

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

VOLUME I OF II

Appeal from Charleston County

Honorable John C. Hayes, Circuit Court Judge

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S.C. SUPREME COURT

PHILLIP SHULER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001816

APPENDIX

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COURT OF GENERAL SESSIONS
2009-GS-10-06160

STATE OF SOUTH CAROLINA

Plaintiff

V.

PHILLIP LEON SHULER,

Defendant:

TRANSCRIPT OF RECORD

September 19-21, 2011
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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Ms. Natasha Chisolm, Assistant Solicitor
Representing The State

Ms. Mary Ford, Assistant Public Defender
Mr. Jason King, Assistant Public Defender
Representing The Defendant

Anne Bouley Meyer, RPR

Circuit Court Reporter

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1 (Whereupon, the jurors enter the courtroom.)

2 THE COURT: Good afternoon, ladies and
3 gentlemen. We are going to proceed with the selection
4 of the criminal jury for State of South Carolina versus
5 Phillip Leon Shuler. It is an indictment for armed
6 robbery.

7 The defendant wishes to have a formal
8 arrangement. If you would proceed.

9 THE CLERK: Case number 2009-GS-10-6160, State
10 of South Carolina versus Phillip Leon Shuler, an
11 indictment for armed robbery.

12 If you answer by that name, please raise your
13 right hand.

14 You may put it down.

15 You have been indicted by the name of Phillip
16 Leon Shuler. That on or about March 30th, 2009 in
17 Charleston County, South Carolina the defendant,
18 Phillip Leon Shuler, while at 323 Coleman Boulevard,
19 Mount Pleasant, South Carolina, by the use of force,
20 threat, or intimidation, and while armed with a deadly
21 weapon; or by alleging either by action or words was
22 armed by using a representation of a deadly weapon or
23 other object which a person who was present during the
24 commission of the robbery reasonably believed to be a
25 deadly weapon, did take and carry away goods and/or

1 monies from the person or immediate presence of Lenore
2 Lipsius with the intent to permanently deprive the
3 victim of possession thereof in violation of section
4 16-11-330(A) of the south carolina code of laws as
5 amended.

6 How say you, are you guilty or not guilty?

7 THE DEFENDANT: Not guilty.

8 THE CLERK: How will you be tried?

9 THE DEFENDANT: By my God and my country.

10 THE CLERK: May they send you a true
11 deliverance.

12 Are you ready for trial?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Thank you, ma'am.

15 You may take your seats.

16 Ladies and gentlemen, we are going to go through
17 a process that is called voir dire, which is simply a
18 very complicated legal term which means I am going to
19 ask you some questions so that the attorneys may more
20 effectively exercise their preemptory challenges in
21 jury selection.

22 If a question applies to you please stand and in
23 a loud and clear voice give us your name and your juror
24 number, and an answer to the question if applicable and
25 remain standing until the court has completed

1 questioning you.

2 Before we begin that process I will ask counsel
3 for the State to stand and introduce themselves, and
4 the names of the members of their office. And counsel
5 for the defense to provide the Court with the same
6 information and anyone who will be assisting them in
7 the trial of the case.

8 You may proceed.

9 MS. CHISOLM: Good afternoon. My name is
10 Natasha Chisolm, and along with my co-counsel Culver
11 Kidd, we will be prosecuting the case potentially
12 before you today.

13 The other members of our office, the Ninth
14 Circuit Solicitor's Office are as follows: Scarlet
15 Wilson, the Solicitor. Bruce Durant, Deputy Solicitor.
16 Spencer Compton. Stephanie Linder. Rutledge Durant.
17 Greg Voigt. Michael Nelson. Chad Simpson.

18 Amy Harrell. Julie Cardillo. Jennifer Shealy.
19 Shannon Elliot. Timmy Finch. Marian Askins. Meg
20 Haley. Jim Stack. Michael Sahn. Tyler Whitaker.
21 Adam Young. Burns Wetmore. Debbie Herring-Lash.
22 Elizabeth Gordon. Jessica Baldwin. Lindsey McClain.
23 Jennifer McCoy. Emmanuel Ferguson. Lance Stoney.
24 Elizabeth Riddle.

25 MS. FORD: Hi, my name is Mary Ford, and I'm an

1 attorney with the public defender's office. And I'm
2 representing Phillip Shuler today. And also with us is
3 Jason King who is another attorney in my office.

4 And as far as the attorneys who work in my
5 office they are Ashley Pennington, who's the head
6 public defendant for the Ninth Circuit. Lori Proctor,
7 deputy public defender.

8 And then the assistant public defenders are
9 Benjamin Lewis. Andrew Grimes. Karen Barker. Cody
10 Groeber. Megan Ehrlich. Alicia Penn.

11 There is Martha Dicus. Rhett Dunaway. Rodney
12 Davis. Cassandra Winslow. Victoria Anderson. Beattie
13 Butler. Martha Kent Runey-Jenkinson. Michelle Suggs.
14 Reese Stidham. Cantrell Frayer. Ted Smith. And I
15 believe that's it.

16 THE COURT: Did you introduce your client to the
17 panel?

18 MS. FORD: Yes, Your Honor, I did.

19 THE COURT: Thank you, you may be seated.

20 Again, ladies and gentlemen, I'm going to ask a
21 series of questions. If any of the questions apply to
22 you, please stand and in a loud and clear voice give us
23 your name, your juror number, and an answer to the
24 question if applicable and remain standing until the
25 Court has completed questioning you.

1 Is there any member of the panel related by
2 blood or marriage to either Phillip Leon Shuler or
3 Lenore Lipsius, if so please stand at this time.

4 Does any member of the panel have a close
5 personal or social relationship with Phillip Leon
6 Shuler or Lenore Lipsius, if so please stand at this
7 time.

8 The following are a list of potential witnesses,
9 I would ask that you listen very carefully.

10 Lenore Lipsius. Doris Yarborough. Selena
11 Kinard. Patricia Crooks. Verona Gibson. Amy
12 Stephens. Nikki Perry. Sherre Brown. Paul Meeh.
13 Patrolman William Culnon. Patrolman Adam Campbell.
14 Patrolman Elliot Keenan. Patrolman Angela Peterson.

15 Patrolman Michael Botsiz. Patrolman Plyler.
16 Detective Paula Borgeson Wilson. Detective John Byrd.
17 Detective M.A. Willis. Officer Charles Arrowood.

18 Are they all with the City Police Department?

19 MS. CHISOLM: They are with Mount Pleasant
20 Police Department.

21 THE COURT: All with the Mount Pleasant Police
22 Department. And Sgt. Helms as well.

23 Crime Scene Investigator Angela Mitchell of the
24 North Charleston Police Department. Brian Bland.
25 Andrew Fischer. Wayne Myers. Investigator Ray Haupt.

1 And Clarence Magwood.

2 Is there any member of the panel related by
3 blood or marriage to any of the people that I have just
4 listed, or does anyone have a close personal or social
5 relationship with any of these individuals, if so
6 please stand at this time.

7 Yes, sir.

8 A JUROR: Number 14, Kevin Bean. John Byrd is a
9 personal friend and neighbor of mine. Detective John
10 Byrd.

11 THE COURT: As a result this relationship, do
12 you feel that you can remain fair and impartial, and
13 render a fair and impartial decision in this case?

14 A JUROR: Yes, Your Honor.

15 THE COURT: Thank you, sir, you may take your
16 seat.

17 Has any member of the panel ever been
18 represented by any of the attorneys involved in this
19 case or anyone in their offices, if so please stand at
20 this time.

21 Is there any member of the panel who is related
22 by blood or marriage to, or have a close personal or
23 social or business relationship with any of the
24 attorneys involved in this case or anyone with whom
25 they practice law, in their offices, if so please stand

1 at this time.

2 A JUROR: Your Honor, if I may. I don't know if
3 this would impact anything, but two of the partners in
4 the law firm that I work for practice criminal defense
5 on occasion.

6 I don't recognize any of the names, but I don't
7 know whether or not that would be pertinent.

8 THE COURT: All right. Tell me your name and
9 your juror number.

10 A JUROR: 376, Christine Williams.

11 THE COURT: What firm are you with?

12 A JUROR: Thurmond, Kirchner, Timbes and
13 Yelverton.

14 THE COURT: As a result this experience, do you
15 feel that you can remain fair and impartial, and render
16 a fair and impartial decision in this case based solely
17 on the evidence as it will be presented and on the law
18 as the Court will instruct?

19 A JUROR: Yes, Your Honor.

20 THE COURT: Thank you, ma'am, you may take your
21 seat.

22 Is there any member of the panel who is related
23 by blood or marriage to, or has a close personal or
24 social relationship to anyone who is employed either in
25 the public defender's office, or in the solicitor's

1 office, if so please stand at this time.

2 Has any member of the panel formed or expressed
3 an opinion about any issue or matter involved in this
4 case, if so please stand at this time.

5 Is there any member of the panel aware of any
6 bias or prejudice toward either the State of the
7 defense in this case, if so please stand at this time.

8 Is there any member of the panel who was a
9 member of the grand jury -- I'm sorry.

10 Yes, sir. Name and juror number.

11 A JUROR: John Hudson, juror 160. I'm a retired
12 Charleston City Police Officer. I can't say I'm
13 biased, but quite naturally I was in law enforcement
14 almost 30 years before I retired.

15 THE COURT: Are you telling me you cannot set
16 that aside and be fair and impartial?

17 A JUROR: I can be -- it depends on the -- yeah,
18 I can. I think I can.

19 THE COURT: Okay. I need to ask, there is no
20 right or wrong answer. I need you to search yourself
21 in your heart and only you can answer this question.
22 Again I emphasize there is no right or wrong answer, I
23 just need you to be as honest with me as you can.

24 You've indicated that you were employed in law
25 enforcement for 30 years. As a result of this

1 employment, do you feel that you can set aside any
2 opinions that you may have developed and be fair and
3 impartial, and render a fair and impartial decision in
4 any case that comes before the court based solely on
5 what you hear from the sworn witnesses and the law as
6 the court will instruct?

7 A JUROR: Yes, ma'am.

8 THE COURT: Thank you, sir, you may take your
9 seat.

10 Is there any member of the panel who's a member
11 of the grand jury which issued the indictment in this
12 case, if so please stand at this time.

13 Is there any member of the panel who is a member
14 of or contributor to any group which has as its primary
15 concern the promotion of law enforcement or victim's
16 rights. These groups would include, but are not
17 limited to, Mother's Against Drunk Driving, Student's
18 Against Drunk Driving, Citizens Against Violent Crime,
19 People Against Rape, Citizens Advocating a Return to
20 Decency and Ethics, Parents Empowered to Save Teens, or
21 any other like type community watch organization, if so
22 please stand at this time.

23 A JUROR: Gerald Galbraith, juror number 114.

24 THE COURT: Yes, sir.

25 A JUROR: I'm a security specialist with the

1 south Carolina State Guard as a law enforcement role,
2 but I have no bias.

3 THE COURT: As a result of your experiences, do
4 you feel you can remain fair and impartial, and render
5 a fair and impartial decision in this case based solely
6 on the evidence as it will be presented and on the law
7 as the Court will instruct?

8 A JUROR: Yes, ma'am.

9 THE COURT: Thank you, sir, you may take your
10 seat.

11 Is there any member of the panel who is a former
12 employee of law enforcement. For those who have
13 already disclosed that, you do not have to stand again.
14 If there is anyone who has not stood in response to
15 this question and you feel it applies to you, please
16 stand at this time.

17 Is there any member of the panel who has a
18 member of your immediate family employed by a law
19 enforcement agency, if so please stand at this time.

20 Yes, ma'am.

21 A JUROR: Willette Mazyck, 209. I'm employed
22 with the Charleston City Police Department.

23 THE COURT: In what capacity, ma'am?

24 A JUROR: North division.

25 THE COURT: As a result of this experience do

1 you feel that you can remain fair and impartial, and
2 render a fair and impartial decision in this case based
3 solely on the evidence as it will be presented and on
4 the law as the Court will instruct?

5 A JUROR: Yes.

6 THE COURT: Thank you, ma'am, you may take your
7 seat.

8 Is there any member of the panel who has been
9 the victim of a violent crime, if so please stand at
10 this time.

11 A JUROR: Your Honor, Andrew Tedesco, juror
12 number 322. Attempted armed robbery.

13 THE COURT: Sir, as a result of this experience
14 do you feel that you can remain fair and impartial, and
15 render a fair and impartial decision in this case based
16 solely on the evidence as it will be presented and on
17 the law as the Court will instruct?

18 A JUROR: Yes, Your Honor, I do.

19 THE COURT: Thank you, sir, you may take your
20 seat.

21 Yes, ma'am.

22 A JUROR: Margaret Miley, number 216.

23 THE COURT: Ma'am, as a result of your
24 experience do you feel that you can remain fair and
25 impartial, and render a fair and impartial decision in

1 this case based solely on the evidence as it will be
2 presented and on the law as the Court will instruct?

3 A JUROR: Yes.

4 THE COURT: Thank you, ma'am, you may take your
5 seat.

6 Is there any member of the panel who has had a
7 family member who has been the victim of a violent
8 crime, if so please stand at this time.

9 Yes, sir.

10 A JUROR: Gerald Galbraith, juror 114.
11 My widowed spouse was the victim of a violent crime.

12 THE COURT: Sir, as a result of this experience
13 do you feel that you can remain fair and impartial, and
14 render a fair and impartial decision in this case based
15 solely on the evidence as it will be presented and on
16 the law as the Court will instruct?

17 A JUROR: Yes, ma'am.

18 THE COURT: You may take your seat, sir, thank
19 you.

20 Is there any member of the panel who has read,
21 watched, or listened to any media reports about this
22 incident, that would include anything on radio,
23 television, newspaper or Internet, if so please stand
24 at this time.

25 Is there any member of the panel who has a

1 religious, philosophical or moral belief or mind-set or
2 religious opposition to sitting in judgment of a fellow
3 human being, if so please stand at this time.

4 Is there any member of the panel ever had what
5 you would characterize as an unpleasant experience with
6 law enforcement such that it would impair your ability
7 to be fair and impartial, if so please stand at this
8 time.

9 Does any member of the panel know of any reason
10 whatsoever why he or she should not serve as a juror in
11 this case, with particular emphasis being placed on
12 your ability to be fair and impartial to both the state
13 and the defense, if so please stand at this time.

14 Are there any additional questions from the
15 State?

16 MS. CHISOLM: No, Your Honor.

17 THE COURT: From the defense?

18 MS. FORD: No, Your Honor.

19 THE COURT: Strikes are ten and five.

20 Who's going to demonstrate for me?

21 Ladies and gentlemen, if your name is called,
22 please come forward with all of your person belongings,
23 just as Mr. Major has, and stand where he is standing,
24 turning back facing your fellow jurors until we have
25 either sat you as a juror or excused you as a juror.

1 Again, please bring all of your belongings. We
2 appreciate your patience.

3 Madam Clerk, you may proceed when you are ready.

4 THE CLERK: Juror 19, Anne Binz.

5 (Whereupon, a white female approaches.)

6 THE CLERK: What say you for the State?

7 MS. CHISOLM: Please excuse the juror.

8 THE CLERK: Please have a seat back in the
9 audience.

10 Juror Number 35, Cynthia Brown.

11 (Whereupon, a white female approaches.)

12 THE CLERK: What say you for the State?

13 MS. CHISOLM: Please seat this juror.

14 THE CLERK: What say you for the defendant?

15 MS. FORD: Please excuse this juror.

16 THE CLERK: Please have a seat back in the
17 audience.

18 Juror Number 70, Frances Cote.

19 (Whereupon, a white female approaches.)

20 THE CLERK: What say you for the State?

21 MS. CHISOLM: Please seat this juror.

22 THE CLERK: What say you for the defendant?

23 MS. FORD: Please excuse the juror.

24 THE CLERK: Please have a seat back in the
25 audience.

1 Juror 187, Travis Landrith.

2 (Whereupon, a white male approaches.)

3 THE CLERK: What say you for the State?

4 MS. CHISOLM: Please seat this juror.

5 THE CLERK: What say you for the defendant?

6 MS. FORD: Please seat this juror.

7 THE CLERK: Mr. Landrith, please have a seat in
8 the jury box.

9 Juror Number 73, Scott Crego.

10 (Whereupon, a white male approaches.)

11 THE CLERK: What say you for the State?

12 MS. CHISOLM: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MS. FORD: Please seat this juror.

15 THE CLERK: Mr. Crego, please have a seat in the
16 jury box.

17 Juror Number 77, Jeannetta Davis.

18 (Whereupon, a black female approaches.)

19 THE CLERK: What say you for the State?

20 MS. CHISOLM: Please seat this juror.

21 THE CLERK: What say you for the defendant?

22 MS. FORD: Please seat this juror.

23 THE CLERK: Ms. Davis, please have a seat in the
24 jury box.

25 Juror Number 269, Shineika Robinson.

1 (Whereupon, a black female approaches.)

2 THE CLERK: What say you for the State?

3 MS. CHISOLM: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MS. FORD: Please seat this juror.

6 THE CLERK: Ms. Robinson, please have a seat in
7 the jury box.

8 THE CLERK: Juror Number 365, Nancie Willett.

9 (Whereupon, a white female approaches.)

10 THE CLERK: What say you for the State?

11 MS. CHISOLM: Please seat this juror.

12 THE CLERK: What say you for the defendant?

13 MS. FORD: Please excuse the juror.

14 THE CLERK: Please have a seat back in the
15 audience.

16 Juror Number 257, Earthalee Reed.

17 (Whereupon, a black female approaches.)

18 THE CLERK: What say you for the State?

19 MS. CHISOLM: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MS. FORD: Please seat this juror.

22 THE CLERK: Ms. Reed, please have a seat in the
23 jury box.

24 Juror Number 147, Annice Henry.

25 (Whereupon, a black female approaches.)

1 THE CLERK: What say you for the state?

2 MS. CHISOLM: Please excuse the juror.

3 THE CLERK: Please have a seat back in the
4 audience.

5 Juror Number 352, Deborah Whaley.

6 (Whereupon, a black female approaches.)

7 THE CLERK: What say you for the state?

8 MS. CHISOLM: Court's indulgence.

9 Please sit this juror.

10 THE CLERK: What say you for the defendant?

11 MS. FORD: Please seat this juror.

12 THE CLERK: Ms. Whaley, please have a seat in
13 the jury box.

14 Juror Number 95, Michael Fedorenko.

15 (Whereupon, a white male approaches.)

16 THE CLERK: What say you for the state?

17 MS. CHISOLM: Please seat this juror.

18 THE CLERK: What say you for the defendant?

19 MS. FORD: Please seat this juror.

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

21 Juror Number 84, David Dipietro.

22 (Whereupon, a white male approaches.)

23 THE CLERK: What say you for the state?

24 MS. CHISOLM: Please seat this juror.

25 THE CLERK: What say you for the defendant?

1 MS. FORD: Please excuse the juror.

2 THE CLERK: Please have a seat back in the
3 audience.

4 Juror Number 216, Margret Miley.

5 (Whereupon, a white female approaches.)

6 THE CLERK: What say you for the State?

7 MS. CHISOLM: Beg the Court's indulgence.
8 please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MS. FORD: Please excuse the juror.

11 THE CLERK: Please have a seat back in the
12 audience.

13 That's five strikes for the defendant.

14 Juror Number 66, Alicia Commodore.

15 (Whereupon, a black female approaches.)

16 THE CLERK: What say you for the State?

17 MS. CHISOLM: Please excuse the juror.

18 THE CLERK: Ms. Commodore, please have a seat
19 back in the audience.

20 Juror Number 322, Andrew Tedesco.

21 (Whereupon, a white male approaches.)

22 THE CLERK: What say you for the State?

23 MS. CHISOLM: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MS. FORD: Please excuse the juror.

1 THE CLERK: Please have a seat back in the
2 audience.

3 Juror Number 344, Lori Ware.

4 (Whereupon, a white female approaches.)

5 THE CLERK: What say you for the State?

6 MS. CHISOLM: Please seat this juror.

7 THE CLERK: What say you for the defendant?

8 MS. FORD: Please seat this juror.

9 THE CLERK: Ms. Ware, please have a seat in the
10 jury box.

11 Juror Number 152, Robin Hill.

12 (Whereupon, a white female approaches.)

13 THE CLERK: What say you for the State?

14 MS. CHISOLM: Please seat this juror.

15 THE CLERK: What say you for the defendant?

16 MS. FORD: Please excuse the juror.

17 THE CLERK: Please have a seat back in the
18 audience.

19 Juror Number 324, Stephen Thomas.

20 (Whereupon, a white male approaches.)

21 THE CLERK: What say you for the State?

22 MS. CHISOLM: Please seat this juror.

23 THE CLERK: What say you for the defendant?

24 MS. FORD: Please seat this juror.

25 THE CLERK: Mr. Thomas, please have a seat in

1 the jury box.

2 Juror Number 6, Larry Allen.

3 (Whereupon, a black male approaches.)

4 THE CLERK: What say you for the State?

5 MS. CHISOLM: Please seat this juror.

6 THE CLERK: What say you for the defendant?

7 MS. FORD: Please seat this juror.

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

9 Juror Number 302, Paul Sparrow.

10 (Whereupon, a white male approaches.)

11 THE CLERK: What say you for the State?

12 MS. CHISOLM: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MS. FORD: Please seat this juror.

15 THE CLERK: Mr. Sparrow, please have a seat in
16 the jury box.

17 Juror Number 125, Linda Gilmore.

18 (Whereupon, a black female approaches.)

19 THE CLERK: What say you for the State?

20 MS. CHISOLM: Please seat this juror.

21 THE CLERK: What say you for the defendant?

22 MS. FORD: Please seat this juror.

23 THE CLERK: Ms. Gilmore, please have a seat in
24 the jury box.

25 THE COURT: Is one alternate sufficient from the

1 state?

2 MR. KIDD: That's fine, Your Honor.

3 THE COURT: From the defense?

4 MS. FORD: Yes, Your Honor.

5 THE COURT: Strikes are one and two. You may
6 proceed with the selection of the alternate.

7 THE CLERK: Juror Number 119, Eugene Gebhard.
8 (Whereupon, a white male approaches.)

9 THE CLERK: What say you for the State?

10 MS. CHISOLM: Please excuse the juror.

11 THE CLERK: Please have a seat back in the
12 audience.

13 Juror Number 34, Jared Broom.

14 (Whereupon, a white male approaches.)

15 THE CLERK: Any challenge from the State?

16 MS. CHISOLM: No.

17 THE CLERK: What say you for the defendant?

18 MS. FORD: Please seat this juror.

19 THE CLERK: Please have a seat in the jury box,
20 you have been selected as the alternate.

21 THE COURT: Are there any motions regarding the
22 selections of the jury from the State?

23 MS. CHISOLM: No, Your Honor.

24 THE COURT: From the defense?

25 MS. FORD: No, Your Honor.

1 THE COURT: To the balance of the panel, we
2 thank you for your time and your attention today. You
3 are excused. Please call the jury information line
4 after 6 o'clock this evening for further instructions.
5 Have a wonderful afternoon. You are excused with our
6 thanks.

7 (Whereupon, the prospective jurors exit the
8 courtroom.)

9 THE COURT: Counsel approach for me, please.
10 (Whereupon, the following discussion was held at
11 the bench.)

12 THE COURT: I think it's safe to say let them
13 go. I think by the time we finish motions it will be
14 4:30.

15 MR. KIDD: That's right.

16 THE COURT: I'm thinking it would not serve any
17 purpose to have them sitting.

18 (In open court.)

19 THE COURT: Ladies and gentlemen, you have been
20 selected for the case of the State of South Carolina
21 versus Phillip Leon Shuler. We have some pretrial
22 matters of law that we need to deal with prior to
23 beginning the trial of this case, so you will be
24 excused for the remainder of the afternoon.

25 I need all of you to return in the morning at

1 9:30. You will come directly to the jury room. please
2 do not call the jury information line because it will
3 confuse you. Because people do that sometimes and they
4 don't show back up and say, well, we called the jury
5 information line, and they don't come back.

6 So you do not have to call the jury information.
7 You know in advance that we will start the trial of
8 this case in the morning. And we anticipate what we
9 have to do will take us close to 5 o'clock and we don't
10 want you all sitting and waiting for us while we are
11 doing that, that's not good use of your time and would
12 probably only serve to frustrate you waiting on us.

13 Again you will return directly to the jury room
14 at 9:30. During the break please do not discuss the
15 case. Please do not speculate about what you think it
16 may or could be about. Please don't do any independent
17 research, that includes anything that could be on
18 radio, television, Internet, or otherwise.

19 And don't allow yourselves to be exposed to any
20 media coverage about the case from any media outlet.
21 Also please do not discuss your jury service on any
22 social networking sites, that includes My Space,
23 Facebook, Linked-In, I forget, there are so many of
24 them now I have lost track of them.

25 And I know it might seem innocent to mention

1 your jury service, but I will give you an anecdotal
2 story to show you how really significant this can
3 become, and how troublesome it can become for you and
4 for the Court.

5 I picked, a couple weeks ago I picked three
6 juries. I started one jury. While I was in the
7 process of completing that jury and beginning another
8 jury, a juror from my third jury called in to say that
9 someone at work had mentioned that they were high
10 school friends with somebody on my second jury who had
11 posted comments about their jury service on Facebook.

12 Which confirms to you that we are all only
13 divided by six degrees of separation. I know that was
14 hard to understand. But I had three juries. Somebody
15 on my third jury talked to somebody who was a high
16 school friend of somebody on my second jury who read on
17 Facebook that they had posted that they had jury duty
18 and put some details about the case.

19 See I mean completely unrelated but it all came
20 back full circle. So when that happened that required
21 me to do an individual voir dire of each of them to see
22 what may have been said, whether it was tainted. And
23 in addition to that, it puts you within the contempt
24 powers of the Court for which you could go to jail for
25 six months. And I don't want any of you all to have to

1 go through that.

2 So even an innocent comment could be so very,
3 very -- because somebody totally unrelated to this case
4 totally misinterpreted what was said. Because it was
5 something very innocent that was said. It really
6 wasn't intended to be an inappropriate comment about
7 the case.

8 But when you are dealing with things that are so
9 significant, it is best not to comment at all. I know
10 people post every bit of their lives online anymore,
11 but it is something that can be seen very innocent can
12 take on a whole 'nother meaning. So I would ask that
13 in an abundance of caution that you not mention you're
14 on jury service at all on Facebook or any other social
15 networking sites.

16 When you return to the courthouse in the
17 morning, please don't have any contact with anyone in
18 or about the courthouse. Even an innocent conversation
19 could be observed by somebody and misinterpreted. And
20 again, you will return directly to your jury room.

21 I hope that you all have a wonderful evening.
22 The bailiffs are going to show you how to come to the
23 jury room, and we'll see you in the morning at 930.

24 Have a good afternoon. We appreciate your
25 patience.

1 (Whereupon, the jurors exit the courtroom.)

2 THE COURT: You can take your seats.

3 Are you all ready to proceed with your pretrial
4 matters?

5 MS. CHISOLM: Yes, Your Honor.

6 THE COURT: As I understand it, the only thing
7 we are dealing with -- are we doing Jackson versus
8 Denno now?

9 MS. CHISOLM: No, Your Honor.

10 THE COURT: We are not, just the suppression. I
11 also need to disclose, out of an abundance of caution,
12 I apologize I did not do this early, and it's common
13 knowledge at this point, but I again do it out of an
14 abundance of caution, that me and Ms. Chisolm attend
15 the same church.

16 However, she is much younger than me. We do not
17 interact, we do not socialize. And so you know, my
18 church has anywhere from 1,100 to 1,400 members. I sit
19 on the very back row. And with my travel schedule of
20 late, I unfortunately have not been able to make church
21 very much.

22 Nevertheless, we are not on any committees
23 together or serve on any -- in other words, we really
24 don't interact at all. But I needed -- but I wanted
25 to, out of an overabundance of caution, disclose that

1 in the event that there was any exception to me hearing
2 the case, from the state?

3 MS. CHISOLM: No, Your Honor.

4 THE COURT: From the defense?

5 MS. FORD: No, Your Honor.

6 THE COURT: Okay. We ready to start with the
7 suppression?

8 MS. CHISOLM: Yes, Your Honor.

9 THE COURT: You can call your witness.

10 MS. CHISOLM: State calls Detective Adam Willis.

11 MR. ADAM WILLIS,

12 after having first been duly sworn to state the truth,
13 the whole truth and nothing but the truth, testified on
14 his oath as follows:

15 THE COURT: You may proposed.

16 MS. CHISOLM: Thank you, may it please the
17 Court.

18 DIRECT EXAMINATION

19 BY MS. CHISOLM:

20 Q What is your occupation?

21 A I'm a detective with the Mount Pleasant Police
22 Department.

23 Q And how long have you been employed there?

24 A Since January of 2005.

25 Q On March 30, 2009, were you employed by Mount

1 Pleasant Police Department?

2 A I was.

3 Q In your present capacity?

4 A Yes.

5 Q Were you involved in obtaining a search warrant
6 for skin tissue, hair tissue, blood, and any
7 information requested for a DNA comparison of items
8 used by the suspect for the crime, suspect being
9 Phillip Shuler, for the crime of armed robbery?

10 A Yes.

11 Q Could you also tell me -- Court's indulgence.

12 MS. CHISOLM: May I approach?

13 THE COURT: Yes.

14 (Whereupon, Court's Exhibit No. 1 is marked for
15 identification.)

16 Q (By Ms. Chisolm) I'm now showing you what has
17 been marked as Court's Exhibit 1.

18 Can you take a look at that, please. Do you
19 recognize what that is?

20 A Yes.

21 Q What is it?

22 A It's the copy of the search warrant that was
23 served on Mr. Shuler for DNA evidence.

24 Q Has it been edited at all?

25 A No, not that I know of.

1 Q Does it fairly and accurately represent the
2 search warrant that was executed by you?

3 A Yes. It was actually executed by Detective
4 Wilson, formerly Detective Borgeson at the time.

5 MS. CHISOLM: Court's indulgence.

6 THE COURT: Uh-hum.

7 Q (By Ms. Chisolm) Did you provide the
8 information in the warrant that stood out probable
9 cause in the probable cause section of the warrant?

10 A Yes, I prepared the search warrant and brought
11 it in front of Judge Sinclair.

12 Q And did you -- what did you describe as your
13 probable cause to issue the warrant?

14 A It was totality of the circumstances. There was
15 a robbery that occurred at 2115 hours, 9:15 on March
16 30th, 2009. The victim had originally described the
17 suspect as being a stocky black male.

18 Approximately two and a half hours later we
19 viewed -- were able to view the video surveillance. I
20 wasn't familiar with the system. The person that came
21 out didn't know how to use the system. Finally was
22 able to pull up the video and we observed that it was a
23 white male.

24 This was observed by myself and also PFC Plyler.
25 PFC Plyler was patrolling after he left me at the gas

1 station where he saw the video, got out with Mr.
2 Shuler, and he was developing a suspect from then on.

3 It should be noted that approximately -- it was
4 the actual time was 2207 according to PFC Campbell,
5 however information I had that night it was between
6 2118 hours and 2152 hours when PFC Campbell got out
7 with Mr. Shuler at first.

8 PFC Campbell got out with Mr. Shuler at Rose
9 Lane which is no more than .1, .2 miles away from the
10 actual incident location. Got out Mr. Shuler,
11 identified himself, said he was looking for a black
12 male and handed him a business card, told him if he saw
13 anything to give us a call.

14 Not too long after that, PFC Keenan also got out
15 with Mr. Shuler in the area of Church and River Street,
16 which is right near Hibben Street and Mount Pleasant
17 Presbyterian Church. And he also got out with Mr.
18 Shuler and Mr. Shuler presented him the business card
19 that he had been given by PFC Campbell, and PFC Keenan
20 continued patrolling looking for a black male.

21 It wasn't until after PFC Plyler saw the video,
22 passed that information onto PFC Keenan, they both got
23 out with Mr. Shuler, Mr. Shuler was brought back to the
24 station with me where I observed that Mr. Shuler was
25 not wearing any socks. PFC Plyler said that he had him

1 take his shoes off also on the scene, and there was a
2 preserve, there was some leaves and -- leaves and -- I
3 don't know the exact wording, but it's in the search
4 warrant.

5 Anyways, I believe it's in the search warrant.
6 But it talks about him not having any socks on. He was
7 also wearing a shirt that was inside out. We found a
8 shirt that was on the crime scene near a \$5 bill that
9 was matching the same description of that shirt, it was
10 just a different color. So same design, different
11 color.

12 Based on the totality of Mr. Shuler being in the
13 area during all that time right after the robbery, he
14 fit the build -- I looked at the video, it looks his
15 build, looks like him, looks like the shoes he was
16 wearing, looked like the pants, looks like the shirt
17 underneath the shirt that he had on. So based on all
18 that, we got an arrest warrant and a search warrant.

19 Q The suspect that you saw in the video, do you
20 remember the color shirt that individual had on?

21 A It was a -- do you mind if I refer to my
22 picture?

23 Q Yes.

24 A It was more of a -- this is the picture I
25 referred to the night of the incident. It was more of

1 a grayish, blue-green shirt. Underneath it is a -- you
2 can see there is a little bit of a blue shirt showing
3 underneath.

4 And then it looks like he has a whitish-gray
5 cutup shirt on top of his head. And some white socks
6 on his hands, covering his hands, with an item in his
7 right hand that looks like possibly the shape of a gun
8 underneath the sock.

9 Q Do you remember what color was the shirt that
10 the defendant was wearing when you executed the
11 warrant?

12 A In the interview room it was a blue shirt.

13 Q What was the importance of the defendant not
14 having socks on?

15 A It was the fact that he had been seen so quickly
16 near the scene after the robbery, and there was socks
17 that are on the defendant -- on the suspect's hands
18 during the robbery.

19 Q Did you all recover any socks?

20 A We did.

21 Q Do you remember what type of shoes the defendant
22 was wearing when you all arrested him?

23 A It was a combination of white, I believe blue,
24 dark blue. But I'm not positive on the blue, it could
25 have been black. But I think it was white and blue

1 mixture of color. But matched the same color as the
2 video showed. I just don't have an actual still-frame
3 of the shoes of when I viewed the video at the time.

4 Q And you said you did locate another shirt at the
5 scene?

6 A It was a shirt at the scene that looked to be a
7 similar color to the one that was in the video,
8 grayish, green whatever color shirt. It had a Pawleys
9 Island design on it. And we actually recovered that
10 right when we responded to the robbery scene.

11 It was a \$5 bill, and then nearby was the shirt.
12 we collected that shirt in case it became evidence or
13 potential evidence.

14 Q And after you met with the defendant, how did
15 that brown shirt influence your decision to --

16 A When I met with the defendant he was wearing a
17 blue shirt inside out. I asked him to turn the shirt
18 right side out. When he did, it was a Pawleys Island
19 design shirt.

20 It looked to be the exact same design I had seen
21 on the crime scene for the shirt that was on the ground
22 near the \$5 bill. So I immediately tried to understand
23 or tried to ask him about whether or not that was his
24 shirt to which he at first denied and then later on
25 said, well, it could have been his shirt.

1 Q And can you tell us the location of the robbery
2 that you are speaking of?

3 A 323 Coleman Boulevard I believe is the exact
4 crime scene.

5 Q Is that in Charleston County?

6 A Yes, it is. In Mount Pleasant, Charleston.

7 Q And the warrant that you did, where was the
8 defendant located?

9 A During the time I was doing the search warrant?

10 Q Uh-hum.

11 A He was actually -- when I was drafting the
12 search warrant he was in the interview room at Mount
13 Pleasant headquarters. I was waiting for Detective
14 Spantana to return back from buying his breakfast.

15 And he was going to be transported on a warrant
16 -- transported to the jail shortly thereafter. I had
17 to wait until approximately 9 o'clock in the morning to
18 sign the arrest warrant and the search warrant based on
19 the totality of the circumstances of the case at the
20 time.

21 Q Is this a sworn warrant?

22 A Yes.

23 Q Were the statements that you made in the
24 warrant, were the information that you placed in the
25 warrant truthful?

1 A At the time they were. Like I said there are
2 some typos in it. One of the things that I -- when I
3 talked to PFC Keenan that night about where he had
4 found -- where he had gotten out with Mr. Shuler and
5 then where he'd found the items, the items that were
6 related to the actual robbery -- the socks and the
7 shirt that we think went over his face and everything
8 -- those were found at Mount Pleasant Presbyterian
9 Church. I thought it was called Hibben United
10 Methodist Church. He said it was the church off of
11 Hibben Street, and that was my mistake, one that I did
12 not realize until far later.

13 Then like I said, the other thing was at the
14 time PFC Campbell had already gone home for that night,
15 for that shift, I could not get a hold of him early in
16 the morning the next day to try to ascertain when he
17 got out with Mr. Shuler.

18 But I was told by just dealing with dispatch and
19 everything that it was between 2118, 9:18 at night and
20 9:52 at night. Now when PFC Campbell, when I was able
21 to get a hold of him and he was able to do his own
22 research, he was able to clarify it was actually at
23 10:07 at the night is when he actually got out with
24 him.

25 Q Did you knowingly or intentionally make any

1 false statements?

2 A No.

3 Q Did you show any disregard for the truth?

4 A No.

5 Q Lastly, the reason why you wanted to -- the
6 reason why you executed the search warrant was because
7 what?

8 A Absolutely. Because we recovered the items so
9 close to where he had been gotten out with and so close
10 to the scene, it was to basically ascertain whether or
11 not it was his DNA on the items looking for evidence.

12 MS. CHISOLM: No further questions.

13 THE COURT: Any questions for the witness?

14 MS. FORD: Yes, Your Honor.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION

17 BY MS. FORD:

18 Q Detective Willis, how are you?

19 A I'm doing fine.

20 Q okay. When you talked to Mr. Shuler, this was
21 after 2:00 a.m.?

22 A I believe so. I can check my supplemental real
23 quick. But it was after PFC Plyler and PFC Keenan got
24 out with him at the gas station at 1402 Ben Sawyer.

25 Q Now that was about 1:30 when they met up with

1 him?

2 A Right.

3 Q So this was several hours after the robbery?

4 A Yes.

5 Q And up until that time you had been
6 investigating the armed robbery still?

7 A Yes. Actually at that point I had retrieved the
8 video surveillance of the robbery, and I was at the
9 station in the process of placing that in evidence,
10 jotting my additional notes from the crime scene and
11 looking at the evidence of the pictures and everything
12 when they called me about 1:30 in the morning and let
13 me know that they had gotten out with a subject they
14 believe to be the subject based on Plyler seeing him,
15 looking at the video and saying, this looks like him,
16 and also PFC Keenan saying, I got out with that guy not
17 too long after the robbery in the area.

18 Q And as part of your investigation you went to
19 the Scotchman after the robbery was reported and you
20 talked to the victim?

21 A Yes.

22 Q Ms. Lipsius?

23 A Yes. At the time of the robbery, I got there at
24 2119 hours, so about four minutes after it was
25 reported.

1 Q And you spoke with her and you got a statement
2 from her?

3 A Yes.

4 Q And she gave a description of the guy?

5 A Yes.

6 Q And she really couldn't see very much of the
7 man, could she?

8 A Well.

9 Q Or his face was covered? The robber's face was
10 covered?

11 A Yes.

12 Q And his arms were covered?

13 A Part of his arms were covered. According to
14 her, his arms were covered with socks, yes.

15 Q So she could just see part of his skin and she
16 thought he was a black man?

17 A I don't know that she said she saw part of his
18 skin or not. She told me it was a black man, but
19 that's the only part I can really remember. I'd have
20 to look at her statement to better.

21 Q That's fine.

22 A Sorry.

23 Q That's fine. So she gave a description of his
24 clothing though, right?

25 A I believe so, yeah. Specifically the shirt, I

1 think, she talked about the shirt was a brown in color
2 shirt.

3 Q Right. She said that he was wearing a brown
4 shirt with silver writing on it?

5 A Okay. I'm not sure, I will have to look at the
6 statement.

7 Q Do you have a copy of the statement?

8 A I do.

9 Q Why don't you take a look at that.

10 A Yeah. She said it was a medium brown shirt that
11 had silver writing that was faded.

12 Q Okay. And she also described a possible symbol
13 on it, correct? She said there might be like flames or
14 something on it?

15 A I will have to look, hang on a second.

16 Counsel, do know what page that says that? I'm
17 not disagreeing with you, I'm just trying to find it.

18 Q Sure.

19 A Okay, here it is on Page 4. Says, it was
20 definitely faded. The t-shirt looked to be medium
21 brown with silver type writing. It looked like silver
22 writing with maybe symbols. It was designed with stuff
23 going everywhere. It was some sort of a design like
24 flames.

25 Q okay. And she never mentioned a fish or

1 anything on the shirt, correct?

2 A No. But she also said he was a black male and
3 had twists.

4 Q Right. And the police, you all found a Pawleys
5 Island t-shirt outside, correct?

6 A Yes.

7 Q And this shirt is sort of a grayish, brownish --
8 a brownish grayish type of color, isn't it?

9 A Yes. The best I can describe, yes.

10 Q And it's got a Pawleys Island shirt, correct?

11 A Uh-hum.

12 Q And it's got a big fish on the back?

13 A I'd have to go off memory. I cannot tell you
14 the exact design, but I know it said Pawleys Island. I
15 cannot remember the exact design, I'm sorry.

16 Q It had designs on it, you remember?

17 A I do, yes. Some kind of a print.

18 Q Did you ever have Ms. Lipsius identify the shirt
19 as being the shirt worn by the robber?

20 A I did not.

21 Q So outside when you all picked it up, you all
22 just assumed it may have been the shirt?

23 A No, we just secured it for potential evidence.
24 like I said, at the time we didn't know. And things
25 were I guess disconcerting once we looked at the video

1 and saw it was a white male.

2 Because that was drastically not what was given
3 to us in the first place. So, no, she was not shown
4 the shirt at that time.

5 Q So when you found, or whoever found the Pawleys
6 Island shirt, you all had no clue if that was actually
7 used in the robbery?

8 A No. Everything we secured on the scene was just
9 potential. I mean there was a \$5 bill we assume was
10 from the robbery, and then also the shirt was nearby,
11 so.

12 Q And you were able to watch the video of the
13 robbery yourself, correct?

14 A I eventually was able to do that about 10 till
15 midnight I think. Then about 12:30 I probably got it
16 off the video and that's when Plyler was with me.

17 Q And that was before you met with Mr. Shuler?

18 A Yes.

19 Q So by the time you met with him, you got to see
20 the video yourself of the robber and what he was
21 wearing?

22 A Yes.

23 Q And when you -- and you saw a brownish shirt in
24 the video?

25 A I did.

1 Q And from the video isn't it that there's a face
2 covering, so it's hard to see what's on the front of
3 the shirt, correct?

4 A Right. I don't think there is actually any kind
5 of design on the front. But in the back of my head I
6 was thinking that the shirt was inside out, just like
7 the one he was wearing there, if that was the shirt.

8 But the picture I have and everything, like I
9 said, the picture I have is not the best. Yeah, you're
10 right, it looks like it's covering whatever would be
11 the design.

12 Q Right. And in video, when you are watching the
13 robbery, you can see him leaving the store too?

14 A Yes.

15 Q And there is no design on the back of the shirt
16 that the robber was wearing?

17 A I don't know, I don't have the picture of it
18 here to actually say recalling that. I'm sorry.

19 Q But you don't recall seeing a big fish on the
20 back of the shirt or anything like that?

21 A I don't.

22 Q So when you watched that video, do you come to
23 the conclusion that that was the Pawleys Island shirt
24 found outside?

25 A Did I came to the conclusion?

1 Q Yes.

2 A No. I mean it was a possibility, but I wasn't
3 able to say 100 percent that that was the shirt.

4 Q The Pawleys Island shirt was actually much
5 lighter than the shirt in the video, isn't it?

6 A Now I'm just crossing hairs on that one, I
7 couldn't tell you on that. I mean it looks to be the
8 same kind of shade to me. This is a picture of the
9 shirt. I mean I couldn't say for sure that's not a
10 different shade or whatever.

11 Q Do you have a picture of the Pawleys Island
12 shirt up there?

13 A Yeah, I have got a picture of it that was taken
14 before it was secured.

15 MS. FORD: May I approach?

16 THE COURT: You may.

17 Q (By Ms. Ford) So from this shirt, this picture
18 -- it will be marked.

19 (Whereupon, Court's Exhibit No. 2 is marked for
20 identification.)

21 Q (By Ms. Ford) I'm showing you what has been
22 marked as Court's Exhibit No. 2.

23 And that shirt, it looks almost like a grayish
24 bluish it could be, couldn't it? Wouldn't you say?

25 A I mean it's a weird color. I don't know what to

1 tell you what color it is or anything. To me they look
2 almost the same. I mean I'm not color blind, but they
3 look pretty close.

4 So I'm not saying that's the shirt or not, or it
5 is the shirt, but I don't know.

6 Q Okay. Can I see that picture, please?

7 A Okay. For the purpose of the search warrant,
8 though, it wasn't to compare to this shirt. It was
9 more to compare the items that were recovered from
10 Mount Pleasant Presbyterian.

11 Q Okay. I want that picture there.

12 MS. FORD: I'll have this marked as Court's
13 Exhibit 2 (sic), please, if I may.

14 THE COURT: Any objection?

15 MS. CHISOLM: No, Your Honor.

16 THE COURT: Court's exhibit without objection.

17 (Whereupon, Court's Exhibit No. 3 is marked for
18 identification.)

19 Q (By Ms. Ford) This is Court's Exhibit No. 3.

20 In that shirt you don't think that looks sort of
21 like an olive green? olive greenish, brownish?

22 A I mean it doesn't look exactly, but I mean we
23 are talking about a picture of a video camera of a
24 camera that's taking a person. And a picture of
25 directly an item.

1 So, I mean, yeah, it's got kind of a drab green
2 kind of look to it I guess.

3 Q Okay. And now in this picture of the Pawleys
4 Island shirt, Court's Exhibit No. 2, it's inside out
5 but an officer is holding it up and you can see a
6 yellow -- basically a Pawleys Island print that's
7 pretty recognizable, correct?

8 A I can see the print, I don't know if it's
9 recognizable. I mean I saw Pawleys Island. It looked
10 recognizable that night when he flipped his shirt.

11 Q It's yellow?

12 A Yes.

13 Q And you can clear see Pawleys Island written on
14 it from that picture?

15 A Yes.

16 Q So you are saying that you had no clue if the
17 Pawleys Island t-shirt was the shirt used in the
18 robbery, it was found at the scene?

19 A Right.

20 Q So that's why it was important to you?

21 A Right. At the time it was found near the \$5
22 bill.

23 Q And you all collected other things at the scene
24 too, correct?

25 A I believe we tried to collect fingerprints.

1 Q You collected cigarette butts?

2 A I believe so.

3 Q And soda cans?

4 A I don't know.

5 Q Outside?

6 A I don't know what soda can. I think the
7 cigarette butt I recall, but I'm not too sure about the
8 soda can.

9 Q No one had any clue if they were the robber's
10 property, you all collected it because it was there?

11 A Right.

12 Q Going back to the description of the robber.
13 The victim said that he had a brown shirt with the
14 silver writing and the symbol?

15 A Okay.

16 Q But she also said that he had gray jeans on?

17 A What is that?

18 Q Gray jeans? Page one.

19 A Yeah, gray jeans. She said grayish jeans, and
20 then she crossed that out and said gray.

21 Q And the pants from the picture of the robbery,
22 the video, the robber is wearing dark pants; isn't that
23 fair to say?

24 A Yes.

25 Q And Ms. Lipsius, she didn't mention a blue

1 shirt, correct?

2 A No.

3 Q She said that she thought the pants were hanging
4 down and she could see shorts hanging out, correct?

5 It's on the first page right after the gray
6 jeans part.

7 A Okay. said that they were hanging down with his
8 shorts showing underneath. Okay, yes.

9 Q So she didn't mentioned blue or anything like
10 that?

11 A Uh-uh.

12 Q But when you watched the video you were able to
13 say that you thought the robber was wearing a blue
14 t-shirt under the brown shirt?

15 A Uh-hum.

16 Q So when Mr. Shuler was actually arrested, he was
17 wearing a blue t-shirt, correct?

18 A Yes.

19 Q And is it fair to say that blue is a common
20 color?

21 A Yes, my favorite color.

22 Q Yes. And he was wearing jeans, correct?

23 A Yes, ma'am.

24 Q His jeans were very light?

25 A I can't tell you right now, I mean I haven't

1 looked at the picture of him for a while, so. If you
2 want to show me a picture, that's fine.

3 MS. FORD: May I approach, Your Honor?

4 THE COURT: You may.

5 (Whereupon, Court's Exhibit No. 4 is marked for
6 identification.)

7 Q (By Ms. Ford) I'm handing you Court's Exhibit
8 4.

9 A Yeah, I would say a faded blue.

10 Q so they're very light jeans?

11 A They're faded blue. Yeah, lighter in areas.

12 Q okay. And he is also wearing a hat in this
13 picture, correct?

14 A Yes.

15 Q A white hat.

16 A Is that a white hat or a gray hat?

17 That looks like a dirty white.

18 Q okay. So when Mr. Shuler is arrested he's
19 wearing light pants, a blue t-shirt, a white hat and
20 white tennis shoes, correct?

21 A Uh-hum.

22 Q The robber was wearing a dark shirt, with
23 possibly a blue shirt underneath it, dark pants and
24 white tennis shoes correct?

25 A Uh-hum.

1 Q The reason -- is it fair to say when you saw
2 that Mr. Shuler was wearing a Pawleys Island t-shirt,
3 that's when he became your main suspect?

4 A No. I think that the first thing that was
5 brought to my attention was the fact that he wasn't
6 wearing socks, and that he had leaves and stuff in his
7 shoes and everything. And then he fit the actual
8 build.

9 It wasn't until he flipped his shirt that I even
10 thought about the Pawleys Island shirt. So I don't
11 think that would be fair to say. I interviewed him
12 based on the fact that PFC Plyler had viewed the video
13 and PFC Keenan had seen him in the area, and that's
14 what made him a very good suspect.

15 Q You mentioned in your search warrant affidavit.

16 A I did.

17 Q That he was wearing this shirt, the Pawleys
18 Island shirt, and it matched the shirt found at the
19 scene?

20 A Yes. It was an item recovered from the scene.

21 Q And do you have a copy of your affidavit for the
22 search warrant?

23 A I do.

24 Q And perhaps it's just the way it's written, but
25 the search warrant says: Once the t-shirt was turned

1 right-side out, it was learned that the shirt matched
2 the description of a brown shirt discarded at the
3 scene. Phillip Shuler was developed as a suspect.

4 Is that correct?

5 A All right, well it says Phillip Shuler was
6 developed as a suspect based on all the stuff above it.

7 Q Right.

8 A So there was other stuff that was -- let me see
9 here. At approximately 12:30 Detective Willis, PFC
10 Plyler viewed the video surveillance, he had white
11 socks on his hands, and his right sock had the item
12 shaped like a gun.

13 Was wearing a t-shirt with holes cut out of his
14 eyes. And it was determined -- was not wearing socks
15 and his clothing matching the suspect's.

16 So I mean it was part of it, yeah, it was part
17 of it. The fact that his shirt, ironically, Pawleys
18 Island is a good 60 miles up. That same design shirt
19 was found at the crime scene that he was wearing, same
20 design.

21 Q But in the affidavit you don't say that it's
22 unsure if the Pawleys Island t-shirt found at the crime
23 scene was the shirt worn by the robber. You don't say
24 that, do you? You just say it was found at the crime
25 scene?

1 A I'm just stating the facts.

2 Q Right, I understand. You don't say that it's
3 not the shirt or we don't know if it's the shirt?

4 A Right, no, I don't. I don't say that.

5 Q You just throw out there that you found a
6 Pawleys Island t-shirt?

7 A Yes.

8 Q And that then you say Mr. Shuler was wearing a
9 Pawleys Island t-shirt?

10 A Yes.

11 Q And directly after that you say that he was
12 developed as a suspect?

13 A Yes.

14 Q Also as far as the socks, in the video, I'm not
15 sure if you remember, but the robber is wearing white
16 shoes, correct, it looks like he is wearing white
17 tennis shoes?

18 A It looks like white shoes with I think a darker
19 trim around them or something like that.

20 Q You can't tell if the robber is wearing socks or
21 not, correct?

22 A No.

23 Q And in Charleston, South Carolina a lot of men
24 wear shoes without socks, correct?

25 A I don't. But I mean that's --

1 Q Have you ever seen men wear shoes without socks?

2 A Yes.

3 Q And he also told you, when you talked to Mr.
4 Shuler -- because he talked to you, correct? And told
5 you why he was in the area?

6 A Yes.

7 Q And he told you that he had a trash bag of
8 clothes with him?

9 A Yes.

10 Q And the police were able to recover that bag?

11 A Yes, different location.

12 Q So you found clothing which he had indicated
13 were his?

14 A Yes.

15 Q And in that bag it included socks?

16 A I don't know.

17 Q You don't remember?

18 A I don't remember if there was socks in the bag.
19 I don't think I went over the contents of the bag
20 because that was something that he freely offered us
21 and that we -- that was not -- the items that were
22 found at 5 o'clock in the morning were the ones that we
23 were interested in.

24 Q But you found -- that bag of clothes was found
25 before you got the search warrant for the DNA, correct?

1 A Yes, it was.

2 Q Mentioning briefly about the shoes, no one ever
3 said that the robber took off his shoes, did they?
4 That they saw the robber take off his shoes?

5 A No.

6 Q Or anything like that?

7 A No.

8 Q In the affidavit for the search warrant you said
9 that his description matched, correct?

10 A Yes.

11 Q But you didn't actually say how the description
12 matched, correct?

13 A I will have to look and see.

14 What part of it does it say that?

15 Q It didn't specifically say, I'm not going to
16 give the description.

17 A I think that's why I made this search warrant so
18 detailed is it was the totality of the circumstances.
19 And the DNA was something that we needed to have to
20 compare with the items that we located. He was found
21 in the area of the scene shortly after the robbery
22 happened.

23 Q All right. In the affidavit you say that the
24 robber was a heavier-set white male not a black male,
25 correct?

1 A Yes.

2 Q He was wearing a white t-shirt with holes cut
3 out for his eyes?

4 A Yes.

5 Q Now I know you do say that he was wearing a
6 t-shirt with holes cut out for his eyes, but you don't
7 specifically say that the shirt was covering his head,
8 correct?

9 A In the affidavit?

10 Q Right.

11 A I don't think I do.

12 Q But you wrote the search warrant -- not the
13 search warrant, the arrest warrant affidavit?

14 A I wrote both, yes.

15 Q And in that warrant you actually specifically
16 say that the guy's face was covered?

17 A Okay.

18 Q He had a white t-shirt covering his head and
19 face --

20 A With holes cut out for eyes. Yes.

21 Q So you specifically say that in the arrest
22 warrant, but in the search warrant affidavit you do
23 not, correct?

24 A Yes, I guess so.

25 Q So then you say: The officers met up with

1 Phillip Shuler at the kangaroo located at 1442 Ben
2 Sawyer Boulevard because he had matching appearance to
3 the subject in the video, correct?

4 A Yes. PFC Plyler called me and said that this
5 guy looks just like the one he saw in the video.

6 Q But you don't actually say because of his build,
7 correct?

8 A I don't use the word build in the actual --
9 those lines you gave me, no.

10 Q And again the clothing he was wearing when he
11 was arrested they were light blue jeans, correct?

12 A Faded blue jeans, yes.

13 Q Not darker pants like the robber seemed to be
14 wearing in the video?

15 A Right. But like as I said before, you are
16 talking about a picture of a camera of a screen taken
17 from another camera. That's a lot of interpretation
18 there.

19 So dark, light, I mean I don't know if that's
20 going to be something that we should -- the video is
21 the video.

22 Q So are you saying that the light blue jeans that
23 Phillip Shuler, those jeans that he was wearing, those
24 are possibly the same pants that the robber was
25 wearing? You are saying that someone could come to

1 that conclusion?

2 A Until I see the video, I haven't seen the video
3 in a while. But the pictures taken show them being
4 dark. It does not look to be the same kind of jeans
5 here, but I'm not going to try to make an opinion off
6 of a picture of a picture of a video.

7 Q But ultimately, even though it's not specified,
8 he matched in his build?

9 A Right.

10 Q And he was wearing a blue t-shirt, which you
11 believe the robber was wearing a blue t-shirt under the
12 brown shirt?

13 A Yes.

14 Q And white tennis shoes?

15 A Yes.

16 Q So that's how he fit the description?

17 A Right, correct.

18 Q Let's go to the time.

19 A Okay.

20 Q So you told us how originally you thought that
21 the officers, or the initial officer Campbell I believe
22 was the first one who met up with Mr. Shuler, but it
23 was much earlier than it actually was?

24 A Yes. I was inside of a window of 9:18 to 9:52.
25 And it should have been 9:18 to 10:07.

1 Q How do you come up with a window that far apart?
2 Because that's a pretty significant window there.

3 A Okay. Well the best I can tell you is that PFC
4 Keenan told me he had gotten out with him. But I don't
5 know if it was documented, or he got out with him and
6 -- because he is not a black male, so they were looking
7 for a black male. So I don't know when that time was.

8 But PFC Keenan had told me that he had been the
9 second one to get out with him. So when I talked to
10 dispatch communications, they were trying to tell me
11 when PFC Campbell would have gotten out with Mr. Shuler
12 the first time. And that was the best window they
13 could give me. They said sometime between this and
14 that.

15 Like I said, I did try to call PFC Campbell that
16 morning at 6:35 in the morning, and I did not get a
17 hold of him at all. It wasn't until later, until I had
18 actually gotten home I believe around noon or something
19 like that, that I was actually able to get a hold of
20 him.

21 And he still wasn't even able to tell me at that
22 point. He said he had to go back to the station to
23 look at his notes and deal with dispatch to figure out
24 when it was. And he determined it was 10:07 the next
25 day, after the search warrant.

1 Q Were those just the times that dispatch shows he
2 was in the area, and that's how they came up with the
3 time?

4 A I'm assuming, yes. That's what I'm assuming.

5 Q So even based on those times it could have been
6 as late as 9:52, which is more than half an hour after
7 the robbery?

8 A Yes.

9 Q Now I want to go into the area a little bit.
10 This robbery was at the Scotchman gas station and
11 convenience store?

12 A Uh-hum.

13 Q It's located on Coleman Boulevard, correct?

14 A Correct. The forks right there are Whilden and
15 Coleman. The next street up is Hibben.

16 Q Okay. And before you get to that fork, that's
17 where you go to the bridge for Shem Creek, right?

18 A If you were coming from the Ravenel Bridge, you
19 would go over the Shem Creek Bridge, then go through a
20 traffic light, and then the next fork is where Whilden
21 continues on straight, Coleman bears to the left.

22 Q Okay. So at the fork of the road if you go to
23 the right that's where Whilden is?

24 A Yes.

25 Q And back there is where the old Village is,

1 correct?

2 A Correct.

3 Q And there is a lot of homes back there?

4 A Yes.

5 Q There is a pharmacy back there?

6 A Well that's further on, Long Point Pharm -- Pitt
7 Street Pharmacy is further on, yes.

8 Q But it's back there in that area down that
9 street?

10 A Yes. If you go down Whilden and take a
11 righthand turn onto Hibben, and a left onto Church and
12 go down about .3 miles or so, it will run into Pitt
13 Street Pharmacy.

14 Q And there's a restaurant back there too around
15 where the pharmacy is, and a post office I believe?

16 A Yes.

17 Q And a little store?

18 A Uh-hum.

19 Q And the docks are over in the general area?

20 A The docks are to the right, yes.

21 Q Then if you are at the fork and go to the left
22 and you continue on coleman, there are a lot of
23 shopping centers, correct?

24 A Yes.

25 Q And bars?

1 A Art's, uh-hum.

2 Q Art's Bar. And right before you get to the fork
3 that's Shem Creek and there is lots of bars over there,
4 bars and restaurants, correct?

5 A Yes.

6 Q Red's is one?

7 A Uh-hum.

8 Q And that's a very popular bar, correct?

9 A Yes.

10 Q And this is 9:15 at night when the robbery
11 occurred?

12 A Yes.

13 Q So it's not a secluded area, correct?

14 A No.

15 Q Is that fair to say?

16 A Yes.

17 Q As far as the DNA, some people indicated that
18 the robber actually looked calm. Do you remember if
19 that's you, or it could have been Plyler, when you
20 watched the video?

21 Basically what I'm getting at, there is no
22 indication, no one said that the robber seemed to be
23 sweating, correct?

24 A On the video? You wouldn't be able to tell.

25 Q I know. But I'm just saying no one said, oh,

1 he was sweating profusely or anything like that?

2 A No.

3 Q And no one said that the robber cut himself and
4 was bleeding or anything like that?

5 A No.

6 Q So when you got the search warrant, you are not
7 a scientist, correct?

8 A I'm not.

9 Q And someone, you said that someone informed you
10 that it might be there. The DNA might be there, be
11 present?

12 A Anytime we recover articles of clothing,
13 something that touches a body, a person, there is
14 always a chance for either touch DNA, whatever kind of
15 DNA. I'm not a scientist, you're right, so I don't
16 know the official term.

17 But whenever we recover the items related to the
18 crime, we try to have that analyzed through DNA, yes.

19 Q But you just mentioned that someone informed
20 you, I guess meaning that somewhere along the lines you
21 learned that this might be true?

22 A Yes. I just had a homicide last year where we
23 got touch DNA off a charging cable.

24 Q So you said you were informed, this wasn't
25 actually a particular person who informed you like a

1 scientist who works for the police, it was just this is
2 your general knowledge?

3 A I would say it's through my experiences in
4 investigations and dealing with the crime scene and the
5 State Law Enforcement Division that I have learned
6 this.

7 I have been to a couple classes on what items
8 you can get DNA from, and a lot of times it's clothing
9 articles is the best type of stuff to get DNA from.

10 Q Right. But you didn't note in the affidavit
11 that you thought that there might be DNA from your
12 training and experience, correct?

13 A I don't have any training and experience in DNA.
14 I just know that we are supposed to collect it in a
15 secure manner that's, you know, don't touch it, get it
16 in a bag, seal it up, don't open it up, that type
17 stuff.

18 Q I mean like the classes you said you took.

19 A Just awareness, they're awareness classes of
20 what they can get DNA, what kind of DNA they can get
21 and stuff like that.

22 Q Is it fair to say, would you be able to say that
23 someone can't destroy their own DNA unless maybe
24 they're dead, can't be found, correct?

25 Meaning like as long as you can locate Mr.

1 shuler, you are always going to be able to get his DNA.
2 Is that fair to say?

3 A Yeah, I could always get his DNA off of him,
4 yes.

5 Q Right. He can't change his DNA as far as you
6 know?

7 A Correct.

8 MS. FORD: Beg the Court's indulgence.

9 THE COURT: Uh-hum.

10 MS. FORD: No further questions, Your Honor.

11 THE COURT: Any questions on redirect?

12 MS. CHISOLM: No, Your Honor.

13 THE COURT: Does the State have any further
14 witnesses?

15 MS. CHISOLM: No, Your Honor.

16 THE COURT: Does the defense have any witnesses?

17 MS. FORD: No, Your Honor.

18 THE COURT: Glad to hear argument.

19 MS. CHISOLM: Your Honor, the State's position
20 is that the search warrant was valid, it was not
21 defective, that there was probable cause to issue the
22 search warrant based on the fact that the officer had
23 arrived at the scene and gotten a description from the
24 victim in the case, and watched the video himself and
25 seen the defendant's clothing.

1 Having been able to -- by the time the search
2 warrant was drafted, had been able to talk to other
3 officers who had also seen the defendant in the area
4 close to the time of the robbery.

5 The defendant did not have on socks. The
6 defendant's feet were -- the shoes had leaves in it
7 which was similar to all the leaves on the ground near
8 the Scotchman. The warrant was not issued solely based
9 on the fact that there was a brown shirt found on the
10 -- in the parking lot, but based the fact that they
11 found other items.

12 They found another gray shirt. They found
13 socks. They found other items that actually didn't
14 have value later on, but were in the vicinity.

15 The officer testified that the information, the
16 only information that he got wrong was the name of the
17 church. There is no indication that he deliberately
18 falsified any of the statements in the warrant, that he
19 had any reckless disregard for the truth. And the
20 defense hasn't offered any statements that were in
21 there that were a lie, or that were untruthful.

22 So based on those reasons, I believe that he did
23 establish probable cause and that the judge issued the
24 warrant properly.

25 THE COURT: Any argument from the defense?

1 MS. FORD: Thank you, Your Honor, may it please
2 the Court.

3 I did turn in a written motion on this as well,
4 basically just going into some of the main points that
5 I felt were at issue.

6 I don't think that Detective Willis deliberately
7 set out to lie or anything like that, Your Honor,
8 that's not what we are trying to claim here today. But
9 I do think a lot of the information is misleading, and
10 I think that was made recklessly.

11 When you read the search warrant you get a
12 completely different picture than what he even
13 testified to, Your Honor. I think he would come to
14 conclusions that he even said, well, I don't know if
15 that's the case.

16 For example I think the Pawleys Island shirt is
17 very significant. If you are reading the affidavit, I
18 think the person, the magistrate would come to the
19 conclusion that the Pawleys Island t-shirt was used in
20 the robbery. And since he was wearing a Pawleys Island
21 t-shirt, then that's a big coincidence, like too big of
22 a coincidence to ignore.

23 However, he testified today that he had no idea
24 if that Pawleys Island t-shirt was even the shirt used
25 in the robbery. And we do look at some pictures, and

1 he is saying, well, you know, he can't remember
2 everything, and the video may distort the colors or
3 something.

4 But the Pawleys Island shirt is much lighter
5 than the shirt portrayed in the video. Plus there is
6 no symbol, Pawleys Island symbol, no yellow, anything
7 like that. I think if a person were to look at the
8 video, which he did look at the video before he got the
9 warrant, and it's clear that the Pawleys Island shirt
10 was not used in the robbery.

11 In addition, he was at the scene with the
12 victim, the person who saw the t-shirt, and he did not
13 even bother to take the Pawleys Island t-shirt to her.
14 And I understand why they would have collected anything
15 at the scene just in case, like they did the cigarette
16 butts, things like that.

17 However, he collected it and then that was a
18 major part of why Mr. Shuler was charged. If you are
19 reading the affidavit it says he became our suspect
20 right after --

21 THE COURT: Why would he have shown that to a
22 witness? Because then you would be arguing that they
23 tainted any identification of it by showing it to her
24 because it was the only shirt that was found in the
25 vicinity.

1 I'm trying to figure out why would an alleged
2 victim be involved in the evidentiary collection
3 process? I don't know.

4 MS. FORD: Well, Your Honor, because she saw
5 what the robber was wearing. She described the shirt
6 in great detail.

7 THE COURT: Why would he go show it to her?
8 Because then if she testified at trial, you all then
9 would argue that they showed it to her before trial and
10 therefore it's tainted. Because we don't know whether
11 it's a valid ID of it because they showed it to her and
12 implied to her that it was the shirt that was found and
13 involved in the robbery.

14 I have never heard of evidence collection being
15 shown to alleged victims in cases. The purpose of the
16 evidentiary collection process is to collect and
17 preserve what is found and then test it. Or to use it
18 later on in the identification process.

19 I have never known victims, or others involved
20 who say they're the victims of crime, be involved in
21 the evidence collection process.

22 MS. FORD: Well, Your Honor, I think it's
23 different when it's something that the person was
24 wearing. Because if someone is wearing, you know, a
25 very distinctive shirt, they would say, is this the

1 shirt.

2 If someone stole a bike or something, and they
3 found a guy riding a bike, they take the bike to the
4 victim and say, is this your bike.

5 THE COURT: That's different because that's what
6 was taken from the person. That's a part of the --
7 that's different. That's something that was stolen
8 from him.

9 But they wouldn't take money and ask, does this
10 money look familiar to you. I don't record serial
11 numbers from the money I have in my wallet. I would
12 not be able to tell you if the money was taken from me
13 or not. All I know is that the money was taken from
14 me.

15 And I don't know too many people that write down
16 serial numbers. So you wouldn't go to a victim and
17 say, is this the money that was taken out of your
18 pocketbook? Or is this the money that was taken? A
19 bicycle is a little different because that's something
20 that is very distinctive, it belongs to the victim,
21 that's what they alleged to be the corpus of the crime.

22 But things that go to identify somebody, that's
23 totally different. I don't know what else, people's
24 watches, jewelry, distinctive things like that people
25 identify because it's an item that was stolen from

1 them.

2 But somebody's clothing. Anyway, you can
3 continue your argument. I just never heard of it done,
4 nor would I think it probably would be proper because I
5 think you would be arguing the exact opposite thing if
6 they had done that.

7 MS. FORD: Well, I think it would have been
8 completely reasonable for an officer to do that. I do
9 believe that it's clear from the video that the shirt
10 is not the shirt used in the robbery. Another shirt
11 was actually recovered later on that appears to be the
12 shirt that was used in the robbery.

13 I don't think the State would even dispute that,
14 Your Honor. Nevertheless, the detective testified
15 today that he had no clue if that was involved in the
16 robbery when they first collected it, even at the time
17 he got the search warrant he had no clue.

18 But I think by reading the affidavit it's very
19 misleading and suggesting --

20 THE COURT: Did anybody admit the actual
21 affidavit? I don't want an excerpt. I want to see the
22 actual affidavit.

23 MS. FORD: I included it as part of my motion,
24 Your Honor.

25 MR. KIDD: It's a Court exhibit also, Your

1 Honor.

2 THE COURT: Okay. But in your memo what you did
3 was you excerpted it out. There is not a copy of the
4 warrant attached to your memo.

5 MS. FORD: If I did, I must have given you one
6 where the warrant wasn't attached, but I have one.

7 THE COURT: It's in evidence. I will read it in
8 a moment.

9 MS. FORD: Thank you, Your Honor.

10 But that's one reason. Another reason is the
11 warrant seems to say that he matched the description,
12 but it doesn't go into detail. In comparison, if the
13 robber is a skinny black man and they find a skinny
14 black man walking down the street and they say he met
15 the description, he's a skinny black man, and we'll
16 even go further, wearing white shirt and black pants,
17 that wouldn't necessarily be enough for just a skinny
18 black man.

19 In this case, he is a heavy-set man. But that's
20 not necessarily even specified in the affidavit. And I
21 think that's important. And I think the affidavit is
22 misleading in that it's not clear that the robber's
23 face was covered. So someone reading it they might
24 think, oh, they have a video and he matches the
25 description, it must be the same person. So I just

1 think that that's not clear.

2 As far as the timing, Your Honor, the reason
3 that's important is that I don't think that even meets
4 probable cause. They say that he was in the area
5 possibly shortly after, possibly up to half an hour or
6 so later. Ultimately they find out it was even later
7 than that.

8 But this is a populated area. That's why I
9 asked the questions about all the bars in the area, all
10 the neighborhood. So it was only 9:15 at night. It
11 wasn't a time of night where everybody is sleeping in
12 their beds. So a lot of people were out and about,
13 Your Honor.

14 Him being merely in the area 30 minutes plus in
15 the future, I don't think that's enough for probable
16 cause. So just everything together, I think probable
17 cause is really weak, Your Honor. And the things that
18 are in there that seem to point to probable cause I
19 think are very misleading and I think that was made
20 recklessly.

21 So based on that, that's why we would ask for a
22 suppression, Your Honor. Him wearing white tennis
23 shoes, big deal. The victim didn't even describe the
24 blue shirt. He said that he saw the blue shirt under
25 the shirt. Besides being big, he was wearing much

1 lighter pants than the robber. So the description did
2 -- and that was left out, Your Honor.

3 And I put those pictures, made those Court's
4 exhibits. His pants were very light, the ones he was
5 wearing. The robber, his pants were dark. I don't see
6 how that can even be stated, Your Honor.

7 So I just think a lot of that was left out. And
8 I just think that it's weak, the probable cause is
9 really weak and those misleading things do make a huge
10 difference in this case.

11 THE COURT: Does that conclude your argument?

12 MS. FORD: Yes, Your Honor.

13 THE COURT: Anything further from the State?

14 MS. CHISOLM: Very briefly. Only that the
15 defence in the very beginning said, well, I don't think
16 that he intentionally made misstatements, or something
17 along those lines, perhaps not verbatim, and that's
18 what she has to prove. She has to at least allege that
19 there were statements that where in this document that
20 were false, and she has not done that.

21 The warrant that you will read in a moment, the
22 warrant does not say, well we collected this shirt
23 because we thought this was the shirt that the suspect
24 robbed the store in. It merely lists the shirt as
25 something that was at the location at the time.

1 Again, like I said, by the time the warrant was
2 drafted he had met with several different people. And
3 he wasn't trying to mislead anybody because he
4 corrected the description of the defendant. Yeah, she
5 said he was black. But he corrected it and said that
6 he was white.

7 I don't think that the defense has met the
8 requirements that they show that there was reckless
9 disregard for the truth, and that the officer made
10 statements that were misleading and false and should
11 cause the warrant to not be valid. It's not defective.

12 THE COURT: What were the results of the DNA
13 test?

14 MR. KIDD: Positive match.

15 THE COURT: What items matched?

16 MR. KIDD: There's a mixture on two of the
17 items. On the socks that were recovered, there's a
18 mixture which he cannot be excluded from. From the
19 shirt with the holes cut out that he was using as a
20 mask, there was also a positive match, 1 in 24
21 quintillion.

22 I apologize, Your Honor, the Pawleys Island
23 shirt was also tested and had a mixture that included
24 the defendant's DNA.

25 THE COURT: Okay.

1 The court finds the defendant has failed to meet
2 his burden of proof. In order to challenge the search
3 warrant under these circumstances, the court looks at
4 the totality of the circumstances test as to what is
5 required to be employed.

6 The duty of the reviewing court is to ensure the
7 issuing magistrate has a substantial basis upon which
8 to conclude probable cause existed. And again,
9 probable cause is established by the totality of the
10 circumstances test.

11 All that is required is a very low burden of
12 proof, which is by a preponderance of the evidence.
13 And then it is for a jury to determine whether the
14 state has met its burden, in this case to establish
15 identity beyond a reasonable doubt. But all that is
16 required is a mere probability that criminal activity
17 has taken place.

18 The court is required to test any search warrant
19 affidavit and interpret it in a common sense and
20 realistic fashion since those who draft them are
21 normally non-lawyers in the haste of a criminal
22 prosecution.

23 And the magistrate's determination of probable
24 cause is entitled to substantial deference by the
25 reviewing court. In doubtful cases where reasonable

1 minds can differ on the existence of probable cause,
2 the magistrate's decision to issue a warrant should be
3 upheld.

4 The issuing magistrate is simply required to
5 make a practical, common sense decision whether given
6 all the circumstances set forth in the affidavit before
7 him, including the veracity and basis of knowledge the
8 persons supplying hearsay information, that there is a
9 fair probability that evidence of a crime will be found
10 in a particular places.

11 And the Court is required confine that review to
12 the information that was actually submitted to the
13 issuing magistrate. And our courts have articulated
14 that the mere probability that a crime is being
15 committed, rather than a prima facie showing of
16 criminal activity, is sufficient to establish probable
17 cause.

18 The affidavit must set forth particular facts
19 and circumstances underlying the existence of probable
20 cause to allow the magistrate to make an independent
21 evaluation of the matter. And that is based on Franks
22 versus Delaware, Illinois versus Gates, and its South
23 Carolina precedents mirroring the same concepts.

24 Of course the affidavit must go beyond
25 conclusory statements which give the issuing authority

1 no basis to determine probable cause. And there is no
2 indication that there was any supplementation of the
3 affidavit in this case, so that is not applicable.

4 I find the testimony of the officer, that being
5 Detective Willis, to be credible. And I have read, I
6 took the time to read his affidavit, and I listened to
7 his testimony very intently.

8 He said the basis of the warrant was not the
9 description given by the witness in this case. But it
10 was based on the totality of the circumstances based on
11 what was found at the scene, as well as them -- I'm
12 referring to them meaning him and the other officers
13 actually watching the video.

14 And I may go in backwards order as to the
15 arguments, so you all bear with me. But the issues
16 that have been raised by defense counsel are really
17 issues of weight of the evidence which would be argued
18 to a jury. But certainly there is an indication that
19 there was another color t-shirt being worn under --
20 there was a blue t-shirt being worn under the t-shirt
21 of the person who committed the robbery. And that is
22 seen on the video, and that is pursuant to the
23 testimony of the officer.

24 That the purpose or scope of the search warrant
25 was not -- the focus of it was not the Pawleys Island

1 t-shirt, but all of the items that were found at the
2 scene, within close proximity and within the scene,
3 that being the parking lot of the incident.

4 And the things, and based on this affidavit that
5 was submitted, the focus of the search warrant, without
6 going through all of it because you all have read it,
7 they point out discrepancies between the victim's
8 description and indicate very clearly in this affidavit
9 that the focus of the search is not her description,
10 but what they watched on the video.

11 There has also been a lot of discussion or
12 argument from the defense about this long period of
13 time elapsing, but I did the math and there is only a
14 34-minute window that they indicate took place between
15 the times that the defendant was stooped in this case,
16 and only a 12-minute elapse of time in the last
17 incident that is referred to the last time they stopped
18 him.

19 So actually, that is not a large lapse of time
20 in terms of when you look at an investigation of an
21 armed robbery, or any other criminal offense, it
22 actually is a very short period of time in terms of
23 proximity when the event is alleged to have occurred.

24 There is an indication that what they actually
25 were seeking to compare was the white t-shirt that they

1 found with the holes cut out for the eyes. They had
2 recovered the socks, which are clearly visible in the
3 video.

4 And what is of most particular note to them was
5 the post-Miranda interview of the defendant where he
6 had debris in his shoes, it was consistent with -- it
7 was odd to them that he had no socks on -- I'm trying
8 to get the exact language without having to read this
9 whole thing into the record because it's already a part
10 of the record.

11 What really is the crux of the search warrant is
12 the initial description, which was although inaccurate,
13 they indicate that the focus was the video and the
14 similarity and the stocky appearance of the suspect.

15 In addition to that, they again correct the fact
16 that he was white, not black. Although to be honest
17 with you, in these pictures it would not be
18 unreasonable, especially in Charleston, to think of him
19 as a light skinned black male. That would not be
20 unusual based on this picture that I'm reviewing,
21 especially with the facial hair and his -- and that is
22 consistent with the body build that the victim gave the
23 description to the officers.

24 The other things that drew their attention for
25 comparison again was the white t-shirt with holes cut

1 out for the eyes, and the fact that they had had three
2 separate contacts with the suspect. That first being
3 giving him the business card and telling him who they
4 were looking for. And then shortly after seeing him in
5 the area of Hibben Street. And after watching the
6 video, the person who left fled in that direction.
7 Well fled in the direction of Whilden Street with that
8 being close proximity to where he was located.

9 The actual description or similarity to the
10 video, that being that he was a heavier-set white male,
11 not a black male. That he had -- and that during the
12 post-Miranada interview they noted that he was not
13 wearing socks or clothing matching the suspect's.

14 And that he further noted that he had a blue
15 t-shirt inside out. And once the t-shirt was turned
16 right-side out it was learned that the t-shirt matched
17 the design of the brown shirt discarded at the scene.
18 And at that point he was developed as a suspect. As
19 well as the stick that was found in the sock that was
20 used to assimilate a gun.

21 It was the cumulative effect of all those
22 factors, as well as watching the video, which seems to
23 be the real crux of the information as well as those
24 items that were found in close proximity, coupled with
25 the fact that he was missing his socks and had on a

1 similar shirt, that formed the totality of the
2 circumstances, the underlying factual basis of the
3 warrant.

4 Again only a mere probability is required, not a
5 prima facie case. On any discrepancies in the
6 description were put in the warrant, what is of
7 highlight is the fact that he matched the description
8 in the video; also the interview with no socks and
9 clothes matching that of those that were discarded; as
10 well as the video with him running toward the -- after
11 this event, running toward Whilden Street which is
12 where the first contact was -- where one of the
13 officer's first contact was with Mr. Shuler; as well as
14 the fact that they found the socks, the white t-shirt,
15 and the other items on Hibben near where, again, the
16 officers had another additional contact with the
17 suspect after the armed robbery.

18 So the totality of all those circumstances
19 certainly form an appropriate factual basis for the
20 magistrate to have made an independent decision for
21 determination regarding probable cause. And there was
22 a substantial basis upon which him or her to conclude
23 that probable cause existed. Therefore, the motion to
24 suppress is denied.

25 Do we have any other pretrial matters that we

1 need to cover prior to?

2 MS. CHISOLM: None from the State.

3 THE COURT: Anything further from the defense?

4 MS. FORD: No, Your Honor.

5 THE COURT: Okay. Do you all have anything you
6 need to pre-mark with the court reporter?

7 MR. KIDD: We have pre-marked the first exhibits
8 that we intend to put in through the first witness.

9 THE COURT: Is there anything else you all
10 agreed upon that would be easily marked?

11 Let the court reporter know if there is anything
12 else you can mark that you all have agreed upon, that
13 would be appreciated.

14 Is there anything else we need to discuss or go
15 over before we adjourn for the afternoon from the
16 State?

17 MR. KIDD: No, ma'am.

18 THE COURT: From the defense?

19 MS. FORD: No, ma'am.

20 THE COURT: You all have a good evening. See
21 you in the morning at 9:30.

22 Did the State make any offers to Mr. Shuler?

23 MS. CHISOLM: Your Honor, the offer was for ten
24 years.

25 THE COURT: And that was the recommendation for

1 the minimum; is that correct?

2 MS. CHISOLM: Yes, Your Honor.

3 THE COURT: And, Ms. Ford, did you fully
4 communicate -- when was that? I need a time frame.

5 MS. FORD: That was a couple of months ago, Your
6 Honor.

7 MS. CHISOLM: Yeah, it was at least --

8 MS. FORD: He was first on the trial docket in
9 July, and the offer was made a week or two prior to
10 that.

11 MS. CHISOLM: There was no offer before that.

12 THE COURT: Okay. And did you fully communicate
13 that offer to your client?

14 MS. FORD: I did, Your Honor.

15 THE COURT: And, sir, did your lawyer fully
16 communicate the offer made to you by the State?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Did you understand the scope of that
19 offer?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And did you reject that offer or
22 accept that offer?

23 THE DEFENDANT: I rejected the offer.

24 THE COURT: And did you do that freely and
25 voluntarily and of your own will?

1 THE DEFENDANT: Freely.

2 THE COURT: Did you feel anybody forced you to
3 do that?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: Were you under any duress or
6 suffering from any mental disability or under the
7 influence of any drugs or alcohol?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Thank you so much. See you all at
10 9:30.

11 (Whereupon, the proceedings in this matter
12 before the Court were adjourned.)

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1 THE COURT: State ready to proceed?

2 MS. CHISOLM: Yes, Your Honor.

3 THE COURT: Defense ready to proceed?

4 MS. FORD: Yes, Your Honor.

5 THE COURT: Please bring in the jury for me.

6 And actually, wait one second for me. Bring in
7 Mr. Landrith as the Foreperson, Number 187.

8 (Whereupon, the jurors enter the courtroom.)

9 THE COURT: You all can be seated.

10 Ladies and gentlemen, raise your right hands for
11 the clerk to administer the oath.

12 THE CLERK: Do you swear or affirm that you
13 shall well and truly try to the State of South Carolina
14 and the defendant at the bar who you shall have in
15 charge and a true verdict render according to the
16 evidence and the law, so help you God?

17 You can answer by stating I do.

18 THE JURORS: I do.

19 THE COURT: You may take your seats, ladies and
20 gentlemen. I hope that everyone had a pleasant
21 evening.

22 What we will now do is I'm going to give you
23 some preliminary instructions in the case of the State
24 of South Carolina versus Phillip Shuler. What I am now
25 going to say to you is intended as a brief instruction

1 to procedurally as to how we will be proceeding in this
2 case so that you will better understand what is
3 happening.

4 These remarks are not a charge on the law. They
5 are simply an instruction as to how we will be
6 proceeding. And when you hear me use the word charge,
7 that's a legal term of art that means instructions.
8 And so when I use charge or instructions, they're
9 interchangeable terms.

10 I will instruct you on the law applicable to
11 this case at the end of the trial before you retire to
12 consider your verdict. This is merely an explanation
13 of the procedure that we will follow in the trial of
14 this case so you may better understand what is
15 happening.

16 You will be given the opportunity to take notes
17 and the bailiff is going to pass out some notes pads to
18 you along with some pens. And there is a white sticker
19 on the front of each pad. You should put your juror
20 number on that sticker so that you will be able to
21 identify which notebook belongs to you. And I will
22 give you some instructions regarding note taking at the
23 conclusion of this instruction.

24 The defendant is charged by an indictment filed
25 in this court with the crime of armed robbery, the

1 elements of which will be explained to you at the close
2 of the case after the parties have presented their
3 cases, after the closing arguments. The Court will
4 then instruct you on the law applicable to this case
5 and the elements of armed robbery.

6 The indictment, ladies and gentlemen, is simply
7 the charge by which the case brought into court. And
8 it is not, in any sense, evidence of any of the
9 allegations it contains. In fact, an indictment is
10 simply the procedural way a case is brought or
11 processed through this court.

12 The defendant has pled not guilty to the
13 indictment. The State, therefore, has the burden of
14 proving each of the elements of the indictment beyond a
15 reasonable doubt. And it will be your duty, ladies and
16 gentlemen, to decide whether the State has met that
17 burden or not.

18 Your purpose as jurors is to find and determine
19 the facts. You are the sole judges of the facts. If
20 at any time I make any comment regarding the facts, you
21 must disregard it. You are to determine the facts from
22 the testimony you hear and the other evidence
23 introduced in court. It is then for you to determine
24 the inferences which you feel may be properly drawn
25 from the evidence.

1 It is especially important that you perform your
2 duty of the determining the facts diligently and
3 contentiously. Because ordinarily there is no way to
4 correct an erroneous determination of fact made by a
5 trial jury.

6 On the other hand, and with equal emphasis, the
7 same law that makes you the judges of the facts makes
8 me the judge of the law. The law as given by the Court
9 is the only law you may consider. You must accept and
10 follow it, even though you may disagree with it. I
11 cannot tell you what the facts are, and you cannot
12 disagree with the Court about what the law is or about
13 what the law should be.

14 Your responsibility, ladies and gentlemen, is to
15 take the law as it is instructed and apply it to the
16 facts as you find them from the testimony of the
17 witnesses and the other evidence that may be
18 introduced. After doing that, you'll render your
19 verdict, a true and just verdict under the solomon oath
20 that you have just taken as jurors in this case.

21 Until I advise you to begin your deliberations,
22 you must not discuss this case with anyone. That
23 includes your fellow jurors, your friends, your family
24 members, and anyone involved in the case. After the
25 case is submitted to you, you must discuss it only in

1 the jury room among your fellow jurors.

2 The attorneys and the parties have been advised
3 that they should not speak with you at all. So if at
4 any time if you see anyone involved in this case in the
5 elevator, maybe even in the hallway of the courthouse,
6 or a local restaurant, maybe even in the parking garage
7 and they don't speak with you, please don't they
8 they're being unfriendly, they're simply following the
9 Court's instructions. Again, we would not want an
10 innocent conversation to be observed and
11 misinterpreted.

12 During the trial you are not to read, listen to,
13 or watch any news reports about this case. That
14 includes anything that might be in the newspaper,
15 radio, television, or Internet. And you are not to do
16 any independent research of any kind whatsoever on the
17 Internet.

18 You must not consider anything that you may have
19 read or heard about this case outside the courtroom,
20 whether before or during the course of the trial. It
21 is essential that you make a decision based solely on
22 the evidence as it is presented from the lips of the
23 sworn witnesses and the other evidence that will be
24 introduced.

25 It is important and essential that you keep an

1 open mind and not decide any issue in this case until
2 all of the evidence has been presented, the parties
3 have made their closing arguments, and I have
4 instructed you on the law applicable to this case.

5 It is your solemn responsibility to determine
6 the guilt or innocence of the defendant. And your
7 verdict must be based solely on the evidence as it is
8 presented during this trial and on the law as I will
9 instruct you during and at the close of this trial.

10 In just a moment the solicitor will make an
11 opening statement in which they will explain to you
12 what they believe the issues or what they believe the
13 evidence will show in this case. The attorney for the
14 defendant may also make an opening statement, although
15 they are not required to do so.

16 What the attorneys tell during their opening
17 statement is not evidence. It is only their contention
18 as to what they believe the evidence will show in this
19 case.

20 The evidence, ladies and gentlemen, will be
21 presented to you by testimony of sworn witnesses from
22 the witness stand, and/or by exhibits that may be
23 introduced into evidence. From time to time during the
24 trial you may hear one of the attorneys say, You Honor,
25 I object. Just as in sports, business, or any other

1 structured activity, there are certain rules that we
2 must obey in the presentation of the evidence. These
3 rules have a definite purpose. They ensure that you
4 receive the most trustworthy and reliable evidence
5 available.

6 An objection is the procedure that an attorney
7 uses to call a possible violation of these rules to my
8 attention as the Judge of this court. And for this
9 reason, you should never hold an attorney's objection
10 against them. Nor should you conclude from the Court
11 overruling or sustaining an objection that I favor one
12 side or the other.

13 Also from time to time you may hear one of the
14 attorneys say, Your Honor, we have a matter of law, or
15 they may ask to approach the bench, or I may have them
16 approach the bench, or it might be necessary for us to
17 exclude you from the courtroom for a short while.

18 The reason we do this is when we discuss matters
19 of law, sometimes it is necessary for the Court to make
20 a comment in connection with the facts, in connection
21 with ruling whether an evidentiary rule or procedural
22 rule or statute applies. And for this reason, we
23 exclude you from the courtroom so that in no way will
24 you be influenced by anything that the Court may say or
25 do in connection with the facts of this case.

1 And sometimes we will have bench conferences
2 because as you all know by now how long that hall is.
3 And it saves us the time of sending you back and forth.
4 You will hear a noise over your heads. It is simulated
5 white noise, the same as you would hear almost on a
6 radio station. And it is designed to interfere with
7 your hearing. You are not supposed to hear what we are
8 saying.

9 I had a juror one time raise his hand and he
10 said he couldn't hear us. He didn't know what we were
11 saying. And I said, you are not supposed to hear what
12 we are saying. So I always chuckle about that. And I
13 found it necessary to explain why you have that noise
14 over your heads.

15 So it is a great time saver for us because it
16 saves me having to make you all get up and down for
17 what might be a relatively short conversation. But
18 again we do that because you are the fact finders, and
19 we would not want you to be influenced by anything the
20 Court may say or do in connection with the facts of
21 this case.

22 In determining what the true facts are in this
23 case, you must decide whether or not the testimony of a
24 witness or witnesses is believable. It is my
25 responsibility to rule as a matter of law whether

1 certain testimony is admissible at all or not. But
2 once it is admitted, ladies and gentlemen, whether --
3 but once it is admitted, whether or not you believe it
4 is solely a matter for you to determine in your fact
5 finding province.

6 In determining whether to believe a witness, you
7 have the right to consider the interest of any witness;
8 the bias of any witness; the prejudice of any witness;
9 the opportunity for the witness to have seen the things
10 and matters about which the witness may testify; and
11 the way the witness acts on the witness stand,
12 something we commonly refer to as demeanor.

13 You have a right to consider anything that is in
14 the record that will help you evaluate the testimony of
15 the witnesses. That means, ladies and gentlemen, that
16 it is your duty to pay close attention to the
17 witnesses, to observe them, to listen to them, and to
18 pay close attention to the attorneys and the Court.

19 Although I know it is very difficult, especially
20 in a room without windows, please do not allow your
21 thoughts to wander, but give strict attention to the
22 testimony. So that at the end of the testimony, after
23 the arguments of counsel and the charge on the law as
24 given by the Court, you will then be in a position to
25 determine what the true facts are and apply the law to

1 those fact and thus render a true and just verdict in
2 this case.

3 During this trial you will be allowed the
4 opportunity to take notes. Note taking is a privilege
5 that you may choose to exercise or choose not to
6 exercise. Please don't feel that you are required to
7 take notes because it isn't required, and not everyone
8 finds note taking helpful to them.

9 I know for myself, I'm peculiar, I would write
10 down what I can't remember. So if you were to read my
11 notes, you probably would not understand what I was
12 saying. Because for me, as I read it, it fills in the
13 gaps of my memory. And it's probably the same, much
14 the same for you.

15 But there are some people who have wonderful
16 memories and notes don't prove helpful to them. So
17 please do not feel that you are required to take notes.
18 And if you should decide to take notes, please don't
19 try to record everything that is said. It is literally
20 physically impossible.

21 Each of us speaks probably, even a moderately
22 slow speaker, still speaks at the rate of 200 words per
23 minutes. So as you can well imagine, that's a lot of
24 words. And there is no way to take that down, at least
25 not accurately. And as the fact finders, it is

1 absolutely incumbent upon you to pay attention to the
2 witnesses and to observe them. And we would not want
3 note taking to become a preoccupation or distraction to
4 you.

5 So it might be helpful to just make an outline
6 of the main points that are being made so that when
7 retire to deliberate, you can allow those notes to
8 refresh your memory. Please be reminded that your
9 notes are for your specific and your individual
10 purposes. They are not to be shared with anyone else.
11 And they are only to be used to refresh your own
12 memory.

13 During breaks and recesses, your notes will be
14 left in your seats. And we do that so that there is no
15 temptation to prematurely deliberate regarding
16 something you may have heard in the courtroom. And
17 please know that they are secured during recesses.
18 Your privacy is always protected, and we make sure that
19 no one has access to your notes.

20 Just as a reminder, when you retire to
21 deliberate, your notes are for your specific and your
22 individual purposes. They're to be used to refresh
23 your memory. And you should be reminded that your
24 notes should not be considered anymore reliable than
25 someone else's memory. Their memory should be

1 considered just as reliable as notes that may have been
2 taken by someone else.

3 It is your added duty, Mr. Foreman, to write out
4 the verdict form and to write out any questions the
5 jury may have during deliberations. But I will give
6 you further instructions regarding that at the
7 conclusion of the case.

8 And for the benefit the entire panel, the
9 foreperson selection is a completely random process
10 that court employs to make sure a cross-section of the
11 community is represented. That person does not have
12 any greater vote or voice than you do.

13 It is purely administrative. They fill out the
14 verdict form, and they write out any questions that may
15 arise during jury deliberation. Again, I emphasize
16 they have no greater vote or voice than you do in the
17 collaborative jury deliberation process.

18 In order to preserve everyone's rights, I will
19 give the parties the opportunity to take exception to
20 anything that the court has said by way of opening
21 instructions.

22 Are there any exceptions from the State?

23 MS. CHISOLM: No, Your Honor.

24 THE COURT: From the defense?

25 MS. FORD: No, Your Honor.

1 THE COURT: Ladies and gentlemen, I would ask
2 that you give the attorneys your undivided attention.

3 The State may proceed.

4 MS. CHISOLM: May it please the court.

5 THE COURT: Yes, ma'am.

6 And, Mr Robinson, please make sure there is no
7 walking during any portion of the court giving
8 instructions or the parties giving arguments. Thank
9 you.

10 MS. CHISOLM: Good morning. My name is Natasha
11 Chisolm. And I, along with Culver Kidd, we will be
12 presenting the case to you against this defendant for
13 armed robbery. You see on March 20th, 2009 Lenore
14 Lipsius, who is the victim in this case, had been
15 working at the Scotchman at 323 Coleman Boulevard in
16 Mount Pleasant for about two months. It had been about
17 20 years since she had been a cashier, but she enjoyed
18 her job and liked what she was doing.

19 On March 20th, 2009 she began her eight hour
20 shift at 3:00 p.m. like she usually did. She continued
21 throughout the day maintaining stock, organizing items,
22 as well as cleaning and giving friendly customer
23 service to the customers. She did this at 3 o'clock, 4
24 o'clock, 5 o'clock, 6 o'clock, 7 o'clock, 8 o'clock.
25 But at 9:00 p.m., that day that began like any other,

1 turned into a nightmare that she would never forget.

2 You see shortly after 9:00 p.m. on March 20th,
3 the door closest to the register suddenly swung open.
4 A man holding what looked like a gun under a sock, with
5 his face covered with a mask, burst in and yelled, give
6 me your money.

7 Shocked and startled, her eyes on the gun under
8 the sock, she tries to open the register as quickly as
9 she can. She tries once, she tries twice, it doesn't
10 work. Not sure what might happened if she doesn't do
11 it, she tries again. The robber yells, hurry up.

12 On the third try she was able to open the
13 register. She then gives the robber what he's asked
14 for \$5 and \$1 bills that were in the register. He then
15 runs out the door toward Whilden Street in the Mount
16 Pleasant.

17 Ladies and gentlemen, the man who held her up,
18 the man who said those words is the defendant, Phillip
19 Shuler. The man sitting right over there.

20 Now after an event like that, it would be hard
21 to imagine that the victim would be able to remember so
22 many important details, but she did. Even though her
23 life was almost flashing before her eyes in fright, she
24 reported that he had a t-shirt over his head with a
25 hole in it. She reported that he had a stocky build.

1 He was about 5'8" or 5'9" or so. She said he had a
2 brown shirt with lettering on it. And it even had a
3 design on the back side of it.

4 She said there were some clothing under that
5 t-shirt that looked like his underwear. He had on
6 denim jeans, sneakers, and of course the white sock
7 over his arm up to his elbows that had this weapon in
8 it.

9 There were a few details that she didn't quite
10 get right. She said he was about 170 to '80 pounds.
11 She said he was black. She said his hair was about 3
12 to 4 inches long and twisted. Mistakes in a
13 description are difficult. It's a high stress
14 situation, horrifying environment, she tries to recall
15 as many details as she can.

16 Fortunately, as soon as the Mount Pleasant
17 Police Department officers were able to gather more
18 information, they were able to correct the description.
19 This is usually the point in opening statements where
20 the prosecution has to discuss the reality of real life
21 trials as opposed to TV trials.

22 Where those TV and movie trials are concocted by
23 producers and writers with vivid imaginations and
24 scientific genius. You want a spot-on physical
25 description; you want see it for yourself on tape; you

1 want to see the science; you want to see the DNA.
2 Realistically those things usually don't exist in
3 cases. Sometimes -- usually there are none. Sometimes
4 you may get one of those, one of those few things.

5 But this case is a little bit different because
6 we have actually got all three. The witness, who I
7 mentioned was frightened out of her mind, did give a
8 description with some very important details about the
9 robber who held her up, what the robber did and how
10 that robber looked -- I'm sorry, how that robber was
11 dressed.

12 We also have the entire robbery on tape, so you
13 all will get to see it for yourselves. You all will
14 watch the video. You all won't be scared for your
15 life. You won't be looking down at the register. You
16 will be able to see his weight, his build, his
17 complexion, and ultimately you'll see that the
18 defendant was the robber.

19 Unfortunately, when the robber was arrested, he
20 wasn't arrested in the same outfit that he had on at
21 the time of the robbery. The robber threw off the
22 mask, threw off the brown t-shirt, threw off his pants,
23 he threw off the socks that had the weapon in it.

24 But the Mount Pleasant Police Department was
25 able to find those items. They did a DNA analysis on,

1 you'll hear about a gray t-shirt, a mask, as well as a
2 sock. And the -- those items actually matched with the
3 defendant's DNA, and they were a match.

4 The evidence will also show that during the
5 search after the robbery in the parking lot, which had
6 some leaves, the officers found a gray and brown
7 t-shirt, a \$5 bill that was also in the parking lot.
8 That shirt on the ground was a Pawleys Island t-shirt
9 and was a match to the shirt the defendant had been
10 wearing all day, except this shirt had a bigger hole in
11 it. That shirt also had the defendant's DNA on it.

12 You'll hear testimony that not far away from the
13 Scotchman, officers located that white tube sock with
14 the object in it that resembled a gun. That sock had
15 the defendant's DNA on it.

16 Along with the sock, they find another gray
17 t-shirt with a hole in it and a knot. Just like the
18 one that the victim described was used as a mask on the
19 robber's head. That shirt also has the defendant's DNA
20 on it. But unlike that first shirt, the second shirt
21 was missing a sleeve. Fortunately, that sleeve was
22 recovered. And not far away from that was the mask
23 with the DNA on it.

24 The missing sleeve was near another tube sock
25 which was not far away from a brown discarded t-shirt

1 that had some writing on the front and a design on the
2 back of it, just like the one that the victim described
3 the robber had on.

4 At the end this trial the Judge is going to
5 instruct you on the law. I'm just going to take a
6 moment just to mention it now so you know what evidence
7 and testimony you are going to be applying to the law.

8 The defendant is charged with armed robbery. An
9 armed robbery is an unlawful taking from a person,
10 without the consent of the owner, by force, threats, or
11 intimidation, while armed with a deadly weapon or while
12 having possession of an object that the victim
13 reasonably believed to be a deadly weapon, and alleging
14 by actions or words that he is armed.

15 You will be presented with testimony of the
16 victim and the officers. You'll get to see the
17 physical evidence and you'll hear about the DNA
18 results. The State is confident that we will prove
19 beyond a reasonable doubt that the defendant is guilty
20 as charged.

21 THE COURT: Is the defense ready to proceed?

22 MS. FORD: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MS. FORD: Good evening. Phillip Shuler was an
25 easy arrest. Why? Because he was in the area and

1 because he is a large man. That is why Phillip Shuler
2 was arrested that night back in March of 2009.

3 The police had noticed, after watching the
4 video, that the robber was a fairly large man. And
5 some officers had remembered that they had talked to a
6 large man nearby down the street from the Scotchman
7 about an hour after the robbery.

8 And so that man was Phillip Shuler and they
9 said, so he must be it, he's our guy. Easy enough.
10 But they ignored all other possibilities. And you are
11 here today because it's not that easy. Because the
12 state has to back up their case with evidence, and has
13 to prove to you beyond a reasonable doubt that Phillip
14 Shuler is the man who robbed the Scotchman that night.

15 But in this case there are a lot of other
16 possibilities, and there is a lot of doubt. And that's
17 why at the end you will be able to find Phillip Shuler
18 not guilty.

19 Now I want to go more into why, or how Phillip
20 Shuler became involved that night. He was at the
21 Scotchman that day, not at 9:15 when the robbery
22 occurred, but he was actually there multiple times
23 throughout the day.

24 He was in light blue jeans and a light blue
25 t-shirt, a Pawleys Island t-shirt. And he came in

1 multiple times and he actually talked to the clerk, Ms.
2 Lipsius, several times. She was nice and agreed to
3 hold a bag of clothes he had. He had a trash bag with
4 some clothes. And she agreed to hold that behind the
5 counter for him.

6 So she took that for him and then later he came
7 back and they talked and, you know, he got his clothes
8 back. So he was in the store earlier that day.

9 Now jumping to the robbery, Ms. Lipsius was by
10 herself in the store and the robber comes in. Now his
11 face is covered with a white cloth. And his arms are
12 mostly covered with socks instead of gloves.

13 And he talked to her, give me your money. And
14 she is focused on the arm, the arm that has the object
15 in it that she thinks may be a gun, she wasn't quite
16 sure if it was a gun. And she sees his skin between
17 the t-shirt and the socks and she said, it was a black
18 man.

19 Other than that, she couldn't give too much of a
20 description of the face because it was covered after
21 all. But she gives a description of his clothing. He
22 had gray jeans on, she said. And his shorts were kind
23 of hanging out, like his pants were baggy or something.
24 And she described a t-shirt, it was a brown t-shirt
25 with a faded silver writing. And it had some kind of

1 design on the top of it, like flames or something.

2 And the reason she was able to focus in on this
3 t-shirt because she thought that she had seen it
4 earlier in the day on a customer. Now not on Phillip
5 Shuler because he was wearing the light blue Pawleys
6 Island t-shirt when he was in the Scotchman. But she
7 recognized that shirt from seeing it on someone that
8 day.

9 So she told the police about it and so they went
10 about looking for a black man in a brown shirt. So
11 while the police are out there, they're gathering what
12 evidence they can. They see some bills outside, so
13 they presume, you know, assume the robber probably
14 dropped them on his way out. And they see a shirt
15 outside, a Pawleys Island t-shirt, and it's kind of
16 like brownish-grayish color.

17 And they don't show it to Ms. Lipsius or
18 anything and say, hey is this the shirt the robber was
19 wearing or anything like that, but they collected it
20 into evidence.

21 At about 10:07 the officers are patrolling the
22 area. And just to explain the area a little bit for
23 those of you who aren't familiar, the Scotchman is at a
24 fork in the road. If you are on Coleman Boulevard in
25 Mount Pleasant and you go past Shem Creek, there is a

1 fork where you go to the right and that's like the Old
2 Village, the neighborhood and the docks are back there.
3 there's even a restaurant back there, a pharmacy.

4 You stay to the left of the store and then you
5 continue on Coleman and there are multiple bars out
6 there, shopping centers, things like that.

7 Anyway, the officers are patrolling the area and
8 are on the right side, the Old Village side. And an
9 officer at about 10:07 sees a man, nothing suspicious.
10 He talks to that man and asks him, hey, have you seen
11 anything? That man is Phillip Shuler. And Phillip
12 Shuler is like, no, man, I haven't seen anything. Easy
13 conversation, nothing suspicious, or anything like
14 that.

15 But a little later the police, Detective Willis,
16 he is watching the video and he says, now I know the
17 clerk said the man was black, but I see his arms and he
18 looks like a white man to me. So they put out the
19 description, white man, large white man.

20 And that officer who had talked to Phillip
21 Shuler earlier said, well, I was talking to a large
22 white man in that area, you know, after the robbery.
23 And later at about 1:30 a.m., some officers see him at
24 a convenience store down the street, still on Coleman,
25 buying a Honey Bun and a Coke. And they say, hey

1 that's the guy, you know, they were talking to, that's
2 a large man, so they take him in.

3 They take him in and he is wearing the light
4 blue shirt. The Pawleys Island light blue shirt. And
5 they realize, hey, that Pawleys Island shirt is the
6 same as the Pawleys Island shirt found at the scene,
7 other than the color. So he is the man, they arrest
8 him, that simple.

9 Now later, actually later that evening after
10 Phillip was picked up, they do find some items down the
11 street on the Old Village side down the street from the
12 Scotchman, and they think those are the items used by
13 the robber in the crime. And later they are able to do
14 some testing and Phillip Shuler's DNA was found on some
15 of those items.

16 However, his DNA was not the only DNA found on
17 those items. Other people's DNA, they just found on
18 those items as well, the state just does not know who
19 those people are.

20 So I want you to keep several things in mind as
21 you are listening to the evidence in this case. First
22 of all the time frame. Phillip Shuler was in the area
23 a long period of time, for hours. Second, that trash
24 bag of clothes. He had this trash bag of clothes. Ms.
25 Lipsius even agreed to hold it for him. So he had that

1 trash bag of clothes at the Scotchman that day.

2 Also I want you to think about the Pawleys
3 Island shirt. Because the Pawleys Island shirt found
4 at the scene, that brownish-grayish shirt, that is not
5 the shirt used in the robbery. So while the police
6 took it into evidence that night thinking, hey, this
7 may be the robber's shirt, it's not. And that will be
8 clear from the video that that shirt is not the shirt
9 worn by the robber.

10 So you -- also in this case there are several
11 things that you are not going to hear. You are not
12 going to hear about a confession. You are not going to
13 hear about an identification of Mr. Shuler. And you
14 are not going to hear about any evidence found on his
15 person connecting him to the crime.

16 So I want you to consider all of that. And at
17 the end, there is going to be a lot of doubt here.
18 Because there are a lot of other possibilities and a
19 lot of other explanations. And we will go more into
20 that later at the end of the trial.

21 But I think that you will be able to find
22 Phillip Shuler not guilty. And the reason for that is
23 because there is way too much doubt here, and the State
24 will not be able to prove their case. There's too many
25 other possibilities. Thank you.

1 THE COURT: State may proceed.

2 MS. CHISOLM: Thank you, your Honor. The State
3 would call Lenore Lipsius.

4 THE COURT: If the witness would come to the
5 stand to be sworn.

6 MS. LENORE LIPSIUS,
7 after having been duly sworn to state the truth, the
8 whole truth and nothing but the truth, testified on her
9 oath as follows:

10 DIRECT EXAMINATION

11 BY MS. CHISOLM:

12 Q Good Morning, Ms. Lipsius.

13 A Good morning, Ms. Chisolm.

14 Q Have you ever testified before?

15 A No.

16 Q Are you nervous?

17 A Yes.

18 Q Where are you from?

19 A Originally Buffalo, New York.

20 Q And how long have you been in Charleston?

21 A 30 years.

22 Q And what was your last employment?

23 A I was working on the naval weapons -- the old
24 naval base.

25 Q Let me take you back to March 30th, 2009. Where

1 were you working then?

2 A At the Scotchman on Coleman Boulevard.

3 Q And what county is that in?

4 A I believe it's in Charleston County.

5 Q And did something happen that day?

6 A Yes. And actually it was March 30th.

7 Q I'm sorry, March 30th.

8 A Yes. I was going through my regular shift. I
9 worked 3:00 to 11:00 pretty normally, three or four
10 times a week. And I was -- after I got done stocking
11 and doing my restocking in all areas of the store, I
12 was standing at the register right at the end of the
13 counter, closer to the register but at the end of the
14 counter and I heard the door open.

15 And I looked up and automatically thought, oh
16 shoot, what is it, Halloween, you know, just kind of
17 taken aback. And then I saw an arm go up like that,
18 with a sock over it. And said, give me all your money.

19 so I proceeded to go around back to the register
20 which was only a couple of feet away. And I tried to
21 get into the register, but I was so nervous and I did
22 once, and twice, and then the third time I finally got
23 in there. And I didn't want to look up because I
24 really didn't -- I felt like maybe if I look up I will
25 get shot in the face or something.

1 And so when I finally got in the register, I
2 just made a drop so there was only like 5's and 1's in
3 there and some change. And I did not look up, I just
4 grabbed the money and then held it out. And he took it
5 and ran out the door.

6 Q And could you explain to the jury, what is a
7 drop?

8 A Well that's where underneath the register, it's
9 like a slot where you take any extra money, you are not
10 supposed to have more than \$50 in your drawer at any
11 time. So ten minutes before that, ten or fifteen
12 minutes, I made a drop. I'm not sure exactly how much,
13 but close to \$100.

14 And it's an envelope, you put it in an envelope
15 and it goes in the slot, then it goes straight to the
16 safe which we don't have a key for. So what was left
17 in there, I'm not sure. But except 5's and 1's and
18 that's all that I could give him.

19 Q Now what was your position at the Scotchman?

20 A Just a clerk.

21 Q And at that point, how long had you been working
22 there?

23 A Since January 25th.

24 Q Are there other businesses in that area?

25 A There was like a breakfast restaurant across the

1 street, I believe it's not there anymore. As far as --
2 well that was the neighborhood store, so I seen a lot
3 of the locals come in most of the time for coke or
4 whatever. You know, there was a lot of locals for
5 lottery. So I saw a lot of locals.

6 I mean I saw other people also, but you don't
7 necessarily pay attention to all of them when you got
8 your locals around you because they're talking to you
9 too, you know, while they're cashing out or whatever.

10 Q Now in describing the location of the Scotchman,
11 it's on Coleman Boulevard?

12 A Correct. The actual physical address is, yes.

13 Q And what is that street that?

14 A I believe it's Whilden.

15 Q And also describe the area of the convenience
16 store. Are there gas pumps there?

17 A Yes, there are on both sides of the station.
18 One of the -- the one on Whilden is considered the
19 front one where the fork is, and then there is a few
20 more on the back. I believe there are four on each
21 side. It has been a while, I'm sorry. I'm not real
22 sure.

23 Q No problem. Are there doors? How many doors
24 are there?

25 A Two. One going to the front and one going to

1 the back.

2 Q I'm going to show you what has been marked as
3 State's Exhibits 1 through 4, as well as State's
4 Exhibits 10 and 11.

5 MS. CHISOLM: Your Honor, may I approach?

6 THE COURT: You may.

7 Q (By Ms. Chisolm) If you want to examine these
8 for a moment and look up when you are done.

9 A Okay.

10 Q Are you familiar with the scenes shown in those
11 photographs?

12 A I'm trying to remember which is the front and
13 which is the back.

14 Q Well just generally the location?

15 A Yes.

16 Q Okay. And what location is shown in those
17 photos?

18 A Okay. That would be 323 Coleman Boulevard, the
19 Scotchman.

20 Q And are those photos a fair and accurate
21 representation of the Scotchman as they were on the
22 night in question?

23 A Yes, I believe so. Except for no people.

24 Q I'm sorry?

25 A I believe so, except for there's no people

1 there.

2 MS. CHISOLM: Your Honor. At this time the
3 state would like to enter State's Exhibits 1 through 4
4 and 10 and 11 into evidence.

5 THE COURT: Any objection?

6 MS. FORD: No, Your Honor.

7 THE COURT: Marked and admitted without
8 objection.

9 (Whereupon, State's Exhibit Nos. 1, 2, 3, 4, 10
10 and 11 are admitted into evidence.)

11 MS. CHISOLM: May I approach the witness?

12 THE COURT: Yes.

13 MS. CHISOLM: Your Honor, may I publish to the
14 jury.

15 THE COURT: You may.

16 Q (By Ms. Chisolm) If you can turn around for
17 me.

18 Showing you what has been marked as state's
19 Exhibit No. 1. What is this?

20 A That would be the back of the store going
21 towards whilden.

22 Q Okay. Looking in this window, is this side
23 where I am pointing to, is this side the area where the
24 cash register would be?

25 A Yes. Except it would be on the other end

1 towards the other door.

2 Q okay. And beyond these walls, is this still
3 part of the store?

4 A Yes. That would probably be the cooler and also
5 the office.

6 Q okay. Now showing you what has been marked
7 State's Exhibit 2. what is this picture of?

8 A okay. That would be the back also from the
9 Whilden side. And you can see where the gas pumps are,
10 the ice machine.

11 Q Is this side here Whilden?

12 A okay. Yeah. If you are coming from that way,
13 yeah. And out that way would be Coleman.

14 Q Coleman Boulevard?

15 A Uh-hum.

16 Q And what are these here?

17 A It's hard to tell. It could be our trash
18 receptacles.

19 Q Are they the gas pumps?

20 A Yes, these are the gas pumps, two there and two
21 over there. So actually probably eight. It has been a
22 couple years, I'm sorry.

23 Q That's all right. And there is an entrance on
24 this side?

25 A Correct.

1 Q And there is an identical entrance on the other
2 side of the building?

3 A Also correct.

4 Q And again you said that the -- this side would
5 be coleman and this side would be whilden?

6 A Right.

7 Q Showing you another picture, State's Exhibit 3.
8 If you can tell which side of the street this is from
9 the picture?

10 A Okay. Looks like it's coming from the back of
11 the building, so I -- yeah, it's got to be -- it looks
12 like coleman should be that right there. It looks like
13 the left-hand corner from the back of the building, so
14 I am assuming the street right there is Coleman
15 Boulevard.

16 Q Would this be the back side of?

17 A Well this looks like the back side of the
18 building here. So on the left it would be towards the
19 fork. So that would be coleman there. It looks like
20 it's that corner right there from what I can see.

21 Q So then this might be whilden?

22 A No, I think that would be coleman.

23 Q Okay. We'll be moving on. Picture Number 4,
24 can you tell us what this is?

25 A Okay. That would be the back side of the store.

1 The fork would the right over there.

2 Q What is this area here?

3 A Those were just parking spaces where we would
4 park. A lot of times we would just park up against the
5 store in the back.

6 Q And that was State's Exhibit 4. And now I will
7 show you State's Exhibit No. 11.

8 What is this picture of?

9 A That will be the back of the building going
10 towards -- that's a path going towards Whilden. A lot
11 of people use that area to come to the store from the
12 neighborhood.

13 Q And this is still the parking lot?

14 A Correct.

15 Q Okay. And I know this is probably obvious, but
16 what are these?

17 A Trees.

18 Q And what are these?

19 A Bushes.

20 Q And what is the ground, things on the ground
21 there?

22 A The leaves.

23 Q Okay. And which street did you say this
24 probably was here?

25 A Whilden.

1 Q Okay. Just a close up, that was State's Exhibit
2 11. This is State's Exhibit 10. Again, these are?

3 A Bushes.

4 Q And these are? On the ground?

5 A Okay. Now I don't recognize those.

6 Q Are those leaves?

7 A No. I don't recognize the air conditioning
8 units right there.

9 A Okay. But on the ground there, are those
10 leaves?

11 A Yes. I'm assuming that is on the other side of
12 the parking lot because I never went past there.

13 Q Okay. Thank you very much.

14 Let's talk a little bit about your duties at the
15 Scotchman. How many hours was your shift?

16 A Eight hours, 3:00 to 11:00.

17 Q And do you work alone or with other people?

18 A Always alone until after that.

19 Q Was there security at the store?

20 A No.

21 Q Okay. Was there a video surveillance system?

22 A Yes.

23 Q Are you responsible for turning the video on and
24 off?

25 A No.

1 Q So.

2 A I was hardly ever let in the office. The only
3 time you could go in there is if the office was open
4 really.

5 Q Okay. And were you restricted to just standing
6 behind your counter?

7 A No. I had a lot of duties. Very rarely see me
8 behind the counter unless there's customers in there.
9 Because usually from 3:00 to 7:00 I would stay pretty
10 busy. And after that I start stocking the hot dog
11 area, the soda area, all the coolers. So I'm pretty
12 busy usually after 7:00 when it slows down.

13 Q You mentioned -- right. You mentioned that it's
14 usually busy during the afternoon?

15 A Yeah. As soon as I come in it's usually from
16 3:00 to at least 5:30.

17 Q And then when you say it slows down, what do you
18 mean by that?

19 A Less customers, less traffic in the area.
20 People are getting home by then. So it's usually after
21 6:30 it's pretty -- it mellows out.

22 Q What can you see from the area of the register?

23 A Well you can see the front and the back, gas
24 pumps. I did not spend a whole lot of time looking
25 outside, to tell you the truth. I always kept myself

1 busy.

2 Q Okay. Did you have any regular customers?

3 A I did have, yes. Lottery, A lot of lottery
4 customers, beer customers.

5 Q And they were your regular customers because
6 what?

7 A You see them every day.

8 Q Okay. Occasionally do non-regulars kind of
9 catch your attention sometimes?

10 A Oh, yes. Especially on the weekends when they
11 go to the beach and such. During that time of the year
12 people go to the beach.

13 Q In any given day, do people come into the store
14 more than once?

15 A Yeah, quite often.

16 Q Do they ever ask you to watch property for them?

17 A Just the one time.

18 Q Okay. Could you describe that?

19 A A gentleman came in and he was holding a black
20 bag, a trash bag. And he just asked me and he was
21 waiting, either he had just gotten back from Georgetown
22 or he was waiting for somebody to pick him up to take
23 him to Georgetown, I don't remember exactly the
24 conversation.

25 Asked me to hold it for him and so I did. I put

1 it behind the stacks of beer we have at the end of the
2 counter.

3 Q Did he ever retrieve the bag, did he ever get it
4 the bag from you?

5 A Later on that evening, I believe it was sometime
6 after 8:00.

7 MS. CHISOLM: Court's indulgence.

8 THE COURT: Uh-hum.

9 MS. CHISOLM: Your Honor, may I approach?

10 THE COURT: Yes.

11 Q (By Ms. Chisolm) I'm now showing you what has
12 been marked as Exhibit No. 9. Do you recognize that
13 photo? or do you recognize that person?

14 A Right now I don't recognize that person.

15 Q Okay. Do you remember at all what the person
16 looked like who dropped the bag off?

17 A Just that he was about his build. I can't
18 remember. It has been over two years. I can't
19 definitely identify.

20 Q Okay.

21 MS. CHISOLM: Court's indulgence.

22 THE COURT: Uh-hum.

23 MS. CHISOLM: Your Honor, may I approach?

24 THE COURT: Uh-hum.

25 Q (By Ms. Chisolm) Showing you now what has been

1 marked as State's Exhibit No. 5. Do you recognize that
2 item?

3 A Yes. I do.

4 Q What is it?

5 A It's a DVD of the robbery of 3/30/09. And my
6 initials are on it clearly from July 8th of this year.

7 Q Have you had an opportunity to watch that video?

8 A Yes. Just finally this year.

9 Q And you said the video does contain the robbery?

10 A Yes, that's right.

11 Q When you saw it, was it altered in any way from
12 the events as you remember them?

13 A No.

14 Q Do they fairly and accurately depict the robbery
15 as you recall?

16 A Yes.

17 MS. CHISOLM: At this time, Your Honor, State
18 would like to move State's Exhibit 5 into evidence.

19 THE COURT: Any objection?

20 MS. FORD: No, Your Honor.

21 THE COURT: Marked and admitted without
22 objection.

23 (Whereupon, State's Exhibit No. 5 is admitted
24 into evidence.)

25 MS. CHISOLM: May I approach, Your Honor?

1 THE COURT: You may.

2 Q (By Ms. Chisolm) If you'll turn your attention
3 to the screen. Turn your attention to the corner, the
4 right top corner there.

5 (Whereupon, the videotape, State's Exhibit No.
6 5 is played in open court.)

7 Q (By Ms. Chisolm) Ms. Lipsius, what time is this
8 occurring, can you tell?

9 A 8:29, I mean 6:29.

10 Q The person in the video talking to someone, who
11 is he talking with?

12 A That would be me.

13 Q Ms. Lipsius, what color is that shirt?

14 A Appears to be blue.

15 Q Does that person have something in their hand?

16 A Looks like the trash bag of clothing.

17 Q And where is he going with that trash bag?

18 A Right there. Right where those stacks of beer
19 are.

20 Q Who is that at the counter?

21 A That was me again. I have got my shirt on. I
22 must have been in the cooler.

23 Q What time was this, can you tell?

24 A It's 7:43.

25 Q Can you describe what the individual is wearing?

1 A Uh-uh. All I know is that the t-shirt with the
2 hole in it, was the white sock with what I thought was
3 a gun, and that's basically what I noticed when he came
4 in.

5 Q Can you describe what you are looking at right
6 now? Can you describe his shirt, just what you see,
7 the shirttail?

8 A The shirttail has blue in it. Light blue,
9 definitely light blue.

10 Q Ms. Lipsius, looking at that picture, can you
11 describe again what the person is wearing?

12 A I wasn't really paying attention.

13 Q From what you see right now?

14 A Just the hood. The register, you can only
15 really only see the hood and his shoulders. It looks
16 like a brownish colored shirt. I can't even tell what
17 color the jeans are.

18 Q Can you describe the shoes?

19 A I don't know if that's a shadow or not, but it
20 seems to be some kind of green right there or orange.

21 Q So you see a color?

22 A I see two colors there, a little green and
23 orange on the other side of the green. Maybe there is
24 some kind of a logo in the middle.

25 Q Okay. When you spoke a little earlier, you

1 mentioned that you might have thought it was Halloween,
2 why was that?

3 You can turn it off.

4 (Whereupon, the videotape, State's Exhibit No. 5
5 is completed and removed from the screen.)

6 A Because of the t-shirt over his head and just
7 the one eye. It looked like one eye, one hole through
8 it. And I don't know, that's what rushed through my
9 head first thing.

10 And then the arm went up and it wasn't no
11 Halloween anymore. I mean, you know, I thought I was
12 actually -- I was fearing for my life. I just didn't
13 -- after looking up at that, I just looked down, I
14 didn't even want to face him. I just didn't want to
15 see myself being shot in the face.

16 Q (By Ms. Chisolm) Did you say you feared for your
17 life?

18 A Yes. I'm shaking right now because I'm watching
19 this.

20 Q Did you see the person's face?

21 A No.

22 Q Were you able to tell whether the person was a
23 man or a woman?

24 A A man.

25 Q And what gave you a clue?

1 A The stockiness.

2 Q Were you able --

3 A And it looked like a beer belly.

4 Q Were you able to see a lot of his skin?

5 A No.

6 Q You mentioned there was one hole in the shirt
7 over his head?

8 A That's what I saw was one hole. I only looked
9 at his face one time. I did not want to look back.

10 Q You weren't focused on his face?

11 A No. He told me to give me your money. I wasn't
12 focused on his face, I just saw that sock, whatever was
13 in the sock, which looked to me like a gun.

14 I wasn't going to ask him, is that a gun? You
15 know, I was just scared.

16 Q And because he said, give me the money, what did
17 you do?

18 A I went straight for the register.

19 Q And did you give him money?

20 A Yes. In 5's and 1's, that's all I had left over
21 after my drop.

22 Q Do you remember anything about the shirt?

23 A That I just saw some like old sparkly type logo
24 of some kind of design, but you could tell it has been
25 washed. I don't know how else to explain it.

1 Q And you said there was a design like a flame or
2 something?

3 A That's what I was thinking. I saw pointed,
4 something pointed.

5 Q And how long were the socks that were on his
6 arms?

7 A I noticed -- I don't know about the left hand to
8 tell you the truth, I don't. The right hand I know it
9 came up to almost the elbow or right at the elbow.

10 Q And how did you feel?

11 MS. FORD: objection, relevance.

12 THE COURT: I will let her answer the question.

13 MS. CHISOLM: I will withdraw the question, Your
14 Honor.

15 THE COURT: Question is withdrawn.

16 Q (By Ms. Chisolm) How long did you think it took
17 you to open the register?

18 A Like 30, 40 seconds maybe. There is a certain
19 code. It usually doesn't take that long, so maybe 10
20 seconds each time.

21 Q And after the robber left the store, which
22 direction did you say he went toward? Did you see?

23 A Okay. When he went out the door he went to the
24 left. And that would indicate to me, you know, that
25 side of the fork would be Whilden.

1 Q Okay. And his face was still covered when he
2 ran out?

3 A Correct.

4 Q You gave a description of his height. Do you
5 remember what that was?

6 A When I looked on the, they have this height
7 indicator by the door, it appeared to me between 5'8'
8 and 5'9'.

9 Q Okay.

10 MS. CHISOLM: Your Honor, may I approach?

11 THE COURT: You may.

12 Q (By Ms. Chisolm) I'm now showing you what has
13 been marked as State's Exhibit 8.

14 A That was --

15 Q Just look at it and let me know when you are
16 done.

17 A Okay.

18 Q Ms. Lipsius, what is this picture of? I'm
19 sorry, do you recognize this picture?

20 A Yes.

21 Q What is it a picture of?

22 A The door that is -- well my right from behind
23 the counter. The door that would be the exit door of
24 the robber.

25 Q Okay. And is this a fair and accurate

1 representation of the door --

2 A Yes.

3 Q -- of that day. Thank you.

4 MS. CHISOLM: Your Honor, at this time the State
5 would like to move State's Exhibit 8 into evidence.

6 THE COURT: Any objection?

7 MS. FORD: No, Your Honor.

8 THE COURT: Marked and admitted without
9 objection.

10 (Whereupon, State's Exhibit No. 8 is admitted
11 into evidence.)

12 MS. CHISOLM: May I publish?

13 THE COURT: You may.

14 Q (By Ms. Chisolm) Ms. Lipsius, what is this a
15 picture of again?

16 A The door facing the fork. Actually Whilden
17 would be here, Coleman would be here.

18 Q And can you tell if this is the door that the
19 robber entered?

20 A Yes.

21 Q And is this the door the robber exited?

22 A Yes.

23 Q If I zoom in, it's not very clear on here, but
24 can you tell me what this is?

25 A That's the height indicator that's located by

1 the door.

2 Q And that's what you looked at as the robber was
3 leaving?

4 A Yes, ma'am.

5 Q Thank you. Did you ever call for help?

6 A I pushed the button underneath the counter and I
7 did call 911.

8 Q Okay. And did -- who arrived?

9 A Well within less than a minute an officer
10 arrived. He didn't come in, he just taped everything
11 off and then another officer came after that.

12 Q Okay. And did you speak to one of the officers?

13 A Yes, Detective Willis.

14 Q Detective Willis. And did you give a
15 description?

16 A Yes, I did.

17 Q Do you recall what that description was?

18 A That he had a light brown shirt with some
19 sparkly -- old sparkly stuff on it. And it looked like
20 gray jeans or light color jeans. I didn't really pay
21 attention to the exact hue of his --

22 THE COURT: Ma'am, could you speak directly into
23 the microphone, please.

24 A I'm sorry. And it looked like he had underwear
25 hanging out in the back, you know, like they were

1 wearing down kind of. And that's about it.

2 Q (By Ms. Chisolm) Did you describe the item on
3 his head?

4 A Yes, as a t-shirt with a hole in it for sight, I
5 guess. That's what I assumed it was for, so he could
6 see.

7 I did not see any hair or anything like that to
8 distinguish him, you know.

9 Q And did you describe the item on his arm?

10 A Yeah, it was a sock. A long sock that came up
11 to about his elbow.

12 Q Do you remember describing his weight?

13 A I don't remember describing it now. But I just
14 know he was stocky build. And I just really looked at
15 his back, so I was just estimating what the weight
16 would be.

17 Q Did you describe his race?

18 A I did say he was black. That's he was black.

19 Q Why did you think that?

20 A Well, just the difference. I guess it was
21 because of the difference of from the white sock and
22 the skin tone.

23 Q Had you seen someone earlier in the day that had
24 on a brown shirt similar to the --

25 A I thought I had. But, you know, I do believe I

1 did. It's just I'm not sure who.

2 Q And at the time, though, you -- were you trying
3 to give a detailed description of the person who you
4 saw?

5 A Yes.

6 Q And you said all of your attention was focused
7 on what?

8 A As far as when he left or?

9 Q As far as when you were focused -- I'm sorry,
10 when you were looking at him through the event, you
11 were focused on --

12 A His arm, his right arm with the weapon. I just
13 didn't want to look up at him. I didn't want to look
14 at -- I just kept my head down.

15 I was more comfortable that way, I guess you
16 could say. I didn't want to be shot in the face, like
17 I said, and felt like I could have been, you know.

18 Q Is there any history between you and the man
19 that came in the store with the blue shirt earlier that
20 day?

21 A No. As far as I know, he was just an
22 out-of-towner asking me to watch his stuff.

23 Q And why do you remember that night so well?

24 A The robbery, basically. You know, the event
25 with the trash bag didn't even occur to me. Why would

1 I think that? You know, I don't know.

2 MS. CHISOLM: Court's indulgence.

3 THE COURT: Uh-hum.

4 MS. CHISOLM: No further questions. Please
5 answer any questions the defense may have.

6 THE COURT: You may proceed when you are ready.

7 CROSS-EXAMINATION

8 BY MS. FORD:

9 Q Hello.

10 A Hi.

11 Q My name is Mary Ford.

12 A Hi, Ms. Ford.

13 Q Ms. Lipsius, now you've already told us how you
14 couldn't see the robber's face, right?

15 A Correct.

16 Q He had a white cloth over his head?

17 A Like a white t-shirt, maybe off-colored white.

18 A light t-shirt with a hole.

19 Q When you talked to the police, you indicated it
20 was a white shirt of some sort?

21 A Yes.

22 Q And his arms were mostly covered, you told us
23 about that as well, right?

24 A I know one arm was definitely covered. I wasn't
25 really paying attention to the other.

1 Q okay. But the robber was wearing a t-shirt?
2 A Yes.
3 Q So you could see the skin between the t-shirt,
4 the sleeve and the sock?
5 A Yes.
6 Q And so that's the arm you were focused on,
7 right?
8 A Right.
9 Q With the object in it?
10 A Uh-hum.
11 Q And to you, at that time, the man appeared to be
12 a black man, correct?
13 A Yes.
14 Q Now even though you couldn't see the robber's
15 face, he did remind you of a customer from earlier in
16 the day, right?
17 A The t-shirt reminded me of a customer from
18 earlier I had that day.
19 Q Okay. And this man, he was a black man?
20 A That's what I thought.
21 Q The guy wearing the shirt, I'm sorry. The guy
22 wearing the shirt earlier in the day, the customer the
23 robber reminded you of, he was a black man?
24 A I believe so.
25 Q He was -- he had twists in his hair? Do you

1 remember telling the police that?

2 A Yes.

3 Q And chubby cheeks?

4 A Yes.

5 Q And the shirt that robber was wearing, there was
6 no fish or anything on the shirt, correct?

7 When you watched the video, you couldn't see a
8 fish or anything like that?

9 A No.

10 Q You also were able to see the pants of the
11 robber, right?

12 A Yeah, briefly.

13 Q And he was wearing -- when you met with the
14 police you told them that he was wearing gray jeans, or
15 that's what you thought he was wearing, gray jeans?

16 A It was lighter colored jeans.

17 Q Gray?

18 A I've described them as gray at the time, yes. I
19 wasn't really focused on color, I just knew they were
20 light colored.

21 Q Okay.

22 A But I did say gray.

23 Q And you thought they were -- you could see his
24 underwear hanging out?

25 A I thought it was underwear, yes.

1 Q Now the robber talked to you, right?

2 A Briefly.

3 Q Said, give me all of your money?

4 A Basically.

5 Q And the police were interested in his voice,
6 right? They asked you some questions about his voice?

7 A He wasn't excited. He was basically monotone,
8 give me your money. And when I was slow at it it was
9 just, hurry up. He didn't sound excited or worried or
10 anything like that. Just monotone kind of I guess you
11 would say.

12 Q Right. You described it as not too deep?

13 A Right.

14 Q And not too soft?

15 A Right.

16 Q And it was a little forceful?

17 A Just a little. You know, just enough to scare
18 me.

19 Q Right.

20 A But I was already scared so, I mean, you don't
21 have to do much when you are already scared.

22 Q Right. When you described the voice to the
23 police you said it was a little forceful?

24 A Right.

25 Q And he did not seem to have an accent?

1 A Did not seem to, no.

2 Q Now I want to go into the area a little where
3 the Scotchman is. It sounds like you are not 100
4 percent familiar with the area possibly. So if you
5 don't know the answers to the questions, just let me
6 know.

7 A Okay.

8 Q But the Scotchman is at a fork in the road,
9 correct?

10 A Correct.

11 Q And that fork is just past Shem Creek, right?
12 If you go over the little bridge is Shem Creek?

13 A Yes. I was trying to think if it was before or
14 after, that's why I had to hesitate.

15 Q Okay. If you are coming from the city, the
16 Ravenel Bridge?

17 A Right.

18 Q And if you go to the right, that's Whilden,
19 right?

20 A Uh-hum.

21 Q And that's what takes you to the Old Village?

22 A Correct.

23 Q And the Old Village is a neighborhood?

24 A Right.

25 Q And there are even some restaurants back there,

1 a restaurant?

2 A I'm not really sure.

3 Q Okay. The docks are back there in that area?

4 A I have never really went passed that area except
5 to go see a victim's advocate one time after the
6 robbery, so I really couldn't tell you.

7 Q All right. Well at the fork if you go to the
8 left, that's where -- how you stay on Coleman though,
9 right?

10 A That's correct.

11 Q And in that area there is some shopping centers?

12 A I believe so. I'm not a resident of Mount
13 Pleasant. I never really -- I'm a resident of North
14 Charleston, have been for a long time. So I'm not
15 really familiar with Mount Pleasant.

16 Q Okay. There is a bar, Art's Bar and Grill, just
17 down the street?

18 A Yeah, I have heard that.

19 Q Okay. There's some other bars in the area?

20 A I'm sure there are. I know there is some
21 restaurants in the area.

22 Q And at Shem Creek there's lots of restaurants
23 over there on Shem Creek too, correct?

24 A Yes.

25 Q Now you told us how the robber ran towards

1 Whilden, that street, correct?

2 A Yes.

3 Q When the robber came in only -- I know there's
4 two doors in the store, right?

5 A Correct.

6 Q But by the time of the robbery, you had locked
7 one of the doors?

8 A Yes. I tried to do that even though they didn't
9 want me to.

10 Q Okay.

11 A I did do that when I was in the cooler.

12 Q So that was basically the only place to enter
13 and exit, correct?

14 A Yes. At that time of day, yes.

15 Q And when he left, you don't actually know where
16 he ran to?

17 A I just know he went to the left towards Whilden.
18 I didn't go up and chase him, no.

19 Q Right.

20 A I'm not that bold.

21 Q Now, Ms. Lipsius, you told us about the sock
22 that the robber was wearing on his arm, correct? With
23 the object?

24 A Yeah. Would be the right arm.

25 Q And you thought it may be a gun?

1 A I definitely thought it was a gun.

2 Q Right. Well at the time --

3 A That's not -- that's the only thing that went
4 through my head was if it was a gun.

5 Q Right. But at the time when you talked to the
6 police you told them you thought it may be a gun but
7 you weren't sure?

8 A No because I didn't actually see it, but that's
9 what was in my head.

10 Q Right. But you told them that it may not have
11 been a gun?

12 A I told them I thought it was gun. I didn't say
13 it might not have been, I don't believe I said that.

14 MS. FORD: Beg the Court's indulgence.

15 THE COURT: Uh-hum.

16 MS. FORD: Your Honor, may I approach?

17 THE COURT: You may.

18 (Whereupon, Defense Exhibit No. 1 is marked for
19 identification.)

20 Q (By Ms. Ford) Ms. Lipsius, I'm handing you what
21 has been marked as Defense Exhibit 1 for identification
22 purposes. Do you recognize that?

23 A Yes, I do.

24 Q And is that copy of your statement?

25 A Yes, it is.

1 Q You gave a written statement to Detective Willis
2 that evening?

3 A Uh-hum. Yes, ma'am.

4 Q And near the beginning of the statement you told
5 Detective Willis, he had a white sock over his right
6 hand that was in the shape of a gun, correct?

7 A Uh hum. Correct.

8 Q And then you said, I didn't know if it was
9 really a gun or not, but he had it pointed at --

10 MS. CHISOLM: Objection, Your Honor.

11 THE COURT: Basis?

12 MS. CHISOLM: Can we approach?

13 THE COURT: You may.

14 (Whereupon, the following discussion was held at
15 the bench.)

16 THE COURT: What the basis of the objection?

17 MR. KIDD: She is just reading the statement
18 into evidence. If she wants to ask a question.

19 THE COURT: You need to ask her and then she can
20 use it to refresh her memory, and then you can her a
21 question. You can only use it to impeach her if she
22 answers inconsistently. You need to follow the rule.

23 MS. FORD: Okay.

24 MR. KIDD: Also I think the question has been
25 asked and answered. She said she may have said that.

1 MR. FORD: She said she didn't know and so I
2 gave her the statement. I was impeaching that.

3 THE COURT: She has to answer inconsistently for
4 you to impeach her and you haven't done that yet.

5 MS. FORD: Yes, ma'am.

6 (In open court:)

7 THE COURT: Proceed.

8 Q (By Ms. Ford) Okay. Ms. Lipsius, I've shown you
9 -- given you a copy of your statement?

10 A Yes, ma'am.

11 Q And so that evening did you tell Detective
12 Willis that you thought it may be a gun, but you didn't
13 really know if it was A gun or not?

14 A Yes. Now looking at the statement, yes, I see
15 that. I'm sorry, it has been two years, I didn't
16 recall saying it.

17 Q No, that's fine. And the man, the robber, he
18 didn't -- I understand you thought it may be a gun, but
19 he didn't say it was a gun, correct?

20 A No.

21 Q And he didn't say that he would shoot you,
22 correct?

23 A No.

24 Q He didn't say he would kill you or anything,
25 correct?

1 A No. You don't wait for them to say that,
2 though.

3 Q Now the State showed you the video of the
4 robbery?

5 A Correct.

6 Q And they also showed, well us, a few other clips
7 from earlier in the day of the man in the blue shirt at
8 the store, right?

9 A Uh-hum.

10 Q Now that man, you said that was the only time
11 someone had ever asked you to hold something for them?

12 A As far as I can recall, yes.

13 Q And the clips that the State showed, those
14 showed two times he was in the store, but he was
15 actually in the store more times than that, right?

16 A That's what I understand.

17 Q Okay. So you talked to him multiple times that
18 day?

19 A I didn't remember doing so. But that's what the
20 I understand from the videos.

21 Q So did you watch all of the clips from the
22 video?

23 A Yes, I did. As far as I'm aware of, yes, I did.

24 Q Right. When you said that you first watched --
25 or you told us how you initialed it back in July of

1 this year?

2 A Yeah. That was the first time I had seen the
3 video.

4 Q When you watched that, did you watch more than
5 the clips that were shown today?

6 A Yes.

7 Q Okay. So --

8 A They just went through my day with me, you know.

9 Q Right.

10 A What I was doing at this time, at this time, at
11 this time.

12 Q But from watching that video, do you remember
13 that man, that same man came in multiple times that
14 day?

15 A Yes. But I did not always talk to him. It
16 appeared to me I didn't always talk to him.

17 Q But you talked to him several times?

18 A I know two times.

19 Q You don't remember talking to him at any other
20 time?

21 A I can't say that I do right at this point, no.

22 Q Okay. So he first came in at 6:30, around 6:30
23 that was the first video you watched?

24 A Yes. That's the one I saw, yes.

25 Q And the robbery was at 9:15?

1 A I believe it said at 9:05 if I'm not mistaken.

2 Q Okay. So about two and a half hours from the
3 first time -- from the time Mr. Shuler brought the bag
4 of clothes in the store?

5 A Yes. I am assuming, yeah. If the time is right
6 on there, yes.

7 MS. FORD: Beg the Court's indulgence.

8 THE COURT: Uh-hum.

9 MS. FORD: Your Honor, I have no further
10 questions for Ms. Lipsius.

11 THE COURT: Any redirect?

12 MS. CHISOLM: Briefly, Your Honor.

13 THE COURT: You may proceed.

14 REDIRECT EXAMINATION

15 BY MS. CHISOLM:

16 Q Ms. Lipsius, did you think the object under the
17 sock was a gun?

18 A Yes, I did.

19 Q Were you scared?

20 A Very scared.

21 MS. CHISOLM: No further questions, Your Honor.

22 THE COURT: Any objection to the witness being
23 excused, from the State?

24 MS. CHISOLM: None, Your Honor.

25 THE COURT: From the defense?

1 MS. FORD: No, Your Honor.

2 THE COURT: Ma'am, you are excused.

3 Mr. Foreman, ladies and gentlemen we are going
4 to take advantage of this break in testimony and take a
5 brief mid-morning recess. During the break, please do
6 not discuss the case and please leave your note pads in
7 your seats.

8 If you would go with the bailiffs.

9 (Whereupon, the jurors exit the courtroom.)

10 THE COURT: You may be seated. We will be at
11 ease for about 10 to 15 minutes.

12 (Whereupon, a recess was taken.)

13 THE COURT: Ms. Ford, did you discuss with your
14 client if he wanted to plead? I know you were talking
15 with him earlier.

16 MS. FORD: I did, Your Honor, and he does not
17 want to plead.

18 (Whereupon, the jurors enter the courtroom.)

19 THE COURT: You may be seated. Ladies and
20 gentlemen, I hope you enjoyed your break. We will now
21 resume with trial testimony.

22 You may call your next witness.

23 MS. CHISOLM: Thank you, Your Honor. State
24 calls Detective Willis.

25 THE COURT: Sir, if you would come to the stand

1 to be sworn.

2 MR. MASON ADAM WILLIS,
3 after having been duly sworn to state the truth, the
4 whole truth, and nothing but the truth, testified on
5 his oath as follows:

6 THE COURT: You may proceed,

7 MS. CHISOLM: Thank you.

8 THE COURT: You're welcome.

9 DIRECT EXAMINATION

10 BY MS. CHISOLM:

11 Q Detective Willis, what is your occupation?

12 A I'm a detective with the Mount Pleasant Police
13 Department.

14 Q And how long have you been employed there?

15 A I have been employed there since January of
16 2005.

17 Q Do you have any previous law enforcement
18 experience?

19 A Past that, no. I graduated from Clemson back in
20 2004.

21 Q And what are your present duties as a detective?

22 A I'm an investigator with the Mount Pleasant
23 Police Department. I have been in investigations since
24 2006. Primarily I investigate cases, crimes after they
25 have occurred.

1 Q Let me take you back to March 30, 2009. Were
2 you employed in your present capacity on that date?

3 A I was.

4 Q And were you working that day?

5 A I was working that night. We have a second
6 shift from 4:00 to midnight. That's for the call-out
7 investigator, the one that gets called out when things
8 happen during the nighttime or the late evening. So I
9 was working 4:00 to 12:00 that night.

10 Q And was one of your duties to assist in
11 investigations?

12 A Absolutely. There was, on that evening there
13 was a -- we have what we call a Code 4 tone, which is a
14 loud tone on the radio.

15 I had my radio on my desk in my office at the
16 time. It went off. It dispatched an armed robbery at
17 323 Coleman Boulevard. I immediately ran to my
18 vehicle, responded as well.

19 I believe I was there at 9:19, about four
20 minutes after it had been dispatched.

21 Q When you arrived, who did you speak with first?

22 A The first person I spoke with was actually the
23 victim. It was -- since I was there so quickly, the
24 initial officer there was immediately setting up a
25 crime scene. I spoke with the victim and tried to get

1 a description of the suspect.

2 Q And what was the victim's demeanor?

3 A She was very distraught, very scared, very
4 upset. And it was not hard to talk to her, but she was
5 very, you could tell she was very scared.

6 Q You mentioned getting a description. Let's talk
7 a little bit about witness identifications. How
8 important are they?

9 A They are very important. Unfortunately, when
10 people we deal with that are victims of crimes, it is
11 usually not a social gathering. It's very traumatic at
12 times.

13 So we take what we can and get it out as soon as
14 possible to get the best description possible.

15 Q And as you learn more information, do you then
16 use that information in your descriptions?

17 A Absolutely. We try to take not only the actual
18 victim, we try to find witnesses as well, we canvass
19 the area. We weren't able to find any witnesses to be
20 able to say what they saw.

21 But we did find, you know, the victim gave us a
22 description of what we thought was an accurate
23 description of the person.

24 Q And at that time, you said she was distraught,
25 what did she describe if you recall?

1 A I'd have to really look through the statement.
2 But to be honest with you, I do remember she said it
3 was black male. I do remember she said it was a stocky
4 build. Those are the two things that were sticking out
5 to me, immediately what I put out there on the radio.

6 Q Do you remember if she mentioned a brown shirt?

7 A I believe, yeah, I believe so, yes.

8 Q Do you remember if she mentioned a sock over?

9 A Yeah. She said that was definitely one of the
10 things she said. She said it was a sock looked to be
11 covering a weapon or a gun. She remembered the right
12 hand.

13 Q Do you remember if she told you which direction
14 the robber went after he left the store?

15 A She said he came out the door that faces the
16 fork where Coleman and Whilden split. She said that he
17 ran toward back of the store which would have been
18 toward Whilden.

19 Q When you received that description of the
20 suspect at that time, did you put that out to the other
21 officers?

22 A Yes. Yes. I believe Officer Culnon did as
23 well.

24 Q Okay. And you said there were no other
25 witnesses?

1 A Not that we could find. There was somebody that
2 pulled up later on, but I don't know who they are so I
3 can't really mention them.

4 Q Were you aware whether or not the store had
5 video surveillance?

6 A Yes. I knew the store had video surveillance,
7 yes.

8 Q Did you ask the -- did the victim inform you
9 that there was a video surveillance?

10 A Yes. I asked the victim. She said there was
11 video surveillance. She said she did not know how to
12 use the video surveillance, and that a manager by the
13 name of Yvonne would be the person to contact.

14 We immediately put that in motion of having her
15 come out, and she did respond thereafter. I don't know
16 how long after she got there.

17 Q And were there any other officers present while
18 you were speaking with Ms. Lipsius?

19 A Well when I spoke with her it was first out of
20 the car. She briefly just gave us a layout that I
21 passed on to Crime Scene Investigator Mitchell, who was
22 also working second shift with me, and she got there
23 pretty quickly.

24 After that, I immediately took the victim and
25 put her in my car so that I could take a witness

1 statement from her. Those things that happened right
2 then and there, I wanted to catch as much information
3 as I could and that's why I wanted to get her statement
4 so quickly.

5 Q And Officer Culnon was there before you?

6 A He was. And he was -- he set up -- well we have
7 crime scene tape to cover the scene to make sure nobody
8 goes in and out of that scene. And also to try make
9 sure we mark off an area that we believe is the area we
10 will find the most evidence.

11 Q Was Officer Plyler with you?

12 A Officer Plyler was not at that time.

13 Q I'm trying to think of her title, CSI Mitchell?

14 A I call her CSI Mitchell, Crime Scene
15 Investigator is her title.

16 Q Was Crime Scene Investigator Mitchell present?

17 A Was she present? Yes, she was. She responded.

18 Q And what was her role in the investigation?

19 A Her role was to gather the evidence that was at
20 the scene immediately there, and immediately found the
21 evidence outside of that. We always start off making
22 -- or try to make as big a crime scene as possible.
23 Obviously we won't try to block off roadways unless
24 it's absolutely necessary.

25 And that was what she was processing, the area

1 that was cordoned off.

2 Q Was any evidence collected?

3 A Yes, there were. A t-shirt was found in the
4 parking lot. A \$5 bill was found in the parking lot.
5 she did try to get prints. Even though the suspect was
6 wearing socks, we were -- at the time we didn't know if
7 he had socks on both hands, so we tried to get prints.

8 And also I believe she gathered some additional
9 evidence. A can and I believe a cigarette butt.

10 Q Okay. Now going back to the video, were you
11 able to watch the video?

12 A I was at a later time. The manager, Yvonne, did
13 respond. She wasn't that familiar with how to pull it
14 up as well.

15 A sergeant up the road, of patrol, Sgt. Helms,
16 tried to pull it up as well. It wasn't until almost
17 11:45, close to midnight before we actually got to see
18 the robbery on the video and identified that the person
19 was actually a white male based on looking at his arm.

20 Q Before you watched that video though, did you
21 try to capture the images that you saw?

22 A What we did quickly, at that point nobody knew
23 how to pull the video off, so we figured the best thing
24 to do was to have CSI Mitchell come in and actually
25 take pictures of the video monitor with the footage of

1 the robber in a still position, pause.

2 MS. CHISOLM: Your Honor, may I approach?

3 THE COURT: You may.

4 Q (By Ms. Chisolm) I'm now showing you what has
5 been marked as State's Exhibits 6 and 7. Do you
6 recognize these photos?

7 A I do.

8 Q How do you recognize them?

9 A Those are the pictures that I was there when CSI
10 Mitchell took the picture of the monitor showing the
11 actual events.

12 Q And do these pictures fairly and accurately
13 represent the screen as you saw it?

14 A Yes. Fairly is, well, it's taking a picture of
15 a monitor that's taking a video. But, yes, as best as
16 I could see. I could make out that it looked like a
17 white male to me.

18 MS. CHISOLM: Your Honor, at this time State
19 would like to move State's Exhibit 6 and State's
20 Exhibit 7 into evidence.

21 THE COURT: Any objection?

22 MS. FORD: No, Your Honor.

23 THE COURT: Marked and admitted without
24 objection.

25 (Whereupon, State's Exhibit Nos. 6 and 7 are

1 admitted into evidence.)

2 MS. CHISOLM: Thank you, Your Honor.

3 May I publish?

4 THE COURT: Yes, you may.

5 Q (By Ms. Chisolm) Showing you now what has been
6 marked as State's Exhibit 6. Can you tell the jury
7 what this is a picture of?

8 A This is a picture of the actual armed robber.
9 This is a little bit -- the other picture I think is
10 going to be better to show the sock with what was the
11 weapon inside.

12 And this is the offender that's in front of the
13 cash register at 323 Coleman Boulevard in Charleston
14 County.

15 Q Okay. And I'm now showing you what has been
16 marked as State's Exhibit 7. What is this?

17 A And this was the picture that caught my
18 attention with how his arm was definitely more white
19 than black. And that was why I went ahead and put the
20 change of description out there. It was almost
21 midnight at that time.

22 Q Let me switch back. Can you tell on this
23 picture what his race might have been?

24 A Again that's not a great picture for me to say
25 that. It was the other picture, I remember that

1 picture looking at it and saying, that's got to be a
2 white guy.

3 Q And could you tell us what's going on here?

4 A That looks to be a sock. And right here is an
5 item that is being trained as a weapon. Could be
6 anything under there, I didn't know.

7 Q And can you describe what the defendant -- what
8 the person in this picture is wearing?

9 A He is wearing a dark in colored shirt, greenish
10 gray. A blue, looks like a blue shirt underneath. And
11 then dark pants to me is what I see.

12 And then also a white, or light in color shirt
13 or fabric over his head with a hole cut out. And then
14 two white socks.

15 Q Thank you very much. Who watched the video with
16 you?

17 A Once I immediately saw it, we had CSI Mitchell
18 was there. And then later, a few minute after, PFC
19 Plyler came. He had a USB drive that I was going to
20 try to extract the video from. And I was basically
21 going blind, but I needed to get the video. So PFC
22 Plyler was there as we were reviewing the video.

23 MS. CHISOLM: Court's indulgence.

24 Q (By Ms. Chisolm) After watching the video, did
25 you put out another description of the suspect?

1 A Yes. I believe I did, or I had somebody else do
2 so. But, yeah, it was put out around the 12:15, 12:00,
3 right around that area when I saw the video.

4 Q And when -- Court's indulgence.

5 When did you return to the Mount Pleasant Police
6 Department?

7 A Shortly after I would guess probably around
8 12:45, 12:50, 1 o'clock, I'm not sure. It was right
9 around the 1 o'clock area, though, is probably when I
10 started actually sitting down at my desk, typing all my
11 notes that I quickly scribbled on the scene and
12 everything, and making sense of them and putting them
13 in a supplement.

14 Q I forgot to ask you this one question. Are you
15 the case agent?

16 A I am..

17 Q You are. And what is your role as case agent?

18 A My role case as the agent is not always to get
19 all the glory. It is basically to gather the facts and
20 be able to direct people what needs to be done.

21 So I tried, like I said, when I got there I
22 tried to direct crime scene, this is what we got from
23 the victim. I tried to direct officers to look for
24 certain things.

25 So my main role is to gather the facts. And in

1 the end I put the facts together to make a decision and
2 try to find the suspect.

3 Q So during the course of the investigation would
4 you say you are constantly in communication with the
5 other officers that are still out?

6 A Yes. Especially in a case like this. I mean,
7 robberies are not that prevalent in Mount Pleasant.
8 Obviously they do happen, but our officers are trained
9 that once we have a robbery that we will continue to
10 look and keep looking for other pieces of evidence.

11 Q During the course of your communications with
12 other officers, did any officers run into a suspect?

13 A It was brought to my attention later on at 1:30
14 or so that night that two officers had actually gotten
15 out with Mr. Shuler at different times within close
16 proximity of the robbery, within an hour of the
17 robbery, as they were canvassing the area.

18 But both of them were both looking at the time
19 still for a white male -- I mean a black male, not a
20 white male. So one, I believe, gave him a business
21 card. And the other one got out and looked and he
22 showed him he had been out with the police and they let
23 him go.

24 MS. CHISOLM: Your Honor, may I approach?

25 THE COURT: Uh-hum.

1 Q (By Ms. Chisolm) I'm now showing you what has
2 been marked as State's Exhibit 14.

3 A This is an overhead map.

4 Q Not yet. Not yet.

5 Detective Lewis, do you recognize state's
6 Exhibit 14?

7 A Yes.

8 Q And what is it?

9 A It's an overhead map of basically that end, the
10 Coleman side and the Old Village side of Mount
11 Pleasant.

12 Q And is it a fair and accurate representation of
13 that area as you know it?

14 A Yes.

15 MS. CHISOLM: Your Honor, at this point State
16 would like to enter State's Exhibit 14 into evidence.

17 THE COURT: Any objection?

18 MS. FORD: No, Your Honor.

19 THE COURT: Marked and admitted without
20 objection.

21 (Whereupon, State's Exhibit No. 14 is admitted
22 into evidence.)

23 MS. CHISOLM: May I publish?

24 THE COURT: You may.

25 MS. CHISOLM: Your Honor, may I have the witness

1 step down?

2 THE COURT: Sir, you may step down but please
3 speak loudly and clearly.

4 THE WITNESS: Yes, ma'am.

5 Q (By Ms. Chisolm) I'm going to give you this
6 marker. And if you could just point out for the jury,
7 for clarification, what street is this long street
8 here?

9 A This is Coleman Boulevard. It turns into Ben
10 Sawyer at Chuck Dawley up here. And Ben Sawyer
11 continues on to Sullivan's Island.

12 Q Toward the left side of this map, what is in
13 this area?

14 A This side over here is Shem Creek. That right
15 there is going to be I believe Red's Ice House. And
16 this over here would be the Ravenel Bridge.

17 Q Okay. If you could point out for the jury and
18 mark where 323 Coleman Boulevard is? Where the
19 Scotchman is?

20 A Yes. Whilden Street and Coleman, this is the
21 fork that we were talking about. And this is the
22 actual business right there, the Scotchman.

23 Q You mentioned Officer Campbell met up with the
24 defendant at Rose Lane. Could you point that area out
25 if you could see it on here.

1 MS. FORD: Your Honor, may we approach?

2 THE COURT: You may.

3 (Whereupon, the following discussion was held at
4 the bench.)

5 MS. FORD: Your Honor, I understand Detective
6 Willis is the case agent, but it seems the State is
7 having him testify on behalf of all the cops, including
8 where they met the defendant and everything.

9 So I just -- his knowledge is based on hearsay.

10 THE COURT: Are the other officers going to
11 testify?

12 MS. CHISOLM: Yes.

13 THE COURT: Skip to what isn't going to be
14 cumulative.

15 MS. CHISOLM: Okay.

16 (In open court.)

17 MS. CHISOLM: No further questions on this.

18 Q (By Ms. Chisolm) Okay. And when -- at about
19 that time, was the defendant a suspect at that time?

20 A I'm sorry, what time?

21 Q When Officer Campbell had spoken with him?

22 A No. We were still looking for a black male.

23 Q Okay. Were you -- did anyone else meet with the
24 defendant?

25 A Yes. PFC Keenan actually met with the

1 defendant, got out with the defendant not too far away
2 from where PFC Campbell had gotten out with the
3 defendant.

4 Q And at that point was the defendant a suspect?

5 A No. Because that was still early on before we
6 actually saw the video to see it was a white male
7 versus a black male.

8 Q Did any officer see the defendant again that
9 night?

10 A Yes. PFC Plyler, who had been with me when we
11 were watching the video, actually went back in service
12 on patrol and got out with Mr. Shuler at 1402 Ben
13 Sawyer, which is the northern part past, like the area
14 I was telling you about, towards Sullivan's Island.

15 Q And was that person -- was -- Court's
16 indulgence.

17 THE COURT: Uh-hum.

18 Q (By Ms. Chisolm) Was he taken into custody, the
19 defendant?

20 A Yes. PFC Plyler took him into custody.

21 Q And once he reached the Mount Pleasant Police
22 Department?

23 A Yes. He came to me at the police department.

24 Q Is that person that you met with in the
25 courtroom today?

1 A Is the person I met with, interviewed?

2 Q Uh-hum?

3 A Yeah. Mr. Shuler right over there.

4 MS. CHISOLM: Let the record reflect that
5 Detective Willis has pointed out the defendant.

6 THE COURT: Let the record so indicated.
7 proceed.

8 MS. CHISOLM: Court's indulgence.

9 THE COURT: Uh-hum.

10 MS. CHISOLM: Your Honor, may I approach the
11 witness?

12 THE COURT: Uh-hum.

13 Q (By Ms. Chisolm) I'm now showing you what has
14 been marked as State's Exhibit 9.

15 Detective Willis, do you recognize that photo?

16 A Yes.

17 Q How do you recognize it?

18 A I took the photo when he was in the interview
19 room with me, when Mr. Shuler was in the interview room
20 with me.

21 Q Is this a fair and accurate representation of
22 Mr. Shuler at the time that you met with him?

23 A Yes.

24 MS. CHISOLM: Your Honor, at this time State
25 would like to enter State's Exhibit 9 into evidence.

1 THE COURT: Any objection?

2 MS. FORD: No, Your Honor.

3 THE COURT: Marked and admitted without
4 objection.

5 (Whereupon, State's Exhibit No. 9 is admitted
6 into evidence.)

7 MS. CHISOLM: May I publish?

8 THE COURT: You may.

9 Q (By Ms. Chisolm) Can you describe what you see
10 in this picture?

11 A Mr. Shuler has got a hat on, A blue shirt, blue
12 jeans. He had on some white and dark colored -- it was
13 like blue or something on his shoes. It was a design
14 on his shoes.

15 Q And what is this right here?

16 A That's a tear in the shirt. And then this looks
17 like I think paint stains or some kind of stain, but
18 that's a tear.

19 Q Can you see what's -- can you describe his arms?

20 A He's got a tatoo over here. I'm not sure what
21 the design was. And I don't know if he has tatoo on
22 this side, but there is a tatoo over here.

23 Q Can you see what this is here?

24 A What's that?

25 Q Can you tell what this is?

1 A Looks to be a tatoo as well.

2 Q This screen doesn't quite show it, but the
3 bottom here, do you remember what kind of footwear he
4 had on?

5 A The footwear he had on was white, like I said,
6 it was white Nike tennis shoes and they had a design on
7 the sole that -- that if you have the shoe I can show
8 you.

9 MS. CHISOLM: May I approach, Your Honor?

10 THE COURT: You may.

11 Q (By Ms. Chisolm) Now showing you what has been
12 marked as State's Exhibit 12?

13 A Yes.

14 Q Do you recognize State's Exhibit 12?

15 A Yes. That is an actual still photo from the
16 video surveillance.

17 Q Is that a fair and accurate representation of
18 what you saw on the video?

19 A Yes.

20 MS. CHISOLM: I'm sorry, Your Honor. At this
21 time State would like to enter State's Exhibit 12 into
22 evidence

23 THE COURT: Any objection?

24 MS. FORD: No, Your Honor.

25 THE COURT: Marked and admitted without

1 objection.

2 (Whereupon, State's Exhibit No. 12 is admitted
3 into evidence.)

4 MS. CHISOLM: May I publish?

5 THE COURT: You may.

6 Q (By Ms. Chisolm) Can you tell the jury what this
7 is a picture of?

8 A This is a picture of actually the video
9 surveillance of the robbery right when he's getting
10 ready to leave. Ms. Lipsius is up there, she has just
11 been robbed. He's exiting out the door.

12 As you can see, he has got the white shirt or
13 gray shirt over his head tied in the back; he's got the
14 socks on his arms; and then right here is the design I
15 was talking about. In the sole of the shoe it's a
16 darker design right there. And then a little design
17 right here to which Mr. Shuler had Nike shoes on that
18 had the same kind of design.

19 MS. CHISOLM: May I approach, Your Honor?

20 THE COURT: Uh-hum.

21 Q (By Ms. Chisolm) I'm now handing you what has
22 been marked State's Exhibit 13. If you could view
23 that.

24 A Yes. These were the shoes taken off him at the
25 county jail.

1 MS. FORD: Your Honor, I don't think the
2 foundation has been laid.

3 THE COURT: Is there is an objection? If there
4 is you need to stand and state you have an objection.

5 MS. FORD: Objection, Your Honor.

6 THE COURT: Basis of the objection?

7 MS. FORD: Foundation.

8 THE COURT: Please approach.

9 (Whereupon, the following discussion was held at
10 the bench.)

11 THE COURT: Is he actually the person that took
12 the shoes off of him?

13 MR. KIDD: He didn't take them into custody, but
14 he saw them, he was with him.

15 THE COURT: You are going to have to lay the
16 appropriate --

17 MR. KIDD: Right, I agree the foundation.

18 THE COURT: She has already established that he
19 had on a pair of sneakers. You are going to have to
20 connect the dots that these are the actual sneakers
21 that -- I guess my question is, why don't you have the
22 person who actually arrested him and took this stuff
23 into custody?

24 MS. CHISOLM: She will be here.

25 THE COURT: Okay, that's who you need to ask

1 these question to. He can identified them and say
2 whether they're consistent with what he had on that
3 day. But you are not going to be able to admit them
4 through him.

5 MS. CHISOLM: Okay.

6 MS. FORD: Okay.

7 (In open court.)

8 THE COURT: Proceed.

9 Q (By Ms. Chisolm) Detective Willis, is State's
10 Exhibit No. 13 consistent with the footwear that the --
11 Phillip Shuler had on the day that you met him?

12 A Yes. Those are the shoes he had on.

13 Q Are they also consistent with the shoes that are
14 in State's Exhibit 12?

15 A Yeah. That was one of the considerations to
16 making an arrest warrant on him.

17 MS. FORD: Your Honor. Your Honor.

18 THE COURT: Basis? You need to stand when
19 addressing the court.

20 MS. FORD: I'm sorry. May we approach?

21 THE COURT: Yes.

22 (Whereupon, the following discussion was held at
23 the bench.)

24 MS. FORD: He keeps publishing them. He keeps
25 like showing them to the jury, the shoes.

1 MS. CHISOLM: Okay, I will take them back.

2 MS. FORD: So that's my concern. So that was
3 my concern the last time.

4 THE COURT: Actually you need to take the shoes
5 away from him. He's identify them. Set them on the
6 table.

7 MS. CHISOLM: Okay.

8 MR. KIDD: Your Honor.

9 THE COURT: Yes.

10 MR. KIDD: We have the other witness who I think
11 could lay more foundation. But it would be my argument
12 that the appropriate foundation has been laid and --

13 THE COURT: You cannot admit them through him,
14 he didn't take them. You have to prove your chain.
15 The person who actually took the shoes off him needs to
16 be here to testify.

17 He can testify that they're consistent with what
18 he saw at that time. But we don't know what happened
19 between him leaving there and going to the jail.

20 MR. KIDD: But even on a non-pledgeable item we
21 need to prove a chain?

22 THE COURT: I like a clean record. Overruled.

23 MR. KIDD: Thank you.

24 (In open court.)

25 MS. CHISOLM: May I approach the witness?

1 THE COURT: Yes.

2 Q (By Ms. Chisolm) You conducted, you gathered
3 some information during the course of your interview
4 with the defendant?

5 A Yes.

6 Q Did you Mirandize him?

7 A Yes.

8 Q And explain to the jury what Mirandizing is?

9 A Okay. Anytime we have somebody in custody that
10 is not allowed to leave, it's called a custodial
11 advisement of Miranda.

12 Basically we have to advise them of their
13 rights, and there is series -- there's a form we
14 actually go through to do so that let's them know that
15 we are police officers, number one. Number two -- I
16 can read it off the form if you like. It might be a
17 little better to explain.

18 MS. CHISOLM: Courts indulgence, Your Honor.

19 THE COURT: Uh-hum.

20 MS. CHISOLM: The State has no further
21 questions. Please answer any questions the defense may
22 have.

23 THE COURT: You may proceed.

24 MS. FORD: Thank you, Your Honor, may it please
25 the court.

1 THE COURT: Yes, ma'am.

2 CROSS-EXAMINATION

3 BY MS. FORD:

4 Q Good morning, Detective.

5 A Hi, counsel.

6 Q Detective, you arrived at the scene within
7 minutes of the robbery, correct?

8 A That's correct.

9 Q And you talked to Ms. Lipsius?

10 A I did.

11 Q And you got a statement from her?

12 A I did, yes.

13 Q So you were the main one dealing with Ms.
14 Lipsius that evening?

15 A Yes, ma'am.

16 Q And in your investigation you told us a little
17 about the description that was sent out?

18 A Yes.

19 Q And part of that description included clothing?

20 A I believe so, yes. The brown shirt and the
21 white socks over the hand making the shape of a gun.

22 Q The brown shirt that she described, she said it
23 had some type of metallic writing on it?

24 A Yes.

25 Q And possibly a flame type of design?

1 A Yes. I can read a part of her statement if
2 you'd like. I don't know if that's going to be entered
3 in now because she has been interviewed. I don't know.

4 Q Right. She has already testified to that.

5 A Okay.

6 Q It's just I wanted to see what your
7 understanding was of what you know the description was?

8 A Right. She said it was a black male, it was --

9 MS. CHISOLM: Objection, Your Honor.

10 THE COURT: Basis?

11 MS. CHISOLM: May we approach?

12 THE COURT: You may.

13 (Whereupon, the following discussion was held at
14 the bench.)

15 MS. CHISOLM: Hearsay.

16 MS. FORD: My point is going to when he's giving
17 out the description.

18 THE COURT: He is the case agent and this is
19 really about the basics of the ID. I'm going to give
20 him some latitude. He can testify as to hearsay. But
21 anything beyond her initial description, be careful.

22 MS. FORD: Yes, Your Honor.

23 (In open court.)

24 THE COURT: Proceed. Overruled.

25 Q (By Ms. Ford) So you had a description of a

1 brown shirt?

2 A Yes.

3 Q Now you told us earlier about how Investigator
4 Mitchell, I'm not sure her actual -- Crime Scene
5 Investigator?

6 A Yes, Crime Scene Investigator Angela Mitchell,
7 yes.

8 Q She was at the scene?

9 A Yes.

10 Q And, you know, several police were there and
11 they were collecting evidence?

12 A Well the only person that was collecting
13 evidence was Crime Scene Investigator Mitchell. That's
14 done for reasons for not too many hands are in the
15 contaminating of evidence or anything like that.

16 She was the only one that was actually
17 preserving and collecting the evidence.

18 Q Okay. And at the Scotchman there were several
19 items found?

20 A Yes.

21 Q And those items were taken and put into
22 evidence?

23 A Correct.

24 Q So some cigarette butts, you mentioned cigarette
25 butts possibly were submitted?

1 A Yes. I believe she collected a cigarette butt.
2 I believe you mentioned yesterday a can.

3 Q Ms. Lipsius never mentioned the robber was
4 smoking or anything like that?

5 A Not at all. When Crime Scene Investigator
6 Mitchell processes a scene, she takes evidence that
7 would possibly relate to the crime. That's how she
8 processes it.

9 Q And a shirt was found there too?

10 A Yes.

11 Q A Pawleys Island t-shirt?

12 A Yes. It had a Pawleys Island design, I think it
13 was inside out, towards the aft part of the parking
14 lot.

15 Q And this shirt, the color was kind of brownish
16 grayish?

17 A Brownish, grayish, greenish to me, but yeah.

18 Q And you never took it to Ms. Lipsius to see if
19 this was the shirt the robber was wearing or anything?

20 A No.

21 Q But it was found at the scene?

22 A It was found at the scene. I believe it was
23 within several feet of the \$5 bill that was found as
24 well on the scene.

25 Q And you told us that you -- earlier you were

1 going over the video and you were describing what the
2 robber was wearing?

3 A Yes.

4 Q And the shirt the robber was wearing, that's not
5 the Pawleys Island t-shirt found at the scene?

6 A I would have to agree with you now, yes.

7 Q At the time, though, you thought that Pawleys
8 Island t-shirt may have been the shirt worn by the
9 robber?

10 A It was possible. I mean it was an item found at
11 the scene. It was found, like I said, near the \$5
12 bill. It was discarded it looked like.

13 Q Let's go to when Phillip Shuler became your
14 suspect. From your understanding you told us how other
15 officers had met up with him near the Scotchman,
16 correct?

17 A Yes. I received a phone call at 1:35, 1:30 in
18 the morning when I was back at the station. I got a
19 phone call from PFC Keenan and also PFC Plyler. They
20 were out with Mr. Shuler at 1402 Ben Sawyer Boulevard
21 which is -- I'm sorry,

22 Q And I'm sorry, I was actually talking about
23 earlier.

24 A Oh, okay. But that's when I found out about
25 them getting out with these people is when they were on

1 the phone call telling me about this.

2 Q Right. Okay. So you told us how Mr. Shuler was
3 brought in, and this was about 1:30 in the morning?

4 A Yes, sir -- yes ma'am, I'm sorry.

5 Q And earlier in the evening some offices had met
6 up with Mr. Shuler?

7 A Yes. PFC Campbell had gotten out with Mr.
8 Shuler first. And PFC Keenan second. Right in the
9 area, the vicinity of the robbery.

10 Q Right. And Mr. Shuler is a larger man?

11 A Yes. Not as large as me, but he is a
12 stockier-built individual, yes.

13 Q And he also -- the State, they showed us a
14 picture of Mr. Shuler in that light blue shirt?

15 A Yes.

16 Q Okay. The Pawleys Island shirt?

17 A Yes. There was a second Pawleys Island shirt he
18 was wearing, yes.

19 Q And other than the color, it matched the Pawleys
20 Island shirt found at the scene?

21 A Yeah. The print that he was wearing, when he
22 came in the shirt was inside out and I had him flip it
23 right-side out. And the print looked familiar to the
24 print I had seen before it had been collected, the
25 shirt was collected on the scene actually.

1 Q Okay. So when he -- by the time he came to the
2 police station, and you saw that the shirt matched?

3 A I didn't see that until I made him change it
4 right-side out. What I noticed first, and what PFC
5 Plyler noticed, was he was wearing shoes with no socks
6 and I was told he had some leaves in the shoes.

7 Q Okay. So you mentioned a little how you did
8 talk to Mr. Shuler?

9 A Yes. I conducted an interview.

10 Q He is actually from Hemmingway, South Carolina?

11 A I believe so, yes. But I think he-- yeah, okay,
12 I think so. I'm sorry, I don't know.

13 Q That's okay. You told us how you were able to
14 watch the video of the robbery, correct?

15 A Yes. I actually watched it several times while
16 I was in the gas station trying to figure out how to
17 extract the video onto a disk or something like that we
18 could use.

19 Q Well you were able to go back and watch the
20 video surveillance for the whole day pretty much, or
21 Ms. Lipsius' shift?

22 A At that time, I didn't know exactly what time

23 Q Not at this time, but later?

24 A But later on, yes. The next day -- I had worked
25 through the night and then into morning, about 11

1 o'clock I believe, I had some help from one of our tech
2 guys at the police department to help us review the
3 video further than what the actual scene was.

4 Because there is -- is a -- you can either look
5 -- what I know now is there is an event search or there
6 is a time search. And I think we were looking at the
7 event search which you can't go past a particular event
8 in the computer, whatever it divides it at. So that's
9 why I wasn't really able to use it. I was sort of
10 novice at using it at that time.

11 Q But you were able to see Phillip Shuler -- the
12 robber was wearing a mask, correct?

13 A The robber was wearing that fabric over his head
14 with the hole cut out, yes.

15 Q Right. But on the video of the Scotchman from
16 earlier, you were able to identify Mr. Shuler as being
17 in the store?

18 A Yes. At 11 o'clock when we went back and
19 reviewed the video, we saw him in there earlier as you
20 were shown earlier.

21 Q And you actually noted that you saw him five or
22 six times in the store?

23 A I believe so, yes.

24 Q And this is in the evening hours?

25 A I think it was early afternoon or late afternoon

1 to -- then to the actual whenever the last time we saw
2 him without wearing the clothing, the disguise.

3 Q You saw Mr. Shuler, the man wearing the blue
4 shirt and the light jeans, you could see him in the
5 Scotchman video? I'm just talking about that?

6 A Yes, yes. I'm sorry.

7 Q Okay. And you could see him interact with Ms.
8 Lipsius?

9 A Yes.

10 Q On multiple occasions?

11 A Yes.

12 Q And you saw, like we saw today, him actually
13 give her a trash bag of clothing?

14 A I saw him put the trash bag of clothes behind
15 the counter and then her give it back to him later on,
16 yes.

17 Q And those are two different interactions right
18 there?

19 A Yes.

20 Q And then there were other interactions as well?

21 A Yes. I think that, I believe so.

22 Q Where he would come in the store?

23 A Yes. I don't know that he always interacted
24 with her, but I know there were other times he came in
25 the store. I do remember that.

1 Q There were numerous times in the store?

2 A I believe so. I believe, I think I noted in my
3 supplement six times.

4 Q And about this trash bag, as part of your
5 investigation was the trash bag of clothing discovered?

6 A The trash bag of clothing was discovered near
7 the dock area which is further down to the right,
8 deeper into Old Village.

9 Q And that was based on information given to you
10 by Mr. Shuler, the location?

11 A Correct.

12 Q And in that trash bag random clothes?

13 A I believe so, yes. I never actually looked in
14 the trash bag because that was something he said was
15 just his personal possessions.

16 Q But as the case agent you never saw the pictures
17 that Crime Scene Investigator Mitchell took?

18 A I don't believe I ever did see the pictures of
19 those, yes. They found the items related to the
20 robbery, the sock with the stick in it and everything,
21 at a different location. That's what I was focused on.

22 Q So you didn't even look at the trash bag of
23 clothes yourself?

24 A I personally did not. Like I said, it's good --
25 for me I direct a lot of the other investigators and

1 officers to do certain things. And I don't want to put
2 my hand in it as well. But I try to, as much as I can,
3 direct them so I can know what is going on at all times
4 from every angle.

5 Not all cases require that, but a robbery like
6 this where we have got an active interview, I'm not
7 able to go out there and actually look for the items
8 myself.

9 Q Most things you were able to look into like
10 officers Plyler -- or Campbell and Keenan talking to
11 Mr. Shuler, but you weren't able to look into the trash
12 bag?

13 A I don't believe I looked into the trash bag.
14 No, I don't believe it.

15 MS. FORD: Beg the Court's indulgence.

16 THE COURT: Uh-hum.

17 MS. FORD: Your Honor, I have no further
18 questions for this witness.

19 THE COURT: Any redirect?

20 MS. CHISOLM: No, Your Honor.

21 THE COURT: Any objection to the witness being
22 excused subject to recall, from the State?

23 MS. CHISOLM: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MS. FORD: No, Your Honor.

1 THE COURT: Counsel approach for me, please.

2 (Whereupon, the following discussion was held at
3 the bench.)

4 THE COURT: Who is your next witness?

5 MS. CHISOLM: Officer Culnon. We think he will
6 be really short.

7 THE COURT: Who would be after that?

8 MS. CHISOLM: After that would be Mitchell.

9 THE COURT: Culnon?

10 MS. CHISOLM: Uh-hum. Really, really short.

11 THE COURT: Okay. Let's do him then we will
12 break for lunch.

13 (In open court.)

14 THE COURT: You may proceed.

15 MS. CHISOLM: State calls Officer Culnon.

16 MR. WILLIAM CULNON,

17 after having been duly sworn to state the truth, the
18 whole truth and nothing but the truth, testified on his
19 oath as follows:

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MS. CHISOLM:

23 Q Good afternoon, Mr. Culnon. How long have you
24 been employed with the Mount Pleasant Police
25 Department?

1 A For over six years.

2 Q Do you have any special training?

3 A I do.

4 Q Could you list it?

5 A I am trained in investigation techniques;
6 interview and interrogation; robbery; as well as
7 currently a traffic officer.

8 I am certified in DUI techniques, as well as
9 reconstruction for collisions.

10 Q Let me take you back to March 30th, 2009, were
11 you employed in your present capacity then?

12 A Yes, ma'am.

13 Q Were you working that day?

14 A Yes, I was.

15 Q Was one of your duties to assist in
16 investigations?

17 A It was.

18 Q Okay. And did you take part in the
19 investigation of a robbery that took place at the
20 Scotchman on Coleman Boulevard?

21 A I did. I was on duty that night and was one of
22 the closest officers to the scene.

23 Q Okay. And did you arrive on the scene first?

24 A I believe so. I was the first officer on the
25 scene.

1 Q Do you remember about what time that was?

2 A I would have to look at my report. It was dark.
3 It was near the end of my shift.

4 Q Okay. What did you do while you were there?

5 A When I first arrived on scene I verified that it
6 was a robbery. The clerk appeared a bit distraught. I
7 think she was -- her appearance, it still hadn't really
8 gotten to her as far as appearing that she had just
9 been robbed. I think she was still trying to figure
10 all that out.

11 But she explained that the person had come in
12 and requested money. After I confirmed that the
13 robbery occurred and that he was no longer on scene, I
14 used crime scene tape and surrounded the premise. I
15 remained on scene until I was relieved later that night
16 after some evidence had been collected and pictures
17 were taken.

18 Q Do you remember what other officers were
19 present?

20 A Detective Willis arrived on scene shortly after
21 I did, as well as Crime Scene Investigator Mitchell.
22 And I can't remember who relieved me from my duties.

23 Q Was it Officer Plyler?

24 A It sounds correct.

25 MS. CHISOLM: No further questions. Please

1 answer any questions the defense has.

2 THE COURT: Any questions for the witness?

3 MS. FORD: No, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused, from the state?

6 MS. CHISOLM: None, Your Honor.

7 THE COURT: From the defense?

8 MS. FORD: No, Your Honor.

9 THE COURT: Sir, you are excused.

10 THE WITNESS: Thank you.

11 THE COURT: You are welcome.

12 Mr. Foreman, ladies and gentlemen, we are going
13 to take advantage of this break in testimony to take
14 our lunch recess. During the break, please do not
15 discuss the case among yourselves or with anyone else.
16 Please don't have any contact with anyone in or about
17 the courthouse.

18 You will return directly to your jury room by 2
19 o'clock. That gives you about an hour and 15 minutes,
20 give or take for lunch. I know that sounds like a long
21 time, but it really isn't. By the time you get out of
22 this building -- which believe it or not is about
23 180,000 square feet, that's a lot of square feet, it's
24 a huge building -- it takes -- most of the hallways are
25 the length of a city block because, as you know, we sit

1 basically on a corner.

2 so it takes a little bit of time to get in and
3 out of the courthouse, as well as just to decompress a
4 little bit, enjoy the outside and get something to eat.

5 so I hope that you all enjoy your lunch recess.
6 We will see you at 2 o'clock. Please leave your note
7 pads in your seats and come directly to your jury room
8 after lunch and we will resume promptly at 2:00. Have
9 a good lunch.

10 (Whereupon, the jurors exit the courtroom.)

11 THE COURT: You may be seated.

12 Is there anything further before to go to lunch,
13 from the State?

14 MS CHISOLM: No, Your Honor.

15 THE COURT: From the defense?

16 MS. FORD: No, Your Honor.

17 THE COURT: Have a good lunch. See you all at 2
18 o'clock.

19 (Whereupon, a recess was taken.)

20 THE COURT: State ready to proceed?

21 MS. CHISOLM: Yes, Your Honor.

22 THE COURT: Defense ready to proceed?

23 MS. FORD: Yes, Your Honor.

24 THE COURT: Apparently many of our jurors went
25 to lunch at the same place. They all came in at the

1 same time.

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: You may be seated.

4 Ladies and gentlemen, I hope that you all had a
5 pleasant lunch. We will now resume with testimony.

6 state may call its next witness.

7 MS. CHISOLM: State calls criminalist Angela
8 Mitchell.

9 MS. ANGELA MITCHELL,
10 after having first been sworn to state the truth, the
11 whole truth and nothing but the truth, testified on her
12 oath as follows:

13 THE COURT: Please speak directly into the
14 microphone.

15 You may proceed when you are ready.

16 MS. CHISOLM: May it please the Court.

17 THE COURT: Yes.

18 DIRECT EXAMINATION

19 BY MS. CHISOLM:

20 Q Good afternoon. Could you tell the jury what is
21 your occupation?

22 A I'm a police officer with the Town of Mount
23 Pleasant. Currently I do crime scene. It is my main
24 function. I'm also an evidence technician.

25 Q And how long have you been employed by the Mount

1 Pleasant Police Department?

2 A I've worked for Mount Pleasant for a little over
3 11 years. I have been a police officer for eight, and
4 crime scene for a little over five years.

5 Q Do you have any special training?

6 A I have the training from the academy for basic
7 police officer. And then I have several more
8 specialized training classes, you could say, for crime
9 scene, photography, and all kinds of the other evidence
10 collection.

11 Q Okay. And were you working in your present
12 capacity on March 30, 2009?

13 A Yes, I was.

14 Q Okay. Let me take you back to March 30, 2009,
15 was one of your duties to participate in the
16 investigation?

17 A Yes, ma'am.

18 Q And did you take part in the investigation of a
19 robbery that took place at the Scotchman on Coleman
20 Boulevard?

21 A I did.

22 Q And how were you brought into the case?

23 A What we do, we have an office and then whenever
24 there is a call that goes out the duty investigator, if
25 he is on the scene, or the sergeant will request for

1 crime scene.

2 We go to the scene. We get a little basic
3 background from either the victim who's there, if they
4 are available to speak with me, the first responding
5 officers. Then I pretty much do what I do at every
6 crime scene. I take photographs and document what the
7 place looked like when I got there prior to any
8 evidence being removed, before anything is disturbed at
9 all we document that.

10 And then I will do things like process for
11 latent fingerprints, collect evidence that may could be
12 used later on, whatever is in the area that we would
13 need.

14 Q Could you explain for the jury a little bit what
15 processing a scene means?

16 A Processing, normally we process for latent
17 fingerprints. If it's a burglary whether -- sometimes
18 we will know ahead of time if -- not ahead of time, but
19 if we can review a video and we can see that they have
20 on gloves or whatnot, we don't necessarily process for
21 fingerprints.

22 If we don't know, we typically process for
23 fingerprints using black powder. And sometimes we
24 process for shoe prints. Just depending on what all is
25 there. Each circumstance is going to be different.

1 And we do the same kind of protocol, just
2 depending on the circumstances it may be tweaked a
3 little bit.

4 Q Did you process the scene alone or were you with
5 anyone else?

6 A I was the only crime scene technician there.

7 Q What other officers, if you recall, what other
8 officers were present?

9 A Detective Adam Willis was on scene. And there
10 were several others in the area, but I remember
11 speaking with Detective Willis.

12 Q Was the victim still in the store when you
13 arrived?

14 A Yes, she was.

15 Q And what did you do when you arrived?

16 A As soon as I first got there, I spoke with the
17 offices on the scene and then immediately took
18 photographs.

19 Q And what did you take photographs of?

20 A It would have been just showing the building,
21 the Scotchman. Any piece of evidence that could of
22 pertained to the case that's in the parking lot. The
23 inside of the business, things like that.

24 Q A little bit more specifically, did you take
25 pictures of any items at the location?

1 A Yes.

2 Q What items were those?

3 A There was a gray shirt that was in the parking
4 lot. I took photographs of my fingerprints that I
5 processed for. The building itself. There were some
6 cigarette butts that were there. There was a soda can
7 that was there.

8 Just anything that could possibly be used later
9 on. Not knowing all of the circumstances, all the
10 details of what had transpired, we just kind of collect
11 in general.

12 Q So at the time when you collected these items,
13 they weren't necessarily connected to the robbery?

14 A Don't know. You know, some things we know for
15 sure, some things we don't. And in this case I didn't
16 have a whole -- I couldn't -- at the time I collected I
17 don't think we had seen the video at all. There had
18 been some problems with reviewing the video with the
19 clerk.

20 A lot of times the clerks don't always know how
21 to show us the video. So we collect whatever could
22 possibly be tied in with the case.

23 MS. CHISOLM: Your Honor, may I approach?

24 THE COURT: You may.

25 Q (By Ms. Chisolm) I'm showing you what has been

1 marked as State's Exhibit 4. Do you recognize this
2 picture?

3 A I do.

4 Q Okay. What is that?

5 A That's the Scotchman.

6 Q Is this a picture that you took?

7 A It is.

8 Q I'm now going to show you what has been marked
9 as State's Exhibit 11. Do you recognize this?

10 A Yes.

11 Q And what is this a picture of?

12 A That's the parking lot closest to I believe
13 that's Whilden Street over here, and that's the gray
14 shirt.

15 Q Okay. And the gray shirt would be this item
16 here?

17 A Yes.

18 Q Okay.

19 MS. CHISOLM: May I approach, Your Honor?

20 THE COURT: You may.

21 Q (By Ms. Chisolm) Showing you what has been
22 marked as state's Exhibit 15. Do you recognize that?

23 A That's the gray shirt.

24 Q And you have already answered the question, but
25 what is this?

1 A It's a gray shirt.

2 Q And does this picture of the gray shirt fairly
3 and accurately represent the shirt as you saw it on
4 March 30th?

5 A Yes, ma'am.

6 MS. CHISOLM: Your Honor, State would like to
7 move State's Exhibit 15 into evidence.

8 THE COURT: Any objection?

9 MS. FORD: No, Your Honor.

10 THE COURT: Marked and admitted without
11 objection.

12 (Whereupon, State's Exhibit No. 15 is admitted
13 into evidence.)

14 MS. CHISOLM: May I publish?

15 THE COURT: You may.

16 Q (By Ms. Chisolm) If you could just tell the
17 jury what that is?

18 A That's the gray shirt.

19 Q okay. And did you take that picture also?

20 A Yes. Yes, I took that photo also.

21 Q Did you collect any of these items?

22 A Yes. I collected that shirt and several other
23 items.

24 Q okay. Can you tell us about the collection
25 process, please?

1 A We have bags that are only used for that
2 specific piece of evidence. Each individual piece of
3 evidence would get its own bag. And those are placed
4 into those bags by me with gloves on that are --
5 haven't been used at any other crime scene, they're
6 fresh, sterile gloves. And we use those to collect the
7 items.

8 And then they're sealed with tape and initialed
9 over. And we take those to the police department where
10 I, as an evidence technician, log those into our
11 evidence room. And they stay in that evidence room
12 until they're either used for trial, taken to SLED for
13 further examination, detectives look at, you know,
14 whatever the case may be.

15 We have a chain of custody that tells us, tells
16 anybody who wants to know, exactly where that piece of
17 evidence is at any given time.

18 Q And did you mention once you take it from the
19 scene, where it goes from there?

20 A Yes. It goes back to the police department and
21 I log it into evidence and kind of find it a place to
22 stay in our evidence room until it's used for another
23 purpose.

24 MS. CHISOLM: Your Honor, may I approach?

25 THE COURT: You may.

1 Q (By Ms. Chisolm) I am now showing you what has
2 been marked State's Exhibit 16.

3 A Uh-hum.

4 Q Do you recognize that?

5 A Yes, ma'am.

6 Q How are you able to recognize it?

7 A It's the gray shirt that I put into evidence.
8 and this is the bag that I used. It's my handwriting,
9 and I have initialed right here showing that I took it
10 into the actual scene and then I logged it into
11 evidence. And SLED has put it into this piece of white
12 paper.

13 Q And where did you obtain it?

14 A From the Scotchman, 323 Coleman Boulevard.

15 Q And is this shirt in substantially the same
16 condition as when you first saw it?

17 A Yes, ma'am.

18 Q Are there any changes in its condition?

19 A I think it's just turned right-side out. It was
20 turned inside out at the scene.

21 MS. CHISOLM: Your Honor, State would like to
22 move State's Exhibit 16 into evidence.

23 THE COURT: Any objection?

24 MS. FORD: No, Your Honor.

25 THE COURT: Marked and admitted without

1 objection.

2 (Whereupon, State's Exhibit No. 16 is admitted
3 into evidence.)

4 MS. CHISOLM: May publish, Your Honor?

5 THE COURT: You may.

6 Q (By Ms. Chisolm) Can you describe the shirt for
7 me to the jury?

8 A It's a gray t-shirt. I think it says Pawleys
9 Island on the front and the back with a fish.

10 Q And that's the front side of it?

11 A Yes, ma'am, that's the front.

12 Q And this would be the back?

13 A Yes, that's the backside.

14 Q And this was the shirt located on the ground?

15 A Yes.

16 MS. CHISOLM: Court's indulgence.

17 I have no further questions. If you would
18 please answer any questions the defense has.

19 THE COURT: You may proceed.

20 MS. FORD: Thank you, Your Honor, may it please
21 the court.

22 THE COURT: Yes, ma'am.

23 CROSS-EXAMINATION

24 BY MS. FORD:

25 Q Hello.

1 A Hello.

2 Q You told us a little about how when you go to a
3 crime scene it's your job to try to collect whatever
4 evidence might possibly be found?

5 A Yes, ma'am.

6 Q And sometimes, you told us or indicated, that
7 you are not sure what may be relevant?

8 A Yes, ma'am.

9 Q So you err on the side of taking too much
10 instead of too little?

11 A We try to.

12 Q And in this case you mentioned that you took
13 some cigarette filters?

14 A Uh-hum.

15 Q But you had no idea if those actually belonged
16 to the robber?

17 A No, I had no clue.

18 Q And because the Scotchman is a convenience
19 store --

20 A Yes.

21 Q -- it has a lot of random people there?

22 A Uh-hum.

23 Q At all hours of the night?

24 A Uh-hum.

25 Q And you weren't even sure how long those filters

1 had even been there?

2 A No.

3 Q And also there is a drink can as well?

4 A Yes, ma'am.

5 Q And again, you had no indication if that
6 belonged to the robber?

7 A No.

8 Q And you had no indication of how long that had
9 actually been there?

10 A No.

11 Q You processed the store for some fingerprints?

12 A Yes, ma'am.

13 Q None of those matched Philip Shuler?

14 A No, they did not. They were insufficient for
15 any comparison at all.

16 Q Also your job, not only do you go collect
17 evidence, you also work in the evidence room when you
18 collect evidence, correct?

19 A Yes, ma'am.

20 Q So you are basically responsible for all the
21 evidence collected in this case; is that fair to say?

22 A No. I'm responsible -- it depends on what you
23 mean by responsible. If there's evidence on the scene
24 that I collected, yes, I'm responsible for putting that
25 into evidence and bringing it to the station.

1 And if it's another officer who collects a piece
2 of evidence, he or she may bring it into the station
3 and I could be one of the four evidence custodians who
4 takes it from our locker and logs it into the actual
5 evidence room.

6 Q Okay. A few more questions. At the scene you
7 also -- you had mentioned in your testimony that
8 sometimes you all do take footprints, correct?

9 A Yes, ma'am.

10 Q Or shoe prints?

11 A Yes, ma'am.

12 Q And in this case you actually did try to take
13 some footprints?

14 A I did.

15 Q Shoe prints?

16 A I did.

17 Q But that wasn't actually followed up on, was it?

18 A No. Those do not go to SLED.

19 Q But if you have the suspect's shoes you could,
20 in theory, compare those two?

21 A I can't. I'm not a certified expert in any of
22 that. That would be up to SLED whether they could make
23 a comparison or not. That's not something that we do.

24 Q But the reason that you took those shoe prints
25 is because you know that it could potentially be

1 possible?

2 A It could be. It's possible, yes.

3 Q And you also, we looked at that Pawleys Island
4 t-shirt today. You collected this at the Scotchman?

5 A Yes, ma'am.

6 Q But, again, you had no idea if that belonged to
7 the robber?

8 A No.

9 Q And you have no idea how long it had been there?

10 A No. I mean it couldn't have been there -- I
11 can't say how long it was there.

12 Q You have no idea how long it was there?

13 A No.

14 MS. FORD: Beg the Court's indulgence?

15 THE COURT: Uh-hum.

16 MS. FORD: No further questions for this
17 witness, Your Honor.

18 THE COURT: Any redirect?

19 MS. CHISOLM: None, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused, from the State?

22 MS. CHISOLM: No, Your Honor.

23 THE COURT: From the defense?

24 MS. FORD: No, Your Honor.

25 THE COURT: Ma'am, you are excused.

1 You may call your next witness.

2 MS. CHISOLM: State calls Officer Elliot Keenan.

3 MR. MICHAEL ELLIOT KEENAN,

4 after having been duly sworn to stat the truth, the
5 whole truth, and nothing but the truth, testified on
6 his oath as follows:

7 THE COURT: You may proceed.

8 MS. CHISOLM: Beg the Court's indulgence.

9 THE COURT: Uh-hum.

10 MS. CHISOLM: Your Honor, may I approach the
11 court reporter?

12 THE COURT: You may.

13 DIRECT EXAMINATION

14 BY MS. CHISOLM:

15 Q Good afternoon. What is your what occupation?

16 A Police officer.

17 Q And how long -- and what agency do you work for?

18 A For the Mount Pleasant Police Department for the
19 past five years.

20 Q And what are your present duties?

21 A Patrol officer assigned to Waterfront Park in
22 Mount Pleasant.

23 Q Let me take you back to March 30, 2009. Were
24 you a patrol officer on that date?

25 A Yes, ma'am.

1 Q And was one of your duties to assist in
2 investigations?

3 A Yes, it was.

4 Q Did you take part in the investigation of a
5 robbery that took place at the Scotchman on Coleman
6 Boulevard in Mount Pleasant?

7 A I did.

8 Q Okay. And how were you brought into the case?

9 A I remember hearing it, the information, radio
10 talk, as I was coming into work. It was discussed
11 briefly at roll call. And then we were out patrolling
12 for a suspect in the area.

13 Q Okay. And at that time, do you remember what
14 hours your shift was?

15 A 10:00 p.m. to 8:00 a.m.

16 Q And do you remember what the description was at
17 that time?

18 A The description, I believe, was a black male,
19 brown shirt with writing of some sort, A design on the
20 t-shirt.

21 Q Let me take you to about 10:10 p.m. Do you
22 remember where you were?

23 A I was patrolling in the part of Mount Pleasant
24 called the old village on Church Street. Church near
25 Rivers.

1 Q And how far is that from the scotchman?

2 A A couple of blocks.

3 Q Did you speak to anyone?

4 A Yes. As I was patrolling the area I was flagged
5 down by the defendant, Mr. Shuler. When I approached
6 him, he presented me with a Mount Pleasant Police
7 Department business card.

8 Another officer that he had spoken to advised
9 him, he was aware there was a robbery and we were
10 looking for a black male suspect.

11 Q And where was Mr. Shuler when you all spoke? Do
12 you remember?

13 A He was on the corner of Church and Rivers. He
14 told me at that time he was coming from Art's Bar and
15 Grill and was heading to Shem Creek.

16 Q And the other officer that you spoke about, do
17 you know who that was?

18 A No. I just recognized it was one our business
19 cards. I didn't see the name on it.

20 Q Okay. Do you remember what he was wearing?

21 A Light blue t-shirt and denim pants.

22 Q And why did you begin speaking with him?

23 A He flagged me down.

24 Q Is that usual?

25 A I was surprised. Especially given the

1 information the he passed on to me. Although it was
2 relevant to what I was doing there, it was sort of
3 strange that somebody would flag me down to tell me
4 that he knew why I was there and what I was doing.

5 MS. CHISOLM: Court's indulgence.

6 THE COURT: Uh-hum.

7 Q (By Ms. Chisolm) Were there any other people
8 around on that street?

9 A No, ma'am.

10 Q Okay. I'm going to show you what has been
11 marked as State's Exhibit 14.

12 MS. CHISOLM: Your Honor, may I ask the witness
13 to step down?

14 THE COURT: Yes, sir. If you would step down.
15 but please speak loudly so that the court reporter can
16 take down your responses.

17 THE WITNESS: Yes, ma'am.

18 Q (By Ms. Chisolm) I'm going to give you this pen.
19 And if you would, please mark for the jury where you
20 met with the defendant first at Church and Rivers
21 street.

22 A (Whereupon, the witness so indicates.)

23 Q And do you recognize what this location is here
24 with an F on it?

25 A Yes, ma'am. That's where the robbery took

1 place.

2 Q Could you also mark -- actually at this time I
3 will have you sit back down for a second.

4 okay. Could you tell me around 1:20 a.m. where
5 you were?

6 A I was meeting with Officer Plyler at a gas
7 station on Ben Sawyer. It was 1402 Ben Sawyer
8 Boulevard.

9 Q Was officer Plyler also on patrol?

10 A Yes, he was. We pulled up driver-side to
11 driver-side and we were discussing the -- well he had
12 stood by the crime scene, so we discussed the video
13 that he saw.

14 Q I'm sorry, discussed what?

15 A We discussed the crime scene video that he
16 witnessed. He told me that the suspect was a white
17 male, large --

18 MS. FORD: Your Honor, objection, hearsay.

19 THE COURT: Please approach.

20 (Whereupon, the following discussion was held at
21 the bench.)

22 THE COURT: Sustained, hearsay.

23 He's repeating what the other officer told him
24 he saw on the video.

25 MR. KIDD: If I may be heard. I don't think.

1 it's offered for the truth. It shows --

2 THE COURT: It is offered for its truth and it's
3 bolstering. Move on.

4 (In open court.)

5 THE COURT: He can say he had a conversation and
6 what he did as a result.

7 Proceed.

8 MS. CHISOLM: Thank you, Your Honor.

9 Q (By Ms. Chisolm) Officer, as a result of your
10 conversation, what did you do?

11 A While speaking with Officer Plyler, I observed
12 Mr. Shuler coming back across the street and told him
13 that that was the individual I saw a few hours ago and
14 he was wearing the same clothing, the light blue
15 t-shirt and denim pants that he was wearing when I had
16 earlier seen him about 10:15 p.m.

17 Q And what did you observe him doing?

18 A The defendant, he entered the gas station at
19 1402 Ben Sawyer. He was walking across the street from
20 across Ben Sawyer Boulevard headed to the gas station.

21 MS. CHISOLM: Court's indulgence.

22 THE COURT: Uh-hum.

23 Q (By Ms. Chisolm) Now going to about 2:30 a.m.
24 Do you remember where you were?

25 A Patrolling on Whilden Street.

1 Q okay. And what type of neighborhood is that?

2 A It's kind of -- it's a residential area. But
3 it's sort of on the outskirts of the old village, so
4 there are some businesses close by and some homes.

5 Q And why were you in that area?

6 A Patrolling in the area of the crime scene,
7 Hibben and Whilden, for suspicious items related to the
8 case potentially.

9 Q Did you find any items?

10 A Yes. As I was driving down Whilden Street I
11 looked down Hibben Street and I observed what looked
12 like money in the roadway and some articles of
13 clothing.

14 Q And where is this location in regards to
15 Scotchman?

16 A Less than a block. It's the street that runs
17 behind the gas station essentially.

18 Q Were there any people around?

19 A No.

20 Q Do you recall what day of the week this was?

21 A Well the crime occurred on a Monday night,
22 10:00, school night. And this was the following
23 morning on Tuesday morning, a couple of hours later.

24 Q So you said you found a \$5 bill and some
25 clothing. What did the articles of clothing look like?

1 A One was a -- excuse me. One was a white sock,
2 one article of clothing was a white sock. A XXXL light
3 colored gray t-shirt, and a \$5 bill. And I think that
4 was it. Yes, that was it. A sock, a gray t-shirt, and
5 a \$5 bill.

6 Q Do you recall anymore description about the gray
7 t-shirt?

8 A The shirt had a large knot in the back and a
9 small hole, that I can recall, somewhere on the shirt.
10 like it was cut out intentionally.

11 Q And the third item was a shirt sleeve?

12 A No. On this particular -- in this particular
13 area what I found was a gray t-shirt size XXXL, a white
14 sock that appeared to have a stick or some sort of firm
15 object in the foot end of the stick, and then the \$5
16 bill.

17 Q Okay. And after you located these items, were
18 they photographed?

19 A Officer Arrowood arrived on the scene and
20 photographed them. And after he photographed them, I
21 placed them into evidence bags and went to the station
22 where I logged them into evidence and were placed in
23 the evidence locker.

24 MS. CHISOLM: Your Honor, may I approach?

25 THE COURT: Yes, you may.

1 Q (By Ms. Chisolm) Now showing you what has been
2 marked as State's Exhibit 22. Do you recognize that?

3 A Yes, ma'am, I do.

4 Q What is it?

5 A It's a gray t-shirt and white sock with the item
6 in the foot end.

7 Q Does it fairly and accurately represent the item
8 that you saw that night?

9 A Yes, ma'am, it does.

10 MS. CHISOLM: Your Honor, at this time the State
11 would like to move into evidence State's Exhibit 22.

12 THE COURT: Any objection?

13 MS. FORD: No, Your Honor.

14 THE COURT: Marked and admitted without
15 objection.

16 (Whereupon, State's Exhibit No. 22 is admitted
17 into evidence.)

18 MS. CHISOLM: May I publish?

19 THE COURT: You may.

20 Q (By Ms. Chisolm) If you could turn around and
21 describe what it is that you see here?

22 A Here to the left, here on the left is the sock.
23 You can almost see this area here something is within
24 the length of the sock, it's very straight. This is
25 the gray t-shirt with the knot and the hole in it.

1 Q And you did say you collected these items,
2 correct?

3 A Yes, ma'am, I did.

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

5 THE COURT: You may.

6 MS. CHISOLM: Your Honor, may I approach?

7 THE COURT: You may.

8 Q (By Ms. Chisolm) I'm now showing you what has
9 been marked as State's Exhibit 18. Do you recognize
10 that?

11 A Yes, ma'am.

12 Q What is it?

13 A It's the gray t-shirt I found at 400 Hibben
14 Street.

15 Q Is that shirt in substantially the same
16 condition as when you first saw it?

17 A Yes, ma'am.

18 Q Are there any changes in its condition or
19 appearance?

20 A No, ma'am.

21 MS. CHISOLM: Your Honor, at this time, State
22 would like to offer State's Exhibit 18 into evidence.

23 THE COURT: Any objection?

24 MS. FORD: No, Your Honor.

25 THE COURT: Marked and admitted without

1 objection.

2 (Whereupon, State's Exhibit No. 18 is admitted
3 into evidence.)

4 MS. CHISOLM: May I publish, Your Honor?

5 THE COURT: You may.

6 Q (By Ms. Chisolm) If you would, could you please
7 hold up that item and describe it to the jury?

8 A Yes, ma'am. This is going to be the shirt I
9 found -- this shirt here pictured behind me, size XXXL,
10 the hole in the center there -- at 400 Hibben.

11 Q Could you tell us again, what did you do with it
12 after you picked it up from the ground?

13 A First I had taken photos and then placed it in a
14 paper bag, along with other items in separate bags, and
15 transported it to the station.

16 Q Is that the paper bag that you --

17 A Yes, it is. It was written on there, as well as
18 a description of what is inside.

19 Q Can you speak up just a little bit?

20 A Yes, ma'am, I'm sorry. Yes, ma'am.

21 It's -- my name is here on this, I was that one
22 that filled it out with the shirt here labelled, torn
23 gray shirt, with the location where I found it, 400
24 Hibben.

25 Q And after you collected that item, did you then

1 take it to the police department?

2 A Yes, I did.

3 Q And what's the process once you get to the
4 police department?

5 A Enter it into evidence placing it into the
6 evidence locker, and from there the evidence techs take
7 care of it.

8 MS. CHISOLM: May I approach, Your Honor?

9 THE COURT: You may.

10 Q (By Ms. Chisolm) Now I'm showing you what has
11 been marked as State's Exhibit 17.

12 A It's a white sock.

13 Q Take a look at it. When you are ready, when you
14 are done, just look up.

15 A This is the white sock with the items that were
16 found inside the sock.

17 Q Okay. And where did you obtain that?

18 A 400 Hibben Street. Same location as the
19 t-shirt.

20 Q And is that sock, and the item inside of it, in
21 substantially the same condition as when you first saw
22 it?

23 A Yes, ma'am.

24 Q Are there any changes to its condition or
25 appearance?

1 A No, ma'am.

2 MS. CHISOLM: All right. Your Honor, at this
3 time we'd like to move State's Exhibit 17 into
4 evidence.

5 THE COURT: Any objection?

6 MS. FORD: No, Your Honor.

7 THE COURT: Marked and admitted without
8 objection.

9 (Whereupon, State's Exhibit No. 17 is admitted
10 into evidence.)

11 Q (By Ms. Chisolm) Now you mentioned that you --
12 I'm sorry, once you gathered that item.

13 A Right.

14 Q What did you do with that?

15 A Well the items that were located inside the sock
16 which is this plastic items, it looks like a piece of
17 palm tree, I didn't remove anything once I wanted to
18 make sure there was nothing inside the sock that wasn't
19 going to be harmful to the evidence techs.

20 And I left the items inside the sock, placed
21 them in a paper bag, and took them to the station with
22 the t-shirt and logged them into the evidence locker.

23 Q Was that the bag that you --

24 A Yes, ma'am, it was. Or it is, yes, ma'am.

25 Q And then you said you put it in the evidence

1 locker at Mount Pleasant Police Department?

2 A Correct.

3 Q Could you tell us where you were around 5:00
4 a.m.?

5 A I went back to the intersection of Hibben and
6 Whilden Street patrolling again for items.

7 Q And did you find anything?

8 A Yes, I did. Across the street -- this was found
9 on one side of Hibben Street. I found some other items
10 on the other side of Hibben Street in the grass lot
11 area used for overflow church parking.

12 Q And where is that in relation to the Scotchman?

13 A Behind the Scotchman, essentially.

14 Q And where is that in relation to where you saw
15 the defendant, Philip Shuler?

16 Q Two to three blocks away.

17 Q Okay. What did you find then?

18 A We found a brown t-shirt with gold writing; a
19 pair of dark in colored sweat pants, size XXL; it
20 appeared to be a shirt sleeve from the first gray
21 shirt; and another piece of gray cloth at that location
22 as well.

23 MS. CHISOLM: Your Honor, may I approach?

24 THE COURT: You may.

25 Q (By Ms. Chisolm) I'm now showing you what has

1 been marked as State's Exhibits 20 and 21. Do you
2 recognize these?

3 A Yes, ma'am, I do. That's what I found on Hibben
4 Street the second time.

5 Q And what exactly are these items here?

6 Q I'm sorry, can you repeat that?

7 A What exactly are these items here?

8 A It's the brown t-shirt and the sweat pants,
9 another sock and another piece of gray cloth.

10 Q Are these photographs in substantially -- do
11 these photographs fairly and accurately depict the
12 items as you saw them on March 30th?

13 A Yes, they do.

14 MS. CHISOLM: Your Honor, at this time State
15 would like to move State's Exhibits 20 and 21 into
16 evidence.

17 THE COURT: Any objection?

18 MS. FORD: No, Your Honor.

19 THE COURT: Marked and admitted without
20 objection.

21 (Whereupon, State's Exhibit Nos. 20 and 21 are
22 admitted into evidence.)

23 MS. CHISOLM: Thank you, Your Honor. May I
24 publish?

25 THE COURT: Yes, you may.

1 Q (By Ms. Chisolm) Okay. Could you tell the jury
2 what this item is?

3 A This is the brown t-shirt.

4 Q And is it inside out currently in the picture?

5 A Yes, ma'am. There was some kind of gold writing
6 on the front of the shirt, and some other insignia or
7 design on the rear of the shirt.

8 Q I'll now show you what's been marked as State's
9 Exhibit 21. Could you describe to the jury what this
10 is?

11 A Those are the XXL sweat pants and the sock, and
12 a small piece of gray cloth, possibly a shirt sleeve,
13 I'm not sure.

14 Q Okay. So this piece here is the sleeve?

15 A Yes, ma'am. And the sock here on the bottom,
16 and the dark colored sweat pants at the top.

17 Q These items, once you collected -- I'm sorry,
18 did you collect these items?

19 A Yes, I did.

20 Q And once you collected these items, what did you
21 do with them?

22 A Immediately took them back to the police
23 department, to the station, and entered them into
24 evidence and secured them in the evidence locker.

25 MS. CHISOLM: Your Honor, may I approach?

1 THE COURT: You may.

2 Q (By Ms. Chisolm) Now showing you what has been
3 marked as State's Exhibit 19. Can you take a look at
4 that?

5 A It's the brown t-shirt.

6 Q Okay. How did you recognize that shirt?

7 A I'm sorry, do you have another pair of gloves?

8 Q Sorry.

9 A This is the brown t-shirt that I found.

10 Q How did it first come into your possession?

11 A Just found it on -- while I was patrolling on
12 foot in the area, across the street from where I
13 initially found the first set of items.

14 Q And again, what did you do with that shirt once
15 you?

16 A Put it in the brown paper bag out there and
17 transported it to the station.

18 Q And put that in evidence as well?

19 A Yes, ma'am.

20 Q Is it in the same -- substantially the same
21 condition as when you first saw it?

22 A Yes, it is.

23 Q Any there any changes to its condition or
24 appearance?

25 A No, ma'am.

1 MS. CHISOLM: At this time, Your Honor, the
2 State would like move State's Exhibit 19 into evidence.

3 THE COURT: Any objection?

4 MS. FORD: No, Your Honor.

5 THE COURT: Marked and admitted without
6 objection.

7 (Whereupon, State's Exhibit No. 19 is admitted
8 into evidence.)

9 Q (By Ms. Chisolm) officer, was there anything
10 else -- at this time when the shirt was -- actually, I
11 will withdraw that.

12 MS. CHISOLM: Your Honor, may the witness step
13 down, please?

14 THE COURT: Yes, sir, you may step down.

15 Q (By Ms. Chisolm) I'm going to give you this red
16 marker. And we are looking again at State's Exhibit
17 14. And once again, do you recognize this area that
18 has been circled with the F on it?

19 A Yes, ma'am.

20 Q The Scotchman?

21 A Correct.

22 Q And this little area down here that you circled
23 previously, what is this?

24 A That's where I first saw Mr. Shuler --

25 THE COURT: Sir, I need for you all to switch

1 places so that she can hear you. Thank you.

2 THE WITNESS: I'm sorry.

3 THE COURT: Thank you. And I need for you to
4 speak up for me, sir. And he needs to start from the
5 beginning and repeat his last answer.

6 MS. CHISOLM: Court's indulgence.

7 THE COURT: Uh-hum.

8 Q (By Ms. Chisolm) Again showing you what has been
9 marked as State's Exhibit 14. Could you tell the jury
10 what this location is here with the F?

11 A That's the Scotchman where the robbery occurred.

12 Q Okay. And you previously marked this over here,
13 what streets are these?

14 A Church and Rivers. This is where I saw the
15 defendant for the first time, 10:10 p.m. the night of
16 the robbery.

17 Q okay. could you also mark for the jury where
18 you located the -- you testified around 2:20 a.m. you
19 were patrolling in Whilden Street, correct?

20 A Correct.

21 Q And you collected some items at 400 Hibben
22 Street?

23 A Yes, ma'am.

24 Q Would you mark that on the map here.

25 A It's going to be in this area here on the

1 sidewalk, off the sidewalk.

2 Q Okay. And you left that area?

3 A Correct.

4 Q To do what?

5 A Enter those items into evidence at the station.

6 Q And after you left the station, where did you
7 go?

8 A Well I'm not sure exactly what I did between
9 that time and when I left. But at 5:00 a.m. I came
10 back to the area and found the other second set of
11 items in this area here across the street.

12 Q Thank you. And again you said that was just a
13 couple of blocks over from the Scotchman?

14 A Right. Just a block actually.

15 Q Just a block. And then this area here?

16 A Roughly about two blocks or so from there.

17 Q Now you saw the defendant again?

18 A Uh-hum.

19 Q Could you circle on the map where that was?

20 A This was the gas station here, 1402 Ben Sawyer
21 where we saw the defendant a second time.

22 Q So the first location was here?

23 A Yes, ma'am.

24 Q And then the second location was here?

25 A Correct.

1 Q And after --

2 A Roughly three hours apart.

3 Q After you left the defendant, you came back to
4 this area to search for items?

5 A Yes, ma'am.

6 Q And you found items here and here?

7 A Correct.

8 Q And you took those into custody?

9 A Yes.

10 MS. CHISOLM: Thank you. Have a seat.

11 I have no further questions. Please answer any
12 questions the defense may have.

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

14 THE COURT: Uh-hum.

15 MS. FORD: Just a few questions.

16 CROSS-EXAMINATION

17 BY MS. FORD:

18 Q When you were first given a description of the
19 robber, you were told that he was wearing a brown shirt
20 with gold lettering?

21 A Yes, ma'am.

22 Q So you, later at 5:00 a.m. you found a brown
23 shirt with gold lettering?

24 A Yes, ma'am.

25 Q And it says Shawn John, that's what the shirt

1 said?

2 A Yes, ma'am.

3 Q And in the back it has some black design?

4 A Correct.

5 Q And when you first came across Mr. Shuler, just
6 to clarify, I believe you may have said 10:15 at once,
7 and then you said 10:10?

8 A It was sometime then, 10:10, 10:15, somewhere in
9 that time frame.

10 Q Your report indicates 10:10?

11 A Yes, ma'am.

12 Q And you found some items at a church parking
13 lot. What church was that?

14 A I believe it was the Mount Pleasant Presbyterian
15 Church parking lot. It was an overflow lot, a grass
16 lot.

17 Q And when you came across Mr. Shuler at about
18 10:10, he was the one who approached you?

19 A He flagged me down. I was in my car.

20 MS. FORD: No further questions.

21 THE COURT: Any redirect?

22 MS. CHISOLM: None, Your Honor.

23 THE COURT: Any objection to the witness being
24 excused?

25 MS. CHISOLM: No, Your Honor.

1 THE COURT: From the defense?

2 MS. FORD: No, Your Honor.

3 THE COURT: Sir, you are excused.

4 You may call your next witness.

5 MR. KIDD: Thank you, Your Honor.

6 State calls Detective Wilson.

7 MS. PAULA WILSON,

8 after having been duly sworn to state the truth, the
9 whole truth, and nothing but the truth, testified on
10 her oath as follows:

11 THE COURT: You may proceed.

12 MR. KIDD: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 DIRECT EXAMINATION

15 BY MR. KIDD:

16 Q Good afternoon, Ms. Wilson.

17 A Good afternoon.

18 Q Could you tell the jury where you are employed?

19 A Mount Pleasant Police Department.

20 Q And how long have you been employed there?

21 A 14 and a half years.

22 Q We will just get right to the point. Do you
23 remember becoming involved in an armed robbery that
24 occurred in late March, 2009?

25 A I do.

1 Q And what was your involvement in that case?

2 A I transported Mr. Shuler to Charleston County
3 Detention Center and obtained a DNA sample once there.

4 Q Okay. Did you collect any evidence from, other
5 than the DNA sample, did you take any of his property
6 or possessions?

7 A Yes. Pursuant to a search warrant, I obtained
8 his clothing.

9 MR. KIDD: If I may approach, Your Honor?

10 THE COURT: You may.

11 Q (By Mr. Kidd) I'm going to show you what has
12 been marked for identification purposes as State's
13 Exhibit No. 13.

14 Can you tell me if you first recognize that bag?

15 A I do.

16 Q And what is that?

17 A This is a bag with the defendant's shoes and a
18 hat.

19 Q And would have you taken those items into
20 custody?

21 A I did.

22 Q And can you look inside that bag?

23 A Okay.

24 Q Do you recognize those? Would you like some
25 gloves?

1 A I'm good. I only see the shoes in here.

2 Q Correct. Well I might ask you to pull them out?

3 A Okay, yeah, I will have some. Thank you.

4 Q I will wait until you get those on.

5 A I'm ready.

6 Q Do you recognize the shoes in that bag?

7 A I do.

8 Q And do those -- were those the shoes you
9 collected that day?

10 A They are.

11 MR. KIDD: Your Honor, at this time State would
12 like on move State's Exhibit No. 13 into evidence.

13 THE COURT: Any objection?

14 MS. FORD: Your Honor, subject to my pretrial
15 motion on the search warrant.

16 THE COURT: Noted, overruled, admitted.

17 (Whereupon, State's Exhibit No. 13 is admitted
18 into evidence.)

19 MR. KIDD: Thank you, Your Honor. May I publish
20 these shoes to the jury?

21 THE COURT: You may.

22 Q (By Mr. Kidd) I'm going to risk it.

23 THE COURT: And actually those were not subject
24 to the pretrial motions.

25 MS. FORD: Yes, Your Honor.

1 (Whereupon, the following discussion was held at
2 the bench.).

3 THE COURT: The only thing that was the subject
4 of the pretrial motion was the DNA collection,
5 specimen. You never made a motion about the shoes.

6 MS. FORD: Yes, Your Honor.

7 THE COURT: I'll note your objection for the
8 record and overrule it.

9 MS. FORD: Thank you.

10 (In open court.)

11 THE COURT: Proceed.

12 MR. KIDD: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 Q (By Mr. Kidd) And this is the shoe that you just
15 discussed right here, State's Exhibit No. 13?

16 A It is.

17 Q And can you tell the jury what is this gold
18 design on the side?

19 A The Nike sign.

20 Q And can you tell how this kind of sole of the
21 shoe wraps up the side there?

22 A Yes.

23 Q Thank you. Now also as -- when you were at the
24 detention center that evening, you say that you took a
25 DNA sample from the defendant?

1 A I did.

2 Q Can you tell the jury how that process takes
3 place?

4 A Pursuant to a search warrant, I had two sterile
5 swabs in an envelope.

6 Q Do you call those buccal swabs?

7 A A buccal swab, two swabs.

8 Q And how do you -- and not necessarily in this
9 specific incident -- but how is a buccal swab used?
10 How do you do it?

11 A With the nurse present that was at the jail, I
12 instructed him, I took the two swabs out and handed
13 them to him and instructed him to swab the inside of
14 his mouth, and then he swabbed his cheek with it too.

15 Q So Mr. Shuler would have swabbed his own cheek?

16 A Yes.

17 Q Okay. And is Mr. Shuler present here today?

18 A He is.

19 Q And for the record, can you identified him?

20 A The defendant, sitting at the table.

21 Q Tell me what color tie he's wearing?

22 A Sorry. A multi-color tie, sort of.

23 Q Okay. And that was the person who you did the
24 buccal swab on?

25 A Yes.

1 Q okay. I'm going to show you what has been
2 marked for identification purposes as State's Exhibit
3 No. 23.

4 A okay.

5 Q Do you recognize that item?

6 A I do.

7 Q Can you tell the jury what that item is?

8 A This is an envelope. Inside this envelope I
9 would have put the two swabs into a box so that they
10 could dry, and the box inside this envelope.

11 Q So after he would have wiped the inside of his
12 cheek with one of those swabs, then you would have done
13 what with the swabs?

14 A There is a small box, it's probably inside of
15 here possibly, that has holes in it which would enable
16 these swabs to dry. And then I put that box inside
17 this envelope.

18 Q okay. And did you make any indications on that
19 envelope? Did you write on the envelope?

20 A I did.

21 Q And did you seal them inside that envelope?

22 A Can you repeat that? Sorry.

23 Q Did you seal the envelope?

24 A Yes.

25 Q What did you seal the envelope with? Is that

1 evidence tape or is it sealed by itself or?

2 A It's probably sealed and then there is red
3 evidence tape on it as well.

4 Q Okay. And then what did you do with that
5 envelope once it was sealed?

6 A Placed it into evidence.

7 Q And that would have been in Mount Pleasant?

8 A Mount Pleasant Police Department, yes.

9 Q Okay. Do you know when you would have done
10 that?

11 A It was taken on the 31st, so as soon as I got
12 back to the station I would have filled out the
13 evidence sheet and put it into evidence.

14 Q Okay. And what we are talking about is just
15 this inner envelope, right? Not the outer envelope?

16 A No. The inner envelope, yes.

17 Q So The manila envelope?

18 A The manila envelope, yes, sir.

19 Q This outer envelope?

20 A That's not mine.

21 Q That's not.

22 MR. KIDD: Court's indulgence.

23 No further questions, Your Honor.

24 THE COURT: Any questions for witness?

25 MS. FORD: No, Your Honor. No questions.

1 THE COURT: Any objection to the witness being
2 excused, from the State?

3 MR. KIDD: No, ma'am.

4 THE COURT: From the defense?

5 MS. FORD: No, Your Honor.

6 THE COURT: Ma'am, you are excused.

7 THE WITNESS: Thank you.

8 THE COURT: You're welcome.

9 Mr. Foreman, ladies and gentlemen, you all have
10 been sitting for an hour. I'm going to give you a
11 brief restroom break. During the break, please do not
12 discuss the case and please leave your note pads in
13 your seats.

14 (Whereupon, the jurors exit the courtroom.)

15 THE COURT: You may be seated. Is there
16 anything before we take a break, from the State?

17 MS. CHISOLM: No, Your Honor.

18 THE COURT: From the defense?

19 MS. FORD: No, Your Honor.

20 THE COURT: We will be at ease for about 10
21 minutes or so.

22 (Whereupon, a recess was taken.)

23 THE COURT: Ladies and gentlemen, I hope you
24 enjoyed your break. We will now resume testimony.

25 You may swear the witness.

1 MR. RAYMOND HAUPT,
2 after having been duly sworn to state the truth, the
3 whole truth and nothing but the truth, testified on his
4 oath as follows:

5 THE COURT: You may proceed.

6 MR. KIDD: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. KIDD:

9 Q Good afternoon.

10 A Good afternoon.

11 Q Could you tell the jury where you are employed?

12 A The Mount Pleasant Police Department.

13 Q And how long have you been employed there?

14 A Eight years.

15 Q And what are your duties at the Mount Pleasant
16 Police Department?

17 A I'm a police officer. And right now I'm a
18 crime scene investigator and an evidence technician.

19 Q What were your duties back in March of 2009?

20 A Crime scene and evidence.

21 Q And what does that mean?

22 A Whenever there is crime scene that occurs, we go
23 and process the scene. And then whenever we are not at
24 a scene, whenever the evidence comes in to the police
25 department we log it in and we make sure it's preserved

1 for whatever purpose it needs to be preserved for.

2 Q Do you have an evidence room?

3 A Yes.

4 Q And tell me a little bit about your evidence
5 room. Can anyone just walk in?

6 A No. There are four people that have keys and
7 also have a security code to access the evidence room.
8 Three of us are sworn police officers, and one is our
9 supervisor.

10 Q And generically speaking, if I am an officer and
11 I collected evidence, how do I turn it into the
12 evidence room to you?

13 A We have two ways they can turn it into us. They
14 can bring it directly to us and we will take direct
15 custody of the evidence and log it in.

16 Or we have lockers, they're pass-thru lockers
17 that they're locked on one side and they have swing-out
18 doors that are open on the other side which is
19 accessible to the officers. They put the evidence in
20 there, they shut the door, it's locked, they can't open
21 it anymore. We are the only that can then open it from
22 the other side.

23 So whenever we come in to log in the evidence,
24 then we would open it and proceed with the log-in
25 process.

1 Q When you take in a piece of evidence, do you
2 then keep a form of some sort to log what happened to
3 that piece of evidence?

4 A Yes. It's our chain of custody form. The
5 police officer, or the person turning in the evidence,
6 they fill out the evidence sheet. And the evidence
7 sheet has all the information of what the evidence is,
8 where it was taken from, the case number, all the
9 pertinent information.

10 And then at the bottom of it is the chain of
11 custody. And that's where we log in where it goes,
12 basically. We are usually the first ones to sign it.
13 And then anyone else signing it out for whatever reason
14 will be on the chain of custody.

15 Q With regard to case that we are here for, which
16 carries your case number which is 09, 2009003935. Did
17 you collect or log into evidence any pieces of evidence
18 regarding -- that were related to this case?

19 A I did log some in.

20 Q Okay.

21 MR. KIDD: And if I may approach the witness,
22 Your Honor?

23 THE COURT: You may.

24 Q (By Mr. Kidd) I'm going to start with, let's
25 see here, what's been entered into evidence as State's

1 Exhibit No. 16, which is a gray shirt. You don't have
2 to look into the bag, but do you recognize that bag?

3 A This one, I do not.

4 Q I'm sorry, make sure I'm on the right one.

5 okay. Excuse me, that's -- do you recognize the
6 person's name on that bag?

7 A Yes.

8 Q And is that someone you work with?

9 A Yes. It's Officer Mitchell.

10 Q Officer Mitchell?

11 A Yes.

12 Q And so what would Officer Mitchell have done
13 with this?

14 A It looks like this is the gray shirt she
15 collected from the scene and logged it in as evidence.

16 Q So she would have logged that one into evidence;
17 is that correct?

18 A Yes.

19 Q Okay. And I'm going to leave that one with you.

20 i'm going to show you what has been marked as
21 State's Exhibit 17. Do you recognize that bag?

22 A Yes, I do.

23 Q And what's in that bag?

24 A A white sock.

25 Q And what did you do with that bag?

1 A I took it from Officer Keenan placed it into
2 evidence. And after he locked it, I then opened up the
3 other side and then logged it into evidence.

4 Q And so you logged that one into evidence?

5 A Yes, sir.

6 Q Finally I'm going to show you what has been
7 marked as State's Exhibit 18. Can you tell the jury
8 what's in that bag?

9 A A torn gray shirt.

10 Q And what did you do with that?

11 A Same thing with the other item. Officer Keenan
12 logged it into evidence, or entered it into evidence in
13 the lockers and then I logged it in.

14 Q Okay. And finally I'm going to show you what
15 has been marked for identification purposes as State's
16 Exhibit No. 23. It's the inner bag, the inner manila
17 envelope, do you recognize that?

18 A The envelope itself?

19 Q Correct.

20 A I can't recall.

21 Q Okay. At some point did you make a trip up to
22 South Carolina Law Enforcement Division with evidence
23 in reference to this case?

24 A Yes, I did.

25 Q Can you tell the jury what evidence you would

1 have carried up to SLED?

2 A The torn gray shirt, the white sock, this gray
3 shirt, and then the buccal swabs.

4 Q And do you have your chain of custody sheet for
5 the DNA swabs?

6 A I have a copy.

7 Q You have a copy?

8 A Yes, sir.

9 Q Does it indicate that you carried it up to SLED?

10 A If I can find it. You said buccal swabs?

11 Q Correct.

12 A Yes, it is.

13 Q So you would have carried the buccal swabs up to
14 SLED also?

15 A Yes.

16 Q Okay. And that would be State's Exhibit 23?

17 A Yes, sir.

18 Q Okay. So State's Exhibit No. 23; 16, which is
19 that gray shirt which you didn't log into evidence, but
20 you carried it up to SLED?

21 A Correct.

22 Q State's Exhibit No. 17, which is the white sock?

23 A Yes, sir.

24 Q And State's Exhibit No. 18, which is the torn
25 gray shirt?

1 A Yes, sir.

2 Q So all these items would have been taken from --
3 just so I get your testimony correct -- all these items
4 would have been taken from your evidence room?

5 A Yes, sir.

6 Q And driven by you up to South Carolina Law
7 Enforcement Division?

8 A Yes, sir.

9 Q All these items, a lot of them have this kind of
10 red evidence tape on them?

11 A Yes, sir.

12 Q What's the purpose of that evidence tape?

13 A It seals the bag.

14 Q If any of these seals had been broken or
15 tampered with or anything like that, what would you
16 have done?

17 A I would not have taken it into evidence. It
18 would have gone right back into the locker that I
19 retrieved it from. And I would have made contact with
20 the officer who submitted the evidence to have them
21 make sure that what they put in is what they put in,
22 and that they seal the bag.

23 Q And did that happen at all in this case?

24 A No.

25 Q So all that evidence tape would have been intact

1 when you took it up to SLED?

2 A Yes, sir.

3 Q And do you remember when you took those items to
4 SLED?

5 A April 16, 2009.

6 Q Now when you take items to South Carolina Law
7 Enforcement Division, do you -- is there a drop off
8 there, or do you actually physically change custody
9 over to someone?

10 A We physically give it to their forensic
11 technicians.

12 Q And did someone sign for them?

13 A Yes.

14 Q Do you remember who took custody of those from
15 you?

16 A Doris Yarborough.

17 MR. KIDD: No further questions for the witness,
18 Your Honor.

19 THE COURT: Any questions for the witness?

20 MS. FORD: Thank you, Your Honor, may it please
21 the Court.

22 THE COURT: Yes, ma'am, you may proceed.

23 CROSS-EXAMINATION

24 BY MS. FORD:

25 Q As far as the DNA, the buccal swabs, you

1 testified that you took those to SLED, correct?

2 A Yes, ma'am.

3 Q But Mitchell is actually the one who took those
4 into evidence?

5 A Correct.

6 Q Okay. You collected some other -- or you
7 received some other evidence in this case as well,
8 correct?

9 A What do you mean by that? I'm sorry.

10 Q There is a bag of clothing, of miscellaneous
11 clothing?

12 A Yes, ma'am.

13 Q So that just had random clothing in it, it had
14 some socks in it?

15 A Doesn't say anything about socks on the evidence
16 sheet.

17 Q Miscellaneous clothing?

18 A Miscellaneous clothing, talcum powder;
19 deodorant, another bag with miscellaneous clothing.

20 Q You don't recall what actually that bag had in
21 it, though?

22 A No, ma'am. It's just whatever is on the
23 evidence sheet, and the bag.

24 Q Would seeing some pictures refresh your memory?
25 Did you ever see what's in the bag?

1 A No, I did not.

2 Q Okay. So they just handed you bag and you
3 didn't look into it?

4 A Correct. If the bag is sealed, we do not open
5 it.

6 Q It was in like a trash bag, not in a bag like
7 that.

8 A It doesn't matter what kind of bag it's in. If
9 the bag is closed, we do not open it.

10 Q Okay. So you don't look at every single piece
11 of clothing?

12 A No, we do not.

13 Q You just log it in as one item?

14 A Correct. The information that is on the
15 evidence sheet and the bag, or whatever kind of tag or
16 whatnot is on the bag, as long as it matches, then that
17 officer is the one saying what is in that bag.

18 Q Well you mentioned miscellaneous clothing,
19 talcum powder, and deodorant, correct?

20 A Correct.

21 Q So if you knew that talcum powder and deodorant
22 were in there, then you probably did look at the items
23 in the bag?

24 A No, ma'am.

25 Q Would seeing a picture help you at all?

1 A No. The evidence sheet clearly says
2 miscellaneous clothing, talcum powder, deodorant for
3 item number one.

4 Q Right.

5 A Right. So I wouldn't have to see what's inside
6 the bag to determine that that's what it says on the
7 evidence sheet.

8 Q That would just be based on what --

9 A It says on the evidence sheet.

10 Q -- the officer who gave it to you said then?

11 A Correct.

12 Q Okay. So you don't actually log in every piece
13 in?

14 A I don't understand what you're saying.

15 Q If you put down miscellaneous clothing, talcum
16 powder, deodorant, correct?

17 A Correct.

18 Q But you don't actually -- all of that is
19 considered one piece of evidence?

20 A If it's in one bag it's one piece, yes.

21 Q So if the items are laid out on the table at the
22 police station, you wouldn't have seen that?

23 A Probably not.

24 Q Would seeing a picture help you?

25 A I can look at the picture, but it's --

1 MS. FORD: May I approach, Your Honor?

2 THE COURT: You may.

3 (Whereupon, Defendant's Exhibit Nos. 2 and 3 are
4 marked for identification.)

5 Q (By Ms. Ford) I'm handing you what has been
6 marked as Defendant's 2 and 3 for ID purposes.

7 A Okay.

8 Q Maybe you weren't there, but?

9 A No. I wasn't there at all, so I have no clue
10 what those are.

11 Q Okay. So you don't know who?

12 A No. That's what I said earlier.

13 Q All right. So you just collected the evidence
14 after the fact?

15 A I did not collect the evidence at all.

16 Q Oh, I'm sorry. You accepted the evidence?

17 A Yes. Once the officer bagged it and turned in
18 their evidence sheet and submitted it into the locker,
19 that's when I took custody of it.

20 MS. FORD: Okay. No further questions, Your
21 Honor.

22 MR. KIDD: No redirect.

23 THE COURT: Any object to the witness being
24 excused, from the state?

25 MR. KIDD: No, ma'am.

1 THE COURT: From the defense?

2 MS. FORD: No, ma'am.

3 THE COURT: Sir, you are excused.

4 THE WITNESS: Thank you.

5 THE COURT: You're welcome.

6 You may call your next witness.

7 MS. KIDD: Thank you, Your Honor. The State
8 would call -- recall Angela Mitchell for one follow-up
9 question.

10 THE COURT: I will remind you that you are still
11 under oath.

12 Please take your seat and state your full name
13 for the record and spell your last name for the court
14 reporter.

15 THE CLERK: Angela Mitchell, M-I-T-C-H-E-L-L.

16 THE COURT: You may proceed.

17 MR. KIDD: Thank you, Your Honor.

18 May I approach the witness?

19 THE COURT: You may.

20 DIRECT EXAMINATION

21 BY MR. KIDD:

22 Q And I apologize, Ms. Mitchell. I glossed over
23 this the first time you were on the stand.

24 I'm going to show you what has been marked for
25 identification purposes as State's Exhibit 23. Do you

1 recognize that item?

2 A I do.

3 Q Could you tell the jury what it is?

4 A These are the buccal swabs that Detective Wilson
5 took from the defendant. And this is my handwriting
6 with these numbers, letters, right here.

7 So I took this from the locker and logged it
8 into evidence.

9 Q So Ms. Wilson would have, after she took the
10 buccal swabs, turned it into evidence. And then you,
11 just to refresh the jury, you are also an evidence
12 technician?

13 A Yes, I am.

14 Q So would you have similar duties as Mr. Haupt?

15 A Yes, I do.

16 Q And so you would do the same thing when you take
17 any evidence into the evidence room?

18 A Yes.

19 Q And when you took custody of those buccal swabs
20 from Detective Wilson, what would you have done with
21 them?

22 A I would have, just like Officer Haupt, the
23 lockers are locked. When the officer puts in a piece
24 of evidence on the patrol side, they put it into the
25 locker and they shut the door.

1 And I, in turn, would have opened the door on
2 the opposite side and taken this out and filled out the
3 paperwork for it.

4 Q And then you would have filled out the chain of
5 custody sheet?

6 A I would have filled that out, yes.

7 Q On that item?

8 A Yes.

9 Q And then as Mr. Haupt testified, was then
10 transported by him to SLED?

11 A Yes.

12 MR. KIDD: No further questions.

13 THE COURT: Any questions for the witness?

14 MS. FORD: No, Your Honor.

15 THE COURT: Any objection to the witness being
16 excused, from the state?

17 MR. KIDD: No, ma'am.

18 THE COURT: From the defense?

19 MS. FORD: No, Your Honor.

20 THE COURT: Ma'am, you are excused.

21 MR. KIDD: Your Honor, may I have a moment to
22 check and see if my SLED agents are here?

23 THE COURT: Yes.

24 MR. KIDD: Your Honor, may we approach.

25 THE COURT: Yes.

1 (Whereupon, the following discussion was held at
2 the bench.)

3 MR. KIDD: I apologize. They were supposed to
4 be here by 3:30. They were stuck on I-26 on a wreck.
5 That was 20 minutes ago they said they were at exit
6 219.

7 THE COURT: I will give you a few minutes to
8 check and see where they are.

9 MR. KIDD: Thank you, Your Honor.

10 (In open court.)

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 we need to take a brief recess. During this break,
13 please do not discuss the case. Please leave your
14 notes pads in your seats. If you would go with the
15 bailiffs.

16 (Whereupon, the jurors exit the courtroom.)

17 THE COURT: Tell them to keep you posted and let
18 us know when they're in the garage and headed down the
19 street so that I can know.

20 MR. KIDD: Yes, Your Honor.

21 (Whereupon, a recess was taken.)

22 THE COURT: Is the defense ready to proceed?

23 MS. FORD: Yes, Your Honor.

24 (Whereupon, the jurors enter the courtroom.)

25 THE COURT: Thank you, you may be seated.

1 Ladies and gentlemen, we appreciate your
2 patience. We will now resume with the State's
3 testimony.

4 You may call your next witness.

5 MR. KIDD: Thank you, Your Honor. State calls
6 Doris Yarborough.

7 MS. DORIS YARBOROUGH,
8 after having been duly sworn to state the truth, the
9 whole truth, and nothing but the truth, Doris Yarbrough
10 testified on her oath as follows:

11 THE COURT: You may proceed.

12 MR. KIDD: Thank you, Your Honor, may it please
13 the Court.

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. KIDD:

17 Q Good afternoon, Ms. Yarborough?

18 A Good afternoon.

19 A Did you all have a little trouble getting down
20 here today?

21 A Yes, sir, we did.

22 Q You hit a little traffic?

23 A A lot of traffic.

24 Q Well I'm sorry to put you through that. And we
25 will be real brief and get right to the point.

1 Did you come into custody with any evidence
2 pertaining to your case number which is L0904682?

3 A I did.

4 Q Do you know which case that would be as far as
5 which Mount Pleasant Police Department case that is?

6 A I know the case type is a robbery.

7 Q okay. Can you tell the jury what evidence you
8 checked in?

9 A I accepted a gray shirt, a torn gray shirt.
10 Item number 1 was a gray shirt. Item number 2 was a
11 torn gray shirt. Item number 3 was white sock. And
12 item number 4 was some DNA swabs of the suspect, Philip
13 Leon Shuler.

14 Q And I'm probably getting a little bit ahead of
15 myself. Can you tell the jury where you are employed?

16 A I employed by the South Carolina Law Enforcement
17 Division, also known as SLED. I'm a forensic
18 technician.

19 Q And what are your duties at SLED?

20 A I work in the log-in department. And we accept,
21 our office accepts the evidence from throughout the
22 state South Carolina from law enforcement agencies.

23 Q So when a law enforcement agency brings you a
24 piece evidence, do they hand it directly to you?

25 A They give us the package.

1 Q Right. The package that it comes in.

2 MR. KIDD: And, Your Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 Q (By Mr. Kidd) I'm going to show you what's been
6 marked -- and it's a little bit confusing because we
7 use our case numbers, and then you have your SLED item
8 numbers.

9 But I'm going to show you first what has been
10 marked as -- that's the wrong one -- as State's Exhibit
11 No. 23. I think this would be your lab number, I think
12 you said 4. Do you recognize that?

13 A These would be the swabs.

14 Q The swabs. Did you log those into evidence or
15 take those in at SLED?

16 A Yes. I identify it by the label that's on this
17 package and the item number.

18 Q Thank you. And I'm going to show you also what
19 is marked as State's Exhibit No. 16. And this is, I
20 believe, the gray shirt. And it just might be your
21 SLED packaging here. I think you have a sticker on it.

22 Can you tell what that item is?

23 A I don't physically see these items, they are
24 wrapped and packaged. And I don't know if this was
25 placed in a box or if it was placed in a plastic bag.

1 But they bring their packaging to us, possibly
2 this. And I packaged them all together, so those
3 clothing items would have been placed into a box.

4 Q Do you recognize what that writing would be on
5 the back?

6 A That's not my writing.

7 Q Do you know whose writing that is?

8 A That would be the person who processed the
9 evidence.

10 Q The person who processed the evidence. And just
11 to go back through what you actually received, though.
12 Can we go back through those items that you received at
13 SLED?

14 A The items listed were a shirt, item number 1.
15 Item number 2 was a torn gray shirt. Item number 3 was
16 a white sock. And item number 4 was DNA swabs of the
17 suspect, Philip Leon Shuler.

18 Q Okay. And do you, as part of your duties, do
19 you maintain chain of custody forms or internal chain
20 forms with SLED?

21 A Everything that we log in is manually done
22 through a computer system. And the chain of custody is
23 maintained through that electronic transmission.

24 Once I receive it and transferred it to the
25 evidence room, then the person that transfers it -- it

1 could have been me or there's three other technicians
2 that do the same thing I do, plus a part-time person
3 who's in our evidence room, and she can receive
4 evidence from the analyst that are returning it to go
5 back to the agency, or she can transfer it to the
6 analyst for them to work.

7 But it's all electrotonically monitored.

8 Q And the officer who dropped -- the law
9 enforcement officer who drops the evidence off, is he
10 required to sign anything?

11 A Oh, he is. For instance this particular
12 package, he had to put his initials and the day that he
13 signed it into SLED, as well as he signed and dated it
14 below.

15 Q And so on that you are referring to is the
16 buccal swabs; is that correct?

17 A That is correct.

18 Q Would he have also had to do the same thing with
19 the other pieces of evidence?

20 A If it was either -- sometimes, I'm sure all
21 those items were in a box. And I would have taped all
22 the edges of that box, placed SLED seal tape on it.
23 And he would have initialled and dated the top and the
24 bottom of those seals.

25 Q okay. If any one of these items that you

1 received had been tampered with in anyway, what would
2 you have done?

3 A I actually have no knowledge of them being
4 tampered with because they are sealed in those bags.
5 They come to me sealed, but then I put the items
6 together and reseal them in another container.

7 Q Right. That's what I'm asking is if one of the
8 seals had been broken, what would you have done?

9 A We would have noted it in our case.

10 Q Are there any such notations?

11 A No, sir.

12 MR. KIDD: I don't have any further questions,
13 Your Honor.

14 MS. FORD: No questions for this witness, Your
15 Honor.

16 THE COURT: Any objection to the witness being
17 excused, from the State?

18 MR. KIDD: No, ma'am.

19 THE COURT: From the defense?

20 MS. FORD: No, Your Honor.

21 THE COURT: Ma'am, you are excused.

22 THE WITNESS: Thank you.

23 THE COURT: You're welcome.

24 You may call your next witness.

25 MR. KIDD: State calls Verona Gibson.

1 MS. VERONA GIBSON,
2 after having first been duly sworn to state the truth,
3 the whole truth and nothing but the truth, testified on
4 her oath as follows.

5 THE COURT: You may proceed.

6 MR. KIDD: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 DIRECT EXAMINATION

9 BY MR. KIDD:

10 Q Good afternoon, Ms Gibson.

11 A How are you?

12 Q I'm doing well, thank you.

13 Can you the tell the jury where it is you are
14 employed?

15 A I'm employed with SLED.

16 Q And what is SLED?

17 A SLED is the South Carolina Law Enforcement
18 Division.

19 Q And what are your duties at SLED?

20 A I'm a forensic technician in the DNA evidence
21 processing department.

22 Q And what does that mean?

23 A That means we usually get in larger items, such
24 as clothing, bed linens, car parts, just different
25 larger things that are not usually swabs or small

1 cuttings.

2 And we usually test for the presence of -- the
3 possible presence of body fluids, touch DNA, like where
4 someone has worn a shirt or touched an item or stuff
5 along that nature, or hair, we collect hair.

6 Q I want to talk to you a little bit about touch
7 DNA, since you brought it up. We will talk about it
8 just briefly. So can DNA be left on something without
9 there being blood or semen or saliva?

10 A Yes, sir.

11 Q So is that what you refer to as touch DNA?

12 A It is, yes, sir. We usually -- I'm sorry,

13 Q No, go ahead.

14 A We usually kind of break it down into two
15 categories. Ownership is usually --

16 MS. FORD: Your Honor, objection.

17 THE COURT: Basis?

18 MS. FORD: Expert testimony, Your Honor.

19 (Whereupon, the following discussion was held at
20 the bench.)

21 THE COURT: How is that expert testimony? She
22 is merely reciting what was given to her.

23 MS. FORD: No, she is going into touch DNA.

24 THE COURT: That's not what the transcript says.
25 It merely says that she received -- I accepted a gray

1 shirt, a torn shirt. Item number one was a gray shirt.
2 Item number two was a torn gray shirt. Item number
3 three was a white sock. Item four was DNA swabs from
4 suspect Phillip Leon Shuler.

5 Then he said he was getting a little ahead of
6 himself.

7 MS. FORD: That was the last one, Your Honor.

8 MR. KIDD: If it helps I will move on. I may
9 get the testimony in through my other expert.

10 THE COURT: Unless my real-time stopped, that
11 was the last question.

12 MS. FORD: Right.

13 MR. KIDD: I think it might have stopped.

14 THE COURT: Okay. What was your question?

15 MR. KIDD: We were talking a little bit about
16 touch DNA. My purpose --

17 THE COURT: Is this your chain witness?

18 MR. KIDD: To an extent. She does --

19 THE COURT: What do you mean to an extent?

20 MR. KIDD: Well she actually takes the swabs
21 from the clothing. So I'm just having her explain why
22 she was taking swabs from the clothing when there is no
23 stain there.

24 THE COURT: What you need to do is stick to
25 whatever the procedure is for her taking swabs from

1 clothing. Other than that, unless you can lay the
2 appropriate foundation for her expertise, it is not
3 appropriate.

4 MR. KIDD: Okay, thank you.

5 THE COURT: You're welcome.

6 (In open court.)

7 Q (By Mr. Kidd) Ms. Gibson, with regard to this
8 case, which is under your number L0904682, did you come
9 into contact with any evidence in regard to this case?

10 A I did. Yes, sir.

11 MR. KIDD: Okay. If I may approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 Q (By Mr. Kidd) I'm going to first show you what
15 has been marked and entered into evidence as State's
16 Exhibit No. 16. I believe this is going to be your
17 item number 1.

18 Do you recognize that item?

19 A The bag that the item is packaged in has my item
20 number, my initials, our case number, and the date it
21 was processed on. And the processing paper which we
22 spread out on the table has that same information.

23 Q Why did you spread out that processing paper?

24 A It helps contain -- I mean to guard against
25 cross contamination with other cases. So every case is

1 processed on paper so that it doesn't actually touch
2 the table.

3 Q You brought your own gloves?

4 A And my initials are in the back of the shirt.
5 This is our item one that I processed, yes, sir.

6 Q Okay. And so you actually put your initials on
7 the shirt itself?

8 A Yes.

9 Q Okay. And can you tell the jury what you did
10 with item number one when you had it in your custody?

11 A I processed it for ownership, which involves
12 scraping the neck area usually, and collecting -- we
13 swab the neck area after we scrape it with the scraper
14 in the area, I mean the scrapings that fall onto the
15 paper.

16 Q And is that the only thing that you did with
17 that shirt?

18 A Yes, sir.

19 Q Okay. And I'm going to show you what has been
20 marked for identification purposes as State's Exhibit
21 No. 24. See if you recognize I think I believe three
22 items inside that bag.

23 Do you recognize those items? If you need to
24 open it, I can get you some scissors.

25 A Yes, please, if you don't mind. Thank you.

1 Okay. These are the sub-items off the three
2 items that I processed in this case.

3 Q And when you say sub-items, what do you mean?

4 A When I take a swab or a cutting or collect
5 possible hair off an item, if our item is 1, any item
6 that comes off that is going to be 1.1, or 1.2, or 1.3.
7 That way we always know by looking at the sub-item
8 number, which parent item it came off of.

9 Q So if you had taken like a cutting or some swabs
10 from that t-shirt, then those would be labeled like
11 1.1, 1.2, 1.3?

12 A Correct. Yes, sir.

13 Q And so that t-shirt that we were just talking
14 about a moment ago, which is item number 1?

15 A Correct.

16 Q Is that correct?

17 A Yes, sir.

18 Q Did you then create a sub-item for that shirt?

19 A I did, yes, sir.

20 Q And what is the sub-item?

21 A It is item 1.1.

22 Q And what is that?

23 A It's a swab from where I scraped the neck of the
24 t-shirt.

25 Q And what would you do with that swab once you

1 get it?

2 A It is dried and packaged in this coin envelope
3 with all the information from the case on the front of
4 it. And then it's taped shut, and I put my initials
5 and the date that I sealed it on here. And then it's
6 placed into a heat-sealed pouch and sealed before it's
7 forwarded on to the next department.

8 Q And I apologize if I'm getting ahead myself, so
9 I want to backtrack a little bit.

10 Where did you first come into contact with item
11 number 1? Where did you get it from?

12 A I received that item from Patricia Crooks who is
13 in our evidence control department.

14 Q And based on your internal chain of custody, are
15 you able to determine where -- how she came into
16 contact with that item?

17 A She took it off -- it's what is called an EP
18 intake shelf, which is basically a storage area for
19 evidence processing for items that have not been worked
20 yet.

21 Q And can you tell who put it on the shelf?

22 A Selena Kinard.

23 Q And can you tell how she came into contact with
24 it?

25 A She took it off a different shelf in the

1 evidence processing section.

2 Q Can you tell how it came on that shelf?

3 A Doris Yarbrough put it on that shelf.

4 Q And that would have been from where she took it
5 in from the beginning?

6 A Yes, sir. That is the first entry in the chain
7 of custody.

8 Q So you would have been the first person since it
9 got to SLED to actually open the packaging?

10 A Correct. Yes, sir.

11 Q Okay. And on that item number 1 which we're
12 talking about, when you got it was that package in a
13 sealed condition?

14 A It was, yes sir.

15 Q Had the evidence tape or anything been broken on
16 that item?

17 A No, sir.

18 Q If it had been, what would you have done?

19 A We would have noted it in our case file. We
20 would have also contacted the agency.

21 Q Are there any such notations?

22 A There are none.

23 Q So you create the sub-item for item 1 and sealed
24 it. What do you do with item 1 and 1.1 at that point?

25 A Item 1 is repackaged in the processing paper,

1 the bag it was submitted in and the box that it came to
2 me in. And that is returned to our evidence control
3 department to be picked up by the agency.

4 The sub-items, the 1.1 or whatever, it is
5 packaged in a heat-sealed pouch, which is this here.
6 And it is sealed by me and dated by me and I fill out
7 the front of it. It gets an individual container
8 number so that it can be tracked as well.

9 Q Now I want to move on to SLED item number 2,
10 and let me show you that item. Try to clear off your
11 desk a little bit.

12 I am going to show you what has been marked and
13 admitted into evidence as State's Exhibit 18, which
14 would be SLED item number 2. See if you recognize
15 that.

16 A This is also on the item, the pack -- I mean the
17 processing paper and the package, the bag package, all
18 have my initials, my item number, and the lab number on
19 it.

20 Q And so would I be correct in saying this is item
21 number 2?

22 A Yes, sir, it is.

23 Q Okay. And this is the torn gray shirt; is that
24 how it's described?

25 A Yes, sir.

1 Q Okay. And did you come into contact with this
2 item through the same process that you came in contact
3 with item number 1?

4 A Yes, sir. It was in the same larger box with
5 item number 1.

6 Q Okay. So they came to you at the same time?

7 A Yes, sir.

8 Q Okay. And what did you do with item number 2
9 when it was in your custody?

10 A I scraped the entire article. And then swabbed
11 the entire article, swabbed the scraper that I used,
12 and swabbed the paper on which I scraped over.

13 Q And when you say scraped, what do you use to
14 scrape the item?

15 A They are disposable, sterile scrapers. So we
16 use them one time and if possible we package them back
17 in with the item so that they're not reused and there
18 is no cross-contamination there. So we just physically
19 scrape the whole item.

20 Q And then you'll swab the paper and the scraper?

21 A We swab the item that we scraped, or the area of
22 the item we scraped, the scraper itself, and the paper
23 we scraped over. We try to scrape it into a smaller
24 area so that we don't have to do the whole paper.

25 Q And did you create a sub-item for that SLED item

1 number 2?

2 A I did. Yes, sir, two of them.

3 Q You created two of them?

4 A Yes, sir.

5 Q And I believe I showed you State's Exhibit -- or
6 what has been marked for ID State's Exhibit No. 24?

7 A Yes, sir.

8 Q And those sub-items, are they contained in that
9 package?

10 A Yes, sir, they are.

11 Q And what are those sub-items?

12 A Sub-item 2.1 is the swab that I created from
13 scraping the entire item. And then 2.2 is possible
14 hair that I collected.

15 Q And what did you do with those sub-items once
16 you collected them?

17 A Those were as well sealed in envelopes which I
18 initialed and dated on the back and filled out the
19 information on the front, and sealed in the same
20 heat-sealed pouch with item 1.1.

21 Q And where did you put those?

22 A Those were transferred to the DNA, it's a DNA
23 storage drawer, which is basically just a holding area
24 for -- a secure holding area for evidence for DNA that
25 has not been worked.

1 Q And finally I'm going to show you what has been
2 marked and entered into evidence as State's Exhibit No.
3 17. It should be SLED item number 3.

4 See if you recognize that?

5 A Yes, sir, this is our item 3.

6 Q So that is your item 3. Are your initials on
7 that as well?

8 A My initials are on the item, the processing
9 paper and the bag.

10 Q And would you have taken possession of that at
11 the same time as items 1 and 2?

12 A Yes, sir.

13 Q In the same way?

14 A It was in the same container, yes, sir.

15 Q And did you create a sub-item for item number 3?

16 A I did. Yes, sir.

17 Q And what did you -- how did you do that?

18 A I scraped the entirety of the sock inside and
19 out. And again swabbed the item, swabbed the scraper,
20 swabbed the paper. And I also collected possible hair.

21 Q Was there anything else in that sock besides
22 just a sock?

23 A Yes, sir. There was a piece of wood.

24 Q A piece of wood inside there?

25 A Yes, sir.

1 Q Okay. And so you just said you created
2 sub-items, what would the sub-items be?

3 A 3.1 is the swab from scraping, and 3.2 is the
4 possible hair.

5 Q And what did you do with those sub-items once
6 you collected them?

7 A They were sealed in the envelopes, initialed
8 and dated and placed in same heat-sealed pouch with the
9 other sub-items from this case.

10 Q Other than what we have just talked about with
11 those three items which you tested when you made
12 sub-parts with, did you have any other involvement with
13 evidence in this case?

14 A Not that I'm aware of. No, sir.

15 Q Thank you so much.

16 And I guess finally, my final question would be,
17 just to be a little bit repetitive and redundant, all
18 of this evidence that you came and scraped and tested,
19 when it all came to you, was it in a sealed condition?

20 A Yes, sir, it was.

21 Q Did you make any notations about how any of the
22 evidence tape or any of the packaging had been
23 compromised in any way?

24 A No, sir, I did not.

25 Q And by the lack of notation, that means it did

1 not happen?

2 A Correct.

3 Q And all three of those items, you put them all
4 in the same place when you -- all of your sub-items,
5 did they all end up together in the same place?

6 A Yes, sir, they did. They were in the same
7 heat-sealed pouch together.

8 Q Can you tell who came into possession of those
9 items next?

10 A I put them in the DNA storage drawer, and Paul
11 Meeh removed them from the DNA storage drawer.

12 MR. KIDD: Thank you.

13 I have no further questions.

14 THE COURT: Any questions for the witness?

15 MS. FORD: Beg the Court's indulgence.

16 THE COURT: yes, ma'am.

17 MS. FORD: No questions for this witness, Your
18 Honor.

19 THE COURT: Is there any objection to the
20 witness being excused, from the State?

21 MR. KIDD: None from the State, Your Honor.

22 THE COURT: From the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: The witness is excused.

25 You may call your next witness.

1 MR. KIDD: State calls Paul Meeh.

2 MR. PAUL MEEH,

3 After having been duly sworn to state the truth, the
4 whole truth and nothing but the truth, testified on his
5 oath as follows:

6 THE COURT: You may proceed.

7 MR. KIDD: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 DIRECT EXAMINATION

10 BY MR. KIDD:

11 Q Mr. Meeh, can you tell the jury where you are
12 employed?

13 A I'm employed at SLED also.

14 Q How long have you been with SLED?

15 A I guess four years now, approximately.

16 Q What is your -- do you have a title at SLED?

17 A I'm a forensic scientist there in the DNA
18 department.

19 Q How long have you been a forensic scientist or
20 analyst?

21 A Well after I got to SLED I went through a year
22 and a half of training there. So about two and a half
23 years, I guess, I have been processing cases on my own.

24 Q Can you tell the jury about your educational
25 background?

1 A Yeah. I got my bachelors's degree in biology
2 from the University of South Carolina. Then I got my
3 Master's from there also, That's in biomedical science.
4 That was in the molecular biology or pediatric cancer.

5 I'm finishing my Ph.D currently in the molecular
6 biology of colorectal cancer while working at SLED.

7 Q Can you the tell jury, do you have any
8 specialized training in the area of forensic DNA
9 analysis?

10 A I have a year and a half there at SLED, that
11 was where the specialized training came from. All of
12 the disciplines that I have studied from undergrad on
13 up have been in DNA and in the same field.

14 It was just once I got to SLED, I specialized
15 during that training.

16 Q Do you have any continuing educational
17 requirements?

18 A We do. Every year we have to meet a certain
19 requirement. I think it is eight hours, and it's
20 easily met by training. We often exceed that. We get
21 training every year and stay up on those.

22 Q Do you hold any certifications by SLED to
23 perform forensic DNA analysis?

24 A Other than the title of forensic scientist, I
25 can't think of one that would be called as quote,

1 unquote certification, no.

2 Q How many DNA cases can you estimate that you've
3 handled during your tenure at SLED?

4 A It would be in the hundreds, possibly in the
5 thousands.

6 Q Have you ever been qualified as an expert in DNA
7 analysis?

8 A Yes, I have.

9 Q About how many times?

10 A Approximately ten now.

11 Q And in what sort of courts? All criminal courts
12 or family courts?

13 A All criminal. One time family, yeah.

14 MR. KIDD: Your Honor, at this time we'd offer
15 Mr. Meeh as an expert in the area of forensic DNA
16 analysis.

17 THE COURT: Any objection or questions?

18 MS. FORD: No, Your Honor.

19 THE COURT: So admitted. You may proceed.

20 Q (By Mr. Kidd) Mr. Meeh, in general terms what
21 does forensic DNA analysis entail? Can you describe
22 that to the jury?

23 A What we are attempting to do, what I do
24 personally in my job, is I attempt to identify body
25 fluids and their owners.

1 What you are doing by using DNA, it's individual
2 to each person. DNA is in every cell of your body
3 except for red blood cells. And we use that, it's
4 individual except for twins, there's some trivia for
5 you.

6 But each person has their own genetic code. And
7 we can look at that code and tell with great certainty
8 if a body fluid or skin cells came from someone.
9 That's what I try to do.

10 Q So is that why -- forensically why is that
11 significant?

12 A Well if you're trying to identify ownership, or
13 in a sexual assault case or something, you are trying
14 to point to whom that belongs, I guess.

15 Q And you might have already answered this, but do
16 all people share the same DNA?

17 A A lot of it is similar, but the stretches that
18 we test, we test stretches that are known to be
19 dissimilar. That's the point of what we do. So it's
20 called polymorphism.

21 And we test the areas where you would be
22 expected to differ from other people. And they differ
23 in known ways. That's advantageous to us too, we can
24 sort of quantify how different you are from other
25 people in that area.

1 Q And so -- but I think you testified a moment ago
2 that identical twins have identical DNA?

3 A Yes, they do, but they don't share fingerprints.
4 It just so happens that they share DNA.

5 Q And without getting too complex with it, can you
6 explain to the jury in kind of general terms how you go
7 about developing a DNA profile?

8 A The non-complex version would be that we amplify
9 a small -- first of all, DNA is beyond microscopic.
10 You couldn't see it very well even with a microscope,
11 you might see little stretches of it.

12 We have to amplify it to many, many copies. And
13 we use florescent labels so that we can use an
14 instrument to look at it. Like sort of imagine a
15 telescope. You can't see a lighthouse in the distance,
16 but then you use that telescope to amplify that light
17 signal and see it better.

18 So we look at many different points using
19 florescent molecules to label those sections. So we
20 amplify the signal up, and then we use an instrument to
21 look at those very clearly.

22 Q And with regard to this case, which bears your
23 lab number L0904682, did you receive any items
24 submitted by the Mount Pleasant Police Department for
25 analysis?

1 A Yes, sir, I did. I received four items. I
2 processed four items. I may have received more than
3 that.

4 Q When did you first come into contact with the
5 items pertaining to this case?

6 A I don't have the chain of custody. I saw that --
7 I know that I picked them up from the DNA evidence
8 storage drawer. But given the chain of custody, I
9 could tell you what day I picked them up.

10 Processing in the case, my physical processing
11 began on 9/16/09.

12 Q If I showed you the chain of custody, would that
13 help refresh your recollection?

14 A Yes, it would. I could tell you when I picked
15 them up.

16 MR. KIDD: May I approach the witness, Your
17 Honor?

18 THE COURT: You may.

19 Q (By Mr. Kidd) Do you recognize that document?

20 A Yes. This is the correct chain custody. And
21 the sub-items that Veronica Gibson created were put
22 into DNA storage drawer 6B. I picked them up on
23 8/25/09 at 11:26.

24 Q Okay. Thank you.

25 A And I would have picked them all up at the same

1 time.

2 Q Thank you. And I think you might have just
3 testified, so you received all those from that same
4 drawer that Ms. Gibson placed them in?

5 A Yes. That should be correct.

6 Q And were their containers properly sealed when
7 you took possession of them?

8 A Yes. I would not have processed them had any
9 container not been properly sealed.

10 Q And if they had not been you said you would not
11 have processed them. What would you have done?

12 A I would have notified my supervisor, made note
13 of it in the case, and returned it probably to the DNA
14 storage drawer.

15 Q I'm now going to show you a handful of items.
16 First of which is State's Exhibit, for identification
17 purposes, No. 23. It should be your item number 4.

18 Do you recognize that item?

19 A Yes, I do.

20 Q What is that?

21 A This is a buccal swab from Philip Leon Shuler.
22 I can recognize that as item number 4 based on the
23 label. You can see that my processing was done on
24 9/16/09. My initials and the date are on the
25 heat-sealed portion there.

1 Q All right. And now I'm going to show you
2 State's Exhibit No. 24 for identification purposes
3 which contains a handful of smaller sub-items.

4 Do you recognize those items?

5 A Again my initials and the date are on them.
6 It's got the container number that would makes sense
7 for us. Let me just check that the items are here.

8 Yes, these are all correct. And I do recognize
9 them, yes.

10 Q And now I want to go through, did you develop
11 DNA profiles on those items you have in front of you?

12 A Yes, I did. I developed DNA profiles from items
13 1.1, which was a swab from a gray shirt; from item 2.1,
14 which was a swab from a torn gray shirt; and item 3.1,
15 which was a swab from a white sock.

16 MR. KIDD: May I approach the blackboard?

17 THE COURT: You may.

18 MR. KIDD: Thank you.

19 Q (By Mr. Kidd) I'm just going to try to write
20 this down so that we can try to keep track. The first
21 item you said you developed for DNA profile was item
22 1.1?

23 A That is correct.

24 Q And what was item 1.1?

25 A That is a swab from a gray shirt.

1 A So the gray shirt swab. okay.

2 And what was the second item that you developed
3 a profile on?

4 A That was item 2.1 that's a swab from a torn gray
5 shirt.

6 Q Torn shirt swab?

7 A Correct.

8 Q And what was the next item you developed?

9 A That's 3.1, that's a swab from a white sock.

10 Q 3.1, white sock swab?

11 A Correct.

12 Q All right. And the last item that you developed
13 a profile on?

14 A That's all.

15 Q What is the standard that you were comparing
16 them with?

17 A Oh, yeah, I didn't count that. That's number 4,
18 a buccal swab from Philip Leon Shuler.

19 Q All right. So you developed a DNA profile on
20 each one of those items that I just wrote on the board;
21 is that correct?

22 A Correct.

23 Q Can you tell the jury what the results -- I
24 guess when you were developing a profile, were you
25 comparing them to the buccal swab?

1 A Yes. so that's the -- what you are supposed to
2 do in this case then is when submitted they give you a
3 little -- what they ask you to do with it. In some
4 cases if they didn't have a buccal swab from a subject,
5 you would put it into a database and search for other
6 people.

7 But in this case, we are just comparing what we
8 found in the shirts and the sock to this known profile.
9 so that's all I did was compare it to the buccal swab
10 from Philip Shuler.

11 Q So I guess the first thing you would have needed
12 to do then would have been to prepare the standard?

13 A The order isn't actually as important. They're
14 compared all at the same time during the creation of
15 the project at the end. After you have measured all of
16 them, then you compare them.

17 Q Okay. so you just would have created a profile
18 then for each one of those four things?

19 A That's correct.

20 Q Okay. Can you tell the jury what the results of
21 your analyses were.

22 MS. FORD: Objection.

23 THE COURT: Basis?

24 MS. FORD: Just based on my pretrial motion,
25 Your Honor.

1 THE COURT: Noted and overruled.

2 MS. FORD: Thank you.

3 THE COURT: You're welcome.

4 Q (By Mr. Kidd) Go ahead.

5 A The result for item 2.1 was that the DNA profile
6 developed from item 2.1 is a mixture of at least two
7 individuals. The partial DNA profile of the major
8 contributor of this mixture matches the DNA profile of
9 Philip Shuler. The probability of randomly selecting
10 an unrelated individual having a DNA profile matching
11 the major contributor is approximately 1 in 58.
12 trillion.

13 The partial DNA profile of the minor contributor
14 to this mixture is from an unidentified individual and
15 is not suitable for entry into the combined DNA index
16 system, COTIS.

17 Q So let me get this straight so I make sure I am
18 writing the right thing that you were saying. You are
19 saying that the DNA profile that you developed from the
20 torn shirt had a mixture of at least two people. So
21 that means there's at least two people's skin cells or
22 cells that are on that swab?

23 A Correct.

24 Q And that of those two people, Philip Shuler was
25 definitely one of them?

1 A Yes. Well I can say with that certainty, I can
2 say with certainty that 1 in 58 trillion that Philip
3 Shuler had touched that item.

4 Q And how many people do you know -- do you know
5 how many people are in America, the United States?

6 A 6.5 billion.

7 Q That's the world, right?

8 A Oh, yes, excuse me. 360 million in the United
9 States.

10 Q Roughly 360 million people in United States,
11 roughly over 6 billion in the world?

12 A Yes. 6.something.

13 Q And you are telling me that there is a 1 in 58
14 trillion chance that that's -- so trillion is a bigger
15 number than billion; is that correct?

16 A Correct.

17 Q So this is a virtual sure thing?

18 A It's -- I feel very confident, yes.

19 Q So if we are putting it in a percentage it would
20 be like 99. a bunch of 9's that Philip Shuler's DNA was
21 on that shirt?

22 A Correct.

23 Q What about item 1.1?

24 A The DNA profile developed from item 1.1 is a
25 mixture of at least three individuals. Philip Shuler

1 cannot be excluded as a possible contributor to this
2 mixture.

3 Q All right. So this one we have a mix of three
4 people?

5 A That's correct.

6 Q And Philip Shuler cannot be excluded?

7 A That's correct.

8 Q I'm going to write PS for Philip Shuler, cannot
9 be excluded.

10 What do you mean by that?

11 A That means that his alleles were generally
12 present at almost all loci. That's what we measure is
13 loci. His DNA was present in that mixture, but to a
14 lesser extent than item 2.1.

15 We are confident, but the number wouldn't have
16 been as large as the 1 in 58 trillion. So we only
17 calculate a single stack per case. We consider all
18 items to be sort of a level playing field.

19 And once we got to this point, we can say his
20 DNA is probable present, but we don't need to put how
21 confident we are that it is present.

22 Q And you said a couple of words that kind of
23 remind me of something, you said alleles and loci.
24 When you develop a DNA profile, does it kind of graph
25 it out, is that what you are talking about?

1 A It does. I have a table here of all the
2 alleles.

3 Q So does your table kind of look like rows and
4 columns?

5 A Yes, it does.

6 Q For example you'd have, and once again my
7 penmanship is next to terrible, but for example you
8 have a bunch of columns like that and then a bunch of
9 rows; is that correct?

10 A That is correct.

11 Q And what do you call each row?

12 A That's a locus. No, excuse me, each row is an
13 item number.

14 Q I guess I meant column.

15 A Column, sure, that's a locus.

16 Q A column is a locus?

17 A Yes. So that's what a locus is an individual
18 test. That's one spot that we tested for.

19 Q Sorry, if I am blocking the jury. So each
20 column is a locus. And what is an allele?

21 A An allele is the number, it's the size of the
22 DNA present at that point. That's what we measure is
23 just size.

24 Q And I don't want take this too far, but am I
25 right to say that DNA is oftentimes kind of like a

1 wave, and the peak of the wave gives out the number?

2 A No, that's incorrect. That's the measurement of
3 the signal that I was telling you about. The
4 florescent molecule that we're doing.

5 The -- that wave corresponds to a size. Maybe I
6 can show you a little more.

7 Q Yes, absolutely. It would be better than what I
8 was doing.

9 A So what this is doing, the florescence is
10 measured on this scale. So imagine someone holding a
11 flashlight at you and you're saying whether it's on or
12 off. That's what this is indicating, high volume, low
13 volume. This is on, and this is off.

14 So this would be representative of what we call
15 a ladder because it has many of these alleles present.
16 This would be like 12, 13, 14. When I measure
17 someone's DNA, when I measure that single locus, what
18 I'm looking for is for their measurement to come up and
19 I match it up and say what size it is.

20 So each of these tests is that test right there.
21 Each of these columns is that test. So then we fill in
22 our table. So we say for item 1.1, that person has a
23 13. Because we know by our ladder, by our florescent
24 ladder, that they also matched up with that same
25 position.

1 Q And each -- so when you develop a profile, when
2 you develop a profile for 1.1, you test multiple loci;
3 is that correct?

4 A Yes, that's correct. That's right. And then so
5 each one is an individual test. So this would be -- a
6 simple name would be this. The real names are like
7 DH2011, and that's the location in the genome that we
8 are testing, and each one is an individual test.

9 Q And so on each individual test you are going to
10 come up with a number or a series of numbers?

11 A Right.

12 Q Is that correct?

13 A That is correct.

14 Q Okay. So I think we are starting to make a
15 little bit of sense here.

16 So now for example on 1.1, and this might take
17 you looking at it a little bit, but on item 1.1 when
18 you compare the results of your profile that you
19 developed on 1.1, and you compare that to the results
20 of the standard you developed from Mr. Shuler's buccal
21 swab and the first loci, what were the results that you
22 got?

23 A So for the item, it was 13/14 and Mr. Shuler was
24 also 13/14.

25 Q So this one, the first loci you tested was an

1 exact match?

2 A That's correct.

3 Q okay. And for second loci you tested with item
4 1.1 and Mr. Shuler's, what were the results there?

5 A Mr. Shuler's is a 28/31.2, and the item 1.1 is a
6 28/30/31.2.

7 Q So the difference in the second loci?

8 A Locus is the singular and loci is plural.

9 Q So the difference in the second locus is the
10 same in that Mr. Shuler has the same numbers as item
11 1.1, the difference is there is an additional Number 30
12 there?

13 A Right. Which would indicate that someone else
14 had possibly held that item or touched it or got some
15 skin cells on there.

16 Q So it's the same except for the additional 30 on
17 the 1.1?

18 A Correct.

19 Q And if we kept going and went to the third
20 locus?

21 A Yes, sir.

22 Q What would be the difference there?

23 A Another extraneous allele. So Mr. Shuler is an
24 8, and on item 1.1, it's an 8/10.

25 Q So there would just be an extra 10 there?

1 A Correct.

2 Q And if we went on down that line, is there any
3 locus that is completely uncommon with Mr. Shuler's DNA
4 profile?

5 A No, there is not.

6 Q And could you have attached a statistical
7 probability to that?

8 A Yes, we could have. It could still be
9 calculated, the data is here.

10 Q But that wasn't done?

11 A No, that's correct. It wasn't calculated
12 because the strongest evidence in this case was item
13 2.1, in fact. Because Mr. Shuler matched the major
14 contributor to that item, so I was able to do --
15 there's a little bit of trouble here -- a mixture stat,
16 as you can see, where there are extraneous alleles is
17 less exact than a match statistic.

18 A match statistic is saying you matched at these
19 positions, and we know the frequency of that and we can
20 multiply across all those singular tests to create that
21 number. And so it seems more probative, I guess, or it
22 would be a larger number than the other items.

23 Q Can you tell the jury a little bit about the
24 difference between a major and a minor contributor?

25 A Yes. So a major contributor, imagine if you and

1 your wife or your husband shared something, shared a
2 remote control. And he often had it more than you, or
3 she often had it more. Whoever handles it most is
4 probably going to commit more skin cells to it.

5 And if there are say ten times more, if they
6 handle it ten times more, you can see that in the data.
7 Those peaks that we were talking about, those
8 florescent peaks, will be higher for that person.

9 So in a mixture there would be three peaks.
10 well imagine your peak would be, you know, much higher
11 than the lower person. The minor contributor would be
12 the lower person.

13 Q And as part of your quality control with SLED,
14 if something doesn't peak high enough, do you even
15 calculate it?

16 A No, we don't. That's correct, it gets thrown
17 out at that locus.

18 Q Okay. And were the peaks high enough in this
19 case?

20 A Yes. On item 2.1, yes, they were. We are able
21 to calculate a stat at almost every locus. Some were
22 thrown out. Some loci were thrown out because the
23 peaks didn't meet the quality control to calculate the
24 major contributor's statistic.

25 Q Is it safe to say that Mr. Shuler is the major

1 contributor in each of the sub-items that you tested?

2 A He is the major contributor on 2.1. It's the
3 only one we can confidently say. On items 1.1 and 3.1
4 they're mixtures, but we can't pick out a major
5 contributor there.

6 Q Now let me talk to you a little bit, are you
7 familiar with the term touch DNA?

8 A Yes, sir.

9 Q Now for example on a sock, which is a sock is
10 one of the things that you tested. Touch DNA, is it
11 safe to say is just a transfer of skin cells?

12 A Yes, that's exactly.

13 Q Typically when you test for DNA it's from a
14 fluid like saliva, blood, or semen.

15 A Uh-hum.

16 Q But touch DNA can -- like if you tested my suit,
17 would you think you would find my DNA on it?

18 A I would. And I'd probably find a mixture. It's
19 very common to find mixtures on things that even a
20 single person owns.

21 Q Okay. For example like if I hug somebody or
22 something like that, I could -- their DNA or dandruff
23 or hair follicles or something could end up on my suit;
24 is that correct?

25 A Correct.

1 Q So for example like a sock, if I was walking
2 around in socked foot on the floor, could I be picking
3 up other DNA, other people's DNA onto my socks?

4 A Very much so, yes.

5 Q And so that could be a logical explanation of
6 why there would be a mixture of different DNA on
7 clothing; is that fair to say?

8 A That could be, that could be one explanation,
9 yes.

10 Q Or it could be that someone else washed your
11 clothes for you and handled your socks?

12 A Correct.

13 Q Or could just -- at some point, somehow, some
14 other skin cells came into contact with those socks in
15 environment of the world in which we live?

16 A Correct.

17 Q And DNA, is there a way to put a time stamp on
18 DNA?

19 A No. It lasts different. It varies greatly. I
20 mean, for example, the Neanderthal genome has been
21 sequenced, that's 30,000 years old. So that puts some
22 indication on it.

23 But then if things are left in the elements
24 completely, you know, if you left your shirt out in the
25 rain and then the UV's from the sun, it could degrade

1 very quickly.

2 Q Let me posture this to you. If I had a sock on
3 my hand and then opened the door with it. Could I then
4 pick up someone's skin cells from the door that I
5 opened on that sock?

6 A Yes, you could.

7 Q Let's talk about a little bit more about your
8 results, for example on the sock, sub-item 3.1. Can
9 you tell the jury what your results were on that item?

10 A The DNA profile developed from item 3.1 is a
11 mixture of at least two individuals. Philip Shuler
12 cannot be excluded as a possible contributor to this
13 mixture.

14 Q All right. So to get back here, so we have
15 mixture of two people, and once again Philip Shuler
16 cannot be excluded.

17 And obviously the buccal swab is not a mixture,
18 is it?

19 A No, it's not a mixture.

20 Q And I still feel like we need a little bit of
21 clarity on what you mean by he cannot be excluded.
22 Does that mean that the -- in each locus when you get
23 his alleles, are they present at each of the locuses on
24 those other items?

25 A Yes. So there's a single one where he, where

1 Philip Shuler doesn't have an allele there. At every
2 other location, his DNA is present.

3 Q How many locations do you test?

4 A Testing 16 locations, he was present at 15. Or
5 a DNA profile that would match his was present at 15 of
6 those 16.

7 Q And if you had that 16th, would it have changed
8 anything?

9 A Not in this example because there is some lower
10 end DNA. What ends up happening is that there is not a
11 lot of DNA present anyway, and so you are seeing
12 dropout, what's called dropout.

13 And that is when somebody is heterozygous, or
14 they just don't dedicate -- they don't donate enough
15 DNA to the item for you to detect it. We have a
16 detection limit, if that makes sense.

17 And it wouldn't have changed things much in this
18 example on that particular item. No, it wouldn't have.

19 Q And so when we talk about strengths of DNA
20 samples, is touch DNA generally a weaker sample than
21 say a blood sample?

22 A Absolutely, yes.

23 Q So it would be safe to say then that in a touch
24 sample, you're more likely to come across a dropout
25 than you would in a blood sample?

1 A Very much so.

2 Q And just to reiterate what we are talking about
3 here, in items 1.1, 2.1, and 3.1, which if we listed
4 them here, you tested 16 different locuses or loci?

5 A Loci, that's correct.

6 Q And in those 16, on each one of those items, all
7 of them matched Philip Shuler, there were additional
8 mixtures so there were additional, but he was
9 consistent with each one of those except for one in
10 which case that was a dropout?

11 A That's what it appears to be. And on item 2.1,
12 he was in fact the major contributor to that item.

13 So your explanation is correct for items 1.1 and
14 3.1. But on item 2.1 it's a little stronger than that,
15 he was actually the major -- or a DNA profile that
16 matched his was the major contributor for that item.

17 MR. KIDD: Your Honor, like I said, my brain is
18 a little bit jumbled. But while I'm thinking about it
19 I would like to move State's Exhibit Nos. 24 and 23
20 into evidence.

21 MS. FORD: Just subject my prior objection.

22 THE COURT: Marked and admitted subject to the
23 prior objection. Overruled.

24 MR. KIDD: Thank you, Your Honor.

25 (Whereupon, State's Exhibit Nos. 23 and 24 are

1 admitted into evidence.)

2 MR. KIDD: Beg the Court's indulgence.

3 THE COURT: Uh-hum.

4 MR. KIDD: No further questions, Your Honor

5 THE COURT: Any questions for the witness?

6 MS. FORD: Yes, Your Honor.

7 THE COURT: You may proceed.

8 CROSS-EXAMINATION

9 BY MS. FORD:

10 Q Earlier you mentioned that only identical twins
11 have identical DNA?

12 A That's correct.

13 Q And this is true when 100 percent of the DNA is
14 analyzed?

15 A That's another question. If you were to
16 sequence the entire genome of identical twins you would
17 probably come across maybe a snip or a few snips that
18 might be different. But your -- the sequencing error
19 rate would be higher than your ability to detect those
20 snips.

21 Q So -- and some of what I'm asking may be a
22 little repetitive, but I know it's hard for everyone to
23 understand.

24 In a forensic situation only 15 loci are
25 actually analyzed, correct? And the gender.

1 A Yes, that's correct.

2 Q There is 15 loci and then there is the gender
3 gene, amelogenin?

4 A Amelogenin, correct. Yes, 16 total. Yeah, so
5 that's the X and Y.

6 Q Right. So one thing you are looking at is just
7 male or female?

8 A Right.

9 Q And these genes that you are looking at, they
10 represent less than one percent of the total DNA,
11 correct?

12 A Well these aren't actually genes. These are
13 short tandem repeats that are interspersed in between
14 genes. These are in long stretches.

15 So genes only make up a very small percentage of
16 your genome, a very small percentage, like maybe 10
17 percent or even less. These are tested from long
18 stretches that are just left over from evolution or
19 creation or whatever. It's the long stretches that
20 don't do anything.

21 Q But you are not looking at someone's total DNA?

22 A That's correct. No, we look at small portions,
23 correct.

24 Q And so even though you mentioned that many of us
25 are identical in many ways, correct, as far as our DNA

1 goes, but there is still 1.1 percent -- it's about we
2 are identical 99.9 percent, correct?

3 A Yes. Yes.

4 Q And that .1 percent still leaves millions of
5 base pairs, or some say building blocks, of DNA where
6 we are unique?

7 A Correct. These locations are chosen because
8 they display that uniqueness. So it's called
9 polymorphism.

10 So they have a lot of those peaks, when I was
11 saying the ladder, these places were chosen because
12 they are very different. Because many people have
13 different sizes at that position.

14 Q But unless 100 percent of the DNA is analyzed,
15 you could never be 100 percent sure if the evidential
16 DNA in fact was left by the defendant, correct?

17 A That is correct. So that's why we calculate,
18 using a mathematical model, we can calculate how sure
19 we are that that -- the portions that have been tested
20 match the other -- match the profile in question.

21 Q In forensic analysis of DNA, there are two
22 specialties of genetics are molecular genetics and
23 population genetics, correct?

24 A Correct.

25 Q And molecular genetics incorporates the actual

1 lab work leading to the generation of DNA profile,
2 correct?

3 A That is correct.

4 Q And so once there is a simple match between a
5 suspect's profile and the evidential DNA profile, then
6 a statistical analysis is done to ask how many other
7 people in the world might match the evidential profile.
8 That's why you do the numbers, correct?

9 A Yes. Sort of, yes.

10 Q That's what it's called is molecular genetics?

11 A Well the population genetics is a different
12 science. The molecular genetics is what I do, and I
13 create those profiles, even from the standard I do.

14 But then when I have to measure those, when I
15 have to measure that degree of certainty, that 1., that
16 1 in 58 trillion in this case, we go to -- the FBI
17 provides us with a program called Popstats, it's on a
18 computer, a dedicated computer in our laboratory, that
19 was generated.

20 And what the FBI did was go step by step and see
21 exactly what the allele frequencies were, see exactly
22 how frequent those polymorphisms showed up in the
23 population so that we could calculate based on each of
24 those individual tests.

25 Q This is all very sensitive technology, correct?

1 A Yes, very sensitive.

2 Q And in a lab you are telling us how small it is,
3 so it allows for the analysis of just a few cells?

4 A That's correct.

5 Q And so that's why you wear gloves when you are
6 in a laboratory, right?

7 A Also correct.

8 Q And a lot of people today have been wearing
9 gloves whenever they deal with any of the evidence?

10 A Uh-hum.

11 Q And you wear gloves because if you were to touch
12 an item with your bare hands, you could leave your own
13 DNA on it?

14 A Yes, I could.

15 Q That's part of the touch DNA that the solicitor
16 was talking to you about?

17 A That's correct.

18 Q And that's called primary transfer, when you
19 touch something and your DNA is left on it?

20 A Yeah. So if you touch it directly, and then
21 secondary transfer would be if I touch this table and
22 you set that, that's where the paper came in.

23 Yes, anyway that you can transfer skin cells to
24 an item, you can contaminate it -- items in many ways.
25 But there is no evidence of contamination in this case.

1 Q So just secondary transfer is when there is
2 transfer of DNA from one sample to another. So not
3 from directly from a person but from another sample,
4 object?

5 A Correct.

6 Q And earlier we heard about how when things are
7 being looked at, paper is -- there is paper set down so
8 that there's no chance of the table, of DNA being left
9 on the table and that getting on the object, correct?

10 A Yeah. That's in the evidence processing
11 section, yes.

12 But to expand on that, we take many steps to
13 make sure that cross-contamination doesn't occur. And
14 then the items are checked against themselves after the
15 fact. We also check for contaminated DNA after the
16 fact from every analyst, from every person in the
17 evidence processing position, from all of the people in
18 evidence intake also.

19 Q A mixed sample is a situation where profiles
20 from one -- from more than one person is found on a
21 single item, correct?

22 A Correct.

23 Q So that's the situation we have here, mixed
24 samples?

25 A Correct.

1 Q And you actually use a process that, a formula
2 that is typically used for a single profile and not a
3 mixed profile, correct?

4 A Yes, that is correct. On item 2.1 the
5 calculation was based on the fact that the major
6 contributor to that item, like we talked about someone
7 handling, or the major contributor to the torn gray
8 shirt matched the DNA profile of Philip Shuler.

9 So we were able to do a match statistic instead
10 of a mixed statistic.

11 Q But there is something called a combined
12 probability of inclusion, that there are tests that you
13 can use on this sample?

14 A Correct. But it wasn't calculated in this case.

15 Q So if the combined probability of inclusion
16 formula is used it would give a realistic match number
17 considering that this was a mixed sample of several
18 people, correct?

19 A It wouldn't give anymore of a realistic
20 statistic than the match statement does because of the
21 presence of a major contributor in this mixture.

22 If the presence of a major contributor were not
23 there, then a mixture statistic would have been more
24 appropriate and would have been calculated.

25 Q I want to look just briefly into one of the

1 alleles and just explain that a little. I don't think
2 you went over that before.

3 Someone at a loci you typically, or locus, you
4 typically have two alleles, correct?

5 A Correct.

6 Q And one is from the parent -- or one is from the
7 mom and one is from the dad?

8 A Correct.

9 Q Okay. So that's where the two numbers come
10 from, right?

11 A Correct. If someone's heterozygous there.
12 That's the name for having two different sizes there.

13 Q And homozygous is actually where they have the
14 same allele from each parent?

15 A The same size allele, yeah, exactly.

16 Q So if you look at the torn gray shirt, item
17 2.1., and you are looking at locus D3, see where I am
18 talking about?

19 A D3S1358?

20 Q That one that has 15/16/17?

21 A Correct.

22 Q Yes. So Mr. Shuler, his -- he is 15/17,
23 correct?

24 A Yes.

25 Q So that leaves the 16, right, that's not him?

1 A Yes, that's correct.

2 Q But there are multiple other calculations that
3 are possible from those three alleles?

4 A Yes. What we did in that example is that we
5 noticed that they're not bolded. Do you have my chart
6 available to you?

7 Q I do.

8 Q If you'll notice that they are not bolded at
9 that position, that means that the major contributor
10 could not be picked out of that position so it was left
11 out of the calculation. Which would make it more
12 conservative.

13 So that number is actually more conservative.
14 We leave out positions where we can't tell exactly
15 what's going on. So to give, you know, all benefits of
16 the doubt in that example.

17 Q But looking at the heterozygous, homozygous,
18 it's possible that someone who contributed to that,
19 their DNA, they could have been a -- if it's
20 homozygous, someone could have been 17/17 for example,
21 right?

22 A Yes. That's a possibility.

23 Q And 15/15, correct?

24 A Yes.

25 Q And 16/16, correct?

1 A Yes. If it were a mixture of three individuals
2 that were all homozygous in that position, that would
3 be exactly the case.

4 Q And then if you are looking at -- if someone is
5 heterozygous, or if there is a heterozygous match, then
6 there is a possibility of someone, they could be a
7 15/16, correct?

8 A Yes.

9 Q Or a 15/17?

10 A Correct.

11 Q Or a 16/17?

12 A Correct.

13 Q So in other words, if you are looking at the
14 homozygous and the heterozygous, you are looking at the
15 possibility of six different genotypic combinations
16 possible at that one locus, correct?

17 A There could be many combinations at that locus
18 to create that specific profile. But it was left out
19 of the computation. Yes, the answer is yes.

20 But also, in this specific example what I should
21 point out, I guess, is that if it were a mixture of any
22 more than three people, it would have showed up at the
23 other location.

24 So the likelihood that everyone was homozygous
25 at that position, and then also homozygous at the other

1 positions to keep the allele number low at the other
2 positions -- may I step to the light board for a second
3 to explain that?

4 Q Sure.

5 A Thanks so much.

6 So the scenario that she is talking about, she's
7 got a location that she is asking me about here. And
8 the data is 15/16/17. I'm just going to refer to that
9 one, the only position.

10 So what she was asking was could this be created
11 from a situation where people were all homozygous. So
12 you get one copy from your mother and one copy from
13 your father. And if someone is homozygous, that means
14 they got two 15's.

15 So she's asking is it possible that all the
16 people in this position, or this mixture, could be made
17 up a person that is 15/15, and a person that was 16/16
18 and also a person that was 17/17. Yes, that is
19 possible.

20 But the problem with that is that it seems
21 highly, highly unlikely because if that were the case
22 those people would have also had to be homozygous or
23 minimally heterozygous at all of these other locations.

24 Because if they -- if these three people were
25 all heterozygous at this location, that would have put

1 many other -- so like this person here, instead of
2 being homozygous 15/15, it would have showed up as a
3 15/16. And then this person, if they were in fact
4 16/17, it would have showed up like that. And then
5 this person would have showed up like that.

6 So then at this position there would have been
7 six alleles if everyone was heterozygous. So this
8 position could have been three, and this position could
9 have been six. But there is no evidence of that in the
10 profile.

11 There is no evidence -- there is no position
12 where there are 6 or 7 or more alleles. We would have
13 looked for that and called it a mixture of more than
14 three people. We would have called it a mixture -- in
15 this example we would have called it a mixture of three
16 people.

17 And the results, it's only two. So there is no
18 position where there are that many alleles that would
19 indicate that it was a mixture of more than two people.
20 Which would be infinitely more probable, much more
21 probable than the other way, than everyone being
22 homozygous at single -- at multiple locations and
23 contributing equally.

24 Q okay. And this might be -- everything might be
25 confusing everybody more, so I apologize. But

1 basically, what I was trying to get at is there is no
2 way to determine just how many genotypes actually do
3 exists on an item of clothing?

4 or it's very difficult to determine that because
5 it can be mixed at every locus?

6 A That's somewhat true. I mean you can imagine
7 different ways -- you can imagine different ways that
8 genotypes can be created, you can.

9 You can imagine a case where you would think
10 that a genotype that you created was heterozygous and
11 it's not, it's contributing from homozygous. But it
12 would be very unlikely. It's possible, but very, very
13 unlikely.

14 Q Okay. Now for the easier questions. DNA
15 results do not indicate, for example, the race of a
16 donor, correct?

17 A That's correct.

18 Q They don't also indicate the age of the donor?

19 A That's correct.

20 Q And they don't indicate how the DNA got on the
21 evidential surface?

22 A Correct.

23 Q And they don't indicate when the sample got on
24 the evidential surface?

25 A Correct.

1 Q So there is no way for you to know if the DNA
2 got on those items the day they were collected,
3 correct?

4 A That's correct. I don't know when.

5 Q Or the week before? There is no way for you to
6 tell if the DNA got on the items months before even?

7 A I would not be able to tell.

8 Q And the DNA results do not indicate the order in
9 which various DNA profiles were placed on the item of
10 clothing?

11 A No, it doesn't.

12 Q So if this item of clothing were worn during
13 some crime, the DNA results can't indicate who out of
14 the mixed sample, which one then committed the crime?

15 A That's correct.

16 Q Okay, thank you.

17 MS. FORD: No further questions.

18 THE COURT: Any redirect of the witness?

19 MR. KIDD: Very briefly, Your Honor.

20 THE COURT: You may proceed.

21 MR. KIDD: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. KIDD:

24 Q I think you said a couple of times you all err
25 on the side of being as cautious as possible. Is that

1 accurate?

2 A That is accurate.

3 Q And in doing it within that regard, in your
4 opinion as an expert is Mr. Shuler's DNA present on
5 item 1.1, 2.1 and 3.1?

6 A Item 2.1; I believe that Mr. Shuler's DNA is
7 present. I can say with confidence that at some point
8 he handled that item. He's the major contributor on
9 the item and, yes, I feel very confident.

10 On the others I feel less confident, but he's
11 present at most locations. I can say with pretty good
12 confidence that, yes, he at some point handled those
13 other items as well. But most confident with 2.1.

14 MR. KIDD: No further questions.

15 THE COURT: Any objection to the witness being
16 excused, from the state?

17 MR. KIDD: No, ma'am.

18 THE COURT: From the defense?

19 MS. FORD: No, Your Honor.

20 THE COURT: Sir, you are excused.

21 THE WITNESS: Thank you.

22 THE COURT: You're welcome.

23 MR. KIDD: Your Honor, may we approach?

24 THE COURT: You may.

25 (Whereupon, the following discussion was held at

1 the bench.)

2 MR. KIDD: I know it's very late.

3 THE COURT: It is very late and I'm late for a
4 meeting.

5 MR. KIDD: I was going to say we have one
6 witness that takes five minutes and then we can rest.
7 They are local so they can come back in the morning.

8 THE COURT: They can come back. I'm very late.
9 (In open court.)

10 THE COURT: Mr. Foreman, ladies and gentlemen,
11 we are going to take advantage of this break in
12 testimony to take our evening recess. During the
13 break, please do not discuss the case among yourselves.
14 Please do not allow yourselves to have any contact with
15 anyone in or about the courthouse.

16 And I know when you hear technical testimony, it
17 is very tempting to maybe try to look it up on the
18 Internet. But let me remind you that that is strictly
19 prohibited. I know there are so many programs and
20 other sites. I've had people look up things on Google
21 Earth, you name it, people have looked it up and it is
22 not permissible.

23 Because there is a specific way that cases are
24 tried. And they are tried with many different
25 strategic reasons or otherwise. And you are bound, as

1 the fact finders, to decide the case based solely on
2 what is presented to you. So I would ask that you
3 refrain, as tempting as it might be, from doing that.

4 Also please don't have any contact with anyone
5 in or about the courthouse as you leave or when you
6 return in the morning. I'm going to have you return at
7 10:00. I'm picking another jury. So that once you all
8 -- as we conclude your case, then I will be able to
9 start another case.

10 In State court our resources are very limited
11 with the emphasis being on limited. So unlike Federal
12 Court where everything is a date certain, we try cases
13 one right after the other. So in order for us to
14 maximize our court time, as we anticipate coming to the
15 close of a case, we will begin another case.

16 So I appreciate your patience in advance. And
17 instead of having you all wait while I go through that
18 process, I think it is better for you all to come as I
19 anticipate that I will be completing that process. You
20 will return at 10:00. You will return directly to your
21 jury room. If I run a little over, I'm going to eat
22 crow already in advance.

23 I don't know what's going on with the
24 interstate. I'm almost tempted to call the Department
25 of Transportation myself and ask what is the game plan

1 for wrecks. Lately it seems that in the last few weeks
2 whenever there is a wreck on the Interstate you sit for
3 an hour and a half. You know, I don't understand what
4 the logic is about it.

5 But if something should happen, you know, with
6 someone trying to get to court or otherwise, just know
7 that if there is a delay, lately it has been because of
8 that. So I anticipate we'll begin at 10:00, but if it
9 goes a little beyond that, please I ask for your
10 patience in advance and I apologize in advance.

11 But please know that we do not take your time
12 for granted. We are so appreciative that you are here
13 with us. And when you are waiting, please know that we
14 are working. So, but, I anticipate that we will begin
15 at 10:00.

16 Please leave your note pads in your seats and we
17 will secure them during the recess. You all have a
18 wonderful evening and we will see you in the morning at
19 10:00.

20 (Whereupon, the jurors exit the courtroom.)

21 THE COURT: Is there anything before we adjourn,
22 from the State?

23 MS. CHISOLM: No, Your Honor.

24 THE COURT: From the defense?

25 MS. FORD: No, Your Honor.

1 THE COURT: And normally I would have taken your
2 witness, but I have to consider the jurors. I have a
3 meeting, but I am always late for my meetings so my
4 organizations know that court is my only job and if I
5 am late, I am late.

6 But I had like three sleepy jurors who were
7 about to nod off and I didn't want to press our luck.
8 You all have a good night. You can leave your things
9 here, they will not be disturbed.

10 (Whereupon, the proceedings in this matter
11 before the Court were adjourned for the evening.)

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1 THE COURT: Anything before we proceed from the
2 State?

3 MS. CHISOLM: No, Your Honor.

4 THE COURT: From the defense?

5 MS. FORD: No, Your Honor.

6 THE COURT: State ready to proceed?

7 MS. CHISOLM: We are, Your Honor.

8 THE COURT: Defense ready to proceed?

9 MS. FORD: Yes, Your Honor.

10 THE COURT: Let me ask a quick question. If the
11 defendant were to testify, is there any record that the
12 State would be seeking to use to impeach his
13 credibility?

14 MR. KIDD: Yes, ma'am. We have accessory after
15 the fact of a grand larceny.

16 THE COURT: What year is that?

17 MS. CHISOLM: That is '91.

18 THE COURT: That would be more than ten years
19 old, wouldn't it?

20 MR. KIDD: Correct.

21 THE COURT: So how would you use it?

22 MR. KIDD: I think when we are impeaching his
23 credibility, I think that comes within the Court's
24 discretion.

25 THE COURT: Irregardless of punishment is --

1 wait a minute, I'm thinking through the rule in my
2 head.

3 Who has to -- didn't you have to give them
4 notice under the rules if it's ten years old if you
5 plan to use it? I think you have a notice requirement.

6 I'm just going from my memory, though. And I'll
7 look it up while we are finishing the testimony. Just
8 go ahead and read it all out to me.

9 MR. KIDD: The entire records or the ones I
10 would --

11 THE COURT: The ones you would seek to use to
12 impeach his credibility.

13 MR. KIDD: That one and then there is also a
14 failure to return rental object, which is in '05. And
15 petty larceny in '08. Which, I think, are the only
16 ones that would be admissible for impeachment.

17 THE COURT: Okay. And then we will discuss that
18 at the time that I advise him of his right to testify.
19 I just wanted to know in advance so that I could start
20 thinking about it.

21 Okay. You said you had two additional
22 witnesses?

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

24 THE COURT: And who are they?

25 MR. KIDD: Officer Campbell and Officer Plyler.

1 THE COURT: okay. And they are here, correct?

2 MR. KIDD: Yes, ma'am.

3 THE COURT: Very good. Bring in the jury for
4 me. They're happy, I ordered them lunch so whatever
5 hard feelings they have for us, they have forgiven us.

6 And if you all had any instructions you all
7 wanted me to review, if you can give those to me as
8 well.

9 MS. FORD: Your Honor, I don't have any
10 instructions, but I would request a strong armed
11 robbery charge.

12 THE COURT: Does the State have any opposition?

13 MR. KIDD: We would, Your Honor, open to the
14 evidence.

15 THE COURT: We'll argue it at the charge
16 conference. What else?

17 MS. FORD: Your Honor, I just wanted to ask for
18 strong arm robbery.

19 THE COURT: Is there anything specific the State
20 would be requesting?

21 MR. KIDD: No, ma'am. I think it is straight up
22 and down armed robbery.

23 THE COURT: We'll deal with it at charge
24 conference. I did my instructions yesterday, and while
25 we're doing all this I'm going to review it. I just

1 wanted to make sure that I included everything.

2 But when we do charge conference I'll think
3 through the evidence to determine if a lesser included
4 is supported. Because the statute does have that
5 language, or representation of a deadly weapon.

6 So I don't know that that puts its within the
7 ambit of a lesser included of strong armed, but I'll
8 think through it and see. And then we will discuss it
9 at charge conference.

10 MS. FORD: Yes, Your Honor.

11 MR. KIDD: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 (Whereupon, the jurors enter the courtroom.)

14 THE COURT: You may be seated.

15 Good morning, ladies and gentlemen. That was
16 resounding, you all make me feel better. I feel
17 horrible. I had you all sitting, but please know that
18 we have been working. It's Murphy's Law. Everything
19 that could happen this morning, did.

20 And believe it or not, we disposed of three
21 additional cases while you all were waiting. So I do
22 truly appreciate your patience. But please know we do
23 not take your time for granted.

24 As my mentor would always say, thank you goes a
25 long way. So I hope that a small thank you of buying

1 you all lunch today will go a long way and will
2 hopefully redeem all of us for you all having to wait.

3 we will now proceed with trial testimony. I
4 would ask that you give the attorneys your undivided
5 attention.

6 You may proceed when you are ready.

7 MR. KIDD: Thank you, Your Honor. State calls
8 Officer Adam Campbell.

9 THE COURT: If the officer will come forward to
10 be sworn.

11 MR. ADAM CAMPBELL,
12 after having first been duly sworn to state the truth,
13 the whole truth and nothing but the truth, testified on
14 his oath as follows:

15 THE COURT: You may proceed.

16 MR. KIDD: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MR. KIDD:

20 Q Good morning, Officer Campbell.

21 A Good morning.

22 Q Get right to the point. Could you tell the jury
23 where you are employed?

24 A I'm employed with the Town of Mount Pleasant
25 Police Department.

1 Q And what is your title with the Mount Pleasant
2 Police Department?

3 A I'm a patrol officer.

4 Q What was your title back in March of 2009?

5 A It was patrol officer then as well.

6 Q Okay. Do you remember getting involved in this
7 case?

8 A I do, yes.

9 Q What were you doing on the evening of March 30,
10 2009?

11 A I responded to the area of 323 Coleman Boulevard
12 in the town in reference to an armed robbery that had
13 just occurred.

14 Q And what were your orders? What were you
15 looking for that evening?

16 A I was looking for the suspect, which at the time
17 telecommunications advised that it was a black male
18 wearing a brown shirt with gold lettering.

19 Q Excuse me while I set this up a little bit.

20 But I'm going to show you what has been marked
21 as State's Exhibit No. 14. Do you recognize that?

22 A I do, yes.

23 MR. KIDD: Okay. Can I ask the Officer to step
24 down?

25 THE COURT: Uh hum. And if you all would switch

1 places to let him talk toward the court reporter.

2 MR. KIDD: Yes, ma'am.

3 THE COURT: And, sir, please speak loudly and
4 clearly so that the court reporter can take down your
5 responses.

6 Q (By Mr. Kidd) officer Campbell, can you
7 indicate on this map where 323 Coleman Boulevard is?

8 A It's right where this red circle. It's right
9 there.

10 Q Okay. And what is -- where were you patrolling?

11 A I was in the area of Rose Lane, which is right
12 here and runs between Simmons Street and Whilden Street
13 in the old village section of Mount Pleasant.

14 Q And did you come across anything while you were
15 patrolling that area?

16 A I did. I encountered a gentleman walking on
17 Rose Lane from Simmons Street, towards Whilden Street.

18 Q Can you draw an arrow where you encountered that
19 individual and the direction that he was walking?

20 A Sure.

21 Q Here, I will hold the blackboard for you.

22 A (Whereupon, the witness so indicates.)

23 Q All right. And when you -- can you tell the
24 jury what happened when you encountered this
25 individual?

1 A I did.

2 Q Please don't say anything that he said, that's
3 hearsay.

4 A Okay.

5 Q Just what you did and what you learned.

6 A I encountered the gentleman on Rose Lane as he
7 was walking. And I told him that we had an incident
8 right around the corner from his location. And advised
9 him if he saw anything out the ordinary to please give
10 us a call.

11 And I provided him a business card at that time
12 to give him our information.

13 Q What time was this?

14 A That was at 11 -- or 10:07 p.m.

15 Q 10:07 p.m. And do you remember what time the
16 robbery took place?

17 A I do not, but there is an incident report right
18 over there.

19 Q But 10:07 p.m. is when you came across this
20 subject on this lane?

21 A That's correct.

22 Q Do you see the subject you came across in the
23 courtroom today?

24 A I do, yes.

25 Q And can you identify him for the jury?

1 A The gentleman in the white shirt and the tie.

2 Q So at 10:07 p.m., that gentleman was in this
3 neighborhood behind the Scotchman?

4 A That is correct.

5 Q And you can have a seat, thank you.

6 Can you tell jury what was -- do you recall what
7 he was wearing at that time?

8 A Dark clothing is what I remember from that
9 evening, just based on the fact that I was looking for
10 a black male.

11 Q Do you remember anything specific about his
12 demeanor or appearance?

13 A He was pretty relaxed. Just very calm.

14 Q So he wasn't sweating profusely?

15 A No.

16 Q Wasn't excited or out of breath?

17 A No.

18 MR. KIDD: Court's indulgence.

19 THE COURT: Uh-hum.

20 Q (By Mr. Kidd) Did you inform him of why you
21 were patrolling the area?

22 A I did. I said that we had an incident at an
23 area business.

24 Q Did you inform him of the description of the
25 subject you were looking for at the time?

1 A I did, yes.

2 Q And once again, what was that description?

3 A It was a black male, wearing a brown shirt with
4 gold lettering on it.

5 Q And he did not fit that description, did he?

6 A Not at the time, no.

7 MR. KIDD: Court's indulgence.

8 THE COURT: Uh-hum.

9 MR. KIDD: No further questions, Your Honor.

10 THE COURT: You may proceed.

11 MS. FORD: Thank you, Your Honor, may it please
12 the Court.

13 CROSS-EXAMINATION

14 BY MS. FORD:

15 Q officer Campbell; I just want to go into the
16 area a little bit, just to explain the area.

17 A okay.

18 Q The Scotchman is at the fork in the road past
19 Shem Creek, correct?

20 A Correct.

21 Q And to the right of the fork in the road is the
22 old village area, right?

23 A That's correct. That would be Whilden Street,
24 yes, ma'am.

25 Q And back there the docks are near, are over

1 there?

2 A Correct. If you go onto Whilden Street and
3 after you get onto Whilden you make a right, you would
4 be back toward the docks. And to the left off Whilden
5 Street is where Rose Lane is, where I was at that time.

6 Q And over there, so there are a lot of houses
7 back there?

8 A There are.

9 Q And there is even some businesses, right?

10 A There are.

11 Q Is there a pharmacy?

12 A That would be on the opposite side of Whilden
13 Street. The direction I was was toward Moultrie Middle
14 School, the new Moultrie Middle School in the Town of
15 Mount Pleasant, Art's Bar and Grill, that area.

16 Q Okay. Now going back to the fork in the road,
17 to the left, that's Coleman, you continue on Coleman
18 Boulevard, correct?

19 A That's correct.

20 Q And there are a lot of bars in that area?

21 A Yes, there are.

22 Q And shopping centers?

23 A Yes.

24 Q One of the bars you mentioned is Reds, or I'm
25 sorry, Art's?

1 A Art's, yes.

2 Q And actually before you get to the fork in the
3 road, not far before that is the bridge over Shem
4 Creek, correct?

5 A That is correct.

6 Q And there is a lot of restaurants and bars
7 there?

8 A There are.

9 Q One bar there is Red's Ice House?

10 A Yes, Red's Ice House.

11 Q It's a popular bar in Mount Pleasant?

12 A It is.

13 Q Now going to the date, March 30th. You told us
14 that when you met with Mr. Shuler, you did not consider
15 him a suspect at that time?

16 A That's correct.

17 Q You were looking for a black man?

18 A I was.

19 Q You were looking for a brown shirt with gold
20 writing?

21 A That is correct.

22 Q You mentioned that Mr. Shuler was wearing dark
23 clothing?

24 A He was wearing dark clothing, yes.

25 Q You did not notice a brown shirt with gold

1 Lettering?

2 A I did not at the time, no.

3 Q And it was dark when you met with him, correct?

4 A It was dark, yes.

5 Q And you actually wrote your report the next day?

6 A That's correct.

7 Q And you told us how -- the solicitor was asking
8 you questions about he seemed to be calm?

9 A Right.

10 Q And you actually specifically noted that he did
11 not appear to have been in a high stress environment
12 that evening?

13 A That's correct.

14 MS. FORD: Beg the Court's indulgence.

15 THE COURT: Yes, ma'am.

16 MS. FORD: No further questions for this
17 witness, Your Honor.

18 MR. KIDD: Very, very briefly

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MR. KIDD:

22 Q And would it be safe to say this is
23 approximately an hour after the robbery occurred?

24 A Yes. My incident report has the time as 9:14,
25 so approximately.

1 Q 45 minute or so?

2 A Right. Yes, sir.

3 Q And do you remember approximately -- this is
4 March, correct?

5 A Correct.

6 Q Do you remember approximately was it hot
7 outside, cold outside?

8 A I don't recall the temperature outside.

9 Q Safe to say -- well --

10 MR. KIDD: No further questions, Your Honor.

11 THE COURT: Any objection to the witness being
12 excused, from the State?

13 MR. KIDD: No, ma'am.

14 THE COURT: From the defense?

15 MS. FORD: No, Your Honor.

16 THE COURT: Sir, you are excused.

17 THE WITNESS: Thank you.

18 THE COURT: You're welcome.

19 You may call your next witness.

20 MR. KIDD: Thank you, Your Honor.

21 State calls officer Plyler.

22 MR. THOMAS D. PLYLER,

23 after having first been duly sworn to state the truth,
24 the whole truth, and nothing but the truth, testified
25 on his oath as follows:

1 THE COURT: You may proceed.

2 MR. KIDD: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 DIRECT EXAMINATION

5 BY MR. KIDD:

6 Q Good morning, Officer Plyler. How are you?

7 A Good. How about you?

8 Q Doing all right. Can you tell the jury where
9 you are employed?

10 A Yes, sir. I'm employed by Mount Pleasant Police
11 Department.

12 Q And what are your duties there?

13 A I'm a detective in the Narcotics Bureau.

14 Q What were your duties back on March of 2009?

15 A I was a patrolman.

16 Q Do you remember getting involved in this case on
17 March 30, 2009?

18 A Yes, sir, I do.

19 Q Can you tell the jury how first became involved
20 in the investigation of this armed robbery?

21 A Yes, sir. I came to work at 10 o'clock that
22 night. And on the way to work, I heard on the radio
23 that there was an armed robbery at 323 Coleman
24 Boulevard.

25 After roll call I was -- it was my area, so I

1 was assigned to relieve PFC Coleman who was the crime
2 scene officer there at 323 Coleman Boulevard.

3 Q So you went to the scene of the robbery?

4 A Yes, sir.

5 Q About what time did you get there?

6 A I responded there at 2245, which is 10:45 in the
7 evening.

8 Q So this is well after the robbery has taken
9 place?

10 A Yes, sir, about an hour and a half.

11 Q Okay. And what are your duties once you are on
12 scene?

13 A My duties is crime scene log, log down whoever
14 comes in and out of the crime scene and maintain
15 security.

16 Q So is the crime scene still taped off at this
17 point?

18 A Yes, sir.

19 Q All right. And tell the jury a little bit about
20 what you did during that period of time while you were
21 at the crime scene.

22 A Most of the investigation or people that would
23 come in and out of a crime scene was a party. PFC
24 Mitchell of our crime scene unit did depart about 11:30
25 in the evening.

1 And between 11:30 and 12:30 in the morning of
2 the 31st, Detective Willis and myself was able to view
3 the in-store video security system. The tape of when
4 the actual robbery took place.

5 Q Is that the first time anyone was able to see
6 the actual video of the robbery?

7 A Yes, sir, it was.

8 Q And once again, about what time in the evening
9 was this?

10 A That was between 11:30 at night and 12:30 in the
11 morning of March 31st. It took us a while to figure
12 out how to work the system.

13 Q So late at night of the 30th, or very, very
14 early on the 31st?

15 A Yes, sir.

16 Q And what did you see when you watched that
17 video?

18 A When I watched the video I observed that it was
19 a white male with a large frame. I estimated the male
20 to be approximately 6', 270 pounds.

21 I observed a -- what appeared to be a gray shirt
22 covering his face. I observed white tube socks pulled
23 over his arms up to his elbows. And there was a little
24 gap between the tube sock and his shirt sleeve, that's
25 how I identified him as a white male.

1 I also observe in the right hand of the tube
2 sock there appeared to be a gun inside the sock. It
3 appeared that a white male had it, what I thought was a
4 green in color shirt on, blue jeans and white tennis
5 shoes.

6 And the suspect, the white male, appeared very
7 calm, wasn't nervous, wasn't really looking around, he
8 was just focused on what he was doing and remained very
9 calm during the entire robbery.

10 Q And after you got this new description of the
11 suspect, what did you all do with it from there?

12 A We broadcast that over our radio to all
13 officers. And basically after that, Detective Willis
14 went back to the police department and I opened the
15 crime scene up and I kept patrolling.

16 Q When you say opened the crime scene up, that
17 means kind of removing the crime scene tape?

18 A Yes, sir.

19 Q All the evidence had been collected at that
20 point?

21 A Yes, sir.

22 Q And it was kind of back open for business, so to
23 speak?

24 A Yes, sir.

25 Q Okay. And when you left that crime scene, what

1 did you do at that point?

2 A I patrolled my neighborhoods, especially
3 convenience stores, making sure we didn't have another
4 robbery.

5 Q And did you come across Mr. Shuler at some point
6 later in the evening?

7 A Yes, sir, I did. Approximately 1:20 in the
8 morning I was behind the Kangaroo, which is at 1402 Ben
9 Sawyer Boulevard. It's at the intersection of Rifle
10 Range and Ben Sawyer Boulevard.

11 I was behind the convenience store talking with
12 Patrolman PFC Keenan.

13 Q Can I stop you for one second?

14 A Yes.

15 MR. KIDD: Your Honor, may I have the officer
16 step down?

17 THE COURT: Yes. Again, have him speak towards
18 the court reporter.

19 MR. KIDD: Yes, Your Honor.

20 THE COURT: Thank you.

21 Q (By Mr. Kidd) Again, I'm going to show you what
22 has been marked as State's Exhibit No. 14.

23 Do you recognize that?

24 A Yes, sir.

25 Q What is that?

1 A This is basically an overview map of the Old
2 village, Ben Sawyer, Rifle Range.

3 Q Can you indicate to the jury where on that map
4 you then ran into the suspect?

5 A Yes, sir.

6 Q And put an X on it?

7 A Would be this red circle here.

8 Q So that's where it was?

9 A Yes, sir. That's 1402.

10 Q And what time in the evening was that, again?

11 A It was approximately 1:20 in the morning, the
12 31st of March.

13 Q Thank you. You can sit down.

14 When you first saw the defendant at that
15 location, what was he doing?

16 A Walking on foot from the Ben Sawyer side,
17 walking into the store.

18 Q Were there a lot people on foot out in that area
19 at that time of evening?

20 A No, sir.

21 Q Or that time of morning. And what -- where was
22 he going?

23 A Walking straight towards the store.

24 Q And when you saw that, what was your thought
25 process?

1 A My thought was that his physique matched the
2 physique of the suspect in the video. And I wanted to
3 make sure that the clerk was okay in this convenience
4 store.

5 Q So he was entering another convenience store?

6 A Yes, sir.

7 Q And so what did you do?

8 A I approached the north side of the convenience
9 store. I looked through the windows to make sure
10 nothing was going on in the store. I observed the
11 defendant purchased a Coca-Cola and a honey bun.

12 Q And what did he do next?

13 A He exited the convenience store.

14 Q And what did you do?

15 A I approached the defendant, identified myself as
16 a police officer with the Town of Mount Pleasant, and
17 made conversation with the defendant.

18 Q Are there anything specific that you noticed
19 about the defendant at that time that further aroused
20 your suspicions?

21 A Yes. I observed several tatoos on his left
22 forearm which I thought would be consistent with --

23 MS. FORD: Your Honor, objection, speculation.

24 THE COURT: It's based on his observations.

25 MS. FORD: May we approach?

1 THE COURT: Yes.

2 (Whereupon, the following discussion was held at
3 the bench.)

4 MS. FORD: What he's going to say, it's in his
5 report --

6 THE COURT: I don't know what he is going to
7 say.

8 MS. FORD: Right, well. He's wearing tatoos and
9 that would be consistent with somebody covering their
10 arms in a robbery.

11 THE COURT: Is that what he is going to say?

12 MR. KIDD: Absolutely.

13 THE COURT: He can say what he rationally
14 perceived. You would have to lay the foundation for
15 the rest of that opinion.

16 He can say I saw those tatoos, because that's a
17 part of his rational perception. It's something he
18 saw, he can describe what he saw.

19 But any other explanation beyond that, you would
20 have to lay the appropriate foundation for him to opine
21 about that.

22 MS. FORD: He can argue it.

23 MR. KIDD: He saw the video. He saw the socks
24 covering the arms.

25 THE COURT: That's why you got to connect the

1 dots and lay the appropriate foundation. How about
2 that?

3 MR. KIDD: Gotcha. Okay.

4 (In open court.)

5 THE COURT: You may proceed.

6 Q (By Mr. Kidd) In your experience, how long have
7 you been an officer with Mount Pleasant?

8 A A little over four years.

9 Q Four years. In your experience as an officer,
10 would it -- would it be common for you to -- or based
11 on your experience, would you know of people concealing
12 ways that would be easily --

13 THE COURT: Approach, please.

14 (Whereupon, the following discussion was held at
15 the bench.)

16 THE COURT: When I say lay the appropriate
17 foundation and connect the dots, what I mean is that
18 you have to tie what he saw on the video with what he's
19 talking about.

20 In other words that he saw the tatoos, and tied
21 that to his rational perception of what he perceived on
22 the video as it relates to what he saw on him that
23 night.

24 MR. KIDD: Thank you.

25 THE COURT: Okay. Not general speculation.

1 (In open court.)
2 Q (By Mr. Kidd) I apologize, I got a little off
3 track.

4 Back when you were watching the video, I believe
5 you testified earlier you noticed there were socks on
6 the suspect's arms?

7 A Yes, sir, I did.

8 Q And could there be a number of reasons why
9 someone would cover their arms in socks like that?

10 A Yes, there would be.

11 Q And what could, rationally, what could some of
12 those reasons be?

13 A Large scars, a deformity, unique tatoos.

14 Q So to conceal an identifying characteristic?

15 A Yes, sir.

16 Q Would that be reasonably because the event might
17 be caught on video?

18 A Yes, sir.

19 Q Okay. And when you came across the suspect that
20 evening at -- on Sawyer Boulevard coming out of that
21 gas station and you noticed that he had tatoos on his
22 arms, did that arouse your suspicions?

23 A Yes, sir, it did.

24 Q And for what reason?

25 MS. FORD: Your Honor, objection, speculation.

1 THE COURT: Approach.

2 (Whereupon, the following discussion was held at
3 the bench.)

4 THE COURT: What's the testimony going to be?

5 MR. KIDD: That he found it suspicious that this
6 guy has tatoos on his arms, and that the suspect was
7 wearing socks on his arms. It's just one more thing
8 that aroused his suspicion.

9 THE COURT: I think he can say as an officer
10 with a certain amount of experience what would arouse
11 his suspicion that would precipitate him investigating
12 a particular person or investigating a particular line
13 of inquiry.

14 I think that's permissible. But to go beyond
15 that to say that all these things means he did it,
16 that's a different thing.

17 MS. FORD: Right. And I think a lot --

18 MR. KIDD: And that's where we are stopping.

19 MS. FORD: A lot of these arguments are really
20 to be made in closing. He had tatoos, he had --

21 THE COURT: Well I think he is talking about his
22 investigation and why he pursued this particular person
23 and that is germane. And as to why he did it, the
24 underlying reasons for why he did it.

25 MS. FORD: Okay.

1 MR. KIDD: Thank you.

2 THE COURT: You're welcome.

3 (In open court.)

4 THE COURT: You may proceed.

5 Q (By Mr. Kidd) And see if I can recall that last
6 question I asked you. So why did that arouse your
7 suspicions?

8 A Can you read the question back for me?

9 THE COURT: Actually, approach for me, please.

10 (Whereupon, the following discussion was held at
11 the bench.)

12 THE COURT: Don't lead him. What you need to
13 ask him is the original question you asked which is
14 what did you see, and then what did you do as a result
15 of that. Because he said it aroused my suspicions, and
16 then let him continue his answer.

17 (In open court.)

18 THE COURT: You may proceed.

19 Do you need the court reporter to read back the
20 original question?

21 MR. KIDD: No, ma'am. I think we should be
22 okay.

23 Q (By Mr. Kidd) And so when you approached the
24 defendant that evening, or early that morning and you
25 saw his arms, what did you see on his arms?

1 A I saw several tatoos on his left arm.

2 Q What did that mean to you?

3 A To me that meant that if I had unique tatoos on
4 my left arm, I would want to conceal them. Especially
5 if I was trying to rob a store.

6 Q Okay. Thank you.

7 And in talking further with the defendant at
8 that point, did you notice anything else about his
9 clothes or anything else that further aroused your
10 suspicions?

11 A I observed the defendant still had blue jeans on
12 and white tennis shoes which the suspect in the video
13 had.

14 Q And did you take him into custody at that point?

15 A At that time I contacted Detective Willis. And
16 based on my reasonable suspicion, he was transported to
17 the Mount Pleasant Police Department.

18 Q Did you notice anything further about his feet?

19 A Yes. Prior to transporting him, it's policy
20 that we search everybody for weapons so they can't hurt
21 us when we are transporting.

22 I noticed he did not have any socks on. And
23 inside his shoes has some debris, leaves and stuff.

24 Q And why is his lack of socks important?

25 A I believe the lack of socks would be important

1 because he used socks to cover his unique tatoos on his
2 arms.

3 Q Did you notice anything else in his possession
4 at that point?

5 A I noticed a business card from officer Campbell
6 in his pocket.

7 MR. KIDD: Court's indulgence.

8 THE COURT: Uh-hum.

9 MR. KIDD: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 Q (By Mr. Kidd) Showing you a couple of pieces of
13 evidence, real quick.

14 First I'm going to show you what has been marked
15 and entered as State's Exhibit No. 9. Do you recognize
16 that photo?

17 A Yes, sir, I do.

18 Q And what is that photo of?

19 A That is a photo of the suspect's clothing that
20 he had on that night.

21 Q Is that how he appeared to you when you
22 approached him on Ben Sawyer?

23 A Yes, sir.

24 Q And how would you describe his build there?

25 A A large build. Which matched the description

1 and what I saw on the video.

2 Q And is that what first drew him to your
3 attention?

4 A Yes, sir. The stomach is what actually.

5 Q What specific about his stomach?

6 A It was rather large. Looked to be firm like he
7 was a strong man.

8 Q I'm also going to show you what has been marked
9 a State's Exhibit No. 15. Do you recognize that?

10 A I do not.

11 Q Let me find a better picture. Do you see those
12 tatoos we referenced in State's Exhibit No. 9?

13 A Yes, sir, I do. On his left arm.

14 Q Maybe you can recognize this, This is State's
15 Exhibit No. 11. Do you recognize that at all?

16 A I do not.

17 MR. KIDD: I have no further questions, Your
18 Honor.

19 THE COURT: Any questions for the witness?

20 MS. FORD: Yes, Your Honor, may it please the
21 Court.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MS. FORD:

25 Q Hello.

1 A Hey.

2 Q When you came across Mr. Shuler, you thought he
3 matched the description of the person you saw in the
4 video?

5 A Yes, ma'am.

6 Q Now the person in the video was wearing a brown
7 shirt, correct?

8 A What I saw appeared to be a green shirt in the
9 video.

10 Q Okay. So when you watched the video, you saw a
11 green shirt?

12 A Yes, ma'am.

13 Q But he wasn't wearing a green shirt?

14 A No, ma'am.

15 Q And he was wearing jeans when he was arrested?

16 A Yes, ma'am.

17 Q But he was wearing light blue jeans?

18 A Okay.

19 Q Do you remember, do you need to see a picture?

20 A No. I remember the light blue jeans.

21 Q And you'd describe those jeans as light,
22 correct?

23 A I would consider them lighter colored blue
24 jeans. Yes, ma'am.

25 Q The guy in the video, though, he was wearing

1 darker jeans?

2 A Okay.

3 Q And do you think that's fair to say?

4 A Blue jeans, yes.

5 Q And he had on a blue shirt when he was arrested,
6 as well?

7 A In that picture, yes, ma'am, he has a blue shirt
8 on.

9 Q When you watched the video you didn't note a
10 blue shirt or anything like that?

11 A What it appeared to be to me is a green shirt.

12 Q Okay. He was also wearing a hat when he was
13 arrested?

14 A I believe, yes, a hat when he was arrested.

15 Q And when you approached him, he gave his name as
16 Phillip Shuler, correct?

17 A Yes, ma'am.

18 Q And he didn't try to run or anything like that?

19 A No, ma'am. He was very calm.

20 Q And you talked about how when you watched the
21 video, the robber seemed to be calm to you?

22 A Yes, ma'am.

23 Q But you couldn't see the robber's face?

24 A No, ma'am.

25 Q You couldn't see if the robber was sweating?

1 A No, ma'am.

2 Q You are just assuming, you are assuming?

3 A Yes, ma'am.

4 Q Because he wasn't shaking or anything?

5 A Shaking, looking side to side, he was just
6 focused on what he was doing.

7 Q But you actually couldn't see for yourself?

8 A I would be able to see his head moving around,
9 turning, but he just.

10 Q But any sweating, anything of that nature?

11 A No, did not see that.

12 Q Like when you are, as a cop, and you are -- you
13 are a narcotics officer now, right?

14 A Yes, ma'am.

15 Q And so when you are talking to someone and
16 they're sweating and shaking and that's what arouses
17 your suspicion, correct?

18 A Sometimes.

19 MS. FORD: Beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 MS. FORD: No further questions for this
22 witness, Your Honor.

23 THE COURT: Any redirect?

24 MR. KIDD: Very briefly.

25 THE COURT: You may proceed.

1 MR. KIDD: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 REDIRECT EXAMINATION

4 BY MR. KIDD:

5 Q And when you ran into the suspect on Ben Sawyer,
6 that was -- how long after the robbery was that?

7 A Do you mind if I look at my report in front of
8 me?

9 Q Help yourself.

10 A I left the crime scene at approximately 12:30 in
11 the morning of the 31st of March. And I observed the
12 defendant approximately 1:20 in the morning. So
13 approximately an hour and ten minutes.

14 Q I'm going to show you what has been marked as
15 State's Exhibit No. 7.

16 Do you recognize that photograph?

17 A Yes, sir, i do.

18 Q And just looking at that photograph today, what
19 color does that shirt look?

20 A That shirt look's to me to be green.

21 Q Like a dark olive green?

22 A Yes, sir.

23 Q could it also be brown?

24 A Yes, sir.

25 Q So just a dark greenish brown is how it looked

1 to you that night?

2 A Yes, sir.

3 MR. KIDD: No further questions, Your Honor.

4 THE COURT: Any object to the witness being
5 excused, from the State?

6 MR. KIDD: No, ma'am.

7 THE COURT: From the defense?

8 MS. FORD: No, Your Honor.

9 THE COURT: Sir, you are excused.

10 THE WITNESS: Thank you very much.

11 THE COURT: You're welcome.

12 State may proceed.

13 MR. KIDD: States rests, Your Honor.

14 THE COURT: Mr. Foreman, ladies and gentlemen,
15 the State has rested their case. There are some
16 matters of law that I need to take up that will
17 probably take up maybe ten minutes.

18 During the break, please does not discuss the
19 case. Please leave your note pads in your seats. I
20 have asked that they have your lunch here by 1:00. So
21 irregardless of where we are in the proceeding, we will
22 stop then so that you can eat, okay.

23 If you would go with the bailiffs for me,
24 please.

25 (Whereupon, the jurors exit the courtroom.)

1 THE COURT: Are there any motions now that the
2 State has rested?

3 MS. CHISOLM: No, Your Honor.

4 MS. FORD: Yes, Your Honor. At this time I
5 would ask for a directed verdict.

6 First of all, as far as the armed robbery goes,
7 I think the State's theory is that it was not a weapon,
8 but rather the stick in the sock. Of course, there is
9 a part of the law saying representation.

10 However, Ms. Lipsius did say she thought it may
11 be a gun but she was not sure. And the robber did not
12 indicate in any other way by saying, I have a gun, I'm
13 going to shoot, or anything like that to indicate that
14 it was a gun.

15 Also as far as identification, I don't think
16 there is any proof that Mr. Shuler is the person who
17 actually committed the robbery. There is just a lot of
18 circumstance, white shoes, things like that. I don't
19 think that meets the burden, Your Honor. So we would
20 ask for a directed verdict.

21 Also just -- I'm not 100 percent sure because I
22 know sometimes it's confusing to keep the pretrial
23 distinct from the trial, but I'm not sure if they
24 mentioned it was in Charleston County

25 THE COURT: They did, several times.

1 MS. FORD: Okay.

2 THE COURT: They don't have to actually say
3 Charleston County as long as they mention street names.
4 There are cases on point that say it's sufficient even
5 if they never mentioned a street name, circumstantially
6 you can infer it's in the county.

7 MS. FORD: Yes, Your Honor.

8 THE COURT: It's sufficient. But they said --
9 somebody testified several times about which street it
10 was in, it was in Mount Pleasant.

11 MS. FORD: Right.

12 THE COURT: That's all Charleston County.
13 Anything further?

14 MS. FORD: No, Your Honor.

15 THE COURT: Okay. Anything from the State?

16 MR. KIDD: If you'd like a response, we'd be
17 happy to give one.

18 THE COURT: It's up to you. Your choice.

19 MR. KIDD: As to Charleston County, our argument
20 is Ms. Lipsius did testify that it was Charleston
21 County.

22 As to the elements of the charge, I think in a
23 sense she consented to the fact that a representation
24 that the defendant was armed with a deadly weapon is
25 sufficient under the statute. Clearly the video, it

1 shows a suspect making a representation that he was
2 armed with deadly weapon.

3 Ms. Lipsius testified that she was scared for
4 her life, afraid she would be shot in the face. She
5 said she couldn't tell 100 percent if it was a weapon
6 because it was concealed under the sock. But that she
7 believed it to be a weapon and she was scared, and I
8 think that came across in her testimony.

9 And to the final elements of the charge, she
10 also testified that there was a robbery, the taking by
11 force, threats, or intimidation money from the gas
12 station in her presence. And when viewing the evidence
13 in the light most favorable to the State, there is
14 sufficient evidence to submit the case to the jury on
15 armed robbery.

16 THE COURT: When considering a motion for
17 directed verdict, the court is required to look at the
18 existence or nonexistence of evidence and not its
19 weight. The Court is not the fact finder.

20 Of course the evidence must rise above a mere
21 suspicion of guilt. But, however, in light of that,
22 the State does not have to prove, nor does the Court
23 have to -- nor is the Court required to find that the
24 evidence infers guilt to the exclusion of any other
25 reasonable hypothesis.

1 The Court finds that there is direct as well as
2 circumstantial, substantial circumstantial evidence
3 reasonably tending to prove the defendant's guilt.
4 While this is in large part a circumstantial case,
5 because the perpetrator's face was covered, there is
6 some very distinct circumstantial inferences from which
7 the jury can draw upon.

8 The most distinct being the blue shirt that
9 hangs out from under the t-shirt that is worn by the
10 perpetrator in the video. And that being linked it is
11 -- of course I could not say with 100 percent certainty
12 because I was not there, but it is strikingly similar
13 in color, if not identical in color, to the shirt that
14 the defendant was wearing at the time he entered the
15 store earlier in the day.

16 Couple that with DNA testimony that has been
17 presented that links him to at least one of the shirts
18 conclusively as a major donor, that is certainly
19 substantial circumstantial evidence reasonably -- as
20 well his build and other things that are strikingly
21 similar as shown in the videotape of the robbery --
22 certainly provides substantial circumstantial evidence
23 reasonably tending to prove his guilt.

24 I believe venue was established through the
25 State's witnesses, therefore I won't belabor that.

1 point.

2 As regards to whether he had a gun. The State
3 is not required to prove that he had a gun. The State
4 has to prove one of two things pursuant to the statute.
5 That the robber was armed with a deadly weapon. Which
6 under our statutory framework does not require a gun,
7 it is a series of things that we can list for them.

8 But our case law is very clear, those are all
9 only evidentiary facts for the jury to take into
10 consideration as to whether something has been used as
11 a deadly weapon. Even an ordinary object, such as a
12 fist or otherwise, can be considered a deadly weapon
13 depending on the facts and circumstances of the case.

14 But pursuant to the statute, the state can also
15 prove beyond a reasonable doubt that the robber alleged
16 that he or she was armed with a deadly weapon, either
17 by action or words, while using a representation of a
18 deadly weapon, or any object which a person present
19 during the commission of the robbery reasonably
20 believed to be a deadly weapon.

21 And the State's witness testified that she
22 believed it was a gun. That she was in fear of her
23 life. And she felt she might be shot in the face,
24 that's why she did not look up at him and kept her head
25 down and was so flustered when she was trying to open

1 the register.

2 So the Court would find that he State has met
3 that burden, at least at this point, regarding the
4 statutory language and requirements.

5 Again, the Court is only concerned with the
6 existence or nonexistence of evidence and not its
7 weight. The Court does not act as the fact finder.
8 Therefore, the motion is denied.

9 Now, sir, if you would stand for me please and
10 raise your right hand to be sworn.

11 Do you swear or affirm the testimony you give
12 will be the truth?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: You can put your right hand down.

15 Sir, please state your full name for the record.

16 THE DEFENDANT: Philip Leon Shuler.

17 THE COURT: And, sir, how old are you?

18 THE DEFENDANT: 38.

19 THE COURT: How far have you gone in school?

20 THE DEFENDANT: 11th grade.

21 THE COURT: Do you have your GED?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Can you read and write?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Sir, I am now going to explain to

1 you certain of your rights. If there is anything you
2 don't understand, please let me know. If you need me
3 to repeat something, please let me know.

4 And by all means, if you need to discuss
5 anything in more detail with the Court, please let me
6 know. Do you understand?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: We have now reached the stage of the
9 trial where you may present your defense. You have the
10 right to claim the protections given to you by the
11 Fifth Amendment to the Constitution. And that
12 Amendment states in part that no person shall be
13 compelled, in any criminal case, to be a witness
14 against himself.

15 This means that you cannot be required to
16 testify in this case. You have the right to testify on
17 your own behalf, however no one can make you testify.
18 This is a personal right, and no one can waive that
19 right except you.

20 If you decide to testify, you will be subject to
21 the same rules that govern other witnesses. And you
22 may be examined and cross-examined on any relevant
23 issue in this case.

24 In addition, if you have any convictions
25 involving dishonesty or false statements and the Court

1 -- or for crimes punishable by more than one year and
2 this Court determines that the probative value of
3 admitting that record outweighs its prejudicial effect
4 to you, the solicitor will be allowed to introduce your
5 record to attack your credibility.

6 And at this point they have advised me that they
7 would want to use an accessory after the fact of grand
8 larceny which happened in '91?

9 When was he released from confinement? Because
10 that's what starts the clock running. Was he on
11 probation or otherwise? Do you know, Ms. Ford?

12 MS. FORD: I'm not sure. It would not have been
13 past 2000, Your Honor.

14 MR. KIDD: He was given three years, suspended
15 on one year probation. So it would not be within the
16 10 years.

17 THE COURT: So I will tell you in advance, sir,
18 that pursuant to Rule 609, which is the rule that
19 governs the admissability of prior crimes, that the
20 State would be allowed to introduce the following
21 convictions to impeach your credibility. That being
22 the failure return rental objects which occurred in
23 2005, and the petty larceny which occurred in 2008.

24 They would not be allowed to use the accessory
25 after the fact of grand larceny because it is over 10

1 years old. And pursuant to Rule 609(B), they're
2 required to give sufficient written notice of intent to
3 use that evidence to provide your attorney the fair
4 opportunity to contest the use of it.

5 And they admit that they did not provide that
6 notice, so that would not be admissible. However, I
7 want you to be fully aware that the other two would be
8 admissible to impeach your credibility.

9 Do you understand?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: If you decide to testify, this
12 decision on your part must be made freely, voluntarily,
13 and intelligently, with knowledge of the protections
14 given to you by the Fifth Amendment and the
15 consequences of your decision to testify.

16 If you decide not to testify, I will instruct
17 the jury that they cannot give this fact any
18 consideration whatsoever, that there is to be no
19 prejudice to you whatsoever, That it is not to be
20 discussed in any manner whatsoever because you have no
21 burden of proof. You have nothing to prove. You are
22 not required to prove your innocence. That the burden
23 remains on the state to prove your guilt beyond a
24 reasonable doubt.

25 It is left entirely up to you whether or not you

1 testify. You may speak with your attorney, your family
2 members, friends or otherwise, but ultimately that
3 decision is yours.

4 Sir, do you understand your rights as I have
5 just explained them to you?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Do you have any questions about what
8 I have explained to you?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Do you need some more time to speak
11 with your lawyer about whether you should or should not
12 testify.

13 THE DEFENDANT: No, ma'am.

14 THE COURT: And sir -- is that correct, Ms.
15 Ford?

16 MS. FORD: Yes, Your Honor.

17 THE COURT: Mr. King?

18 MR. KING: Yes, Your Honor.

19 THE COURT: Sir, do you wish to testify?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: You may take your seat.

22 Ms. Ford, does the defense have any other
23 witnesses?

24 MS. FORD: We do not, Your Honor.

25 THE COURT: And so would the defense be resting?

1 MS. FORD: We will be resting, Your Honor.

2 THE COURT: Now that -- and I will let you do
3 that in the presence of the jury. But now that the
4 defense has rested, are there any motions?

5 MR. KIDD: None from the State, Your Honor.

6 THE COURT: Any from the defense?

7 MS. FORD: Just renewing my earlier directed
8 verdict.

9 THE COURT: The Court would note that and deny
10 that based on its previous ruling.

11 Okay. I would give the jury a general
12 instruction regarding their responsibility and my
13 responsibility. How they are to judge witness
14 credibility and believability. That they have to
15 accept the law as it is instructed. That they cannot
16 set up any arbitrary standard on their own.

17 I will give them a general instruction, you
18 know, on credibility, believability of witnesses. I
19 will give them a general instruction regarding expert
20 witness testimony. I will give them a general
21 instruction on identification, and that element having
22 to be met.

23 I will give them a general instruction on direct
24 and circumstantial evidence, which is from State versus
25 Grippon. Give them a general instruction that the

1 charge, the arrest and the indictment are not evidence,
2 as well as on the presumption of innocence.

3 Charge Victor versus Nebraska on reasonable
4 doubt. I will then instruct them regarding the fact
5 that the defendant did not testify, you know what that
6 entails.

7 Then charge the elements of armed robbery, which
8 is 16-11-330 which will include the language of the
9 verdict.

10 Are there -- and I'm going to hear some argument
11 regarding the lesser included. But absent that, are
12 there any exceptions to the court's charges as
13 proposed, from the State?.

14 MR. KIDD: No, ma'am.

15 THE COURT: From the defense?

16 MS. FORD: No, Your Honor.

17 THE COURT: Okay. I will be glad to hear
18 argument on whether a lesser included is justified in
19 this case.

20 MS. FORD: Thank you, Your Honor, may it please
21 the Court.

22 THE COURT: Yes, ma'am.

23 MS. FORD: Well I believe, you know, the State
24 will be saying that the sock used -- or the stick in
25 the sock was the actual object used in this case. And

1 the object was covered so several people, Detective
2 Willis for example, said there is no way of me knowing
3 what was in there.

4 The victim said that she thought it was a gun
5 but she wasn't sure, so it could have been anything. I
6 just think when you have a case like this that it's a
7 factual determination by the jury. Especially the
8 language says what would a reasonable person believe.
9 And when you have language like that, I think that
10 becomes a factual issue.

11 THE COURT: Doesn't it require a deadly weapon
12 or a representation of a deadly weapon which is based
13 on the rational perception of the person who's the
14 object of the robbery?

15 MS. FORD: Yes, Your Honor. But that's what I'm
16 saying, I think it's a factual issue as to whether they
17 believe a reasonable person, a rational person would
18 think that.

19 THE COURT: Wouldn't that be an argument,
20 though, that he is not guilty if they don't believe
21 that it was a representation of a deadly weapon?

22 That's an interesting issue. I may have to
23 think about that a little bit. You may continue.

24 MS. FORD: Your Honor, I just think it's just a
25 very factual situation, and so because of that I think

1 the jury needs to hear it, Your Honor.

2 Ultimately it was not a weapon, and no one could
3 say -- it isn't a case where it is a toy gun, for
4 example, where it is clear that this person was saying
5 they had gun. The robber never said, I have a gun, or
6 I'm going to shoot you, or anything to say anything to
7 indicate that he had a gun.

8 And so that's why while they thought it looked
9 like a gun, it really could have been anything under
10 there, they didn't know. And so I think it's a factual
11 determination, Your Honor.

12 THE COURT: Be glad to hear from the State.

13 MR. KIDD: Thank you, Judge.

14 THE COURT: You're welcome.

15 MR. KIDD: It is an any evidence standard. If
16 there is any evidence to support the lesser included
17 offense, it should be charged. But there is absolutely
18 zero evidence to support the fact that there was a
19 strong armed robbery committed.

20 In fact, the defense's entire position
21 throughout the trial has been that he didn't do it. It
22 wasn't -- the position was never taken that an armed
23 robbery wasn't committed, the position was that this
24 defendant didn't commit any sort of robbery.

25 And I think the character -- the testimony of

1 Ms. Lipsius is being mischaracterized in that, she
2 never -- she said she didn't know whether it was a gun
3 or not because she couldn't see it, but she testified
4 that she feared for her life, she was scared she would
5 get shot in the face, she thought it was a gun at that
6 time.

7 And that's the only evidence on the record. And
8 that's the only evidence of the crime. And that's
9 evidence is armed robbery, not strong armed robbery.

10 And what the officers thought or saw is of no
11 impact whatsoever. The only testimony that's relevant
12 to this fact is Ms. Lipsius. And her testimony is
13 quite clear that while she couldn't see it was a gun,
14 it was held out and represented to her that it was a
15 firearm, she was scared for her life, and that's why
16 she acted the way she did.

17 That's why she was nervous, that's why she
18 looked down, that's why she couldn't at look him in the
19 face. And that's the only evidence on the record.
20 There is absolutely zero evidence to support the lesser
21 included charge. And the state would object to the
22 lesser included being charged to the jury.

23 THE COURT: I'm jumping ahead a little bit. Is
24 the state going to open and close?

25 MR. KIDD: I don't believe the defense put

1 anything into evidence.

2 THE COURT: So they have last argument.

3 MR. KIDD: That's true.

4 THE COURT: You're absolutely correct.

5 How long do you all think your closing arguments
6 will be?

7 MR. KIDD: I'm actually relatively short, 20 or
8 25 minutes.

9 THE COURT: And how long did you think yours
10 will be, Ms. Ford?

11 MS. FORD: At least half an hour, Your Honor.
12 It's five pages of typed notes.

13 THE COURT: okay. That's an hour. We are going
14 to have to stop for lunch. I hate doing that.

15 We are going to start. I probably should have
16 followed my gut instincts because I sort of felt like
17 this is what was going to happen.

18 When the jury's lunch gets here, we are going to
19 stop so they can eat. So however long it takes them to
20 eat. It usually takes them about 30 minutes. Then we
21 will resume. But I just want you all to know some of
22 them have hot stuff, so when it comes we will stop. So
23 wherever that puts us it puts us.

24 Originally I went into this thinking that there
25 really was no evidence to support a lesser included

1 offense of robbery. But after I've thought through it
2 a little bit, the jury could theoretically discount
3 that an ordinary object is a deadly weapon, so that is
4 in their fact finding province, and they could
5 theoretically find that there was no representation of
6 a deadly weapon and it is factually based.

7 So out of an abundance of caution, since it's
8 50/50 in my mind at this point, I'm going to instruct
9 the lesser included offense which is robbery. Which
10 the only element would be the use of a deadly weapon or
11 representation of a deadly weapon.

12 Now is there anything else we need to take up
13 before we proceed with closing arguments?

14 Does anyone need to go to the restroom?

15 MR. KIDD: I'm ready to go, but if you would
16 just note the State's objection.

17 THE COURT: I noted it when you argued it.

18 MR. KIDD: Thank you.

19 THE COURT: All right, now does anyone need to
20 go to the rest room otherwise before we get started?

21 MS. FORD: Yes, Your Honor, I'd like to.

22 THE COURT: Go ahead. As soon you get back, we
23 will get started.

24 (Whereupon, a recess was taken.)

25 THE COURT: Okay. State ready to proceed?

1 MR. KIDD: We are, Your Honor.

2 THE COURT: Defense ready to proceed?

3 MS. FORD: Yes, Your Honor.

4 THE COURT: If you all would approach for me to
5 look at the verdict form.

6 Any exceptions from the State?

7 MR. KIDD: No, Your Honor.

8 THE COURT: From the defense?

9 MS. FORD: No, Your Honor.

10 THE COURT: All right. Thank you very much.
11 You all ready?

12 MR. KIDD: We are.

13 THE COURT: All right. Please bring in the
14 jury.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: You may be seated.

17 Defense may proceed.

18 MS. FORD: Your Honor, at this time the defense
19 rests their case.

20 THE COURT: Mr. Foreman, ladies and gentlemen,
21 both the State and the defense have rested their cases.
22 We have now reached the stage of the trial where we
23 will have closing arguments and the Court's
24 instructions.

25 As promised, when your lunch arrives we will

1 break, I will allow you the time to eat, to get a
2 little air, and then we will resume closing argument if
3 we need to and then instruction.

4 In other words, whenever your lunch comes we
5 will interrupt the process and then we will resume. I
6 would ask that you give the attorneys your undivided
7 attention.

8 State may proceed.

9 MR. KIDD: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 MR. KIDD: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. KIDD: Ms. Ford, Mr. King.

14 Ladies and gentlemen of the jury, I will tell
15 you a little story to start this off. It's a story
16 about the most unlucky man on earth. That's the story
17 of Philip Shuler.

18 The story of a man who's hanging out at the
19 scotchman. Who just happens to be in the neighborhood
20 behind the Scotchman after it's robbed. Who just
21 happens to have the same build and body type as the
22 robber. Who just happens to have a blue shirt on that
23 you can see hanging out under robber's disguise. Who
24 just happens to have the DNA that matches the defendant
25 on the mask that was used during the robbery. Who just

1 happens to be wearing the exact same shoes that the
2 robber was wearing during the robbery.

3 That's story that Ms. Ford is going to get up
4 and try to have you swallow in a few minutes when I sit
5 down. Undoubtedly she is going to put some spin on it.
6 She's going to dress it up, make it a little more
7 artful. But ultimately, when you use your common sense
8 and see the facts that have come to you in this case,
9 that's the story she is going to have you believe.
10 Those are all just unfortunate coincidences. And this
11 is the most unlucky man on earth.

12 Now before I get too far ahead of myself, I want
13 to take a quick minute to thank you. I know you all
14 have busy schedules, times and things in your lives,
15 the demands on your time that you have had to sacrifice
16 to be here. I know I speak for myself that I
17 appreciate it, and I know Ms. Chisolm appreciates it,
18 and I know the defense appreciates it.

19 And regardless of your verdict here today, I
20 think we have one of the best judicial systems here on
21 earth and it could not function without you. And we
22 are all deeply in your gratitude.

23 In that same vein, we don't take your time for
24 granted. I know a lot of times testimony and evidence
25 might seem redundant or repetitive. Please know there

1 are a lot of legal hoops we have to jump through in
2 order to present the whole picture of the case to you.
3 So I hope you don't hold that against us. We
4 definitely do not take your time for granted.

5 Now I want to go through the evidence that you
6 saw throughout this week. And it's not going to be --
7 I'm not going to say anything different than the way it
8 was presented to you, I'm just going to try and put it
9 all together in a more succinct picture.

10 The first of which is the defendant's stature.
11 His body type. It's relatively unique. His is a big
12 man. Two pictures taken on the same day of the
13 robbery, one of the robber, one of Mr. Shuler when he
14 was arrested. Very similar stature, very similar body
15 type as you heard from the officers.

16 Now I also want to show you this map that we
17 talked about, where it was talked about a handful of
18 times. About where the Scotchman is, how it was robbed
19 shortly after 9:00 p.m.

20 About where Mr. Shuler was seen 45 minutes or so
21 after the robbery, a few blocks away on foot. About
22 where the shirts and the evidence was recovered between
23 those two locations. And then, a few hours later, four
24 hours later, when he was arrested down here still on
25 foot. Opportunity.

1 Now I want talk about the shirt that he was
2 wearing. You look at the shirt that he was wearing
3 when he was arrested, that light blue shirt. Which is
4 also the same Pawleys Island design shirt that was
5 found at the scene. But what I'm talking about now is
6 this light colored blue shirt.

7 Then you look at this picture. It's a picture
8 of the robber. And you look at his shirttail. And you
9 look at that light blue shirttail. These all
10 coincidences?

11 And finally, or not finally, one more thing.
12 Let's talk about his shoes. I think this is better
13 than the DNA evidence. You got this shoe right here.
14 and you will have all this back in the jury room, you
15 can look at it all. And it's going to be hard for you
16 to see where you are standing now, but look closely at
17 this still that was taken from the robbery. Look very
18 closely at this shoe when you are back there in the
19 deliberation room.

20 Notice how this sole, this black right here, and
21 how comes up into the shoe. And then notice that Nike
22 swoop sign which is on the outside of the shoe. And I
23 have the wrong shoe, in that it belongs on the other
24 foot, for that picture. But you look at this one. You
25 look at the direction he was walking, and you look at

1 those markings on the shoe and you compare them to that
2 picture. Same shoes.

3 And lastly, this torn gray shirt. The hole in
4 it, the mask that was wrapped around his head. You
5 heard the testimony of Paul Meeh, the DNA analyst, who
6 told you 1 in 58 trillion that Philip Shuler's DNA is
7 on this shirt.

8 This shirt right here, with one small hole cut
9 in it. The one found in the neighborhood, right behind
10 the Scotchman, right between where Philip Shuler was
11 first seen and the Scotchman. His DNA is on that
12 shirt. On the mask that was used in the armed robbery.

13 Ladies and gentlemen, what we have here is what
14 we refer to as circumstantial evidence. Now
15 circumstantial evidence is a little different than
16 direct evidence, but it's no better, it's no worse,
17 it's just different.

18 Philip Shuler wasn't caught red-handed. He
19 wasn't caught with the mask on his head, leaving the
20 store. He wasn't caught with the money in his pocket.
21 That would be direct evidence. We have circumstantial
22 evidence.

23 There's a story that I have heard a few times
24 and I like to recount that helps explain what
25 circumstantial evidence is, it's the story of Robinson

1 Crusoe. You might be familiar with it. But he was
2 stranded on a desert island all by himself for a number
3 of years. And there's other little islands around that
4 had cannibals on it. And he was always terrified that
5 the cannibals would make their way to his island.

6 One morning Robinson Crusoe walked down to the
7 beach and he saw fresh footprints in the wet sand.
8 Well his knees got weak, his heart began to beat fast
9 and he fainted. Because what those footprints meant to
10 him was that he was no longer alone on that island.

11 He knew beyond a reasonable doubt that he was no
12 longer alone on that island based on those footprints.
13 That's circumstantial evidence. He did not see
14 anybody. He didn't see any cannibals or anyone else on
15 that island. But he knew based on that evidence that
16 he was no longer alone.

17 This is the footprints in the sand. This is
18 what proves to you beyond a reasonable doubt that
19 Philip Shuler is guilty of armed robbery.

20 Now when we are talking about the events that
21 happened that day, when we are talking about how he
22 spent a long time in that gas station, coming and going
23 a number of trips, we are not going to tell you that
24 he's a criminal mastermind, casing out this joint,
25 putting together some intelligence paper. This is a

1 crime of desperation. It's a crime of opportunity.
2 And it reminds me of the saying that no good deed goes
3 unpunished.

4 You know, if Lenore Lipsius had not been so kind
5 to Mr. Shuler that day, and not been so tolerant of the
6 things he was doing, coming in and out of the store,
7 had not agreed to watch his clothing for a little
8 while, this problem never would have happened.

9 But Mr. Shuler saw her kindness as a weakness.
10 He saw it as an opportunity of a female working alone.
11 And saw it as an opportunity to make some quick money,
12 a crime of opportunity.

13 And, ladies and gentlemen, that makes Philip
14 Shuler a predator. And that makes this man a coward
15 because he played on her weakness. But, ladies and
16 gentlemen, he made a mistake. Because he confused her
17 kindness for weakness. You saw she was strong. And
18 you saw how watching that video, having to relive that
19 armed robbery affected her, how it shook her up,
20 because she was afraid for her life.

21 Ladies and gentlemen, I ask to use your common
22 sense, to see the evidence for what it is, nothing
23 more, nothing less. To see the story that Ms. Ford's
24 going to tell you for what it is. And I ask you to
25 return a verdict that the facts in this case support

1 and that justice demands. And that is a verdict guilty
2 of armed robbery.

3 Now I also want to take this moment to talk to
4 you a little bit about the law in this case. And to be
5 honest, it's not as important in this case for the main
6 reason that it's really not contended that an armed
7 robbery didn't occur. It's on the video. This is not
8 a what-is-it case, it's a who-done-it.

9 And but I still have the burden of proof to
10 prove to you beyond a reasonable doubt each element of
11 the offense. So I want to kind of walk through them
12 relatively briefly about what an armed robbery is, and
13 I also want to talk about strong armed robbery because
14 you are going to be hearing a little bit about that.

15 What an armed robbery is basically the unlawful
16 taking of property from another, in the presence of
17 another, with force, threats or intimidation, so that's
18 what a robbery is, and then coupled with being armed
19 with a deadly weapon.

20 But you don't have to be armed with a deadly
21 weapon if you represent or allege or hold yourself out,
22 through either actions or words, that you are armed
23 with a deadly weapon. And listen to Judge Jefferson's
24 charges. If I ever tell you one thing that the law is
25 and it's different from how Judge Jefferson charges to

1 you, I defer to her. She is the authority on the law
2 in this courtroom.

3 But I want to bring your attention to it because
4 sometimes it goes by quickly. But when she is charging
5 you with the law of armed robbery, she is going to tell
6 you what a deadly weapon is. And she is going to say
7 that under the statute, you are guilty of armed robbery
8 when you make representations that are reasonably
9 believed by the victim that you are armed with a deadly
10 weapon.

11 So by holding up that stick inside of the sock
12 and putting it in Ms. Lipsius' face, he's representing
13 that he is armed with that deadly weapon. And that
14 puts the same amount of fear in her as if it was a
15 firearm. And that's why the law says that is still
16 armed robbery.

17 Now you are also going to be charged with the
18 law of what strong armed robbery is, or just robbery.
19 And that is the unlawful taking of another with force,
20 threats or intimidation, minus the weapon or the
21 representation that one is armed with a deadly weapon.

22 Well, ladies and gentlemen, you have the
23 pictures. If you want to watch the video again, we can
24 play that for you again. But it's very clear he is
25 holding up an object that looks to be a weapon for the

1 purpose of putting fear in her so that she does exactly
2 what he says. He's using force, he's using threats,
3 he's using intimidation, and he's using the threat of a
4 firearm in order to accomplish that goal. And that's
5 what armed robbery is.

6 And lastly, I want to talk to you a little bit
7 about reasonable doubt, about what is reasonable doubt
8 because it's the kind of a term that gets kicked around
9 a lot in this court. And I try to keep my definition
10 of it as close to Judge Jefferson's as possible. But I
11 do want to point out that beyond a reasonable doubt
12 does not mean beyond all doubt. It does not mean
13 absolutely certain.

14 There are very few things on this earth which
15 are absolute certainties, and that is not my burden.
16 That which leaves you firmly convinced of the
17 defendant's guilt is beyond a reasonable doubt. You
18 have to feel firmly convinced. That's what beyond a
19 reasonable doubt is.

20 If you feel firmly convinced that these aren't
21 mere coincidences, that the elements of the crime have
22 been met, then the defendant is guilty.

23 And, ladies and gentlemen, I just ask that you
24 do your job as jurors; that you view the evidence with
25 common sense; that you apply it to the law as Judge

1 Jefferson charges you; and I'm confident that when you
2 do so, you'll return a verdict of guilty of armed
3 robbery. Thank you for your time.

4 THE COURT: Defense may proceed.

5 MS. FORD: May it please the Court.

6 THE COURT: Yes, you may proceed.

7 MS. FORD: There is one witness in this case,
8 Lenore Lipsius. And much of what she said that day
9 back in 2009, much of what she did that day has been
10 disregarded. Why? Because it's inconsistent with
11 Philip Shuler's guilt. Instead, the police went with
12 easy answers. They went with what was there.

13 But based on the evidence, it doesn't make sense
14 that Philip Shuler did this crime. Not unless you make
15 a lot of assumptions and ignore a lot of the reasonable
16 explanations.

17 Now Ms. Lipsius, she was really scared that
18 evening, understandably. And so she was ignoring some
19 things and focusing on others. She focused on two
20 things, that arm with the sock and the object, and the
21 shirt.

22 The arm, of course, because she didn't know if
23 there was a gun in there. She thought there may be,
24 but she told you she wasn't quite sure. And then the
25 shirt, she described the shirt as brown shirt, gold

1 writing, some type of design, maybe a flame. And that
2 shirt stood out because she had seen it earlier in the
3 day.

4 It reminded her of a shirt that another customer
5 was wearing, not Philip Shuler who was wearing a blue
6 shirt, but a whole 'nother customer. So that's why she
7 focused in on that shirt and made sure to tell the
8 police about it.

9 Detective Willis told you how he quickly got her
10 into his car as fast as possible to get a statement
11 because it's important to get things while they're
12 fresh in people's minds.

13 But when the police were doing that
14 investigation that evening, they pretty much ignored
15 that brown shirt. And that brown shirt, which you'll
16 see, you've seen it in evidence, it has got Shawn John
17 written on it in gold lettering. It has got some kind
18 of black design on the back.

19 And if you see the video when the robber leaves,
20 you can see it's got some kind of black design on the
21 shirt. So that's the shirt. But that shirt is not
22 actually tied to Mr. Shuler.

23 Now how did Phillip Shuler end up here? Why is
24 he charged and what is the case against him? And, yes,
25 there are a lot of things that Mr. Kidd made a big deal

1 of saying, you know, I'm going to say this and this and
2 say, oh, it's a coincidence. But there are a lot of
3 things, generic things, blue t-shirt, white shoes that,
4 yeah, I am going to talk about. But then there's more
5 to this story. Then you have to take some other things
6 into consideration, so we will get there.

7 But first let's get to the, he so happens to be
8 in the area. Okay. The robbery occurred at about 9:15
9 in the evening. 9:15, this isn't a time where
10 everybody is sleeping in their bed. Plenty of people
11 are still out and about.

12 You heard from several people, including the one
13 officer today, Officer Campbell, that this is a pretty
14 busy area. It's right after Shem Creek that has all
15 the bars and restaurants. The very popular bar, Red's
16 Ice House.

17 To one side there is the old village with the
18 neighborhood, the docks, and there are some businesses
19 back there. And then there is Coleman Boulevard which
20 has lots of bars and restaurants and shopping centers,
21 things like that.

22 So this is not a secluded area. And it's not
23 the time of night when nobody else is out. And he
24 wasn't seen in the area right after the robbery. It
25 was nearly an hour later, 9:15 to 10:07. That's a long

1 time. So he was seen in the area an hour later and
2 that's how he first became their suspect.

3 Then let's go to size. Phillip Shuler is a
4 larger man. The robber was a larger man. However, how
5 many times do you turn on the TV and you see some
6 special about people being overweight in America,
7 people being obese. There are plenty of large people.
8 Again, Ms. Lipsius pointed out the other man who the
9 robber reminded her of. He must have been a large man
10 if the robber reminded her of him.

11 And Phillip Shuler, you know -- you will be able
12 to look at the pictures that the Solicitor showed you
13 -- he actually, in that blue shirt when he was in the
14 Scotchman, he looked bigger, he looked like he had a
15 bigger gut. And today, you heard Detective Plyler
16 telling you how the guy seemed to be firm, the robber
17 seemed to be firm. But Philip Shuler was not firm.

18 Then let's go to the blue shirt. Ms. Lipsius
19 didn't even mention a blue shirt. She mentioned that
20 she thought maybe the robber had his shorts hanging
21 out. But she didn't mention a blue shirt. Detective
22 Plyler, when he testified, he didn't mention a blue
23 shirt when he watched the video.

24 Detective Willis noticed it, and again you all
25 will be able to see the video. Blue is a very popular

1 color. I'm wearing blue, darker shade, but plenty of
2 people wear blue everyday. Other than black and white,
3 it's probably the most popular color, especially among
4 men who don't usually have as many options as the
5 ladies might have, or they don't like to wear those
6 colors. So blue is a very popular color.

7 And then what about these white shoes? Well the
8 solicitor pointed out how he thinks the shoes are the
9 same, but they're not. You see some type of black
10 thing on the bottom of the sole. Nike shoes are very,
11 very popular shoes.

12 What do you notice about Phillip Shuler's white
13 shoes? Well they have a gold swish. You don't see
14 gold in the video. Gold is very distinctive in the
15 shoes. It's not as common, but Nikes are a very common
16 shoe.

17 And then the solicitor didn't mention it, but
18 several of the police officers mentioned that he didn't
19 have socks on. Well this is Charleston, South
20 Carolina, I have seen male lawyers wear suits with no
21 socks. Plenty of men don't wear socks.

22 And then they mentioned the debris in the shoes.
23 Not sure how that's relevant. But again there is no
24 indication that the robber took off his shoes or
25 anything like that to where he would get debris in his

1 shoes.

2 And again also keep in mind that Phillip Shuler
3 was not arrested for hours after the robbery. Almost
4 1:30 in the morning. And so he had been in the area
5 since at least 6:00-something that evening when he
6 first gave Ms. Lipsius the bag of clothes. So he was
7 walking around a lot.

8 Then there are the tatoos. Again, those were
9 mentioned today, not in the clothing, but plenty of
10 men have tatoos. Why would a robber wear socks on his
11 arms? Could be to cover a mark. Could be so his
12 fingerprints aren't left. Could be to pretend an
13 object is a weapon, when it's not. Could be so his
14 skin color is not seen. But it doesn't mean the robber
15 had tatoos. There is no indication that the robber had
16 tatoos.

17 And then there is the Pawleys Island t-shirt.
18 There's two Pawleys Island t-shirts in this case. One
19 is the blue shirt that Mr. Shuler was wearing, and the
20 other was that brownish, grayish, shirt. Some people
21 called it different colors. The DNA guy said the gray
22 shirt.

23 That shirt was found on the scene at the
24 Scotchman, okay. But even though Ms. Lipsius gave a
25 specific description of the shirt the robber was

1 wearing, no one ever went to her and said, hey, is this
2 the robber's shirt?

3 Also when you watch the video, it's clear that
4 that was not the shirt used in the robbery. The shirt
5 from the robbery was much darker, and plus it doesn't
6 have the gold writing. Again Ms. Lipsius, what she
7 said, that was ignored. And instead the police said,
8 well this must belong to the robber.

9 So without any confirmation of that, they sent
10 that shirt off to be tested for DNA, not the Shawn John
11 shirt, but they sent that shirt. That's what drew
12 Phillip Shuler to -- that's one of the reasons because
13 of the Pawleys Island shirt. Because they said, oh,
14 he's got one and one was found at the scene.

15 But what do we know about that Pawleys Island
16 shirt is that it came from a trash -- or Mr. Shuler had
17 a trash bag that day and you got to see that in the
18 video. He went into the store where Ms. Lipsius was
19 working and asked her to do a favor for him, and she
20 did.

21 He talked to her at length. And then later he
22 came and picked that trash bag back up. So we know he
23 had a bag of clothing at the store that day. And
24 because we know the Pawleys Island shirt was found at
25 the scene, but the Pawleys Island shirt was not the

1 shirt used by the robber, that is evidence that clothes
2 were falling out of that bag.

3 Also, Mr. Shuler didn't have that bag with him
4 when he was arrested. Nobody said anything about that.
5 it was found later. So anyone could have gotten
6 anything from that bag. So that's why now I'm going to
7 go into the DNA.

8 I'm not trying to say that Mr. Shuler's DNA was
9 not on those items, it was. I'm not saying that. But
10 there are some things to point out. First of all,
11 there are multiple people's DNA on each and every
12 single one of those items. And the State made
13 assumptions. They said, he's our guy, we don't need to
14 do anything more.

15 They took shortcuts. You heard that they did
16 the mathematical equation thing for the one item. They
17 didn't bother to do it for the others. You heard that
18 when there is a mixed sample, meaning that multiple
19 people's DNA is on something, that there is a special
20 test they can do, combined probability of inclusion.
21 They didn't do that here, they just did a regular test
22 because he was the major contributor. Remember they
23 talked about that?

24 However, what Mr. Meeh also told you is that
25 someone being the major contributor does not mean he

1 would be the last person to have touched it. He told
2 the story about the remote control. He said that if a
3 wife and a husband they share a remote but one person
4 uses it more, that's probably -- that person would
5 probably be the major contributor. But that wouldn't
6 indicate that person was the last person who handled
7 that remote.

8 And then what about the sock? Okay, they sent
9 the sock in to be tested, and it was. But Mr. Shuler
10 wasn't a major contributor on that. If the state's
11 theory is correct that Philip Shuler was wearing socks
12 all day and took off that sock and put it over his arm,
13 wouldn't he be the major contributor on that item?

14 MR. KIDD: Objection, Your Honor.

15 THE COURT: Basis?

16 MR. KIDD: Mischaracterization of the evidence.

17 THE COURT: Please approach.

18 (Whereupon, the following discussion was held at
19 the bench.)

20 THE COURT: What did you say? You said Mr.
21 Shuler --

22 MR. KIDD: Was not the major contributor --

23 THE COURT: On the socks?

24 MR. KIDD: And the point is that there was no
25 major contributor.

1 MS. FORD: Okay, well then I will say that, yes.

2 MS. CHISOLM: And every thing had been tested
3 the same way.

4 MS. FORD: No, I said they only did the
5 statistical analysis on one of the items.

6 THE COURT: She can argue what she argued in her
7 cross. You just didn't argue what you did in your
8 direct.

9 (In open court.)

10 THE COURT: You may proceed.

11 MS. FORD: Excuse me. As far as the sock, there
12 was no major contributor. That's what we were trying
13 to figure out, there was no major contributor. So he
14 was able to determine he was the major contributor for
15 the one item, but they couldn't determine that from the
16 sock.

17 But anyway, what I was getting to is if somebody
18 was wearing a sock all day, walking for hours, and then
19 took it off and had it on his hand, don't you think
20 that based on what the SLED guy told you that he would
21 be the major contributor on that item? If the state's
22 theory about the sock is correct.

23 And what else did we learned about the DNA? I
24 know that was pretty boring testimony, a lot of it.
25 And again I'm not contesting the DNA, so sorry if there

1 was some confusion. But basically the DNA doesn't
2 actually tell you much about the person. It can tell
3 you the gender, there's that one gender gene, male and
4 female. But it can't tell you what the person looks
5 like. It can't tell you their race. It can't tell you
6 the last person who, you know, had that item, who put
7 DNA on the item.

8 It can't tell how long it's been there. It
9 can't tell you when it was put there. And it certainly
10 can't tell you if someone actually did a crime.
11 Because this isn't like a rape case, we talked about
12 that. In rape there might be semen found, and so it's
13 a little different.

14 But in this case, there's multiple people's DNA
15 on the object. And again, as I talked about, there was
16 the trash bag of clothing, clothing was falling out as
17 evidenced by the Pawleys Island shirt found at the
18 scene but not used in the robbery.

19 Now all of that, those are all of the things
20 that the solicitor kind of mentioned that I am going to
21 say, oh, isn't it a coincidence. Oh, he's just
22 unlucky. But then you've got to look at the other
23 things, The other things that make all of those things,
24 it doesn't add up that Phillip Shuler is the man.
25 You've got to go to Ms. Lipsius and what she said.

1 She told you how -- and it's a fairly busy store
2 -- but how there are fewer customers in the evening
3 after about 6:30 when people are done with work. She
4 told you how there are some regulars who she has come
5 to know. But how there are a few non-regulars who do
6 stick out as well. And a lot of people do come in and
7 out.

8 However, this is a time of day, this is within a
9 few hour period before the robbery. And Mr. Shuler
10 came in, Detective Willis told you five or six times
11 into the store. Mr. Shuler talked to Ms. Lipsius
12 several times. And you can see that in the video that
13 was shown as well. He had a fairly lengthy
14 conversation with her actually.

15 And what is more important is that the solicitor
16 asked her, has anyone ever asked you to watch something
17 for them? And she said one time. One Time and that
18 was Phillip Shuler when he asked her to watch that bag
19 of clothes. So that was memorable.

20 He was a memorable guy in the fact that she
21 talked to him several times. It was at a time when not
22 many people were in store. And he asked her to do
23 something that no one else had ever asked her to do.

24 So if Phillip Shuler were indeed the robber,
25 wouldn't he be the first person who would come to Ms.

1 Lipsius' mind? Again, she talked to him numerous
2 times, recently did a favor for him. She saw Philip
3 Shuler's build. She saw the robber's build when he was
4 in the store. She saw Philip Shuler's skin color. She
5 saw the robber's skin color on his arm.

6 She heard Philip Shuler's voice. She heard the
7 robber's voice. She told you how -- she described the
8 voice, not too soft, not too deep and no accent. You
9 didn't hear a lot from Phillip Shuler, but you heard
10 him say he is not guilty. He is from Hemmingway, a
11 small town, he has an accent.

12 But no, the robber, Mr. Shuler never came to
13 mind. He, the robber, reminded her of yet another
14 person who had been in the store that day.

15 So what else says it's not Philip Shuler? All
16 of the officers who testified about their contact with
17 him, they all testified about how cooperative he was.
18 Gave them no problem. Never once tried to run, never
19 once. Gave them his name.

20 He didn't know the first time when he was out
21 with Officer Campbell at 10:07 and Officer Campbell
22 stopped him, he had no way of knowing that the
23 description, if he had been the robber, he would have
24 had no way of knowing that the description given was a
25 black man. He didn't have some type of police radio.

1 So if he were the robber, wouldn't he have been
2 scared of something? But, no. Officer Campbell
3 actually went on to say that he was not only very calm,
4 but that he did not seem like he had been in a high
5 stress situation that evening. He made a point of
6 noting that.

7 So in this case we have no identification, no
8 confession, no property found on Phillip Shuler,
9 remember the solicitor mentioned that, nothing was
10 found on him. Money was taken from the robbery but it
11 wasn't found on him.

12 And then the State, just a little about the law
13 of armed robbery. You know, it wasn't Phillip Shuler,
14 that is the defense. That is what I am saying.
15 However, it's not necessarily clear if it's armed
16 robbery or not because there was no weapon, there was a
17 stick.

18 And the law does say, if a person can reasonably
19 believe. But Ms. Lipsius said, actually I didn't know
20 if it was a gun. Detective Willis said, I couldn't
21 tell what was in that thing. There was no mention of a
22 gun, or a weapon, or a shooting, or anything like that.
23 The robber in no other way said that there was a gun.

24 So maybe it is strong armed robbery instead of
25 an armed robbery. However, ultimately, either way

1 you're thought process in determining guilt is going to
2 be the same. That is just an extra thing you'll have
3 to answer.

4 But everything just doesn't add up as easily as
5 the State would like to suggest. He was in the area.
6 In the area, not even close to the time of the robbery,
7 but nearly an hour later in a non-secluded area.

8 He is a large man, like so many others. He is
9 an easy-going guy. But he is not the easy answer the
10 police had hoped for. Why? Because Phillip Shuler is
11 not guilty. Thank you.

12 THE COURT: Ladies and gentlemen, your lunch has
13 not yet arrived. I'm having the clerk double-check to
14 make sure. If it hasn't, we will proceed with
15 instruction. And if it has, we will break.

16 Ladies and gentlemen, the bailiffs are bringing
17 your lunch upstairs right now, so I'm going to go ahead
18 and break for lunch so that you all can eat while your
19 food is warm for those who ordered something hot.

20 During this break, while you've heard the
21 closing arguments, you have not heard the Court's
22 instruction on the law. So please refrain from having
23 any discussion or deliberation regarding the facts and
24 circumstances of this case. It would be improper.

25 Once you have completed eating your lunch, we

1 will then resume with the Court's instructions. And at
2 that time we will excuse the alternate, and you will be
3 allowed to begin your deliberations.

4 Please abide by the Court's instruction. If you
5 would leave your notes pads in your seats. If you will
6 go with the bailiffs, the are going to get your drink
7 orders and by the time they do that your lunch should
8 be upstairs. I anticipate we will be out about 30
9 minutes. If you would go with the bailiffs, please.

10 (Whereupon, the jury exits the courtroom.).

11 THE COURT: You can take your seats. It's 1:10
12 now. I anticipate we will resume at 1:40, and that
13 should give you time to make it to your plea. I think
14 my instructions will take fifteen minutes. So that's
15 30 minutes to eat.

16 MS. FORD: Yes, Your Honor.

17 THE COURT: I hope you all brought your lunch as
18 well. All right, thank you very much. See you at
19 1:40.

20 (Whereupon, a recess was taken.)

21 THE COURT: Is the State ready to proceed?

22 MR. KIDD: We are, Your Honor.

23 THE COURT: Defense ready to proceed?

24 MS. FORD: Yes, Your Honor.

25 THE COURT: I had to give them an extra few

1 minutes to eat.

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: You may be seated.

4 Ladies and gentlemen, I hope you had a pleasant
5 lunch break, as short as it was, but we appreciate
6 again your patience.

7 You have heard the closing arguments of the
8 attorneys, you will now hear the Court's instructions
9 on the law.

10 During this trial, ladies and gentlemen, you and
11 I have certain duties to perform. As the trial judge,
12 it is my responsibility to preside over the trial of
13 this case. And I also have the duty to pass upon or
14 rule upon the admissibility of evidence which has been
15 offered during the trial.

16 You are to consider only the competent evidence
17 that is before you which has been presented through the
18 sworn witnesses and the other evidence that has been
19 introduced during the trial. I have the additional
20 duty to charge or instruct you on the law applicable to
21 this case.

22 As the presiding judge, I am the sole judge of
23 the law. And it is your duty, as jurors, to accept and
24 apply the law as I now state it to you. If you have a
25 preconceived idea as to what the law is or what the law

1 ought to be in a case, or in this case, and it should
2 not agree with what I now tell you the law is, you are
3 obligated, under the oath which you have taken, to
4 abandon this preconception on your part because you are
5 sworn to accepted the law and apply the law precisely
6 as I now state it to you.

7 In every case tried in this court before a jury,
8 the jury becomes the sole and exclusive judges of the
9 facts. This court is the judge of the law. The
10 constitution of our state has declared that a trial
11 judge shall not intimate, state, comment upon or make
12 any statement to a trial jury about the facts in the
13 case.

14 Since you, the jury, are the sole judges of the
15 facts in this case, you are not to infer anything from
16 what I have said during the progress of this trial in
17 ruling upon the admissability of evidence or otherwise,
18 or anything that I now say to you during the course of
19 this instruction that I have any opinion about the
20 facts. The law does not permit me to have an opinion
21 about the facts.

22 This is a matter solely for you, the jury, to
23 determine. As jurors then it is your duty, as I have
24 instructed you, to determine the effect, the value, the
25 weight, and the truth of the evidence presented during

1 this trial.

2 Necessarily, you must assess the credibility of
3 witnesses who have testified in this case. Credibility
4 is simply a legalistic term which means believability.
5 It become your duty as jurors to analyze and to
6 evaluate the evidence, and determine that evidence
7 which convinces you of its truth.

8 Some of the things you may consider as you
9 decide whether or not to believe a witness's testimony
10 about a particular matter include; what was the manner
11 and appearance of the witness who testified; was he or
12 she straightforward or hesitant in answering; was the
13 testimony of a witness consistent or inconsistent; how
14 did the witness come to know the facts that he or she
15 testified to; or what was his or her ability to know
16 these facts; is there some reason a witness would want
17 to give testimony which would help or hurt one side of
18 the other, in other words was the witness bias or
19 prejudiced; and was the witness -- and was the
20 testimony of a witness strengthened or weakened by
21 other testimony or evidence.

22 Additional factors that you may consider on the
23 question of credibility or believability of witnesses
24 who have testified, and in determining that question,
25 you may believe one witness as against several

1 witnesses, or several witnesses as against one witness.

2 You may believe a part of the testimony of a
3 witness, and reject the remaining part of the testimony
4 of that same witness. If you have a good and sound
5 reason, you may believe the testimony of a witness in
6 its entirety, or reject the testimony of a witness in
7 its entirety.

8 You may consider whether any witness has
9 exhibited to you any interest, any bias, any prejudice
10 or motive in this case. You may consider the demeanor
11 of a witness, that is the manner and appearance of the
12 witness, from the witness stand.

13 You can believe as much or as little of each
14 witness's testimony as you think appropriate. Ladies
15 and gentlemen, you have but one objective in this
16 process, to seek the truth regardless of its source.

17 Our rules of evidence ordinarily do not permit
18 witnesses to testify to opinions or conclusions. An
19 exception to this rule exists for witnesses we call
20 expert witnesses. A witness who by their education,
21 training and experience has become an expert in some
22 art, science, profession or calling, may state an
23 opinion as to relevant and material matters in which
24 the witness claims to be an expert, and may also state
25 the reasons for that opinion.

1 You should consider any expert opinion received
2 in evidence in this case like any other evidence. Give
3 it the weight you think it deserves. If you decide
4 that the opinion of an expert witness is not based on
5 sufficient education and experience, or if you conclude
6 that the reasons given in support of the opinion are
7 not sound, or that the opinion is outweighed by other
8 evidence, you may disregard the opinion entirely.

9 An expert witness's testimony is to be given no
10 greater weight than that of other witnesses simply
11 because the witness is an expert. Further, you are not
12 required to accept an expert's opinion, even though it
13 is not contradicted.

14 An issue in this case, ladies and gentlemen, is
15 the identification of the defendant as the person who
16 committed the crime charged. The State has the burden
17 of proving identity beyond a reasonable doubt. You
18 must be satisfied beyond a reasonable doubt of the
19 accuracy of the identification of the defendant before
20 you may convict the defendant.

21 Identification testimony is an expression of
22 belief or impression by a witness. You must determine
23 the accuracy of the identification of the defendant.
24 You must consider the believability of each
25 identification witness in the same way as any other

1 witness.

2 You may consider whether the witness had an
3 adequate opportunity to observe the offender at the
4 time of the offense. This will be affected by things
5 like how long or short a time was available; how far or
6 close the witness was; the lighting conditions; and
7 whether the witness had a chance to see or know the
8 person in the past.

9 Once again I instruct you, the burden of proof
10 on the State extends to every element of the crime
11 charged. And this specifically includes the burden of
12 proving beyond a reasonable doubt the identity of the
13 defendant as the person who committed the crime.

14 If after examining the testimony you have a
15 reasonable doubt as to the accuracy of the
16 identification, you must find the defendant not guilty.

17 Ladies and gentlemen, there are two types of
18 evidence which are presented during the course of a
19 trial; direct evidence and circumstantial evidence.
20 Direct evidence is the testimony of a person who
21 asserts or claims to have actual knowledge of a fact,
22 such as an eyewitness. Circumstantial evidence is
23 proof of a chain of facts and circumstances indicating
24 the existence of a fact.

25 The law makes absolutely no distinction between

1 the weight or value to be given to either direct or
2 circumstantial evidence. Nor is a greater degree of
3 certainty required of circumstantial evidence than of
4 direct evidence.

5 You should weigh all of the evidence in this
6 case. After weighing all of the evidence, if you are
7 not convinced of the guilt of the defendant beyond a
8 reasonable doubt, you must find the defendant not
9 guilty. Conversely, if you're convinced of the guilt
10 of the defendant beyond a reasonable doubt, then you
11 must find him guilty.

12 I instruct you, ladies and gentlemen, the fact
13 that the defendant was arrested, charged and indicted
14 is not evidence in this case, and cannot be considered
15 by you as evidence of guilt, nor does it create any
16 presumption or inference of guilt.

17 This documentation is simply the formal written
18 instrument which contains the charge made against the
19 defendant. It serves as the formal document or process
20 by which the case is processed or brought into this
21 court.

22 The defendant has pled not guilty to this
23 indictment. And that plea casts the burden on the
24 State to prove the defendant guilty. Because a person
25 charged with committing a criminal offense in South

1 Carolina, is never required to prove himself innocent.

2 I instruct you, Mr. Foreman, ladies and
3 gentlemen of the jury, that it is a cardinal and
4 important rule of the law of evidence, that the
5 defendant in a criminal trial, no matter what the
6 seriousness of the charge made against him may be, will
7 always be presumed to be innocent of the crime for
8 which he is indicted, unless his guilt has been proven
9 by evidence satisfying you of that guilt beyond a
10 reasonable doubt.

11 This presumption of innocence does not cease
12 when you retire to deliberate, but it accompanies the
13 defendant from the time of his arraignment, throughout
14 the trial, until you reach a verdict based upon
15 evidence satisfying you beyond a reasonable doubt.

16 Our supreme court has said that the presumption
17 of innocence is like a robe of righteousness placed
18 about the shoulders of the defendant. And it remains
19 with him and assigns him to that class, the innocent,
20 until that presumptive robe or righteousness has been
21 stripped from his person by evidence satisfying you of
22 that guilt beyond a reasonable doubt.

23 Ladies and gentlemen, the presumption of
24 innocence is not mere legal theory. It is not just a
25 legal phrase. It is a substantial right to which every

1 defendant is entitled, unless you the jury are
2 satisfied from the evidence of the his guilt beyond a
3 reasonable doubt.

4 The State has the burden of proving the
5 defendant guilty beyond a reasonable doubt. Some of
6 you may have served as jurors in civil cases where you
7 were told that it is only necessary to prove that a
8 fact is more likely true than not true, such as by the
9 greater weight or the preponderance of the evidence.

10 In criminal cases the state's proof must be more
11 powerful than that, it must be beyond a reasonable
12 doubt. Proof beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the defendant's guilt.
14 There are very few things in this world that we know
15 with absolute certainty. And in criminal cases the law
16 does not require proof that overcomes every possible
17 doubt.

18 If based on your consideration of the evidence
19 you are firmly convinced that the defendant is guilty
20 of crime charged, you must find the defendant guilty.
21 If on the other hand you think there is a real
22 possibility that the defendant is not guilty, you must
23 give him the benefit of that doubt and find him not
24 guilty.

25 I instruct you and emphasize that the fact that

1 the defendant did not testify is not a factor to be
2 considered by you in any manner whatsoever in your
3 deliberations, and in your consideration on the
4 question of the guilt or innocence of the defendant.

5 It must not be considered by you in any manner
6 whatsoever. A defendant has a constitutional right to
7 remain silent. And the assertion of this right must
8 not be considered by you in your deliberations. I
9 repeat, under your oath, you are to draw absolutely no
10 conclusion whatsoever from the fact that the defendant
11 in this case did not testify.

12 The fact that the defendant did not testify
13 should not be discussed in any manner whatsoever in the
14 jury room. The burden of proof, as I have stated to
15 you, is on the State. The defendant is not required to
16 prove his innocence. The burden of proof remains on
17 the State to prove guilt beyond a reasonable doubt.

18 The defendant is charged with armed robbery. In
19 order to prove this offense, the State must first prove
20 beyond a reasonable doubt that the defendant took
21 personal property from the person or presence of
22 another person. Property is in the presence of a
23 person if it is within the person's reach, inspection
24 observation or control, so that the person could, if
25 not overcome with violence or prevented by fear, keep

1 possession of the property.

2 The State must also prove beyond a reasonable
3 doubt that the defendant carried the property away,
4 intending to permanently deprive the owner of the
5 property, and to keep the property for the defendant's
6 own use. The slightest removal of the property, or the
7 complete possession of the property, even for an
8 instant, by the defendant is sufficient to show a
9 taking and carrying away of the property.

10 The taking and carrying away of the property
11 must have been done by violence, or putting the owner
12 of the property in fear of violence.

13 Finally, the State must prove beyond a
14 reasonable doubt that the defendant was armed with a
15 deadly weapon, or that the defendant, either by action
16 or words, while using a representation of a deadly
17 weapon or object, during the robbery.

18 A deadly weapon is any article, instrument or
19 substance which is likely to cause death or great
20 bodily harm. Whether an instrument has been used as a
21 deadly weapon depends on the facts and circumstances of
22 each case.

23 The following are examples of instruments which
24 may be deadly weapons. A pistol, a shotgun, a rifle, a
25 dirk, a dagger, a knife, a sling-shot, metal knuckles,

1 a razor, gasoline, a firebomb, a Molotov cocktail, and
2 lighter fluid. A gun may be a deadly weapon even if it
3 is not operating.

4 Ordinary objects may become deadly weapons when
5 the facts show that they have been used to inflict
6 serious bodily harm or death.

7 Ladies and gentlemen, these are simply
8 evidentiary facts to be considered by you, along with
9 the other evidence in the case, and it is for you the
10 jury to give it the effect, value and weight you decide
11 it should have.

12 So in summary, ladies and gentlemen, the state
13 may prove armed robbery by establishing the commission
14 of a robbery, and either of these two additional
15 elements. That the robber was armed with a deadly
16 weapon; or that the robber alleged that he or she was
17 armed with a deadly weapon, either by action or words,
18 while using a representation of a deadly weapon, or any
19 object which a person present during the commission of
20 the robbery reasonably believed to be a deadly weapon.

21 If you find that the state has failed to prove
22 that the defendant was armed with a deadly weapon, or a
23 representation of a deadly weapon or object, you may
24 then consider whether the state has proven beyond a
25 reasonable doubt that the defendant committed robbery.

1 In order to prove robbery, the State must prove
2 beyond a reasonable doubt all of the elements that I
3 have just explained, except that the defendant was
4 armed with a deadly weapon, or representation of a
5 deadly weapon or object.

6 In order to prove robbery, the State must prove
7 beyond a reasonable doubt that the defendant took the
8 personal property from the person or presence from
9 another person, without that person's consent, and
10 carried it away.

11 Property is in the presence of a person if it is
12 within the person's reach, inspection, observation or
13 control. So that the person could, if not overcome
14 with violence or prevented by fear, retain possession
15 of the property.

16 The State must show that the defendant carried
17 the property away with the intent to permanently
18 deprive the owner of the property, and to convert the
19 property to the defendant's own use. The slightest
20 removal of the property, or the complete possession of
21 the property, even for an instant, by the defendant is
22 sufficient to show a taking and carrying away of the
23 property.

24 The taking and carrying away of the property
25 must have been done with violence, or by putting the

1 owner of the property in fear of violence.

2 There are two possible verdicts which you may
3 find in this case. There is absolutely no significance
4 whatsoever to the order in which I state them. And
5 they are as follows. And this will go into the jury
6 room with you, so you don't have to try to write this
7 down.

8 As to indictment number 2009-GS-10-6160, we the
9 jury, by unanimous consent, find the defendant guilty
10 of armed robbery; or as to the lesser included offense,
11 guilty of robbery; or not guilty. Again, there is no
12 significance to the order in which I have stated these
13 potential verdicts.

14 Ladies and gentlemen, your verdict must be a
15 unanimous one, which means all 12 of you must agree in
16 order to reach a verdict. Mr. Foreman, when the jury
17 has reached a verdict, it is your responsibility to
18 fill out the verdict form, to sign and date the form,
19 and knock on the door and advise the bailiffs that you
20 all have reached a verdict in this case.

21 Also, if the jury has any questions during
22 deliberations, it is your responsibility to write out
23 those questions and follow the same process, knock on
24 the door and advise the bailiffs the jury has a
25 question.

1 Ladies and gentlemen, if you have any questions
2 during the deliberation process, please know that there
3 will be a delay in us responding to you. It's not that
4 we are ignoring you, it is just that there is a process
5 that we have to follow in answering your questions.

6 So know that if you have a question, there will
7 be a delay before we respond to you and that we are not
8 ignoring you.

9 I will also tell you in advance, however, that
10 I'm going to start another hearing probably shortly
11 after you begin your deliberation. And that may cause
12 some delay as well in the event that -- for example, I
13 need to explain to you as well, that we don't have any
14 equipment to send back with you for any technical type
15 exhibits.

16 So if you want to watch anything, you'll have to
17 let us know that because we will have to bring you back
18 into the courtroom to do that. So if there is any
19 delay in that procedure, know that logistically we are
20 doing things so that we can get back to you. So please
21 do not think that I'm ignoring you in any way.

22 Again, ladies and gentlemen, your verdict must
23 be a unanimous one, which means that all 12 of you must
24 agree.

25 I'm going to send you to your jury room, but

1 please do not yet begin your deliberations. I have
2 some matters of law that I need to take up with the
3 attorneys that may require further instruction or
4 clarification of an instruction.

5 However, if there is no further instruction we
6 will dismiss the alternate, send in your notes and the
7 evidence and the verdict form, and at that time you
8 will be allowed to begin your deliberations.

9 If you would go with the bailiffs for me,
10 please.

11 (Whereupon, the jurors exit the courtroom.)

12 THE COURT: You may take your seats. Is there
13 any exception from the State?

14 MR. KIDD: No, ma'am.

15 THE COURT: From the defense?

16 MS. FORD: No, ma'am.

17 THE COURT: okay, if you all could make sure all
18 the exhibits are in place for me. Please bring me the
19 alternate.

20 (Whereupon, the alternate juror enters the
21 courtroom.)

22 THE COURT: Sir, I want to thank you for your
23 time and your attention to this case. It has been
24 truly appreciated by the State and the defense. You
25 are welcome to leave. You are excused for the

1 remainder of the week. This is the last case that we
2 will be trying in civil and criminal court.

3 The bailiffs will destroy your notes for you.
4 You are welcome to discuss this case, but I would ask
5 that you not do that until the entire panel is
6 dismissed after Friday, just to be on the safe side.

7 If someone should persist in trying to speak
8 with you and it exceeds your comfort level, please
9 contact the clerk's office so that we can take the
10 appropriate action to protect your privacy.

11 We appreciate your service.

12 A JUROR: Thank you, have a good one.

13 THE COURT: You do to. Have a great day.

14 The record should reflect the jury has begun its
15 deliberations at 2:14.

16 Anything further before we recess from the
17 state?

18 MS. CHISOLM: No, Your Honor.

19 THE COURT: From the defense?

20 MS. FORD: No, Your Honor.

21 THE COURT: We will be at ease.

22 (Whereupon, a recess was taken.)

23 THE COURT: Do we have the video cued up?

24 We had a note from the jury: We would like to
25 view the video again.

1 We will have that marked as a court's exhibit.
2 I assume there is no exception to proceeding with the
3 video again, from the State?

4 MR. KIDD: No, ma'am. Only that I would like as
5 much instruction as possible because we have a split
6 screen. And I can enlarge one scene at a time, but the
7 perpetrator enters --

8 THE COURT: I think that you have to play it
9 exactly like you played it at trial unless they ask for
10 something else.

11 So we have to play it just like it was played at
12 trial. And then if they ask for something else, then
13 we will do something else.

14 MS. CHISOLM: Do you know if they want to see
15 the entire video?

16 THE COURT: I think when they said we want to
17 see the video, that means they want to see everything
18 they saw at trial. So that's everything that you all
19 showed at trial.

20 MR. KIDD: I understand.

21 THE COURT: Any exception from the defense?

22 MS. FORD: No, Your Honor.

23 THE COURT: Okay.

24 (Whereupon, the jurors enter the courtroom.)

25 THE COURT: You maybe seated. Ladies and

1 gentlemen, we received your note. And in response we
2 will replay all portions of the video that were played
3 at trial.

4 You may proceed.

5 MR. KIDD: Thank you, Your Honor.

6 (Whereupon, the videotape is played in open
7 court.)

8 MR. KIDD: That's it, Your Honor.

9 THE COURT: Ladies and gentlemen, that concludes
10 the replaying of the video. Please let us know if you
11 need anything further and we will accommodate your
12 request.

13 If you would go with the bailiffs, please.

14 (Whereupon, the jurors exit the courtroom.)

15 THE COURT: We will be at ease and we will await
16 further instructions from the jury.

17 (Whereupon, a recess was taken.)

18 THE COURT: The jury has reached a verdict. Is
19 there anything before we bring in the jury from the
20 State?

21 MS. CHISOLM: No, Your Honor.

22 THE COURT: From the defense?

23 MS. FORD: No, Your Honor.

24 THE COURT: As soon as they get to the door you
25 can bring him on in.

1 (Whereupon, the jurors enter the courtroom.)

2 THE COURT: You may be seated. Mr. Foreman, is
3 it correct that the jury has reached a verdict?

4 A JUROR: Yes, Your Honor.

5 THE COURT: If you would give the verdict form
6 to the bailiff for me, please.

7 Sir, if you would stand for publication of the
8 verdict.

9 THE CLERK: As to indictment number
10 2009-GS-10-6160, the State of South Carolina versus
11 Phillip Leon Shuler. We the jury, by unanimous
12 consent, find the defendant guilty of armed robbery.
13 Signed the Foreperson, Travis Landrith.

14 Mr. Foreperson, ladies and gentlemen of the
15 jury, if this is your verdict, please raise your right
16 hand. Thank you.

17 THE COURT: You may put your right hand down.

18 Sir, you may be seated.

19 Is there any request to poll the jury from the
20 state?

21 MR. KIDD: No, ma'am.

22 THE COURT: From the defense?

23 MS. FORD: Yes, Your Honor.

24 THE COURT: Please, Madam clerk, poll the jury.
25 Ladies and gentlemen, the clerk has two

1 questions to ask you. I would ask that you give her
2 your attention.

3 You may proceed when you are ready.

4 THE CLERK: Jury Foreperson, Juror Number 187;
5 Travis Landrith. Is this your verdict?

6 A JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 A JUROR: Yes.

9 THE CLERK: Juror Number 73, Scott Crego. Is
10 this your verdict?

11 A JUROR: Yes, ma'am.

12 THE CLERK: Is it still your verdict?

13 A JUROR: Yes, ma'am.

14 THE CLERK: Juror Number 77, Jeannetta Davis.
15 Is this your verdict?

16 A JUROR: Yes, ma'am.

17 THE COURT: Is it still your verdict?

18 A JUROR: Yes, ma'am.

19 THE CLERK: Juror Number 269, Shineika Robinson.
20 Is this your verdict?

21 A JUROR: Yes.

22 THE CLERK: Is it still your verdict.

23 A JUROR: Yes.

24 THE CLERK: Juror Number 257, Earthalee Reed.
25 Is this your verdict?

1 A JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 A JUROR: Yes.

4 THE CLERK: Juror Number 352, Deborah Whaley.

5 Is this your verdict?

6 A JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 A JUROR: Yes.

9 THE CLERK: Juror Number 95, Michael Fedorenko.

10 Is this your verdict?

11 A JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 A JUROR: Yes.

14 THE CLERK: Juror Number 344, Lori Ware. Is

15 this your verdict?

16 A JUROR: Yes.

17 THE CLERK: Is this still your verdict?

18 A JUROR: Yes.

19 THE CLERK: Juror Number 324, Stephen Thomas. Is

20 this your verdict?

21 A JUROR: Yes.

22 THE CLERK: Is this still your verdict?

23 A JUROR: Yes.

24 THE CLERK: Juror Number 6, Larry Allen. Is

25 this your verdict?

1 A JUROR: Yes, ma'am.

2 THE CLERK: Is this still your verdict?

3 A JUROR: Yes, ma'am.

4 THE CLERK: Juror Number 125, Linda Gilmore. Is
5 this your verdict?

6 A JUROR: Yes.

7 THE CLERK: Is this still your verdict?

8 A JUROR: Yes.

9 THE CLERK: Your Honor, the jury has been polled
10 and the verdict stands.

11 THE COURT: Mr. Foreman, ladies and gentlemen,
12 we thank you for your time and your attention to this
13 case. It has been greatly appreciated on behalf of the
14 State, as well as the defendant and defense counsel.

15 I hope that this has been an educational
16 experience for you. I often tell jurors that real
17 court is nothing like Judge Judy, Judge Joe Brown,
18 People's Court, Judge Mathis, I forget the other ones.

19 Our system is unique. It's the only one of its
20 kind in the world where 12 citizens listen to the
21 facts, find the facts, and then apply what is really a
22 very complicated set of laws to the facts and render
23 verdicts.

24 So I hope that you have left, really in some
25 small measure, of instilling your faith in the system

1 and that it works because of you and your participation
2 and your willingness to serve as jurors, and really
3 sacrifice of your time both personally and
4 professionally.

5 If you need a work excuse, you can get that on
6 the first floor on the civil side of the clerk's
7 office, and any of the deputy clerks at the window can
8 provide you with a work excuse. Otherwise they will be
9 mailed to you, along with your checks, on Friday.

10 This is the last case that we will try this
11 week. I have some other matters that I'm going to deal
12 with that do not require a jury, so you are excused for
13 the remainder of the week.

14 You are welcome to discuss this case. By the
15 same token, if someone should persist in speaking with
16 you and it goes beyond your comfort level, please
17 notify the clerk's office so that we can take the
18 appropriate action to protect your privacy.

19 I hope you all have a wonderful afternoon. You
20 are welcome to stay for sentencing if you would like,
21 or you're welcome to be excused at this time. I need
22 the foreperson to meet us so that I can have him sign
23 the indictment.

24 (Whereupon, the jurors exit the courtroom.)

25 THE COURT: Are there any post-trial motions

1 from the State?

2 MS. CHISOLM: No, Your Honor.

3 THE COURT: From the defense?

4 MS. FORD: No, Your Honor.

5 MR. KIDD: One moment.

6 THE COURT: Did I hear his entire record which
7 was the accessory after the fact of grand larceny in
8 1991; failure to return rental objects in 2005; and
9 petty larceny in 2008, or was there more to his record?

10 MR. KIDD: There was a few more, Judge. There
11 was a conviction of fray, which I haven't looked up, I
12 have never actually heard of it. I think it's
13 consistent with starting like a bar fight type
14 scenario. It was an older charge. I believe he got --

15 THE COURT: That probably was in the '70s?

16 MR. KIDD: No, it wasn't that old actually. It
17 was like maybe another jurisdiction.

18 THE COURT: Okay. That make more sense to me.

19 MR. KIDD: Give me one second, Judge.

20 I will just read his full record. He has
21 accessory after the fact of grand larceny in '91;
22 night hunting in '91; night hunting again. He has a
23 fray in '92, which was a five years suspended on 200 --
24 2 years and 6 months and \$2,000 restitution and two
25 years probation.

1 THE COURT: What State is that from?

2 MR. KIDD: That's actually in South Carolina.

3 THE COURT: Were both night huntings in 1991?

4 MR. KIDD: Yes, ma'am.

5 THE COURT: Uh-hum.

6 MR. KIDD: Then we have a failure to return
7 rental objects '04. Public disorderly conduct '05.
8 Petty larceny '08. And that's the extend, Your Honor.

9 THE COURT: Okay.

10 MR. KIDD: I believe he also has some current
11 traffic offenses which he was recently in SCDC for,
12 which are driving under suspension, operating improper
13 vehicle.

14 THE COURT: Is he currently serving that active
15 time?

16 MR. KIDD: I believe he is due to be released on
17 that Saturday.

18 THE COURT: Is that correct?

19 MS. FORD: Yes, Your Honor.

20 MR. KIDD: May I approach with the sentencing
21 sheet, Your Honor?

22 THE COURT: Yes, sir.

23 MS. FORD: My client does indicate that he only
24 has one night hunting, Your Honor. According to the
25 rap sheet they both were in December of '91.

1 THE COURT: So maybe it's only one?

2 MS. FORD: Yes, Your Honor.

3 MR. KIDD: May I approach, Your Honor?

4 THE COURT: Yes, sir.

5 Be glad to hear from the state as regards to
6 sentencing.

7 MR. KIDD: Yes, Your Honor. I believe you've
8 heard most of the facts so I won't belabor them. I
9 also believe, as I know you do, that no defendant
10 should be punished for exercising his right to a jury
11 trial.

12 That being said, Your Honor, he does have some
13 record, this was an extremely violent and traumatic
14 event for Ms. Lipsius. I believe he has not accepted
15 responsibility for his actions. And I think he needs
16 to be held accountable for that.

17 Judge, as you know there is a 10 year minimum on
18 the offense, but we would ask for something in the 12
19 to 15 year sentencing range.

20 THE COURT: Okay. Be glad to hear from -- and
21 Ms. Lipsius has left, correct?

22 MR. KIDD: That's correct Your Honor.

23 MS. FORD: Thank you, Your Honor, may it please
24 the Court.

25 THE COURT: Yes, ma'am.

1 MS. FORD: You've heard a little about Phillip,
2 he's from Hemmingway. And he is about 38 years old,
3 Your Honor. And he is joined here today with his -- by
4 his sister and his wife. He has been with his wife for
5 19 years, they have three kids together.

6 His mom is outside. He had actually asked me to
7 ask his mom to go outside because she has heart
8 problems and so he didn't want her there. He'd
9 actually said to his family they could leave, but they
10 wanted to be here for him. They are very supportive of
11 him, Your Honor.

12 Your Honor, there was a statement given that
13 didn't come in at this trial that just, you know, an
14 explanation of how he ended up in Charleston because he
15 is from Hemmingway. He told the police that his mom
16 actually dropped him off to go to drug rehab, Your
17 Honor. And that was --

18 THE COURT: What drug rehab was he going to
19 attend?

20 MS. FORD: MUSC. I don't think it was anything
21 definitely set up.

22 THE COURT: How did he end up in Mount Pleasant?

23 MS. FORD: He took a cab, Your Honor.

24 THE COURT: From downtown?

25 MS. FORD: Yes, ma'am. Because he actually knew

1 someone from awhile ago who worked at the docks. So
2 that's why he was in the area, he was -- he was back
3 and forth to the docks, Your Honor.

4 THE COURT: And when you say it wasn't a
5 definate thing, what do you mean?

6 MS. FORD: I mean it wasn't like a -- I don't
7 believe it was, I'm supposed to start this program
8 today, the 30th of March. His mom just said,
9 basically, you need some help. So that's what I meant
10 by that, Your Honor.

11 THE COURT: Uh-hum.

12 MS. FORD: So that's what he was doing in the
13 area, and he couldn't reach anybody to get him home,
14 Your Honor.

15 You know, a weapon wasn't actually used. Of
16 course we do understand about Ms. Lipsius believed it
17 was a gun so we totally understand her fear. However,
18 I think that's important going into Phillips intent to
19 harm anybody.

20 So certainly, you know, I don't think that was
21 his intent at all, you know, the robber's intent. It
22 was a stick, Your Honor, so we'd ask you to consider
23 that it wasn't actually a weapon used.

24 I told you he has three kids. He has been
25 self-employed for a while as a contractor. So he does

1 do that work. He has been out of jail primarily for
2 the past two and a half years working. Recently he is
3 back in jail for some driving offenses.

4 But you heard his record. It's extremely
5 minimal, Your Honor, of course nothing to this level.
6 His most extensive record is from the very early '90s,
7 and even that is accessory to grand larceny, not even
8 actually grand larceny. And the most recent things are
9 misdemeanors, 30-day misdemeanors, Your Honor. So he
10 is not one who gets in trouble, Your Honor, at all.

11 And I believe if he -- I believe it would be
12 appropriate for him to get the minimum 10 years because
13 that's an extremely long time. He has never been in
14 prison other than this very short amount of time he has
15 been serving now.

16 So we would ask for you to consider that.

17 THE COURT: Why is he at SCDC now?

18 MS. FORD: For traffic offenses. Driving under
19 suspension. And that's out of a different county. And
20 he has been in there for about a couple months now.

21 Originally, I didn't do the actual calculation,
22 but he served a couple months on this charge before,
23 Your Honor.

24 THE COURT: How old are his children?

25 MS. FORD: Your Honor they're 18, 16 and 13.

1 And they live together as one family unit.

2 THE COURT: In Hemmingway?

3 MS. FORD: Yes, ma'am.

4 THE COURT: Anything further?

5 MS. FORD: No, Your Honor.

6 THE COURT: Sir, do you wish to speak or say
7 anything on your own behalf?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Okay.

10 Sir, your drug problem, what was the substance
11 you were addicted to or substances?

12 THE DEFENDANT: Marijuana and cocaine.

13 THE COURT: What precipitated your family
14 bringing you to Charleston?

15 THE DEFENDANT: Myself, I realized I needed to
16 get some help. Get my life back.

17 THE COURT: So how did you end up from
18 Hemmingway to Charleston? What happened in the time
19 between that? How did you come to the decision to have
20 them drive you to Charleston, I'm curious?

21 THE DEFENDANT: Me and my wife had a
22 conversation. And we decided that it was in my best
23 interest to come to MUSC and try the outpatient or
24 inpatient program. I had my mother, I went and talked
25 to my wife, I left my wife, I had my mother bring me to

1 MUSC.

2 THE COURT: I mean did you call anybody at MUSC
3 before you came to Charleston?

4 THE DEFENDANT: No, ma'am.

5 THE COURT: So what was the plan?

6 THE DEFENDANT: I was going there, they have an
7 inpatient treatment. I was going there to check myself
8 in.

9 THE COURT: I mean you were just going to
10 show up and just check yourself in?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And had you done that before?

13 THE DEFENDANT: No, ma'am.

14 THE COURT: So what made you think that you
15 could just show up?

16 THE DEFENDANT: I had a friend that had done it.

17 THE COURT: Okay. So you thought that they
18 would, based on your conversation or interaction with
19 the friend, you were under the impression that you
20 could just come and check yourself in?

21 THE DEFENDANT: Yes.

22 THE COURT: What time did you get to Charleston
23 that day when your mother dropped you off, do you
24 recall?

25 THE DEFENDANT: Probably 3 o'clock.

1 THE COURT: And is there a reason you didn't go
2 right there and check yourself in?

3 THE DEFENDANT: Me and one of the -- I went in
4 and started the progress. And me and one of the, I
5 guess you would say nurses because he wasn't a doctor,
6 had a confrontation. I didn't like what he had to say,
7 he didn't like what I had to say so I left.

8 THE COURT: What was the nature of that
9 confrontation?

10 THE DEFENDANT: Just little smart remarks of the
11 drug use and stuff. I was in there to get help, not to
12 be beat in the head while I was there.

13 I later went and got help, though.

14 THE COURT: Where did you go?

15 THE DEFENDANT: I went to Morris Village.

16 THE COURT: You were there for how long?

17 THE DEFENDANT: 32 days. I have been clean
18 since.

19 THE COURT: When did you go to Morris Village?

20 THE DEFENDANT: I'm not particularly sure the
21 date. It was probably two months afterwards, three
22 months.

23 THE COURT: Two months after this incident?

24 THE DEFENDANT: Yes, ma'am. After I got out of
25 the jail.

1 THE COURT: On bond you mean?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: So after you got into it with the
4 nurse you just left and got in a cab and went to Mount
5 Pleasant to see who?

6 THE DEFENDANT: I had a friend that worked on a
7 boat. I know a few boat operators down there. I was
8 going to talk to see if I couldn't find some work up
9 maybe while I was in the area, try to make some decent
10 money.

11 THE COURT: How did he come to be back in
12 custody, Ms. Ford? Was he picked up on a bench
13 warrant? What happened?

14 MS. FORD: I believe there was a bench warrant.

15 THE DEFENDANT: No. The bondsman fell off my
16 bond. He said that I didn't call him within a month's
17 time. I still --

18 THE COURT: So he moved to come off your bond?

19 THE DEFENDANT: He came off of it which I still
20 owed him \$1,500. And during the time I had some money
21 saved up and we posted the \$1,500 and he picked my bond
22 back up.

23 MS. FORD: Your Honor, he is talking about he
24 originally did about 20 days in jail, bonded out.
25 Later in 2009 his bondsman went off his bond briefly

1 for about a month. That's what he is talking about.

2 Currently he is --

3 THE COURT: Yes, he's at SCDC. So a hold was --
4 I assumed that. But in the interim he was dealing with
5 these driving offenses and got this time and so they
6 transported him from SCDC?

7 MS. FORD: Yes. They transported him from SCDC
8 to here, Your Honor, yes.

9 THE COURT: Exactly.

10 MR. KIDD: Your Honor, I apologize to interrupt.
11 I think I did omit just a relatively small offense, but
12 he has also a petty larceny in 2011. That might have
13 been what he was picked up on.

14 THE COURT: There was a petty larceny in 2011.

15 THE DEFENDANT: It's being thrown out, Judge.

16 THE COURT: Was it resolved, or is it pending?

17 MR. KIDD: It shows a conviction on his rap
18 sheet.

19 THE COURT: Did you forfeit the bond?

20 THE DEFENDANT: No, ma'am. It's the charge of
21 -- right now it was me and my brother-in-law. The
22 charges has been dropped against him on the petty
23 larceny, which they will be dropped on me once I go to
24 court. But that charge is being dropped.

25 MS. FORD: And possibly a bench warrant, Your

1 Honor. The solicitor is saying it shows a conviction.
2 I know magistrate court they find people guilty in
3 their absence.

4 THE COURT: Well you would have posted a bond
5 and you would have a date and you would have gotten a
6 ticket. And so if you don't show up you forfeit the
7 bond and that is a conviction.

8 MS. FORD: Yes, Your Honor. I'm just saying the
9 magistrate court continued or something. My experience
10 there are a lot of issues with magistrate court
11 convictions, Your Honor.

12 THE COURT: Also, just so the record is clear,
13 the minimum mandatory on armed robbery is 10 years, the
14 maximum is 30 years. No portion of the sentence can be
15 suspended nor probation given. He has to serve 7 years
16 to be eligible for parole.

17 And, sir, I will notify you that this is
18 classified as most serious and violent so it is a
19 strike. If you get another most serious offense you
20 could be subject to life without parole.

21 In addition to that, the violent classification
22 will affect how you serve your time, which means it
23 will have to be served at 85 percent.

24 MR. KIDD: Your Honor, I don't want to correct
25 you if I'm mistaken here. I believe this is going to

1 be under the old law. The only difference is I think
2 it's a no parole offense.

3 THE COURT: Well it's always been seven years to
4 be eligible, you have to serve seven years under the
5 old law. That wasn't changed in the omnibus
6 reconciliation I don't think.

7 And my memory is not infallible, but I have
8 always instructed in guilty pleas that it's seven years
9 to be eligible. I might be wrong. I don't know if it
10 was changed with omnibus.

11 But in any event, sir, we don't calculate time.
12 I can't guarantee what will happen. I always try to
13 give worst case scenario because sometimes people have
14 expectations.

15 And until you meet with your caseworker, I
16 forget what they call them at the Department of
17 Corrections, the person will go over that with you.
18 Because your lawyer has had some discussion about time
19 you might be entitled to. While I will give you credit
20 for the time that you've served, the Court does not
21 calculate time. That is solely an issue for the
22 Department of Corrections because I'm not certain
23 they're going to give you credit for the time you have
24 been serving on these traffic offenses. And I don't
25 want you to be under that misapprehension, okay?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Sir, based upon what has been
3 presented to the Court, you are sentenced to the State
4 Department of Corrections for a period of 11 years.
5 you'll get credit for any time that you've served. And
6 I have ordered the ATU if it's available. And you will
7 get credit, that credit will be calculated by the
8 Department of Corrections pursuant to 24-13-40.

9 Thank you very much.

10 MR. KIDD: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 (Whereupon, the proceedings in this matter
13 before the Court were adjourned.)

14 * * * * *

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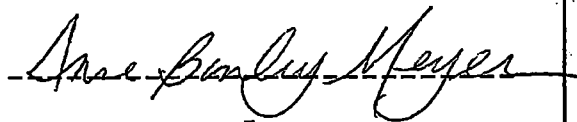
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3 C E R T I F I C A T E
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9 I, the undersigned, ANNE BOULEY MEYER,
10 official Court Reporter for the Ninth Judicial
11 Circuit of the State of South Carolina, do hereby
12 certify that the foregoing is a true, accurate, and
13 complete transcript of record, and of all the
14 proceedings had and evidence introduced in the above
15 captioned case, relative to appeal, in the Circuit
16 Court for South Carolina, on the indicated date.

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

19 
20

21 Anne Bouley Meyer, RPR
22 Circuit Court Reporter
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Philip Shuler #196792
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2014-CP-10-7474
IN THE COURT OF COMMON PLEAS

FILED
DEC-8 PM 3:01
CLERK OF COURT

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention EVANS C.I. 110 Hwy #9 West, Bennettsville SC 29512
2. Name and location of Court which imposed sentence Charleston General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery #1111382
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty NIA
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere NIA
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Unpublished Opinion No. 2013-UP-455
- ii. Appeal Dismissed
- iii. _____
- (c) the date of each such result:
- i. December 17, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellant Counsel Filed Anders Brief
- ii. under Anders v. California procedure.
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NIA
- (b) NIA
- (c) NIA
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) NIA
- (b) NIA
- (c) NIA
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective Assistance / Trial Counsel
- (b) Prosecutorial Misconduct / BRADY VIOLATION
- (c) SEE, Supporting PCB MEMORANDUM
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? YES
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA
- (b) the name and location of the Court in which each was filed:
- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA
- (c) the disposition thereof:
- i. NIA
- ii. NIA
- iii. NIA

- iv. NIA
- (d) the date of each such disposition:
- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. NIA
- ii. NIA
- iii. NIA
- iv. NIA
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. NIA
- ii. NIA
- iii. NIA
- (b) the proceedings in which each ground was raised:
- i. NIA
- ii. NIA
- iii. NIA
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) My case was pending a Direct Appeal
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (b) your trial, if any? ✓
- (c) your sentencing? ✓
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

X 18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Mary Ford
- ii. Robert M. Dudek
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Jury Trial (Mary Ford)
- ii. Court of Appeals of South Carolina Robert Dudek
- iii. _____

19. State clearly the relief you seek in filing this application:

New Trial And/or Armed Robbery reduced to Strong-Armed-Robbery

20. Are you now under sentence from any other court that you have not challenged? .

NO

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, P.S., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Philip Shuler 196792

SWORN to and subscribed before me this 4th
day of December, 2014

J. Ouelaw (L.S.)
Notary Public

My Commission Expires: 2/24

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, P.S., hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Philip Shih 196792
Applicant

SWORN or affirmed to and subscribed before me this
4th day of December, 2014

J. Outlaw
Notary Public

My Commission Expires: 2/24

2014-CP-10-1414

State OF South Carolina } In The Court OF
 County OF Charleston } Common Pleas _____
 Judicial Circuit.

Philip Shuler, # 196792 } Case No: _____
Applicant Motion For Appointment

VS.

} OF PCR Counsel Pursuant

State OF South Carolina } Suant To SCRCP, Rule 71.1.
Respondent. (d)

COMES NOW Philip Shuler, # 196792 hereby
 petitioning the Attorney General's Office
 for the appointment of PCR Counsel Pursuant
 to SCRCP, Rule 71.1 and the 6TH Amendment
 of the U.S. Constitution.

— Applicant So Moves —

Philip Shuler, # 196792
 Philip Shuler, # 196792

CC: Charleston Co. Clerk of Court
 Attorney General Office
 Philip Shuler, # 196792

State of South Carolina } In The Court of
County of Charleston } Common Pleas

Philip Shuler, # 196799 } Judicial Circuit
2014-CP-10-7474

Applicant.

Case No: 1

VS.

State of South Carolina } Memorandum To Supp
Mary Ford, Esq., Respondents. } ort PCR Application

COMES NOW The Applicant Philip Shuler, do
to the limited space on the PCR appli-
cation the Factual predicates are hereto in-
corporated for PCR relief.

Thus, applicant hereby contends and would show
that applicant's trial counsel rendered ineffect-
ive assistance and violated applicant's 14TH
Amendment of the U.S. Constitution ("Due
Process of Law"). Citing, Strickland v. Washington,

Hence, this Post Conviction Relief application
follows the dismissal of applicant's direct app-
eal ORDER issued on December 11TH, 2013.

"Ineffective Assistance Trial Counsel"

Trial Counsel was ineffective for failing to have applicant's armed robbery offense reduced to Strong armed robbery where the victim could not determine applicant was the robber and whether applicant was armed.

In this case, the State had to submit Substantial Circumstantial evidence that applicant was the robber and that represented to the victim that he was armed with a deadly weapon, or that the victim reasonably believed applicant had a weapon.

S.C. Code § 16-11-330 provides:

A) A person who commits robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of ...

Standard of Review

In a post-conviction relief proceeding, the applicant bears the burden of proving his allegations by a preponderance of the evidence. Caprood v. State, 338 S.C. 103, 109-110, 535 S.E. 2d 514, 517 (2000); Rule 71.1(e). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed. 2d 674, 692 (1984); Butler v. State, 386 S.C. 441, 334 S.E. 2d 813 (1985).

The correct measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, supra. "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case." Caprood, supra, at 109, 535 S.E. 2d at 517 (citations omitted). The applicant must overcome this presumption to ...

- • • Receive relief. Cherry v. State, 300 S.C. 115, 386 S.E. 2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of Counsel. First, the applicant must prove that Counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E. 2d at 625 (citing Strickland).

Second, Counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for Counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E. 2d at 625. In order to receive relief, the applicant must prove both ineffectiveness of trial Counsel and resulting prejudice. SEE Suber v. State, 371 S.C. 554, 558, 640 S.E. 2d 884, 886 (2007).

Philip Shulz 196792

The applicant's trial Counsel rendered ineffective assistance for failing to Motion the judge to dismiss the armed robbery offense because the victim could not substantiate "Whether the victim applicant had a gun."

Wherefore, the armed robbery offense lacks an element the state had to prove at trial to find the applicant guilty of armed robbery, S.C. Code Ann. § 16-11-330(A).

THE DEPARTMENT OF CORRECTIONS HAS NEITHER
CENSORED NOR INSPECTED THIS ITEM. THEREFORE,
THE DEPARTMENT DOES NOT ASSUME RESPONSIBILITY
FOR ITS CONTENTS.

EVANS CORRECTIONAL INSTITUTION
S.C. DEPARTMENT OF CORRECTIONS

Return to and subscribed before me
the 4th day of December, 2014

S. Oun
Notary Public of South Carolina

My Commission Expires 8/1/16

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Phillip Shuler, #196792,

2014-CP-10-7474

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed on December 8, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted by the August 2009 term of the Charleston County Grand Jury for Armed Robbery (2009-GS-10-6160). Mary Ford, Esquire, represented him. On September 19-21, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Deadra L. Jefferson sentenced the Applicant to confinement for eleven (11) years.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected pursuant to Anders v. California, 386 U.S. 738 (1967). Robert M. Dudek, Esquire, represented the Applicant on appeal. The South Carolina Court of Appeals dismissed the appeal and granted Counsel's motion to be relieved. State v. Shuler, 2013-UP-455 (filed December 11, 2013). The Remittitur was issued on January 8, 2014.

II.

In his application for post conviction relief the Applicant alleges that he is being held in

custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Trial Counsel was ineffective for failing to have applicant's armed robbery offense reduced to strong armed robbery where the victim could not determine applicant was the robber and whether applicant was armed"
 - b. "Failing to motion the judge to dismiss the armed robbery offense because the victim could not substantiate 'whether the applicant had a gun'"
2. "Prosecutorial Misconduct/ Brady Violation"
 - a. "The State had to submit substantial circumstantial evidence that applicant was the robber and that represented to the victim that he was armed with a deadly weapon, or that the victim reasonably believed applicant had a weapon"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, and the Record on Appeal. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry

v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent interprets the Applicant's second allegation as one of prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The

failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989).

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

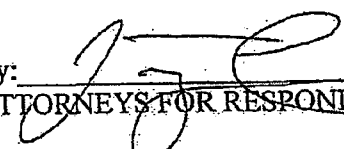
Respectfully submitted,

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June 2, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

PHILLIP SHULER, #196792,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

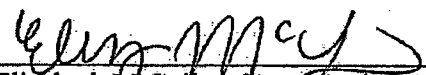
2014-CP-10-7474

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esq.
 Lowcountry Law Office
 4000 Faber Place Dr.
 Ste 300
 Charleston, SC 29405

DATED this 2nd day of June, 2015.


 Elizabeth McLellan, Legal Assistant
 For Respondent

1
2 STATE OF SOUTH CAROLINA)
3 COUNTY OF CHARLESTON) Court of Common Pleas
4) Case No. 2014-CP-10-7474
5)
6 PHILLIP SHULER,)
7)
8 Petitioner,)
9 vs.) Transcript of Record
10)
11 STATE OF SOUTH CAROLINA,)
12)
13 Respondent.) DATE: August 1, 2016
14)

15
16 B E F O R E:

17 THE HONORABLE JOHN C. HAYES
18

19 A P P E A R A N C E:

20 J. RUTLEDGE JOHNSON
21 Attorney for the Plaintiff

22 RODNEY D. DAVIS
23 Attorney for the Defendant
24

25
Karen V. Andersen, RMR, CRR
Circuit Court Reporter

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1 (Whereupon, the defendant is present.)

2 THE COURT: Mr. Johnson.

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

4 This is the case of Phillip Shuler vs. State of South
5 Carolina, 2014-CP-10-7474. Mr. Shuler was indicted at the
6 August 2009 term of the Charleston County Grand Jury for
7 armed robbery. Mary Ford, Esquire, represented him.

8 On September 19th through the 21st, 2012, he
9 proceeded to a trial, pursuant to which he was found guilty
10 as indicted. The Honorable Deadra L. Jefferson sentenced him
11 to confinement for 11 years. Notice of appeal was filed.
12 Appeal was perfected pursuant to *Anders vs. California*.
13 South Carolina Court of Appeals dismissed this appeal and
14 granted counsel motion to be relieved.

15 The remittitur was then after issued on January 8th,
16 2014. And he filed his application on December 8th, 2014.
17 The State filed its return on June the 2nd, 2015. And he is
18 represented here today by Mr. Rodney Davis.

19 THE COURT: Mr. Davis.

20 MR. DAVIS: Yes, Your Honor. We are prepared to go
21 forward. I advised my client about the risks and benefits of
22 a PCR action, but out of abundance of caution, if you would
23 just on the record review those with him, I would appreciate
24 it.

25 THE COURT: I'm John Hayes. I'm from Rock Hill.

1 I'm a circuit court judge; held court here in Charleston
2 County an awful lot. And we have statewide jurisdiction. I
3 have jurisdiction to hear post-conviction cases. And that's
4 what we are doing at this point.

5 I have not studied your file. I usually don't until
6 I get an individual before me, because appeals are withdrawn,
7 and it would be useless for me to spend time reading
8 something I don't have to deal with later. So I don't know
9 much about your case. I just got told you had a 12-year
10 sentence from Judge Jefferson.

11 MR. JOHNSON: 11.

12 THE COURT: And what was the offense?

13 THE DEFENDANT: Armed robbery.

14 THE COURT: Armed robbery carries, I believe ...

15 MR. JOHNSON: 10 to 30.

16 THE COURT: I don't know the fact of your case, but
17 I can tell you that -- and I don't know what you claim your
18 attorney did or did not do that caused you to have
19 ineffective assistance of counsel, but if I agree with you
20 and set aside your sentence, set aside your trial finding the
21 verdict guilty, then that wouldn't be sort of
22 get-out-of-jail-free situation. What will happen is, you
23 would be returned from the state custody to county custody.
24 And you would be facing this trial again.

25 If you went to trial, retrial on this, I feel

1 confident pretty much the same evidence would be presented.
2 I can't say that with 100 percent certainty, because I
3 haven't read the record. But I'm fairly confident, in doing
4 this 20 years, what would happen would be the same with what
5 happened in the first trial, as far as presentation of
6 evidence would be the same, unless somebody has died or
7 something like that.

8 Jury verdict could be -- I don't know what -- could
9 be not guilty. If that was the case, unless you have other
10 charges pending -- and I don't know you do, I don't want to
11 say something that doesn't hold water -- if you were found
12 not guilty, at least after this charge, it would be over.
13 The State couldn't appeal a not-guilty finding. And you
14 could be released. The sentence would be gone, because I
15 would set that aside. But the matter would be over and you
16 would be subject to being released.

17 If you were found guilty, then whatever the judge
18 decided to do, could be whatever the judge decided to do with
19 that sentence. That's hard for me to say. By that I mean
20 that, were you to be found guilty, you would be looking at
21 possible sentence between 5 and 30 --

22 MR. DAVIS: 10 to 30.

23 THE COURT: -- 10 to 30 years. Instead of getting
24 11 years, you could get 12. You could get 8. You could get
25 20. You could get 10. So I want you to be aware that this

1 is not a get-out-of-jail issue. It is an issue which would,
2 if you prevail, send you back for a retrial. And you could
3 receive the same sentence or less sentence or greater
4 sentence, giving you credit for the time you've already
5 served, of course.

6 Do you understand all that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions about that?

9 THE DEFENDANT: No, sir.

10 THE COURT: Mr. Davis explained that to you?

11 THE DEFENDANT: Clearly.

12 THE COURT: We will move forward with your case.

13 Thank you. Appreciate your attention.

14 MR. JOHNSON: Your Honor, one point of contention
15 you brought up about getting credit for time he already
16 served, Mr. Davis and I have had this discussion many times.
17 The statute is unclear whether or not he gets this because it
18 is not pretrial detention. It's actually post-trial
19 detention. And so the State would argue that he doesn't get
20 any credit for that time served. And we could make new case
21 law.

22 THE COURT: I correct myself. I have never had that
23 situation. I would presume that a good argument could be
24 made that whatever time you served, you should get credit for
25 rather than start with day one, even though it's not pretrial

1 detention; it's time served. I don't want to comment on that
2 further than that because I'm not going to be the judge.

3 How long have you served?

4 THE DEFENDANT: Five years.

5 THE COURT: Five years? You may get credit for
6 that, or if you've got a new sentence and it was just 10
7 years, then it may be that it would be 10 years without
8 credit for 5. I don't know. And according to what
9 Mr. Johnson has said and Mr. Davis confirmed, is an
10 unanswered question.

11 MR. DAVIS: Just out of abundance of caution, I will
12 stand on record, what I tell my clients about this certainly
13 is, as the attorney general indicated, there's a statutory
14 requirement of presentence time, jail time, time at the
15 county jail before you go to court. There's no statute
16 pertaining to that. However, to hopefully my client's
17 benefit, I have not found a case where that's been the issue
18 on appeal. Certainly, I think if ever a client was
19 resentenced and that didn't get credit for prison time, first
20 thing, attorney would appeal it.

21 We have case law on it. That says to me deductively
22 that, if not always been given, if that issue came up, the
23 State is correct that there is not a statute pertaining to
24 it. So that's kind of where we are on that.

25 THE COURT: Then we don't need to go further on

1 that. Call your first witness.

2 MR. DAVIS: For the record, we talked about it.
3 Mr. Shuler wants to go forward with the hearing. And we are
4 prepared to go forward. We call Mr. Shuler as the first
5 witness to the stand.

6 THE COURT: Okay. Come up.

7 PHILLIP SHULER,
8 having been duly sworn, testifies as follows:

9 THE CLERK: Just for record, if you will state your
10 first and last name and spell out your last name.

11 THE DEFENDANT: Phillip Shuler, S-h-u-l-e-r.

12 DIRECT EXAMINATION

13 BY MR. DAVIS:

14 Q. Mr. Shuler, what's your birthday?

15 A.

16 Q. You are 43 years old now?

17 A. Yes, sir.

18 Q. Okay. And how far have you gone in school?

19 A. 11th grade.

20 Q. Where was that?

21 A. Georgetown.

22 Q. Did you complete school?

23 A. No, I have a GED certificate.

24 Q. Okay. And you dropped out of school because of
25 family reasons?

1 A. Pretty much.

2 Q. What happened when you were 19?

3 A. Rough times around the house. I had to get out, get
4 a job.

5 Q. Are you currently on any medications today?

6 A. No, sir.

7 Q. Consumed anything that would cause you to have any
8 difficulty in testifying here today?

9 A. No, sir.

10 Q. Now, we are here complaining about the conviction on
11 armed robbery that Ms. Mary Ford represented you on here in
12 Charleston County; is that right?

13 A. Yes, sir.

14 Q. As to your attorney's advice about whether this case
15 should go to trial or not, what was her advice to you on
16 that?

17 A. We had talked. There was a good chance that we'd
18 win in a trial.

19 Q. Is that your opinion or is that what Ms. Ford told
20 you, or both?

21 A. I asked her what did she think. She said that there
22 was a good chance of winning at trial, a good chance.

23 Q. There, in fact, had been some discussion from the
24 solicitor's office about an offer, a guilty plea offer; is
25 that right?

1 A. Yes, sir.

2 Q. Do you remember what they had offered?

3 A. Ten years armed robbery and double burglary charge
4 out -- that was in Georgetown.

5 Q. That was pending at the same time up in
6 Georgetown?

7 A. Yes, sir.

8 Q. That is no longer pending, correct?

9 A. No, sir.

10 Q. And what was Ms. Ford's advice as to whether to take
11 that offer or not?

12 A. She put it on the table. I declined it.

13 Q. Were there any other discussions about any other
14 resolution to this case other than trial, now that you had
15 rejected that offer?

16 A. No.

17 Q. So let's talk about the discussions you had with
18 Ms. Ford. Do you remember when you were arrested on this
19 charge?

20 A. March the 30th. That was the night it happened.
21 March the 31st was when they arrested me with an arrest
22 warrant.

23 Q. Of what year?

24 A. 2009.

25 Q. And your trial went forward September, started on

1 September 19th of 2011; do you recall that?

2 A. Yes, sir.

3 Q. In front of Judge Jefferson; do you recall that?

4 A. Yes, sir.

5 Q. So in over two years, how many times did you meet
6 with Ms. Ford?

7 A. Two times.

8 Q. And can you tell the judge about the first time you
9 met with her? Where was that?

10 A. County jail.

11 Q. Charleston County jail?

12 A. Yes, sir.

13 Q. Before you made bond on this charge?

14 A. Yes, sir.

15 Q. So that would have been April of 2009?

16 A. Somewhere in that category, yes, sir.

17 Q. Do you recall how long you were in before you bonded
18 out?

19 A. I was in 30 days.

20 Q. Okay. And now, back then, where were you residing?

21 A. Georgetown, Hemingway.

22 Q. That's not here in Charleston County, is it?

23 A. No, sir.

24 Q. About how far from Charleston is that?

25 A. Probably 90 miles, 95 miles.

1 Q. And so once you bonded out, did you go back to
2 Hemingway?

3 A. Yes, sir.

4 Q. Now, just so the Court understands the whole story,
5 was there another time you were in the Charleston County jail
6 for a brief period?

7 A. Yes, sir. I came up for a court appearance, roll
8 call appearance, and I stopped by the bondsman's office. And
9 he locked me up for a failure to communicate. He said that I
10 didn't contact him within the month -- the couple months that
11 I was out, that I was supposed to be calling him to contact
12 him. So I sat in jail for another 30 days.

13 Q. This was not a new charge or anything?

14 A. No, sir.

15 Q. During that time frame, that 30 days in the
16 Charleston County jail, did you have any conversations with
17 Ms. Ford?

18 A. No, sir.

19 Q. You ultimately were able to get that worked out and
20 got back out of jail; is that correct?

21 A. 30 days later, yes.

22 Q. Now, would this still have been in 2009? It was a
23 roll call miss date?

24 A. It was a roll call miss date. I'm thinking it was
25 2010.

1 Q. If you were not -- if you were not incarcerated, you
2 were living in Hemingway, South Carolina; is that right?

3 A. Yes, sir.

4 Q. In addition to the -- oh, how long would you say the
5 meeting lasted when Ms. Ford came to see you in the
6 Charleston County jail before you made bond in Richland?

7 A. Probably 20, 30 minutes, somewhere in there?

8 Q. At that point, only a few weeks after your arrest,
9 were you able to discuss the case in detail, or what was that
10 discussion about?

11 A. We talked about the details of what they were
12 saying, that it was supposed to have been a black male, such
13 and such weight, and the finding of the shirts, the white
14 shirt compared to the gray shirt that they were saying. That
15 type of details is what was being discussed.

16 MR. DAVIS: And, Judge, I will ask for a little
17 direction here. We do understand you have several scheduled
18 this week. Obviously, the transcript is in the record. I'm
19 happy to, through testimony, go over details, or I will leave
20 it to Your Honor to review at a later date.

21 THE COURT: Either way. I will review it, but I
22 don't want Mr. Shuler to go away without feeling like he's
23 related to me everything he feels like he needs to relate to
24 me. So I'm in no hurry. And just whatever you feel needs to
25 be in the record, proceed, put in the record.

1 MR. DAVIS: Yes, sir. We will circle back around to
2 that in just a moment. Okay?

3 BY MR. DAVIS:

4 Q. You've already testify that in addition to that
5 meeting, there was one other meeting?

6 A. Yes.

7 Q. And when would that have happened?

8 A. I came up for court in -- I think it was July. I
9 came up for court. I wasn't prepared to go to trial during
10 that time, but Judge Jefferson was ready to see my case. I
11 wasn't dressed. All I had on was casual blue jeans and a
12 T-shirt. So Ms. Mary Ford asked for a continuance on it
13 because we hadn't discussed the trial, basically, and I
14 wasn't ready. So we had a continuance until the next court
15 term.

16 Q. And so had you had a chance to speak to Ms. Ford in
17 July of 2011 then?

18 A. Yes, sir.

19 Q. The same year as the trial?

20 A. Yes, sir.

21 Q. Where did that meeting take place?

22 A. In Ms. Ford's office.

23 Q. Approximately how long did that meeting last?

24 A. I would guess 45 minutes, hour, somewhere in there.

25 Q. In-between those two meetings, is that when you

1 would have been told about this offer dealing with the
2 Charleston and Georgetown cases?

3 A. I had got a letter from her stating they had put an
4 offer on the table of 10 years armed robbery and that they
5 would throw out the charge of burglary in Georgetown, in the
6 mail. And that she had been trying to call me but she was
7 saying that my phone was out of service. That's when I
8 called her and let her know that my phone wasn't out of
9 service. I don't know what was going on there, but my phone
10 wasn't out of service. And we had talked. And we came up
11 that I was going to come up and we were going to have the
12 meeting and discuss the case.

13 Q. To be clear about that, she had sent you a letter
14 with that offer written in it, correct?

15 A. Yes. Yes, sir. If I'm not mistaken, yes, sir.

16 Q. And you had called her back?

17 A. Yes.

18 Q. So other than that -- was that a rather short
19 conversation?

20 A. Very short.

21 Q. Other than that short telephone conversation, did
22 you have any other telephone conversations?

23 A. No.

24 Q. On the -- during the meeting in July of 2011 for
25 about 45 minutes to a hour, what did you all discuss at that

1 time?

2 A. We went through the video footage of the case. We
3 talked about where we stood at in the case, did I want to
4 proceed to go on with the jury trial, with the trial. I
5 stated yes. There was never -- nothing else offered other
6 than armed robbery. And so we basically talked about the
7 case and where we stood at it.

8 At the end, I asked her what did she think on it. I
9 asked Mr. Kidd what did he think on it -- not Mr. Kidd, the
10 attorney that was with her. I asked him what did they think
11 on it. And they implied that I had a good chance at a trial.

12 Q. At that point, did you have your discovery packet,
13 your Rule 5 packet? Did you have possession of it?

14 A. I want to say that I did have a Rule 5, but I didn't
15 have a court -- I had a Rule 5, yes, yes.

16 Q. So now during that 45 minutes to a hour when you
17 were discussing these options, you reviewed the video,
18 correct?

19 A. Yes.

20 Q. Did she go through all discovery or kind of
21 generalize it?

22 A. Generalize it. She told me what she was going to
23 attempt with a direct verdict and that she was going to move
24 to that with the judge. And, like, it all sounded good. I
25 was very new to the system. It had been 20-some years since

1 I had seen a courtroom.

2 Q. It was the plan at trial to show that any evidence
3 identifying you as a suspect was weak; is that fair to say?

4 A. Yes, yes.

5 Q. That it wasn't you who had done this; is that fair?

6 A. Yes.

7 Q. Now, let's circle back around. The judge does have
8 the transcript of your trial that's hundreds of pages long.
9 Can you give the judge a summary of what you understood at
10 that first meeting, when she came to the jail. What do you
11 recall about the victim's description of the suspect?

12 A. She identified the suspect as a black male, 5' 7",
13 175 pounds, African American with -- I think she said corn
14 rolls or braided hair, that I reminded her -- that the
15 robbery reminded her of that, the African American.

16 Q. It's clear from what you were told and what you
17 reviewed, that the perpetrator had their face covered with a
18 shirt of some sort, correct?

19 A. Yes.

20 MR. JOHNSON: Your Honor, I'm going to object at
21 this point and move to strike the testimony. This is far
22 outside the allegations listed in the application. The only
23 allegations listed is that trial counsel was ineffective in
24 failing to have his armed robbery offense reduced to strong
25 arm --

1 THE COURT: Slow down. Slow down a little bit.
2 Court reporter has got to take it down.

3 MR. JOHNSON: I apologize, Your Honor. This is
4 outside the scope of the allegations and I move to strike
5 this testimony.

6 THE COURT: Well, since I'm here without a jury,
7 obviously, I will give it such weight, if any, as I deem
8 appropriate. I will allow it.

9 Go ahead. I won't strike it, but I --

10 MR. JOHNSON: I understand, Your Honor. Thank you.

11 BY MR. DAVIS:

12 Q. Let's go to the one thing attorney general read from
13 your application. Was there ever any evidence that a weapon,
14 a gun, a knife, any weapon was ever seized or used in this
15 incident?

16 A. Repeat your question to me, please.

17 Q. Sure. Was there ever an allegation that an actual
18 gun or knife was used?

19 A. No.

20 Q. Was there any evidence collected of a gun or knife?

21 A. No.

22 Q. The State's theory is that the perpetrator suggested
23 that they were armed. Is that your understanding?

24 A. He represented a gun.

25 Q. The night of the incident, before you were arrested,

1 did you have a run-in with law enforcement?

2 A. Yes.

3 Q. How long before you were arrested was that
4 interaction with law enforcement?

5 A. Probably three hours, two and a half hours,
6 somewhere in there.

7 Q. And it was near the -- nearby in the neighborhood of
8 this incident, correct?

9 A. Yes.

10 Q. Are you aware of whether there was video
11 surveillance of this business?

12 A. Am I aware that there was video surveillance?

13 Q. Yes.

14 A. You are talking about beforehand or now?

15 Q. Now.

16 A. There was video then; so, yes.

17 Q. And you reviewed that with Ms. Ford?

18 A. Yes.

19 Q. Was that of importance in this case?

20 A. Yes.

21 Q. Particularly the clothing; is that right?

22 A. Yes.

23 Q. All right. Moving back to the July 2011 date, where
24 you met with Ms. Ford, when you appeared that day, what did
25 you think you were appearing for?

1 A. Roll call.

2 Q. And when you arrived, you had a chance to speak with
3 Ms. Ford?

4 A. Yes. We spoke. She came outside the courtroom,
5 told me that they had called my case to trial.

6 Q. And I believe you may have already testified to
7 this, but were you dressed appropriately for court?

8 A. No.

9 Q. Was a continuance granted that day?

10 A. Yes.

11 Q. In addition to how you were dressed, was there
12 another reason Ms. Ford gave Judge Jefferson in asking for
13 continuance?

14 A. She hadn't went over my case trial appropriately.
15 She needed more time to go over my trial.

16 Q. She wasn't prepared to go forward that day?

17 A. That's correct.

18 Q. And that's when y'all go meet and talk?

19 A. Yes.

20 Q. The longest conversation you had with her?

21 A. Yes.

22 Q. Was there any discussions ever about an offer better
23 than the one you've already testified to?

24 A. Never.

25 Q. Did she ever discuss with you attempts she had made

1 to get a better offer?

2 A. Never.

3 MR. JOHNSON: Objection, Your Honor. Anything about
4 a plea offer is outside the scope.

5 THE COURT: Same ruling. Go ahead.

6 BY MR. DAVIS:

7 Q. At some point, you received information from
8 Ms. Ford about DNA testing; do you recall that?

9 A. Yes.

10 Q. Did she tell you about that or mail it to you?

11 A. She mailed it to me. That was part of the Rule 5.

12 Q. Is it fair to say that while there are other
13 contributors, your DNA does come up on some items that was
14 tested; is that fair?

15 A. Yes.

16 Q. After she sent you that -- do you recall when she
17 sent you that?

18 A. Yeah. I can't -- I'm thinking it was during the
19 time she sent me the letter telling me that -- about the plea
20 offer and that she couldn't get in touch with me because of
21 the phone.

22 Q. You do recall it came in the mail to you, right?

23 A. Yes.

24 Q. If you saw that letter again, would that refresh
25 your memory as to the date she sent it?

1 A. Yeah. I mean, we are talking about five years ago,
2 but, yes.

3 MR. DAVIS: May I approach, Your Honor?

4 (Plaintiff's Exh. 1, Letter from Mary Ford, was
5 marked for identification.)

6 MR. DAVIS: May I approach the witness?

7 THE COURT: You may.

8 BY MR. DAVIS:

9 Q. I'm going to show you what's been marked Plaintiff's
10 Exhibit 1 for identification purposes only. Take as much
11 time as you need to look at this. After you've had a chance,
12 let me know and I will have some questions for you. Okay?

13 You've had enough time to review it?

14 A. Yes.

15 Q. Is this a letter pertaining to DNA evidence in your
16 case?

17 A. Yes.

18 Q. Is this the letter you received sending you that
19 documentation?

20 A. Yes.

21 Q. Do you recall when it was now?

22 A. I would guess in December, somewhere in there.

23 Q. Of 2010?

24 A. Yes.

25 Q. Okay. Now, in that letter, is there any discussion

1 about how that evidence influences your case?

2 A. No.

3 Q. Is there any discussion about the fact that now with
4 DNA match, that you ought to work on some type of a deal?

5 A. No.

6 MR. DAVIS: Your Honor, if I could have just a
7 moment.

8 THE COURT: Certainly.

9 BY MR. DAVIS:

10 Q. Mr. Shuler, the night of the incident, you had been
11 at a bar in the area; is that right?

12 A. Yes, sir.

13 Q. Did you talk to Ms. Ford about that?

14 A. We had spoke.

15 Q. About that issue?

16 A. Yes.

17 Q. But you were aware in discovery, the police knew
18 that as well, right?

19 A. Yes.

20 Q. And there were two witnesses that saw you at that
21 bar; is that right?

22 A. Yes.

23 Q. Do you remember who those witnesses were?

24 A. Andrew --

25 MR. JOHNSON: Objection, Your Honor. This is

1 failure to call witnesses. This is completely outside the
2 scope. This is the first time I heard of this being an
3 allegation.

4 THE COURT: Well, obviously, if he wants -- same
5 ruling. I'm going to hear what he has to testify to. But
6 unless the witnesses come and testify themselves, obviously,
7 there's nothing to predicate what he says about them. But I
8 will go ahead and let him testify.

9 BY MR. DAVIS:

10 Q. Do you recall who they were?

11 A. Yes. Andrew Fisher and Brian Blair, I think was his
12 name.

13 Q. Bartenders at the bar?

14 A. Bartenders.

15 Q. And that was in discovery?

16 A. Yes.

17 Q. And you received that discovery from Ms. Ford,
18 correct?

19 A. Yes.

20 THE COURT: Did you answer the question?

21 THE DEFENDANT: Yes, sir.

22 MR. DAVIS: Mr. Shuler, that's all the questions I
23 have right now. The attorney general may have some questions
24 for you.

25 MR. JOHNSON: Court's indulgence, Your Honor.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. JOHNSON:

4 Q. Mr. Shuler, in this case, the victim was a clerk at
5 the Scotchman, correct, over there by Shem Creek?

6 A. Yes, sir.

7 Q. And you are saying there was no evidence presented
8 that there was a gun used in the robbery, right?

9 A. Yes.

10 Q. Are you well aware that she testified that she
11 thought it was a gun?

12 A. She testified that she did not think it was a gun.

13 MR. JOHNSON: May I approach the witness, Your
14 Honor? I'm looking at page 130.

15 THE COURT: I just was looking at that myself.

16 MR. JOHNSON: Page 130 on the Bates stamp and 129 on
17 the actual transcript. May I approach the witness?

18 THE COURT: Because I just read about something
19 covered with a sock. Go ahead.

20 BY MR. JOHNSON:

21 Q. You said -- do have your GED?

22 A. Yes.

23 Q. Can you read me out loud lines 11?

24 A. I can't hardly see.

25 Q. Can you read that highlighted portion there?

1 A. "No. He could -- he told me to give him the money.
2 I wasn't focused on his face. I just thought -- I just saw
3 the sock, whatever was in the sock, which looked to me like a
4 gun."

5 Q. So she thought you had a gun; is that not correct?

6 A. From what it says there, yes. She's quoted several
7 other times that she didn't think it was a gun.

8 Q. Right there she says she thinks it was a gun,
9 correct?

10 A. Yes, from what I'm looking at right there.

11 Q. You said, yeah, it's been 20 years since you've seen
12 a courtroom; is that correct?

13 A. Yes.

14 Q. Don't you have a 2008 conviction for petty larceny?

15 A. That was a minor issue. We are talking about
16 general sessions. That's what I'm referring to.

17 Q. And you've had your fair share of run-ins with the
18 law, have you not?

19 A. Yes, sir.

20 Q. To reiterate, on July 11th, you thought you were
21 coming for roll call, correct?

22 A. Yes.

23 Q. And you didn't show up in proper attire for court?

24 A. Yes.

25 Q. And your counsel did get a continuance?

1 A. Yes, sir.

2 Q. And your DNA was found on that clothing, correct?

3 A. That one piece of clothing that said I was the major
4 contributor.

5 Q. Pawleys Island shirt?

6 A. No, the gray shirt. They stated that there was at
7 least two other mixtures of DNA on that shirt as well.

8 Q. But you were the major contributor, correct?

9 A. Yes.

10 MR. JOHNSON: No further questions of this
11 applicant, Your Honor.

12 THE COURT: Redirect?

13 MR. DAVIS: No, Your Honor.

14 THE COURT: You can step down, Mr. Shuler. Thank
15 you.

16 MR. DAVIS: We will call Mary Ford as the next
17 witness.

18 THE COURT: Ms. Mary Ford, if you will come up and
19 be sworn.

20 MARY FORD,

21 having been duly sworn, testifies as follows:

22 THE CLERK: For the record, if you will state your
23 first and last name and spell your last, please.

24 THE DEFENDANT: Mary Ford, F-o-r-d.

25 DIRECT EXAMINATION

1 BY MR. DAVIS:

2 Q. Ms. Ford, let's start with the thing that the AG
3 handed to you. This was originally trial docket in July of
4 2011; is that correct?

5 A. Correct.

6 Q. And on that date, you were able to obtain a
7 continuance of the trial from Judge Jefferson?

8 A. Yes. I had asked for just a day's continuance. I
9 had prepared for trial, but I had not been able to reach
10 Mr. Shuler since I had trial notice. At that time, we were
11 only given 10 days trial notice. And once I was given
12 notice, I had sent him multiple letters, left multiple
13 messages. I had not heard back from him. And he showed up
14 that Monday at eleven o'clock after jury. We had gone to the
15 jury qualifications. And so I asked for a continuance for
16 that day because I had not been able to fully discuss the
17 case and the offer with my client. And she ended up giving
18 me a continuance for that whole week.

19 Q. And so it's accurate that then you, Mr. Shuler, and
20 I believe Mr. King, another attorney from y'all's office, had
21 a meeting following that?

22 A. Correct, in my office.

23 Q. Is it fair to say that was about 45 minutes to an
24 hour meeting?

25 A. I believe so, yes.

1 Q. Fair to say that's when you reviewed the Rule 5 in
2 the case, correct?

3 A. Yes.

4 Q. Reviewed the video from this incident?

5 A. Yes.

6 Q. And discussed trial strategy?

7 A. Yes.

8 Q. Let's start there and go back a little bit. Can you
9 explain to the Court the policy of the Ninth Circuit
10 solicitor's office once a case is placed on the trial docket
11 as far as an offer.

12 A. In general, they take the stance that they do not
13 make offers off the trial docket. In this case, the
14 circumstances were a little unusual. Mr. Shuler had never
15 been given an offer previously. He had been placed on the
16 plea docket several times.

17 But the solicitor, the original solicitor was
18 Jennifer Shealy, not Natasha Chisolm, who ultimately tried
19 the case. The first time was earlier on in this case, and we
20 didn't have DNA or anything. So it was continued.

21 The solicitor, and this is my experience based on
22 other clients, sometimes she will just kind of throw
23 something on the docket without ever discussing it or even
24 being ready to make an offer. It was actually placed on the
25 plea docket again in June 2011. The solicitor was in trial

1 at that time, according to my notes. And she had not been
2 able to make an offer yet, but she and I discussed it
3 somewhat. She never said, I can't make an offer, there's not
4 going to be an offer. She just was not at that point yet.

5 Q. And this would have been Ms. Chisolm you are
6 speaking about?

7 A. No, Ms. Shealy, still Ms. Shealy.

8 Q. So the June docket of 2011?

9 A. Yes. That's the -- I could have the date wrong, but
10 I have June 2011. And I do remember him being place on the
11 plea docket several times and us having to do a continuance
12 because the solicitor was not ready to make an offer.

13 Q. So as late as June 2011, Ms. Shealy was still lead
14 solicitor and there had not been an offer made, correct?

15 A. Correct. And then I get an e-mail a couple of weeks
16 before trial from Natasha Chisolm saying: Jennifer
17 reassigned this case to me; it's my understanding it's a
18 trial.

19 And I said: Well, not necessarily. I don't think
20 he will plead to armed robbery, but Jennifer and I discussed
21 this. I think we can work it out. He is -- doesn't have
22 much of a record, of a more advanced age than some people we
23 see with armed robbery charges.

24 And she said, oh, I didn't know that. But within
25 the next day or two, he was placed on the trial docket. And

1 Ms. Chisolm did say that she could extend the offer 10 years.
2 But, again, that was in light of the fact he had never been
3 made an offer previously because he had never been
4 legitimately placed on the plea docket.

5 Q. So what was your understanding about when that offer
6 would expire?

7 A. The day of trial.

8 Q. Which was the July date that we just referenced
9 where you get the continuance; is that right?

10 A. Yes.

11 Q. So in addition to discussing trial strategy in July
12 of 2011, you were advising him of the offer that he testified
13 about, the 10 years in Charleston and the Georgetown case to
14 go away?

15 A. Yes. I remember the Georgetown case. And I believe
16 it was for it to go away. I am not 100 percent sure, but I
17 knew their offer was to fully dispose of charges in both
18 counties.

19 Q. And that meeting was on the Monday, that court term
20 in July?

21 A. Yes, yes.

22 Q. So was it -- did you advise him he had that day or
23 that week to accept or reject that offer, or what was your
24 advice about the length of that offer or the expiration of
25 the offer?

1 A. I don't know, or I don't recall if we specifically
2 went over that, because I don't think the solicitor's office
3 had a strong position on it. In light of his light record,
4 he's not someone they were looking to give necessarily more
5 than 10 years. I don't recall if there was ever a straight,
6 "this is when the offer expires," necessarily. So I don't
7 know if I discussed that with him.

8 Q. But when he left your office that day, at that
9 point, there was no acceptance of an offer?

10 A. Correct.

11 Q. During that meeting, you already have the discovery
12 packet from the solicitor's office, correct?

13 A. Correct.

14 Q. By that time, you received the video that was
15 involved in this case from the business?

16 A. Yes.

17 Q. And at that time in July of 2011, you had already
18 received the DNA testing; is that right?

19 A. Yes.

20 Q. That was later to come in the discovery process, the
21 DNA testing?

22 A. Correct. I believe Mr. Shuler said my letter was
23 dated in December 2010. And my policy is that I have my
24 paralegal just automatically send discovery to my clients.
25 The same time, she prepares that and gives it to me.

1 Q. And at this meeting, with all the evidence in your
2 possession and the offer from the State, it was your advice
3 to Mr. Shuler that he should go to trial in this case?

4 A. No. I did not tell him that he should go to trial.
5 I don't recall ever saying I think he has a good chance at
6 trial. I did think we had a lot of issues that we could work
7 with, which I think I believe I presented during the trial.
8 I told him that based on his limited record, he may not have
9 too much to lose because many judges still may give him a
10 sentence closer to the 10 years, but, of course, he could be
11 facing up to 30 years.

12 So I remember telling him all the things I thought
13 we had to work with, but I did not ever tell him, yes, we are
14 going to win, we have a good chance, anything like that. But
15 I did believe that we had issues that we could work with.

16 Q. You had issues about whether it was an armed robbery
17 or not, correct?

18 A. Yes.

19 Q. You had issues about whether identification was
20 accurate or not, correct?

21 A. Yes.

22 Q. You had issues about -- it's in the transcript. But
23 you questioned officers about their descriptions, inaccurate
24 descriptions of clothing? Do you recall that, colors of
25 clothing, how they suggested it was different than what they

1 actually presented in the courtroom? Do you recall that?

2 A. Yes. I remember they found the shirt outside, which
3 was the same shirt but in a different color than Mr. Shuler
4 was actually wearing when he was arrested. And it's clear at
5 one point, the police were acting like that was the shirt
6 that was used by the armed robber. But when you watch the
7 video, it was clear that that was not the shirt. The shirt
8 in the video was an olive-type of coloring, had an olive-type
9 of coloring. It was not the Pawleys Island shirt that
10 Mr. Shuler was wearing when he was arrested.

11 Q. All that the State was stringing together to the
12 identification issue?

13 A. Correct.

14 Q. Let's flip that for a second. While you -- and I
15 think you said you had issues to work with at trial, correct?

16 A. Yes.

17 Q. Other than relaying the offer to Mr. Shuler of the
18 10 years on an armed robbery, you did not have discussions
19 with either Ms. Shealy or Ms. Chisolm about an offer of
20 strong-arm robbery, did you?

21 MR. JOHNSON: Objection, Your Honor, renewing my
22 objection. This is not in the application; therefore, it is
23 not proper.

24 THE COURT: I will be glad to hear the application
25 to attack the evidence at trial, as opposed to Ms. Ford's

1 recitation, from what I see, but I will be glad to have her
2 testify as to that.

3 THE WITNESS: I did discuss with them, to an extent
4 with Ms. Shealy -- like I said, she was the initial
5 solicitor -- and she and I had talked about the case several
6 times. And I did tell her that I wanted us to try to be able
7 to work this out. And I did indicate, you know, I don't
8 think he would plead to armed robbery, but I thought we could
9 work it out. And I did talk to Ms. Chisolm, just saying, you
10 know, when she asked if it was a trial, I said, well, no, not
11 necessarily, we had hoped to work it out for something less
12 than armed robbery, but I know he wouldn't plead to armed
13 robbery.

14 So, obviously, I was suggesting we were looking for
15 an offer of something below armed robbery.

16 Q. The State never relented and was willing to make an
17 offer less than armed robbery, correct?

18 A. Correct. They pretty much just never directly
19 responded to, no, we can't. They never said, no, I can't
20 give a strong-arm robbery. But they were like, oh, okay,
21 good to know. And they proceeded with the offer of armed
22 robbery.

23 Q. I want to see if I understood, paraphrased something
24 you testified about earlier. Considering Mr. Shuler's record
25 and the issues you had to work with at trial, I think you

1 testified something to the effect of that the risk at trial
2 was minimal because, even if you lost, the State's offer is
3 close to what you might expect from a judge following a
4 guilty verdict at trial?

5 A. I said that that was a possibility, that I --
6 because we never know who the judge is going to be, there's
7 no way to know that for sure. Some judges may have still
8 given him 30 years after a trial. But I knew -- he made it
9 clear he did not want to plead to the armed robbery. So my
10 response was, well, we may not have that much to lose anyway,
11 you don't have much of a record, so that's good.

12 Q. In 2011 -- let me ask you the other way around.
13 When did you -- when were you licensed as an attorney?

14 A. 2005.

15 Q. So we understand that strategy, but let me ask you
16 this. Once you reviewed the DNA analysis and reviewed that
17 with Mr. Shuler, that did not cause you to advise him we
18 better not go to trial, we better consider this deal, did it?

19 A. That created a difference in the case to the extent
20 that originally they didn't have that information. When I
21 had his preliminary hearing on the record, even the judge
22 commented -- he didn't dismiss it -- but even he commented
23 that it sounded like the State had some issues with their
24 case.

25 When we got the DNA, obviously, it wasn't good news.

1 I did consult a DNA expert. And he confirmed the State's
2 results and gave me a list of questions I could ask to help.
3 I did discuss the DNA with Mr. Shuler when we met that
4 Monday, the first time he was placed on the trial docket.
5 And I told him, this is what they are going to say. I never
6 indicated it was something we didn't need to be concerned
7 about, but I did have an argument that I could make,
8 primarily surrounding the fact that he had been in and out of
9 the store that day. There was video. And so that was not
10 being denied.

11 He actually talked to the clerk multiple times. He
12 left his clothes with her. She had agreed to let him leave
13 the clothes. Some of the clothes was found outside. My
14 argument was the shirt that they found outside that matched
15 the shirt he was wearing, it clearly was not the shirt in the
16 robbery. So it could be argued that he dropped clothing from
17 his bag at one of the times he left the store.

18 And so I told him -- and I believe this is what I
19 argued in trial -- that that was going to be our defense to
20 that. But, no, obviously, that wasn't a good factor for us
21 that they had some DNA.

22 Q. Even -- so even with the DNA on one of the shirts
23 that was found near the scene, you still were going to argue
24 at trial mistaken identity?

25 A. Yes, because I think I had a good argument that that

1 was not the shirt worn by the robber. And we already knew
2 that he had been there. That was on video. He had been
3 there several times that day. So we weren't arguing that he
4 wasn't in the area.

5 Q. So while it wasn't a true alibi defense, it
6 certainly was "not this guy" was your defense at trial,
7 correct?

8 A. Correct.

9 Q. While working -- you worked in the public defender's
10 office at the time you worked with Mr. Shuler?

11 A. Yes.

12 Q. While working for the public defender's office,
13 there was an investigator assigned to you at the time?

14 A. Correct.

15 Q. Who was assigned to you at the time?

16 A. It actually at that time was Celia Wilson.

17 Q. Who worked on the case with you; do you recall?

18 A. I think Ms. Wilson did. But I believe she was on
19 vacation at some point. So I think Mr. DeGiovanni came in at
20 some point to assist me at the time of trial. But
21 Ms. Wilson, I remember we actually went to the scene
22 together. So I do remember she helped me to an extent on the
23 case.

24 MR. JOHNSON: Objection as to relevancy. I
25 strenuously object to this being --

1 THE COURT: I'm going to sustain that.

2 MR. DAVIS: Yes, Your Honor.

3 BY MR. DAVIS:

4 Q. One last issue as to the planned defense; you had
5 reviewed all discovery, including witness statements,
6 correct?

7 A. You mean at the time?

8 Q. Uh-huh.

9 A. Yes.

10 Q. Mr. Shuler had told you he had been at a bar nearby
11 that evening, correct?

12 A. Correct.

13 Q. You are aware that two bartenders saw him in there
14 that evening, correct?

15 A. Correct.

16 Q. Did you speak to either one of those bartenders
17 before trial?

18 A. I don't recall having my investigator do that.

19 MR. JOHNSON: Objection, Your Honor. That's outside
20 the scope of this application. I move to strike that
21 testimony.

22 THE COURT: For whatever value it will have, I will
23 leave it in.

24 MR. DAVIS: I appreciate that's been your ruling.
25 There's one thing I will point out on this, though. On page

1 5 of the application, I place this on the record because, of
2 course, you have not ruled against me, so I don't want to
3 talk myself into trouble here, but number 19: What relief is
4 he asking for? New trial and/or armed robbery reduced to
5 strong-arm robbery.

6 Just I want to reference to that. I'm done with
7 that line of questioning, but just to make the Court aware,
8 in his application, he does at least reference the potential
9 lower charge. And I just, like I said, just bring it to the
10 Court's attention.

11 THE COURT: Did reference which now?

12 MR. DAVIS: Page 5, question 19 of the
13 application.

14 THE COURT: New trial and/or armed robbery reduced
15 to strong-arm.

16 MR. DAVIS: Just that he does reference the
17 possibility of the lower charge. Some of the questions I had
18 about what negotiations, I would suggest that he does give
19 notice to the State that was one of the issues. I think I'm
20 done with my questioning, however, though.

21 THE COURT: I think the question, though, was that
22 bartender -- some occasion he was in the bar at some point
23 during the evening in question. How that's raised by this
24 act --

25 MR. JOHNSON: Failure to investigate is listed

1 nowhere in this application, Your Honor. And that's why I
2 asked you to strike the testimony.

3 THE COURT: For whatever value it has, I will
4 consider it, give it such weight as needed.

5 MR. DAVIS: To that specific argument, then we will
6 say ineffective is broad enough to cover that. Just a
7 moment. I may be done with my questioning of Ms. Ford.

8 Thank you, Your Honor. Thank you, Ms. Ford. No
9 further questions.

10 THE COURT: Please answer any questions Mr. Johnson
11 may have.

12 CROSS-EXAMINATION

13 BY MR. JOHNSON:

14 Q. This DNA information that was related to you, I
15 guess in July of 2011 --

16 A. No. I think the DNA, at least according to the
17 letter Mr. Davis showed Mr. Shuler earlier, I believe that
18 was December 2010..

19 Q. 2010. Okay. So you relayed that information to
20 Mr. Shuler, correct?

21 A. Yes.

22 Q. And that's a good seven months before the trial ever
23 happens, correct?

24 A. Correct.

25 Q. And then the plea offer comes in June for the 10

1 years?

2 A. Yes, basically after he was placed on the trial
3 docket, so whenever that was, the end of June, early July.

4 Q. So you would have discussed the DNA evidence with
5 him prior to him rejecting this plea offer, correct?

6 A. Well, he never actually officially rejected the
7 offer on the record. Because of the circumstances, again, he
8 just kind of showed up the morning he was supposed to be on
9 the trial docket. And I had not been able to reach him in
10 the two weeks prior since I had notice of him being placed on
11 the trial docket, which I got the offer at the same time as
12 my trial notice.

13 So he and I discussed it in my office at that time.
14 And we discussed the DNA at that point, what they meant and
15 what we could argue as a defense. And he told me he was not
16 interested in a plea to armed robbery at that point.

17 Q. Then actually at the trial, he testifies that he was
18 the one who rejected the plea offer, correct?

19 A. I believe so.

20 Q. Your Honor, I point you to page 86 of the record,
21 lines 8 through 22 -- 23, actually. And, actually, all of
22 next page where he does freely and voluntarily and of his own
23 will, that nobody forced him?

24 THE COURT: Okay.

25 THE WITNESS: And if I may add, we had discussed the

1 DNA a little before as well when he had been placed on the
2 docket, a plea docket previously. I had talked to him the
3 times he was on the plea docket. And so the most recent time
4 when Ms. Shealy had been in trial, we did discuss it
5 somewhat. But we didn't have an in-depth conversation
6 because he did not seem interested. At that point, we were
7 trying to wait to see what kind of offer we could get,
8 essentially.

9 BY MR. JOHNSON:

10 Q. And they never offered a strong-arm robbery?

11 A. No.

12 Q. But you did ask for strong-arm robbery at trial,
13 correct?

14 A. Yes, as far as I --

15 Q. And you got a jury instruction on the strong-arm
16 robbery?

17 A. Yes, as far as I know.

18 Q. You say you weren't able to communicate with him
19 prior to that June plea docket. Did you attempt to
20 communicate with Mr. Shuler?

21 A. No. I did talk to him. I believe he came to court.
22 I'm reading my notes. I believe he actually came to court in
23 June. I talked to him, because I had discussed -- talked to
24 him on and off on the phone mostly. I had met him in jail.
25 And I actually met him in jail the time he was in there for

1 an off bond. I did not see him when he was initially
2 arrested because he bonded out the same day my office opened
3 the file. But we had discussed -- I had talked to him in
4 June. But then it all happened just really quickly.

5 So by the time I got the offer and the trial notice,
6 I could not locate him. He sent messages and was too far
7 away from me to justify sending my investigators out there.

8 Q. How often did you meet with him during the course of
9 your representation?

10 A. To my memory, I met with him I know that time in
11 jail. I know I met with him when he came to court on the
12 plea docket. I met with him the morning that he was
13 scheduled for trial in July. I know we talked on the phone
14 multiple times.

15 I did not see notes. Sometimes when I go into
16 trial, I get bad about writing the notes. So I can't
17 remember conversations immediately prior to the time he
18 actually went to trial. But, obviously, I talked to him that
19 week that he was on the trial docket and the week before.

20 Q. And the reason you asked for the continuance in June
21 was because he was not appropriately dressed?

22 A. That was the trial docket. I asked for that because
23 he was not appropriately dressed. He was in gym shorts and
24 soccer type of sandals. But also, because of how it
25 happened, I had not fully discussed the offer or anything

1 with him. So I just wanted at least a day to do that.

2 Q. And then Judge Jefferson, I believe, continued the
3 case to the next term?

4 A. Correct.

5 Q. Which was July, and then you had an opportunity to
6 fully discuss that plea offer?

7 A. That day, he and I went to my office, yes.

8 Q. And like the transcript says, it was ultimately his
9 decision to plead guilty, I mean, to reject that guilty plea?

10 A. Yes.

11 MR. JOHNSON: Court's indulgence, Your Honor.

12 BY MR. JOHNSON:

13 Q. You thoroughly cross-examined the police officers on
14 their conflicting statements concerning the colors of the
15 shirt, whether it's blue shirt or an olive shirt or a gray
16 shirt?

17 A. I believe so.

18 Q. And you fully argued that he was not armed with a
19 gun in this case, right?

20 A. Yes.

21 Q. And that was a big trial strategy of yours to do so?

22 A. Well, our main strategy was to say it wasn't him.
23 It's kind of difficult sometimes when you are arguing it
24 wasn't him, but you are also trying to argue the legal issue
25 to get a lesser charge. So, yeah, we did bring that up. But

1 I didn't want to take away too much from the fact that we
2 were saying it wasn't him.

3 Q. But you will agree with me that even the
4 representation of a gun, even if it's a stick in a sock and
5 the victim believes that, that is a charge for armed
6 robbery?

7 MR. DAVIS: Objection, Your Honor, leading.

8 MR. JOHNSON: It's cross-examination.

9 THE COURT: Yeah, it's cross-examination. It's your
10 witness. Go ahead.

11 THE WITNESS: Yes, that's my understanding of the
12 law.

13 MR. JOHNSON: That is all I have for this witness at
14 this time, Your Honor.

15 THE COURT: Redirect?

16 MR. DAVIS: Just a moment, Your Honor.

17 Thank you, Your Honor. No further questions. And
18 we have no other witnesses, Your Honor.

19 THE COURT: I did not see you on the list for later
20 today, so you can be excused. I don't know if you've got any
21 other ones this week.

22 MS. FORD: No, sir, I don't.

23 THE COURT: You are excused. Thank you. Appreciate
24 your time.

25 MR. JOHNSON: No witnesses from the State.

1 MR. DAVIS: No witnesses on behalf of the applicant.

2 MR. JOHNSON: Quick summary, if I may, Your Honor.

3 THE COURT: Please.

4 MR. DAVIS: Judge, what we would argue is that
5 Mr. Shuler, as you know, went to trial, was convicted of
6 armed robbery. We would argue that Ms. Ford was ineffective
7 on a number of accounts. And all of those led directly to
8 this trial and then, therefore, this conviction. We would
9 argue that there was clearly insufficient meetings leading up
10 to this trial.

11 It's either, in light most favorable to the
12 plaintiff, two letters, two meetings and one call. I believe
13 Ms. Ford would say three or four meetings, a few calls. And
14 I don't believe she disputed the two letters. We will still
15 argue, even if you find that the evidence in light most
16 favorable light to the defendant is valid, it's still
17 insufficient time together with her client leading up to this
18 trial on such a serious case.

19 She had been an attorney for -- at the time of
20 arrest, four years, and ended up going to trial, six years.
21 We would argue that she knew or should have known that more
22 time was needed in this case.

23 THE COURT: What would more time have generated?

24 MR. DAVIS: Couple things, Your Honor. One of the
25 other complaints, connecting to the second, but certainly it

1 could have, we will argue, certainly our second prong, we
2 must prove outcome would have been different.

3 One of the things that we tried to focus on
4 specifically was the effect of this DNA evidence. Because,
5 again, we do not have a true alibi case here. Although
6 Mr. Shuler indicates that he was in the area, he was at a bar
7 nearby. The exact time can't be pinned down. But we do have
8 an identity issue, and that was at trial.

9 Ms. Ford testified that was the defense at trial was
10 "it wasn't him". So while it's not a true alibi, it is an
11 identity case.

12 The difficulty becomes then, when the DNA and those
13 pictures, that still gives her something to work with, if
14 they had met more times about that, that wasn't received
15 until December of --

16 THE COURT: What would meeting more times have
17 changed what the DNA was?

18 MR. DAVIS: No, but it would have more fully
19 informed Mr. Shuler, who knew that he was testifying -- has
20 testified that, well, had the State brought this out, petty
21 larceny is a magistrate-level offense, he hadn't been to
22 trial for something this serious, had they had more time to
23 talk about this, Ms. Ford would have -- as testified today,
24 the issues she had to work with at a trial, the DNA is extra
25 hurdle to get over. And had they had more time to talk about

1 that, for her to more fully explain that, then there could
2 have been a different outcome. Again, exactly what
3 Mr. Shuler is asking for in his application. Even if he had
4 done that, the strong-arm would be more of an option. Had he
5 better understood at the time, instead of, I'm not interested
6 in a plea, I guess, at trial, he could have more
7 communicated, look, we need more negotiations about some
8 plea, I will plea.

9 Ms. Ford's testimony was she knew he wouldn't plead
10 to the armed robbery. Beyond that, she didn't know. There
11 weren't sufficient discussions about what he can and should
12 have pled to on advice of counsel.

13 THE COURT: He didn't even have an offer.

14 MR. DAVIS: Correct. And that's what we are getting
15 at, Judge. Again, when he left that day in July of 2011,
16 there was one offer available that had been made. He
17 rejected that offer. Let's go to trial.

18 His testimony is, she's indicated we had some good
19 chances at trial. And even her testimony today, we had a
20 bunch of issues to deal with.

21 She also testified about how this had been through
22 two different solicitors, had been thrown on the trial docket
23 without any negotiations of an offer. It wasn't until when
24 she did object to it being placed on the trial docket with
25 the new solicitor there were any discussions. But even with

1 that, all we have on the record is one offer. He had one
2 day, 45 minutes to an hour to decide on.

3 THE COURT: I didn't hear any testimony about any
4 cap of time.

5 MR. DAVIS: No, no, the discussion between them,
6 discussion between them, because the testimony --

7 THE COURT: He didn't go to trial September. So in
8 August, he could have accepted the plea.

9 MR. DAVIS: Theoretically, because Ms. Ford did
10 testify there was no expiration. But when he walked out that
11 day, they both understood he wouldn't accept the offer.

12 THE COURT: And he told Judge Jefferson that.

13 MR. DAVIS: He did. In the meantime, our whole
14 point is, if there had been continuous meetings,
15 communications about this, especially once the DNA comes in,
16 then that's when the rubber meets the road, and there could
17 have been better discussions -- should have been better
18 discussions about negotiating a better deal.

19 It should be noted, obviously, that then in -- or
20 that day, sorry, Judge, same day we are talking about,
21 Ms. Ford's testimony is certainly her client was unprepared
22 physically for court, but she indicated she was as well. She
23 had not sufficiently talked to him at that point. She
24 testified to that. And then what's result of that? 45
25 minutes to a hour meeting. And that's it until then she

1 meets with him on the trial date, which is then September.

2 THE COURT: What further discussion -- what would
3 further discussion have generated?

4 MR. DAVIS: I'm going to tie it back again.

5 THE COURT: Okay. I will hush and just listen.

6 MR. DAVIS: No, Judge, one of the things we want to
7 bang the drum on is that what he's asked for, if there had
8 been further discussion, more fruitful discussion, there had
9 been an honest review of this evidence, there was no attempt
10 to go back for a better offer.

11 There's been no testimony between that July date, 45
12 minutes to a hour, here's your option, accept the plea or go
13 to trial. You tell me I've got a lot of stuff to work with,
14 I will go to trial. He leaves. There's no discussion up
15 until trial date.

16 We are submitting, with her experience, several
17 years being at the public defender's office, handling cases
18 like this, with his limited experience in general sessions
19 realm, that communications during that time frame should have
20 been led and could have led to a continued negotiation in
21 that amount of time they had to try to obtain a better offer.
22 There's no evidence that was attempted in this case. And we
23 would argue that was failing. And could have, should have,
24 would have, led to more discussions.

25 As Ms. Ford testified, even though normal policy

1 still on trial docket, no more negotiations, Ms. Chisolm, who
2 had the case drop in her lap, did not obey that, and at least
3 made one offer. So there's testimony before you that the
4 State, even in this unique circumstance with an armed robbery
5 case, would have been receptive to continued discussion even
6 though it was on the docket. That's before Your Honor by the
7 testimony.

8 We would argue that it was a failure of his attorney
9 not to continue those discussions. Of course, she won't
10 without the client's permission to do so. But she did not
11 get it because the communication ceased to exist.

12 We would argue that her handling of the officers at
13 trial -- you've got the transcript, you know, as much time as
14 you need it. I talked briefly about the -- where she did
15 discuss the variations of coloring, of shading, of whether it
16 was really a gray shirt, white shirt, olive drab or green.
17 You've got the record before you. Certainly, she queried
18 about that. But we would argue it was insufficient
19 cross-examination of the officers, when identity is the issue
20 and the officers, their video is the identification. We
21 would argue she failed in cross-examining them effectively.

22 She had evidence of bartenders placing him at the
23 bar during this time frame. She didn't call either of the
24 bartenders, despite their statements to police to that.

25 And, Your Honor, we would argue that not only her