 19 Q Are you a diabetic?
- 20 A I'm fine.
- 21 Q Are you diabetic, Ms. Gilmore?
- 22 A I'm a diabetic, yes.
- 23 Q Okay. Now, after this surgery, I imagine that was
- 24 pretty painful?
- 25 A (No response.)

1 Q The back surgery?

2 A Yes.

3 Q Yes, ma'am. Did Dr. Gunter -- Dr. Gunter, you said?

4 A Yeah, my surgeon was Dr. Gunter. He had two more
5 helping him, Dr. -- I forgot the other two but I --
6 he had two more doctors helping him. He had -- I had
7 13 hours of surgery.

8 Q I'm sorry?

9 A I had 13 hours of back surgery.

10 Q 13 hours, okay. And for this 13 hour surgery, when
11 you were done, and you said it occurred about a month
12 prior to this incident?

13 A About that, yes.

14 Q Yes, ma'am.

15 A I couldn't tell you the day but I know it happened.

16 Q And Dr. Gunter and those other officers -- excuse me,
17 other doctors prescribed you some medication?

18 A Holbrook was one of the them. Dr. Gunter was the
19 main surgeon and Holbrook was the helper and there
20 was another one and I could have looked it up for you
21 but.

22 Q Yes, ma'am. And they prescribed you some pain
23 medication for that surgery?

24 A No, he -- he didn't. He told me that he didn't think
25 I was going to need any medication but if I did, give

1 him a call. And I did, I gave him a call. He called
2 me in some pills which -- he called me in some. He
3 said take as needed.

4 Q How many times ---

5 MR. CATHCART: Your Honor, if I may object as to
6 ---

7 THE COURT: What's the relevancy?

8 MR. CATHCART: --- relevance of ---

9 THE COURT: Relax. What's the relevancy, Mr.
10 Shealey?

11 MR. SHEALEY: You Honor, the relevance is to the
12 medication that she may have been taking during --during
13 the incident. It goes to her state of mind, Your Honor.
14 It goes to any type of confusion, identification. That's
15 pretty relevant, Your Honor. It's an ID case.

16 MR. CATHCART: And, Your Honor, the question
17 would be, were you under the influence of any drugs ---

18 THE COURT: Had you taken any medication the day
19 that you were robbed or the car was jacked and that --
20 whether she was under medication and had back surgery?

21 So narrow it down to the day in question.

22 A Yeah, and the medication bottles said take as needed.

23 I think I had taken two in all that time.

24 Q Did you take any of that as needed medication on
25 February 1st, 2008?

- 1 A I'm sorry?
- 2 Q Did you take any of the as needed medication, that
3 pain medication, on February 1st, 2008?
- 4 A No, I don't take any medicine.
- 5 Q Okay. Now, Ms. Gilmore, I see you're wearing
6 glasses?
- 7 A Yes.
- 8 Q Were you wearing glasses on February 1st, 2008?
- 9 A Yeah, I wear glasses all the time.
- 10 Q You wear them all the time?
- 11 A Yeah.
- 12 Q Okay. So not like reading glasses but all the time
13 glasses?
- 14 A I wear my -- they're prescription glasses.
- 15 Q Yes, ma'am. Now, you described the perpetrator in a
16 statement to Investigator Pegram on February 1st,
17 2008, do you remember that?
- 18 A I what now?
- 19 Q I'm saying, Ms. Gilmore, you described the alleged
20 perpetrator in a statement to Investigator Pegram at
21 the Columbia Headquarters after this incident ---
- 22 A Yeah, I did?
- 23 Q Yes, ma'am. Do you remember doing that?
- 24 MR. SHEALEY: Your Honor, may I approach?
- 25 THE COURT: Yes, sir.

1 MR. SHEALEY: Thank you, Your Honor.

2 Q Do you recognize this, Ms. Gilmore? Do you recognize
3 that as your statement?

4 A That is my signature right there, right there, and
5 right there.

6 Q Thank you. And you gave the statement on
7 February 1st, 2008 because, like you said, it would
8 have been fresh in your mind right after this
9 happened, correct?

10 A It's still fresh in my mind?

11 Q Yes, ma'am, of course it is. Now, I'm going to read
12 you ---

13 MR. SHEALEY: Actually, before I do that, can
14 I mark this for identification purposes as Defendant's
15 ID?

16 (WHEREUPON, Defendant's Exhibit Number 1,
17 Victim's Statement, was marked for
18 identification.)

19 Q Now, Ms. Gilmore, do you remember this statement,
20 you just identified as your statement. I'm going to
21 read you a portion of this statement:

22 (Reading) I waited outside and was sitting in the
23 front passenger's while I was waiting for William to
24 return. A black man snatched the driver's door open.
25 He put a gun to the side of my head and he told me --

1 and I apologize for this language -- bitch, get out
2 of the car or I'll shoot you. He said that many
3 times as was getting out of the car. I was having
4 trouble getting out of the car because had back
5 surgery. The black man didn't wait for me to get out
6 before he started backing up. He almost knocked me
7 down. He drove away very fast and I went inside to
8 get help.

9 Do you agree with that statement?

10 A What part do you think -- you want me to tell whether
11 I agree with it or not?

12 Q Just the portion I read, do remember ---

13 A Yeah.

14 Q --- writing that ---

15 A I agree with it. He did, he drove away very fast and
16 the car door was not shut. I don't know when the car
17 door did get shut. But when he left there, the car
18 door was a swinging, in and out like it was trying to
19 shut.

20 Q Yes, ma'am. But on that day, February 1st, 2008, you
21 only identified the alleged suspect as a black man?

22 A Yes, sir.

23 Q But today you're saying something a little different?

24 A He's still a black man, isn't he?

25 (Laughter.)

1 Q He is, you're right. In fact there a lot of black
2 men in this room, you're correct.

3 Now, I'm going to bring you back to what
4 happened. You testified that you were on the
5 passenger side because William had been driving?

6 A Yeah, I was a passenger.

7 Q And the man that carjacked you, opened up the
8 driver's side door. And you testified that he put a
9 gun to your left ear?

10 A He put a -- the point of the gun went into my ear.

11 Q Uh-huh. Was he pressing it pretty hard?

12 A Pretty hard. And he -- he pulled out and pushed it
13 in I think two times.

14 Q Uh-huh. And even though you didn't describe what he
15 looked like in your statement to the officer, other
16 than a black man, what did he look like? What did --
17 what did his facial features look like?

18 A You mean the black man ---

19 Q Did he have a mustache?

20 A You want me to identify the black man? I just did.

21 Q Right. And I remember you said that -- and you
22 identified the Defendant.

23 Now, you testified that his hair is shorter now
24 than it was then. He's changed, you said he's put on
25 some weight and his hair's shorter now than it was

1 then?

2 A Yeah, his head -- when I -- when he had -- I saw his
3 hair, it was long and it was -- well, it was longer
4 than what I have and it was gummy looking.

5 Q Gummy? Was it like ---

6 A Gummy looking. Looked like it was -- needed a good
7 shampoo.

8 Q So it was -- I mean, I don't -- was it kind of long
9 and nappy?

10 A Yeah, it was nappy like.

11 Q Was it braids or was it just ---

12 A No, no, it was not braided.

13 Q Uncombed, maybe uncombed? Was it uncombed?

14 A It was uncombed for sure.

15 Q Okay. Okay. Now, other than the gun that was
16 pointed to your left ear as you were on the passenger
17 side, did he have anything else in his hands?

18 A I didn't see anything else but a gun. But when I
19 went over -- when we went over to that garage to get
20 our car, there was two duffle bags in the trunk and
21 they was a pillowcase in there with some -- looked
22 like clothes.

23 Q Yes, ma'am. Now but other than -- he had a gun in
24 his hand for sure, you're certain of that?

25 A I'm a hundred percent sure I seen a gun.

- 1 Q Yes, ma'am.
- 2 A And I felt it in my ear.
- 3 Q Now you weren't able to really describe the weapon,
4 were you?
- 5 A No, I couldn't tell it enough to -- and I wouldn't
6 know what to -- how to describe a gun anyway.
- 7 Q Yes, ma'am.
- 8 A By name.
- 9 Q Now, after this happened, you went into Time Warner,
10 didn't you?
- 11 A Sir?
- 12 Q Sorry, Ms. Gilmore. After this thing happened, you
13 went to the Time Warner to let them know something
14 happened right, something happened to you?
- 15 A Me, happened to me?
- 16 Q After this incident, you went into the Time Warner to
17 let them -- to let people know something happened to
18 you, right?
- 19 A No, my son might have but I ---
- 20 Q You never went inside Time Warner?
- 21 A I never entered Time Warner. I don't pay bills. My
22 son pays them.
- 23 Q Okay. Ms. Gilmore, after this incident, you felt a
24 little faint, didn't you?
- 25 A I felt a little bit what?

1 Q You felt a little bit faint?

2 A No, I ain't faint.

3 Q Okay.

4 A I'm too mean to faint.

5 Q You're too mean to faint? Okay. So you would
6 disagree with some of the earlier testimony when they
7 said you looked a little faint? You were fine? You
8 think you were fine?

9 A Not one.

10 Q Okay.

11 A I don't have a pain one.

12 Q Yes, ma'am. Now, eventually the officers took you to
13 the area where they had a suspect. And you -- you
14 knew this because they told you where they were
15 taking you and to look at somebody and you had heard
16 on the radio that they had -- they were on someone
17 and they had apprehended someone, isn't that right?

18 A Yeah, they said they had apprehended but they didn't
19 say who. I'm not sure they knowed how but they had
20 -- they ---

21 Q Yes, ma'am and they took you -- they took you to the
22 Gonzales Gardens Apartment Complex, didn't they?

23 A You know, I don't know what that is down there. We
24 just went inside and I was trying to get out of there
25 fast because it was making me sick, the smell.

- 1 Q The smell, you didn't like the smell of the place?
- 2 A The smell ---
- 3 Q It smelled dirty, didn't it, dirty?
- 4 A Yeah. My son was saying, hurry, get out of here,
5 let's just -- because it stunk.
- 6 Q Now, you identified a man in handcuffs, didn't you?
- 7 A Yes he -- yes, he did, he had handcuffs on.
- 8 Q And he was the only man in handcuffs?
- 9 A He was the only one I seen in handcuffs.
- 10 Q There were no other black men in handcuffs there with
11 the officers?
- 12 A I didn't see nobody else in handcuffs, black or white
13 or pink or pokie dots. That was the only one I seen.
- 14 Q Yes, ma'am. Now, after this thing happened, it was
15 covered in the news a little bit. And you were on
16 the news a little bit and the incident ---
- 17 A Yeah, I was on the news. I was on the news. They
18 didn't use my name in the newspaper.
- 19 Q Of course, not.
- 20 A They didn't use my name in the newspaper but it came
21 out on TV when it came out on TV.
- 22 Q You saw -- you saw Mr. Mitchell own TV, they showed
23 him on TV?
- 24 A Yes. I didn't see him on TV, just myself.
- 25 Q Your picture was on TV?

- 1 A Huh?
- 2 Q I'm sorry. You said your picture was on television?
- 3 A Yes, it was -- it was on 6 in the morning and 11 at
4 night.
- 5 Q Okay. Okay.
- 6 A It was on the WL -- you know, what is it, WLTX or
7 something, something like that.
- 8 Q And you've known this trial has been coming for a
9 while, correct?
- 10 A (No response.)
- 11 Q You've known this trial has been coming for a couple
12 of weeks now?
- 13 A Uh-huh.
- 14 Q And Mr. Cathcart's been out to your house a couple of
15 times before this trial?
- 16 A Who?
- 17 Q Mr. Cathcart has been out to your house a couple of
18 times before this trial?
- 19 A I think he was. I'm pretty sure he was.
- 20 MR. SHEALEY: Beg the Court's indulgence.
- 21 (Pause.)
- 22 THE COURT: Yes, sir.
- 23 MR. SHEALEY: No further questions at this time?
- 24 THE COURT: All right. Anything on redirect?
- 25 MR. CATHCART: Just a couple of questions.

REDIRECT EXAMINATION

2 BY MR. CATHCART:

3 Q Ms. Hendrick and I did visit you at your home,
4 correct?

5 A Huh?

6 Q We did come see you at home, didn't we?

7 A Yeah, uh-huh.

8 Q And ask you to tell the truth in this case, right?

9 A Yes.

10 Q Defense counsel sent an investigator down there also,
11 didn't they?

12 A Yes, they did, sir.

13 Q That indicated that he was not the PD's office but
14 was an investigator, right ---

15 A Said he was an investigator ---

16 Q Just an investigator, right?

17 A And he -- I think he left the card ---

18 MR. SHEALEY: Objection, Your Honor.

19 THE COURT: All right, basis?

20 MR. SHEALEY: 403 issue, Your Honor, it's more
21 prejudicial than probative at this point.

22 THE COURT: Well I think you opened the door by,
23 did he go to the house.

24 MR. CATHCART: Yes, sir.

25 THE COURT: Leave it alone.

1 MR. CATHCART: Okay.

2 THE COURT: Move on to something else.

3 Q You've been here all day today, right?

4 A Yes, sir.

5 Q And you're not doing the best of health as you were
6 last year, were you?

7 A I couldn't hear you.

8 Q I'm sorry. You're not doing as well as you were last
9 year?

10 A I was doing better than I was, you know, last year.
11 I think probably that helped me to go down, all of
12 that, because I hear things at night. That's still
13 bearing on my mind.

14 Q Okay. But the person who attacked you is the same
15 person you saw 10 minutes later, correct?

16 A Uh-huh.

17 Q Yes, ma'am?

18 A (The witness nodded head.)

19 Q You have to answer out loud?

20 A Uh-huh, yeah, I did.

21 MR. CATHCART: No further questions?

22 THE COURT: Anything on recross?

23 MR. SHEALEY: No, Your Honor, nothing.

24 THE COURT: You may step down now, Ms. Gilmore.

25 Help Ms. Gilmore step down, please.

1 (The witness leaves the witness stand.)

2 THE COURT: Ms. Hendrick.

3 MS. HENDRICK: Yes, sir.

4 MR. CATHCART: Your Honor, actually if I may.

5 THE COURT: Yes, sir.

6 (Pause.)

7 THE COURT: I'm going to give y'all a short
8 break, members of the jury. Don't talk about this case,
9 okay. We'll bring you right back and try to work in a
10 couple more witnesses before I let you go get your
11 daughter, all right. Fair enough?

12 JUROR: I'm sorry?

13 THE COURT: I'm going to give you a short break.
14 We're going to try and work in a couple more witnesses
15 before I let you go get your daughter.

16 JUROR: Thank you very much.

17 (The jury retires from the courtroom at
18 3:47 p.m.)

19 THE COURT: We'll be at ease. Not very
20 long, not very long.

21 (The Court was in recess.)

22 THE COURT: Is everybody ready?

23 MR. CATHCART: Yes, Your Honor.

24 THE COURT: Bring the jury in.

25 MR. CATHCART: Your Honor, I ask as to the

1 victim.

2 THE COURT: The Solicitor has requested to me
3 that Ms. Gilmore be allowed to leave for today. Any
4 objection?

5 MR. MAY: No, sir.

6 THE COURT: She'll be back tomorrow, won't she?

7 MR. CATHCART: Yes sir.

8 THE COURT: All right. That's fine then.

9 (The jury returned to the courtroom at
10 3:57 p.m.)

11 THE BAILIFF: The jury's seated, Your Honor.

12 THE COURT: Thank you, sir. Welcome back, Mr.
13 Foreman and members of the jury.

14 Solicitor, you may call your next witness.

15 MR. CATHCART: Your Honor, at this time the State
16 calls Michael Murphy.

17 (MICHAEL MURPHY, after being duly sworn,
18 testified as follows:)

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

21 THE WITNESS: My name is Michael Brandon
22 (phonetic) Murphy.

23 DIRECT EXAMINATION

24 BY MR. CATHCART:

25 Q You're going into the army this afternoon, correct?

- 1 A Yes.
- 2 Q And you are going to be, I guess starting basic
3 training?
- 4 A Yes, sir.
- 5 Q Can you tell the jury where you were on February the
6 1st of last year?
- 7 A (No response.)
- 8 Q Or do you recall being at the -- at Harley's Barber
9 Shop?
- 10 A Yes, sir.
- 11 Q You do recall being there?
- 12 A Yes, sir.
- 13 Q Were you -- what were you doing there?
- 14 A Just stopped by to get a haircut.
- 15 Q I'm going to show you what's been marked as State's
16 Exhibit Number 2. Can you tell me what that is a
17 picture of?
- 18 A Yes, sir.
- 19 Q What is it a picture of?
- 20 A It's a picture of like an open field right in front
21 of the barber shop.
- 22 Q Okay. And the barber shop that we're talking about
23 is in that picture as well?
- 24 A Yes, sir.
- 25 Q Okay.

1 MR. CATHCART: At this time the State seeks to
2 introduce State's Exhibit Number 2.

3 MR. MAY: Without objection, Your Honor.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit Number 2, Photograph,
6 was moved into evidence.)

7 BY MR. CATHCART:

8 Q Would you please point to the jury basically where
9 y'all were -- where you were, excuse me?

10 A Yes, sir. We were standing like right about toward
11 the back ---

12 THE COURT: Mr. Solicitor, I don't think all the
13 jury can see past you.

14 MR. CATHCART: Thank you, Your Honor.

15 Q I'm going to let you hold it, how about that?

16 A All right. Standing about right here at the rear of
17 the shop right by the back door, the right side.

18 Q Okay. What if anything did you see that was out of
19 the ordinary that day?

20 A All I know is we seen, we heard a bunch of police
21 sirens. And as we heard the sirens coming, I was
22 sitting on a little -- it's like a little brick stump
23 right here (indicating).

24 Q Uh-huh.

25 A I was sitting on it looking to the right. I seen the

1 police coming from this side of the street on this
2 side (indicating). So then I look towards this
3 direction over here and I saw a guy running coming
4 down the street, looked like he had just jumped out
5 of a car. And he was coming down the street and I
6 seen a police officer running behind him. He got
7 about right here (indicating) ---

8 Q Uh-huh.

9 A --- and it looked like he was taking off some clothes
10 coming through this area right here. And when he got
11 about to the middle of the parking lot, he threw a
12 phone ---

13 Q Okay.

14 A --- under the car, like a little car sitting right
15 there and he threw the phone under the car right here
16 (indicating). And he ran up that hill and the police
17 officer, she stopped about right on that street
18 (indicating) and she called for backup. And it looked
19 like when he ran up the hill, he tried to go through
20 somebody house but he couldn't get through the door.

21 Q Okay.

22 A So he ran around the corner to the -- to the other
23 side. And we tried to follow him so we ran up the
24 hill following him and when we got to the other side,
25 he was gone.

1 Q Okay. And did you subsequently tell the police where
2 that phone was?

3 A Yes, sir.

4 Q Okay. And you pointed out that to them?

5 A Yes, sir.

6 MR. CATHCART: Please answer any questions from
7 Defense counsel.

8 CROSS-EXAMINATION

9 BY MR. MAY:

10 Q Hey, Mr. Murphy, how you doing?

11 A How you doing?

12 Q So you're going in the army?

13 A I'm in the National Guard.

14 Q Well, thank you very much. I mean, thank you for
15 going. That day you saw somebody running?

16 A Yes, sir.

17 Q You saw them drop something. Did you see them drop
18 anything else?

19 A As he was taking off his jacket, it kind of looked
20 like something came out his pocket but I don't know
21 if he was actually trying to throw it or not.

22 Q Okay. Was that the phone?

23 A No, the phone was in the parking lot. When he was
24 coming through taking off his jacket, coming through
25 the brush, something looked like it might have flew

1 off the side or something out his pocket.

2 Q And then the police descended upon the area, correct?

3 A Yes, sir.

4 Q A lot of police and they searched where he ran?

5 A Yes, sir.

6 Q And you saw them search to make sure that nothing --
7 nothing else was out there?

8 A Yes, sir.

9 Q All right, I thank you very much.

10 A You're welcome.

11 Q And good luck.

12 A Thank you.

13 MR. CATHCART: I'd ask that he be excused.

14 THE COURT: Yes, good luck to you, sir.

15 THE WITNESS: Thank you, sir.

16 MR. CATHCART: Thank you.

17 (The witness leaves the witness stand.)

18 MS. HENDRICK: The State calls Corporal Ginger
19 Sanders.

20 (GINGER SANDERS, after being duly sworn,
21 testified as follows:)

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

24 THE WITNESS: My name is Ginger Sanders.

25 DIRECT EXAMINATION

1 BY MS. HENDRICK:

2 Q Good afternoon, Corporal Sanders. Where are you
3 currently employed?

4 A The City of Columbia Police Department.

5 Q And what do you do for the City of Columbia?

6 A I'm an acting sergeant. Actually I run a squad out
7 of the downtown metro region area.

8 Q And why do I have to call you Corporal?

9 A I'm technically just a corporal. They're just having
10 me do a sergeant's job.

11 Q Okay. How long have you been in law enforcement?

12 A This summer will make 20 years with the City of
13 Columbia Police Department.

14 Q If you would, just briefly describe for the jury what
15 your duties are as an acting sergeant for the
16 Columbia Police Department.

17 A I'm basically responsible for eight patrolmen to be
18 sure they cover their territories that they are
19 assigned and be sure they carry out their day to day
20 activities as far as police work, patrolling,
21 providing community services for the citizens of
22 Columbia.

23 Q And part of your job is to respond to any emergency
24 calls that go out?

25 A That is correct.

1 Q And did you have the opportunity to respond to an
2 emergency call February 1st, 2008?

3 A I did.

4 Q Can you explain to the Court how that happened?

5 A Actually, I had gone in that day to work an overtime
6 assignment and over the police radio they gave our a
7 in-progress robbery at the Time Warner Cable that's
8 located on Harden Street in the Five Points area.

9 Q What other information came out over the radio about
10 this call?

11 A The information that came out over the radio was that
12 the suspect had left the Time Warner Cable in a blue
13 four door Intrepid vehicle. And that was the vehicle
14 we were looking for.

15 Q And where were you in Columbia when this call came
16 out?

17 A I had just left my offices over on the Two Notch Road
18 area, so I was coming down Two Notch Road. I had
19 turned on to Taylor Street and then when the call
20 went out on Harden Street, I started making my way
21 over to the Five Points area via Taylor Street to I
22 believe it was Hampton.

23 MS. HENDRICK: Permission to approach the
24 witness.

25 THE COURT: Yes, ma'am.

1 Q I'm going to show you what's been marked as State's
2 Exhibit Number 27. Do you recognize that?

3 A I do. It's a downtown map of Columbia, part of it.

4 Q And is this the area where you were headed towards or
5 that you were in?

6 A Yes.

7 Q You said you were coming from Taylor Street?

8 A I was coming down Taylor Street. I had just come off
9 of Two Notch to Taylor right by the Providence
10 Hospital. I turned, I was trying to make my way over
11 to the Five Points area.

12 MS. HENDRICK: Your Honor, permission for the
13 witness to step down.

14 THE COURT: Yes, ma'am.

15 (The witness steps down from the witness stand.)

16 Q And while you're driving in this area, did you happen
17 to see a blue Intrepid?

18 A I did about the 1200 block of Laurens Street.

19 Q And can you use this marker and just show us where
20 you first spotted the blue Intrepid?

21 A Okay.

22 Q Take your time ---

23 A This is Laurens Street right here and this is Harden
24 Street and I'm assuming this is going to be Gervais
25 (indicating). It's not marked.

1 Q Uh-huh.

2 A This is Laurens Street. It was about somewhere right
3 in this area (indicating).

4 Q Okay. And who was in that blue Intrepid?

5 A The Defendant.

6 Q And how were you able to see that?

7 A I was actually headed towards Gervais Street. See my
8 little arrow, it's coming down Laurens Street this
9 way. And the blue Intrepid was headed on Laurens
10 Street coming towards me (indicating). Everybody see
11 that?

12 When I actually saw the car coming towards me, I
13 noticed it was a blue Intrepid so I looked over into
14 the car and the driver actually looked at me and his
15 eyes got kind of big like, oh, police.

16 Q What happened after you made eye contact with the
17 driver?

18 A Once I made eye contact with the driver, the driver
19 proceeded on Laurens Street. I came down Laurens
20 Street and made a right on to Gervais Street, made a
21 right on to Gregg Street trying to hurry up because I
22 knew the only place for him to come out would be on
23 Hampton Street up here. So I was basically right
24 here (indicating) and I made a right hand turn and
25 the blue Intrepid once again was coming towards me.

1 So at this point I do a u-turn and I get behind
2 the car and they had already given out the tag on the
3 radio. So I confirmed with our dispatch, I read out
4 the tag and told everybody to give me the channel
5 because I was behind the vehicle.

6 He proceeded up Hampton Street to Barnwell. I
7 was still behind him the whole time giving radio
8 transmission. We made a right on to Taylor Street,
9 went all the way down to Taylor Street. I was still
10 giving transmissions on our metro channel.

11 He made a right on to Heidt Street and we
12 actually came to a final rest right here at Hampton
13 and Washington.

14 Q Okay. And at what point during this did you put on
15 your blue lights and siren?

16 A Right here when I made the initial u-turn and got
17 behind the Defendant is when I confirmed that that
18 was the tag, this was the car and I turned my -- I
19 activated my blue lights and my siren and my
20 headlights in the flashing mode.

21 Q Okay. So it was not until right there (indicating).

22 A Right here (indicating) when I made this actual u-
23 turn on him.

24 Q And did he ever stop during this?

25 A He never stopped. He kept proceeding on down this

1 path (indicating), kept proceeding on down the path
2 until we came to the intersection of Hampton and
3 Heidt and that's where he stopped the car right in
4 the middle of the intersection.

5 Q And was there traffic on these roads?

6 A There was traffic. It seemed like it was around
7 lunchtime, 12:30'ish, during the day.

8 Q Was there opportunity for him to pull over and stop?

9 A Oh, yeah. There's not very much traffic right here
10 on Hampton Street or Barnwell. This would have been
11 actually -- this would have been the most appropriate
12 opportunity for him to have stopped right here
13 (indicating) because there was no traffic there. It
14 was before we reached a major intersection and a
15 major ---

16 Q And your blue lights were on the entire time you're
17 driving down Taylor?

18 A The entire time.

19 Q Okay. What happened when you came to the
20 intersection of Hampton and Heidt Street?

21 A When we got to Hampton and Heidt Street, he stopped
22 the car right here. I stopped behind him. I got on
23 my PA and told him to stop. At this point -- and the
24 PA is the loud speaker, the police radio over the
25 police vehicle. He actually exited the vehicle,

1 jumped out and began to run on foot.

2 At this time I exited my police car and pursued
3 after him on foot headed toward Gonzales Gardens.

4 Q Okay. And where is Gonzales Gardens on this map?

5 A It's going to be on -- up in this area (indicating).

6 Q Okay.

7 MS. HENDRICK: Your Honor, at this time the State
8 moves to enter State's Exhibit Number 27 into evidence.

9 THE COURT: I think it's already without
10 objection, was it not?

11 MR. MAY: That's correct, Your Honor.

12 THE COURT: All right, just needs to be marked.

13 MS. HENDRICK: It's been marked.

14 THE COURT: All right, it's in then.

15 (WHEREUPON, State's Exhibit Number 27, Map of
16 City of Columbia, was moved into evidence.)

17 (The witness returns to the witness stand.)

18 Q Okay. I'm going to show you some other pictures.

19 This is what's been marked as State's Exhibit 5. Let
20 me show them all to Defense counsel first.

21 (Pause.)

22 Q I'm going to show you what's been marked as State's
23 Exhibit 10.

24 MS. HENDRICK: Permission to approach again.

25 THE COURT: Did you see this?

1 MR. MAY: Yes, sir.

2 THE COURT: All right.

3 Q I'm going to show you what's been marked as State's
4 Exhibit 10. Is this the area that you chased him
5 through?

6 A Yes, that's the -- it's a little dirt field right
7 there. I believe there's a Church's Chicken and a
8 barber shop right there and that's Gonzales Gardens,
9 these apartments.

10 Q And can you kind of -- maybe it would be helpful if
11 you held it.

12 A Okay.

13 Q Can you show the jury maybe the path you took?

14 A This street is actually Millwood Avenue right here.
15 I ran across Millwood Avenue and up through this --
16 this field right here (indicating) going up toward
17 Gonzales Gardens, these apartments.

18 Q Okay. And was he in your line of sight the entire
19 time?

20 A He was in my line of sight the entire time going
21 across this field and across this roadway, from the
22 time we exited the vehicle back here, he was in my
23 sight the whole time.

24 Q And did you ever lose him in your line of sight?

25 A I lost him briefly when he rounded the corner of one

1 of the apartment buildings. But is was just briefly.

2 Q Okay.

3 MS. HENDRICK: The State moves to enter this,
4 State's Exhibit 10.

5 MR. MAY: No objection, Your Honor.

6 THE COURT: Without objection.

7 (WHEREUPON, State's Exhibit Number 10,
8 Photograph, was moved into evidence.)

9 Q And did you eventually catch back up with him?

10 A I did. There were other officers in the area also
11 because we had given the general area that we were
12 at, so there were other officers. And once I rounded
13 that -- that apartment building, I looked over and in
14 between the door and the screen door he had wedged
15 his self up in there trying to hide. And at that
16 point Officer Smalls was coming down here and I'm
17 like, that's him, that's him. And at that point we
18 went in and got him.

19 Q And then you were able to place him under arrest at
20 that point?

21 A Uh-huh.

22 Q And was that the same person, the person you had been
23 chasing, the same person you saw in the blue
24 Intrepid?

25 A Yes, indeed it was.

1 Q Okay. And after he was apprehended, what else did you
2 do?

3 A That was it. Well, I -- actually -- I had saw him
4 throw something when we were running across that
5 field, he had dropped something, threw something
6 down. So I went and backtracked my steps, the path
7 that we ran, and we ended up finding a, I believe it
8 was black cell phone that he had dropped or thrown
9 down.

10 MS. HENDRICK: Beg the Court's indulgence.

11 (Pause.)

12 Q I'm going to show you what's been marked State's
13 24. Do you recognize this?

14 A That's the blue Intrepid he was driving and that's my
15 patrol car behind it.

16 Q And so is that the intersection of Hampton and Heidt?

17 A That is.

18 Q Does that fairly and accurately represent your cars
19 -- those cars that day?

20 A Yes.

21 MS. HENDRICK: Your Honor, the State moves to
22 enter State's Exhibit 24 into evidence.

23 MR. MAY: No objection, Your Honor.

24 THE COURT: All right, without objection.

25 (WHEREUPON, State's Exhibit Number 24,

1 Photograph, was moved into evidence.)

2 MS. HENDRICK: Please answer any questions that
3 Defense counsel may have for you.

4 CROSS-EXAMINATION

5 BY MR. MAY:

6 Q How you doing, Officer -- I mean, Corporal.

7 A That's okay.

8 Q I apologize.

9 A That's all right.

10 Q Okay. Just real quick. Help me orientate myself to
11 this, all right?

12 A Okay.

13 MR. MAY: If I may approach, Your Honor.

14 THE COURT: Yes, sir.

15 Q So we're assuming this is Gervais, this is 378,
16 correct?

17 A Right.

18 Q And this is the train tracks that run behind and
19 these are county buildings, right?

20 A (No response.)

21 Q Those are the county buildings?

22 A The county buildings -- can I -- permission to step
23 down?

24 THE COURT: Yes.

25 (The witness steps down from the witness stand.)

1 A These right here -- this is Gervais Street right
2 here. This is Laurens Street. This is where the bus
3 station is at. There's like a paint and body shop
4 right here (indicating).

5 And these are the state (sic) buildings, 2020
6 Hampton Street where you pay your taxes and some kind
7 of EMS building right there (indicating).

8 Q Okay. And where would the Greyhound Bus Station be?

9 A The Greyhound Station would be right here
10 (indicating) on the corner or semi-on the corner of
11 Harden -- in between Harden and Laurens and Gervais
12 Street. It's like right ---

13 Q It's about right there?

14 A Right there (indicating) where my finger's at.

15 Q Okay. And this little street right here, do you know
16 the name of that? Is that Cherokee (phonetic)
17 Street?

18 A I believe that is Cherokee Street right there.

19 Q And you started seeing the Defendant, okay, after you
20 came back. You came back down here and right about
21 in this area (indicating) ---

22 A Uh-huh.

23 Q --- is where you saw the Defendant, is that correct?

24 A That is correct.

25 Q And you can get back -- take your seat.

1 A Thank you.

2 (The witness returns to the witness stand.)

3 Q And where we ended up and the place where he took a
4 right and you took a right following him, there's a
5 Kentucky Fried Chicken right there as -- after you
6 pass Benedict and Allen, isn't that right?

7 A There's a Kentucky Fried Chicken on your left on
8 Taylor Street and on your right there's actually a
9 Church's Chicken.

10 Q Okay. But you said you take a right. It's right
11 there in that -- in that vicinity ---

12 A Right.

13 Q --- where -- where the vehicle was eventually stopped
14 -- I mean stopped.

15 A Right.

16 Q And then you gave foot chase and I have to tell you
17 it makes me feel better living in Columbia that you
18 caught him, that you had the speed to catch him while
19 he was running, I mean. And you caught him in
20 Gonzales Gardens?

21 A (The witness nodded head.)

22 Q And it was this man who was running?

23 A Yes, yes.

24 Q Okay. And you saw him drop the cell phone?

25 A Uh-huh.

1 Q And that was recovered?

2 A Yes.

3 Q And you pretty much kept up with him the entire time,
4 right?

5 A He had a little bit of a jump on me but I could still
6 see him in sight. And then when he rounded that
7 building, I briefly -- he was out of my sight for
8 just a brief moment. And then when I turned around
9 and then I saw him wedged in that doorway.

10 Q About that time the -- weren't there some narcotics
11 agents coming from the other direction?

12 A That is correct. They were coming from like the
13 Providence Hospital street side up there on the
14 Gardens.

15 Q And you came together and you got Norman somewhere --
16 somewhere on the building kind of like in between the
17 screen door and the main door?

18 A It wasn't kind of, he was. He had tried to wedge his
19 self in between a locked door and a screen door of
20 somebody's apartment.

21 Q I can't do that so I'm just ---
22 (Laughter.)

23 MR. MAY: Beg the Court's indulgence for one
24 second.

25 (Pause.)

1 THE COURT: Yes, sir.

2 Q You were present when he was placed in handcuffs,
3 correct?

4 A Yes.

5 Q And did y'all do -- like you patted him down to see
6 what was in his pockets?

7 A Officer Smalls is the one that actually handcuffed
8 him because we both got in there together and I'm
9 like, that's him, that's him, that's him.

10 Q Yes, ma'am.

11 A So Smalls actually and someone else actually took him
12 into custody right there.

13 A But you were there looking at it?

14 A I was there watching it.

15 Q Okay, did they find a gun?

16 A I'm not aware that they did.

17 MR. MAY: No further questions at this time, Your
18 Honor.

19 MS. HENDRICK: Beg the Court's indulgence. Very
20 briefly. May I approach the witness?

21 THE COURT: Yes, ma'am.

22 REDIRECT EXAMINATION

23 BY MS. HENDRICK:

24 Q Just to clarify, the first time you actually saw the
25 Defendant in the blue Intrepid was where?

1 THE WITNESS: Can I step down?

2 THE COURT: Yes, ma'am.

3 (The witness leaves the witness stand.)

4 A It was there on Laurens Street, right here
5 (indicating) about mid ---

6 Q Where you made ---

7 A --- Laurens Street. That's where I made eye contact
8 with him. He was driving the blue Intrepid. I was
9 driving the police car, basically came and I saw the
10 blue Intrepid and I looked right over there looking
11 dead in the eye and saw him.

12 Q And this area where Hampton and you said that's
13 Cherokee?

14 A That's Cherokee right here (indicating) because it
15 dead ends.

16 Q And right where that is is where you actually just
17 activated the blue lights.

18 A Right. Because I made a right right here because I
19 knew when he came off of Laurens Street he would have
20 either had to have taken a right or taken a left. So
21 I obviously made the right to go back down here to
22 try to catch back up with him to see where he was at.
23 And at this time he was coming towards me again. So
24 that's when I did the u-turn and got behind him and
25 verified that was the car and that was the tag.

1 Q Okay. So that was the second time you actually saw
2 him in the blue Intrepid? The first time was on
3 Laurens Street?

4 A That's correct.

5 MS. HENDRICK: Beg the Court's indulgence.

6 (The witness returns to the witness stand.)

7 MS. HENDRICK: I have no further questions for
8 the witness.

9 THE COURT: Anything on recross?

10 MR. MAY: No, sir.

11 MS. HENDRICK: Your Honor, may this witness be
12 excused?

13 MR. MAY: Without objection, Your Honor.

14 (The witness leaves the witness stand.)

15 (Whereupon, a bench conference was held off the
16 record, in the presence of the jury, but out of the
17 hearing of the jury.)

18 THE COURT: I've got good news and I've got bad
19 news for you, members of the jury. What would y'all like
20 to hear first?

21 JURORS: Good -- bad.

22 THE COURT: I'm going to stop a little bit early,
23 okay. I want to make sure you go get your daughter. And
24 this is long night for me and I'm going to take a little
25 break myself. I'm going to save myself a little bit just

1 from a personal standpoint.

2 So, once again, don't talk about this case in any
3 way, shape or form. I ask you to be back in the jury room
4 tomorrow morning at 9:30. I trust and hope you all have a
5 pleasant and restful evening.

6 I'll see you at 9:30. Thank you all so very
7 much.

8 JURORS: What's the bad news?

9 THE COURT: There is no bad news.

10 (The jury retires from the courtroom at
11 4:20 p.m.)

12 THE COURT: See y'all at 9:30 in the morning.

13 (The Court was in recess.)

14 THURSDAY, FEBRUARY 5, 2009:

15 THE COURT: We all ready?

16 MR. CATHCART: Yes, sir.

17 THE COURT: Ready, Mr. May?

18 MR. MAY: Yes, Your Honor.

19 THE COURT: Bring them in.

20 (The jury returned to the courtroom at
21 10:11 a.m.)

22 THE BAILIFF: Jury's all present, Your Honor.

23 THE COURT: Welcome back, Mr. Foreperson and
24 members of the jury. We'll see how this thing goes.

25 Solicitor, you may call your next witness.

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 MR. CATHCART: Your Honor, at this time the State
2 calls Officer Smalls.

3 (BARRY SMALLS, after being duly sworn,
4 testified as follows:)

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

7 THE WITNESS: My name is Barry Smalls, Columbia
8 Police Department

9 DIRECT EXAMINATION

10 BY MR. CATHCART:

11 Q Where are you employed?

12 A Columbia Police Department.

13 Q And what do you do there?

14 A Narcotic -- officer for organized crime and
15 narcotics.

16 Q And were you doing that back on February the 1st of
17 '08?

18 A Yes, I was.

19 Q Okay. Were you working on February the 1st of '08?

20 A I was.

21 Q Did something bring you to Gonzales Gardens on
22 February the 1st of '08?

23 A Yes.

24 Q What was that?

25 A Was scanning radio channels and we heard a call go

1 out about an armed robbery in progress, just
2 happened. And myself and my supervisor, Sergeant
3 Kelly, was in the same vehicle and we started in the
4 direction of Gonzales Gardens. They said that the
5 person was heading that way.

6 Q Okay. And what if anything did you observe when y'all
7 were heading that way?

8 A There were other officers in route going to the call.
9 Pretty much when we got on scene pretty much in the
10 area we saw people starting to set up a perimeter and
11 they was shouting out descriptions of the guy saying
12 that he was on foot at the time running.

13 Q Okay. And what if anything did y'all observe?

14 A When I got near Gonzales Gardens I observed a guy
15 that they were describing on the radio at the time
16 around about the A-B building of Gonzales Gardens,
17 going around the corner. At that time I exited the
18 vehicle and began to pursue on foot.

19 Q What occurred after that?

20 A As I got around the A-B building side, I noticed
21 Office Sanders coming around the Gonzales Gardens
22 side and she was stating that the guy was running
23 that way. I went to the Forest Drive side of the A-B
24 building and we noticed that the guy was going --
25 looked like he went inside of a apartment.

1 At that time I moved up and she was like, there
2 he is, there he is. He was wedged between the door
3 and like the aluminum screen door part of the
4 apartment. And she was stating, that was him, that
5 was him. At that time we apprehended him and placed
6 him under arrest at that time.

7 Q And did -- what did y'all do after that?

8 A After that I moved with my sergeant, Sergeant Kelly,
9 and some other officers, we went and backtracked the
10 area looking for a gun because during the pat down at
11 that time we didn't find a gun that they were saying
12 that he had. So we did a backtrail going back from
13 the route that he ran and tried to recover any items
14 that they were saying that he was taking off clothes
15 and throwing things. At that time we tried to canvas
16 the area to see if we could find any of the things
17 that he was throwing away.

18 Q Were you able to recover the gun?

19 A No, I didn't retrieve a gun at that time.

20 Q And how much -- how far did you backtrack?

21 A Probably about -- about a half a mile total distance.

22 Q The distance that he was on foot?

23 A About what he was on foot from where I saw him at
24 that time.

25 MR. CATHCART: Okay. Please answer any question

1 from Defense counsel.

2 MR. SHEALEY: May it please the Court.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. SHEALEY:

6 Q How you doing, Officer Smalls?

7 A How you doing?

8 Q You never saw who carjacked Ms. Gilmore, did you?

9 A Excuse me?

10 A You never saw who carjacked Ms. Gilmore? You
11 personally never observed the carjacking?

12 A No, I didn't see the carjacking, no.

13 Q And you never saw Norman with a gun?

14 A I saw him that day.

15 Q You never saw Norman with a gun?

16 A No, I never seen him with a gun.

17 Q You never found a gun?

18 A No, I didn't find a gun.

19 MR. SHEALEY: Thank you.

20 THE COURT: Anything further of this witness?

21 MR. CATHCART: No, sir.

22 THE COURT: You may step down, sir.

23 (The witness leaves the witness stand.)

24 MR. CATHCART: May he be excused, Your Honor?

25 THE COURT: Yes, sir.

1 MR. SHEALEY: Without objection.

2 MS. HENDRICK: The State calls Investigator
3 Vanhouten.

4 (BRIAN VANHOUTEN, after being duly sworn,
5 testified as follows:)

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

8 THE WITNESS: Investigator Brian Vanhouten,
9 Columbia Police Department.

10 DIRECT EXAMINATION

11 BY MS. HENDRICK:

12 Q Good morning.

13 A Good morning.

14 Q Are you currently still employed with the Columbia
15 Police Department?

16 A Yes.

17 Q How long have been employed there?

18 A Approximately nine years.

19 Q And what do you do for the Columbia Police
20 Department?

21 A I'm assigned to the gangs and narcotics division.

22 Q And what did you do back in February of 2008 for CPD?

23 A I was attached to the gang task force and narcotics.

24 Q And did you happen to respond to a call on February
25 1st of 2008?

1 A Yes.

2 Q Can you explain to the Court how you respond to the
3 call?

4 A We got a call that was toned out. When it's toned
5 out it means that a serious crime has been committed
6 or is possibly being committed. Responded to the
7 Gonzales Gardens area at 1505 Garden Plaza in
8 reference to Corporal Ginger Sanders in a foot
9 pursuit of a possible carjacking that occurred at
10 Timer Warner Cable.

11 Q And where did you actually respond to?

12 A At Harley's Barber Shop, I was flagged down as I
13 responding to the call. Michael Murphy I think is
14 the gentleman's name who flagged me down saying that
15 a gentleman had ran through the parking lot and
16 dropped a cell phone.

17 Q And were you able to actually recover the cell phone?

18 A Yes.

19 MS. HENDRICK: Permission to approach the
20 witness, Your Honor?

21 THE COURT: Yes.

22 A I want to show you what's been marked as State's
23 Exhibit 5. Can you show the jury exactly -- orient
24 to the jury using this picture what is in this
25 picture, where you actually recovered the cell

- 1 phone?
- 2 A Right here (indicating) where this little white dot
- 3 is.
- 4 Q Okay. And what is this building right here?
- 5 A That's the apartment complex Gonzales Gardens.
- 6 Q And where was Mr. Murphy?
- 7 A Right up here (indicating) from my understanding. Yu
- 8 talking about flagging me down?
- 9 Q Yes, flagging you down.
- 10 A Standing right over here.
- 11 Q Right over there. And then where was he when he saw
- 12 the person throw the item?
- 13 A I think right over here (indicating).
- 14 Q And what is this back here?
- 15 A That is Lyon (phonetic) Street and that's Gonzales
- 16 Gardens which is 1505 Gonzales.
- 17 Q And why were you in -- was this the street, Lyon
- 18 Street that you were driving down?
- 19 A Yes.
- 20 Q And he was just waving you down?
- 21 A Yes.
- 22 Q Okay. And when you got to that location -- I'm going
- 23 to show you what's been marked as State's Exhibit 25.
- 24 Is that the cell phone you recovered?
- 25 A Yes.

- 1 Q And what did you do, how did you recover the cell
2 phone?
- 3 A I put it in a evidence bag, a brown evidence bag, and
4 took it to headquarters at 811 Washington Street.
- 5 Q And did you open the cell phone or anything?
- 6 A No, I never touched it.
- 7 Q And who did you give the cell phone to?
- 8 A I took it back to the conference room, opened it up
9 and the victim stated that that was her cell phone,
10 that belonged to her.
- 11 Q And can you read the name that's on the inside of the
12 cell phone?
- 13 A Bill.
- 14 Q Okay. After you collected the cell phone, did you
15 have anything else to do with this case?
- 16 A Yes, I had went to City Garage to get some items out
17 of the victim's vehicle. I think it was a Dodge
18 Intrepid.
- 19 Q Did you go with the victim?
- 20 A Yes, both the elderly lady and her son.
- 21 Q And how did the car actually get to the garage?
- 22 A It was towed by the City of Columbia.
- 23 Q Do you know where it was towed from?
- 24 A I think to the best of my knowledge somewhere in the
25 Hampton and Heidt Street area.

1 Q And when you got to the City Garage, were the victims
2 able to identify that as their car?

3 A Yes.

4 Q And did y'all go into the car?

5 A Yes.

6 Q What was in that car?

7 A There were two pillowcases that contained some
8 clothing and a large duffle bag that had multiple
9 tennis shoes, dress shoes and hygiene products
10 inside.

11 Q And did you turn those items back over to the victims
12 or did you put them into evidence?

13 A Put them into evidence.

14 Q And why is that?

15 A Because the victim had pointed out that those items
16 that were in the back seat did not belong to her or
17 her son.

18 Q Okay. And are those some of the items right there
19 that were there?

20 A Yes, they are.

21 Q And then was the car returned to the victims?

22 A Yes.

23 MS. HENDRICK: Beg the Court's indulgence.

24 (Pause.)

25 MS. HENDRICK: Permission for the witness to step

1 down.

2 THE COURT: Yes, ma'am.

3 MS. HENDRICK: Investigator Vanhouten, would you
4 mind stepping down for a second?

5 (The witness steps down from the witness stand.)

6 Q Can you explain a little bit more in detail about
7 what actually was found in the car?

8 A These were located in the back seat of the victim's
9 vehicle. Most of them, from my understanding, were
10 like men's clothing.

11 THE COURT: You need to speak up, sir.

12 A These were located in the back of the victim's
13 vehicle. From my interpretation when I was going
14 through them, most of them were men's clothing and
15 the victim also stated that none of these clothing
16 items belonged to him or her.

17 Q And have you altered these items in any way?

18 A Oh, no, ma'am.

19 Q And why is this one in a plastic bag (indicating)?

20 A Because it had an odor to it.

21 Q Okay. But does that -- are these markings on the
22 outside for evidence purposes, or storing them in
23 evidence?

24 A Yes, ma'am.

25 Q Okay. Is that the same with the tag right here?

1 A Yes, ma'am.

2 MS. HENDRICK: Your Honor, at this time the State
3 would like to enter these three items. I don't think
4 they've been marked yet.

5 MR. SHEALEY: Without objection.

6 THE COURT: All right. Is it one bag of clothes?

7 MS. HENDRICK: It's one pillowcase full of
8 clothes, one -- another pillowcase full of clothes in a
9 plastic bag and one duffle bag full of clothes and
10 toiletries.

11 THE COURT: All right.

12 (WHEREUPON, State's Exhibit Number 29, Duffle Bag
13 and Contents, was entered into evidence.)

14 (WHEREUPON, State's Exhibit Number 30, Pillow
15 Case and Clothes, was entered into evidence.)

16 (WHEREUPON, State's Exhibit Number 31, Pillow
17 Case and Clothes, was entered into evidence.)

18 (The witness returns to the witness stand.)

19 MS. HENDRICK: I have no further questions of
20 this witness at this time. Investigator Vanhouten, please
21 answer any questions the Defense may have.

22 THE COURT: You may cross examine.

23 CROSS-EXAMINATION

24 BY MR. SHEALEY:

25 Q Officer Vanhouten, other than the evidence tags,

1 those are the way they looked when you first saw them
2 at the very first, right?

3 A Correct, minus the trash bag.

4 Q Okay. And you personally never saw him carjack Ms.
5 Gilmore?

6 A No.

7 Q And you never saw a gun with Norman Mitchell?

8 A This is the first day I've seen Mr. Mitchell.

9 Q You never recovered a gun?

10 A No, no, sir.

11 MS. SHEALEY: Thank you.

12 THE COURT: Anything further of this witness?

13 MS. HENDRICK: No, Your Honor, no further
14 questions for this witness. May this witness be excused
15 at this time?

16 MR. SHEALEY: Without objection.

17 THE COURT: Sure.

18 (The witness leaves the witness stand.)

19 THE COURT: Call your next witness.

20 MR. CATHCART: The State calls Casha Calloway.

21 (CASHA CALLOWAY, after being duly sworn,
22 testified as follows:)

23 THE CLERK: Please have a seat. State your full
24 name for the record.

25 THE WITNESS: My name is Officer Casha Calloway.

1 I'm employed by the City of Columbia Police Department.

2 DIRECT EXAMINATION

3 BY MR. CATHCART:

4 Q In what capacity are you employed there?

5 A I am a police officer.

6 Q Okay. Were you a police officer there back on
7 February 1st of 2008?

8 A Yes, I was.

9 Q What if anything drew your attention to the Time
10 Warner Building on Harden Street back on that date?

11 A At that time an emergency call came out. I was
12 dispatched as well as several other officers that
13 were available to that location in response to an
14 armed robbery.

15 Q Okay. And when you say you responded to the armed
16 robbery, did you respond in what way?

17 A In Code 3 which is blue lights and sirens.

18 Q Were you the only person going out there with blue
19 lights and sirens?

20 A No, I was not.

21 Q Was there -- how many ---

22 A It was all the officers that were available. It was
23 Officer Edwards, myself that actually responded on
24 the scene. Several other officers, Officer Huggins
25 (phonetic) ---

1 Q Did you hear other officers out -- with their sirens
2 and blue lights going while you were at the scene?

3 A I did.

4 Q So it was very apparent that something was going on?

5 A Yes.

6 Q At that location?

7 A Yes.

8 Q And what did you find when you got there?

9 A Upon our arrival, we -- I -- I went inside as well as
10 Officer Edwards went inside. He made contact with
11 the actual customer service representative who
12 advised that it was not an armed robbery but it
13 actually had been a carjacking.

14 Q And what did he do at the point?

15 A At the time we began to get the description of the
16 vehicle from the victim, as well as her son. We went
17 ahead and bolo'd it out which we went ahead and put
18 the information out over the radio to let all the
19 other officers within the area to be on the lookout
20 for that vehicle as well as the subject's
21 description.

22 Q And when you put out a description of the vehicle,
23 how long did it take for something to happen?

24 A Probably about -- maybe about two minutes. At that
25 time that's when Officer -- Corporal Sanders came

1 later when you come to court you want it to be as
2 accurate as possible? That way you look at it, your
3 memory is right back to that date, right?

4 A That is correct.

5 Q And you wrote this report as accurately as you
6 possibly could on that date because you were going to
7 be in court later on?

8 A Yes.

9 Q So you know when you come here, even if you weren't
10 sure a month ago, you could come into court today and
11 say this thing happened on 1030 Harden Street,
12 because you have got a box there that says 1030
13 Harden Street?

14 A That would be correct.

15 Q And you can look at your report and say the incident
16 date was February 1st, 2008 because you have a box
17 that says it happened on February 1st, 2008?

18 A That's correct.

19 Q And you also know the incident time because you wrote
20 in there at 12:45?

21 A That's correct.

22 Q And you can tell exactly when you arrived because
23 it's there in that box?

24 A That's an estimated time, but yes.

25 Q And that box says 12:55, correct?

- 1 A Yes.
- 2 Q And you know exactly when you departed Time Warner
3 because it's there as an estimate as 1300 hours?
- 4 A That's correct.
- 5 Q We'll say that's 1:00, correct?
- 6 A (The witness nodded head.)
- 7 Q And according to your report which is as accurate as
8 it possibly can be, the time of arrest was 13:25,
9 that's 1:25. And that's approximately 40 minutes
10 from the time of the incident?
- 11 A Yes.
- 12 Q Now, you never saw a gun on Norman?
- 13 A The only time that I ever saw the Defendant was when
14 he was actually standing up by the vehicle. I never
15 saw him prior to the situation, I haven't seen him
16 afterward, this is the first time.
- 17 Q So you never saw a gun on Norman?
- 18 A No, I have not.
- 19 Q And you personally never recovered a gun?
- 20 A No, I did not.
- 21 Q And you testified that when Ms. Gilmore -- when you
22 were taking her to view the suspect in custody at
23 that time, which was Norman, she viewed through the
24 Plexiglas?
- 25 A Correct.

1 MR. SHEALEY: Beg the Court's indulgence.

2 (Pause.)

3 Q And as you testified on direct, the first time Ms.
4 Gilmore viewed the suspect, it was through a
5 Plexiglas?

6 A That's when I took her to scene ---

7 Q Right.

8 A --- of the crime -- I mean, at the location he was
9 actually at.

10 Q And she asked you to move a little bit closer?

11 A So she could get a better view.

12 Q And as you testified on direct, at that time you
13 moved a little bit closer she was viewing him through
14 the Plexiglas?

15 A Yes.

16 Q Just closer?

17 A Yes.

18 MR. SHEALEY: No further questions.

19 THE COURT: Anything on redirect?

20 MR. CATHCART: Yes, Your Honor.

21 (WHEREUPON, State's Exhibit Number 32, Closed
22 Incident Report, was marked for identification.)

23 REDIRECT EXAMINATION

24 BY MR. CATHCART:

25 Q I show you what's been marked as State's Exhibit

1 Number 32. Do you recognize what this is?

2 A Yes, I do. This is our actual call log of all the --
3 whenever we phone the dispatch.

4 Q And that is kept in y'all's business records for
5 dispatch 911?

6 A Yes.

7 Q This is something that y'all refer to to get times as
8 to what occurred and who called and that kind of
9 thing?

10 A Yes.

11 Q Is this one from this incident at this time?

12 (Pause.)

13 A Yes, it is.

14 Q Okay. According to this, what time did the call come
15 out for -- from Time Warner Cable?

16 A According to the call it was at 12:45.

17 Q Okay. So incident came out at 12:45, correct?

18 A Correct.

19 Q And according to this, what time did you arrive at
20 the scene and call in?

21 A (No response.)

22 Q According to the same watch that said 12:45 has you
23 indicating ---

24 A It appears that I arrived along with Officer Edwards
25 and he's 314, we arrived approximately at the same

- 1 exact time.
- 2 Q Okay.
- 3 A And that's showing 12:47 but I actually didn't speak
4 out up on the radio to give out the description until
5 12:48. But we arrived on the scene at the same time.
- 6 Q So it was at 12:47?
- 7 A That's correct.
- 8 Q According to the log on this?
- 9 A That's correct.
- 10 Q Okay. And when did y'all tell -- inform the radio
11 dispatcher and everybody else, this isn't an armed
12 robbery, this is a carjacking?
- 13 (Pause.)
- 14 A It appears that it's going to be at 12:47, within the
15 same timeframe.
- 16 Q Look at -- turn to page 2 of this. There's a call
17 out at what time -- notified of carjacking?
- 18 A That -- correction, that would be at 12:50.
- 19 Q Okay. At 12:50 there's a statement, negative to it,
20 this would be a carjacking, correct?
- 21 A Correct.
- 22 Q So you were already there by 12:47. You already
23 informed that by 12:50 that this is a carjacking,
24 correct?
- 25 A Correct.

- 1 Q This is all on the same watch, the same time that --
2 when the first call came out, the same person's
3 watch, correct?
- 4 A That's correct.
- 5 Q Okay. When, according to this same log, did the call
6 come out that somebody's behind the blue Intrepid?
- 7 A 236 called out which was Corporal Sanders called out
8 at 12:50 that she was behind the blue Intrepid.
- 9 Q So in the same minute that y'all said this is
10 actually a carjacking, she says, oh, I'm behind that
11 car?
- 12 A Correct.
- 13 Q In fact, so we start at 12:47, 12:50 carjacked, 12:50
14 I'm behind the car, correct?
- 15 A Correct.
- 16 Q At what time does Corporal Sanders say, I see him
17 running towards Gonzales Gardens?
- 18 A 12:52.
- 19 Q And I think we saw -- it indicated that the call for
20 help from Time Warner Cable was at 12:45, correct?
- 21 A Correct.
- 22 Q So five minutes after they're calling for help, she's
23 behind his car, correct?
- 24 A Correct.
- 25 Q Two minutes, he's on the run?

- 1 A Correct.
- 2 Q So that chase with the blue lights was about two
3 minutes. At that same time they indicate he's taking
4 his shirt off?
- 5 A Correct.
- 6 Q And at what time do they ask you to come over and you
7 indicated, the victim's on the way for
8 identification, at what time?
- 9 A (No response.)
- 10 Q I bring you to...
- 11 A Okay.
- 12 Q Is that ---
- 13 A That's correct.
- 14 Q Okay.
- 15 A At 12 ---
- 16 Q What time is that?
- 17 A --- 57.
- 18 Q And so at 12:57, you're on the way with ID?
- 19 A Correct.
- 20 Q Did it take you a long time to get there?
- 21 A It took me one minute showing my arrival.
- 22 Q So one minute, you're there?
- 23 A Correct.
- 24 Q On this map where is the Time Warner Cable Building?
- 25 THE COURT: What's the exhibit number, Solicitor?

1 MR. CATHCART: I'm sorry, Your Honor, this is on
2 State's Exhibit Number 27.

3 THE COURT: All right, sir.

4 A Okay.

5 Q You've got Harden Street here, Senate Street here.

6 A Harden Street, which side?

7 Q I understand, I've got you coming on the map quickly.
8 This would be Gervais Street, this is Harden Street.

9 A Okay. Okay, I went down Harden Street, went down
10 Gervais, went down Washington, and it took me up to
11 -- went down, came up on Forest Drive.

12 Q And Taylor Street turns into Forest Drive?

13 A Yeah. Yeah, it turns into Forest Drive.

14 Q But you started out down here on the corner of ---

15 A Harden.

16 Q --- Harden and Senate?

17 A Uh-huh.

18 Q Okay. So from here to here was the length of time it
19 took you to take the victim up there?

20 A Correct.

21 Q Then you went back where?

22 A Back to the Time Warner Cable Building.

23 Q So from your arrival to her ID was exactly 11
24 minutes, correct?

25 A Correct.

- 1 Q From your arrival to you're on your way toward
2 Gonzales Gardens, 10 minutes, correct?
- 3 A Correct.
- 4 Q During that time you put out what the car looked
5 like?
- 6 A What the car looked like.
- 7 Q You had to calm down Ms. Gilmore?
- 8 A Yes, I did.
- 9 Q You almost had to call EMS because you thought she
10 was going to have a heart attack?
- 11 A Correct.
- 12 Q And at that -- and from that time -- during that
13 whole time were you able to fill out a robbery
14 questionnaire?
- 15 A No.
- 16 Q Get a full length description of everything that
17 happened to her that day?
- 18 A No.
- 19 Q And when she got there 11 minutes after you were
20 there, was she positive as to who did this to her?
- 21 A She was very positive.
- 22 Q Was she trying to get the guy that did it to her?
- 23 A She pointed to him in the -- against the Plexiglas
24 but she was very adamant that he was the person that
25 did that to her.

1 MR. CATHCART: Thank you. No further questions.

2 MR. SHEALEY: Briefly, Your Honor.

3 THE COURT: Yes, sir.

4 RECROSS-EXAMINATION

5 BY MR. SHEALEY:

6 Q You see that all right?

7 A Uh-huh.

8 Q Okay. And you testified it took you about a minute
9 from the time you left Time Warner -- show me again
10 where Time Warner is on this?

11 A Time Warner sits at the corner of Harden and Senate,
12 right here (indicating).

13 Q Okay. And this would be Gervais intersecting?

14 A Correct.

15 Q Okay. And show me again where -- where you took Ms.
16 Gilmore.

17 A Okay. I took her from right here (indicating),
18 Harden and Senate ---

19 THE COURT: Ma'am, you're going to have to speak
20 up.

21 A At that time I took her from Harden and Senate, came
22 down to Gervais right -- I'm sorry, came down here to
23 Gervais (indicating), made a left onto Gervais, came
24 down, up to -- it should be Millwood. I'm sorry, I
25 don't see Millwood on here. It's not documented.

1 But I brought up to Millwood which ended up bringing
2 me out up to Forest Drive. Because Millwood comes up
3 to Forest Drive, once you get to Forest Drive, it
4 turns into Forest Drive. And once I came to Forest
5 Drive, there's an entrance right into Gonzales
6 Gardens and I came in through the Gonzales entrance.

7 Q So it took you a minute to approximately take Ms.
8 Gilmore from down here, these blocks, up to Gonzales
9 Gardens?

10 A Uh-huh.

11 Q Are you familiar with the location of the bus stop on
12 Laurel and Harden?

13 MR. CATHCART: Beyond the scope, Your Honor.

14 THE COURT: For right now, it's overruled. I'm
15 going to let him continue.

16 MR. CATHCART: Yes, sir.

17 Q Officer, are you familiar with the bus stop located
18 at -- on Harden and Gervais?

19 A The bus stop that's located on Harden and Gervais?

20 Q It's between Laurel and Harden, are you familiar with
21 that?

22 A The bus station or the bus stop?

23 Q The station?

24 A Yes, I am.

25 Q Okay. And you've already testified that Time Warner

1 was approximately in this area?

2 A Yes.

3 Q And you testified it took about a minute for you to
4 get from the Time Warner up to Gonzales Gardens?

5 A That's correct.

6 Q And you see the bus stop is right here. How many
7 seconds would it take you to drive to the bus stop to
8 Time Warner, if you were going the same speed you
9 were going?

10 A Probably about 20 seconds maybe.

11 MR. SHEALEY: Okay. Briefly, Your Honor, beg the
12 Court's indulgence.

13 (Pause.)

14 Q You have a seat. Officer Calloway, now you write on
15 your incident report which you've already testified
16 to be as accurate as possible, that 12:45 was the
17 time that the call came in from the incident?

18 A Correct.

19 Q And that's not exactly the time that it happened,
20 it's the time that the call came?

21 A The time that the call came in.

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

23 THE COURT: Anything further of this witness?

24 MR. CATHCART: If I may, Your Honor.

25 THE COURT: Yes, sir.

RE-REDIRECT EXAMINATION

BY MR. CATHCART:

Q The call for help came in at 12:45, correct?

A Correct.

Q And when you arrived you were not the only police car coming into that area, correct?

A No.

Q Police cars all around there?

A Correct.

Q There was five minutes after the call of help and all those police cars coming in there that ---

MR. SHEALEY: Objection ---

THE COURT: Basis?

MR. SHEALEY: Beyond the scope.

THE COURT: Overruled, go ahead.

Q That Sanders indicated she was behind the car, correct, when she first caught sight of the car right here (indicating) on the corner of Laurens and Gervais?

A That's correct.

MR. CATHCART: Okay. Thank you.

THE COURT: Anything further -- you may step down, ma'am.

(The witness leaves the witness stand.)

THE COURT: Call your next witness.

1 MS. HENDRICK: The State calls Eric Cambre.

2 MR. CATHCART: May she be excused, Your Honor?

3 MR. SHEALEY: Without objection, Your Honor.

4 THE COURT: Without objection.

5 (ERIC J. CAMBRE, after being duly sworn,
6 testified as follows:)

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

9 THE WITNESS: My name is Eric Joseph Cambre.

10 DIRECT EXAMINATION

11 BY MS. HENDRICK:

12 Q Good afternoon, Mr. Cambre. Where are you currently
13 employed?

14 A Time Warner Cable.

15 Q And what do you do for Time Warner Cable?

16 A I'm currently the Business Continuity Manager for
17 West Carolina which is South Carolina, North
18 Carolina.

19 Q And can you explain to the jury a little bit about
20 what that actually is?

21 A Well, I do security as well as disaster recovery. In
22 the course of security we manage card access systems,
23 video alarm systems and alarm systems.

24 Q And is part of your duty to manage security at the
25 Harden Street location?

1 A Yes, we manage.

2 Q And how long have you been doing this?

3 A I've been with Time Warner for 17 years, security.

4 Q 17, okay. And can you explain to the jury a little
5 about the actual security system that's in place at
6 Time Warner Cable on the Harden Street location?

7 A We have a four channel digital video recorder that
8 has a hard drive that stores video. We have three
9 cameras inside the facility, we have one in the
10 parking lot. We have a regular alarm system and a
11 card access system.

12 MS. HENDRICK: Permission to approach the
13 witness.

14 THE COURT: Yes, ma'am.

15 Q And you said how many cameras did y'all have at the
16 Time Warner Cable place?

17 A There were four.

18 Q And where are they located again?

19 A Three of them are in the interior, two of them are
20 directly on the front counter where the financial
21 transactions are occurring. There is one behind the
22 counter that points into the lobby. It's just an
23 overview and there's one on the rear corner of the
24 building by the rear doors and dumpster.

25 Q I'm going to show you what's marked as State's

1 Exhibit 18. Do you recognize this?

2 A That's a photo of the rear door at our Harden Street
3 retail center.

4 Q And where is the camera on this?

5 A The camera is in the upper corner eave.

6 Q Is this a fair and accurate representation of the
7 back of the Time Warner Cable location?

8 A That's correct.

9 MS. HENDRICK: The State moves to enter Exhibit
10 18 into evidence.

11 MR. MAY: Without objection, Your Honor.

12 THE COURT: All right, without objection.

13 (WHEREUPON, State's Exhibit Number 18,
14 Photograph, was moved into evidence.)

15 Q And this camera right here, does this camera move?

16 A It does not.

17 Q So does it have a very wide angle?

18 A It's actually a pretty tight angle. It's -- it
19 points towards the -- the left side of the camera
20 angle is on the door entering the facility. The
21 right side catches about -- about half the parking
22 lot.

23 Q Okay. So does it get the parking lot that would be
24 behind it at all?

25 A No, it does not.

1 Q And this is the only camera outside?

2 A That's correct.

3 MS. HENDRICK: I don't know if I showed this to
4 Defense counsel. This is 16.

5 Q I'm going to show you what's been marked as State's
6 Exhibit 16. Can you describe this to the jury,
7 please?

8 A That is a view from probably across the street. If
9 you were standing in the parking lot of what used to
10 be the Firm, that would what you'd be looking at.

11 MS. HENDRICK: At this time the State
12 moves to enter State's Exhibit 16 into evidence.

13 MR. MAY: Without objection.

14 THE COURT: All right, without objection.

15 (WHEREUPON, State's Exhibit Number 16,
16 Photograph, was moved into evidence.)

17 Q And can you find the actual camera, the close-up of
18 the camera on this picture.

19 A It's right there (indicating).

20 Q And so, again, what would that camera capture?

21 A Pretty much right along here (indicating) on the
22 doorway where this little stoop is and probably from
23 about that van forward.

24 Q And it would not capture anything back here
25 (indicating)?

- 1 A It would not.
- 2 Q Okay. And did you ever come into contact with the
- 3 Columbia Police Department involving the incident on
- 4 February 1st of 2008?
- 5 A Yes, I did.
- 6 Q And what -- why did they contact you?
- 7 A I believe it was Investigator Pegram was wondering if
- 8 we had any video of this incident that occurred on
- 9 February 1st.
- 10 Q Did you go back and review any of that?
- 11 A I did review. I got an approximate time when it
- 12 occurred, approximately where the vehicle was parked.
- 13 I was able to determine that we -- we could not see
- 14 the vehicle itself. But based on the time that I was
- 15 given, I was able to identify a woman in that photo
- 16 that -- that I believed to be the victim based on the
- 17 time.
- 18 Q I'm going to show you what's been marked a State's
- 19 Exhibit 12. Do you recognize this?
- 20 A Yes.
- 21 Q What is this?
- 22 A That is the photo of the woman approaching, based on
- 23 the time that I believed to be the victim.
- 24 Q And this is the photo you collected from your
- 25 security system?

- 1 A That is correct.
- 2 Q And you said it's a video. How did this get reduced
3 to a still?
- 4 A Well, because of the -- the angle and there was only
5 one or two frames that -- that the individual was
6 approaching. So it would have been approximately one
7 second of video, two seconds maybe which would have
8 been a snip-it. So I preserved it as a -- as a
9 photo. At the time, it wasn't requested that I
10 preserve it in video format.
- 11 Q Okay. So you just preserved the one still?
- 12 A That's correct.
- 13 Q And this was around -- do you remember what time this
14 was at, this picture was taken?
- 15 A I don't. I mean ---
- 16 Q Okay.
- 17 A --- it was probably close to 1:00, somewhere in that
18 neighborhood. I think it's stamped on the picture
19 but.
- 20 Q It's not on this copy.
- 21 A It's not? Okay.
- 22 Q Okay.
- 23 A It might have got cut off because it's usually --
24 it's usually -- it's usually on the top but -- date
25 and time.

1 Q Okay. But this is the picture?

2 A It is picture.

3 MS. HENDRICK: Move to enter State's Exhibit 12.

4 MR. MAY: Without objection, Your Honor.

5 THE COURT: All right.

6 (WHEREUPON, State's Exhibit Number 12,
7 Photograph, was moved into evidence.)

8 Q And again, this is basically the appropriate angle of
9 what that one camera captures?

10 A That's correct. You get probably about, you know,
11 four or five cars and the entrance.

12 Q So nothing else, nothing in back of it?

13 A Nothing behind it.

14 Q So there would have been no way for that camera to
15 capture this actual incident based on where they were
16 parked?

17 Q That's correct.

18 MS. HENDRICK: Beg the Court's indulgence?

19 THE COURT: Yes, ma'am.

20 (WHEREUPON, State's Exhibit No. 33, Photograph of
21 Victim, was marked for identification.)

22 Q I'm going to show you what's been marked as State's
23 Exhibit 33.

24 A Okay.

25 Q Is this the same full image from -- from your camera?

1 A It is.

2 Q And is this the one with the actual time stamp on it?

3 Q Yes, it is.

4 Q And can you read the time to the jury?

5 A It's February 1st, 2008 at 12:44 p.m.

6 Q And the time she's actually walking to the building?

7 A Yes.

8 MS. HENDRICK: The State moves to enter this into
9 evidence as State's 33.

10 THE COURT: All right, without objection.

11 (WHEREUPON, State's Exhibit No. 33 was moved into
12 evidence.)

13 MS. HENDRICK: Okay. I have no further questions
14 for you at this time. Please answer any questions that
15 Defense counsel may have.

16 THE COURT: Mr. May, go ahead.

17 MR. MAY: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MAY:

22 Q How you doing?

23 A Fine, thank you.

24 Q Just a few quick questions. Investigator Pegram --
25 Pegram, I'm sorry, sent you a picture of the

1 Defendant and asked you to compare it to suspects in
2 the parking lot, isn't that correct?

3 A That's correct.

4 Q I'm going to hand up a picture. Is this the picture
5 that you received?

6 A It looks about the same.

7 Q So you were asked to look for ---

8 MR. MAY: I ask this be marked as Defense
9 exhibit.

10 THE COURT: Have you showed it to the other side?

11 MR. MAY: Yes, I have.

12 THE COURT: Okay, that's good. That's good.

13 (WHEREUPON, Defendant's Exhibit Number 2,
14 Photograph of Defendant, was marked for
15 identification.)

16 Q He asked you to look for suspects -- let me hand you
17 this. And he asked you to look for suspects that
18 looked like that?

19 A I don't necessarily recall it in that way. I believe
20 it was given to me and said, you know, see if you can
21 find an incident and see if, you know -- if I do have
22 something I can match this up if -- if that happens
23 to be in the video.

24 Q Okay. But he never asked you to look for somebody
25 with long nappy hair?

1 A No. I was not given -- I was given a photograph.

2 Q And the photo's of a bald man?

3 A Yes.

4 MR. MAY: No further questions, Your Honor.

5 THE COURT: Did you mark that for ID or...

6 MR. MAY: Marked it for ID, yes, sir.

7 MR. CATHCART: Your Honor, I wish it entered into
8 evidence.

9 THE COURT: Beg your pardon?

10 MR. CATHCART: He's showing it to the jury. I
11 would ask that he enter it into evidence.

12 MR. MAY: Without objection.

13 MR. CATHCART: Then I'm objecting to him showing

14 ---

15 THE COURT: Relax, he's introducing it into
16 evidence, Mr. Cathcart.

17 MR. CATHCART: I apologize, Your Honor.

18 THE COURT: That's all right, calm down.

19 (WHEREUPON, Defendant's Exhibit Number 2
20 was moved into evidence.)

21 Q So this is the picture that was sent to you?

22 A It looks the same. It wasn't that large obviously.
23 It was a small photo.

24 MR. MAY: Thank you, no further questions at this
25 time.

1 THE COURT: Anything further of this witness?

2 MS. HENDRICK: Very briefly.

3 REDIRECT EXAMINATION

4 BY MS. HENDRICK:

5 Q Did Investigator Pegram give you a description of
6 what to look for?

7 A I don't recall. I mean, it's been over a year but I
8 do know that I had a photograph.

9 Q And do you have any idea if this is what he looked
10 like at the time the carjacking occurred?

11 A No, I have -- I don't.

12 MS. MAY: No further questions;

13 THE COURT: Anything further?

14 RECROSS-EXAMINATION

15 BY MR. MAY:

16 Q But he did send you that photograph?

17 A I believe that to be the photograph, yes.

18 THE COURT: You may step -- go ahead.

19 MS. HENDRICK: I have no further questions.

20 THE COURT: You may step down, Mr. Cambre.

21 (The witness leaves the witness stand.)

22 MS. HENDRICK: May this witness be excused?

23 THE COURT: Yes, he can leave.

24 Call your next witness.

25 MS. HENDRICK: The State calls William Gilmore.

1 THE COURT: Let's do this. Let me give the jury
2 a short break. Y'all look like y'all could use one. Am I
3 misinformed?

4 Okay. Just don't talk about the case. We'll
5 bring you back shortly. Refresh yourselves.

6 (The jury retires from the courtroom at
7 11:05 a.m.)

8 THE COURT: Can I see y'all for a minute?
9 (Whereupon, a bench conference was held off the
10 record.)

11 (The Court was in recess.)

12 THE COURT: All right, where is Cathcart?
13 What y'all got, four more witnesses maybe?

14 MS. HENDRICK: (Affirmative response.)

15 THE COURT: All right.

16 MS. HENDRICK: Short -- I mean ---

17 THE COURT: I know, all of them have been short,
18 so.

19 MS. HENDRICK: We've got Pegram, William ---

20 THE COURT: We'll try to squeeze everything in.

21 MS. HENDRICK: I think -- I mean, Your Honor, we
22 should be able to finish.

23 THE COURT: Okay.

24 MS. HENDRICK: And since we have last closing
25 now.

1 THE COURT: Okay, all right. Y'all ready,
2 everybody ready?

3 MS. HENDRICK: Yes. Yes, Your Honor.

4 (The jury returned to the courtroom at
5 12:25 a.m.)

6 THE BAILIFF: Jurors are all present, Your Honor.

7 THE COURT: All right. Welcome back, Mr. Foreman
8 and members of the jury. I've talked to the lawyers on
9 both sides and there's a good chance we might be able to
10 finish this case today. That might mean we might be here
11 a little bit later than anybody anticipates. But I told
12 them the concerns of two or three of you and if we can
13 finish it without rushing, we will certainly try to do so.
14 But that might put us here a little bit late this evening.

15 Is everybody good with that?

16 JUROR: How late, Your Honor?

17 THE COURT: Ma'am?

18 JUROR: How late?

19 THE COURT: I can't tell you that right now. But
20 I'll have a better idea after lunch, okay?

21 JUROR: Do we have a choice?

22 THE COURT: What now?

23 JUROR: Do we have a choice?

24 THE COURT: Well, I'll give you a choice. I
25 mean, the decision is mine.

1 (Laughter.)

2 THE COURT: But I'll invite your input. You
3 know, you try to accommodate everybody. You can't always
4 do so but we'll try. All right

5 Mr. Cathcart.

6 MS. HENDRICK: The State calls William Gilmore.

7 (WILLIAM GILMORE, after being duly sworn,
8 testified as follows:)

9 THE CLERK: Please have a seat. State your full
10 name for the record.

11 THE WITNESS: William Gilmore.

12 DIRECT EXAMINATION

13 BY MS. HENDRICK:

14 Q Good morning, Mr. Gilmore?

15 A Good morning.

16 Q Mr. Gilmore, where do you work?

17 A I work for Speaks Oil in Camden, South Carolina.

18 Q And what do you do for them?

19 A I'm a retail manager/supervisor.

20 Q Mr. Gilmore, I'm going to ask you to speak up a
21 little bit. That lady has to take down everything
22 that you say?

23 A Yes, ma'am.

24 Q Everybody's got to be able to hear you. So just speak
25 up if you can?

- 1 A Yes, ma'am.
- 2 Q Who do you live with?
- 3 A My mother.
- 4 Q Who else do you live with?
- 5 A Our animals, dogs.
- 6 Q What kind of dogs do y'all have?
- 7 A English bulldogs.
- 8 Q What are their names?
- 9 A Beauford and Ringo.
- 10 Q And your mother loves them, doesn't she?
- 11 A Yes.
- 12 Q Okay. And when did your mom come to live with you?
- 13 A In 2002, February.
- 14 Q And why did she come to live with you?
- 15 A She was -- you know, my father passed away and she
- 16 sold the place. She wanted to come down here and pay
- 17 my house off. And she built a big addition on to the
- 18 house, put a swimming pool in and she knew she was
- 19 getting older but at the time she was doing fine. I
- 20 mean, she's actually worked two different jobs taking
- 21 care of older people.
- 22 Q So when she moved down here she was still working?
- 23 A Oh, yes.
- 24 Q And how long ago did she stop working?
- 25 A It will be two years this March, I believe.

- 1 Q Okay. And do you remember February 1st of last year?
- 2 A Oh, yes.
- 3 Q What -- what -- what were y'all out doing that day?
- 4 A I left work early that day. We had been -- we had
- 5 purchased an English bulldog and we were waiting to
- 6 pick him up. And we had been going every week. And
- 7 that was the day we were going to pick him up and we
- 8 were -- I was going into the pet store by Food Lion
- 9 on Harden Street to get a crate and last minute
- 10 things so we could go pick him up when the guy got
- 11 off work.
- 12 Q And did y'all decide to go anywhere else in that
- 13 area?
- 14 A I decided that day because I didn't realize there was
- 15 a Time Warner place because I always use the one on
- 16 Greystone Boulevard. And I saw it there and I just
- 17 at the last minute whipped in there and said, I'm
- 18 going to pay the cable bill.
- 19 Q Now were you driving?
- 20 A I was driving.
- 21 Q And whose car were you driving?
- 22 A My mother's car.
- 23 Q And you have a separate car?
- 24 A I have a truck.
- 25 Q Okay. And she just -- what did she do with the car

1 at the time?

2 A Since she bought it in 1994, she used it to go to
3 work, to travel back and forth, to go to the grocery
4 stores, go to church.

5 Q But you were driving this day?

6 A Yes.

7 Q Why were you driving?

8 A Well just -- we took her car so we would have more
9 room, you know, to put the crate in the back and have
10 the dog. I just have a small pickup truck.

11 Q Okay, what was the weather like on this day?

12 A It was beautiful.

13 Q Did y'all have the windows down?

14 A I had my window down.

15 Q Can you tell the jury what y'all did when y'all went
16 to the Time Warner Building?

17 A It was real busy and I don't think there was any
18 parking places and a person was backing out at that
19 first parking space as you go into the parking lot.
20 And I pulled in there. I was kind of lackadaisical,
21 I left my cell phone on the dash. And I didn't
22 realize that at the time. I left the keys in the car
23 because I was just going to whip in there real quick
24 and ---

25 Q And why did you leave the keys in the car?

1 A Because I thought I'd be in and out real quick.

2 MS. HENDRICK: Okay. Permission to approach the
3 witness.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 Q I'm going to show you what's been marked as State's
7 Exhibit 9 that's already been entered into evidence.
8 Does that look familiar to you?

9 A Yes, it does.

10 Q Can you tell the jury where you parked that day?

11 A Right there (indicating).

12 Q Right where that silver car is?

13 A Uh-huh.

14 Q Okay.

15 A And I believe it was an Explorer that was backing out
16 of there, a red one.

17 Q Okay. So you left your mom and she was in the
18 passenger seat?

19 A Yes, ma'am.

20 Q And you went inside just to go pay a quick cable
21 bill?

22 A Right.

23 Q Okay, can you tell the jury what happened next?

24 A I walked in and there was rather a long line and I
25 hesitated for a minute. I almost said it's not worth

1 it because I wasn't overdue or anything and I was
2 going to leave. And then I just seen it was moving
3 real fast. So I just kind of stayed in line and
4 wasn't in -- didn't seem long. And I got about half
5 -- I was halfway to the place, there was probably
6 five or six people still ahead of me. And I happened
7 to look over and I just saw my mom standing there and
8 she was kind of in bewilderment and I actually
9 thought in mind, oh, Lord, she's got to use the
10 bathroom. I bet they don't have one here for her to
11 use. This was my thought.

12 And all of a sudden she just said, can somebody
13 please call the police? A man just put a gun to my
14 head and took my car.

15 Q And what did you do?

16 A I reached like this because I'm kind of overweight
17 and I keep my cell phone in my pocket and I didn't
18 have it on me. And I said, can somebody please call
19 the police. And they're like, there's a phone right
20 there.

21 So I picked it up and dialed 911.

22 Q Okay. And you called 911 yourself?

23 A Yes.

24 Q I'm going to play you something. Tell me if you
25 recognize this.

1 (911 call was played in open Court.)

2 Q Is that your voice on the tape?

3 A Yes, it is.

4 Q Is that the 911 call you made?

5 A Yes, it is.

6 Q Is that a fair and accurate representation of the 911
7 call you made on that date?

8 A Oh, yes.

9 MS. HENDRICK: Your Honor, we now move to enter
10 that as State's Exhibit 34.

11 MR. SHEALEY: Without objection.

12 THE COURT: All right, without objection.

13 (WHEREUPON, State's Exhibit Number 34,
14 DVD-911 Call, was admitted into evidence.)

15 Q Now, I want to show you some pictures that are
16 already in evidence, State's 20 and 19. Is this the
17 inside of the Time Warner Cable Building?

18 A Yes, it is.

19 Q Using those pictures, can you show the jury where you
20 were standing when you made that 911 call?

21 A I was like right in here and there was phones right
22 there (indicating). And my mom was standing like
23 right here (indicating). And then I don't know why I
24 said she passed out, she was just acting faint. At
25 the time there was a couch here it seemed like

1 (indicating). And somebody -- you know, of course
2 people were trying to help her and I think she was
3 just so shocked I thought she was going to pass out
4 but she never completely passed out.

5 Q But she was all the way over here ---

6 A Yes -- yeah, and I was going back and forth because I
7 didn't know the description ---

8 Q And that's why there's a delay on the ---

9 A Right, right.

10 Q --- on this call because you had to go tend to her?

11 A Right.

12 Q And you couldn't exactly see if she passed out or
13 not?

14 A No.

15 Q You just knew she was upset?

16 A No, no, there's a partition there.

17 Q Okay. And what was -- how was -- what was her
18 reaction when you were speaking to her?

19 A I think she was just in shock. She couldn't believe
20 what happened, I mean.

21 Q But did she recover quickly?

22 A Oh, yes.

23 Q And she never -- she didn't have to go to the
24 hospital?

25 A No and, you know, the sirens, I started hearing them

1 almost immediately. And I remember her just saying,
2 you know -- actually thinking, wow, my car is gone,
3 my car is gone. Because that's the only thing we
4 really talked about when the police were there.

5 Q And you thought she passed out simply because she was
6 just acting ---

7 A Exactly.

8 Q But you never actually saw ---

9 A No, now.

10 Q --- you just said that on 911 ---

11 A Right ---

12 Q --- because you couldn't ---

13 A Right.

14 Q Okay. And how fast did the police respond to the
15 scene?

16 A Real quick.

17 Q And what happened when the police officers got there?

18 A There was a black lady, City cop, came in and she
19 tried to get more and more information from us but I
20 don't think Mom could hear it but I could hear almost
21 immediately on her radio what seemed to be like a
22 police chase. Because I could hear, you know, I'm
23 turning on this street and I have an eye view or a
24 view of it on this street. I was like, wow, they've
25 got it already. I said, Mom, I think they've got

1 your car in sight. And of course that just got her
2 started like, good, good, you know, is my car all
3 right, you know.

4 Q She was very concerned about the car?

5 A The car, yeah, is it my car, did he wreck my car?

6 Q Okay. And so what happened after they said they
7 found the man?

8 A Well, they really, you know, the officer was busy
9 doing her job. I mean, she didn't -- wouldn't tell
10 us anything, you know.

11 Q And as far as you knew, they just found a car?

12 A Yeah, right, she wouldn't even confirm that to me.
13 It was just what I was hearing, you know,
14 commonsense, on her radio. Of course, I was on an
15 adrenalin rush too.

16 Q And were you upset?

17 A Yeah, I mean, I wasn't even on the right street ---

18 Q Did you hear that ---

19 A --- Huger Street ---

20 Q Yeah, and where is it?

21 A Harden Street.

22 Q And you were obviously just upset?

23 A Oh, yeah, I've lived here 20 years.

24 Q Okay. So you knew where you there?

25 A Oh, yeah.

1 Q So after the police came and spoke to your mom, where
2 did y'all go?

3 A They came and talked to her and they said they said
4 that -- I think they said they had a suspect. I
5 can't remember the exact words. They put us both
6 into the back of a police car. And they didn't tell
7 us where we were going.

8 Q Where did y'all end up?

9 A I didn't know at the time. I guess it was Gonzales
10 Gardens.

11 Q And were you in the back seat of the car with your
12 mother?

13 A Yes, I was.

14 Q Okay. And what happened -- what did they tell you --
15 they didn't tell you where you were going or why you
16 were going there?

17 A No, no.

18 Q What happened when y'all got to Gonzales Gardens?

19 A There was just a bunch of people hanging out. And we
20 pulled down through a paved road and went through
21 some apartments. And, of course, we're still asking,
22 where's the car, where's the car, has the car been
23 wrecked?

24 And, you know, the officer got out and they
25 brought a man towards us. And it was hard to see. I

1 don't think there was like bars there but it was just
2 the seat was so high and I remember I couldn't hardly
3 get in the back seat myself because there was not
4 much leg room.

5 And my mom was sitting right here on the left of
6 me and I was kind of like where the hump would be.

7 Q Okay.

8 A Right in the middle actually.

9 Q And did they show your mom a man?

10 A Yes.

11 Q And did they ask -- did they suggest to her in any
12 way that that was the man?

13 A No.

14 Q Did they point at him or go like this to him?

15 A No.

16 Q They just showed him to her?

17 A Right.

18 Q What did your mom say?

19 A Could you bring him up a little bit further because
20 we couldn't see.

21 Q And then once she got a good view of him, what did
22 she say?

23 A She said, that's him.

24 Q Was she certain?

25 A Oh, yes.

- 1 Q Did she hesitate in any way?
- 2 A No, no hesitation.
- 3 Q And from where you were, she had a clear view of him?
- 4 A Yes.
- 5 Q Okay. And after she was able to do that, what then
- 6 did y'all do?
- 7 A We just got back into the car and they took us back
- 8 to Time Warner.
- 9 Q Okay. And then after you were at Time Warner, did
- 10 you go to the police station?
- 11 A Later on, you know, it took a little bit and then the
- 12 media showed up and of course my mom's still saying,
- 13 where's my car, is it wrecked. And, you know, they
- 14 were just so vague with us. I mean, I guess they
- 15 couldn't say anything but. Yeah and then they took
- 16 us downtown and the media followed us downtown and
- 17 they took us into a room and...
- 18 Q And they talked to you?
- 19 A They took my mom away from me.
- 20 Q They didn't talk to you?
- 21 A I just stayed pretty much in a waiting room.
- 22 Q Okay. And did you eventually ever get your car back?
- 23 A Yes.
- 24 Q Okay. And were there other items in you car that
- 25 didn't belong to you?

1 A Oh, yeah.

2 Q Are these these items down here (indicating)?

3 A It was -- I remember a duffle bag and a pillowcase
4 stuffed with stuff.

5 Q I'm going to show you what's been marked as State's
6 Exhibit 25. Is that your phone?

7 A Yes, it is.

8 Q And is that Bill, is that your name?

9 A Yes, I have it right here, it's the same exact phone.

10 Q And when did you get the phone back?

11 A We got it that day.

12 Q Okay.

13 A Before we went down for the car, they gave it to us
14 before they drove us down there.

15 Q Okay. Now, William, I'm going to ask you a little
16 bit about your mom. I know this is kind of hard for
17 you but has she changed in any way since this time
18 last year?

19 MR. SHEALEY: Objection, Your Honor.

20 THE COURT: Basis?

21 MR. SHEALEY: 403.

22 THE COURT: Y'all approach.

23 (Whereupon, a bench conference was held off the
24 record, in the presence of the jury, but out of the
25 hearing of the jury.)

1 THE COURT: Overruled. Go ahead.

2 Q Can you explain to the jury and the court a little
3 bit how she's changed over the past year?

4 A Slowly going downhill. She's still doing pretty
5 good. She doesn't do as much, doesn't seem to care
6 as much anymore, scared a lot. She -- you know,
7 stuff that she taught me how to do, laundry, she
8 still does the laundry. I don't think she does it
9 right. She's putting towels with shirts. And she
10 does the dishwasher thing and...

11 Q Does she have any significant health problems that
12 she's just been recently diagnosed with?

13 A Yeah, cancer.

14 Q And when was she diagnosed with that?

15 A Well, you know, she was diagnosed and she didn't want
16 to tell me. And then, you know, I kind of found out
17 because, you know, the doctor and her nurse, we talk
18 to mainly the nurse that works with the doctors, you
19 know, they called me ---

20 Q And she doesn't like to admit this to any one?

21 A No.

22 Q But it has greatly affected her ---

23 A Right.

24 Q --- physical and mental abilities?

25 A Yeah. She just doesn't care anymore.

1 Q And at this time last year when she was able to
2 identify this man, was she in better mental and
3 physical shape?

4 A Much better. She had just quit working. I mean, she
5 had a fall at work and ---

6 MR. SHEALEY: Your Honor, objection.

7 THE COURT: All right, overruled.

8 Q Continue.

9 A She was fine. She worked. She was a healthcare
10 provider for a 99 year old lady here the Columbia.

11 Q So back in February of 2008, when she was a hundred
12 percent sure of this man, her mental -- she was much
13 better?

14 A Oh, much better.

15 Q And you've been with her this whole year and seen
16 this deterioration?

17 A Oh, yeah. Oh, yeah.

18 MS. HENDRICK: Beg the Court's indulgence. I have
19 no further questions at this time. Please answer any
20 questions Defense counsel ---

21 THE COURT: Cross-examine.

22 CROSS-EXAMINATION

23 BY MR. SHEALEY:

24 Q Hi, Mr. Gilmore.

25 A Hello.

1 Q On February 1st, 2008, you never actually witnessed
2 the carjacking taking place?

3 A No, sir.

4 Q You never -- never identify the -- the carjacking,
5 who the man was, you weren't there to watch that
6 happen?

7 A Exactly, I was in the building.

8 Q And when they brought you to the suspect to be ID'd,
9 Norman was the only man in handcuffs, wasn't he?

10 A I believe so. I -- you know I -- I can't remember if
11 he even had handcuffs. I just remember them walking
12 him down.

13 Q He was the only black man identified to you as a
14 suspect?

15 A Yes.

16 Q Okay. Did you ever get your wallet back?

17 A Yes, I did.

18 Q Okay. How did you get that back?

19 A Actually, I had the wallet on me.

20 Q You did have it on you?

21 A I did.

22 Q Okay. And we just heard that unfortunately your mom
23 has cancer. She's going through some cancer
24 treatments right now?

25 A Right. She's had some female cancer and she just had

1 some skin cancer taken off. And she's -- I've just
2 noticed since the holidays her hearing's really bad.
3 I think that's a lot of her problem.

4 MR. SHEALEY: Okay. Thank you, no further
5 questions.

6 THE COURT: All right. Anything further of this
7 witness?

8 MS. HENDRICK: No, Your Honor. May this witness
9 be excused?

10 THE COURT: Sure, all right. Thank you, Mr.
11 Gilmore.

12 THE WITNESS: Thank you.

13 (The witness leaves the witness stand.)

14 THE COURT: Call your next witness.

15 MR. CATHCART: The State calls Investigator
16 Pegram.

17 (WILLIAM PEGRAM, after being duly sworn,
18 testified as follows:)

19 THE CLERK: Please have a seat. State your full
20 name for the record.

21 THE WITNESS: I'm William Pegram.

22 DIRECT EXAMINATION

23 BY MR. CATHCART:

24 Q Investigator Pegram, where are you employed?

25 A The Columbia Police Department.

- 1 Q In what capacity?
- 2 A I'm an investigator with the Violent Crimes Unit.
- 3 Q And could you please describe for the jury basically
- 4 what y'all do or you do?
- 5 A What I do is -- is my responsibilities are to
- 6 investigate violent assaults, robberies and
- 7 homicides.
- 8 Q Would carjacking fall under that?
- 9 A It would.
- 10 Q And were you -- was this your job back on February
- 11 1st of '08?
- 12 A It was.
- 13 Q Were you on duty at that time?
- 14 A I was.
- 15 Q What if any connection do you have to this case?
- 16 A I was in my office, I received a call at roughly 1:30
- 17 in the afternoon. I was instructed that a carjacking
- 18 had occurred. That they had a vehicle chase, that a
- 19 guy bailed from a vehicle and they were detaining
- 20 him. And so I responded to Heidt -- I believe it was
- 21 Heidt and Hampton Street. Once I got there, the --
- 22 the blue Intrepid was there empty. There was a
- 23 patrol car behind it, it was empty. And there was a
- 24 series of officers around both of these vehicles.
- 25 Q I'm going to let you take a look at what's been

1 marked as State's Exhibit Number 24. Is that the
2 vehicles as they appeared?

3 A That is.

4 Q Okay. And what occurred after you got at that scene?

5 A I located one of the officers. I got a basic
6 briefing on what has been done, where a crime scene
7 was, who was involved, if we had witnesses, suspects.
8 I basically assessed the scene and then took control
9 of the crime scene.

10 Q And what did you do at that point?

11 A I instructed the officers to have the vehicle towed
12 for processing, to take the witnesses to headquarters
13 for an interview, and to bring the suspect to
14 headquarters for an interview as well.

15 Q Was the vehicle processed?

16 A It was.

17 Q Any identifiable prints found?

18 A Not that I'm aware of.

19 Q Not of the victim or of the Defendant?

20 A Neither.

21 Q And what did you do after that?

22 A I interviewed the -- the victim in the case.

23 Q Okay. And did you -- and when you interviewed her,
24 what did you do exactly?

25 A Well, I -- because of her age, I -- I wanted to take

1 my time with her. I let her tell her story. And one
2 thing I noticed about her back last year, I mean, she
3 was very alert, more so than I saw her yesterday.

4 MR. MAY: Objection, Your Honor. May we
5 approach?

6 THE COURT: Yeah, sure.

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

10 Q And you interviewed her?

11 A I did.

12 Q Okay. And she gave you a description of what
13 occurred?

14 A She did.

15 Q Did she give you a statement as to what happened?

16 A Yes, she did.

17 Q And you heard her testify and basically that
18 concurred with that statement as well?

19 A That is correct.

20 Q Did you interview anyone else?

21 A I did. I interviewed the Defendant.

22 Q Okay. Did you advise him of his rights?

23 A I did. I read him his Miranda warning at 3:45. He
24 understood his Miranda warning and he signed a waiver
25 agreeing to speak to me without an attorney present.

1 Q. I'm going to show you what's been marked as State's
2 Exhibit Number 28. Do you recognize what this is?

3 A I do.

4 Q And what is it?

5 A This is the Miranda warning sheet that I read
6 verbatim the Miranda warnings to the Defendant.

7 Q And did you -- and that's what you indicated you did?

8 A That's exactly what I did.

9 Q And when you read each warning to him, do you have
10 him do something?

11 A I do. Each sentence I have him initial by showing
12 that that's what I read, that he does understand what
13 that is.

14 Q And did he do so on each -- each one that you read to
15 him?

16 A He began -- he initialed the first three. There are
17 three additional sentences -- well, I'm sorry, no, he
18 just initialed on the end instead of the beginning
19 but he did indicate by his initials on each line that
20 he identified or that he agreed and understood what
21 the Miranda warnings were.

22 Q At that time did he understand why he was there?

23 A He did.

24 Q Please read to the jury those Miranda warnings and
25 the warnings that you gave him.

1 A (Reading) Before I ask you any questions, you must
2 understand your rights, that's the first line.

3 You have the right to remain silent, the second
4 line.

5 Anything you say can be used against you in
6 court, third line.

7 You have the right to talk to a lawyer for advice
8 before I ask you any questionings and have him with
9 you during questioning.

10 If you cannot afford a lawyer, one will be
11 appointed for you before any questioning, if you
12 wish.

13 If you decide to answer questions now without a
14 lawyer present, you will still have the right to stop
15 answering at any time. You also have the right to
16 stop answering at any time until you speak to a
17 lawyer.

18 The waiver portion is:

19 (Reading) I have read the statement of my rights
20 and I understand what my rights are. I am willing to
21 make a statement and answer questions. I do not want
22 a lawyer at this time. I understand and know what I
23 am doing. No promises or threats have been made to
24 me, no pressure or coercion of any kind has been used
25 against me.

1 That's what I read to him verbatim. But with
2 every person I read this to, I go a little bit
3 further and what I say is, this form doesn't say
4 anything about guilt. I always tell people that you
5 have -- you can start talking to me now but you don't
6 have to say anything to me. If you decide to not say
7 anything to me, that's fine, it won't change
8 anything, it won't -- nothing will happen to you as a
9 result of that.

10 I also explain further and say that if you decide
11 to talk to me, if at some point during our
12 conversation you are uncomfortable and want to quit,
13 you can quit.

14 And the last thing I say is, you know, you -- you
15 can decide to talk to me, start to talking to me and
16 quit or just not talk to me at all. And when I'm done
17 with that, I make sure that they understand that.

18 And that's how I conduct my -- my right waiver.

19 Q Were you the only person in the room when y'all did
20 this?

21 A Investigator Thomas was there. He's ---

22 Q As well witnessing it?

23 A That's correct.

24 Q Did the Defendant, Mr. Mitchell, decide to talk to
25 you?

1 A He did.

2 Q Okay. And what did he say?

3 A I made a notation in my -- I actually wrote it in my
4 notes, he began to say ---

5 MR. MAY: Objection, Your Honor, may we approach?

6 THE COURT: Sure.

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

10 MR. CATHCART: If I may, Your Honor.

11 MR. MAY: We're good, Your Honor. Sorry, Your
12 Honor, we withdraw the objection.

13 THE COURT: That's all right. Repeat the
14 question, Mr. Cathcart.

15 Q What did he say?

16 A He began by saying -- and I noted this. He stated
17 that he wasn't involved in the carjacking, period.
18 He had nothing -- didn't know anything about it.

19 Q Okay.

20 A He then changed his story and said -- he then stated
21 that he was aware that the carjacking was going to
22 occur and stated that the vehicle was delivered to
23 him while he was on Taylor Street.

24 Q Okay. Now, Taylor Street -- the carjacking occurred
25 here (indicating), I believe, okay, on Senate Street

1 -- Senate, Harden, correct?

2 A Right.

3 Q And Taylor Street's way up here?

4 A That's correct.

5 Q And that's where he indicated the car was delivered
6 to him?

7 A That's correct.

8 Q And that he knew that -- that a carjacking was going
9 to occur?

10 A He was aware that it was going to occur.

11 Q And he changed his story. Why did he change his
12 story that time?

13 A I called him on it. I mean, I -- I described to him
14 or actually explained to him timeline and what a
15 timeline is, is a chronological order of events. And
16 in this case our timeline was very very small. Once
17 I explained to him that his -- his story just didn't
18 fall within the timeline, he changed it once again.

19 Q And what did he say this next time?

20 A Okay. After realizing that the timeline didn't match
21 his story, he stated that he was one block away from
22 the Time Warner Building and an acquaintance of his
23 actually jacked the car. The person delivered the
24 car to him to drive to Gonzales Gardens.

25 Q Now, did he give you that acquaintance's name?

- 1 A He -- he did not, he could not.
- 2 Q Did he say what he looked like or where you could
3 fine him?
- 4 A He didn't give any information other than an
5 acquaintance. That was all he gave.
- 6 Q Did he continually change his story after this as
7 well?
- 8 A He did. And I -- I asked him to -- to reduce his
9 statement to writing. He refused.
- 10 Q And you said, all right, I've caught you in three
11 separate lies.
- 12 A Right.
- 13 Q Let's just put it down in writing. He said ---
- 14 A He refused.
- 15 Q And then at that point was the interview over?
- 16 A I ended the interview.
- 17 Q Did you ask him his address?
- 18 A I did, he doesn't have one.
- 19 Q So you put down in your follow-up report that he was
20 a transient?
- 21 A That's correct.
- 22 Q Didn't indicate he had -- that he was living in any
23 permanent address at this time?
- 24 A That's correct.
- 25 Q Homeless?

1 A Homeless.

2 MR. CATHCART: Beg the Court's indulgence.

3 THE COURT: All right.

4 (Pause.)

5 Q You were here for the testimony in this case,
6 correct?

7 A I was.

8 Q And I believe you heard the testimony being that the
9 when the carjacking occurred, the vehicle headed up
10 that way (indicating), correct?

11 A That's correct.

12 Q Are there in that area abandoned homes where
13 transient people stay?

14 A There are.

15 Q A number of them?

16 A A lot of them.

17 Q One last thing, I'm sorry.

18 MR. CATHCART: Your Honor, at this time the State
19 seeks to introduce into evidence State's Exhibit Number
20 28, the Advice of Rights of the Defendant.

21 MR. MAY: Without objection, Your Honor.

22 (WHEREUPON, State's Exhibit Number 28,
23 Interrogation Advice of Rights, was entered into
24 evidence.)

25 MR. CATHCART: Please answer any questions

1 Defense counsel may have.

2 MR. MAY: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. MAY:

6 Q How are you doing, Investigator Pegram?

7 A Hey, how's it going?

8 Q I just have a few quick questions for you

9 A All right.

10 Q I'm referring to Defendant's Exhibit 2.

11 A (The witness nodded head.)

12 Q Do you recognize this picture?

13 A I do.

14 Q Can you please describe it?

15 A That is the picture taken of him on the day of the
16 arrest.

17 Q So this is a fair and accurate description of what
18 Mr. Mitchell looked like when you saw him the first
19 time at Justice Square?

20 A That's correct.

21 Q Okay. You sent a picture -- you sent that picture to
22 Mr. Cambre who works for Time Warner Cable, correct?

23 A I did.

24 Q You sent that picture and asked him to look for
25 suspects, to compare that picture to the suspects who

1 might have shown up on the video, correct?

2 Q Really it wasn't worded like that. I wanted to -- I
3 did send that picture to him. I wanted him to look
4 through their -- their security films and see if that
5 person or persons that matched that description,
6 basic description, was anywhere on the video.

7 Q Okay. Referring to your case summary, the second
8 page ---

9 A Right.

10 Q --- the second line. You stated, I sent a -- a jail
11 photo of the suspect to -- to compare with photos of
12 suspects in the parking lot prior to the carjacking,
13 correct?

14 A Yeah, that's correct.

15 Q So you wanted him to look for that man?

16 A I did.

17 Q Okay. Not a man with long nappy hair?

18 A No ---

19 Q That man, a bald man, correct? You wanted him to
20 look for a bald man, a man that matches ---

21 A Actually I -- no, the final determination or the
22 evaluation of video would be mine. I was looking for,
23 number one, height, weight, skin tone. I -- actually
24 I really never thought about the bald.

25 Q So when you look at this picture, the most glaring --

- 1 glaring in all practical terms, is there is a glare
2 on the head?
- 3 A Yeah. Yeah, but what I'm -- what I'm trying to
4 explain to you is this. If he sees four people in
5 the video that looks similar to this guy, I would be
6 the one to evaluate those four videos and determine
7 if it was close to my guy.
- 8 Q I understand but you were looking for this man?
- 9 A Yeah. Yeah, that's what I was looking for.
- 10 Q Yes, sir.
- 11 A That's correct. But I don't recall asking him about
12 hair.
- 13 Q No, that's fine but you sent this picture ---
- 14 A I did send it. That is the picture I sent.
- 15 Q That's all I was asking.
- 16 A Yeah.
- 17 Q After February the 1st, 2008, did you ever attempt to
18 interview the Defendant again?
- 19 A No, I did not.
- 20 Q As lead investigator, are -- has -- was there ever a
21 gun found in this ---
- 22 A No.
- 23 Q --- incident?
- 24 A No gun that I am aware of.
- 25 Q Was DNA ever done in the car?

1 A I -- you know, I actually think DNA was requested but
2 I have not received any results on DNA.

3 Q Okay. And the reason why DNA is requested is because
4 every time you leave skin cells, DNA can be recovered
5 from steering wheels or seats ---

6 A That -- that's correct..

7 Q Fingerprint analysis was done on this motor vehicle,
8 correct?

9 A Yes.

10 Q And throughout the entire vehicle, there was not a
11 single recoverable fingerprint?

12 A Not that I'm aware of but that, there again, is not
13 an uncommon occurrence.

14 Q Okay. And your -- in your discussions with Mr.
15 Mitchell on February 1st, 2008, did he ever say that
16 he carjacked Ms. Gilmore?

17 A No, he denied ---

18 Q Okay.

19 A --- being involved.

20 Q Mr. Cathcart, the government lawyer, harped a little
21 bit about him being homeless and being homeless is
22 just an unfortunate circumstance, it's not a crime,
23 is it?

24 A No, it's not -- it's not a crime.

25 MR. MAY: I beg the Court's indulgence for one

1 second.

2 THE COURT: Yes, sir.

3 (Pause.)

4 MR. MAY: I have no further questions of this
5 witness at this time.

6 THE COURT: Anything on redirect?

7 MR. CATHCART: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. CATHCART:

10 Q You spoke to the witnesses in this case, correct?

11 A Correct.

12 Q Including Corporal Sanders is one, correct?

13 A That's correct.

14 Q Did she indicate to you that she was following a bald
15 man?

16 A No, she did not.

17 Q She gave a statement as well, correct?

18 A That's correct.

19 Q What did this man have on when he was running away
20 from her?

21 A It was described as a sweat cap, a black -- well, in
22 her statement it's a dark sweat cap.

23 MR. MAY: Objection, Your Honor.

24 THE COURT: Basis?

25 MR. MAY: Hearsay.

1 THE COURT: Overruled.

2 Q In fact, when the Defendant was booked into the
3 Richland County Detention Center, after he was
4 arrested, part of what he was booked in with was
5 what?

6 A He was booked in with a -- I believe it was a black
7 and red sweat cap.

8 Q Uh-huh.

9 A And other clothing items.

10 Q So when he committed this crime, he wasn't
11 baldheaded, was he?

12 A No, he wasn't.

13 MR. MAY: Objection, Your Honor, calls for
14 speculation.

15 THE COURT: Just ask him what did he have
16 on him at the time he was booked in.

17 Q What did he have on at the time he was running away
18 from Corporal Sanders?

19 MR. MAY: Objection, Your Honor, calls for
20 speculation.

21 THE COURT: Ask your question, overruled.
22 What did the Defendant have with him when he was
23 booked into the county jail?

24 Q What did the Defendant have on -- with him when he
25 was booked into the county jail?

1 A He had a -- I believe it was a black and red sweat
2 cap and other items of clothing.

3 MR. CATHCART: Thank you.

4 THE COURT: Anything further of this witness?

5 MR. MAY: No, sir.

6 THE COURT: You may step down, sir.

7 THE WITNESS: Thank you.

8 (The witness leaves the witness stand.)

9 THE COURT: Call your next witness.

10 (Pause.)

11 THE COURT: You need a moment?

12 MR. CATHCART: No, Your Honor, at this time the
13 State rests.

14 THE COURT: The State rests?

15 MR. CATHCART: Yes, sir.

16 THE COURT: All right, very well. Now, members
17 of the jury, you've heard the evidence you shall receive
18 from the State in the case. I'm going to send you to the
19 jury room. There's a matter of law I need to take up, and
20 the only way I can do that is in your absence, and I'll
21 bring you back out shortly to determine what time I'm
22 going to send you to lunch. Okay.

23 (The jury retires from the courtroom at
24 12:03 p.m.)

25 THE COURT: Motions.

1 MR. MAY: Your Honor, before we make our motions,
2 I would first like to put on the record the sidebars that
3 we had.

4 THE COURT: Go ahead.

5 MR. MAY: Yes, sir. We objected to 403 -- under
6 403 when Mr. Gilmore was up there talking. It was our
7 objection that when he starts talking about the clientele
8 of his mother, that's not indicative to anything related
9 to carjacking. It can be nothing more than just to
10 inflame the passion and the prejudice of the jury. That
11 was the motion of our objections.

12 THE COURT: All right. My ruling is still the
13 same, overruled.

14 MR. MAY: Yes, sir. Then the State attempted to
15 begin bolstering her testimony saying that she remembered
16 much better than she did today.

17 Your Honor, under South Carolina one of the
18 primary evils that we try to avoid is witness bolstering.
19 For that, I object and I move for a mistrial.

20 THE COURT: Your request for a mistrial is
21 denied.

22 MR. MAY: The objection is overruled?

23 THE COURT: Overruled too, yes, sir.

24 MR. MAY: Okay. And then with Investigator
25 Pegram, that was clear bolstering as Mr. Cathcart knows

1 that the jury is the ultimate determiners of fact. He had
2 Mr. Pegram -- Investigator Pegram commenting on the state
3 of the witness and thereby was bolstering the witness.

4 THE COURT: All right.

5 MR. MAY: Again I would object to that and move
6 for another mistrial.

7 THE COURT: Objection overruled. Request for a
8 mistrial denied.

9 MR. MAY: The other one was on the record,
10 hearsay.

11 THE COURT: You're just doing your job. It's all
12 right, relax.

13 MR. MAY: Your Honor, at this time, we move for a
14 directed verdict on -- only on the carjacking. We are
15 consenting that he did break the law on failure to stop
16 for blue light. As far as the carjacking, taking in the
17 light most favorable to the State, we don't believe
18 they've met the substantial circumstantial evidence as the
19 only witness to the carjacking clearly identified the man
20 who carjacked her as having long nappy hair, looked like
21 it hadn't been combed. The Defendant, through the
22 evidence that was introduced has -- is bald.

23 We'd ask the Court to -- respectfully request a
24 directed verdict.

25 THE COURT: Your request is denied. The lady

1 says she saw this man. She identified him directly. Did
2 he have a hat on, did he not have a hat on, I don't know
3 but as you look at the totality of the surrounding
4 circumstances, the timeline and everything else, your man
5 is in the car. Did he have time to go up, as he says, to
6 pick up somebody else? I think they are all issues of
7 fact. I can't rule as a matter of law and -- we're just
8 going to have to let 12 people here from Richland County
9 decide these issues and the guilt or innocence of Mr.
10 Mitchell.

11 Now, I think you've done a good job but I think
12 it's a matter for the jury to resolve.

13 MR. MAY: Yes, sir. The one thing that we would
14 respectfully request is if before -- before we dismiss
15 them for lunch, can we have Captain Redmond testify.

16 THE COURT: That's fine, that's fine. All right,
17 and I'll let you revisit all of your motions again later
18 on, Mr. May. Relax a little bit. Is Captain Redmond
19 here?

20 MR. MAY: Yes, sir.

21 THE COURT: All right. Anything further,
22 Solicitor?

23 MR. CATHCART: No, sir, waiting for Captain
24 Redmond.

25 THE COURT: All right, bring the jury in. So we

1 will finish this -- we will be able to finish everything
2 just before lunch probably? No -- just relax, I'm just
3 asking. I used to do the same thing. So we'll get
4 Captain Redmond in, then you want to break for lunch and
5 talk to your client before he takes the stand?

6 MR. MAY: Yes, sir.

7 THE COURT: And settle his record. Okay, that's
8 fine.

9 MR. MAY: And you can advise him of his rights.

10 THE COURT: All right, that's good, that's good.
11 We'll do that. We'll hear from the Captain, then we'll
12 break for lunch, take about an hour or so and come back.

13 Is that good enough for everybody?

14 MR. CATHCART: Yes, sir.

15 THE COURT: All right. And we have -- we've
16 got the request for charge and all that other kind of
17 stuff, it shouldn't take long.

18 (The jury returned to the courtroom at
19 12:10 p.m.)

20 THE BAILIFF: The jury's all present, Your Honor.

21 THE COURT: Welcome back, Mr. Foreman and members
22 of the jury. We'll now hear presentation of evidence on
23 behalf of the Defense.

24 Mr. Shealey.

25 MR. SHEALEY: At this time we call Captain

1 Redmond to the stand.

2 THE COURT: Captain Redmond.

3 (WILLIAM B. REDMOND, after being duly sworn,
4 testified as follows:)

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

7 THE WITNESS: My name is William Brian (Phonetic)
8 Redmond.

9 DIRECT EXAMINATION

10 BY MR. SHEALEY:

11 Q Hi, Captain Redmond.

12 A Hi.

13 Q Where do you work?

14 A Alvin S. Glenn Detention Center.

15 Q And what's your official title, your job title?

16 A I'm a Captain or Division Manager for Operations.

17 Q And what does that mean? What do you do there?

18 A I supervise several parts of the facility but records
19 is one of the major parts. I'm keeper of the records
20 I think is why I'm here.

21 MR. SHEALEY: I'd like to mark for identification
22 purposes.

23 (WHEREUPON, Defendant's Exhibit Number 3, Current
24 Detained Sheet, was marked for identification.)

25 MR. SHEALEY: Your Honor, permission to approach

1 the witness.

2 THE COURT: Sure.

3 MR. CATHCART: Your Honor, if I could see what
4 he's going to show him first before he does?

5 THE COURT: Y'all be nice to each other. Show him
6 what you're going to let him look at.

7 (Pause.)

8 Q Captain Redmond, I'm going to show you what's already
9 entered into evidence as Defendant's Exhibit 2. I'm
10 going to show you that. What do you recognize that
11 to be? This is marked for ID as Defendant's 3.

12 A This is a report off the internet for our booking
13 procedure, charges and etcetera for somebody going to
14 the jail.

15 THE COURT: Can you speak up a little bit,
16 Captain?

17 A This the our booking procedure, just internet
18 information, for people who are processed through the
19 jail.

20 Q And as ---

21 A And a photo.

22 Q And as a keeper of records, you recognize what that
23 is to be a booking report?

24 A Yes.

25 Q Okay. Now, what's Exhibit 2, it's already into

1 evidence? Is that the same picture as the booking
2 report?

3 A It's the same picture, it's blown up, in color.

4 Q Okay. Now I'm going to show you another document not
5 marked. And on this document which is a an image
6 history from the jail website, do you recognize that,
7 this set up of photos to be an image history from
8 Alvin S. Glenn?

9 A Yes, these are photos from previous arrests.

10 Q And do you recognize this first picture?

11 A That's the current one that we're looking at.

12 Q And would you tell the jury the date and time on
13 that?

14 A It was February the 1st of '08 at 7:35 p.m.

15 Q And was that the time that he was booked?

16 A Well, that's the time the photo was made, I think.
17 It's -- it's within an hour of each other.

18 Q That's the ---

19 A The photo was taken about within an hour of the time
20 that they're actually come in the front door.

21 Q So that exact time is the time that he was
22 photographed and come in the front door?

23 A Yes.

24 MR. SHEALEY: Okay. Your Honor, at this time I
25 move to enter into evidence Defendant's Exhibit 3.

1 THE COURT: Okay. Any objection?

2 MR. CATHCART: Nothing from the State, Your
3 Honor.

4 THE COURT: All right, without objection.

5 MR. SHEALEY: Thank you.

6 (WHEREUPON, Defendant's Exhibit Number 3 was
7 moved into evidence.)

8 Q And Officer -- or Captain Redmond, when people are
9 booked, are they -- are their physical
10 characteristics altered in any way when they come to
11 the jail?

12 A No. We try to take a picture of them just like they
13 come in.

14 Q You don't cut their hair or anything?

15 A No.

16 MR. SHEALEY: No further questions at this time.

17 THE COURT: Cross-examine.

18 MR. CATHCART: Excuse me, Brian -- Mr. Shealey,
19 may I have that please. Thank you.

20 (WHEREUPON, State's Exhibit Number 35, Booking
21 Photographs, was marked for identification.)

22 CROSS-EXAMINATION

23 BY MR. CATHCART:

24 Q I'm going to show you what's been marked as State's
25 Exhibit 35. Is that what the Defense counsel just

1 had you testify from?

2 A Yes.

3 MR. CATHCART: At this time the State seeks to
4 introduce State's Exhibit Number 35 into evidence.

5 MR. SHEALEY: Objection, Your Honor.

6 THE COURT: Basis? Approach.

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

10 THE COURT: Go to jury room, members of the jury.
11 Don't talk about this case.

12 (The jury retires from the courtroom at
13 12:15 p.m.)

14 THE COURT: He seeks to introduce State's Exhibit
15 Number 35, Mr. Shealey.

16 MR. SHEALEY: Yes, Your Honor, I object. I asked
17 about one photo on that for the date purpose of that.
18 Introducing that into evidence would demonstrate he's been
19 booked on multiple occasions. Mr. Mitchell has not taken
20 the stand yet. That would be highly prejudicial.

21 THE COURT: All right. That's stated for now.
22 If he takes the stand, then you'll have an opportunity
23 maybe to revisit it, Mr. Cathcart.

24 MR. CATHCART: That's fine, Your Honor.

25 THE COURT: Are you finished with this witness,

1 pretty much?

2 MR. CATHCART: No, sir.

3 THE COURT: Okay, relax.

4 (Pause.)

5 THE COURT: Bring the jury back in, Mr. Cromer.

6 (The jury returned to the courtroom.)

7 THE COURT: All right. Welcome back, Mr. Foreman

8 and members of the jury. Mr. Cathcart, you may continue,

9 sir.

10 MR. CATHCART: Thank you, Your Honor.

11 CROSS-EXAMINATION CONTINUES

12 BY MR. CATHCART:

13 Q Are you familiar with the procedure of booking
14 photos?

15 A Yes, sir.

16 Q And if a person comes with something obstructing his
17 face in any way, do you allow him to keep that on for
18 their booking photo?

19 A Oh, no, that would have to be removed.

20 Q Okay. And would a hat have to be removed?

21 A Yes, it would.

22 Q So if somebody was having a booking photo and he had
23 a hat on, you're going to say, excuse me, sir, you
24 need to take that hat off?

25 A That's correct.

1 Q Would that hat be then put into your storage locker
2 for him to get at a later date?

3 A In a future step if we take his property, yes, we
4 take his hat.

5 Q Let me show you what's been marked State's Exhibit
6 Number 36. Do you recognize what this is?

7 A Yes, it's a property sheet.

8 Q Okay, hold on a second.

9 (WHEREUPON, State's Exhibit Number 36, Property
10 Sheet, was marked for identification.)

11 Q And this is a property sheet that belongs to whom?

12 A Mr. Norman Mitchell.

13 Q Is it signed by Mr. Norman Mitchell as having given
14 over his property?

15 A Yes, it is.

16 Q Is part of -- well, can you tell me what the very
17 first part of this property is?

18 A A red and black sweater cap.

19 Q Sweater cap?

20 A Sweater cap.

21 Q What is that ---

22 A Like a stocking cap.

23 MR. CATHCART: At this time the State seeks to
24 introduce State's Exhibit Number 36.

25 MR. SHEALEY: Without objection.

1 THE COURT: All right, it's in.
2 (WHEREUPON, State's Exhibit Number 36 was
3 moved into evidence.)

4 Q That stocking cap is not in the picture, is it?

5 A No, it's not.

6 Q And it was with him that day, wasn't it?

7 A Yes, it was.

8 MR. CATHCART: No further questions.

9 THE COURT: Anything on redirect?

10 MR. SHEALEY: Briefly.

11 REDIRECT EXAMINATION

12 BY MR. SHEALEY:

13 Q Captain Redmond, what date was this picture taken?

14 A February the 1st of '08.

15 MR. SHEALEY: Okay. No further questions.

16 RECROSS EXAMINATION

17 BY MR. CATHCART:

18 Q Captain Redmond, what date did you take his stocking
19 cap?

20 A I'd have to look at that but it was February 1st of
21 '08, I feel sure but let me see.

22 (Pause.)

23 A February 1st of '08.

24 Q The same day?

25 A The same day.

1 MR. CATHCART: Thank you.

2 THE COURT: Anything further of this witness?

3 MR. SHEALEY: Nothing.

4 THE COURT: You may step down, sir.

5 (The witness leaves the witness stand.)

6 THE COURT: Now, members of the jury, I'm going
7 to send y'all to lunch. There's a Clemson fan, a judge
8 that offered to buy me lunch because they won last night.
9 I'm going to take him up on it.

10 Please don't talk about this case. Let's see,
11 12:30. Let's say 2:00. I think we're going to finish
12 this afternoon. Go to the jury room and I'm going to talk
13 about your situation for a minute, okay?

14 Just don't talk about this case. Don't leave
15 right now and I'm going to ask you to come back at 2:00,
16 okay.

17 (The jury retires from the courtroom at
18 12:20 p.m.)

19 THE COURT: Y'all sit tight. I might change it
20 to an hour, I'll see what this lady's problem is.

21 (A short recess was taken.)

22 THE COURT: Let's see, 2 -- 12:30, y'all come
23 back about a quarter-till, we'll try to settle his record
24 and all that other stuff a little bit before they get
25 back. Is that good enough?

1 Have you back at 1:45. You got your request for
2 charge, y'all bring it back at 1:45, okay. It's simple.

3 MR. MAY: Whatever you have, Your Honor.

4 THE COURT: Okay. But we'll go over it, I mean.
5 We'll get everything out of the way, we'll stop, renew all
6 your motions. We'll have a little charge conference, it
7 shouldn't be long and we'll be good to go.

8 See y'all later.

9 (The Court was in recess.)

10 THE COURT: Stop. I don't care one way or the
11 other. The main thing is not to let him walk in front of
12 the jury with the leg irons. I don't care whether they
13 keep them on or you take them off. But I'll warn you, Mr.
14 Mitchell, they have bullets in those guns, they will use
15 them.

16 THE DEFENDANT: That's what I'm saying, I mean ---

17 THE COURT: Just relax. I'm just telling you, I
18 don't care. The main thing is not to let the see the jury
19 -- let the jury see him with the irons. But we've got to
20 settle his record first. Let's go ahead and do that.

21 Y'all relax for a minute.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I know it's sort of extensive, Mr. --
24 do y'all agree on what should go in or what?

25 MR. MAY: Your Honor, I would take the stand that

1 under 609 there is a 10 year time limit and that nothing
2 outside that 10 year time limit should come in as it's
3 just cumulative.

4 THE COURT: I don't know what his record is. I
5 have no idea. What is it?

6 MR. CATHCART: Your Honor, as stated earlier, to
7 have parties give notice to the Defense attorney that our
8 intention was to seek or put in the prior record that is
9 beyond the 10 years.

10 THE COURT: What's beyond the 10 years?

11 MR. CATHCART: It is three counts of burglary in
12 the first degree ---

13 THE COURT: That's beyond the 10 years -- sit
14 down. Go ahead.

15 MR. CATHCART: Four counts of burglary second
16 degree, six counts of grand larceny and then an attempted
17 burglary second degree.

18 THE COURT: Those are beyond 10 years.

19 MR. CATHCART: It's beyond the 10 years in that
20 he maxed on these on July the 28th of 1998. However, one
21 month after that, he is picked up again for attempted
22 strong armed robbery and convicted of that. His pattern
23 of dishonesty goes ---

24 THE COURT: Nothing beyond 10 years, period.

25 Let's get that straight now, all right. What's within the

1 10 years?

2 MR. CATHCART: Within the 10 years, Your Honor,
3 is attempted strong armed robbery, petty larceny -- excuse
4 me, the strong armed robbery and attempted strong armed
5 robbery occurred on August the 23rd of 1998. He was
6 sentenced to two years with credit for time served.

7 In 1999 he received -- excuse me, he was
8 convicted of petty larceny. In 2001, auto breaking and
9 petty larceny. And in 2003, he was convicted of 10 counts
10 of bank fraud. In 2004, he was convicted of petty
11 larceny. In 2005, convicted of petty larceny. In 2007,
12 convicted of shoplifting. And in August of 2007, a
13 possession of a stolen motor vehicle.

14 There were also other charges in that time
15 period. However ---

16 THE COURT: That he was not convicted of?

17 MR. CATHCART: Convicted of them, yes, sir. He
18 also had an assault on a correctional officer while he was
19 at the Department of Corrections. He also has a
20 trafficking in cocaine and unlawful weapon charge. But
21 I'm not seeking to introduce those and do not feel that --
22 they're not crimes of dishonesty, in an abundance of
23 caution.

24 THE COURT: So which ones are you seeking to
25 bring in, within the 10 years?

1 MR. CATHCART: Within the 10 years, the attempted
2 strong armed robbery, the petty -- the attempted strong
3 armed robbery from 1998, the petty larceny from 1999, the
4 auto breaking and petty larceny from 2001. The 10 counts
5 of bank fraud from 2003, the petty larceny from 2004, the
6 petty larceny from 2005 and the shoplifting under a
7 thousand in 2007, possession of a stolen motor vehicle
8 from 2007.

9 It's the State's position that each of those have
10 been listed as a crime of dishonesty and under Al-Amin
11 don't even need to ---

12 THE COURT: All right. How about that, Mr. May?

13 MR. MAY: Your Honor, our only position was that
14 -- sorry. Our only position was the 10 years and that you
15 ruled ---

16 THE COURT: So you don't have any problem with
17 what he just listed?

18 MR. MAY: That's correct.

19 THE COURT: We are all on the same page then,
20 good.

21 Now, Mr. Mitchell, stand up, sir.

22 (Complied.)

23 THE COURT: Raise your right hand.

24 (The Defendant was first duly sworn.)

25 THE COURT: I've got to ask you these questions.

1 I assume you're going to take the stand, is that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right, let me -- that's all
4 right, put your hand down. I'm going to take ma time and
5 read this to you. Listen carefully.

6 Now, Norman Lee Mitchell, at this time I'm going
7 to explain to you certain of your rights and if you do not
8 understand anything that I say, please let me know. And
9 if you want me to explain anything in more detail, please
10 let me know.

11 Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Speak up a little bit, thank you.

14 We have now reached the stage of the trial where
15 you may present your defense. You have the right to claim
16 the protection given to you by the Fifth Amendment to the
17 Constitution of the United States. This Amendement states
18 in part: No person shall be compelled with any criminal
19 case to be a witness against himself.

20 You understand that, don't you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: This mean that you cannot be required
23 to testify in this case. You have the right to testify on
24 your own behalf; however, no one can make you testify.
25 This is a personal right and no one can waive this right

1 except for you.

2 Do you understand this?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. If you decide to testify,
5 Mr. Mitchell, you will be subject to this same -- you will
6 be subject to the same rules that govern other witnesses
7 and you may be examined and cross-examined on any relevant
8 issue in this case.

9 In addition, if you have any convictions
10 involving dishonesty or false statement or for crimes
11 punishable by imprisonment for more than one year and this
12 Court determines that the probative value of admitting
13 this evidence outweighs it's prejudicial effect to you,
14 the Solicitor will be able to introduce your record to
15 attack your credibility.

16 Do you understand this?

17 THE DEFENDANT: Does that mean what he just spoke

18 ---

19 THE COURT: Yeah, yeah, your prior record. He'll
20 be able to ask you about it. He'll be able to ask were
21 you convicted of these things and such a date and time.
22 He can't go into the details.

23 Now, if you decide to testify, Mr. Mitchell, this
24 decision on your part must be freely, voluntarily and
25 intelligently made, with knowledge of the protections

1 given to you by the Fifth Amendment and the consequences
2 of your decision to testify.

3 If you decide not to testify, I will instruct the
4 jurors that they cannot give the fact that you did not
5 testify any consideration whatsoever, and that there is to
6 be no -- there is to be absolutely no prejudice to you
7 because you did not testify. It is left entirely up to
8 you whether or not to testify. You may talk with your
9 attorneys, your family friends or anyone else, but the
10 final decision will be left entirely up to you.

11 Do you understand what I have explained to you so
12 far?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Do you any questions
15 about what I have explained to you?

16 THE DEFENDANT: No, sir.

17 THE COURT: All right. Have you discussed with
18 your lawyer whether you should or should not testify?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Do you wish to talk to
21 your lawyers anymore at this time?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you wish to testify?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Anything further,

1 Solicitor, along these lines?

2 MR. CATHCART: No, sir.

3 THE COURT: Mr. May or Mr. Shealey?

4 MR. MAY: Not that I know of.

5 THE COURT: All right. Let's bring him up now.

6 MR. MAY: If you don't mind, I just want to make
7 sure they can't see his feet.

8 THE COURT: Okay. That's fine.

9 (The Defendant is seated in the witness stand.)

10 THE COURT: If somehow they inadvertently see
11 them, I'll give them a charge, you've got to disregard and
12 can't hold it against him, whatever.

13 All right, come on in. These are some witnesses
14 that have already testified. Do y'all have any objection
15 to them coming in?

16 MR. MAY: As long as the State's not planning to
17 recall them.

18 MR. CATHCART: Actually, Ms. Sanders may be
19 called in reply, Your Honor.

20 THE COURT: Who?

21 MR. CATHCART: Corporal Sanders.

22 THE COURT: All right. Well she needs to go back
23 out. We'll let you come back in ---

24 MS. SANDERS: Okay.

25 THE COURT: --- later on. Okay, is everybody

1 ready? Bring the jury in.

2 (The jury returned to the courtroom at
3 2:03 p.m.)

4 THE BAILIFF: Jurors are all present, Your Honor.

5 THE COURT: All right. Welcome back, members of
6 the jury. I hope y'all had a pleasant lunch.

7 JURORS: We did.

8 THE COURT: Okay. The Defense will continue with
9 the presentation of evidence. Mr. May is going to examine
10 Mr. Mitchell.

11 Go ahead, Mr. May.

12 MR. MAY: The Defense calls Norman Lee Mitchell.

13 (NORMAN MITCHELL, after being duly sworn,
14 testified as follows:)

15 THE CLERK: Please state your full name for the
16 record.

17 THE WITNESS: My name is Norman Mitchell.

18 DIRECT EXAMINATION

19 BY MR. MAY:

20 Q Hey, Norman, how you doing?

21 A Doing fine, Mr. May.

22 Q You know why we're here?

23 A Yes, sir.

24 Q Point blank, did you carjack Nola Gilmore?

25 A No, sir.

1 Q All right. We're going to go through this in depth
2 in a little bit.

3 How did you get that car?

4 A I rented the car from a guy whose face I recognized
5 outside the Greyhound Bus Station named John.

6 Q All right. We'll get in more detail about that in
7 the future. I just wanted to go ahead and put it out
8 there while we're here.

9 Norman, where were you born?

10 A I was born in Jersey City, New Jersey. And I was
11 raised in Charleston and Columbia.

12 Q Okay. When did you move down here?

13 A I moved to Columbia like 1984. I moved to Charleston
14 when I was actually five and then I moved to Columbia
15 when I was -- 1984, '85.

16 Q Okay. You moved to Columbia why?

17 A Because my brother was living at DJJ -- my brother
18 was in DJJ and my mother wanted to be closer to my
19 brother.

20 Q Where did you go to high school?

21 A I went to Columbia High School.

22 Q Did you graduate?

23 A No, sir.

24 Q Did you get a GED or something like that?

25 A No, sir, I got kicked out of Columbia High School and

1 I went to Mansfield Business College for business
2 management and accounting and I got my GED.

3 Q You got your GED with Mansfield Business College?

4 A Yes, sir.

5 Q Okay. I mean, this isn't your normal demeanor. Are
6 you scared right now?

7 A Yes, sir, Mr. May.

8 Q Why are you scared?

9 A Because I'm on trial ---

10 MR. CATHCART: Objection, Your Honor ---

11 A --- for a crime I didn't commit.

12 THE COURT: Wait, stop. There's an objection.

13 Yes, sir.

14 MR. CATHCART: Your Honor, the Defendant is going
15 into the potential -- actually maybe ---

16 THE COURT: I beg your pardon?

17 MR. CATHCART: May we approach, Your Honor?

18 THE COURT: Yes.

19 (Whereupon, a bench conference was held off the
20 record, in the presence of the jury, but out of the
21 hearing of the jury.)

22 Q Why are you scared, Norman?

23 A Because I am on trial for a charge I did not commit.

24 Q Okay. And I understand how that can be scary. Now,
25 you've done some bad things in your past, haven't

1 you?

2 A Yes, sir, Mr. May.

3 Q Specifically, you have four petty larcenies, correct?

4 A Yes, sir. I did those and I pled guilty, Mr. May.

5 Q You have an attempted strong armed?

6 A I did that and I pled guilty, Mr. May.

7 Q Auto breaking?

8 A I did that and I pled guilty, Mr. May.

9 Q You have a bank fraud, that's 10 counts of bank
10 fraud?

11 A Yes, sir. I did that and I pled guilty.

12 Q And you have possession of stolen ---

13 THE COURT: I'm sorry. You're you need
14 to speak up, back up a little bit. Some of the
15 jurors have trouble hearing. And you just need to
16 take your time and talk loud, okay? Talk loud and
17 slow.

18 Q Okay. And you have a possession of a stolen motor
19 vehicle, is that correct?

20 A Yes, sir, I did that and I pled guilty, Mr. May.

21 Q Okay. Now, I want to take you back to February 1st.

22 A Yes, sir.

23 Q You remember February 1st, 2008?

24 A Never forget it.

25 Q How did the day start out?

- 1 A Actually I was scheduled to attend a party up at
2 Columbia, a Super Bowl party. So I asked my aunt, my
3 mother's best friend, which is like my aunt, Ms. Judy
4 Lindler (phonetic) that lives at 1921 Marchant
5 (phonetic) Street, Charleston. I told her to take me
6 to the bus station on Dorchester Road so I can get a
7 bus ticket to come to Columbia.
- 8 Q So were you living with this lady?
- 9 A Yes, ma'am -- yes, sir.
- 10 Q And you weren't living with your mother anymore. Can
11 you tell the jury why?
- 12 A My mother passed when I was in prison.
- 13 Q Okay. So you got a bus ticket. And can you tell us
14 about -- do you remember how much you paid for the
15 bus ticket?
- 16 A Exactly \$27.00, I believe, no more.
- 17 Q And did you have a job at this time?
- 18 A Yes, sir.
- 19 Q What were you doing?
- 20 A I was working for a neighbor of mine doing painting.
- 21 Q Can you explain to these nice ladies and gentlemen
22 what exactly Labor Finders are?
- 23 A It's a place that you get up at 5:00 in the morning
24 and you go to the job site and they take you during
25 the week and you get paid at the end of the week and

1 they take you to the job site.

2 Q All right, Norman, you've got to speak up a little
3 bit.

4 A It's a place that you go to early in the morning and
5 you ride on the bus with the rest of the people that
6 attends the same job site that you do and you get
7 paid at the end of the week.

8 Q Okay. So it's just day labor and sometimes you have
9 a job, sometimes you don't, is that fair?

10 A The situation I did, I had a job.

11 Q You had the job?

12 A Yes, sir.

13 Q Did you get paid well for that?

14 A During the time, it was well for me, sir.

15 Q Okay. So you got a bus ticket. What did you take on
16 this bus?

17 A I take my bags and my clothes because I was going to
18 stay for a week because I promised my mother to bring
19 her some flowers to her grave because I didn't see
20 her flowers in prison. I didn't get a chance to
21 attend the funeral.

22 Q Okay. I'm going to show you these things. Do you
23 recognize all this?

24 A Yes, sir.

25 Q What is this?

1 A Those are my bags and my clothes.

2 Q And is this the clothes that you owned?

3 A Yes, sir, Mr. May.

4 Q So did you take these on the bus with you?

5 A Yes, sir.

6 Q Do you know how long that bus ride was?

7 A From an hour and a half to two hours probably.

8 Q When you got to Columbia, where did the bus stop?

9 A The bus stopped on Gervais Street.

10 Q Is that at the Greyhound Bus Station?

11 A Yes, sir, at the Greyhound Bus Station on Gervais
12 Street.

13 Q All right.

14 MR. MAY: May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 Q So is it right here (indicating) about where the
17 corner of Harden Street and Gervais Streets?

18 A Yes, sir.

19 Q Okay. So you got left off there. What happened once
20 you got to the bus station?

21 A I went -- I went directly inside and I called my
22 friend who was supposed -- was scheduled to pick me
23 up at the bus station but he didn't answer the phone.
24 So I called back again and I got the answering
25 machine and he told me he was in Lexington at a roll

1 call.

2 Q What's a roll call?

3 A Where you have to report for pending charges that you
4 have. He said he wasn't going to be available to
5 pick me up. So I walked outside with my bags --
6 grabbed my bags and I walked outside to say, let me
7 see could I find a ride.

8 Q Did you have your bags with you the whole time?

9 A The whole time.

10 Q Why would you have these bags with you the whole
11 time?

12 A Because I've got some very nice tennis shoes and very
13 nice clothes in there and a lot of property and I
14 know that people frequents the bus station, they'll
15 take your things.

16 Q Have you ridden buses before?

17 A Yes, sir.

18 Q Okay. So you went outside and what happened?

19 A A guy immediately approached me. He said, hey, you
20 looking for a ride? I said, yeah, I would like to
21 get a ride. He said, where you going? I said, would
22 you take me on Broad River Road to Bonnie (phonetic)
23 Forest to my friend's house at the Super Bowl party.
24 He said, get in. Grabbed in -- got in the car, and
25 he grabbed the bags and put them in the backseat of

1 the car and we drove off.

2 Q So did you get to -- I'm sorry, I don't know the
3 place you're saying. Are you saying Brandon
4 (phonetic) Forest?

5 A Bonnie Forest.

6 Q Did you get there?

7 A No, sir.

8 Q What happened along that ride?

9 A When we got in the car, we immediately made an exit
10 and when we made an exit to the right headed towards
11 those -- those building -- the building ---

12 Q Is this fair? Did you go up the large street behind
13 the county buildings?

14 A Yes, sir.

15 Q Okay. What happened?

16 A And he told me, well, you know, if you give me an
17 extra \$10.00, you can drop me off at my house and
18 bring me the car back later and that will be it. So
19 I said, okay. I gave him 10 -- I went in my pocket
20 and gave him 10 more dollars and said, I'll bring the
21 car back later after I drop my things off.

22 Q Would it be fair to call this a rental?

23 A Yes, sir.

24 Q Can you talk to these ladies and gentlemen about at
25 rental? I mean when -- when I rent a car, I go to

1 Hertz. Is that what this was? Was this Hertz? Was
2 this Alamo? Was this National?

3 A No, sir, it wasn't Hertz or Alamo. A rental is
4 something that you do -- well, I've been doing it
5 most of my life, you know. You go to someone, they
6 rent you a car for a price and you bring it back at a
7 designated area at the proper time. And the charge
8 either money, drugs or sex.

9 Q And on that day you rented the car for what?

10 A Money, cash money. I gave him \$20.

11 Q With the understanding that what would happen?

12 A That I would drop him off on Cherokee Street and
13 bring the car back later to the house that I dropped
14 him off at.

15 MR. MAY: Have these marked.

16 (WHEREUPON, Defendant's Exhibit Number 4,
17 Photograph was marked for identification.)

18 (WHEREUPON, Defendant's Exhibit Number 5,
19 Photograph was marked for identification.)

20 Q All right, Norman, I'm going to show you two
21 pictures. Tell me this one question, do you
22 recognize these pictures that have been taken --
23 taken?

24 A Yes, I do.

25 Q What are those pictures of?

1 A This is Cherokee Street in the area that I turned
2 around when I dropped him off in the driveway.

3 Q Which house did you drop him off -- what was his
4 name?

5 A John.

6 Q What house did you drop off John?

7 A (Indicating.) Here's a better picture.

8 MR. MAY: At this time the Defense would like to
9 move Defense Exhibits 4 and 5 into evidence, Your Honor.

10 MR. CATHCART: No objection.

11 THE COURT: All right, without objection.

12 (WHEREUPON, Defendant's Exhibit Numbers 4
13 and 5 were moved into evidence.)

14 Q Okay. So this house right here, the -- I don't know
15 exactly what color that is but it's bright.

16 A Yes, sir.

17 Q The bright house you dropped him off at?

18 A Yes, sir.

19 Q Okay. You drop him off and then what happened?

20 A And then I watched him go up the steps and I turned
21 around and I proceeded to go back to the main street,
22 whatever -- whatever is the main street, I'm not
23 sure, Mr. May. But I'm thinking it's -- it's Lauren
24 -- the main street that I -- it's the main street
25 right in front of the building. I can point it

1 (indicating).

2 Q So this right here is Cherokee Street (indicating),
3 right?

4 A Yes, sir.

5 Q This little street right here is Cherokee Street?

6 A Yes, sir.

7 Q You come up here, drop him off, you do a U-turn and
8 you come back?

9 A Out to the main entrance, yes, sir.

10 Q All right. And then what happened?

11 A And then I make a left. As soon as I made the left
12 at the corner where near the drive, maybe -- I'm not
13 sure how many feet, maybe 25, 40 feet, the officer
14 put the blue lights on me.

15 Q What did you do?

16 A I got scared.

17 Q Why would you be scared?

18 A Because I knew I didn't have a license and I'd
19 probably be coming back to jail for driving under
20 suspension without a license.

21 Q So you were scared that you would go to jail because
22 you were driving without a license?

23 A Yes, sir.

24 Q So what did you do?

25 A I started speeding up and then I turned another

1 corner. I made a right and I turned another corner
2 and I kept speeding, I kept speeding. And the only
3 thing kept going through my mind is that I'm going to
4 jail because I'm not going to see my mother's grave
5 like I was supposed to. And so I sped past two
6 lights and I said, I better slow down before I kill
7 somebody or kill myself.

8 Q And what did do you?

9 A I made a right at the Kentucky Fried Chicken and
10 turned and I jumped out of the car and ran.

11 Q And you ran?

12 A Yes, sir.

13 Q And did get caught?

14 A Yes, sir.

15 Q So on February the 1st, 2008, did you break the law?

16 A Yes, sir. I evaded the police.

17 Q What did you do?

18 A I evaded the police.

19 Q And that's what we call failure to stop for a blue
20 light?

21 A Yes, sir.

22 Q So you're admitting to that?

23 A Yes, sir.

24 Q Do you remember talking to Investigator Pegram that
25 day?

1 A Yes, sir, I talked to Mr. Pegram and Investigator
2 Thomas.

3 Q Okay, talk to me about that. What happened when you
4 were -- talked to them?

5 A They took me upstairs to the investigator's office
6 and when -- as soon as they sat me down, they
7 immediately sat me down, they started screaming and
8 yelling. I told Mr. Pegram and Mr. Thomas both at
9 the same time that I did not carjack this lady.

10 He read me my rights and I signed off on the
11 waiver for the rights that he showed y'all and I
12 continuously told Mr. Pegram that I did not carjack
13 this lady. He asked me to sign a statement. I told
14 him I wanted to see my lawyer.

15 Q Okay. Now, there's been talk about a gun. Did you
16 have a gun on you?

17 A No, sir.

18 Q Did they ever find a gun on you?

19 A No, sir.

20 Q Can you tell -- can you tell me what a gun would mean
21 to you and the folks you hang around?

22 A Well, a gun represents in my area prestige, power,
23 respect, valuables. It's priceless, you know.

24 Q All right. Norman, you and I have known each other
25 for awhile?

1 A Yes, sir.

2 Q What have I always told you?

3 A Tell the truth.

4 Q And have you been telling the truth right now?

5 A Yes, sir, Mr. May, I did not carjack this lady.

6 MR. MAY: All right. I beg the Court's
7 indulgence for one moment.

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. MAY: All right, Norman, thank you very much
11 and please answer anything that Mr. Cathcart has for you.

12 THE WITNESS: I sure will.

13 MR. CATHCART: May it please the Court, Your
14 Honor.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. CATHCART:

18 Q I'm going to get a little bit closer to you, Mr.
19 Mitchell, because I can't hear very well. You came
20 off the bus from Charleston, correct?

21 A Yes, sir.

22 Q And you were going to what neighborhood?

23 A Bonnie Forest on -- off Broad River Road.

24 Q Off Broad River Road. And that would be in this
25 direction (indicating), correct?

- 1 A I'm not sure, Mr. Cathcart. But you can go to Broad
2 River Road from any area.
- 3 Q But you wouldn't go back past the bus station, would
4 you?
- 5 A No, sir.
- 6 Q You were headed away from the bus station when you
7 were going to wherever -- what was it again?
- 8 A Broad River Road.
- 9 Q What was the name of the neighborhood, I'm sorry?
- 10 A What?
- 11 Q The neighborhood that you were going to?
- 12 A You're talking about where was the Super Bowl party
13 at?
- 14 Q Yes, sir.
- 15 A On -- it was on Broad River Road.
- 16 Q Okay. And you were going straight to the Super Bowl
17 party, correct?
- 18 A Once I got off at the bus station if my ride had a
19 came and got me.
- 20 Q And the bus -- the Super Bowl party being what, in an
21 hour from then or two hours from then? When does the
22 party start?
- 23 A The party doesn't start till around 3:30 or 4:00.
- 24 Q 3:30, 4:00 to watch the Super Bowl, right?
- 25 A Yes, sir.

- 1 Q This was Friday, Mr. Mitchell. The Super Bowl don't
2 start till Sunday, does it?
- 3 A The Super Bowl is on Sunday, sir.
- 4 Q Yes, sir. You were driving that car and caught and
5 committed this carjacking on a Friday ---
- 6 A No, sir.
- 7 Q The 1st?
- 8 A No, sir.
- 9 Q No, sir?
- 10 A No, sir.
- 11 (Pause.)
- 12 Q What time did you get in to the bus station? What
13 time did you arrive in Columbia?
- 14 A It must have been around 11:30, 10:30, 11:30, I'm
15 not sure, Mr. Cathcart.
- 16 Q Okay. And you said you've lived with who in
17 Charleston?
- 18 A Judy Lindler.
- 19 Q Judy what?
- 20 A Lindler.
- 21 Q Judy Linder, thank you. And you lived with her a
22 year, six months, how long you been living with Ms.
23 Lindler?
- 24 A Since January when I was released.
- 25 Q Since January?

1 A The 10th.

2 Q Okay. When you were released from?

3 A Alvin S. Glenn.

4 Q Okay. So you came from here (indicating). You went
5 straight down to there (indicating).

6 A Yes, sir.

7 Q And within that month, you've already got a job
8 making good money and you're coming back up for the
9 Super Bowl party, correct?

10 A Right.

11 Q And Ms. Lindler, she's still alive, still with us,
12 right?

13 A Yes, sir, I'm pretty sure.

14 Q She will be here in a few minutes to tell us how you
15 were living with her?

16 MR. MAY: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. MAY: May we approach?

19 THE COURT: Sure, come on.

20 (Whereupon, a bench conference was held off the
21 record, in the presence of the jury, but out of the
22 hearing of the jury.)

23 MR. CATHCART: Beg the Court's indulgence.

24 (Pause.)

25 Q And you indicated that somebody was coming to pick

1 you up, correct?

2 A They was scheduled to come pick me up but they was at
3 roll call in Lexington County.

4 Q What was his name?

5 A His name was Heyward Jackson.

6 Q Heyward Jackson, okay. And when he didn't show up,
7 you indicated that you were just standing round?

8 A No, sir.

9 Q What were you doing?

10 A I said I went outside and I said, I better try and
11 find me a ride.

12 Q Okay. You had money on you, correct?

13 A Yes, sir.

14 Q At least \$20, correct?

15 A Yes, sir.

16 Q How much more money did you have on you?

17 A I had about \$50 on me.

18 Q Okay, you had \$50 on you?

19 A Yes, sir.

20 Q Okay. And did you get a cab or ask for a cab?

21 A I knew that would have took all my money, Mr.
22 Cathcart.

23 Q It cost \$50 to go to Broad River Road from the bus
24 station?

25 A No, I said it would have took quite a percentage of

- 1 my money.
- 2 Q More than \$20.
- 3 A Yes, quite sure.
- 4 Q So you indicated that you paid for this car with
- 5 cash, correct?
- 6 A Yes, sir.
- 7 Q You bought it from a fellow you recognized, correct?
- 8 A No, sir, I didn't buy it, Mr. Cathcart. I ---
- 9 Q Rented it, I'm sorry, rented it ---
- 10 A There's a difference. I have to bring it back.
- 11 Q Okay. And you were going to bring it back to this
- 12 guy you recognized?
- 13 A Yes, sir.
- 14 Q Correct? What was his name?
- 15 A John.
- 16 Q John?
- 17 A Yes, sir.
- 18 Q John what?
- 19 A I'm not sure. I just recognized his face, Mr.
- 20 Cathcart.
- 21 Q And John gave you his car for \$20. Did he know your
- 22 name?
- 23 A Yes, sir.
- 24 Q John gave you his car with his cell phone in it,
- 25 correct?

1 A I'm not sure, sir. I didn't search the car down or
2 anything. I'm not sure.

3 Q You would agree with me when you were running across
4 this field (indicating), you dropped this cell phone,
5 right?

6 A Oh, yes, sir, I did.

7 Q Is the name John listed on that cell phone?

8 A I didn't take time to pay attention, Mr. Cathcart?

9 Q I ask you to pay attention now. What's the name on
10 the cell phone?

11 A I can't see a name on the cell phone.

12 Q Right there?

13 A Oh, I thought you was talking about the one up there.
14 Oh, it says Bill.

15 Q Bill?

16 A Okay.

17 THE COURT: That's exhibit number what, Mr. ---

18 MR. CATHCART: Oh, I'm sorry, Your Honor.

19 THE COURT: That all right.

20 MR. CATHCART: State's Exhibit Number 25.

21 THE COURT: All right, sir.

22 Q Now, you said you got to the bus station at 11:30,
23 correct?

24 A I said around about. I'm not sure of the exact time.
25 I didn't have a watch, Mr. Cathcart.

1 Q Okay. And when you were -- your ride didn't show up?

2 A Yes, sir.

3 Q How long did you wait for your ride?

4 A I just made two or three phone calls, maybe -- maybe
5 two -- two minutes, two or three minutes and I walk
6 directly outside.

7 Q And you agree with me that you would first determine
8 he wasn't there, right?

9 A No, he told me he wasn't there. As I stated to Mr.
10 May, he told me he was going to be at roll call. He
11 wasn't sure what time he was going to get back, so I
12 better try to find me a ride.

13 Q He told you that before you made the phone calls to
14 figure out where he was?

15 A No, sir. I told you, the first two times that I
16 called he didn't answer the phone, I got the
17 answering machine and I proceeded to call back and he
18 answered and told me he was at roll call in Lexington
19 County.

20 Q Right, so ---

21 A And told me he wasn't going to be able to make it, I
22 better find a ride.

23 Q Okay. So, you first went out, after you got there on
24 the bus station. You looked for your friend ---

25 A No, sir, that ain't what I said, Mr. Cathcart.

1 Q You said that you called two times ---

2 A Yes, sir, I said I went inside. You have to go
3 inside to make a phone call, Mr. Cathcart. And then
4 I came back outside to look for a ride.

5 Q Why would you go to the phone to look for -- I mean,
6 to call and find out where he was when he was
7 supposed to meet you there?

8 A No, I have to call him and let him know I arrived in
9 Columbia.

10 Q Oh, okay, okay. And you called two times, correct?

11 A Two or three times.

12 Q And how long did you wait in between those times you
13 were calling?

14 A It wasn't but a second, I just called right back, you
15 get the answering machine when you dial the cell
16 phone so he called right back, Mr. Cathcart.

17 Q Okay. So you called three times?

18 A Maybe two or three times, yes, sir.

19 Q And then you finally got in touch with him?

20 A Yes, sir.

21 Q And then you finally -- you talked to him. How long
22 did you talk to him?

23 A I ain't talked to him long. He told me he was at
24 roll call. He had to hang the phone up because he
25 was in roll call but he wasn't going to be able to

1 come back and get me. He was in Lexington County.

2 Q Okay. And so said you had that conversation then you
3 went outside?

4 A Yes, sir, I picked my things up and I walked outside.

5 Q Okay. And you went outside looking for somebody you
6 knew?

7 A No, sir. I looked for the first ride I can get so I
8 can get away from the bus station and go to the area
9 I was going to on Broad River Road, the cheapest way
10 really.

11 Q Okay. And you just basically walked out in the
12 parking lot ---

13 A No, where the buses were coming in and people are
14 standing out there, cabs are out there. There's a
15 whole bunch of people out there. The peddlers are
16 out there.

17 Q So there were cabs out there?

18 A Yes, sir.

19 Q Okay. And you were -- thought about the cabs but
20 then this guy who you ---

21 A That's not ---

22 Q --- Johnny ---

23 A Go ahead, proceed.

24 Q --- he came up to you, you knew him by name, and he
25 was driving this car, correct?

- 1 A Say that again, Mr. Cathcart.
- 2 Q This guy named Johnny came up into the Greyhound
3 parking lot driving this car, correct?
- 4 A Yes, sir.
- 5 Q Did he tell you why he was going to Greyhound for any
6 reason?
- 7 A He was out there, Mr. Cathcart.
- 8 Q So he was just sitting there?
- 9 A His people are out there, period.
- 10 Q He was hanging out talking with his people, sitting
11 around in the car?
- 12 A I didn't observe all that, Mr. Cathcart.
- 13 Q What did you observe?
- 14 A I observed a car sitting right there. When you come
15 on the Greyhound bus station and you go up the ramp,
16 there's cabs, cars, right there where the buses park,
17 right there where the buses park.
- 18 Q So you didn't see him drive up?
- 19 A No, sir.
- 20 Q He was just parked?
- 21 A Right, sir.
- 22 Q Was he out of his car or in his car?
- 23 A He was standing outside.
- 24 Q And he was hanging out with some people?
- 25 A I didn't pay attention to people out there, you know,

- 1 who was he talking to. That's what you're -- that's
2 what you're asking me, right?
- 3 Q Well, I'm only asking you that because you said he
4 was hanging -- he was with his people.
- 5 A No.
- 6 Q So he wasn't with his people?
- 7 A I didn't say he was with no people. I said people
8 were out there. I don't know who he was with. You
9 want me to commit him to somebody. I'm not sure who
10 he was with or beside.
- 11 Q Okay. So you look around. You see this guy.
- 12 A No, he approached me. I was looking around ---
- 13 Q Okay.
- 14 A --- to see which way I could get to my ride cheaper
15 and he approached me.
- 16 Q Okay. He approached you and said, would you like a
17 ride?
- 18 A Yes, sir.
- 19 Q Okay. Did he help you get your luggage?
- 20 A Yes, sir.
- 21 Q And then y'all put it where, the trunk or in the
22 backseat?
- 23 A In the backseat of the car.
- 24 Q In the backseat of car. And then y'all proceeded to
25 drive up from the bus station which way, Harden or --

1 I mean, Laurel to Gregg to Barnwell?

2 A When you ask me this question, Mr. Cathcart, I have
3 to answer because I don't know the side street right
4 beside, I don't know what the street is right beside
5 the Greyhound Bus Station is.

6 Q Okay, but it was the one right beside the Greyhound

7 ---

8 A Right, yes, sir.

9 Q And you were in the passenger seat, correct?

10 A Yes, sir.

11 Q And y'all headed up this way, correct?

12 A Yes, sir. That's by the county buildings, the two
13 buildings, the ambulance place, the EMS place,
14 whatever.

15 Q That's way y'all went up?

16 A Where LRADAC used to be at on the side.

17 Q And y'all headed up that road?

18 A Yes, sir.

19 Q Okay. And he was driving, correct?

20 A Yes, sir.

21 Q What's he look like?

22 A He's about 5-7, dark brown complexion, has a -- a
23 Afro.

24 Q So he's bigger, he's about 3 or 4 inches bigger than
25 you?

- 1 A Maybe, 2 or 3 inches, give or take.
- 2 Q Heavier, smaller?
- 3 A No, sir. Maybe a little bit -- maybe a little bit
4 bigger than me, not maybe my weight, not short ---
- 5 Q You're 5-foot-4, correct?
- 6 A No, I'm 5-5 and a half.
- 7 Q Okay. Does he look just like you?
- 8 A No, sir.
- 9 Q Okay. And y'all two were driving up Laurens Street
10 and were you going real fast?
- 11 A Fairly.
- 12 Q Speeding?
- 13 A He probably -- he probably was. I'm not sure at the
14 time, Mr. Cathcart. I wasn't watching the speed
15 limit or paying attention to the speed limit ---
- 16 Q Seem like -- I'm sorry, go ahead. He seemed like he
17 was in a hurry?
- 18 A Yes, sir.
- 19 Q Okay. And then you stopped on Cherokee Street and
20 turned into Cherokee Street, correct?
- 21 A Yes, sir.
- 22 Q Okay. And y'all go -- I missed this because I was
23 way back there. Which house was his?
- 24 A The house that he got off is the aqua blue house.
- 25 Q The aqua blue house.

- 1 A Right.
- 2 Q And at that time, you got out of the car with him,
3 correct?
- 4 a Yes, sir.
- 5 Q And you walked around and made this deal?
- 6 A No. The deal was being made on the way there. Like
7 I told you, he told me on the way ---
- 8 Q On the way ---
- 9 A On the way he said give him 10 more dollars and drop
10 him off at his house on Cherokee Street because I
11 initially was going to pay him \$10 to take me to
12 Broad River Road.
- 13 Q Okay.
- 14 A He said give him 10 more, that makes it 20.
- 15 Q And you then got out of the car?
- 16 A Yes, sir.
- 17 Q Went around to the other side?
- 18 A Yes, sir.
- 19 Q After you made arrangement where you were going to
20 bring the car back to. Where are you going to bring
21 the car back to?
- 22 A Back to this house right here (indicating) where he
23 was at, where he went in.
- 24 Q Okay. And then what were you going to do when you
25 brought the car back? How long were you having the

1 car?

2 A Well, I was going to have the car for a couple of
3 hours because I was going to visit my mother's grave
4 site, go around and holler at a couple of old
5 friends.

6 Q How were you going to get to the Super Bowl party
7 that was going to happen ---

8 A I was dropping my stuff. The Super Bowl party was
9 after that too, Mr. Cathcart. The Super Bowl's on
10 Sunday.

11 Q It's on Sunday, right?

12 A Yes, sir.

13 Q So you weren't going there that day to the Super Bowl
14 party, correct?

15 A I was going to spend the night at the friend's house
16 prior to the Super Bowl party on Sunday where the New
17 England Patriots and the New York Giants were
18 playing.

19 Q Spend two nights, right?

20 A No, sir, not Two Notch.

21 Q Friday night, Saturday --

22 A Oh, you said two nights. I'm sorry, I thought you
23 said Two Notch, okay.

24 Q Two nights, right?

25 A Right.

1 Q Okay. So the Super Bowl party's going to be two days
2 after you got there, right?

3 A Yes, sir.

4 Q Okay. And the first place that you indicated that
5 you saw any police officers was not down here
6 (indicating) but way over here, correct?

7 A That's the main street if I come out of Cherokee?

8 Q Yeah, off of Cherokee, now the first place that you
9 saw any police officer, had any idea that any police
10 officer was in the area, correct?

11 A Yes, sir.

12 Q Didn't hear any sirens, did you?

13 A I didn't pay attention at the time, Mr. Cathcart.

14 Q You're driving under suspension, you got a car with a
15 phone by the name of Bill on it and you're not paying
16 attention when there's sirens all around you?

17 A Well actually I didn't recognize no phone in the car
18 at the time either, Mr. Cathcart.

19 Q But it was in your pocket when you were running away
20 from the police ---

21 A It was on -- it fell down in the dashboard and I
22 grabbed it simultaneously running out the car.

23 MR. CATHCART: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (Pause.)

1 MR. CATHCART: Your Honor, if I may -- may we
2 approach real quick, sir?

3 THE COURT: Yes, sir.

4 (Whereupon, a bench conference was held off the
5 record, in the presence of the jury, but out of the
6 hearing of the jury.)

7 THE COURT: Members of the jury, there's a matter
8 of law I need to take up in your absence. Please don't
9 talk about this case. I'll bring you back shortly.

10 (The jury retires from the courtroom at
11 2:37 p.m.)

12 THE COURT: Now the question has come up whether
13 or not Mr. Cathcart is allowed to ask the witness about
14 certain parties he identified as the driver of the car,
15 where they lived, who he was going to see and other
16 individuals, correct, Mr. Cathcart

17 MR. CATHCART: That is correct, Your Honor.

18 THE COURT: Mr. May objected earlier. We had a
19 little bench conference and I cautioned Mr. Cathcart about
20 burden shifting questions.

21 Now, Mr. Cathcart, you have a case you'd like to
22 bring to my attention to allow you to inquire further as
23 to where these people are and why aren't they here today,
24 I do believe.

25 MR. CATHCART: That's correct, Your Honor. The

1 case I'm talking about is Douglas versus State which is
2 cited at 332 South Carolina 67. And the State basically
3 -- the State cannot comment on the Defendant's failure to
4 present a witness at trial unless the Defendant presents
5 evidence and there are witnesses accessible to him who are
6 or should be aware of material and relevant facts and
7 whose testimony would presumably aid him.

8 He has testified that he has dropped off this
9 fellow who he knows by name and sight at a location known
10 to him. And I think it's proper that I be able to say,
11 where is he today.

12 THE COURT: All right. Mr. May.

13 MR. MAY: Yes, sir, Your Honor.

14 MR. CATHCART: If I may hold up -- hand over the
15 cases, Your Honor.

16 THE COURT: Yes, sir. Give them to Mr. May too.
17 I'm sure they made extra copies, didn't they?

18 (Pause.)

19 THE COURT: Your inquiry's just as to this one
20 particular witness, Mr. Cathcart?

21 MR. CATHCART: Well also, Your Honor, as to the
22 aunt in Charleston.

23 THE COURT: What?

24 MR. CATHCART: The aunt who he says he lives with
25 in Charleston.

1 THE COURT: All right.

2 MR. CATHCART: The guy at the Super Bowl party
3 who was supposed to be waiting for him to be there --
4 apparently not on the Friday that he arrived but now two
5 days later.

6 THE COURT: All right.

7 MR. CATHCART: These are all people that
8 corroborate his story that he has mentioned that he -- and
9 apparently are available to testify for him and they're
10 not available to be subject to ---

11 THE COURT: All right, Mr. May, let me hear your
12 position.

13 MR. MAY: Yes, sir. Mr. Mitchell is charged with
14 carjacking.

15 THE COURT: I understand that.

16 MR. MAY: A carjacking that occurred at 12:45 ---

17 THE COURT: Address this issue, not what he's
18 charged with. Address whether or not I can allow him to
19 ask your witness or your client, where are these people.
20 That's what I'm interested in.

21 MR. MAY: It's clear burden shifting. What I'm
22 saying is ---

23 THE COURT: All right. How is it burden shifting
24 in light of the cases that Mr. Cathcart just presented to
25 me for you to look at? You want to take a chance to look

1 at it?

2 MR. MAY: Yes, sir.

3 THE COURT: It's all right, relax. Gentlemen, we
4 are in no hurry. Let's take a little break. Take your
5 time, look at the cases. Once you read them, we'll come
6 back in about five minutes. Calm down.

7 MR. CATHCART: Thank you, Your Honor.

8 THE COURT: All right. Get the cases or get my
9 glasses, I'll take a look.

10 (The Court was in recess.)

11 THE COURT: Let's go through once again why you
12 should be allowed to and then I'll give you a chance to
13 respond.

14 MR. MAY: Thank you, Your Honor.

15 THE COURT: Go ahead, Mr. Cathcart.

16 MR. CATHCART: Your Honor, basically when the
17 Defendant puts up a case and this ---

18 THE COURT: The cases that were reversed, he
19 didn't put up any evidence, the ones that you gave me.

20 MR. CATHCART: Your Honor, the one -- Douglas, he
21 did put up evidence, if I'm not mistaken. The Defendant
22 presents evidence at trial. There were witnesses -- the
23 case State v. -- Douglas versus State, the part basically
24 I'm reading from is, the Solicitor argued to the jury that
25 should draw -- I'm sorry, Your Honor.

1 THE COURT: Take your time, it's all right.

2 (Pause.)

3 MR. CATHCART: Where as here, the Defendant
4 presents evidence at trial, and there are witnesses
5 seemingly accessible to the accused, or under his control,
6 who are or should be cognizant of material and relevant
7 facts and competent to testify thereto, and whose
8 testimony would presumably aid him or substantiate his
9 story if it were true, it is not improper for the
10 prosecuting attorney to comment upon his failure to
11 produce them.

12 And I understand it's a prosecutor's closing
13 argument in saying that. But I -- I would stipulate
14 there's difference in this case when I point out to him
15 that, well, they're not here. If you wish to keep me from
16 doing that, that's fine. I just want to make sure ---

17 THE COURT: I ---

18 MR. CATHCART: --- understand ---

19 THE COURT: You want to know the parameters.

20 All right, Mr. May.

21 THE DEFENSE: Yes, sir. May it please the Court,
22 Your Honor.

23 THE COURT: Yes, sir.

24 MR. MAY: I think that what we have here is very
25 much different than the case that the Solicitor presented.

1 Here -- in the case the Solicitor presented, the Defendant
2 did not take the stand. There were holes in the story and
3 there were numerous people presented, put up by the
4 Defense, to explain the story, yet the Defendant never
5 took the stand.

6 Furthermore, the standard that I'm reading is
7 that seemingly ---

8 THE COURT: What case are you referring to,
9 Mr. May? And take your time. I'm not going to yell at
10 you or rush you or anything.

11 MR. MAY: Okay. There are witnesses seemingly
12 accessible to the accused or under his control. Your
13 Honor, the Defendant, since February 1st, 2008, has been
14 incarcerated. The person who I argued is the only
15 arguable material person is John. John would be, in our
16 -- in our stance, the carjacker. A carjacker's not going
17 to take the stand and say, oh, yeah, it was me.

18 THE COURT: I have nothing to do with that, I
19 mean.

20 MR. MAY: Well, yes, sir.

21 THE COURT: It's not whether or not the
22 carjacker's going to take the stand, whether or not he can
23 find him, you can subpoena him and bring him to court.

24 MR. MAY: Yes, sir.

25 THE COURT: Now, you -- go ahead.

1 MR. MAY: Yes, sir, that's correct. Not knowing
2 any vital information of John ---

3 THE COURT: Well, you introduced a picture that
4 says, that's where he dropped John off, that's where John
5 presumably lived. Did you go back to the house and try to
6 find out whether somebody named John was there? Did you
7 try to find out whether or not somebody named John was
8 there? I don't know. I'm not trying to put you on the
9 spot but I mean -- go ahead.

10 MR. MAY: Yes, sir.

11 THE COURT: Or the fellow where he's going to go
12 to the Super Bowl party or his girlfriend he lived in
13 Charleston with.

14 MR. MAY: And, Your Honor, I do not know what the
15 investigator in this case did whom our office hired. I
16 did only get this case roughly a month ago. That being
17 said, I cannot testify -- I cannot as an officer of the
18 Court state one way or another if these people were
19 inquired about.

20 THE COURT: I understand.

21 MR. MAY: Regardless of if they were inquired
22 about, I think there's only one person who would even
23 remotely fit within here and that would be the person
24 who's been referred to as John. His aunt who he lives
25 with is immaterial to this. All that that would be doing

1 is casting stones and saying he's a liar. It's immaterial
2 that he lived or didn't live in Charleston. It just says
3 it's immaterial if there was or wasn't a Super Bowl party
4 in Columbia.

5 The only material thing of fact is what happened
6 at 12:45 on February 1st.

7 THE COURT: Well, that's your view.

8 MR. MAY: So, Your Honor, I would reiterate the
9 Defendant doesn't have to do anything to prove his
10 innocence. And ---

11 THE COURT: And I will charge the jury that.
12 That was -- and the case that was reversed in fact, the
13 judge refused to give a curative instruction, I do
14 believe. I think it was Luke Brown. Wasn't that Luke
15 Brown's case?

16 MR. CATHCART: I'm not sure, Judge.

17 THE COURT: Y'all didn't read the cases? Come on.

18 MR. CATHCART: I was lucky I remembered the case.

19 THE COURT: Huh?

20 MR. CATHCART: I was lucky I remembered the case.

21 THE COURT: All right. That's all right.

22 Anything further?

23 MR. CATHCART: Your Honor, I would just -- as to
24 the other people as to relevance, it goes to his
25 credibility. When he got on the stand he put his

1 credibility at issue along with his prior record, any lies
2 that he has told, either to the jury -- untruths or some
3 things that are -- don't make sense.

4 THE COURT: I'm going to let you ask -- this is
5 what I'm going to do. This is how I'm going to resolve
6 this and be as fair as I possibly can.

7 He mentioned on direct examination the guy John
8 that he dropped off, okay. You can ask him about where
9 John lived and I'm not going to let you go, why isn't John
10 here, why didn't you try to get him, because that's --
11 that's -- that's in evidence inferentially and you've got
12 to be careful about arguing that because I think it does
13 come close to burden shifting. Although I'm going to tell
14 the jury he doesn't have to prove anything.

15 MR. CATHCART: Yes, sir.

16 THE COURT: Without saying anything, what you
17 want is almost there anyway. I mean, you know, it's
18 obvious to people with commonsense or reasonable means,
19 without your having to say, why didn't he call them.
20 Don't go that far.

21 MR. CATHCART: Yes, sir.

22 THE COURT: Don't go that far. But I'm -- I'm
23 going to let you say, this is John, that's where he lived,
24 and let it go at that.

25 MR. CATHCART: Yes, sir.

1 THE COURT: You understand that?

2 MR. CATHCART: Yes, sir.

3 THE COURT: You understand that?

4 MR. MAY: Yes, sir, thank you.

5 THE COURT: All right. That's one of those
6 things. Are we all -- are we all on the same page?

7 MR. CATHCART: Yes, sir.

8 MR. MAY: I am.

9 MR. CATHCART: Better to be safe than sorry.

10 THE COURT: Okay.

11 MR. MAY: Thank you, Your Honor.

12 THE COURT: That's all right. I would hate --
13 otherwise I would have to give a -- almost a charge on the
14 facts. You got -- you can't hold the fact against him
15 that John ain't -- you know, so. Out of an abundance of
16 caution. If there's any doubt, there's no doubt, out of
17 an abundance of caution.

18 Okay, go ahead.

19 MR. CATHCART: Your Honor, I would just ask that
20 in closing, I am able to state that the Defendant does not
21 have to put up a case but if the Defense does put up a
22 case, the State has the opportunity to comment on the
23 weakness of that case ---

24 THE COURT: Okay.

25 MR. CATHCART: --- the story.

1 THE COURT: All right.

2 MR. CATHCART: Not go to much more into it than
3 that.

4 MR. MAY: I mean, weakness, sure. But, I mean,
5 if he goes in, like they should have called him and him
6 and him.

7 THE COURT: He's just going to say, the weakness
8 of what they presented. And we're going to listen
9 carefully. You're on notice to listen carefully. Every
10 -- look, I have no interest in this case one way or
11 another. I don't care whether he's convicted or acquitted
12 or it's mistried. I'm the referee. I don't care who wins
13 the case. And that's the way it is. But is my job, even
14 if there's no clear rule, to try to be fair to both sides.

15 MR. MAY: Yes, sir.

16 MR. CATHCART: And as long as I have your ---

17 THE COURT: Okay.

18 MR. MAY: I mean, just make sure that the leg
19 irons are still underneath.

20 THE COURT: Go ahead, Mr. May. You're acting
21 like your daddy now. And I kid you about your father, you
22 know that.

23 Are we all ready?

24 And so basically, out of an abundance of caution,
25 don't go there ---

1 MR. CATHCART: Okay.

2 THE COURT: --- as a practical matter. And out
3 of an abundance of caution, your request for a mistrial
4 again on the comments that were made, I think still remain
5 the same, no mistrial.

6 MR. MAY: All right. Thank you, Your Honor.

7 THE COURT: But you can renew them later on.

8 MR. MAY: Yes, sir.

9 THE COURT: All right. I don't think it's much
10 ado about nothing. This is of critical importance to both
11 sides.

12 So with that in mind, Mr. Bowman, bring them back
13 in.

14 THE BAILIFF: All right, Your Honor.

15 THE COURT: And we might be lucky to get this
16 over with today, I don't know. I'm going to -- we're
17 going to wrap it up and I'm going to talk to the jury one
18 more time and see. I'd like to give y'all plenty of time
19 to prepare for your closing and I hate to keep them here
20 late. But we'll just take it as it comes and see. But
21 we've got everything in and if a few of them are upset
22 about coming back tomorrow, they can be upset. We'll see
23 how it works.

24 But I kind of want them to make the -- you know.
25 I don't mind them staying. Y'all don't have any choice.

1 But if they don't want to stay, I don't want -- I don't
2 want to force them to.

3 (The jury returned to the courtroom at
4 3:00 p.m.)

5 THE BAILIFF: The jurors are all present, Your
6 Honor.

7 THE COURT: Welcome back, members of the jury,
8 Mr. Foreman. May I remind you of one thing I said at the
9 beginning. If I have to send y'all out to take up
10 arguments on the law, don't hold that against either side.
11 That's just the way trials run and you can take no
12 inference one way or another by that or if I rule on an
13 objection one way or the other, okay. I'm sure y'all
14 understand it. I see y'all nodding your heads.

15 With that in mind, Mr. Cathcart, you may proceed,
16 sir.

17 MR. CATHCART: Thank you, Your Honor.

18 CROSS-EXAMINATION CONTINUES BY

19 BY MR. CATHCART:

20 Q You -- I'm sorry, go ahead. Good?

21 A Yes, sir.

22 Q You'd agree with me, wouldn't you, Mr. Mitchell, that
23 if you had a gun or if a person had a gun and the
24 police officer was behind them or saw that a police
25 officer saw him after he did something such as a

1 carjacking, it would incumbent on him to get rid of
2 that gun quickly, wouldn't it

3 MR. MAY: Objection, Your Honor, speculation.

4 THE COURT: I don't think that's speculation.

5 I'm going to let him answer the question.

6 Q The best thing to do is get rid of that gun quick,
7 right?

8 A Yes, sir.

9 Q And in driving up Laurens Street on the way to
10 Cherokee Avenue, I guess all the way up to Gregg
11 Street where Officer Sanders said that she saw you
12 before, all kinds of places to toss a gun, isn't
13 there?

14 A I guess if you say that, Mr. Cathcart.

15 Q Okay. And down there at Heidt Street, all the way
16 across that field where Mr. Murphy saw you run and
17 drop some things, there's a lot of places to throw
18 the gun as well?

19 A That would be bad idea, Mr. Cathcart, because Ms.
20 Sanders was behind me the whole time running.

21 Q So probably good idea to get rid of it beforehand,
22 right?

23 A That might be what you would do if you had a gun but
24 I didn't have a gun, Mr. Cathcart, so I'm not sure.

25 Q But you agree with me, there's plenty of places to

1 get rid of a gun, correct?

2 A I can't agree with you on that, Mr. Cathcart.

3 Q So you're now saying that on Laurens Street, there's
4 not a lot of places to get rid of a gun?

5 A I said if that's what you say, Mr. Cathcart. I'm not
6 sure.

7 Q Now, you agree with me also that when the police
8 arrested you and they took you to the jail and they
9 put you -- and they took your clothes that you had
10 on, gave you stuff -- issued you other stuff,
11 correct?

12 A You talking about ---

13 Q Issued some jail clothes?

14 A Okay, yes, sir, Alvin S. Glenn.

15 Q Put all your stuff in a property room, you looked at
16 it and you signed your name on it, correct?

17 A Right.

18 Q And part of the property that you had on your person
19 was a black cap, correct?

20 A I'd like to say that, yes, sir. It was a red -- red,
21 highly red, over red, with black strips in it.

22 Q A red and black sweat cap and you signed your name,
23 correct?

24 A Yes, sir.

25 Q Okay. And you didn't have a wallet on you, did you?

- 1 A A wallet?
- 2 Q A wallet.
- 3 A No, sir.
- 4 Q Okay. You didn't have \$30 on you, did you?
- 5 A At the time, no, sir. It was in the car, I believe.
- 6 Q You left the \$30 in the car?
- 7 A I believe.
- 8 Q Okay. So that wasn't in your pocket anymore?
- 9 A No, sir.
- 10 Q Just Mr. Gilmore's phone?
- 11 A The phone wasn't in my pocket either.
- 12 Q It was where again, I'm sorry?
- 13 A I threw it down when I was running through the field
- 14 to evade the police.
- 15 Q And why did you throw away the phone when you were
- 16 evading the police for DUS?
- 17 A I was terrified. I was terrified.
- 18 Q The phone was going to do something to you?
- 19 A No, I was scared.
- 20 Q Of the phone?
- 21 A No, I was scared of the police.
- 22 Q So you got rid of the phone?
- 23 A Yes, sir, I threw the phone down.
- 24 Q Wouldn't you agree with me that having a phone that
- 25 belonged to the victim of the carjacking would

1 incriminate you in that case?

2 A Say that again. I'm quite not understanding you, Mr.
3 Cathcart.

4 Q Okay, sorry.

5 A Slow down, could you slow down, please?

6 Q Sure. Wouldn't you agree with me, that you being in
7 possession of the phone that belonged to the victim

8 ---

9 A Right.

10 Q --- of the carjacking that occurred seven minutes of
11 you running across the field is kind of
12 incriminating, right?

13 A I am not sure because I didn't carjack nobody, Mr.
14 Cathcart.

15 Q But it wouldn't be a good thing to be caught with,
16 right?

17 A No, sir.

18 Q Okay. Good idea to throw it away, right?

19 A Yes, sir.

20 Q You threw it away, right?

21 A Yes, sir, I threw the phone down. And I'm guilty of
22 that, Mr. Cathcart.

23 Q You'll agree with me also, want you, that 10 minutes
24 is not that long of a time, is it?

25 A No, sir.

1 Q Especially to remember something out of the ordinary,
2 correct?

3 A I can't really say. It depends on the situation, Mr.
4 Cathcart.

5 Q Okay. I'm going to give you a situation. Like if a
6 person went to a cable place to pay a bill. Paid the
7 bill, walked out ---

8 MR. MAY: Objection, Your Honor, again this is
9 speculation. He's asking the what ---

10 THE COURT: Let him finish the question first.
11 Finish the question, Mr. Cathcart. Then I'll rule on your
12 objection.

13 Q And nothing out of the ordinary occurred, it would
14 not be unusual -- I mean, you may still be able to
15 remember a lot from it just 10 minutes from it,
16 correct?

17 A Yes, sir.

18 Q Now, if you were going to the cable place and then
19 suddenly out of the blue something tragic and
20 different happened, 10 minutes later that's going to
21 be fresh in your mind ---

22 MR. MAY: Objection, Your Honor.

23 THE COURT: Basis?

24 MR. MAY: Speculation. He says if you go to a
25 cable place and something ---

1 THE COURT: He's asking whether or not if in a 10
2 minute period of time something would be fresh in your
3 mind. Ask the question that way. That's what it boils
4 down to.

5 A Could you repeat that?

6 Q I'm sorry, I'll be happy to.

7 A Okay.

8 Q If a person was at a cable place, sitting in the
9 parking lot, minding her own business and something
10 tragic happened to them.

11 A Right.

12 Q 10 minutes later that would be fresh in their mind,
13 wouldn't it?

14 A I guess it would, Mr. Cathcart.

15 Q If a person put a gun to your face?

16 A To my ---

17 Q To a person's face?

18 A Okay.

19 Q Not to yours or anyone and threatened that person's
20 life, that would be a tragic thing, wouldn't it?

21 A Yes, sir, it would be.

22 Q It would be something that's pretty scary, wouldn't
23 it?

24 A Yes, sir.

25 Q And in fact when you did that to somebody or somebody

1 did that to someone else, they'd probably remember
2 that person pretty well, wouldn't they, just 10 or 15
3 minutes later?

4 A Well, maybe not me, Mr. Cathcart. If somebody put a
5 gun to my head, I'd be scared to look.

6 Q Okay. But if you weren't scared to look and you did
7 ---

8 A I would be scared.

9 Q If you were -- had -- if a person had a gun put to
10 their face they were told, get out of the car, and
11 they were unable to do so ---

12 THE COURT: You have an objection?

13 MR. MAY: Yes, sir.

14 THE COURT: What is it?

15 MR. MAY: If we may approach?

16 (Whereupon, a bench conference was held off the
17 record, in the presence of the jury, but out of the
18 hearing of the jury.)

19 MR. CATHCART: Thank you, Your Honor.

20 Q You had your hat on that day, correct?

21 A Off and on.

22 Q When you were running from Officer Sanders your hat
23 was on your head, correct?

24 A No, sir.

25 Q It was not on your head?

1 A No, sir.
2 Q Where was the hat?
3 A In my pocket.
4 Q Okay. So when you were running from her, you looked
5 like this?
6 A Yes, sir.
7 Q That's how you appeared that day, correct?
8 A Appeared -- that's how -- when I got snatched out of
9 the car, I didn't have the jacket or the hat on,
10 standing in front of the car.
11 Q Where was the jacket?
12 A The jacket with the police. Mr. Smalls picked the
13 jacket up off the ground, it was in my hand, all my
14 clothes that was in my hand ---
15 Q Because you were taking them off while you were
16 running, correct?
17 A Yes, sir, while I was evading the police.
18 Q Taking your hat off, taking your jacket off, taking
19 your shirt off?
20 A No, my hat was in my jacket pocket.
21 Q When Ms. Gilmore came and identified you, the car
22 wasn't anywhere near y'all, right? You already ran
23 way over that way (indicating), correct?
24 A Yes, sir.
25 Q None of the police were pointing at you, were they?

1 A They told me to get out the car. The K-9 officer
2 told me repeatedly, get out the car, and I refused to
3 get out the car several times.

4 Q You didn't want to get out of the car so the person
5 who was going to view you could go find the person
6 who really did it?

7 A Because at the time he was being very absurd. He
8 said, he knows me, your name is Norman Mitchell.
9 You're from Duke (phonetic) Avenue. I know your
10 mother. I know all about you. He was screaming
11 obscenities at me and Officer Smalls had the gun on
12 me while I was on the ground. And I was very
13 traumatized at the time myself because I was scared.
14 I didn't know what was going on.

15 And when they snatched me out the car, my jacket
16 -- my hat was in my -- my hat was balled up in my
17 jacket pocket and my shirt was in my hand. And I was
18 standing out there bare shirted which Mr. Pegram and
19 no one else stated since I been here today or
20 yesterday.

21 Q In fact, you mentioned Duke Avenue. That's where you
22 told the jail that you lived at this point too,
23 correct, not in Charleston? Duke Avenue, that's in
24 Columbia, isn't it?

25 A When you use -- when you go to the county jail you

1 don't ---

2 Q You use -- you don't say Charleston ---

3 A When you go to the county jail you don't use -- use
4 any address. I mean, I have addresses down there I've
5 been using for years. You know, I might have said
6 anything. I'm not saying I didn't make -- make no
7 mistakes so ---

8 Q But you didn't tell them that you were down in
9 Charleston?

10 A Actually, I asked Ms. Carolyn Gripp who was my
11 attorney the first time to get my Social Security
12 card which has 1921 Marchant Street that I got from
13 the Social Security office for my EBT card down
14 there.

15 Q When you got booked in ---

16 THE COURT: What exhibit is that?

17 MR. CATHCART: I'm sorry, Your Honor. This is
18 Defendant's Exhibit Number 3 and State's Exhibit Number
19 36.

20 THE COURT: All right, sir.

21 Q When you got booked in, you told them Duke Avenue is
22 where you lived, correct?

23 A Well, usually they use the same address from the last
24 time you come. Every time you come in jail they
25 pretty much -- they don't always ask you where you

1 stay. They use the same address all the time, the.
2 same age ---

3 Q When you fill out this information, you've got to
4 sign your name to it, correct?

5 A Actually, Mr. Cathcart, as you notice, my name is not
6 Norman Lee Mitchell. So I don't where that Lee comes
7 at. It's been a mistake in that part too. So my name
8 is Norman Carol Mitchell, Junior.

9 Q Is that your signature right there?

10 A Yes, sir, that's my name, Norman Mitchell. But my
11 name is not Lee, so. It's -- they've been using Lee
12 because that's been an alias name I used in the past,
13 so. When they go to the county jail they use
14 different names the whole time. They just give you
15 the same name.

16 Q But you signed the form?

17 A Yes, sir.

18 Q That says Norman Lee Mitchell?

19 A Yes, sir.

20 Q Indicating you?

21 A No, I didn't -- that says Norman Mitchell.

22 Q Okay. Are you familiar with the neighborhood behind
23 the cable company, up in this area (indicating), Pine
24 Street, Oak Avenue?

25 A No, sir, not frequent. I don't frequent -- I know

1 the Green Street area is a little bit down further.

2 I know about that area.

3 Q So you wouldn't know about the abandoned homes in
4 that area?

5 A Say that again, the abandoned ---

6 Q You wouldn't know anything about abandoned homes in
7 that area?

8 A No, sir, I've never.

9 Q And when Investigator Pegram asked for your address
10 at that time, you gave him -- you said you didn't
11 have one, correct?

12 A I might have, I'm not sure.

13 Q In fact, you didn't tell him about Charleston,
14 correct?

15 A I repeatedly told them I came from Charleston on the
16 bus. I repeatedly told them that. That's why I had
17 my bags.

18 Q And these are your bags?

19 A Yes, sir.

20 Q These are the clothes you were going to wear for the
21 Super Bowl party, correct?

22 A No, sir. These were the clothes I was going to have
23 to change out for the week. I was going to be in
24 Columbia visiting my mother's grave.

25 Q Okay. These are your clothes, correct?

- 1 A Yes, sir.
- 2 Q All of your clothes?
- 3 A Yes, sir. Well, I haven't looked in the bag but I
- 4 know that those are my bags, so, you know ---
- 5 Q Your luggage though, right?
- 6 A Yes, sir. The ones with the garbage bags wasn't on
- 7 it. I didn't have a garbage full of clothes.
- 8 Q These were clean clothes that you -- basically your
- 9 luggage that you -- from home, you brought your
- 10 luggage and you were going to put them on, right?
- 11 A Right, yes, sir.
- 12 Q Clean?
- 13 A Shoot basketball and exercise and stuff like that.
- 14 Q And you packed these bags yourself, correct?
- 15 A Yes, sir.
- 16 Q Okay. Is that your sock?
- 17 A No, that's my little cousin's.
- 18 Q You were going to wear that for the basketball ---
- 19 A No, I wasn't. That must have been stuck up in a bag
- 20 or something.
- 21 Q And all these shoes, you were going to wear?
- 22 A Yes, sir.
- 23 Q Okay, just one a day, different each time?
- 24 A Well, yes, sir.
- 25 Q This is everything you owned, isn't it?

- 1 A No, sir.
- 2 Q Isn't it true that these clothes were all dirty,
3 hasn't been cleaned? All these clothes are dirty?
- 4 A I know they're not clean now. They've been in
5 property for a year. I know they mildew or whatever.
- 6 Q And you had them folded up nice, including your --
7 those baby socks, the women's jeans that are in here?
- 8 A Women's jeans...
9 (Pause.)
- 10 Q You indicated that when Pegram and Thomas talked with
11 you, they didn't talk with you at all, they screamed
12 at you, correct? That's what you're saying now?
- 13 A Yes, sir, they kept ---
- 14 Q They screamed at you ---
- 15 A Actually, Mr. Thomas interviewed me first and he was
16 waiting on Mr. Pegram to come in so they both could
17 interview me at the same time.
- 18 Q Interview you or screaming at you?
- 19 A Well, you said talk, interview. I mean, I didn't say
20 what type of procedure it was, Mr. Cathcart.
- 21 Q You would agree with me that they read you your
22 rights?
- 23 A Yes, sir.
- 24 Q You would agree with me that you wrote down your
25 initials on each right they gave you?

- 1 A Yes, sir.
- 2 Q You would agree with me that you signed your name on
3 the Waiver of Rights?
- 4 A Right.
- 5 Q And you spoke with them, correct?
- 6 A Yes, sir.
- 7 Q And you first said you had nothing to do with the
8 carjacking, correct?
- 9 A Yes, sir.
- 10 Q Had no idea what they're talking about, correct?
- 11 A Right.
- 12 Q And then you changed the story, correct?
- 13 A No, sir.
- 14 Q You changed the story two separate times, correct?
- 15 A No, sir.
- 16 Q The one thing that was the same about all these
17 stories is that you never mentioned Charleston,
18 correct?
- 19 A That's a lie, Mr. Cathcart.
- 20 Q The first time anyone other than you and perhaps your
21 attorney has ever heard the term Charleston and the
22 bus was yesterday morning, correct?
- 23 A No, sir.
- 24 MR. MAY: Objection, Your Honor. If we may
25 approach?

1 THE COURT: Sure.

2 (Whereupon, a bench conference was held off the
3 record, in the presence of the jury, but out of the
4 hearing of the jury.)

5 THE COURT: You may continue, Mr. Cathcart.

6 MR. CATHCART: Thank you, Your Honor.

7 Q Mr. Mitchell, back in 1998, you were convicted of
8 attempted strong armed robbery, correct?

9 A Yes, sir, and I did that.

10 Q Back in 1999, convicted of petty larceny?

11 A And I pled guilty, Mr. Cathcart.

12 Q Back in 2001, you were convicted of auto breaking and
13 petty larceny, correct?

14 A And I pled guilty.

15 Q Back in 2003, you were convicted of 10 separate
16 counts of bank fraud, correct?

17 A Yes, sir.

18 Q Back in 2004, you were convicted of petty larceny, is
19 that not correct?

20 A Yes, sir, and I pled guilty.

21 Q Back in 2005, you were convicted of petty larceny, is
22 that not correct?

23 A Yes, sir, and I pled guilty.

24 Q In 2007, you were convicted of shoplifting, correct?

25 A Yes, sir, and I pled guilty.

1 Q And on 2007, you were also convicted of possession of
2 a stolen motor vehicle, correct?

3 A And I pled guilty, Mr. Cathcart.

4 MR. CATHCART: Thank you. I don't have anything
5 else for you.

6 MR. MAY: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (Pause.)

9 REDIRECT EXAMINATION

10 BY MR. MAY:

11 Q I have two questions for you, Norman. Mr. Cathcart
12 just read your record and you said you pled guilty to
13 all of those?

14 A Yes, sir.

15 Q Have you ever been in a trial before?

16 A No, sir.

17 MR. CATHCART: Objection as to relevance, Your
18 Honor.

19 THE COURT: Sustained.

20 MR. MAY: No further questions.

21 THE COURT: Any further questions?

22 MR. CATHCART: No, sir, thank you.

23 THE COURT: All right. Members of the jury, I've
24 got the send you to the jury room. I'm not sure whether
25 or not we're going to hear anymore evidence today or not.

1 I've got to have a discussion with the lawyers about that.

2 Just don't talk about this case. I should be
3 able to bring you back out here shortly and let you know
4 where we are.

5 (The jury retires from the courtroom at
6 3:22 p.m.)

7 THE COURT: All right. There's no further
8 questions of Mr. Mitchell are there?

9 MR. MAY: Your Honor, there is not.

10 THE COURT: All right. You going to present
11 anymore evidence, Mr. May?

12 MR. MAY: Your Honor, the Defense will rest.

13 THE COURT: All right. Close the door. Make
14 sure the door is closed. Escort Mr. Mitchell back to his
15 seat.

16 (The witness leaves the witness stand.)

17 THE COURT: All right, Mr. Cathcart, do you have
18 anything in rebuttal?

19 MR. CATHCART: Actually, Your Honor, yes, two
20 very short reply.

21 THE COURT: All right. And then after that -- I
22 tell you, it's getting close to even try to do it this
23 afternoon. Relax, Mr. May, I've been where you are now.
24 It's fun, come on.

25 Now, let me ask you this. So we've probably got

1 another 20 minutes maybe, somewhere in that range?

2 MR. CATHCART: At the most.

3 THE COURT: We hate to give it to them at 4,
4 4:30. Some lady's got to -- I'm going to have to talk to
5 them, massage them a little bit. Some lady needs to take
6 her daughter to try to get a scholarship at Converse. I
7 think she can delay it.

8 But my guess is, y'all would prefer to wrap up
9 everything today and argue and charge in the morning?

10 MR. MAY: Yes, sir.

11 THE COURT: All right. I'm going to accommodate
12 y'all. I think it's the fair thing.

13 Yes?

14 MR. MAY: Just for the record.

15 THE COURT: Yes, sir.

16 MR. MAY: I'd like to put a few things on the
17 record ---

18 THE COURT: Go ahead.

19 MR. MAY: The main thing I'd like to put on the
20 record is that we objected to what we perceived as an -- a
21 Doyle violation as seen in State v. Hill. The Solicitor
22 is not allowed to ask the question, why haven't we heard
23 this story until now? He's allowed to ask questions
24 specifically to prior statements given by the Defendant
25 but once the Defendant has asserted his Constitutional

1 right, which the Defendant claimed was that day, at the
2 latest was when Carolyn Gripp signed the Edward's motion,
3 then we just have a year of time which he hasn't been able
4 to give this story.

5 I believe that's an impermissible comment and I
6 would move for a mistrial as a result.

7 THE COURT: All right. Your motion for a
8 mistrial is denied.

9 And I think -- go ahead, anything else?

10 MR. MAY: Then I would -- as the Defense has
11 rested, I just wanted to renew all previous objections and
12 motions to include but not limited to that Doyle ---

13 THE COURT: All right, all previous objections
14 and motions are denied. My ruling remains the same. And
15 you'll get a chance to do it again. I'll give you the
16 chance to do it more extensively.

17 All right. Let's see, I really don't like the
18 idea at this late stage. By the time we have a charge
19 conference, y'all get ready, it's -- in my mind it's going
20 to be a little too late. But y'all approach for a minute.

21 (Whereupon, a bench conference was held off the
22 record.)

23 THE COURT: Yes, sir.

24 MR. CATHCART: To his Doyle motion, I never asked
25 him why we haven't heard this before. All I really

1 pointed out is that ---

2 THE COURT: This is the first time.

3 MR. CATHCART: Yes, sir.

4 THE COURT: All right.

5 THE COURT: But Mr. May is going have a chance
6 the go back through everything he's objected to and make
7 his mistrial motions again. And I'll give you a chance to
8 respond again.

9 MR. CATHCART: Okay.

10 THE COURT: Some of them I just summarily ruled.
11 But I'll give -- I'll give you both a chance to put every
12 position you have on the record at some point in time when
13 this is over.

14 All right, go ahead. Are you ready now or you
15 need to talk with him?

16 MR. MAY: I just want to tell him what -- as far
17 as the alternates, that as long as ---

18 THE COURT: Okay. We may not even get to that
19 point, Mr. Mitchell. We may not even get to that point
20 but there's one juror that -- that has a problem with
21 being here tomorrow. And I'm just try -- I don't know at
22 this point in time whether or not she can or cannot be.
23 That's why I was telling the lawyers who the alternate
24 was.

25 But go ahead, do it now. Go ahead and do it.

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 (Pause.)

2 THE COURT: You good?

3 MR. MAY: Yes, sir, and if it comes to that,
4 we're happy to ---

5 THE COURT: All right. And I really don't know.
6 That's just a heads up, I mean, all right.

7 All right. Bring the jury back in.

8 (The jury returned to the courtroom at
9 3:28 p.m.)

10 THE BAILIFF: The jury's all present, Your Honor.

11 THE COURT: All right. Welcome back, Mr. Foreman
12 and members of the jury. Now we will hear, I think, two
13 witnesses in reply or in response to the Defendant's
14 testimony by the State.

15 Mr. Cathcart, you may proceed.

16 MR. CATHCART: That's correct, Your Honor.

17 MS. HENDRICK: The State calls Corporal Ginger
18 Sanders.

19 THE COURT: You're still under oath.

20 THE WITNESS: Thank you.

21 DIRECT EXAMINATION

22 BY MS. HENDRICK:

23 Q Good afternoon?

24 A Hi.

25 THE COURT: Y'all are going to have to speak up

1 for me.

2 MS. HENDRICK: Yes, sir.

3 THE COURT: All right.

4 Q May I bring your attention back to February 1st,
5 2008, do you remember that day?

6 A I do.

7 Q After you chased the Defendant, did you then give a
8 statement to Investigator Pegram?

9 A I did.

10 MS. HENDRICK: Permission to approach the
11 witness?

12 THE COURT: Yes. This is for ID?

13 Ms. HENDRICK: Yes.

14 (WHEREUPON, State's Exhibit No. 37, Statement-
15 Corporal Ginger Sanders, was marked for
16 identification.)

17 Q And in this statement, did you describe what the
18 suspect was wearing while you were chasing him?

19 A I did.

20 Q What was that?

21 A I believe I wrote it was a brownish colored coat and
22 a dark hat. I can actually read it verbatim if you'd
23 like: (Reading) The suspect then jumped out of the
24 driver's seat wearing a brownish colored coat and a
25

1 dark hat.

2 Q And also in that statement, when was the very first
3 time you laid eyes on the Defendant in the Blue
4 Intrepid?

5 A Roughly the 1200 block of Laurens Street as I pointed
6 out yesterday.

7 Q And what direction was he driving in?

8 A He was driving northbound, I was headed southbound.

9 Q And then where was the second place you laid eyes on
10 him?

11 A The second place I laid eyes on him was on Hampton
12 Street in between Gregg and Laurens. He at that time
13 would have been headed westbound and I would have
14 been headed eastbound.

15 Q And the first time you saw him on Laurens Street, who
16 was in the car with him?

17 A Nobody. He was in there by himself.

18 Q And you are sure of that?

19 A I'm positive.

20 Q And is this the statement you gave to Investigator
21 Pegram?

22 A This is the statement.

23 MS. HENDRICK: Your Honor, the State moves to
24 enter State's Exhibit 37 in evidence.

25 THE COURT: Denied.

1 MS. HENDRICK: Thank you, Your Honor.

2 THE COURT: You're welcome. You mark it for ID.
3 It's not going back to the jury.

4 MS. HENDRICK: Thank you.

5 THE COURT: All right. You may cross-examine.

6 MS. HENDRICK: No further questions.

7 THE COURT: All right. You may cross-examine.

8 (Pause.)

9 MR. MAY: We have no questions for this witness,
10 Your Honor.

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

12 (The witness leaves the witness stand.)

13 MS. HENDRICK: May she please be excused again?

14 THE COURT: Yes, ma'am. Call you next witness.

15 MR. CATHCART: The State calls Investigator
16 Pegram.

17 THE COURT: You're still under oath.

18 DIRECT EXAMINATION

19 BY MR. CATHCART:

20 Q Did the Defendant ever mention the bus station to
21 you?

22 A He did not.

23 Q Did the Defendant ever mention Charleston to you?

24 A No.

25 Q Does the bus station have video that you could have

1 checked if that was mentioned to you?

2 A At the time they did. I recently had a case
3 involving a video system at the bus station unrelated
4 to this case. They had changed systems over ---

5 Q But back then ---

6 A Back then they had capability ---

7 Q --- if he told you ---

8 A --- of providing a video ---

9 Q Did he ever tell you?

10 A He did not.

11 MR. CATHCART: No further questions.

12 THE COURT: Any questions of this witness?

13 MR. MAY: No, Your Honor.

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

15 (The witness leaves the witness stand.)

16 THE COURT: Anything further?

17 MR. CATHCART: Nothing from the State, Your
18 Honor.

19 MS. MAY: Anything further from the Defense?

20 THE DEFENSE: No, sir.

21 THE COURT: Now, members of the jury, you have
22 heard all the evidence you shall receive in this case. I
23 need to ask y'all to go back to the jury room. There's a
24 lot of things I need to take up with the lawyers. I need
25 to chit-chat with y'all before I decide what to do next,

1 okay.

2 Just don't talk about the case. I'll be back
3 there to talk with you in just a minute.

4 (The jury retires from the courtroom at
5 3:35 p.m.)

6 THE COURT: All right. I concluded, under the
7 circumstance, to argue and charge in the morning. I've
8 just got to let them know that in a quiet kind of way
9 because they're sort of anxious to get it over with. But
10 when I talked to them earlier, I mean, they weren't going
11 to die if we didn't get it over with today, so.

12 I need to find out about the lady taking her
13 daughter to...

14 MR. CATHCART: Converse.

15 THE COURT: Converse or Spartanburg tomorrow and
16 -- but I'll just let y'all know what I find out in just a
17 moment. We'll be at ease.

18 MR. CATHCART: Thank you, Your Honor.

19 THE COURT: And what time do y'all want to start
20 in the morning, 9:30? That's good enough for everybody?

21 (The Court was in recess.)

22 THE COURT: I told the jury 9:30. I'm going to
23 be here like at 9 probably. But let's be able to go on
24 the record tomorrow at 9, make all your motions again,
25 think about what you want to do. And then -- well we

1 could have a charge conference this afternoon. We'll get
2 that out of the way. It won't take but five minutes.

3 I'm probably going to order them lunch. They
4 probably -- we'll probably start arguing about 10. I
5 figured -- I told them that y'all would probably argue 30
6 minutes a piece, somewhere in that range, you know, so.

7 You explain to them by the time I talked with
8 y'all about the charge conference and y'all argue and I
9 charge them, it ain't starting at 4:00, it's starting like
10 5:30 or 6 and they were good with that, they were good
11 with that. And the young lady with her daughter said she
12 thought she could take care of everything. So don't be
13 concerned about that.

14 So, let's let them get out of here. Y'all come
15 on down to my chambers and we'll have a quick charge
16 conference.

17 (The Court was in recess.)

18 FRIDAY, FEBRUARY 6, 2009:

19 THE COURT: Anything we need to take up before
20 the jury comes in?

21 MR. MAY: Nothing from the Defense, Your Honor.

22 THE COURT: All right. Y'all ready?

23 MR. CATHCART: Yes, sir.

24 THE COURT: She's going to open on the law,
25 you're going to finish up. How are y'all going to do

1 yours?

2 MR. MAY: I'm just going to do it.

3 THE COURT: Okay, that's good. That's the best
4 way to do it actually.

5 THE COURT: It will be a real short charge.

6 Very well, bring them in.

7 (The jury returned to the courtroom at
8 9:30 a.m.)

9 THE BAILIFF: The jurors are all seated, Your
10 Honor.

11 THE COURT: All right, welcome back once again,
12 Mr. Foreman and members of the jury. I've got to kind of
13 confess, after about two and a half days, I'm beginning to
14 like you guys, if you don't mind me saying that.

15 (Laughter.)

16 THE COURT: I want to thank you on behalf of
17 everybody involved for your patience and attention to this
18 case.

19 We are now at the point in this trial when you
20 will hear closing arguments and the final arguments from
21 the State as well as from the Defense on behalf of Mr.
22 Mitchell.

23 And I told you at the beginning to have an open
24 mind and obviously you've done so. So I invite your keen
25 and close attention to the closing statements.

1 We will first hear from Ms. Hendrick who will
2 open on the law, as we say, she'll just talk about the
3 law. And then Mr. May will make an argument on behalf of
4 Mr. Mitchell. And Mr. Cathcart, under our rules, will be
5 allowed to follow Mr. May and complete his closing
6 argument.

7 So, I appreciate your courteous attention on
8 behalf of everybody involved.

9 Ms. Kendricks (sic), you may -- Hendrick, you may
10 proceed.

11 MS. HENDRICK: Good morning.

12 JURORS: Morning.

13 CLOSING ARGUMENT ON BEHALF OF THE STATE

14 BY MS. HENDRICK:

15 I want to take this opportunity to thank you very
16 much for your service and your attention this week. You
17 as jurors in Richland County are very important and we
18 cannot have this justice system without you. I just want
19 to start off by thanking you very much.

20 I also want to take this opportunity to apologize
21 if me or Mr. Cathcart has done anything to offend you in
22 any way. I also want to apologize if we've been
23 ineffective or inarticulate at any point in this trial.
24 Please don't hold that against Ms. Gilmore.

25 Now, right now, I want to take a few minutes and

1 go over the law in this case. After I speak for just a
2 few minutes, I promise, you're going to hear from Mr. May
3 and then finally again from Mr. Cathcart.

4 And after Mr. Cathcart speaks, the Judge is going
5 to instruct you on the law in this case. So at any point
6 when I'm speaking to you about the law, if anything I say
7 or Mr. Cathcart or Mr. May says is in contradiction with
8 what Judge Manning says, please always take the Judge --
9 the law as the Judge gives it to you because he is the
10 ultimate trier of the law in this case, just as you the
11 jury are the ultimate triers of the facts in this case.

12 So each person in this courtroom has different
13 roles. It is our role as solicitors and prosecutors to
14 administer the justice. It is Defense counsel's role to
15 be advocates and attorneys on behalf of their clients.
16 It's the Judge's law (sic) to be the judge of the law --
17 the Judge's role. It is your role as the jurors to render
18 a verdict on the case.

19 Now, y'all remember at the very beginning way
20 back on Wednesday when you took an oath in this case. And
21 you took an oath to render a truthful verdict based on the
22 evidence and the law in this case. You cannot render your
23 verdict based on conjecture, innuendo, speculation,
24 assertions or even wishful thinking. You must base your
25 evidence on -- your verdict on the evidence you've heard

1 in this case. And you've heard everything you're going to
2 hear.

3 Now, like I said, I will go over the law very
4 quickly with you. As I explained in the beginning, based
5 on his actions on that day of February 1st of 2008, Mr.
6 Norman Mitchell was charged with two crimes.

7 The first crime is failure to stop for a blue
8 light. These are the elements of failure to stop for a
9 blue light. It is unlawful to fail or stop driving a
10 motor vehicle on a road, street or highway when signaled
11 to do so by a law enforcement agency by means of blue
12 light or siren. There's the four elements we must prove
13 to you.

14 He was also charged with carjacking. Carjacking.
15 A person is guilty of carjacking when he takes or attempts
16 to take a motor vehicle from another person by force and
17 violence or by intimidation while the person is operating
18 the vehicle, while the person is in the vehicle.

19 By force and violence or by intimidation. That
20 can be by using a weapon or by words or any of those,
21 simply by force and violence or by intimidation.

22 These are the two things that Mr. Norman Mitchell
23 are charged here today. And we have presented evidence
24 through this witness stand that he did this. And it is
25 your job as the jury to assess the credibility of the

1 witnesses. That is your role is to asses the
2 believability or the credibility of the witnesses.

3 Now, you can believe all, part or none of a
4 witness's testimony. And when assessing the credibility
5 of these witnesses, there are several factors I want you
6 to consider.

7 First, the demeanor of the witness on the stand.
8 Was the witness forthright or hesitant? How did the
9 person look on the stand? Was the testimony of the
10 witness consistent? Was it consistent both on cross and
11 direct examination? Did their story remain the same? Was
12 the testimony of the witness corroborated by other
13 evidence in this case? And finally, did the witness have
14 a reason to biased or prejudiced?

15 Those are the five factors, some of the five
16 factors you think of when assessing the credibility or
17 believability of the witness.

18 I urge you to also use your commonsense and your
19 life experiences too. That's why you're on this jury, to
20 bring back your commonsense to this case.

21 Now, we also had some eyewitness testimony in
22 this case. There are several factors of eyewitness
23 testimony I also want you to consider. The opportunity to
24 view the criminal at the time of the crime. How long did
25 the eyewitness have the opportunity to view the criminal

1 at the time of the crime? In this case, it was Ms.
2 Gilmore. What opportunity did she have to view the
3 Defendant when he committed this crime? I submit to you
4 that she had two times to view this Defendant when he
5 committed this crime. The first time when he put the gun
6 to her head, the second time when he got out of the car
7 and jerked her out.

8 The witness's degree of attention during this.
9 Was she totally focused on him or was she just -- or with
10 other things? Think about that.

11 The accuracy of the witness's description of the
12 criminal. The level of certainty demonstrated by the
13 witness at the confrontation. You heard Ms. Gilmore
14 testify. You heard her son say and you heard Officer
15 Callaway, that she was a hundred percent sure when she
16 identified him at the time.

17 Also the length of time between the crime and the
18 confrontation. I submit to you in this case, she was able
19 to see him less than 12 minutes in between the crime
20 happening and she was presented with him.

21 Again, we have to prove to you that the Defendant
22 Norman Mitchell did these crimes, carjacking and failure
23 the stop for a blue light, beyond a reasonable doubt.
24 Now, like I said, Judge Manning is going to instruct you
25 in detail about what reasonable doubt means. But I just

1 want to go over it a little bit right now.

2 Reasonable doubt. Proof beyond a reasonable
3 doubt is proof that leaves you firmly convinced of the
4 Defendant's guilt. There are few things in this world
5 that we know with absolute certainty. And in criminal
6 cases, the law does not require proof that overcomes every
7 possible doubt. If based on your consideration of the
8 evidence you are firmly convinced that the Defendant is
9 guilty of the crime charged, you must find him guilty.

10 If on the other hand, you think there is a real
11 possibility that he is not guilty, you must give him the
12 benefit of the doubt and find him not guilty. Reasonable
13 doubt, leaves you firmly convinced, based on the evidence,
14 and only the evidence, we presented to you.

15 Now I promised I was going to be very very brief
16 because all I'm doing is talking to you about the law here
17 today. Now you're going to hear from Mr. May and then Mr.
18 Cathcart. And I urge you to give them the same attention
19 you've given me for these two times I've spoken to you.

20 And I thank you again for your service.

21 THE COURT: Mr. May.

22 MR. MAY: May it please the Court.

23 THE COURT: Yes, sir.

24 MR. MAY: Beg the Court's indulgence for one
25 minute while I take the time to setup.

1 THE COURT: Take your time, Mr. May.

2 (Pause.)

3 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

4 BY MR. MAY:

5 (Alarm sounding.) That's a terrifying sound. It
6 scares us. It scares us for our safety. It scares us
7 because we know that everything we own could be gone in a
8 second. If you heard that in the middle of the night and
9 you knew you could take -- and you knew that your family
10 and your pets were safe, what one or two items would you
11 take with you out of your house? What one or two items
12 would you make sure were safe, wouldn't get burned? Maybe
13 your grandfather's watch, maybe a necklace that your
14 husband gave you, maybe a shotgun your dad gave you or
15 maybe a ring from your great-grandmother.

16 Ladies and gentlemen, if my house was on fire,
17 these are the two things I would take (indicating).
18 These are my wedding pictures. Now, it's kind of cheesy,
19 but it was the happiest day of my life. We got married
20 and anytime I have a bad day I can always go back, go
21 through the pictures and relive how much fun that day was,
22 how lucky a guy I am.

23 The other thing I'd grab is this picture
24 (indicating), a picture of Bear Bryant. It's autographed.
25 It says, to Jim, always stand tall, Paul Bear Bryant. I

1 got it when -- when I was just a kid. Those three little
2 words from so long ago, always stand tall, they mean the
3 world to me. That's the way I've always tried to live my
4 life. What makes it even more special is that I played
5 college football, I played at Vanderbilt. I started for
6 four years and the first game every season that we played
7 was the Crimson Tide.

8 My very first game, we were playing the number
9 8th ranked team in the nation. And we were just little
10 old Vanderbilt and I'm just a little 18 year old kid out
11 there looking at Bear Bryant. And it's kind of cheesy but
12 those three little words gave me the strength and the
13 power to say, you know, I can do this.

14 Those are the two things I would grab. I can
15 almost guarantee that none of us would grab a pillowcase.
16 None of us would grab socks. None of us would grab dirty
17 jeans. None of us would grab stuff that could be
18 replaced.

19 Now, you've heard Norman talk to you about what a
20 gun means to him and his peer group. It's power,
21 prestige, something of value. If Norman Mitchell had done
22 this crime, the police would have found this gun on him.
23 They would have found a gun on him.

24 Now, the State is going to try to discount this
25 and say well he would have thrown the gun away. Nobody

1 who robbed somebody in midday is just going to throw
2 something of value, something for protection, away at the
3 first sign of the police. They're going to keep it.

4 Norman Mitchell ran from the police. He did.
5 Nobody's discounting that. But find him guilty for
6 failure to stop for a blue light but not carjacking.

7 We know three things of the man -- about the ID
8 of the man who robbed Ms. Gilmore. We know he was black
9 and that he had a gun. And we know from her testimony
10 that he had long nappy hair, it was uncombed, unwashed.
11 That's what she said.

12 An amazing thing happened on Wednesday. Mr.
13 Cathcart was right here, Ms. Gilmore was on the stand and
14 for the first time she was asked, what did he look like?
15 I don't know if y'all noticed it because y'all didn't know
16 that Norman didn't have any hair but Mr. Cathcart says,
17 how was his hair different? Ms. Gilmore says, well, it's
18 longer than it is now. Mr. Cathcart, at that minute,
19 stopped. You mean, it's -- it's longer now, right? No,
20 it was longer then is her response.

21 Brian then got up here and Brian said, describe
22 the hair. She said, it was long, nappy, unwashed and
23 uncombed. Hair is something that you don't mistake. Now,
24 it's an easy identifying factor.

25 Mr. Cathcart and I are sitting next to each

1 other. We're both white guys. We both have blue eyes.
2 We're both -- we're both about 6 foot-3, 6 foot-4. The
3 one identifying factor, easiest identifying factor, is
4 that I have hair and he doesn't -- but it's true. The
5 easiest identifying factor between us is not that I'm 110
6 pounds heavier than Mr. Cathcart but that I have hair and
7 he doesn't. Hair is something that's not going to be
8 mistaken.

9 Now, the government lawyers are trying to salvage
10 their case. This is an important case to them. A little
11 sweet old lady got robbed. It was on the news. It's
12 something that they need to try to salvage. They're
13 trying to salvage a story that makes no sense. They're
14 trying to salvage it with speculation of a hat.

15 Two people saw the carjacker that day. Not only
16 Ms. Gilmore, the other person who saw the carjacker,
17 remember that lady from Time Warner Cable. She said she
18 was walking back. And what did she say? She said she saw
19 the back -- the top back of the guy's head as he drove
20 away. Didn't say that she saw anything else. Didn't say
21 she saw his hands or his ears, just the top back of his
22 head. And from that she said he was a black guy. Not
23 that he had a hat on. If he had a hat on, you can't tell
24 what race he is. But she saw the top back of his head.

25 Now, the government lawyers didn't call the two

1 people who saw the carjacker back to the stand to try and
2 talk to them more about it. Why didn't they do it? Well,
3 because their story is the truth. The person who robbed
4 Ms. Gilmore had hair, had hair.

5 Now, they're trying to salvage it with
6 speculation. Now, Ms. Hendrick said, you can't base your
7 decision on speculation and that's exactly what they're
8 trying to make you do.

9 There's no testimony that the person who
10 carjacked Ms. Gilmore had hair. So let's speculate and
11 say, well, he might have been wearing a red and black hat,
12 a red and black hat. Does anybody in the world think that
13 a red and black hat looks like hair? Ms. Gilmore says --
14 she says it was long nappy hair.

15 Another reason -- I'm sorry, I apologize. The
16 government has that red and black hat in their possession.
17 It's at the jail. It's in the State's possession. It's
18 not in evidence. You know why it's not in evidence?
19 Because it looks as ridiculous as this hat on my head.
20 They're trying to sell you hogwash, that's all. They're
21 trying to say that a red and black hat looks like a black
22 man's hair. Don't let them insult you. Don't let them
23 insult your intelligence.

24 Ms. Gilmore was that close. And Wednesday was
25 the first time she was asked, what does his hair look

1 like? Never asked before that. Why didn't they ask?
2 Well, because she said it was a black man with a gun.
3 They had a black man but they didn't have a gun. But they
4 had a black man, that was close enough.

5 They had a black man who was in her car.
6 Nobody's discounting that. But the man who robbed Ms.
7 Gilmore had hair, uncombed, unkempt hair. Norman Mitchell
8 on the day he was arrested, on the day this happened, you
9 can see the shine on it. Don't let them try to salvage
10 the story with something as ridiculous as the person was
11 wearing a hat that was red and black.

12 Norman Mitchell's story is that he came into
13 Columbia from Charleston. He road a bus. That's what he
14 told y'all. He road a bus into town.

15 Now, does that make sense for somebody to pay for
16 a bus ticket and once he's in town to immediately carjack
17 a car? That doesn't many any sense.

18 These are the bags of Norman Mitchell's clothes.
19 This is the vast majority of the stuff that he owns. The
20 vast majority of the stuff that Norman owns.

21 Now, Mr. Cathcart went through this yesterday. He
22 said, well, its dirty, isn't it? Well, Mr. Mitchell's
23 poor and this isn't a jury about who's poor and who's not.
24 Mr. Mitchell doesn't own his own home. He lives with a
25 friend of his deceased mother's. That's not a crime. But

1 this is what he had on him on the day of February 1st.

2 Now, you heard Investigator Pegram say that the
3 area around Time Warner Cable is a high crime area, it's a
4 ghetto.

5 MR. CATHCART: Objection, Your Honor.

6 MR. MAY: I'll rephrase.

7 THE COURT: I don't think the witness actually
8 said that.

9 MR. CATHCART: No, he did not, Your Honor.

10 MR. MAY: I'll rephrase.

11 THE COURT: Just disregard the last remark. You
12 remember the testimony the way you heard it, not what
13 somebody tells you, members of the jury.

14 MR. MAY: I apologize, Your Honor ---

15 THE COURT: That's all right.

16 MR. MAY: --- saying it was a high crime area.

17 But there is a lot of abandoned houses and
18 transient people walking around.

19 This is the vast majority of Norman Mitchell's
20 earthly belongings. Would anybody leave his stuff where
21 it could be easily stolen? Would anybody leave that stuff
22 where people can take it and never give it back? He's
23 poor, y'all. That's just life.

24 When I go to the airport, I don't let my bags out
25 my sight. When my wife goes anywhere, she doesn't let her

1 pocketbook not be touching her, and she has 17, 18
2 pocketbooks at home that she can replace it. This is
3 everything for all practical purposes that Norman Mitchell
4 has. No way he leaves it so that people can steal it.

5 Ladies and gentlemen, there are two things that
6 people do when they carjack a car. One, they get as much
7 distance between them and the incident location as soon as
8 possible. They do that. Makes the area the police have
9 to search a lot bigger. And two, they use the car as
10 collateral. They quickly turn it over to get things they
11 need. Those are the two reasons.

12 A short period of time between the time Norman is
13 found in the car and the time the crime happens, yeah.
14 But in that 7 to 10 minute time span, could have been on
15 277 almost on I-20, could have got to Bluff Road, could
16 have been in the neighborhoods of North Main Street, not
17 two blocks away.

18 It was about the distance of a dogleg par four
19 the first time he got seen. You can stand on the corner
20 and see both of the places at the same time. If you
21 carjack somebody, the police will be swarming on you.
22 Carjacking is a crime of violence. It's a crime that gets
23 all over the news. The police come. They had a little
24 old lady that was carjacked. The police ascend upon the
25 area. No way somebody carjacks a car and they're seen two

1 blocks away. That doesn't make sense.

2 Sheriff Lott said on Fri -- oh, I'm sorry, it was
3 Monday. Sheriff Lott said that in Richland County we're
4 tired of crack heads, is what he said.

5 MR. CATHCART: Objection, Your Honor. There's no
6 indication of anything about crack in this case at all. I
7 don't understand what he's talking about.

8 THE COURT: You need to confine your argument to
9 the facts in evidence.

10 MR. MAY: The person who stole Ms. Mitchell's
11 (sic) car, what do we know about him? We know that he
12 used the car as collateral to get something he needed. We
13 know that because he traded it to Norman. We know that he
14 had long, nappy, uncut, uncombed, unwashed hair. We know
15 that he had a gun.

16 Norman is guilty of two crimes, ladies and
17 gentlemen, two crimes that day. Number one, failure to
18 stop for a blue light. And number two, possession of a
19 stolen motor vehicle, something they can charge him today
20 for before he leaves the building.

21 The government lawyer will say Ms. Gilmore
22 identified Mr. Mitchell. He will say that she identified
23 him, that she identified him in Gonzales Gardens. Let's
24 think about that ID. She's just gone through a traumatic
25 experience. She's 74 years old. She's put in the back of

1 a police car. She's never even given an opportunity to
2 have an unobstructed view of the Defendant. Never had a
3 chance to see Norman Mitchell not through the Plexiglas.
4 That's the testimony of the police officers, always had
5 that Plexiglas barrier, that Plexiglas that's thick enough
6 so that the police officers can't get harmed. That
7 Plexiglas has all kinds of dirty mire on it. She had to
8 look through that. Never got a chance to look out a
9 window. Never got a chance to do anything but to look
10 through that thick Plexiglas.

11 The person she identified -- the person she
12 identified, the police had come over the radio and said,
13 hey, we got him. She had heard the chase, she heard the
14 radio. She was taken to a -- to a identification where
15 the only person in handcuffs was Norman Mitchell led by a
16 police officer. She identified a man who she thought had
17 hair.

18 Listen to her words, ladies and gentlemen.
19 Listen to her words when she was 12 to 18 inches away from
20 the man who robbed her. Listen to her words, long nappy
21 uncombed hair, that's who stole this car.

22 Now, the government lawyers are going to talk to
23 you about his record. Talked about it and are going to
24 talk to you some more, they're going to harp on it. There
25 are two reasons why they're going to do this. One, they

1 hope that you confuse his past with this crime, his past
2 petty larceny and shoplifting. They're going to hope that
3 you confuse it and that you say, well, he's a bad man.
4 They hope to dirty the water. They hope that you don't
5 pay attention. They hope that the water is dirty. They
6 hope that you hold him responsible for the things he did
7 in the past for this crime.

8 Well, ladies and gentlemen, as Mr. Shealey said,
9 this ain't Pakistan. This is ain't Afghanistan or Red
10 China. This is the United States. Once your slate's
11 wiped clean, you're not held accountable for your past
12 actions, for shoplifting, petty larceny, frauds. He
13 admitted to it. He told you, he said, yeah, I pled guilty
14 to that. I did it. I took responsibility. It is
15 something I did but I didn't do this.

16 Now, the other reasons they're going to say that
17 you can't believe what he says. They're going to say that
18 his past is so mired, his present ability to tell the
19 truth -- I mean, it's tough to tell the truth and you
20 can't believe him. Well, using that logic, you should
21 never read me the writings of the Apostle Paul.

22 Now, I'm not saying Norman Mitchell is a saint,
23 he's far from it. I'm not even saying I want him to be my
24 neighbor. What I am saying is that man told the truth
25 when he was on the stand that he didn't carjack Ms.

1 Gilmore. He told you, yeah, I committed a crime that day.
2 I failed to stop for a blue light. Yeah, I was driving
3 under suspension. That's the reason why I ran.

4 Judge Manning is going to talk to you about
5 reasonable doubt. He's going to instruct you on the law.
6 Reasonable doubt is the highest standard of any earthly
7 court. It is the standard that they must overcome which
8 is impossible to do in this case, impossible.

9 He will instruct you that it says that reasonable
10 doubt is the amount of doubt to make a reasonable person
11 hesitate to act, hesitate to act. Meaning that you think
12 he's guilty and you're like, well, the woman from Time
13 Warner Cable said it was a man with hair. That's
14 hesitation.

15 MR. CATHCART: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. CATHCART: The woman from Time Warner Cable
18 did not say anything about hair.

19 THE COURT: Beg your pardon?

20 MR. CATHCART: The woman from Time Warner Cable
21 did not mention anything about hair or lack of hair.
22 There's no testimony as to that.

23 THE COURT: You'll get a chance to rebut ---

24 MR. CATHCART: Thank you, Your Honor.

25 THE COURT: Continue, Mr. May. But, you know,

1 confine yourself to the evidence.

2 MR. MAY: Yes, sir.

3 THE COURT: That's all right.

4 MR. MAY: The woman at Time Warner Cable said a
5 black man, she saw only the top of his head. Doesn't say
6 anything about a hat. Ms. Gilmore says there's hair. I
7 just don't -- I just don't know. That's hesitation. The
8 fact that he did not have one follicle of hair on his
9 head, that's hesitation.

10 The fact that Ms. Gilmore stated the person who
11 robbed her didn't have bags, throwing them around. That's
12 hesitation. No gun's hesitation. Long nappy hair that
13 looked like it hadn't been washed or combed in a few
14 weeks. That's hesitation. Don't let them sell you on
15 speculation.

16 The reason why we put you on this jury is that
17 y'all have the hardest job of anybody. Much harder and
18 it's more important than me or Brian, the government
19 lawyers. More important than the judge. Even more
20 important than the Defendant Mr. Mitchell. Norman is here
21 to count on you to uphold the oath, to try the facts and
22 render a true verdict.

23 The only true verdict in this case is not guilty
24 under carjacking. That's the only true verdict because
25 the person who robbed Ms. Gilmore had hair. Norman

1 didn't. It's that simple, that simple.

2 What do we know? Well, we know that there's a
3 person who frequents Five Points. He has longer hair.

4 MR. CATHCART: Objection ---

5 THE COURT: Sustained. There's nothing in
6 evidence about that, Mr. May.

7 MR. MAY: What do we know? The person who robbed
8 Ms. Gilmore had hair, he had a gun. Norman Mitchell had
9 neither.

10 (Alarm sounding.) That's a terrifying sound.
11 Get out of the car, bitch, or I'll shoot, is a terrifying
12 sound. But perhaps the most terrifying sound of all is
13 guilty for a crime that you didn't commit.

14 Find Mr. Norman Mitchell guilty for failure to
15 stop for a blue light. Find him guilty for failure to
16 stop for a blue light. But find him not guilty of
17 carjacking because he didn't do it. The person who did it
18 has hair, has a gun.

19 I thank y'all.

20 (Pause.)

21 THE COURT: Mr. Cathcart.

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

24 THE COURT: Yes, sir.

25 MR. CATHCART: Good morning.

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 JURORS: Morning.

2 CLOSING ARGUMENT ON BEHALF OF THE STATE

3 MR. CATHCART:

4 Ladies and gentlemen, I want to bring this up
5 because this has been mentioned by Defense counsel in
6 their opening, throughout the case. And I think he said
7 if five times during his closing. He points his finger at
8 me and Ms. Hendrick and he calls us government lawyers,
9 those government lawyers, like that's something I should
10 be ashamed of. I am the government lawyer. That's
11 exactly what I am. I'm a prosecutor for the State of
12 South Carolina. I represent the people of the State of
13 South Carolina. I represent the people of Richland
14 County. I am the voice of the victims that cry out for
15 justice. I am the government lawyer and I'm proud of it.
16 Now that that's settled, let's talk about this case.

17 Ladies and gentlemen, Defense counsel has
18 indicated that the Defendant is not guilty because of his
19 story, what he said. He said he came from the bus from
20 out of town and that he couldn't have committed this crime
21 because he got off the bus, he got -- he looked outside,
22 his ride wasn't there. He called for his ride. He
23 finally call in from this fellow, Mr. Heyward, I believe
24 he said his name was. Oh, I can't make it there, you'll
25 have to get your own ride. So he walks outside and he

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 sees a mythical dude by the name of John.

2 Now, Johnny is standing outside of this blue
3 Intrepid, hanging out and talking to people outside the
4 Greyhound Bus station.

5 He goes up to Mr. -- this Johnny fellow and he
6 talks with him, making an arrangement that he's going to
7 buy a ride for \$10. They then go get his stuff, he put
8 his stuff into the car. They then drive up toward
9 Cherokee, up Laurel Street, and they continue to make a
10 negotiation as to how much for the car to rent it at this
11 point. This guy he knows by face by the name Johnny and
12 now he knows where he lives and then they -- outside at
13 the house they -- he says goodbye to Johnny, he watches
14 Johnny go up the steps. He gets into the car and he
15 starts driving. And at that time and only at that time he
16 notices the police officer is around him. And I would
17 submit to you, ladies and gentlemen, that's impossible
18 because the evidence doesn't allow that to be.

19 If you look as to the timeline, it just doesn't
20 fit. And we know the timeline, how it works, because
21 there is a clock at that dispatch that goes to each thing
22 that happens. We know that the carjacking occurred right
23 before 12:44 and 12 seconds because she's on her way into
24 the building.

25 At 12:45 a call comes out from Time Warner Cable,

1 the panic button. A little old lady just came in, I've
2 been robbed, a man put a gun to my head. Panic button
3 pressed. Police are dispatched and they're coming in. As
4 you heard from people at Time Warner, as you heard from
5 the victim, as you heard from her son, you could hear the
6 police coming. The were all over.

7 Mr. Mitchell wants you to believe that he's
8 hanging out with the guy that did this carjacking, talking
9 about this car. This guy -- he goes from Time Warner
10 Cable to right here (indicating) and parks and he's out
11 chatting with his peeps while -- that's where Mr. Mitchell
12 finds him. The police are arriving -- the police arrive
13 within two minutes at Time Warner Cable. And within five
14 minutes after the panic button is hit, Officer -- Officer
15 Calloway indicates that this is a carjacking, not an armed
16 robbery and Corporal Sanders is behind the car.

17 Now, Mr. Mitchell tells you, no, the first I
18 noticed her was right over here after I've already talked
19 with this guy, made the deal over at the car down here,
20 that I dropped him off at his house, he went up the steps,
21 said goodbye. As I was pulling out there's a car with the
22 blue lights behind me. And I go, uh-oh, I'm driving under
23 suspension and so I run.

24 Corporal Sanders indicated as she was coming down
25 here (indicating), down Laurens Street, I got the call of

1 an armed robbery that is the carjacking, she sees the blue
2 Intrepid right here. Not only does she see the blue
3 Intrepid, she sees the blue Intrepid with only one person
4 in it. Not a man with an Afro as Mr. Mitchell says he had
5 but him, Mr. Mitchell.

6 Corporal Sanders also states that Mr. Mitchell
7 was not bald headed at the time. He had on a black knit
8 cap. Defense counsel brings in his booking photo. They
9 asked Captain Redmond in the jail who could bring up
10 anything they asked him to bring as well, to bring up the
11 cap if he wanted to see the cap. He brought up the
12 booking photo for them. Said that this is how he appeared
13 that day. Captain Redmond doesn't know this man. He
14 wasn't there that day. The people who were there that day
15 said no, that's not how he looked. He had on a black cap.

16 And how do we know he had on a black cap?
17 Because when they booked him in, Captain Redmond says,
18 well, we don't let them wear the cap for the picture.
19 There it is. He put it in the property room. He had on
20 his black cap.

21 12:52, Corporal Sanders is chasing the Defendant,
22 actively chasing him with this black cap on, brown jacket,
23 black cap. And in the evidence room -- excuse me, the
24 property room, there's the jacket. He has on brown Long
25 John -- Long John top, thermal brown one, and just not

1 wearing a hat for the picture.

2 Chasing him, he is actively avoiding her, running
3 away trying to take his clothes off. Why is he taking his
4 jacket off? Why is he taking his shirt off? To get away
5 from a DUS or make himself not look like the guy who just
6 -- who just carjacked a few minutes before? He's running.
7 He's trying to change and alter his appearance.

8 He throws the phone away. Why would he throw the
9 phone away out of a car that's borrowed from this fellow
10 by -- Johnny, Johnny with the Afro? He gets rid of it
11 because it's evidence of his guilt.

12 Ladies and gentlemen, Corporal Sanders also
13 indicated as she's going down there, when she sees him and
14 he looks at her, she looks at him. He goes, uh-oh. She
15 has to go around this way (indicating) to catch back up
16 with him. The Defendant himself said, that if I had a gun
17 and I did something wrong with it and the police are
18 behind me or their going to catch me, it's a good idea to
19 get rid of the gun. It's just commonsense. He admitted
20 it.

21 All through here, could have gotten rid of the
22 gun there, could have got rid of it here (indicating),
23 everywhere. He had a gun. How do I know he had a gun?
24 Because Ms. Gilmore said he had a gun. She's bleeding
25 from the side of her face where he pushed it into her

1 temple. He's apprehended trying to hide from the police
2 up here (indicating).

3 12 minutes after Ms. Gilmore is carjacked, within
4 seconds of 12 minutes, she is looking at the man that did
5 this to her. And Defense counsel wants to say, well, she
6 was looking through Plexiglas, she couldn't really see
7 him. No, she said, please move closer, I can't see that
8 guy very well. If she's going to pick whoever they want
9 her to pick, she would have said, yeah, that's him, great.
10 She said, no, I need to see him. Can you move him a
11 little closer? She got a good look at him and said,
12 that's the man. I'm 100 percent positive that's the man
13 who did this to me.

14 And how did -- and Ms. Hendrick indicated that
15 you look to opportunity to view somebody. And I would
16 submit to you, ladies and gentlemen, if this is an
17 ordinary day and she just saw Mr. Mitchell walk by, she
18 probably wouldn't remember how he looked. But this was
19 not an ordinary day. She was in the car and that man got
20 a gun, stuck it to her face and said, get out of the car
21 or I will shoot you. She couldn't get out of the car.
22 She could not comply with the simple request or her -- she
23 was going to die. She's stuck looking at the man who's
24 going to end her life.

25 And I would submit to you, when he yanks her out

1 of the car, he's again looking at her, she's looking at
2 him, he's going to kill her because she's not following
3 his instructions. I would submit to you, 12 minutes
4 later, she sees him again, she's pretty darn sure who that
5 guy is.

6 Defense counsel wants to say a year later this
7 lady, her identification is exactly the way it should be.
8 I submit to you, he had on a black hat, this right here
9 (indicating). We know he did. Officer Sanders, Corporal
10 Sanders, was just chasing this guy with the black hat.
11 Not black and red hat. What she saw was just the black
12 hat. Not a bald man, not this man.

13 And I submit to you, this is the way he looked.
14 This is him, not that nice little fellow there
15 (indicating) with his little sweater on, looking a little
16 bit nicer, who cries when he talks about his mom's grave
17 that he was going to take flowers to. That's the man.
18 He's just not wearing his hat.

19 The Defendant was arrested, he was brought to the
20 Columbia Police Department. He was advised of his rights.
21 He signed off on each one of them. He cooperated. And
22 then he said, I don't know what you're talking about. And
23 then that didn't work. You were caught in her car. She
24 said that was you. He said, well, okay, I new the
25 carjacking was going to happen but I was on Peeler

1 (phonetic) Street (indicating) when it happened. These
2 guys brought it up to me and then I got the car. And then
3 she stopped me.

4 So that didn't work either because the timeline
5 doesn't work. Said, come on, that doesn't work because
6 the timeline -- well, okay, I was actually closer. I was
7 over in here somewhere. Again, he changes his story. He
8 changes his story again.

9 He changed his story when he got up here. The
10 first time he told anybody or the police about ---

11 MR. MAY: Objection.

12 THE COURT: Overruled.

13 MR. CATHCART: You heard from Investigator --
14 Investigator Pegram. Did he ever hear about Charleston?
15 Not until yesterday. You ever hear about Johnny? Not
16 until yesterday. Wouldn't it have been really cool if the
17 police had a guy named Johnny and knew exactly where he
18 lived because that's the real guy? But we didn't hear
19 about that until yesterday ---

20 MR. MAY: Objection, again, Your Honor.

21 THE COURT: Basis?

22 MR. MAY: Doyle violation.

23 THE COURT: Overruled.

24 MR. CATHCART: He told y'all, he told Pegram
25 that. He got on the stand and said, I told Pegram all of

1 those things. He then said that he came up on that day,
2 he was going -- got there about 11:30, he was going to a
3 Super Bowl party at 3:00. Are you sure about that? I
4 said, go get me a calendar because this happened on a
5 Friday and every Super Bowl that's ever occurred is on
6 Super Bowl Sunday.

7 And when he finally figures that out, he goes,
8 oh, yeah, I was going to spend the night and then watch
9 the game. Said, well, that's on Saturday. He changes
10 again. He says, that I was bringing up my luggage, this
11 is my luggage. I packed my bags. Ladies and gentlemen, I
12 would submit to you, if y'all wish to go through this
13 stuff, it's not only his clothes but it's dirty clothes
14 and his shoes for a long time. This is everything he
15 owns. I'm not condemning him because he doesn't have a
16 lot. I'm condemning him because he put the gun to a
17 lady's head and he's lying about it.

18 Defense counsel, and I only mention this because
19 he did, wants to talk about -- talked about his prior
20 record. He does have one. I am not hear to say this a
21 the case about him being a bad person. I'm saying that
22 what he did was a bad thing. What he did to Ms. Gilmore
23 was a horrible bad thing.

24 Prior record doesn't go to propensity it goes to
25 how you can judge his credibility, does he have a reason

1 to lie, do you believe him? I submit to you from what the
2 timeline is and how he talked to -- and his story, you
3 cannot.

4 He said -- he says he lives in Charleston making
5 good money. He had \$30 in his pocket. He didn't have
6 \$30. Had a bus ticket. He didn't have a bus ticket.
7 This is the property he had. I live in Charleston. No,
8 he gave his address Duke Avenue here in Columbia on this
9 day.

10 The burden is upon the State, on the government
11 lawyers, to prove beyond a reasonable doubt that he
12 committed this crime. And we welcome that burden because
13 that's the way it should be. If a man is accused of
14 committing a crime such as what he did, putting a gun to a
15 little old lady's head and forcing her out of the car, and
16 making her fear for her own life, it is incumbent upon the
17 State to prove it.

18 And we do that by putting forth the witnesses.
19 And you've heard from each and ever one of them. I would
20 submit to you, ladies and gentlemen, they told you the
21 truth. Defense counsel wants you to say that Ms. Gilmore
22 could pick anybody that she wanted to. And the police,
23 oh, she picked out somebody, great. We'll just let the
24 guy -- the real guy, the guy with the gun run around.

25 They found the man who did it. 12 minutes after

1 he did it she got to look at him again and say, 100
2 percent positive, a year ago, 100 percent positive, that's
3 him.

4 The Judge is going to give you the law as to the
5 facts. I ask that you find a true verdict according to
6 the facts and the law and that verdict must be guilty on
7 both counts.

8 Thank you.

9 THE COURT: Mr. Cathcart, would you mind moving
10 that?

11 MR. CATHCART: I'm sorry, Your Honor.

12 THE COURT: That's all right.

13 (Pause.)

14 CHARGE BY THE COURT:

15 Now, Mr. Foreman and members of the jury, the
16 State of South Carolina charges one Norman Lee Mitchell
17 with the offenses of carjacking and failure to stop for a
18 blue light. The indictments have been read to you so I
19 will not repeat the allegations contained therein.

20 Now, to these indictments, the Defendant has pled
21 -- or entered a plea of not guilty which places upon the
22 State the burden of proving the Defendant guilty. A person
23 charged with committing a criminal offense in South
24 Carolina is never required to prove himself innocent. I
25 charge you that it is a vital important rule of law of

1 evidence that the Defendant in a criminal trial, no matter
2 how great or serious may be the offense for which he is
3 charged, must always be presumed innocent until his guilt
4 has been proven beyond a reasonable doubt.

5 Now this presumption of innocence remains with
6 the Defendant at all times, from the moment of his
7 appearance in this court, throughout the trial and until
8 the jury has, upon the testimony and evidence presented,
9 reached a verdict of guilty beyond a reasonable doubt. It
10 is the solemn duty of the jury, if not clearly convinced
11 of his guilt beyond a reasonable doubt to the contrary, to
12 acquit the Defendant.

13 So the burden of proof is upon the State to
14 establish evidence to your satisfaction the guilt beyond a
15 reasonable doubt of this Defendant here on trial for the
16 crimes of carjacking and failure to stop for a blue light.

17 Now, members of the jury, what is a reasonable
18 doubt? A reasonable doubt is the kind of doubt that would
19 cause a reasonable person to hesitate to act. If you have
20 such a doubt as to the guilt of the Defendant, then he
21 would be entitled to a verdict of not guilty. Reasonable
22 doubt may arise from evidence which is in the case or from
23 the absence of lack of evidence in the case.

24 Members of the jury, you alone must make the
25 determination of whether or not reasonable doubt exists as

1 to the guilt or innocence of Norman Lee Mitchell.

2 Now, the State has the burden of proving the
3 Defendant guilty beyond a reasonable doubt. Some of you
4 may have served as jurors in civil cases where you were
5 told it is only necessary to prove that a fact was more
6 likely true than not true. In criminal cases, the State's
7 proof must be more powerful than that. It must be beyond
8 a reasonable doubt.

9 Now, proof beyond a reasonable doubt is proof
10 that leaves you firmly convinced of the Defendant's guilt.
11 There are very few things in this world that we know with
12 actual certainty. And in criminal cases, the law does not
13 require proof that overcomes every possible doubt. If
14 based on your consideration of the evidence you are firmly
15 convinced that the Defendant is guilty of the crimes
16 charged, you must find him guilty.

17 If on the other hand, you think there is a real
18 possibility that he is not guilty, you must find him not
19 guilty. A criminal Defendant is presumed to be innocent
20 until his guilt is proved beyond a reasonable doubt.

21 A verdict of guilty can be based upon
22 circumstantial evidence as safely as upon direct evidence
23 provided the circumstantial evidence relied upon to prove
24 guilty measures up to these requirements of the law that
25 I've just stated to you.

1 Now, there are two types of evidence which are
2 generally presented during trial, direct evidence and
3 circumstantial evidence. Direct evidence is the testimony
4 of a person who asserts or claims to have actual knowledge
5 of the facts such as an eyewitness. Circumstantial
6 evidence is proof of a chain of facts and circumstances
7 indicting the existence of a fact. The law makes
8 absolutely no distinction between the weight or value to
9 be given either direct or circumstantial evidence. Nor is
10 a greater degree of certainty required of circumstantial
11 evidence than of direct evidence.

12 You should weigh all the evidence in the case.
13 After weighing all the evidence, if you are not convinced
14 of the guilt of the Defendant beyond a reasonable doubt,
15 you must find the Defendant not guilty.

16 Now, Mr. Foreman and members of the jury, under
17 the Constitution and law of the State of South Carolina,
18 you are the finders of the facts of this case. I do not
19 have the right to pass upon the facts or even to express
20 any opinion I might have as to them, nor may I intimate in
21 any way what I may think about the guilt or innocence of
22 the Defendant.

23 You are also the judges, the sole judges, of the
24 credibility, the believability of the witnesses who have
25 testified in this case. In passing upon their

1 credibility, you may take into consideration many things,
2 such as, the demeanor or manner of testifying, whether the
3 witness had reason to be biased or prejudiced, whether a
4 witness's testimony was contradicted on the one hand or
5 supported and corroborated on the other hand.

6 You certainly do not determine this credibility
7 or believability by counting the number of witnesses for
8 either side. You may believe a small portion of witness's
9 testimony and disregard the larger, or vice versa. You
10 may believe one witness against many or many against one.

11 You have heard the testimony of a witness who has
12 -- I'm sorry -- that's expert witness.

13 All these things I just told you, members of the
14 jury, you will consider bearing in mind that you should
15 give the Defendant the benefit of every reasonable doubt.

16 Now, by the same Constitution and law which
17 designates and makes you the finders of the facts and the
18 evidence that I just discussed with you, I am, as the
19 Judge, made the sole and only instructor of the law. You
20 must accept as correct the law which I charge you and
21 apply it to the evidence as you find it and reach your
22 verdict.

23 And finally, I charge you in this regard that
24 you, nor for that matter I, should not be concerned about
25 what the law ought to be but rather what the law is as I

1 charge it to you.

2 And in this particular case, we had a witness who
3 testified about a prior record. In this regard I need to
4 tell you the following. There was admitted into the
5 record in this case evidence of an alleged prior record of
6 a witness or witnesses. The evidence was admitted for a
7 limited purpose. The evidence was admitted and may be
8 considered by you, the jury, if you conclude it true, only
9 for the purpose of evaluating the credibility or
10 believability of that witness. You may give this evidence
11 such weight and such value, if any, to which you find it
12 is entitled on the sole issue of the credibility or the
13 believability of the testimony offered by that witness
14 himself.

15 Now, members of the jury, I will now tell you the
16 law that applies to carjacking. What is carjacking? A
17 person is guilty of the felony of carjacking who takes or
18 attempts to take a motor vehicle from another person by
19 force and violence or by intimidation while the person is
20 operating the vehicle or while the person is in the
21 vehicle.

22 What's failure to stop for a blue light? In the
23 absence of mitigating circumstances, it is unlawful for a
24 motor vehicle driver while driving on a road, street or
25 highway of the state, to fail to stop when signaled by a

1 law enforcement vehicle by means of a siren or flashing
2 light. An an attempt to increase the speed of a vehicle
3 or another manner of avoiding the pursing law enforcement
4 vehicle when signaled by a siren or flashing light is
5 prima facie evidence of a violation of this section.

6 Failure to see the flashing light or hear the
7 siren does not excuse a failure to stop when the distance
8 between the vehicles and other road conditions are such
9 that it would be reasonable for a driver to hear or see
10 the signals from the law enforcement vehicle.

11 Now, Mr. Foreman and members of the jury,
12 whatever your verdict in this case, it must be unanimous.
13 In other words, of course all 12 of you must agree. And I
14 have prepared what we commonly refer to as verdict forms.
15 I have two of them.

16 And the first one, Mr. Foreman, I hold in my hand
17 is The State of South Carolina, County of Richland, The
18 State of South Carolina versus Norman Lee Mitchell,
19 Verdict Form, Failure to Stop for a Blue Light.

20 Now, if you were convinced beyond a reasonable
21 doubt by the evidence that has been presented that Mr.
22 Mitchell is guilty of failure to stop for a blue light,
23 and I had to list -- there are two possible verdicts,
24 guilty and not guilty. I had to list one before the
25 other, I couldn't list them of course at the same time.

1 But this particular form reads: We the jury by unanimous
2 consent find the Defendant guilty or not guilty.

3 Once you reach your verdict, Mr. Foreperson, you
4 sign your name above the line that says Foreperson and
5 date it above the line that says date. And that would
6 conclude your work on that particular charge or
7 indictment.

8 And the second form is State of South Carolina,
9 County of Richland, The State versus Norman Lee Mitchell.
10 This is for carjacking. And the same thing applies: We
11 the jury by unanimous consent find the Defendant guilty or
12 not guilty of carjacking. Whatever your decision, you
13 sign your name above the line that says Foreperson and
14 date it. And that should conclude, once you've signed
15 both of these, Mr. Foreperson, your work on this
16 particular case.

17 Now, I've got to ask that you go to the jury room
18 but don't start talking about this case yet. There is a
19 matter of law I need to take up with the attorneys
20 involved and the only way I can do that is your absence.

21 So go to the jury room. We should be able to
22 submit the case to your shortly.

23 (The jury retires from the courtroom at
24 10:30 a.m.)

25 THE COURT: Any exceptions or additions from the

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 Defense?

2 MR. MAY: Nothing from the Defense, Your Honor.

3 THE COURT: The State?

4 MR. CATHCART: No, sir.

5 THE COURT: All right, gentlemen and Ms.

6 Hendrick, y'all make sure all the exhibits that should be
7 in are in. Check them out. Once we do that, we'll bring
8 the alternate out and give it to them.

9 (The Alternate Juror was excused.)

10 (The Exhibits and Verdict Form were sent to the
11 jury to begin deliberations at 10:40 a.m.)

12 (The Court was in recess awaiting a verdict.)

13 THE COURT: All right. A request for victim
14 court testimony, transcript if possible, direct and cross-
15 examination. Also a request for victim description of the
16 Defendant at time of the crime.

17 So I guess they want to listen to the victim's
18 testimony. Find it and we'll bring them in.

19 (The Court was in recess.)

20 THE COURT: All right. Get the Defendant. Where
21 is he?

22 MR. MAY: They're bringing him up.

23 (Pause.)

24 THE COURT: Everybody ready.

25 MR. CATHCART: The State's ready.

1 THE COURT: All right, bring them in.

2 (Pause.)

3 THE COURT: They requested more time to
4 deliberate. We'll see what happens.

5 (Whereupon the testimony of the victim was played
6 for the jury.)

7 (The Court was in recess awaiting a verdict.)

8 THE COURT: Is everybody ready?

9 MR. CATHCART: State's ready, Your Honor.

10 THE COURT: All right. Bring the jury in.

11 (The jury returned to the courtroom at
12 2:13 p.m.)

13 THE BAILIFF: Jury's seated, Your Honor.

14 THE COURT: Let's wait for the crowd in the back
15 to settle done.

16 (Pause.)

17 THE COURT: All right, Ms. Johnson, Ms.
18 Pendergrass, whichever it is. Which is it Johnson --
19 Pendergrass. Go ahead

20 THE CLERK: Mr. Foreman, have you reached a
21 verdict?

22 MR. FOREMAN: Your Honor, the jury's reached a
23 verdict.

24 THE COURT: All right, hand it to the Bailiff.
25 (Complied.)

1 THE COURT: It's probably that velvet. What
2 color is that?

3 THE CLERK: Red.

4 THE COURT: All right. You may publish it.

5 VERDICT OF THE JURY:

6 THE CLERK: Indictment number 2008-GS-40-1239,
7 The State of South Carolina versus Norman Lee Mitchell.
8 It's an indictment for failure to stop for a blue light

9 We the jury by unanimous consent find the
10 Defendant guilty. This is signed Foreperson, Frederick
11 Felder, February 6th, 2009.

12 Indictment number 2008-GS-40-1238. It's an
13 indictment for carjacking. The State of South Carolina
14 versus Norman Lee Mitchell.

15 We the jury by unanimous consent find the
16 Defendant guilty. This is signed Foreperson, Frederick
17 Felder, February 6th, 2009.

18 Mr. Foreman, are these your verdicts and the
19 verdicts of the entire jury?

20 MR. FOREMAN: They are.

21 THE COURT: Anything further from the jury on
22 behalf of the Defense?

23 MR. MAY: Yes, sir. We would ask that the jury be
24 poled.

25 THE COURT: All right. Ms. Pendergrass, now,

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 isn't it? Go ahead.

2 THE CLERK: Ladies and gentlemen of the jury, I
3 am going to ask you two questions regarding your verdict.
4 If you would answer yes or no to each question.

5 Frederick Felder, were these your verdicts?

6 JUROR: Yes.

7 THE CLERK: Are they still your verdicts?

8 JUROR: Yes.

9 THE CLERK: Thomas Mack, were these your
10 verdicts?

11 JUROR: Yes.

12 THE CLERK: Are they still your verdicts?

13 JUROR: Yes.

14 THE CLERK: Elizabeth Rodgers, were these your
15 verdicts?

16 JUROR: Yes.

17 THE CLERK: Are they still your verdicts?

18 JUROR: Yes.

19 THE CLERK: Susan Moore, were these your
20 verdicts?

21 JUROR: Yes.

22 THE CLERK: Are they still your verdicts?

23 JUROR: Yes.

24 THE CLERK: Fabian Olson, were these your
25 verdicts?

1 JUROR: Yes.

2 THE CLERK: Are they still your verdicts?

3 JUROR: Yes.

4 THE CLERK: Sarah Obrien, were these your
5 verdicts?

6 JUROR: Yes.

7 THE CLERK: Are they still your verdicts?

8 JUROR: Yes.

9 THE CLERK: Rosalind Williams, were these your
10 verdicts?

11 JUROR: Yes.

12 THE CLERK: Are they still your verdicts?

13 JUROR: Yes.

14 THE CLERK: Nicole Thompson, were these your
15 verdicts?

16 JUROR: Yes.

17 THE CLERK: Are they still your verdicts?

18 JUROR: Yes.

19 THE CLERK: Cleo Payne, were these your verdicts?

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

23 THE CLERK: Bobbie Guinyard, were these your
24 verdicts?

25 JUROR: Yes.

1 THE CLERK: Are they still your verdicts?

2 JUROR: Yes.

3 THE CLERK: Jimmie Howard, were these your
4 verdicts?

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

8 THE CLERK: James Sistare, were these your
9 verdicts?

10 JUROR: Yes.

11 THE CLERK: Are they still your verdicts?

12 JUROR: Yes.

13 THE CLERK: The jury's been polled.

14 THE COURT: All right. Anything further of this
15 jury?

16 MR. CATHCART: Nothing from the State, Your
17 Honor.

18 THE COURT: Now, members of the jury, usually I
19 would send you home but I'm going to ask y'all to wait. I
20 know y'all agonized over this case. That's the way trials
21 should be, okay. You should give a Defendant every
22 benefit of every reasonable doubt. I know y'all did this.
23 And I know y'all are a very attentive and conscientious
24 jury.

25 In this case like this, I think this is his third

1 strike, I believe it is, or something like that?

2 MR. CATHCART: Yes, Your Honor.

3 THE COURT: And so I just want y'all to wait and
4 y'all will find out some things that I couldn't tell you
5 during the trial, the Solicitor couldn't mention or
6 anybody else.

7 Bring Mr. Mitchell around.

8 And the sentence I have to impose is required by
9 law for me to impose.

10 (Pause.)

11 THE COURT: Mr. Cathcart, you may go through Mr.
12 Mitchell's prior record, sir.

13 MR. CATHCART: Your Honor, as to the Defendant's
14 prior record actually dates back not from the past 10
15 years but from 1988.

16 Defendant's prior record from 1988 is three
17 counts of pointing and presenting a firearm, two counts of
18 carrying a pistol unlawfully. He has three convictions of
19 burglary in the first degree, four convictions for
20 burglary in the second degree, six counts of grand larceny
21 over a thousand dollars, and attempted burglary in the
22 second degree. On that -- he got a 15 year sentence on
23 those charges. On 1998, his parole was revoked. He maxed
24 out his time on July 28th of 1998.

25 Within a month he committed the attempted strong

1 armed robbery. He was sentenced again and then as soon as
2 he got back out, another charge for unlawful carrying a
3 pistol. Then another petty larceny. Then an auto
4 breaking, petty larceny. Then as the jury was not able to
5 hear because it's not a crime of dishonesty, he was
6 convicted of trafficking in cocaine.

7 He had -- after he got back out of prison, he was
8 convicted of 10 separate counts of bank fraud, forgeries
9 to banks. While he was incarcerated on that time, he was
10 convicted for assaulting a corrections officer. 2004 --
11 that was in 2003. 2004 again a petty larceny. 2005 petty
12 larceny, 2007 shoplifting and then again August the 13th
13 of 2007, possession of a stolen motor vehicle for which he
14 got out the Alvin S. Glenn Detention Center about three
15 weeks before he put a gun to Ms. Gilmore's head.

16 Your Honor, the prior record as to the three
17 separate counts of burglary in the first degree, those are
18 considered a most serious offense in his prior record as
19 is the carjacking.

20 The sentence is as statutory and as appropriate
21 in this case.

22 THE COURT: All right, Mr. May.

23 MR. MAY: Your Honor, before we -- before you
24 issue the sentence, I would first like to renew all
25 motions and objections to include but not limited to the

1 numerous Doyle violations the Solicitor committed, the
2 numerous bolstering that the Solicitor committed, the Neil
3 v. Biggers motion at the beginning where the ID came in
4 and all other motions that -- and objections which are not
5 specifically stated.

6 THE COURT: All right. What I'm going -- I'm
7 going to deny them all. I'll give you a chance to
8 supplement anything in written form, if you'd like.

9 MR. MAY: Thank you, Your Honor.

10 THE COURT: All right.

11 Anything you'd like to tell me, Mr. Mitchell?

12 THE DEFENDANT: No, sir.

13 SENTENCE OF THE COURT:

14 THE COURT: Very well. On indictment number
15 2008-1239, The State versus Norman Lee Mitchell, the
16 sentence is three years.

17 On indictment number 2008-1238, The State versus
18 Norman Lee Mitchell, carjacking, because this is a third
19 offense, members of the jury, your Legislature requires me
20 to impose a life sentence on Mr. Mitchell.

21 Good luck to you, Mr. Mitchell.

22 MR. MAY: Your Honor, for the record, I would
23 object to the LWOP. Under the Eighth Amendment, it's
24 cruel and unusual punishment. Under the Sixth Amendment,
25 for ineffective assistance of counsel ---

1 THE COURT: You will have an opportunity to take
2 that up on appeal.

3 Now, members of the jury -- take him away.

4 Now, members of the jury, like I said, these are
5 difficult cases. And usually I wouldn't -- don't want you
6 to hear all this but you need to know under this situation
7 the extent of his prior record. That's one thing we can't
8 -- it would be unfair for you to know that ahead of time.

9 It was a difficult case. Y'all were very
10 conscientious and personally I think you did the right
11 thing. I think maybe you feel a little bit better after
12 you heard the extent of his record.

13 It's never easy sitting in judgment of your
14 fellow citizens. But like I said, y'all were very
15 conscientious, y'all were very fair and you need to be
16 commended for your patriotic service on this case. And I
17 thank each and every one of you so very much. I wish you
18 the very best.

19 And with that in mind, I think Ms. Pendergrass
20 has a note or something for some of you who might need
21 one. I'm assuming you're married and you might need to
22 let your spouses know where you were the last couple of
23 days and that will help you out a little bit.

24 With that in mind, may God bless you. I wish you
25 all calm nights and sunshiny day. Good luck to you,

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

1 ladies and gentlemen.

2 (WHEREUPON, Court's Exhibit Number 3, Foreman
3 Note, was marked for identification.)

4 (WHEREUPON, Court's Exhibit Number 4, Juror Note,
5 was marked for identification.)

6 ----- END OF TRANSCRIPT OF RECORD -----
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA V. NORMAN MITCHELL

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Crystal Roach, 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 trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 4th, 5th and 6th days of February, 2009.

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

June 1, 2009


Crystal Roach, Court Reporter

1 STATE OF SOUTH CAROLINA) IN GENERAL SESSIONS
2 COUNTY OF RICHLAND) COURT
3)
4 STATE,)
5)
6 -V-) TRANSCRIPT OF
7) RECORD
8 NORMAN LEE MITCHELL) 2008-GS-40-1238,
9) 2008-GS-40-1239
10)
11 DEFENDANT.)

12

13

MARCH 3, 2009

14

RICHLAND, SOUTH CAROLINA

15

16 B-E-F-O-R-E:

17

HONORABLE CASEY L. MANNING, JUDGE;

18

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

20

FOR THE PLAINTIFF:

21

MR. CATHCART, ESQ.

22

23

FOR THE DEFENDANT:

24

MR. MAY, ESQ.

25

1 I-N-D-E-X

2 PG.

3 MOTIONS: 3

4

5

6 CERTIFICATE OF REPORTER: 10

7

8

9

10

11

12

13 E-X-H-I-B-I-T-S

14 REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED DURING THE
15 REQUESTED PORTIONS OF THE TRANSCRIPT.

16

17

18

19

20

21

22

23

24

25

1 (THE FOLLOWING PROCEEDINGS WERE
2 HELD ON MARCH 9, 2009.)

3 THE COURT: This is post-trial motions and -- what
4 case is this?

5 MR. CATHCART: This is --

6 THE COURT: This is the carjacking?

7 MR. CATHCART: That's correct.

8 THE COURT: Mr. May, this is your motion, sir?

9 MR. MAY: Yes, sir. And I'm sure you remember you
10 sat on the case of State v. Norman Mitchell from
11 February the 4th through February 7th. At the end of the
12 trial he was found guilty. We began to make our post-trial
13 motions and we asked that they be submitted to you in
14 writing -- we followed that up within the ten days
15 requirement and filed them on February the tenth. Your
16 Honor, they were provided to you and I'll make them apart of
17 the record once this is done.

18 THE COURT: Okay.

19 MR. MAY: Your Honor, we renew all objects
20 specifically the Dole violations. There were numerous of
21 times when we would -- the solicitor improperly commented on
22 the defense's right to remain silent. We renew our
23 objections to bolstering. They called two additional
24 wittinesses to bolstering their eyewitness testimony that
25 her memory is better than it is now. We renew our motion to

1 exclude the lineup. There was a Biggers Motion heard before
2 the trial. As the trial went on evidence came out during
3 the trial that the ID was improper. She stated that the
4 person who robbed her had hair. We presented evidence and
5 entered it into evidence at the time the defendant was told
6 that goes to our claim that this was an improperly -- an
7 improper suggestive show of ID.

8 Your Honor, we also renew all other motions and
9 objections they're not specifically made right now and we do
10 ask for a new trial as a result of this.

11 THE COURT: All right. Thank you, Mr. May.

12 Mr. Cathcart.

13 MR. CATHCART: Yes, sir. As to defense's motion,
14 Your Honor, as to the life without parole I don't know if he
15 mentioned that --

16 MR. MAY: Well, I was going to do that in the end
17 --

18 MR. CATHCART: Okay.

19 THE COURT: We'll give you a chance to address it
20 at the end.

21 MR. MAY: Yes, sir.

22 THE COURT: Go ahead, Mr. Cathcart.

23 MR. CATHCART: As to the post-trial motion, Your
24 Honor, specifically to the Dole, State v. Dole talks about
25 silence after arrest. In this case it's different in that

1 the defendant did not wish to remain silent, in fact, he
2 gave numerous statements to the police. Defense counsel in,
3 I guess, their strategy as to what they were going to do did
4 not even contest that the voluntariness of the confessions
5 or his statements. He did not wish for Jackson V. Denno
6 because he agreed that these -- that the defendant did give
7 the statements. Based upon that when he gives a statement
8 to the police at the time of trial, and he comes up and
9 gives more statements during that trial something different
10 or something new the state is allowed to comment on them.
11 That is clearly different from Dole. I believe the case
12 that is on point is State V -- beg the Court's indulgence,
13 Kimsey, K-I-M-S-E-Y, Your Honor, which specifically states
14 that if the defendant does give statements he is not invoked
15 his right to remain silent, in fact, he's gone beyond that.
16 And therefor, we can comment on his new stories why it's
17 different than what he said before.

18 As to the other motions, Your Honor, specifically
19 the burden shifting the state put fourth the investigator
20 and her son who are eyewitnesses to these cases. We're not
21 looking for anything specifically as to the victim and also
22 to the identification -- through vigorous Biggers hearing
23 this was an identification made 12 minutes after the actual
24 assault.

25 THE COURT: And they found the defendant in the

1 victim's car?

2 MR. CATHCART: That's correct, Your Honor.

3 THE COURT: Two minutes later. And he got
4 convicted of failure to stop for a blue light?

5 MR. CATHCART: That's correct.

6 THE COURT: All right. Anything further, Mr. May?

7 MR. MAY: Your Honor, I do believe that the Dole
8 is directly on point. And Dole as well as the South
9 Carolina case Jackson V. State the questions asked by the
10 solicitor in Dole the prosecutor it was, Why we never heard
11 this statement before? That was almost verbatim to what Mr.
12 Cathcart said --

13 THE COURT: I think he said this is the first
14 time, maybe, we've ever heard this or something like that
15 but go ahead.

16 MR. MAY: Your Honor, that would be our basis.

17 THE COURT: Okay.

18 MR. MAY: That the defendant did give two
19 statements allegedly and he said he gave a third statement.
20 But still that would be 30 minutes of his arrest. There was
21 over a year later which it seemed like the solicitor was
22 intimate that they should have heard something else if this
23 was a true statement. I believe that goes directly on point
24 to Dole as well as Jackson. There was definitely bolstering
25 with Investigator Pegram as well as the victim's son.

1 And the identification for the first time in over
2 a year. They asked her what did the person looked like, who
3 robbed you and she said, Well, he had long nappy hair. The
4 defense entered evidence --

5 THE COURT: I don't think identification would
6 have to be perfect but when you combine the totality of the
7 circumstances he's in her car two minutes later running away
8 from the police; he had a hat on. The totality of the
9 circumstances I think is what puts you in, Mr. May.

10 MR. MAY: Yes, sir. And --

11 THE COURT: I'm allowing you to do your job even
12 though we lost to Vanderbilt I'm still allowing you to make
13 your motions. Go ahead.

14 MR. MAY: Well, thank you, very much, Your Honor.
15 And just for the record I believe the evidence is between
16 five -- four to ten minutes. Regardless of that it's the
17 defense -- that the ID was extremely suggestive and for
18 those, for those, reasons and any of the others I
19 specifically mentioned we'd ask for a new trial.

20 THE COURT: Thank you, Mr. May. I must
21 respectfully decline. How do they say? Deny, yeah, I
22 forget. Deny your motions. I think you preserved the
23 record. You did a good job. I congratulate you on your
24 efforts, this was a tough case. And I don't necessarily
25 agree with the penalty under these circumstances but I

1 didn't decide the penalty. I think you got a fair trial.
2 Someone from appellate defense will be happy to take this
3 matter up for you.

4 MR. MAY: And we also have an additional --

5 THE COURT: Go ahead --

6 MR. MAY: Motion. Which is an objection to the
7 sentence that was imposed. We move respectfully, Your
8 Honor, that 17-225-45(b) of the South Carolina code is
9 unconditional and this specific incidences violates the
10 defendant's, 8th, 6th, 15th and 14th Amendments as well as
11 we believe that this section is a violation of separation of
12 powers. For that very reason, Your Honor, we ask for either
13 a new trial or amend sentences. While I understand that the
14 legislature has handcuffed you in saying that --

15 THE COURT: Well, don't use handcuffed when you
16 talk about a judge, it makes me nervous.

17 MR. MAY: Yes, sir.

18 (Laughter)

19 MR. MAY: I apologize. Well, they aggregated your
20 judicial powers.

21 THE COURT: It's all right. And I don't
22 necessarily disagree with you. The -- I think you did a
23 good job, you made a good record. Once again, Mr. May, you
24 did a good job. But I got to respectfully deny your
25 motions.

1 MR. MAY: Thank you, Your Honor.

2 THE COURT: Good, luck to you, sir.

3 MR. CATHCART: Thank you, Your Honor.

4 THE COURT: All right. Thank you all.

5

6

END OF PROCEEDINGS

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 COUNTY OF RICHLAND)

2 CERTIFICATE OF REPORTER

3 I, Crystal Roach, hereby certify that I reported
4 the preceding case entitled The State of South Carolina V.
5 Norman Lee Mitchell, Indictments No. 2008-GS-40-1238 and
6 1239, at the Richland County Courthouse, March 3rd, 2009.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 10 constitute a true, accurate and full transcript
9 of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 12th day of April, 2010.

15

16

17

18

19

20

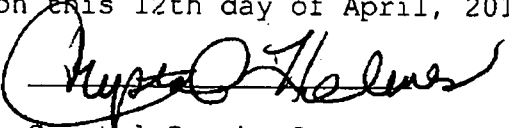
21

22

23

24

25


Crystal Roach, Court Reporter
and Notary Public for the
State of South Carolina my
Commission Expires:
April 21, 2014

3/4/09

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Honorable L. Casey Manning, Judge, 5th Judicial Circuit

Case No. 2008-GS-40-1238, 2008-GS-40-1239

The State,.....Respondent,

v.

Norman Lee Mitchell,.....Appellant.

NOTICE OF APPEAL

Norman Lee Mitchell appeals his conviction and sentence in this case. The sentence was imposed by the Honorable L. Casey Manning on February 6, 2009.

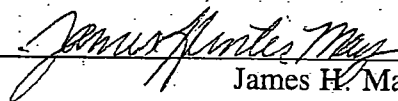
At the conclusion of State v. Norman Mitchell on February 6, 2009, Judge Manning ordered that all post trial motions be submitted in written form. The Defense complied with this order and submitted post trial motions in written form on February 10, 2009, thus staying the time for appeal, per Rule 29 of South Carolina rules of Criminal Procedure. The post trial motions were denied on March 3, 2009, in open court.

2008-GS-40-1238 - Carjacking

2008-GS-40-1239 - Failure to Stop for Blue Light

Sentence: Life without parole (LWOP)

March 4, 2009



James H. May

Richland County Public Defender's Office
P.O. Box 192
Columbia, South Carolina 29202
(803) 765-2592
Attorney for Appellant

Other Counsel of Record:
Assistant Solicitor Richard Cathcart
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of General Sessions

Honorable L. Casey Manning, Judge, 5th Judicial Circuit

Case No. 2008-GS-40-1238, 2008-GS-40-1239

The State,.....Respondent,

v.

Norman Lee Mitchell,.....Appellant.

PROOF OF SERVICE

I hereby certify that a true copy of the Notice of Intent to Appeal in the above-referenced case has been served upon opposing counsel by delivering same this date to their office at the Office of the Solicitor, Fifth Judicial Circuit, Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina 29201.

March 4, 2009


James H. May

Richland County Public Defender's Office
P.O. Box 192
Columbia, S.C. 29201
(803) 765-2592
Attorney for Appellant

Other Counsel of Record:
Assistant Solicitor Richard Cathcart
Office of the Solicitor, Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street
Columbia, South Carolina 29201
Attorney for Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NORMAN LEE MITCHELL,

APPELLANT

FINAL BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT.....	5
CONCLUSION.....	9

TABLE OF AUTHORITIES

Cases

<u>In the Interest of Jamal Rashee A.</u> , 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992)	8
<u>Manson v. Brathwaite</u> , 432 U.S. 98 S.Ct. 2243 L.Ed.2d 14 (1977)	9
<u>Neil v. Biggers</u> , 409 U.S. 188, 93 S.Ct. 375 (1972)	6, 7
<u>Simmons v. United States</u> , 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)	9
<u>State v. Blassingame</u> , 338 S.C. 240, 525 S.E.2d 535 (Ct. App. 1999)	7
<u>State v. Johnson</u> , 311 S.C. 132, 427 S.E.2d 718 (Ct.App.1993).....	8
<u>State v. Mansfield</u> , 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000)	7
<u>State v. Moore</u> , 343 S.C. 282, 540 S.E.2d 445 (2000).....	6, 8
<u>State v. Roach</u> , 364 S.C. 422, 613 S.E.2d 791 (2005)	6
<u>State v. Stewart</u> , 275 S.C. 477, 272 S.E.2d 628 (1980)	9
<u>Stovall v. Denno</u> , 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d. 1199 (1967).....	8, 9

STATEMENT OF ISSUES ON APPEAL

Did the trial judge err by denying the motion to suppress the show-up identification of appellant as unduly suggestive and unreliable and the resulting in-court identification as tainted by the prior suggestive procedure?

STATEMENT OF THE CASE

In June of 2008, the Richland County Grand Jury indicted Mitchell for failure to stop for a blue light and carjacking, indictments #2008-GS-40-1238, 1239. On February 4, 2009, Mitchell proceeded to jury trial before the Honorable L. Casey Manning. On February 6, 2009, the jury returned verdicts of guilty. Judge Manning sentenced Mitchell to life without parole pursuant to S.C. Code §17-25-45 for the carjacking and three years concurrent for the failure to stop for a blue light. Timely filed post trial motions were heard and denied on March 3, 2009. A timely notice of intent to appeal was filed on March 4, 2009. This appeal follows.

ARGUMENT

The trial judge erred by denying the motion to suppress the show-up identification of appellant as unduly suggestive and unreliable and the resulting in-court identification as tainted by the prior suggestive procedure.

On February 1, 2008, as Nola Gilmore was sitting in the passenger seat of her blue Intrepid car in the Time Warner Cable Company parking lot in Five Points waiting for her son who went inside to pay the cable bill, a man grabbed the driver's side door of the car open, pointed a gun and demanded that she get out of the car. (R. pp. 74 - 80). When Ms. Gilmore did not get out of the car, the man came around to her side of the car, pulled her out and took off in the car. (R. p. 79, lines 17 - p. 80, lines 1-20). Ms. Gilmore only described the carjacker as a black male. (R. p. 94, lines 20-24). Several officers with the Columbia Police Department arrived at the scene and a BOLO was issued for Ms. Gilmore's vehicle.

Corporal Ginger Sanders with the Columbia Police Department spotted a vehicle on Laurens Street that matched the BOLO description. (R. pp. 104-106). Corporal Sanders testified at trial that, after confirming the tag number, she attempted to stop the car by activating blue lights and siren. (R. p. 108, lines 1-20). The car eventually stopped in the middle of the intersection of Hampton and Heidt streets and the driver fled on foot. (R. p. 109, lines 1 - p. 110, lines 1-6). Corporal Sanders identified the appellant as the driver of the vehicle who fled on foot. The appellant was apprehended in the Gonzalez Gardens apartment complex. (R. p. 115, lines 18 - p. 116, lines 1-25). Corporal Sanders testified that appellant was only out of her sight for a very short time as he rounded a corner. (R. p. 117, lines 3-9). Corporal Sanders saw the appellant drop a cell phone that was later identified as belonging to Ms. Gilmore's son. (R. p. 116, lines 24-25; p. 86, lines 5-9). Corporal Sanders did not see appellant drop a gun and was unaware if a gun had been

recovered. (R. p. 118, lines 7-16). Officer Barry Smalls confirmed that after appellant was arrested, the police searched the area and did not find a gun. (R. p. 124, lines 1-24; p. 125, lines 8 – 18).

Officer Casha Calloway took Ms. Gilmore to Gonzalez Gardens where appellant was in custody. (R. p. 10, lines 14 – p. 11, lines 1-11). Officer Calloway testified, "I was advised by my supervisor to go ahead and bring the victim to the scene and she (sic) if she could possibly identify him." (R. p. 10, lines 17-19). Ms. Gilmore identified the man in custody as the man who took her car. (R. p. 35, lines 13-18).

Counsel for appellant moved, pre-trial, to suppress the show-up identification of appellant and any in-court identification of appellant resulting from the unduly suggestive show-up identification procedure. (R. pp. 62-71). After hearing testimony, the judge ruled, based on the totality of the circumstances, that the identification was proper and denied the motion to suppress. (R. pp. 7-71). Counsel for appellant objected to the identification at trial. (R. p. 83, lines 14 – p. 84, lines 1-5). The judge overruled the objection. (R. p. 84, line 6). The judge erred.

The show-up identification was impermissibly suggestive and should have been suppressed. To determine the admissibility of an out-of-court identification, the trial court must first consider whether the identification process was unduly suggestive; if so, the court "must decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Roach, 364 S.C. 422, 429-430, 613 S.E.2d 791, 795 (2005), citing Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972); State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000); State v. Blassingame, 338 S.C. 240, 525 S.E.2d

535 (Ct. App. 1999). The trial judge in the present case failed to specifically find that the show-up identification was unduly suggestive. Instead, the judge went straight to the Neil v. Biggers factors and found the identification proper. The judge erred.

The show-up in the present case is particularly suggestive because Ms. Gilmore knew the police caught appellant driving her car, prior to the show-up. Ms. Gilmore testified that she heard over the police radios that the police were chasing a blue Intrepid that matched the description of her car that was taken. (R. p. 37, lines 5-22). Counsel for appellant asked Ms. Gilmore, "and when you heard that they had recently found the blue Intrepid that matched your car, you were pretty sure that was him?" (R. p. 40, lines 1-3). Ms. Gilmore replied, "Yeah." (R. p. 38, line 4).

Appellant testified at trial that once he learned that his friend was not going to be able to pick him up from the bus station at the corner of Gervais and Harden streets, he went outside to look for a ride. He testified that at first a guy offered him a ride and then offered to "rent" the car to appellant for an extra ten dollars. (R. p. 156, lines 16 – p. 157, 158, lines 1-23). Appellant testified that he dropped the guy off at a house on Cherokee Street and agreed to bring the car back later. (R. p. 159, lines 9 – p. 160, lines 1-19). Appellant testified that almost as soon as he turned onto the street leaving Cherokee Street, a police officer initiated a traffic stop with blue lights and siren. (R. p. 161, lines 1-14). Appellant admitted to the failure to stop for a blue light charge and testified that he did not stop because did not have a license. (R. p. 161, lines 25 – p. 162, lines 1-23).

The show-up identification made by the victim after she learned that appellant was caught driving her car is unduly suggestive. Appellant was handcuffed at the time of the show-up with other officers around him. (R. p. 49, lines 2-12). Single person

show-ups are particularly disfavored in the law. Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d. 1199 (1967) (practice of showing suspects singly to persons for the purpose of identification, and not as part of a lineup, has been widely condemned); see also State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct.App.1993) (single person show-ups are particularly disfavored in the law). Here, the witness was brought to a location where two individuals, wearing clothing similar to that described by the witness, were surrounded by uniformed police officers; it is patent the show-up procedure used was unduly suggestive. Accord In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992) (taking witness to location where suspects, but no other individuals, are being detained is suggestive).

In considering whether an identification is reliable, based on the totality of the circumstances and despite the use of an unduly suggestive process, the court should consider the following factors: (1) the opportunity of the witness to view the offender at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Moore, 343 S.C. at 289, 540 S.E.2d at 448-449.

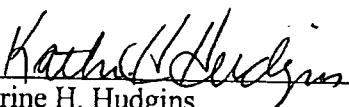
Considering the above factors, the out-of-court identification was not so reliable that no substantial likelihood of misidentification existed. Ms. Gilmore's opportunity to view the person who took her car was limited by how quickly the incident took place. (R. p. 45, lines 19 – p. 46, lines 1-4). Ms. Gilmore's only prior description of the man who took her car was a black man with a gun. A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and

conducive to irreparable mistaken identification. Stovall v. Denno 388 U.S. 293, 87 .Ct. 1967, 18 L.Ed.2d 1199 (1967). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 14 (1977) (citing Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)); State v. Stewart, 275 S.C. 477, 272 S.E.2d 628 (1980). The show-up identification used in the present case created a very substantial likelihood of irreparable misidentification. Both the show-up identification and the in court identification should have been suppressed. As identification of the man who took the car, rather than the man who was found in the car, was a key issue at trial, a new trial is necessary.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

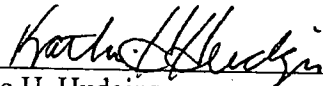
ATTORNEY FOR APPELLANT.

This 16th day of November, 2010.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 16th, 2010


Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

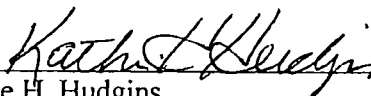
V.

NORMAN LEE MITCHELL,

APPELLANT

CERTIFICATE OF SERVICE

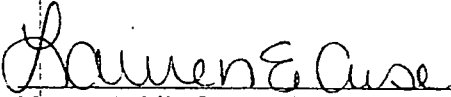
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 16th day of November, 2010.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 16th day of November, 2010.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

Respondent,

vs.

NORMAN LEE MITCHELL,

Appellant.

FINAL BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

WARREN B. GIESE
Solicitor, Fifth Judicial Circuit

P. O. Box 192
Columbia, S. C. 29202
(803) 576-1800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL	1
STATEMENT OF THE CASE	2
STATEMENT OF FACTS	3
ARGUMENT	7
There was ample evidence to support the circuit court's denial of Appellant's motion to suppress the victim's identification testimony.	7
CONCLUSION	11

TABLE OF AUTHORITIES

Cases:

<u>In the Interest of Jamal Rashee A.</u> , 308 S.C. 392, 418 S.E.2d 326 (Ct. App. 1992)	9
<u>State v. Brown</u> , 356 S.C. 496, 589 S.E.2d 781 (Ct. App. 2003)	7-9
<u>State v. Carlson</u> , 363 S.C. 586, 611 S.E.2d 283 (Ct. App. 2005)	7, 9
<u>State v. Drayton</u> , 293 S.C. 417, 361 S.E.2d 329 (1987)	9
<u>State v. Ford</u> , 278 S.C. 384, 296 S.E.2d 866 (1982)	9
<u>State v. Govan</u> , 372 S.C. 552, 643 S.E.2d 92 (Ct. App. 2007)	7, 8, 10
<u>State v. Hoyle</u> , 306 S.C. 561, 413 S.E.2d 806 (1992)	8
<u>State v. Patterson</u> , 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999)	7
<u>State v. Scipio</u> , 283 S.C. 124, 322 S.E.2d 15 (1984)	9
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001)	7

Other Authorities:

22A C.J.S. Criminal Law §803	8

STATEMENT OF ISSUE ON APPEAL

There was ample evidence to support the circuit court's denial of Appellant's motion to suppress the victim's identification testimony.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On June 20, 2008, the Richland County Grand Jury indicted Appellant Norman Lee Mitchell ("Mitchell") on one count of carjacking and one count of failure to stop for a blue light, in connection with an incident on February 1, 2008. (Indictment Nos. 2008-GS-40-1238 and -1239; Record on Appeal [R.], pp. 221-224). The matter was called for a jury trial on February 4, 2009, before the Honorable L. Casey Manning, Circuit Court Judge.

Prior to trial, Mitchell moved to suppress the victim's out-of-court and in-court identifications of him as the person who stole her car at gunpoint, arguing the identifications were tainted by an unduly suggestive single person show-up. The circuit court then conducted a Neil v. Biggers¹ hearing on the reliability of the victim's identification testimony.

Officer Casha Calloway ("Officer Calloway") of the Columbia Police Department testified she responded to an emergency call of a possible armed robbery at the Time Warner office in downtown Columbia on February 1, 2008. When she arrived at the location, she learned it was a carjacking, and put out a BOLO for the stolen car. (Trial Transcript [TT], pp. 49-51; R., pp. 1-3).

Within minutes, another officer reported she spotted the car a few streets away from the Time Warner office and was trying to stop it. The suspect, subsequently identified as Mitchell, was apprehended minutes later, and Officer Calloway transported the victim to the area where officers had him in custody. When they arrived, the victim initially asked Officer Calloway to pull up closer to the group because she could not see the person clearly. When they got closer, the victim immediately identified Mitchell as the man who stole her car. Officer Calloway testified she did not coach the victim in any

¹409 U.S. 188 (1972)

way, the victim was sure of her identification, and the identification occurred approximately ten minutes after she initially arrived at the Time Warner office. (TT, pp. 51-54, 58-62; R., pp. 3-6, 10-14).

The victim testified she was sitting in her car outside the Time Warner office while her son went inside to pay his bill, and a man got in the car, put a gun to her head, and ordered her to get out of the car. Due to recent back surgery, the victim was not able to get out of the car quickly, so the man came around the front of the car, pulled her out by her arm, and then drove away. The victim stated she could see clearly and got a good look at the man's face. (TT, pp. 77-81; R., pp. 29-33).

The victim further testified that when Officer Calloway took her to the scene where Mitchell was apprehended, she immediately recognized him as the man who put a gun to her head and stole her car. She stated she was "very, very, very positive" he was the man. (TT, pp. 82-84; R., pp. 34-36).

The circuit court denied the motion to suppress, finding the totality of the circumstances indicated the victim's identification was reliable. The court specifically found the victim had ample opportunity to see the perpetrator during the carjacking, her degree of attention was specific and direct, the time between the crime and the show-up was small, and the victim's level of certainty was high. (TT, p. 119; R., p. 71).

The victim then testified before the jury about the events of February 1, 2008, including her identification of the perpetrator after he was apprehended. She positively identified Mitchell as the man who held her at gunpoint and stole her car that day, stating she was "110 percent sure." (TT, pp. 157-172; R., pp. 72-87).

The victim's son testified he and the victim were going to pick up a puppy the day of the carjacking, and he was driving. When he went into the Time Warner office, the victim remained in the passenger seat of the car, and he left the driver's window down

and his cell phone on the dash. After Mitchell was apprehended and the victim's car recovered, the police returned the cell phone to him. (TT, pp. 259-272; Supplemental ROA., pp. 7-20).

Police officers testified regarding their investigation of the carjacking and the circumstances leading to Mitchell's apprehension approximately fifteen minutes after the incident. Officer Calloway testified about the initial BOLO, and the victim's identification of Mitchell after he was apprehended. (TT, pp. 195-215, 217-221, 225-241; R., pp. 104-124, 126-130, 131-147). Another witness testified he saw Mitchell running away from the police that day, and observed him throw a cell phone, identified at trial as the victim's son's phone, under a parked car. (TT, pp. 189-194; Supp. ROA., pp. 1-6).

After the circuit court denied his directed verdict motion, ² Mitchell testified he came from Charleston to Columbia by bus on February 1, 2008, to attend a Super Bowl party. When he arrived at the bus station at the corner of Harden and Gervais Streets, he called the person who was supposed to pick him up and learned the person was unavailable because he was attending a roll call in Lexington County.

Mitchell stated he then walked outside the bus station to find a ride, and a man walked up to him and offered to give him a ride for \$10. After Mitchell got in the car, the man offered to "rent" him the car for an additional \$10. Mitchell testified he dropped the man off at a house on Cherokee Street, and was driving away when the police got behind him and turned on the blue lights. He stated he got scared because he was driving without a license, so he tried to get away and finally jumped out of the car and ran. (TT, pp. 295-296, 315-345, 358-375; R., pp. 148-149, 150-180, 181-198).

²Mitchell conceded the failure to stop for a blue light, and only moved for directed verdict on the carjacking charge.

The jury convicted Mitchell of both carjacking and failure to stop for a blue light, and the circuit court sentenced him to life imprisonment on the carjacking conviction and three years incarceration on the failure to stop conviction.³ (TT., pp. 428, 432-434; R., pp. 199, 200-202). This appeal followed.⁴

³The State sought the life without parole sentence based on Mitchell's three prior convictions of first degree burglary.

⁴The failure to stop conviction and sentence is not challenged on appeal.

ARGUMENT

There was ample evidence to support the circuit court's denial of Appellant's motion to suppress the victim's identification testimony.

Mitchell contends the circuit court erred in denying his motion to suppress the victim's identification testimony because it was based on an unduly suggestive and unreliable show-up. On the contrary, there was ample evidence supporting the circuit court's findings regarding the reliability of the victim's identification.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 545 S.E.2d 827, 829 (2001); State v. Govan, 372 S.C. 552, 643 S.E.2d 92, 94 (Ct. App. 2007). Admissibility of eyewitness identification testimony is committed to the trial judge's discretion, and the trial court's ruling will not be disturbed on appeal absent an abuse of that discretion, or the commission of prejudicial legal error. Govan, 643 S.E.2d at 94; State v. Brown, 356 S.C. 496, 589 S.E.2d 781, 784 (Ct. App. 2003).

A criminal defendant may be deprived of due process of law through an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. Govan, 643 S.E.2d at 94. The in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a significantly substantial likelihood of irreparable misidentification. *Id.*

There is a two-prong inquiry to determine the admissibility of an out-of-court identification. The court must first ascertain whether the identification process was unduly suggestive, and if so, next decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed. *Id.* "The query posited is whether under the totality of the circumstances the identification was reliable even though the confrontation procedure may have been suggestive." State v. Carlson, 363 S.C. 586, 611 S.E.2d 283, 290 (Ct. App. 2005) (quoting State v. Patterson,

337 S.C. 215, 522 S.E.2d 845 [Ct. App. 1999]). One-on-one identifications are inherently suggestive and generally disfavored, but may be proper when they occur shortly after, and near the scene of, the alleged crime, as the witness' memory is still fresh, the suspect has not had time to alter his looks or dispose of evidence, and a show-up may expedite the release of innocent suspects and enable the police to determine whether to continue searching. State v. Hoyte, 306 S.C. 561, 413 S.E.2d 806, 807 (1992); Govan, 643 S.E.2d at 95-96; Brown, 589 S.E.2d at 785; 22A C.J.S. Criminal Law §803.

In the instant case, the show-up occurred within fifteen minutes of the carjacking, it was held near the scene of the crime when the victim's memory was still fresh, the police saw Mitchell driving the stolen car, and a witness and a police officer saw him throw the stolen cell phone away while he was trying to run away after abandoning the car. Clearly, he did not have enough time to dispose of the car and cell phone before the police started chasing him. Thus, the show-up was not unduly suggestive under the facts of this case. See Govan, 643 at 95 (show-up was not unduly suggestive because it took place within forty-five minutes of the crime, it was held near the scene of the crime when the witness' memory was still fresh, the suspect was wearing clothing consistent with the clothing described by witnesses, and a police officer saw the suspect, who still had the gun in his possession when he was apprehended, drop the paper bag full of stolen money).⁵

Even if the show-up was unduly suggestive, however, Mitchell's attempt to exclude the in-court identification fails under the second prong of the analysis. An

⁵Mitchell argues the circuit court erred in failing to make a specific finding the show-up at issue was unduly suggestive before considering the relevant factors for reliability. This argument is nonsensical. Arguably, the circuit court presumed the show-up was unduly suggestive for purposes of Mitchell's motion, and simply proceeded to the second step of the required analysis.

in-court identification is admissible if the state can prove the identification is reliable by clear and convincing evidence it was based on information independent of the out-of-court procedure. Carlson, 611 S.E.2d at 290. To determine whether an identification is reliable, the court must consider the following factors: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the witness' level of certainty at the confrontation; and (5) the amount of time between the crime and the confrontation. Brown, 589 S.E.2d at 785; *see also* In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326, 328 - 329 (Ct. App. 1992).

The reliability of an identification depends on the facts of the case and must be determined by considering the totality of the circumstances. State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987); Rashee A., 418 S.E. 2d at 329. The ultimate question is whether the pretrial identification procedure was so impermissibly suggestive as to create a very substantial likelihood of misidentification. State v. Ford, 278 S.C. 384, 296 S.E.2d 866 (1982).

The carjacking in this case occurred during the daytime, and the victim was immediately next to, and in direct contact with, Mitchell as he put a gun to her head and forced her out of the car. The victim's attention was heightened at the time, and Mitchell's appearance at the time of the show-up, which occurred less than fifteen minutes after the carjacking, was consistent with the victim's description of him. Finally, at both the show-up and trial, the victim stated she was absolutely certain Mitchell was the man who put a gun to her head and stole her car. Therefore, there was clear and convincing evidence the victim's in-court identification was reliable independent of the show-up. *See* State v. Scipio, 283 S.C. 124, 322 S.E.2d 15 (1984) (identification reliable, in part, because the victim observed the perpetrator standing within arms length for a four

to four and a half minutes period in a well-lighted store); Govan, 643 S.E.2d at 96 (no abuse of discretion in admitting restaurant employee's show-up and in-court identifications of defendant because the robbery occurred in a well lit building, the employee was immediately next to and in direct contact with the robber as he held her by the arm and put a gun to her head, her attention would have been heightened, the defendant's appearance at the show-up was consistent with the employee's prior description, and the employee stated she was certain the defendant was the robber).

Under the totality of the circumstances, the victim's pre-trial and in-court identifications were reliable, and the circuit court did not abuse its discretion in denying Mitchell's motion to suppress the identification testimony. Accordingly, Mitchell's carjacking conviction and sentence should be affirmed.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

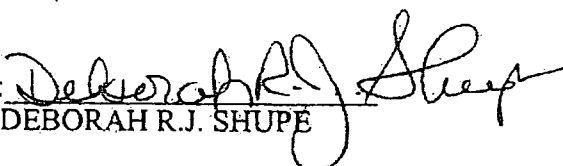
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

WARREN B. GIESE
Solicitor, Fifth Judicial Circuit

BY: 
DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 18, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

Respondent,

vs.

NORMAN LEE MITCHELL,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

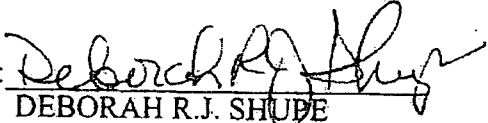
HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

WARREN B. GIESE
Solicitor, Fifth Judicial Circuit

By: 
DEBORAH R.J. SHUPE

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 18, 2010

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Richland County
The Honorable L. Casey Manning, Circuit Court Judge

THE STATE,

Respondent,

vs.

NORMAN LEE MITCHELL,

Appellant.

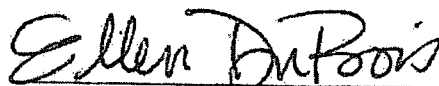
PROOF OF SERVICE

I, Ellen DuBois, certify I served the within Final Brief of Respondent on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

I further certify all parties required by Rule to be served have been served.

This 18th day of November, 2010.



ELLEN DUBOIS

Legal Assistant

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.
Norman Lee Mitchell, Appellant.

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2012-UP-010
Submitted November 1, 2011 – Filed January 25, 2012

AFFIRMED

Appellate Defender Kathrine H. Hudgins, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, Assistant

Attorney General Deborah R. J. Shupe, and Solicitor
Daniel E. Johnson, all of Columbia, for Respondent.

PER CURIAM: Norman Lee Mitchell appeals his conviction of carjacking.¹ He argues the circuit court erred in admitting the victim's single person show-up identification and subsequent in-court identification. We affirm.²

"The admission or exclusion of evidence is left to the sound discretion of the [circuit] court, and the court's decision will not be reversed absent an abuse of discretion." State v. Liverman, 386 S.C. 223, 233, 687 S.E.2d 70, 75 (Ct. App. 2009). "An abuse of discretion occurs when the decision of the [circuit] court is based upon an error of law or upon factual findings that are without evidentiary support." Id. "[W]hether an eyewitness identification is sufficiently reliable is a mixed question of law and fact." State v. Moore, 343 S.C. 282, 288, 540 S.E.2d 445, 448 (2000). "In reviewing mixed questions of law and fact, where the evidence supports but one reasonable inference, the question becomes a matter of law for the court." Id.

When assessing the admissibility of an eyewitness identification "the primary evil to be avoided is 'a very substantial likelihood of irreparable misidentification.'" Neil v. Biggers, 409 U.S. 188, 198 (1972) (quoting Simmons v. United States, 390 U.S. 377, 384 (1968)). An unduly or unnecessarily suggestive confrontation procedure may deprive a defendant of due process of law. State v. Turner, 373 S.C. 121, 127, 644 S.E.2d 693, 696 (2007). However, "the admission of evidence of [an unnecessarily suggestive procedure] without more does not violate due process." Biggers, 409 U.S. at 198.

Single person show-ups are "particularly disfavored in the law" and are suggestive. Moore, 343 S.C. at 287, 540 S.E.2d at 448. If a confrontation procedure is deemed unduly suggestive, a court must determine whether

¹ Although Mitchell was also convicted of failure to stop for a blue light, he does not appeal this conviction.

² We decide this case without oral argument pursuant to Rule 215, SCACR.

"under [the totality of] the circumstances the identification was reliable notwithstanding any suggestive procedure." Id. at 287, S.E.2d at 447-48 (citation and internal quotation marks omitted). Factors to consider in "evaluating the likelihood of a misidentification" include the following:

[T]he opportunity of the witness to view the criminal at the time of the crime, the witness'[s] degree of attention, the accuracy of the witness'[s] prior description of the criminal, the level of certainty demonstrated by the witness at the confrontation, and the length of time between the crime and the confrontation.

Biggers, 409 U.S. at 199-200.

Here, the circuit court did not err in admitting the victim's initial show-up identification and subsequent in-court identification. Although the single-person show-up procedure used in the instant case has been disfavored as suggestive, the circuit court properly found the victim's identification was sufficiently reliable pursuant to the Biggers factors. The victim was able to view Mitchell's face very closely during the carjacking, which took place outside during the day. In addition, the victim demonstrated a high degree of certainty that Mitchell was perpetrator, and both witnesses to her initial identification of Mitchell testified she demonstrated no hesitation or doubt. Finally, she identified Mitchell within minutes after the crime. Accordingly, Mitchell's carjacking conviction is affirmed.

AFFIRMED.

FEW, C.J., THOMAS and KONDUROS, JJ., concur.

Re On Due 7/2/2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

Opinion No. 2012-UP-010 (S.C. Ct. App. filed 1/25/2012)

08-GS-40-1238, 1239

THE STATE,

RESPONDENT,

V.

NORMAN LEE MITCHELL,

APPELLANT

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR PETITIONER.

INDEX

INDEX.....	1
CERTIFICATE OF COUNSEL.....	2
QUESTION PRESENTED	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	5
CONCLUSION	12

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 3/2/2012.

QUESTION PRESENTED

Did the trial judge err by denying the motion to suppress the show-up identification of appellant as unduly suggestive and unreliable and the resulting in-court identification as tainted by the prior suggestive procedure?

STATEMENT OF THE CASE

In June of 2008, the Richland County Grand Jury indicted Mitchell for failure to stop for a blue light and carjacking, indictments #2008-GS-40-1238, 1239. On February 4, 2009, Mitchell proceeded to jury trial before the Honorable L. Casey Manning. Attorney James May represented Mitchell at trial. On February 6, 2009, the jury returned verdicts of guilty. Judge Manning sentenced Mitchell to life without parole pursuant to S.C. Code §17-25-45 for the carjacking and three years concurrent for the failure to stop for a blue light. Timely filed post trial motions were heard and denied on March 3, 2009. A timely notice of intent to appeal was filed on March 4, 2009. The appeal was perfected and on January 25, 2012, the South Carolina Court of Appeals affirmed the conviction. State v. Mitchell, Op. No. 2012-UP-010 (S.C. Ct. App. filed January 25, 2012) A petition for rehearing was filed on February 9, 2012. The petition for rehearing was denied on March 2, 2012. This petition for writ of certiorari follows.

ARGUMENT

The trial judge erred by denying the motion to suppress the show-up identification of appellant as unduly suggestive and unreliable and the resulting in-court identification as tainted by the prior suggestive procedure.

On February 1, 2008, as Nola Gilmore was sitting in the passenger seat of her blue Intrepid car in the Time Warner Cable Company parking lot in Five Points waiting for her son who went inside to pay the cable bill, a man grabbed the driver's side door of the car open, pointed a gun and demanded that she get out of the car. (R. pp. 74 - 80). When Ms. Gilmore did not get out of the car, the man came around to her side of the car, pulled her out and took off in the car. (R. p. 79, lines 17 - p. 80, lines 1-20). Ms. Gilmore only described the carjacker as a black male. (R. p. 94, lines 20-24). Several officers with the Columbia Police Department arrived at the scene and a BOLO was issued for Ms. Gilmore's vehicle.

Corporal Ginger Sanders with the Columbia Police Department spotted a vehicle on Laurens Street that matched the BOLO description. (R. pp. 104-106). Corporal Sanders testified at trial that, after confirming the tag number, she attempted to stop the car by activating blue lights and siren. (R. p. 108, lines 1-20). The car eventually stopped in the middle of the intersection of Hampton and Heidt streets and the driver fled on foot. (R. p. 109, lines 1 - p. 110, lines 1-6). Corporal Sanders identified the appellant as the driver of the vehicle who fled on foot. The appellant was apprehended in the Gonzalez Gardens apartment complex. (R. p. 115, lines 18 - p. 116, lines 1-25). Corporal Sanders testified that appellant was only out of her sight for a very short time as he rounded a corner. (R. p. 117, lines 3-9). Corporal Sanders saw the appellant drop a cell phone that was later identified as belonging to Ms. Gilmore's son. (R. p. 116, lines 24-25; p. 86, lines 5-9). Corporal Sanders did not see appellant drop a gun and was unaware if a gun had been recovered. (R. p. 118, lines 7-16). Officer Barry Smalls confirmed that after appellant was

arrested, the police searched the area and did not find a gun. (R. p. 124, lines 1-24; p. 125, lines 8 – 18).

Officer Casha Calloway took Ms. Gilmore to Gonzalez Gardens where appellant was in custody. (R. p. 10, lines 14 – p. 11, lines 1-11). Officer Calloway testified, "I was advised by my supervisor to go ahead and bring the victim to the scene and she (sic) if she could possibly identify him." (R. p. 10, lines 17-19). Ms. Gilmore identified the man in custody as the man who took her car. (R. p. 35, lines 13-18).

Counsel for appellant moved, pre-trial, to suppress the show-up identification of appellant and any in-court identification of appellant resulting from the unduly suggestive show-up identification procedure. (R. pp. 62-71). After hearing testimony, the judge ruled, based on the totality of the circumstances, that the identification was proper and denied the motion to suppress. (R. pp. 7-71). Counsel for appellant objected to the identification at trial. (R. p. 83, lines 14 – p. 84, lines 1-5). The judge overruled the objection. (R. p. 84, line 6). The judge erred.

The show-up identification was impermissibly suggestive and should have been suppressed. To determine the admissibility of an out-of-court identification, the trial court must first consider whether the identification process was unduly suggestive; if so, the court "must decide whether the out-of-court identification was nevertheless so reliable that no substantial likelihood of misidentification existed." State v. Roach, 364 S.C. 422, 429-430, 613 S.E.2d 791, 795 (2005), citing Neil v. Biggers, 409 U.S. 188, 93 S.Ct. 375 (1972); State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000); State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000); State v. Blassingame, 338 S.C. 240, 525 S.E.2d 535 (Ct. App. 1999). The trial judge in the present case failed to specifically find that the show-up identification was unduly suggestive.

Instead, the judge went straight to the Neil v. Biggers factors and found the identification proper. The judge erred.

The show-up in the present case is particularly suggestive because Ms. Gilmore knew the police caught appellant driving her car, prior to the show-up. Ms. Gilmore testified that she heard over the police radios that the police were chasing a blue Intrepid that matched the description of her car that was taken. (R. p. 37, lines 5-22). Counsel for appellant asked Ms. Gilmore, "and when you heard that they had recently found the blue Intrepid that matched your car, you were pretty sure that was him?" (R. p. 40, lines 1-3). Ms. Gilmore replied, "Yeah." (R. p. 38, line 4).

Appellant testified at trial that once he learned that his friend was not going to be able to pick him up from the bus station at the corner of Gervais and Harden streets, he went outside to look for a ride. He testified that at first a guy offered him a ride and then offered to "rent" the car to appellant for an extra ten dollars. (R. p. 156, lines 16 – p. 157, 158, lines 1-23). Appellant testified that he dropped the guy off at a house on Cherokee Street and agreed to bring the car back later. (R. p. 159, lines 9 – p. 160, lines 1-19). Appellant testified that almost as soon as he turned onto the street leaving Cherokee Street, a police officer initiated a traffic stop with blue lights and siren. (R. p. 161, lines 1-14). Appellant admitted to the failure to stop for a blue light charge and testified that he did not stop because he did not have a license. (R. p. 161, lines 25 – p. 162, lines 1-23).

The show-up identification made by the victim after she learned that appellant was caught driving her car is unduly suggestive. Appellant was alone and handcuffed at the time of the show-up with other officers around him. (R. p. 49, lines 2-12). Single person show-ups are particularly disfavored in the law. Stovall v. Denno, 388 U.S. 293, 87 S.Ct. 1967, 18 L.Ed.2d 1199 (1967) (practice of showing suspects singly to persons for the purpose of identification, and

not as part of a lineup, has been widely condemned); see also State v. Johnson, 311 S.C. 132, 134, 427 S.E.2d 718, 719 (Ct.App.1993) (single person show-ups are particularly disfavored in the law); In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992) (taking witness to location where suspects, but no other individuals, are being detained is suggestive).

In considering whether an identification is reliable, based on the totality of the circumstances and despite the use of an unduly suggestive process, the court should consider the following factors: (1) the opportunity of the witness to view the offender at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the crime and the confrontation. Moore, 343 S.C. at 289, 540 S.E.2d at 448-449.

Considering the above factors, the out-of-court identification was not so reliable that no substantial likelihood of misidentification existed. Ms. Gilmore's opportunity to view the person who took her car was limited by how quickly the incident took place. See In the Interest of Jamal Rashee A., 308 S.C. 392, 418 S.E.2d 326 (Ct.App.1992). In her statement to police Ms. Gilmore stated, "A black man snaps the driver's door open. He put a gun to the side of my head -- and pardon my language -- Told me, bitch, get out of the car or I'll shoot you. He said this many times as I was getting out of the car. I was having trouble getting out of the car because I had had back surgery. The black man didn't wait for me to get out before he started backing up. He almost knocked me down. He drove away very fast." (R. p. 45, lines 19 -- p. 46, lines 1-4). Ms. Gilmore's degree of attention was limited by the facts that the man was holding a gun to her head during the brief encounter and Ms. Gilmore was struggling to get out of the vehicle due to her recent back surgery. (R. p. 45, lines 25 -- p. 46, lines 1-4). Ms. Gilmore's only prior

description of the man who took her car was a black man with a gun. At trial Ms. Gilmore testified that the man who took her car had long gummy or nappy hair. (R. p. 181, lines 2-14). As argued by defense counsel in the post trial motion, appellant was bald at the time of the incident. (R. p. 213, lines 2-7). See State v. Moore, 343 S.C. 282, 540 S.E.2d 445 (2000) (Finding the identification procedure unreliable based on, among other factors, the vague description provided by the witness).

While Ms. Gilmore claimed to be certain of her identification, that certainty was based in part on the fact that she knew Mitchell had been caught driving her car, the police advised her that "they had him" and he was the only black male present in handcuffs. The length of time between the crime and the show up was short. This one factor, however does not outweigh the other factors supporting the unreliability of the show up identification.

A criminal defendant may be deprived of due process of law by an identification procedure which is unnecessarily suggestive and conducive to irreparable mistaken identification. Stovall v. Denno 388 U.S. 293, 87 Ct. 1967, 18 L.Ed.2d 1199 (1967). An in-court identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification. Manson v. Brathwaite, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 14 (1977) (citing Simmons v. United States, 390 U.S. 377, 88 S.Ct. 967, 19 L.Ed.2d 1247 (1968)); State v. Stewart, 275 S.C. 477, 272 S.E.2d 628 (1980). The show-up identification used in the present case created a very substantial likelihood of irreparable misidentification. Both the show-up identification and the in court identification should have been suppressed. As identification of the man who took the car, rather than the man who was found in the car, was a key issue at trial, a new trial is necessary.

The identification procedure used was unduly suggestive in two distinct ways creating a substantial likelihood of irreparable misidentification in violation of due process. First, the identification was a show-up identification. Shortly after the carjacking incident, the victim, Nola Gilmore, was taken by the police to the Gonzalez Gardens neighborhood to identify the man police had arrested after he was seen driving her car. (R. p. 48, lines 6-18). When asked if she knew why the police were taking her to Gonzalez Gardens, Ms. Gilmore testified, "Yes, I was going there to identify the gentleman because they told me he was - - they had him and they - - that lady taking [sic] taking my son and I down there." (R. p. 48, lines 9-11). Norman Mitchell was the only black man on the scene who was handcuffed. (R. p. 48, lines 22 - . p. 49, lines 1-8). Unsurprisingly, Ms. Gilmore identified Mitchell as the carjacker.

Second, just prior to the show-up identification, Ms. Gilmore heard over the police radio that a car matching the description of her car, a blue Intrepid, had been involved in a police chase and the individual driving the car had been arrested. (R. p. 37, lines 5-22). Ms. Gilmore was asked, "And when you heard that they recently found that blue Intrepid that matched your car, you were pretty sure that was him?" Ms. Gilmore replied, "Yeah." (R. p. 38, lines 1-4). At the time Ms. Gilmore was asked to identify the carjacker, Mitchell was the only handcuffed black male to be identified and Ms. Gilmore knew that Mitchell had been arrested driving a blue Intrepid car that was later identified as belonging to Ms. Gilmore. These combined circumstances create a substantial likelihood of irreparable misidentification.

In affirming the trial court's decision to admit the identification testimony, the Court of Appeals wrote:

Here, the circuit court did not err in admitting the victim's initial show-up identification and subsequent in-court identification. Although the single-person show-up procedure used in the instant

case has been disfavored as suggestive, the circuit court properly found the victim's identification was sufficiently reliable pursuant to the Biggers factors. The victim was able to view Mitchell's face very closely during the carjacking, which took place outside during the day. In addition, the victim demonstrated a high degree of certainty that Mitchell was perpetrator, and both witnesses to her initial identification of Mitchell testified she demonstrated no hesitation or doubt. Finally, she identified Mitchell within minutes after the crime. Accordingly, Mitchell's carjacking conviction is affirmed.

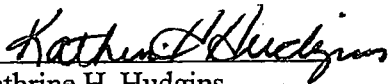
State v. Mitchell, Op. No. 2012-UP-010 (S.C. Ct. App. filed January 25, 2012) (App. p. 3).

The Court of Appeals erred in failing to address the fact that at the time of the show-up identification, the victim knew that Mitchell had been arrested driving a car matching her car. The Court's reliance on the fact that the victim demonstrated a high degree of certainty that Mitchell was the perpetrator is misplaced because the certainty was based in part on the fact that she knew Mitchell had been caught driving her car, the police advised her that "they had him" and he was the only black male present in handcuffs. The unduly suggestive show up identification combined with Ms. Gilmore's brief opportunity to view the carjacker, her attention was directed at the gun and trying to get out of the car and the vague and inaccurate description of the carjacker require suppression. The failure to suppress the improper identification requires a new trial.

CONCLUSION

Based on the above argument, the petition for writ of certiorari should be granted to allow further briefing on the issue.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER.

This 1st day of June, 2012

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

L. Casey Manning, Circuit Court Judge

Opinion No. 2012-UP-010 (S.C. Ct. App. filed 1/25/2012)
08-GS-40-1238, 1239

THE STATE,

RESPONDENT,

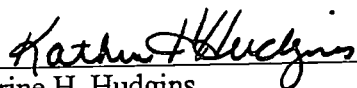
V.

NORMAN LEE MITCHELL,

APPELLANT

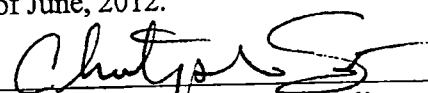
CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Deborah R.J. Shupe, Esquire, and the S.C. Court of Appeals this 1st day of June, 2012.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 1st day
of June, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Richland County
On Petition for Writ of Certiorari to the Court of Appeals
The Honorable L. Casey Manning, Circuit Court Judge
Appellate Case No. 2012-210591

THE STATE,

Respondent,

vs.

NORMAN LEE MITCHELL,

Petitioner.

**RETURN TO PETITION FOR WRIT OF
CERTIORARI TO THE COURT OF APPEALS**

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DANIEL E. JOHNSON
Solicitor, Fifth Judicial Circuit

P. O. Box 192
Columbia, S. C. 29202
(803) 576-1800

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

QUESTION PRESENTED	1
STATEMENT OF FACTS	2
ARGUMENT	6
CONCLUSION	11

QUESTION PRESENTED

Did the Court of Appeals err in finding there was ample evidence to support the circuit court's denial of Petitioner's motion to suppress the victim's identification testimony.

STATEMENT OF FACTS

On June 20, 2008, the Richland County Grand Jury indicted Appellant Norman Lee Mitchell ("Mitchell") on one count of carjacking and one count of failure to stop for a blue light, in connection with an incident on February 1, 2008. (Record on Appeal [R.]. pp. 221-224). The matter was called for a jury trial on February 4, 2009, before the Honorable L. Casey Manning, Circuit Court Judge.

Prior to trial, Mitchell moved to suppress the victim's out-of-court and in-court identifications of him as the person who stole her car at gunpoint, arguing the identifications were tainted by an unduly suggestive single person show-up. The circuit court then conducted a Neil v. Biggers¹ hearing on the reliability of the victim's identification testimony.

Officer Casha Calloway ("Officer Calloway") of the Columbia Police Department testified she responded to an emergency call of a possible armed robbery at the Time Warner office in downtown Columbia on February 1, 2008. When she arrived at the location, she learned it was a carjacking, and put out a BOLO for the stolen car. (R., pp.1-3).

Within minutes, another officer reported she spotted the car a few streets away from the Time Warner office and was trying to stop it. The suspect, subsequently identified as Mitchell, was apprehended minutes later, and Officer Calloway transported the victim to the area where officers had him in custody. When they arrived, the victim initially asked Officer Calloway to pull up closer to the group because she could not see the person clearly. When they got closer, the victim immediately identified Mitchell as the man who stole her car. Officer Calloway testified she did not coach the victim in any way, the victim was sure of her identification, and the identification occurred

¹409 U.S. 188 (1972)