

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

—————
Appeal from York County

Daniel D. Hall, Circuit Court Judge
—————

RECEIVED

FEB 14 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JONATHON ALEXANDER PHILLIPS,

APPELLANT

APPELLATE CASE NO. 2016-000324

—————
RECORD ON APPEAL
—————

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 1 (911 RECORDINGS)
STATE'S EXHIBITS NOS. 2-11 (STILL SHOT PHOTOS)
STATE'S EXHIBIT NO. 12 (SURVEILLANCE VIDEO)

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) CASE NO.: 2015-GS-46-3438

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
 VS) (DAY 1 - VOLUME I)
)
 JONATHAN ALEXANDER) (PAGES 1 - 138)
 PHILLIPS)

FEBRUARY 10, 2016
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE DANIEL D. HALL

APPEARANCES:

BLAINE PLEMING, ASSISTANT SOLICITOR
 YORK, SOUTH CAROLINA

DANIEL PORTER, ASSISTANT SOLICITOR
 YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
 YORK, SOUTH CAROLINA

ATTORNEY FOR THE DEFENDANT

SHIRLEY BROOM
 16TH Circuit Court Reporter

1 THE COURT - All right, on that issue, so is that
2 all we have as far as the statements?

3 MR. PORTER - Yes, sir, Your Honor, from the
4 State.

5 THE COURT - Anything further as far as the
6 statements, Ms. Inzerillo?

7 MS. INZERILLO - Your Honor, those are the only
8 statements I've been made aware of that were made to the
9 detective. I'm not sure if there's any other testimony
10 that may come out regarding any other statements he made to
11 someone else, but that's all I've been made aware of of
12 statements.

13 THE COURT - Anything else, Mr. Fleming?

14 MR. FLEMING - Those are the only statements that
15 he made to law enforcement, which we would seek to
16 introduce. There are statements that he was alleged to
17 have made to one of the other lay witnesses that the State
18 would ask about.

19 THE COURT - All right. Well, we'll deal with
20 those at the trial. Certainly that's not a -- that is not
21 -- the other rules that may or may not govern that.

22 All right, let's move to your next motion, Ms.
23 Inzerillo?

24 MS. INZERILLO - Your Honor, at this time the
25 defense would ask the Court to make findings as to

1 identification of Mr. Phillips. The -- this case has taken
2 a little bit of an unusual turn than normal cases. My
3 understanding, and certainly the State can explain or
4 correct me if I'm wrong, is that the clerk was unable to
5 identify the robber by name or give any leads, and so the
6 officers put out the surveillance video to the general
7 public, and based upon that, they received two phone calls,
8 one from Ms. Biggers identifying Mr. Phillips as the person
9 in the video and one from his mother, Ms. Wright,
10 identifying him as being in the video. It's my -- and
11 there's another officer that's a relation of Ms. Wright,
12 who I think she called directly, and that my understanding
13 is that he would also come in and testify as to knowledge
14 of what Mr. Phillips looks like. It's my understanding
15 that he would base that knowledge of Mr. Phillips based on
16 prior interactions or prior knowledge of Mr. Phillips, and
17 so that would also be an out-of-court identification as
18 well, so we would ask the Court to hear testimony and make
19 findings as to those.

20 THE COURT - All right, you prepared to go forward
21 with the Neil v. Biggers hearing, Mr. Pleming?

22 MR. PLEMING - Yes, sir, Your Honor. The State
23 would call Juanita Wright as the first witness.

24 JUANITA WRIGHT, AFTER BEING FIRST DULY SWORN,
25 TESTIFIES AS FOLLOWS -

1 DEPUTY CLERK - Thank you. You may have a seat.

2 THE COURT - All right, Solicitor.

3 MR. PLEMING - Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. PLEMING -

6 Q Good morning, ma'am. Would you please state your name
7 for the record.

8 A Juanita Wright.

9 Q Ms. Wright, do you know the defendant in this case,
10 Jonathan Phillips?

11 A I do.

12 Q And what is your relationship to the defendant?

13 A My son.

14 Q And did you raise Jonathan?

15 A I did.

16 Q How old is your son?

17 A 24.

18 Q How old was he when he moved out of your house?

19 A Probably between 18 and 19.

20 Q Okay. Do you see your son, Mr. Phillips, in the
21 courtroom today?

22 A Yes, I do.

23 Q Will you for the record describe what he's wearing and
24 point to where he is sitting?

1 A He's wearing a blue and white striped shirt and he's
2 sitting right here.

3 MR. PLEMING - Let the record reflect that Ms.
4 Wright has identified her son, the defendant.

5 Q Prior to the date of Thursday, August 13, 2015, when
6 was the last time that you had seen Jonathan?

7 A Probably two weeks or more prior to that.

8 Q Okay. Did you speak with any officers on that day,
9 Thursday, August 13th?

10 A I did.

11 Q And with whom did you speak?

12 A I spoke to Lieutenant Thomasson and two other officers
13 that I don't know -- recall their names.

14 Q Okay. And did you call Officer Thomasson?

15 A I did.

16 Q And what did you tell him when you called him?

17 A I told him that I received a call my daughter saying
18 that she thought her brother was on the news for supposedly
19 robbing a store and I wanted him to come and talk to me.

20 MS. INZERILLO - Your Honor, I object to the
21 hearsay.

22 THE COURT - Overruled.

23 Q Please continue.

1 A And I told him I needed -- or wanted him to come and
2 talk to me because I didn't want my son to get hurt by any
3 police officers if he had done something.

4 Q Thank you. Had you actually seen any pictures or
5 videos of the alleged incident prior to calling Officer
6 Thomasson?

7 A No.

8 Q And after you spoke with Officer Thomasson, what
9 happened?

10 A Two detectives came to my house and questioned me.

11 Q Okay. And do you recall how many officers were there?

12 A It was two.

13 Q And did you invite them inside?

14 A I did.

15 Q And did either of those officers show you any
16 photographs while at your house?

17 A Yes.

18 Q Describe the photo that they showed you?

19 A It was a picture of Jonathan in a convenience store.

20 MR. PLEMING - Beg the Court's indulgence just one
21 moment. (Pause) At this time the State has shown State's
22 Exhibit Number 2 as previously marked to defense counsel.

23 Q Ms. Wright, I'm showing you a now a photograph that's
24 been previously marked for identification as State's

1 Exhibit Number 2. Do you recognize that photo or the image
2 depicted in it?

3 A Yes.

4 Q And how are you able to recognize this photo?

5 A What do you mean how am I able to recognize it?

6 Q When have you seen this photograph?

7 A I think that's the same photograph they showed me.

8 Q Okay. Does it appear to be the same scene and image
9 that was depicted in the photograph that was shown to you?

10 A I think it is.

11 MR. PLEMING - If it please the Court, I'd like to
12 show the photograph to the Court at this time.

13 THE COURT - All right.

14 (WHEREUPON, PHOTO IS PRESENTED TO THE COURT.)

15 Q Ms. Wright, do you recognize the man in that
16 photograph?

17 A I do.

18 Q And who is depicted in that photo?

19 A That's my son, Jonathan Phillips.

20 MR. PLEMING - No further questions.

21 THE COURT - All right, just for the record, the
22 State -- the Court was handed State's Exhibit 2, and I
23 believe that's the photo to which your last questions
24 referred to with Ms. Wright.

1 MR. PLEMING - That's correct, Your Honor. Thank
2 you.

3 THE COURT - Okay, thank you. Ms. Inzerillo?

4 MS. INZERILLO - Thank you, Your Honor. May it
5 please the Court..

6 CROSS EXAMINATION

7 BY MS. INZERILLO -

8 Q Ms. Wright, you got word from your daughter about what
9 was on TV. Is that right?

10 A Yes.

11 Q So you didn't see it yourself?

12 A No.

13 Q Okay. And then you called Lieutenant Thomasson,
14 because he's your cousin, ---

15 A (Indicating yes)

16 Q --- and you were concerned about ---

17 A For the safety ---

18 Q --- what was being said.

19 A --- of my child, exactly.

20 Q Okay. And then when you called Lieutenant Thomasson,
21 you told him that my daughter said it's him on there and
22 I'm concerned about his safety. Is that right?

23 A Right.

24 Q Okay. And so it was Lieutenant Thomasson and another
25 officer came to your house?

1 A Two other officers.

2 Q Okay. Did they first ask you if you had seen what was
3 on TV ---

4 A Yes.

5 Q --- and you told them that you didn't. And then they
6 um -- they pulled up a picture. Is that right?

7 A (Indicating yes)

8 Q Did they pull up a picture on a phone or did they
9 print out a picture?

10 A I think it was on a cell phone.

11 Q Okay. Do you recall exactly what the picture was that
12 they showed you?

13 A No, I can't exactly. Like I say, I'm assuming it --
14 think it was the same picture that he showed me, the one
15 with -- in the convenience, but I'm not sure.

16 Q But you're not sure. Okay. And when they showed you
17 the picture, did they ask if it was your son in the
18 picture?

19 A Yes.

20 Q Okay. By that point did you know that Mr. Phillips
21 was accused or suspected in robbing a convenience store?

22 A Not on -- only by what I heard.

23 Q Okay. Not -- but from what you had heard, ---

24 A Right.

25 Q --- you knew that's why they were looking for him.

1 A Yes.

2 Q Okay. So the picture ---

3 MS. INZERILLO - Your Honor, may I retrieve
4 State's 2?

5 THE COURT - Mr. Fleming has that.

6 MS. INZERILLO - May I approach the witness, Your
7 Honor?

8 THE COURT - Yes, you may.

9 Q Ms. Wright, so the picture that you were shown of
10 State's Exhibit 2, you are not exactly sure if that was the
11 same photograph that was on the phone.

12 A No, I'm not sure.

13 Q And um in this -- and -- and in this picture that
14 you've been shown, you indicated with Mr. Fleming that you
15 thought it was your son in that picture. Is that right?

16 A (Indicating yes)

17 Q In that picture can you ---

18 COURT REPORTER - She needs to answer verbally.

19 A Yes.

20 MS. INZERILLO - I'm sorry.

21 Q And in that picture you can't see his eyes?

22 A No.

23 Q You can't determine the person's height?

24 A No.

25 Q That person's wearing a black shirt. Is that correct?

1 A That's what it looks like, yes.

2 Q And um you can't determine any facial features or
3 facial hair of the person in that picture.

4 A No.

5 Q All right. Ms. Wright, this is going to be a really
6 stupid question, so I apologize, ---

7 A That's okay.

8 Q --- but you weren't in the convenience store the night
9 that this happened.

10 A No, ma'am.

11 Q Okay. So you didn't see anything that went down that
12 evening.

13 A No.

14 Q Okay. And you didn't see Jonathan that evening.

15 A No.

16 MS. INZERILLO - Okay. Your Honor, I have -- Your
17 Honor, I have no further questions.

18 THE COURT - Thank you. Anything further, Mr.
19 Fleming?

20 MR. PLEMING - Beg the Court's indulgence for just
21 one moment. (Pause) Nothing from this witness, Your
22 Honor.

23 THE COURT - All right, you can step down, Ms.
24 Wright. Thank you. Anything further as far as -- I assume

1 we're talking about the introduction and admissibility of
2 State's Exhibit 2. Is that correct?

3 MR. PLEMING - Yes, sir, Your Honor.

4 THE COURT - Anything further on this issue from
5 the State?

6 MR. PLEMING - Your Honor, the State would call
7 Jeremy Felker.

8 THE COURT - All right.

9 JEREMY FELKER, AFTER BEING FIRST DULY SWORN,
10 TESTIFIES AS FOLLOWS -

11 DEPUTY CLERK - Thank you.

12 DIRECT EXAMINATION

13 BY MR. PLEMING -

14 Q Will you please state your name and occupation?

15 A Jeremy Felker. I work at the Murphy Express as an
16 assistant manager.

17 Q Okay. And where is that Murphy Express located?

18 A In Lake Wylie, South Carolina.

19 Q Were you working there on the night or early morning
20 hours of August 13th, 2015?

21 A I was.

22 Q And will you please now tell the Court what happened
23 that night while you were working?

24 A Well, I was just doing my regular stuff at night; I
25 was cleaning and helping out customers and noticed a dark-

1 color car pull up on the left side of the building where I
2 couldn't really see it very well, and uh was helping a lady
3 get gas and one of my regular paper route guys came in to
4 get his fuel. After I got done with him and the other
5 lady, the guy came up to the counter, placed the beer on
6 the counter; I said, hey, how you doing, rang it up and
7 told him the total and when I got the five dollar bill from
8 him, I cashed my register out to pay for it, and at that
9 point in time he slid a note across the counter that said
10 give me all the money, and at that point I was just like,
11 is this really happening, and I looked up at him and asked
12 him really and he proceeded to lift his shirt tail up on
13 the right side of his body and show me a pistol, and at
14 that time I started getting the cash out of the register.
15 He asked me if there was any hundreds underneath the
16 drawer; I lifted my drawer up out of the -- or the till out
17 of the drawer and showed him that there was nothing there
18 and uh proceeded to hand -- hand him the money and the beer
19 back and he took off out the door. Once he got into the
20 vehicle, I grabbed the store phone and dialed 9-1-1 and,
21 you know, told them I'd just been robbed.

22 Q Okay. And did police respond to the scene after you
23 called 9-1-1?

24 A Yes, they did.

1 Q And were you able to access the store's video camera
2 footage?

3 A Yes, I was.

4 Q And did you show that footage to police the officers?

5 A Yes.

6 Q Okay. And are you familiar with the -- still today
7 with the footage that the cameras got you that night?

8 A Yes, I am.

9 Q Okay.

10 MR. PLEMING - At this time the State is showing
11 defense counsel State's Exhibit Number 2.

12 Q I'm having you the photograph marked as State's
13 Exhibit Number 2 for you. Will you please take a moment to
14 look at it and tell me if you recognize what's depicted in
15 that photograph?

16 A It's the back slide (sic) store -- in-store view, and
17 it shows Mr. Phillips looking at the cooler doors.

18 Q Okay. Have you seen this photograph before?

19 A Yes, I have.

20 Q Okay. And can you tell the Court from which that
21 photograph is derived?

22 A Uh ---

23 Q Is that -- does that fairly and accurately depict the
24 scene that night at the store?

25 A Yes, that is -- that is correct.

1 Q And does it fairly and accurately depict the scene as
2 it was captured on the video cameras?

3 A Yes, it does.

4 Q Okay. And lastly, the man in State's Exhibit Number
5 2, does that fairly and accurately depict the suspect who
6 you claim robbed you?

7 A Yes.

8 MR. PLEMING - Nothing further from this witness,
9 Your Honor.

10 THE COURT - Ms. Inzerillo?

11 MS. INZERILLO - May it please the Court, Your
12 Honor.

13 CROSS EXAMINATION

14 BY MS. INZERILLO -

15 Q Mr. Felker, you -- as you testified this was kind of a
16 normal night for you working and doing what you normally
17 do?

18 A Yes, ma'am.

19 Q And the -- you didn't know anything about the person
20 when he was standing at the beer cooler?

21 A No, ma'am.

22 MS. INZERILLO - I think that was a no, Madam
23 Court Reporter.

1 Q And then when he walks up to the counter and bought
2 the beer, that's when you interacted with him. Is that
3 right?

4 A Yes, ma'am.

5 Q So you didn't have any other interactions with him
6 prior to that?

7 A No, ma'am.

8 Q Okay. The -- have you seen the surveillance video in
9 this case?

10 A Yes, I have.

11 Q Okay. Have you seen it since you've talked to the
12 officers in this case?

13 A Yes, I have.

14 Q Okay. The entirety of the interaction between you and
15 the person in the store was about two seconds. Is that
16 right?

17 A No, ma'am.

18 Q Okay. How long do you think it was?

19 A I believe it was about 30 to 45 seconds.

20 Q Okay. You indicated that you called poli -- or 9-1-1
21 as the car drove away. Is that right?

22 A (Indicating yes) Yes, ma'am.

23 Q And when you called 9-1-1, your description was black
24 male, brown shirt. Is that right?

25 A Yes.

1 Q Okay. And you indicated that his face was not
2 covered.

3 A Yes.

4 Q Okay. The -- then when you spoke to the officers when
5 they got there, do you remember speaking to a Deputy
6 Robinson or a Deputy Clark?

7 A I do not recall the names, ---

8 Q Okay.

9 A --- but I spoke to -- about five officers showed up, -
10 --

11 Q Okay.

12 A --- so I talked to a few of them.

13 Q Do you recall describing the person as black male,
14 mid-20s, short-shaved hair, ---

15 A Yes.

16 Q Five nine and one forty-five -- hundred and forty-five
17 pounds?

18 A Yes.

19 Q And wearing a brown shirt and camo shorts.

20 A Yes.

21 Q Okay. The next statement that you gave in this case
22 when you spoke to officers was August 15th. Is that right?

23 A I believe it was.

24 Q Okay. Actually it was August 18th. Do you recall?
25 At 8:00 o'clock that night? Is that right?

1 A Yes.

2 Q And that is a short typewritten statement. Do you
3 recall seeing that statement?

4 A Yes.

5 Q And that is the statement which you note something in
6 particular about the person's eye. Is that right?

7 A Yes, ma'am.

8 Q Okay. Do you recall what you told officers that night
9 or what's in that statement about the eye?

10 A Yes, that it -- his left eye appeared to be bloodshot
11 or possibly a busted blood vessel, just severely red.

12 Q And they had shown you a picture at that point. Is
13 that right?

14 A Yes.

15 Q Okay. And ---

16 MS. INZERILLO - Your Honor, I'm not sure if you
17 still have the picture ---

18 THE COURT - I do not.

19 (WHEREUPON, DISCUSSION HELD BETWEEN COUNSEL WHICH
20 WAS NOT REPORTED.)

21 MS. INZERILLO - Your Honor, may I approach the
22 witness?

23 THE COURT - Yes.

24 MS. INZERILLO - Your Honor, I'm showing Mr.
25 Felker what's been marked as State's Exhibit 13.

1 Q Mr. Felker, does that -- is that the photograph that
2 you were shown by officers?

3 A Yes, it is

4 Q Okay. And do you notice anything about that picture?

5 A His left eye is bloodshot.

6 Q Okay. And was this the only photograph that they
7 showed you?

8 A Yes, it was.

9 Q Okay. And I believe that evening the statement that -
10 - well, actually let me show you.

11 MS. INZERILLO - May I approach the witness, Your
12 Honor?

13 THE COURT - Yes, you may.

14 Q Mr. Felker, I'm going to show you this typewritten
15 statement. Is that the -- that scribble underneath it, is
16 that your signature?

17 A Yes, it is.

18 Q Okay. And that statement says essentially the only
19 thing you remember about his is you thought it was really
20 bloodshot or a ruptured vessel or something, is that right?

21 A That was the prominent feature I remembered.

22 Q Okay. Prior to this evening, the evening of the
23 robbery, did you know Mr. Phillips?

24 A No.

1 Q Okay. So you know Mr. Phillips by name through either
2 the police investigation or any conversations with the
3 solicitor. Is that right?

4 A Yes.

5 Q Okay. The testimony as well, was that the person that
6 walks up to the counter, lifted his shirt and showed a gun.
7 Is that right?

8 A Yes.

9 Q Okay. And then immediately based when you saw that,
10 that's when you hand over the cash.

11 A That's when I proceeded to clear out the till.

12 Q Okay. Are you guys trained to just comply whenever --

13 -

14 A Yes.

15 Q --- a robbery request is made? Okay.

16 A Yes, ma'am.

17 Q So really that's going through your head even before
18 you see the gun. You just are not sure if this is real or
19 not.

20 A Like I stated earlier, I was a bit shocked and
21 thinking this can't be real, but once he, you know, showed
22 me the pistol in this waistband, that's when I knew it was
23 real and proceeded to clear out the register.

24 Q Okay. And you just doing what they tell you to do at
25 these ---

JEREMY FELKER - RE-DIRECT BY MR. PLEMING

45

1 A Yes.

2 Q Okay.

3 MS. INZERILLO - Your Honor, I have no other
4 questions.

5 THE COURT - Anything further, Mr. Fleming?

6 MR. PLEMING - Just one question, Your Honor.

7 RE-DIRECT EXAMINATION

8 BY MR. PLEMING -

9 Q Mr. Felker, on the night -- or the early morning of
10 August 13th when you spoke to officers there at the scene
11 at Murphy's, did you describe his eye to them that night?

12 A Yes, I did.

13 Q Okay, so you had already given that information to
14 them on August 13th.

15 A Yes.

16 MR. PLEMING - Thank you.

17 THE COURT - Anything further, Ms. Inzerillo?

18 MS. INZERILLO - No, Your Honor, I just have a ---

19 THE COURT - All right, thank you. You can step
20 down, Mr. Felkner.

21 All right, Mr. Fleming, anything else?

22 MR. PLEMING - We also have Ms. -- well, at this
23 time -- address -- excuse me, Your Honor. We would call
24 Lieutenant Thomasson to the stand.

1 THE COURT - All right, let's do this, I mean --
2 are we -- do we still have testimony as far as State's
3 Exhibit 2? That is the photo of him in front of the beer
4 cooler?

5 MR. PLEMING - Yes, sir, Your Honor, uh ---

6 THE COURT - All right, I -- okay, I'm -- I see
7 what you're doing. Are we going to cover -- are we going
8 to cover -- is it your intent to cover -- introduce all
9 your testimony as far as the State's Exhibit 2 and the mug
10 shot as well?

11 MR. PLEMING - I wasn't going to discuss the mug
12 shot at all during this hearing, but the State's Exhibit
13 Number 2, which is the -- is the subject of the show, for
14 lack of a better term ---

15 THE COURT - Right. Okay, all right, go ahead.
16 Call your next witness.

17 MR. PLEMING - State calls Lieutenant Thomasson.

18 JAMES (RICK) THOMASSON, AFTER BEING FIRST DULY
19 SWORN, TESTIFIES AS FOLLOWS -

20 THE COURT - Lieutenant, how are you doing?

21 MR. THOMASSON - Good, Judge. How are ---

22 THE COURT - Good to see you.

23 MR. THOMASSON - Good seeing you.

24 THE COURT - All right, Mr. Fleming.

25 MR. PLEMING - Thank you, Your Honor.

RICK THOMASSON - DIRECT BY MR. PLEMING

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1 DIRECT EXAMINATION

2 BY MR. PLEMING -

3 Q Will you please state your name and occupation for the
4 record?

5 A James R. Thomasson, York City Police Department,
6 Lieutenant.

7 Q And, Lieutenant Thomasson, did you have the
8 opportunity to become involved in an armed robbery
9 investigation with York County Sheriff's office on August
10 13th of last year?

11 A Yes, sir, I did.

12 Q How'd you become involved with that?

13 A I received information from individual that a robbery
14 was -- had taken place in the Lake Wylie area, and that I
15 may know the individual that did the robbery, so I -- I
16 received information, got the name, went back and looked at
17 the video that -- I think it was The Herald Online,
18 Crimestoppers -- myself and Detective Mumaw and I
19 identified the individual from the video.

20 Q Okay, and -- and who did you speak with prior to
21 looking up that video, without saying what that person told
22 you?

23 A Ms. Wright.

24 Q Okay. And did you know her?

25 A Yes, I did.

1 Q Okay. And what did you do after you pulled up the
2 video and viewed it for yourself?

3 A What did I do afterwards?

4 Q Yes, sir.

5 A Myself and Detective Mumaw went to Ms. Wright's
6 residence there in the City of York and speak with her in
7 reference to that individual that we seen on the video.

8 Q Okay, was anyone else present with you and Detective
9 Mumaw?

10 A Myself, Detective Mumaw and also Ms. Wright.

11 Q Okay. And did anyone from York County come to the
12 scene while y'all were there?

13 A Later on I think Detective Mumaw got in contact with
14 the investigator from York County, and I met with the
15 investigator from York County at Ms. Wright's residence.

16 Q Okay. And when you met with Ms. Wright, tell us what
17 -- what you did?

18 A We met with Ms. Wright; we show her (sic) a --
19 Detective Mumaw had a shot of the individual on his phone,
20 so he showed it to Ms. Wright, and Ms. Wright identified
21 the individual as being her son.

22 Q Okay, and did you see the picture which Detective
23 Mumaw showed to her?

24 A Yes, sir, I did.

1 Q Okay. And would you recognize that photograph if you
2 saw it?

3 A Yes, sir, I would.

4 Q Okay. At this time I'm handing up to you State's
5 Exhibit Number 2. Do you recognize that photograph?

6 A Yes, sir, I do.

7 Q And what is it?

8 A It's a photograph of the individual that's the
9 defendant here in Court today.

10 Q Okay, and is that the photograph that Detective Mumaw
11 showed to Ms. Wright?

12 A Yes, sir, it is.

13 Q Okay. And are there -- how many people are depicted
14 in that photograph?

15 A Just one.

16 Q Okay. And is that the photograph in which she
17 identified her son?

18 A Yes, sir.

19 Q Okay. Did you talk to the defendant in the days -- or
20 did you talk to Jonathan Phillips in the days that followed
21 this incident?

22 A During that time Jonathan and I -- well, Jonathan's
23 girlfriend, one of the young ladies there, she called me.

24 We was talking back and forth. I was talking to her in
25 reference to trying to get him to go ahead and turn his

1 self in to the police so we could get this matter taken
2 care of. During that time I think he was a little scared.

3 Q Okay, did you -- did he eventually turn himself in?

4 A Yes, sir, he did.

5 Q Okay, and when he turned himself in, who did he turn
6 himself into?

7 A To myself.

8 Q Okay, and so -- on what day was that?

9 A I can't remember the date. It was a couple of days
10 after we had spoke with Ms. Wright in reference to the
11 picture.

12 Q Do you know if it was less than one week?

13 A I think so.

14 Q Okay. And what, if anything, did you notice about
15 him?

16 A The first thing I noticed about him when he exited the
17 vehicle that he -- one of his eyes needed some medical
18 attention and I advised him, I said you need to get your
19 eye taken care, what happened to your eye, and I don't
20 think he responded.

21 Q Okay, how -- how would you describe how -- how his eye
22 appeared?

23 A His eye was very, very red. It was bloodshot and had
24 some bruising in his eye.

RICK THOMASSON - CROSS BY MS. INZERILLO

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1 MR. PLEMING - Okay. Thank you. I have nothing
2 further.

3 MS. INZERILLO - May it please the Court, Your
4 Honor.

5 THE COURT - Yes.

6 CROSS EXAMINATION

7 BY MS. INZERILLO -

8 Q Lieutenant Thomasson, Jonathan Phillips' mama is your
9 cousin. Is that right?

10 A No, Jon -- his mother's husband is my cousin.

11 Q Is your cousin. Okay.

12 A Yes.

13 Q And she called you because she was concerned about
14 Jonathan's safety.

15 A Yes, she was.

16 Q Okay. And she told you that she had heard that they
17 were looking for him because he had robbed a convenience
18 store.

19 A No, not in that sense; she did not tell me that.

20 Q Okay. Do you recall what she told you?

21 A She told me that Jonathan had been in -- that he had
22 been -- she had received word that he had been involved in
23 an incident, a robbery there in Lake Wylie and she was
24 concerned for his safety.

1 Q Okay. And based on that phone call is when you pulled
2 up the video, I think on Herald Online or something like
3 that. Is that ---

4 A Yes, ma'am, I did.

5 Q Do you recall exactly what that video was?

6 A It was a picture of Jonathan standing there at --
7 looked like a beer cooler ---

8 Q Okay.

9 A --- inside of a what appeared to me to be the
10 convenience store.

11 Q Okay. Do you still have a copy of that picture, save
12 it in anyway?

13 A No, ma'am, I don't.

14 Q Okay. The -- and that picture was not printed out; it
15 was digital -- is that right? -- that you looked at?

16 A Yes.

17 Q Okay. And based on that and based on Ms. Wright's
18 phone call, you and Detective Mumaw went out to speak with
19 her.

20 A Yes.

21 Q Okay. And you told her that -- did you tell her you
22 had taken a look at the picture and you thought it was
23 Jonathan?

24 A Yes, ma'am, I did.

1 Q Okay. And then did she tell you that she hadn't seen
2 anything, she'd just heard from her daughter?

3 A Yes, she did.

4 Q Okay. And so based on that, Detective Mumaw pulled up
5 a picture on his phone.

6 A Yes.

7 Q Okay. Was it the same Herald Online picture that you
8 had seen or was it a different picture?

9 A It was the same picture that we both looked at.

10 Q Okay. And it was pulled up on his phone -- right? --
11 so it was printed out or anything like that?

12 A No, ma'am.

13 Q Okay. The picture --

14 MS. INZERILLO - Your Honor, may I approach the
15 witness?

16 THE COURT - Yes, you may.

17 Q So State's Exhibit 2 that you were shown, that's a
18 printed out version of a still shot from the video. Is
19 that right?

20 A Yes, ma'am.

21 Q Okay. And that printed out version is a lot more,
22 essentially pixelated or not as clear as if you were to
23 bring in the TV or the computer and pull it up. Is that
24 right?

25 A Yes, ma'am.

1 Q Okay. Is this the exact shot that you looked at the
2 day that you identified Mr. Phillips?

3 A This is the -- one of the exact shots, yes, this is
4 the picture that I looked at the day. (sic)

5 Q Okay. But not in this format; it wasn't printed out.

6 A No, ma'am, it wasn't printed out.

7 Q Okay. So you can look at this and based on what you
8 saw on the Herald Online picture, you know you identified
9 him from that, this is a printed out version of it, so
10 that's what you're ---

11 A (Indicating yes) Yes, ma'am.

12 Q Okay. When was the last time you had seen Jonathan
13 prior to this identification?

14 A Let me think. I think I seen Jonathan maybe a week or
15 two before that that incident happened. I have seen him a
16 lot in and out of the city, but I think I had seen him --
17 he was at a resident off of 321 By-Pass there, and then I
18 saw him standing on the front porch going inside in his
19 house.

20 Q Okay. And you said you were talking to a girlfriend
21 of his about getting him to turn him self in?

22 A Yes.

23 Q Okay, what was that girlfriend's name?

24 A I can't -- I can't think of her name at this time.

25 Q Was it Fallon? Was it Fallon Kendrick?

1 A No.

2 Q No?

3 A I can't think of her name.

4 Q That's all right. But he ultimately does make contact
5 with you and turn himself in. Is that right?

6 A Yes. Uh, it -- it took a while for him actually to
7 come in. She and I kept talking back and forth and, you
8 know, I kept telling her, you know, just have him to, you
9 know, come to me and I will take care of him, make sure he
10 get to the right place and everything, and ---

11 Q Okay.

12 A --- I think that she told that she would be around
13 there around 5:00 p.m., and sure enough, a little after
14 5:00 she shows up with him.

15 Q With him?

16 A (Indicating yes)

17 Q And that's when you noticed his eye?

18 A Yes, ma'am, I did.

19 Q And it's pretty obvious, that -- it was pretty red ---

20 A Yeah.

21 Q --- when he came in, so ---

22 A It was pretty bad.

23 Q Yeah. Did you have any conversations with him about
24 robbery or anything when he turned himself in?

1 A I didn't have any conversation with him about what
2 took place out there, no, I didn't.

3 Q Okay.

4 A If I'm not mistaken, I had one of my officers to come
5 out and -- I think he wanted to say some goodbyes to some
6 people and we did, we let him do that. I think I had one
7 of my officers to come out and cuff him and we took him
8 inside the police department.

9 MS. INZERILLO - Okay. Thank you, Lieutenant.

10 MR. THOMASSON - Thank you.

11 THE COURT - Anything further for this witness,
12 Mr. Fleming?

13 MR. PLEMING - No, sir, Your Honor.

14 THE COURT - Lieutenant, you can step down.

15 MR. THOMASSON - Thank you, sir.

16 THE COURT - Mr. Fleming, call your next witness?

17 MR. PLEMING - Your Honor, defense -- it appears
18 that there's two separate motions in this case regarding ID
19 evidence. The only other evidence we would have would be
20 Ardella Biggers and since that would basically be on a
21 separate motion, I would rather go ahead and hear the
22 motion and have arguments ---

23 THE COURT - When you say separate motions,
24 obviously -- I assume that there's two pieces of evidence
25 you want to get in, the State's Exhibit 2, which is the

1 photo of him in front of the beer cooler that night, and
2 then I assume the mug shot which has not been identified
3 yet. Is that the other -- is that the two pieces of -- is
4 that what -- I need to determine the reliability on those
5 two photos?

6 MR. PLEMING - From my understanding for the
7 purpose of a Biggers hearing, we'd really be dealing with
8 the admissibility of an in-court identification, which in
9 this case so far you've heard from Lieutenant Thomasson and
10 Ms. Wright who have identified the defendant, and according
11 to Ardella Biggers who is the -- is another witness, she
12 also identified the defendant, but it was not based on any
13 officers showing her anything. There was no show-up
14 identification there, so I think those are two separate
15 issues --

16 THE COURT - Well, I mean they're both out-of-
17 court identification, so let's deal with the -- I think in
18 my mind, one, I need to deal with the State's Exhibit 2.

19 MR. PLEMING - Yes, sir.

20 THE COURT - So is there anything you want to be
21 heard as far as allowing -- is there anybody else that's
22 going to testify to State's Exhibit 2 besides Lieutenant
23 Thomasson and Ms. Wright?

24 MR. PLEMING - No, sir, Your Honor.

1 THE COURT - All right, let me hear you on that
2 then, Ms. Inzerillo.

3 MS. INZERILLO - Your Honor, my objection to
4 State's Exhibit 2 is firstly that it is -- has not been
5 shown that it is an accurate representation of what these
6 witnesses were shown that day. I want to be clear, in any
7 of arguments involving the best identification in this
8 case, we're not disputing that his own mother knows him,
9 and that by extension, Lieutenant Thomasson as a family
10 member knows him. The defense's issue with State's Exhibit
11 2 with the other testimony is that we are not aware of what
12 was actually used to identify Mr. Phillips at the scene.
13 The -- and I think this might be where the law enforcement
14 video becomes a little more relevant. If you see that, it
15 is I think arguably a little bit -- I don't want to say
16 clear -- but it does not look the same as State's Exhibit
17 2. State's Exhibit 2 was much more pixelated. As the
18 mother indicated, she cannot make out any distinguishable
19 features about the person in the video, I mean in that
20 picture, as has been presented by the State to Court. In
21 using that picture, even though the State may maintain it's
22 just a printed out version of it, in printing it out, it
23 distorts whatever was shown to them, and since we actually
24 don't know what was shown to them, then we don't -- I do
25 not believe that the prongs can be met by the State in

1 terms of any accuracy of the description of the suspect,
2 the level of certainty, the length of time that they looked
3 at it to determine, because we don't have that underlying -
4 -- we don't have that underlying identification or picture
5 that was used to identify them, (sic) and so because of
6 that, the prongs can't be -- with what's been submitted I
7 can argue that that photograph is more pixelated and,
8 therefore, the features are not clear, but I believe the
9 testimony has been that's not what they looked at at the
10 scene, and because there's a disparity between the two,
11 Your Honor, I would ask that State's Exhibit 2 be excluded
12 and that the witnesses not be allowed to identify Mr.
13 Phillips from that.

14 THE COURT - All right, thank you. Mr. Fleming?

15 MR. PLEMING - Yes, sir, Your Honor. Well, Your
16 Honor, I would first note that each of the witnesses
17 described the photograph that they observed out-of-court.
18 They then after seeing State's Exhibit Number 2 stated that
19 it was the same photo, that it was the same image, the same
20 scene depicted, and that from that they stated on -- in
21 their testimony, each of them, that -- that it was -- that
22 it was the -- Mr. Phillips, that it was the person that
23 they had previously identified out-of-court. And, Your
24 Honor, the fact that an ID witness knows the accused
25 remains a extremely significant factor in determining its

1 reliability. We have reliability of an out-of-court
2 identification, and basically the fact that both of these
3 witnesses, Detective -- or Lieutenant Thomasson and Ms.
4 Wright had prior familiarity sufficient that they could
5 identify Mr. Phillips immediately upon viewing the out-of-
6 court photograph and confirming that it was the same photo
7 here, and the State would just argue that any distortion
8 from printing the photo out was minimal, and I think that
9 that is supported by the fact that they can say that's the
10 same picture, and it doesn't distort it enough to change
11 their identification. I mean they saw the picture today;
12 each of those witnesses could've said, well, I can't say
13 for sure that's the same picture, because it's too
14 distorted, and image is, you know, too pixelated, but they
15 didn't. They said that's the same photograph and we're
16 still able to identify the defendant. Also, Your Honor,
17 our Supreme Court in State v. Liverman, 398 South Carolina
18 130 a 2012 case, if I might just bring the Court's
19 attention to some of the language in that opinion, the
20 Court stated that it was -- it was concurring with those
21 jurisdictions that consider show-up identification
22 procedures, which could be normally considered unduly
23 suggestive as merely confirmatory in instances where there
24 -- the witnesses have prior familiarity. In this case
25 that's a perfect example of that where you have the -- Ms.

1 Wright coming forward with information and they bring the
2 photograph to her just to confirm that what she has -- what
3 she has suggested to them is, in fact, the case, the
4 officers had not even identified Mr. Phillips until Ms.
5 Wright brought it to their attention, and so if there's any
6 unduly suggestive showing of photographs -- or -- if
7 anything was suggested, the suggestion came from his
8 mother, not the officer in the case.

9 THE COURT - All right ---

10 MS. INZERILLO - Your Honor -- I'm sorry, if I
11 could respond, because I don't think I addressed the actual
12 identification by Ms. Wright. I only the addressed the
13 admissibility of that picture from the defense's
14 perspective. Your Honor, I would add that my notes from
15 Ms. Wright's testimony is that she was not sure what
16 State's Number 2 -- if that -- she could not remember the
17 picture she was shown at the time and she was not sure that
18 the State's Number 2 was that picture, and clearly
19 testified under my cross examination that she can't
20 identify her son from that picture, so I do think that is
21 relevant. Your Honor, if the Court wishes to take into
22 consideration the circumstances and the context surrounding
23 the identification of Ms. Wright's contact towards
24 Lieutenant Thomasson regarding her identification, I do
25 wish to also place on the record that -- that Ms. Wright

1 has heard through a third party that it could be him, so
2 the -- the information that's been provided to me is that
3 there were some still shots and some surveillance video put
4 out by the sheriff's office, but we don't know the audio
5 and I think, as I mentioned at the beginning of this case,
6 this is a little bit unusual because it does seem the
7 testimony to be that everybody watched something on TV and
8 knew he was charged with an armed robbery or knew they were
9 looking for this person and something to an armed robbery.
10 When she's interviewed she is told this is what they're
11 looking for and is this -- you know, is this him. I -- my
12 argument and my analogy would be that that would be
13 improper if she -- if they just brought her into a room and
14 sat down and told her that... this is the person we're
15 looking for in an armed robbery, do you recognize him...
16 and whether that comes from a news outlet which I think a
17 plain reading does seem to show, that would -- that
18 heightens the suggestibility because they already know --
19 the potential witness already knows more about the case I
20 think that would be allowed under law had the officers just
21 interacted with her in a room, that -- as I indicated I --
22 the defense's issue is not does the mother knowing her son;
23 the issue is the context and the suggestibility around the
24 identification and that, again, I would reiterate, because
25 we don't know what was said, but clearly something was said

1 about an armed robbery, clearly something was told to her
2 that gave her a concern about his safety so we don't know,
3 the public was informed that he was armed and dangerous,
4 not to interact with him, anything like that that is
5 customary for CrimeStopper videos, because that audio was
6 not overlaid on the clip I believe that the State
7 received, and so since we don't know -- we don't know what
8 was put in the Herald Online article, I think that
9 heightens the suggestibility in this case, and therefore,
10 the -- that picture and her identification of him should be
11 excluded.

12 THE COURT - All right, we don't -- I don't need
13 to hear anymore. I'm going to deny your motion, Ms.
14 Inzerillo. I find that - (1) the Court finds that the out-
15 of-court identification was not unduly suggestive. It
16 appears that it is a -- by even his mother's testimony a
17 photo of him standing in a convenience store, so what I had
18 is that she testified that State's Exhibit 2 was a picture
19 of Jonathan in a convenience store; that is her son; he's
20 24 years old, certainty -- even if there was an argument
21 made that it was unduly suggestive, that the second prong
22 of reliability is that it, never-the-less, if the
23 identification was so reliable that there was no
24 substantial likelihood of misidentification existed, this
25 is his mother who testified when she saw the picture, that

1 that was him, and so even as far as the other factors, as
2 far as the degree of attention, what she saw -- that's her
3 son. The testimony from Lieutenant Thomasson was that the
4 defendant is his -- is -- that he is a cousin of the
5 family, in fact, a cousin of the husband of the mother. He
6 testified that he had seen him in and around town, and that
7 he, in fact, had seen him on a porch some time earlier, a
8 few weeks earlier, he obviously knows him as a family
9 member and also someone who lives in town, and so,
10 therefore, Lieutenant Thomasson's identification of State's
11 Exhibit 2 is also reliable, and I find that there appears
12 to be no substantial likelihood of any misidentification
13 from those two witnesses as far as State's Exhibit 2, so
14 I'll allow the State to present that evidence to the jury.

15 All right, what's the next?

16 (WHEREUPON, DISCUSSION IS HELD BETWEEN COUNSEL
17 WHICH WAS NOT REPORTED.)

18 MS. INZERILLO - Your Honor, may we approach?

19 THE COURT - Yes.

20 (WHEREUPON, BENCH CONFERENCE WAS HELD WHICH WAS
21 NOT REPORTED.)

22 THE COURT - All right, for purposes of the
23 record, I met with counsel at bar and we discussed some
24 issues concerning a potential witness, and it appears we're
25 at the point where the State would like to also offer

EDDIE STRAIT - DIRECT BY MR. PORTER

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1 during the course of the trial the mug shot -- well, for
2 better -- lack of a better term, a photo that was generated
3 from a mug shot and so we need to put some -- we need to
4 proffer that testimony now, so Mr. Fleming or are you, Mr.
5 Porter going to ---

6 MR. PLEMING - Mr. Porter.

7 THE COURT - Mr. Porter, if you would call your
8 first witness on this issue.

9 MR. PORTER - State calls Detective Eddie Strait.

10 EDDIE STRAIT, AFTER BEING PREVIOUSLY SWORN

11 TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MR. PORTER -

14 Q Detective Strait, you've previously testified. The
15 questions that I have regarding your meeting with
16 defendant, you -- did you meet with him on August 18th?

17 A Yes, I did.

18 Q And that -- where was that meeting?

19 A In the detention center here at Moss Justice.

20 Q How long did you meet with him?

21 A Approximately 15 minutes.

22 Q Did you -- do you recall what he looked like at that
23 meeting?

24 A Yes.

1 Q Would you be able to identify a picture of him as he
2 appeared that day during your interview?

3 A Yes.

4 Q I'm going to approach and show you what's been marked
5 -- what we've marked as State's Exhibit 13. Could you
6 please tell the Court what that is -- if you recognize the
7 person depicted in that photo?

8 A Yes.

9 Q Who is that a photo of?

10 A Defendant.

11 Q How do you know that that's a picture of the
12 defendant?

13 A I mean the day that I met with him I recognized him,
14 the eye injury or whatever to his left eye.

15 Q Excuse me. Could you repeat that?

16 A I just recognized him from the interview I had with
17 him and also the injury or whatever issue he had with his
18 left eye.

19 Q Is that a fair and accurate depiction of the defendant
20 you met with ---

21 A Yes.

22 Q --- as you met with him on August 18th?

23 A Yes, it is.

24 MR. PORTER - Thank you. No further questions.

25 THE COURT - Ms. Inzerillo?

EDDIE STRAIT - CROSS BY MS. INZERILLO

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1 CROSS EXAMINATION

2 BY MS. INZERILLO -

3 Q Detective, you didn't see Mr. Phillips prior to your
4 interview with him?

5 A No, that's correct.

6 Q Okay. And that booking photo was taken before you
7 interviewed him. Is that right?

8 A Yes.

9 MS. INZERILLO - Your Honor, I have no further
10 questions.

11 THE COURT - All right, let me see the -- let me
12 see the photo. Anything further, Mr. Porter?

13 MR. PORTER - No, sir, Your Honor.

14 THE COURT - Ms. Inzerillo, anything you want to
15 put on the record as far as admissibility of State's
16 Exhibit 13?

17 MS. INZERILLO - Your Honor, my concern about
18 exhibit this is the introduction through Mr. Felker. I
19 believe his testimony has been consistent through his
20 numerous statements in this case that that description of
21 Mr. Phillips's eye was -- it was not written down; it was
22 not even conveyed to the initial responding officer. It
23 was only -- he only made a statement of it after he was
24 shown that picture by law enforcement, and as the Court can
25 see in that picture, it is very pronounced. The -- the

1 injury to his eye -- I think Lieutenant Thomasson also said
2 it was very pronounced when you see him, and I would also
3 point out to the Court that there was a five-day time lag
4 between the robbery and the second statement given by Mr.
5 Felker where he does finally make note of the eye.
6 Certainly with this type of injury there's been no
7 testimony by anyone else that they saw Mr. Phillips on that
8 day and that that is what he looked like on that day. I
9 think Lieutenant -- Detective Strait has testified that the
10 person in that picture of how he appeared on that day,
11 which I've not -- I'm sorry -- on the day of the 18th when
12 he interviewed Mr. Phillips, I'm not sure without more that
13 that makes that mug shot relevant to the identification of
14 the person that went into the convenience store on the 13th
15 and robbed it.

16 THE COURT - All right, thank you. I'm going to
17 deny your motion. One, I find that Mr. Felker's
18 identification of the defendant in State's Exhibit 13, one,
19 is reliable. He did indicate that he spent 30 to 45
20 seconds of interaction with the defendant while he was at
21 the counter, that he -- that he -- that had details about
22 him coming to the counter with beer, that he received a
23 note from the defendant to give up -- give all the money,
24 he indicated that he looked up at the defendant and said,
25 really; he saw him lift up his shirt, saw the pistol; he

1 saw the defendant ask for any hundred bills that are under
2 the drawer. He testified that he handed the defendant what
3 money he had and the beer and that during that time he was
4 able to get a -- was able to -- those are circumstances in
5 which his identification is reliable. I find that State's
6 Exhibit 13, that the testimony is that it was taken from a
7 mug shot, however, State's Exhibit 13 is simply a picture
8 of the defendant from just below the chin up. There is no
9 indication of any type of clothing in the photo, other than
10 there is just a tad bit of white that likely -- well, I'm
11 not sure what that is. There is no indication it was taken
12 from -- and -- by law enforcement, and so I find that that
13 photo is not suggestive and is relevant and makes no --
14 there is a need to introduce the photo based on
15 identification issues. It is not suggestive in any way
16 that he has a criminal record, and there is nothing as far
17 as any testimony that's been presented so far or that would
18 be presented to the jury that would draw attention to how
19 it originated or what it implies, so I'm going to allow it
20 in.

21 All right, anything else?

22 MS. INZERILLO - No, Your Honor. Thank you.

23 MR. PLEMING - No, sir, Your Honor.

24 THE COURT - All right, any other pre-trial
25 issues?

1 reached is properly recorded and given to the -- and given
2 to the Court at the end of the trial.

3 Anything further from the State?

4 MR. PLEMING - No, sir, Your Honor.

5 THE COURT - Anything further from the defense?

6 MS. INZERILLO - No, Your Honor.

7 THE COURT - Well, at this point now we're going
8 to begin the trial. So you can begin your opening
9 statements. Mr. Porter?

10 MR. PORTER - Thank you, Your Honor. May it
11 please the Court. Counsel.

12 Ladies and gentlemen of the jury, be calm, is
13 normally a statement that makes people be at ease, but
14 that's not what happened on August 13th in the early morning
15 hours at the Murphy's Express in Clover to Jeremy Felkner.
16 That's not how that statement was presented to him. It was
17 presented to him while Jonathan Phillips was standing in
18 front of him and after he had handed him a note. Jeremy
19 Felker will tell you about the contents of that note, all
20 the money. That's what that note said, and that's what
21 Jeremy Felker will testify to.

22 Now, ladies and gentlemen, Jeremy Felker was the
23 clerk that night. He had just come on shift at 12:00
24 o'clock, just gotten done ringing up a regular, paper man,
25 and another woman in front of him who had rung up another

1 item. Jonathan Phillips entered the store; Mr. Felker at
2 first didn't take much notice of him, and as he approached
3 the register, he put a beer on the counter, handed him a
4 five dollar bill, Mr. Felker, as he had done so many times
5 before, opened the till. That's when the note came out.
6 He looked up, read the note; Really? That was his
7 response; this is how my night's going to start, be calm.
8 Right after he said that, right after the defendant said
9 that, guess what? Silver pistol tucked in his waist band.
10 Ladies and gentlemen, it did not take too long for Jeremy
11 Felker to understand the message that was being sent, and
12 you will see -- not only will you hear from Jeremy Felker,
13 but you will see on the store surveillance how long it took
14 him to realize the significance of what happened, what was
15 happening to him and what he had to do next. Money out of
16 the till. The defendant leaves. He immediately calls 9-1-
17 1. Now, ladies and gentlemen, not only are you going to
18 hear testimony from Mr. Felker, but you're going to see --
19 you're going to have his eyes and ears; the surveillance
20 video from the store will be played for you in this
21 courtroom. The 9-1-1 call will be played. You will hear
22 the defendant's voice as he says this too, as he says be
23 calm, as he says, the hundreds under the till as well.
24 Now, if that were all we had, I could sit down, but that's
25 not all. Ladies and gentlemen, the defendant's own mother

1 will testify. She notified a lieutenant with the York
2 Police Department. She made an identification from the
3 store surveillance videos of her own son in that store from
4 the store surveillance video that she was shown by one of
5 the officers from York PD. You will hear her testimony as
6 well as the testimony from Lieutenant Thomasson who knew --
7 who knows Jonathan Phillips. He viewed the video, straight
8 dead-away, that's Jonathan.

9 Now, ladies and gentlemen, the defendant because
10 of these actions was charged with armed robbery, and that
11 requires the State to prove that he took property from the
12 presence of another person while armed with a deadly
13 weapon. Well, ladies and gentlemen, the testimony that we
14 will produce here today will prove all of those elements
15 and after you watch the video and you hear the testimony
16 and you hear the 9-1-1 call, after you hear Detective Eddie
17 Strait testify about his investigation and after you hear
18 the confession -- the statement, not confession, but the
19 statement of the defendant that he was there that night,
20 recognizing that he's portrayed on that video, that same
21 surveillance video that we'll show you, that's me. Ladies
22 and gentlemen, after you've heard all that evidence Mr.
23 Fleming will address you, will ask you to find him guilty
24 of the offense of armed robbery. Thank you.

25 THE COURT - Thank you. Ms. Inzerillo?

1 MS. INZERILLO - Thank you, Your Honor. May it
2 please the Court.

3 How many times in life have you been asked about
4 an event or something that you did, and you can say with
5 utmost certainty what happened, but it's not correct? That
6 happens a lot. Our memories fade over time, change over
7 time; details come in and out of our brains that -- that
8 are substituted.

9 Ladies and gentlemen, Jonathan Phillips is
10 charged with armed robbery in this case, and he's charged
11 with walking into a convenience store in Lake Wylie and
12 stealing goods by force. And the State told you in their
13 presentation that you're going to hear testimony and you're
14 going to see videos, and a lot of times in these cases it's
15 presented as a nice, neat package, but the reason that we
16 ask 12 or 14 separate and distinct people to come in here
17 is because it's not always a nice, neat package. You will
18 see surveillance video in this case. You may hear
19 statements being said, but you're not going to see
20 everything that they're claiming about a statement. You
21 will, I would assume since they mentioned it, hear from Mr.
22 Phillips's mother, but you will also not hear her say with
23 absolute certainty that it was Mr. Phillips. The beauty of
24 this case is Mr. Felker's recollection may not match what
25 you see on the video. We live in an age where things are

1 recorded, audio-recorded, video-recorded. We have the
2 ability to push rewind and see what happens, which is an
3 unusual thing. We take it for granted, but it's unusual.
4 There is surveillance video in this case, so you'll see
5 video. There's a statement in this case which you won't
6 hear. All of these things I ask for you to take into
7 consideration, because it's not a nice, neat package. Mr.
8 Phillips is not charged with being in a convenience store
9 that evening; he's charged with robbing it with a deadly
10 weapon, and he's charged with possession of that deadly
11 weapon while committing a violent crime. That is why
12 you're here, ladies and gentlemen, to listen to the
13 evidence, to look at the package and to see if he's guilty
14 of those charges. At the conclusion of this case, once you
15 hear Mr. Felker's recollection, once you hear the testimony
16 even by his mother and once you see the surveillance video,
17 I would argue that you will find him not guilty. Thank
18 you.

19 THE COURT - Would the lawyers approach?

20 (WHEREUPON, BENCH CONFERENCE HELD IN THE PRESENCE
21 OF THE JURY BUT OUT OF THE HEARING OF THE JURY WHICH WAS
22 NOT REPORTED.)

23 THE COURT - Ladies and gentlemen, I just talked
24 with the lawyers a little bit about logistics, and we
25 anticipate that the next -- the first witness may be very

1 lengthy, so we're going to take an opportunity to let you -
2 - let the bailiff take you back to your jury room, let you
3 get situated back there and then -- so we're going to take
4 a break before that witness. We'll take about 10 or 15
5 minutes. Again, do not discuss the case at all. Thank
6 you.

7 (WHEREUPON, JURY EXITS THE COURTROOM)

8 THE COURT - All right, we'll be at ease for about
9 10 or 15 minutes.

10 (WHEREUPON, RECESS TAKEN)

11 THE COURT - State ready?

12 MR. PLEMING - Yes, sir, Your Honor.

13 THE COURT - Defense ready?

14 MS. INZERILLO - Yes, Your Honor.

15 THE COURT - All right, let's bring the jury in.

16 (WHEREUPON, JURY ENTERS THE COURTROOM)

17 THE COURT - All right, Mr. Fleming, call your
18 first witness.

19 MR. PLEMING - Thank you, Your Honor. At this
20 time the State calls Jeremy Felker.

21 JEREMY FELKER, AFTER BEING FIRST DULY SWORN,

22 TESTIFIES AS FOLLOWS -

23 DEPUTY CLERK - You may be seated.

24 DIRECT EXAMINATION

25 BY MR. PLEMING -

1 Q Please state your full name for the jury.

2 A Jeremy Lee Felker.

3 Q Mr. Felker, where are you from?

4 A Tampa, Florida.

5 Q And how long have you -- do you live in this area now?

6 A Yes.

7 Q And how long have you been here?

8 A About four years.

9 Q Where did you attend high school?

10 A Union County, North Carolina.

11 Q And where do you currently live?

12 A Clover, South Carolina.

13 Q Please tell the jury where you work.

14 A I work at the Murphy Express on Lake Wylie.

15 Q And where is that located, more specific?

16 A In the Publix parking lot off of 274.

17 Q Is that in York County?

18 A Yes.

19 Q What is your current position at Murphy's?

20 A Assistant manager.

21 Q And how long have you been working there at that
22 position?

23 A Going on two years now.

24 Q As an assistant manager, do you have access to the
25 store's security camera footage?

1 A Yes, I do.

2 Q And did you report an armed robbery during your shift
3 on the morning of August 13th, 2015?

4 A Yes, sir.

5 Q What were the hours of your shift that morning?

6 A I believe it was 12:00 to 7:00.

7 Q Were you working alone that night?

8 A Yes, I was.

9 Q And how long had you been on your shift when this
10 alleged robbery occurred?

11 A Approximately 20 minutes.

12 Q At this time I'd like you to tell the jury how this
13 incident began.

14 A Well, I was cleaning and helping customers. I had
15 just got done with one of my usual customers -- he's a
16 paper route driver -- there was a lady behind him and we
17 were counting out here change to get -- get some gas and
18 noticed the car pull up on the left side of the store, but
19 I couldn't see the whole vehicle, which, you know, kind of
20 always watch out for that kind of stuff, but the guy walked
21 into the store, but I wasn't really paying him any
22 attention. Once I got done with the lady and her change,
23 the gentleman approached and put a beer on the counter; I
24 said, hey, how are you doing today, and he didn't really
25 say nothing. So I asked him if that was going to be it for

1 him, didn't say nothing, so I took the five dollar bill
2 from him, rang out the register, went to, you know, bag
3 everything up and give him his change and a piece of
4 cardboard I believe it was, was put onto the table or the
5 counter and I picked it up and it said, give me all the
6 money, and at that time I looked up at the customer and --
7 from the note and was like, really, and I was thinking is
8 this really happening right now, because it, you know, just
9 caught be off guard, and that's when he proceeded to lift
10 up his shirt and show me the pistol tucked in his waist
11 band and told me to be calm, and I said okay, and I
12 proceeded to start grabbing the money out of the till and
13 he told me to give him all the hundreds underneath the
14 drawer, which I grabbed the drawer and lifted it up to show
15 him that there was nothing in the drawer and put it back
16 down and handed him over the money that I'd given him or
17 that I had, and he proceeded to take off out the store and
18 jumped into the car. Once he got into the car, picked up
19 the phone, called 9-1-1 and, you know, I reported the
20 robbery.

21 Q Thank you. Mr. Felker, at this time I'd like you to
22 back up just a little bit in that story and tell us --
23 well, actually demonstrate for the jury, if you will, how
24 he -- well, excuse me, let me back up a little bit. When
25 he showed you the piece of cardboard that said all the

1 money and you looked up, describe what he did at that
2 moment?

3 A Said he -- he looked at me and that's when he took his
4 waist -- or his shirt, lifted it up like this and said, --
5 and showed me the gun and said, be calm, be calm, or we
6 cool.

7 Q Okay. And describe the gun that you saw in his
8 waistband.

9 A Was a silver color, probably polished nickel, small
10 caliber. It was a semi-automatic, not a revolver.

11 Q Okay. Is there anything else that you remember about
12 it?

13 A The -- said it was on his right side with the butt of
14 the pistol pointing towards his right side. The hammer was
15 not cocked, so it wasn't, you know, ready to go.

16 Q Okay. How much of that gun was visible to you as it
17 was tucked in his waistband?

18 A From the back of the trigger guard to the hammer, so
19 the whole handle and everything, rear sights.

20 Q Okay. After you handed him the cash and you stated
21 that he left, you stated that you called 9-1-1 at that
22 time?

23 A Yes.

24 Q How soon after he left did you dial 9-1-1?

1 A He was maybe out of the store 10 seconds when I picked
2 up the phone and, you know, dialed and so maybe about 20
3 seconds altogether, 20 or 30.

4 Q And how would you describe the man that you stated
5 robbed you again?

6 A That he was a black male approximately five eight, a
7 hundred and forty-five pounds, beard, close-cut hair and
8 red left eye.

9 Q You say a red left eye. What do you mean by that?

10 A Bloodshot, possibly a busted blood vessel.

11 Q Okay. To your recollection, had you ever seen that
12 man before?

13 A No.

14 Q So you did not recognize him?

15 A (Indicating no)

16 Q Do you see the man who robbed you in this courtroom
17 today?

18 A Yes, I do.

19 Q At this time will you please indicate where he is
20 sitting and point and describe what he is wearing?

21 A Sitting to ---

22 MS. INZERILLO - Your Honor, at this time I would
23 renew previous objections to this ---

24 THE COURT - Your previous objections are noted.

25 Go ahead.

1 A Sitting to the left of the courtroom wearing a blue
2 and white striped shirt.

3 Q To your left?

4 A Yeah, to my left, sorry.

5 MR. PLEMING - Please let the record reflect that
6 the witness has identified the defendant.

7 Q Do you know how much money the defendant got from the
8 register that night?

9 A I believed it to be approximately a hundred and sixty
10 dollars when I was, you know, counting in my head, but it
11 was closer to like a hundred and ninety I think.

12 Q Okay. When you say you believed it to be, when did
13 you -- when are you referring to?

14 A Well, when I first thought about it, when I was
15 counting it out or just grabbing it out of the till I
16 thought I told the police it was probably about two twenty,
17 but, you know, things are happening so quickly.

18 Q That's fine. Were you able to later make a better
19 summation?

20 A Me and my manager, you know, did all the paperwork and
21 it was about a -- it was a -- like a hundred and ninety-
22 eight dollars.

23 Q Okay. Was anyone with the defendant that night?

24 A I believe there was somebody else in the car with him
25 that night, but as for in the store, no.

1 Q Let's talk about the 9-1-1 call that you made.

2 MR. PLEMING - For the record I'm showing what's
3 been previously marked for identification as State's
4 Exhibit Number 1 to defense counsel.

5 Q Mr. Felker, I'm going to hand up to you a disk marked
6 State's Exhibit Number 1. Can you please take a moment to
7 examine that?

8 A (Indicating yes)

9 Q Do you recognize what I've just handed you?

10 A Yes, I do.

11 Q And how are you able to recognize it?

12 A It has my initials and the date I wrote on it.

13 Q Okay. So have you listened to the contents of this
14 disk before?

15 A Yes.

16 Q And how do you know that this is the same disk that
17 you listened to?

18 A Because I signed it with my initials.

19 Q Okay. And what is contained on this disk?

20 A It's a 9-1-1 call where I called in the robbery,
21 speaking with the dispatcher.

22 Q And having listened to this disk previously, is the
23 conversation that's recorded here a fair and accurate
24 depiction of the conversation that took place between you
25 and the 9-1-1 dispatcher that night?

1 A Yes.

2 MR. PLEMING - Your Honor, at this time the State
3 moves to introduce State's Exhibit Number 1 into evidence.

4 MS. INZERILLO - Your Honor, our only objection
5 would be that this witness cannot lay the proper foundation
6 for the care and custody of this piece of evidence.

7 THE COURT - I deny your objection and -- overrule
8 your objection and we'll allow State's Exhibit 1 to be
9 entered into evidence.

10 MR. PLEMING - Thank you, Your Honor. If the
11 please the Court will be published at this time.

12 (WHEREUPON, DISK IS MARKED INTO EVIDENCE AS
13 STATE'S EXHIBIT NUMBER 1.)

14 (WHEREUPON, DISK IS PLAYED FOR THE JURY)

15 Q Mr. Felker, after you called 9-1-1 how long did it
16 take for officers to respond?

17 A Probably about 45 seconds or so.

18 Q And do you recall any of the names of the officers
19 that arrived at Murphy's that night?

20 A No, I do not.

21 Q What happened when they arrived?

22 A I told them, you know, what happened at first, and
23 then there was like three or four of them took off back in
24 their cars to go search around for the vehicle, and then
25 one of -- one or two stayed with me and we uh -- they took

1 my statement after I got calmed down and we re-watched the
2 videos to see what we could tell and all.

3 Q Okay. So you were able to pull the video for the
4 officers that were there?

5 A Yes.

6 Q And did you watch that video, the in-store footage
7 with them?

8 A (Indicating yes) Yes.

9 Q Did you see the incident in full?

10 A Yes, I did.

11 MR. PLEMING - At this time I'm showing defense
12 counsel some photographs previously marked as State's
13 Exhibits numbered 2 through 11.

14 Q Mr. Felker, I'm now showing you State's Exhibits 2
15 through 11 to you. Please take just a moment to flip
16 through those and take a look at each one.

17 A (Witness complies)

18 Q Are you familiar with the scene depicted in each of
19 those ten photos?

20 A Yes, I am

21 Q And what -- what is the scene that's depicted in each
22 of these photographs?

23 A It's the back walkway of my store by the drink
24 coolers.

1 Q And is the scene depicted in each of these ten
2 photographs a fair and accurate depiction of inside the
3 store as it would've appeared on the early morning hours of
4 August 13th of last year?

5 A Yes, sir.

6 MR. PLEMING - At this time the State moves
7 State's Exhibits Number 2 through 11 into evidence.

8 MS. INZERILLO - Your Honor, defense would renew
9 previous objection to State's 2 and make similar objections
10 to the remainder of them.

11 THE COURT - All right, the objections prior made
12 are noted -- States -- under the Court rule; they are
13 admitted into evidence.

14 MR. PLEMING - Thank you, Your Honor.

15 (WHEREUPON, PHOTOGRAPHS ENTERED INTO EVIDENCE AS
16 STATE'S EXHIBITS 2 THROUGH 11.)

17 MR. PLEMING - At this time I'd like to publish
18 just State's Exhibit Number 2 for the jury, Your Honor.

19 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 PUBLISHED TO
20 THE JURY)

21 Q Mr. Felker, now you said that you were able to pull
22 the video for the officers that night. Were you actually
23 able to make a copy of the video for them that night?

24 A No, I wasn't. It -- it was a newer video system that
25 I hadn't been fully trained on yet, but I was able to bring

1 up the video to show them; I just couldn't make a copy of
2 it yet.

3 Q Okay. And were you able replay the entire incident
4 for them?

5 A Yes.

6 Q Did you give a written statement of the incident that
7 night?

8 A Yes, I did.

9 Q And have you since been able to view the video that
10 was captured from your cameras at Murphy's that night?

11 A Yes.

12 Q And where did you watch this video again?

13 A I've watched it at the store, and I've watched it
14 here.

15 Q Okay.

16 MR. PLEMING - At this time I'm showing State's
17 Exhibit Number 12 as previously marked to defense counsel.

18 Q Mr. Felker, I'm showing you a disk previously marked
19 as State's Exhibit Number 12. Do you recognize this disk?

20 A Yes.

21 Q And have you watched what's recorded on this disk?

22 A Yes, I have.

23 Q Please tell the jury what's on this disk.

1 A It shows a few different camera angles of the
2 defendant in the store and shows me, you know, getting the
3 note and handing him the cash.

4 Q Okay. And how do you know that all of those images of
5 that scene is depicted on that disk?

6 A Because it's the same disk I watched; it's got my
7 initials and the date on it ---

8 Q You marked it ---

9 A --- where I signed it.

10 Q Is that the date that you watched it again?

11 A Yes.

12 Q And what is the date?

13 A 2/4/16.

14 Q Okay. Is the art of the images in the scene that's
15 depicted on this disk a fair and accurate depiction of the
16 scene at Murphy's and the events that transpired that night
17 on August 13th, 2015?

18 A Yes, sir.

19 MR. PLEMING - At this time, Your Honor, the State
20 would move to introduce State's Exhibit Number 12 into
21 evidence.

22 THE COURT - Defense?

23 MS. INZERILLO - Same objection as the 9-1-1.

24 THE COURT - All right, objection's noted.

25 State's Exhibit 12 is introduced into evidence.

1 MR. PLEMING - Thank you, Your Honor.

2 (WHERUEPON, STATE'S EXHIBIT 12 IS ENTERED INTO
3 EVIDENCE.)

4 Q Before I publish State's Exhibit Number 12, let me ask
5 you a couple more questions, Mr. Felker. Having viewed the
6 contents of this disk, State's 12, the footage from this
7 disk is from how many different camera angles?

8 A Um, I believe we had three or four camera angles of
9 him.

10 Q Three or four?

11 A (Indicating yes)

12 Q Did you watch the footage from all of the camera
13 angles that are recorded on this disk?

14 A Yes.

15 Q Okay. And for the record, are each of the scenes
16 depicted from each of those four camera angles fairly and
17 accurately depicting the scene of the incident that night?

18 A Yes.

19 Q Is the sound audible on the footage from all four
20 cameras?

21 A No, it's not. There's only two microphones in the
22 store that actually record sound.

23 Q Okay, and do both of those microphones record sound as
24 well as the other?

1 A I don't believe they do. Usually the microphone over
2 register two has the better sound quality.

3 Q Okay. And that's register two?

4 A Yes.

5 Q Okay.

6 MR. PLEMING - If it pleases the Court, the State
7 would publish State's Exhibit 12 at this time.

8 THE COURT - All right, you may publish it.

9 (WHEREUPON, STATE'S EXHIBIT 12 IS PUBLISHED TO
10 THE JURY.)

11 Q Mr. Felker, as assistant manager, are you basically
12 familiar with how the cameras work at the store?

13 A Yes.

14 Q And do they record continuously around the clock or
15 must they be activated?

16 A They um -- they turn them self off if -- no -- or they
17 don't turn them self off. They pause if there's no motion
18 in front of them after a couple seconds.

19 Q Okay. And once there is motion in front of them ---

20 A They automatically start recording.

21 Q All right. Do you know how many seconds of there
22 being no motion in front of the camera it takes before it
23 pauses?

24 A It's one to two seconds. It's almost instantaneously
25 cutting itself off.

1 Q Okay. And when that happens, does the screen go
2 black?

3 A It freeze -- it's a freeze frame of the last scene it
4 recorded.

5 Q Okay. All right, at this time we're going to play
6 those videos; I'm going to hand you a laser pointer, which
7 you -- I will just ask you to use this to explain to the
8 jury what we're seeing on the video. We'll begin by
9 playing kiosk video at approximately 35 seconds in this
10 frame.

11 A This is the left side of my store, outside view of
12 pump A. That's one of my usual customers. He comes in
13 every night about the same time to get drinks and gas. He
14 delivers papers. (Pause) And as you can see, it was fairly
15 quickly that he went in, filled up two cups of drink and
16 paid for gas. What had happened was, like I said, the --
17 the camera actually froze on that last image until there
18 was more movement, so it looks like it's almost -- you
19 know, he walks in and walks back out.

20 Q Do you recall how long he was actually inside the
21 store?

22 A He's usually in there for about a minute or two. We,
23 you know, say, hey, how you doing, talk about, you know,
24 different things. And then this is the defendant's vehicle

1 pulling up. (Pause) We (sic) waits for them to pull off
2 and gets out.

3 MS. INZERILLO - Objection to the speculation.

4 THE COURT - All right, he can -- sustained.

5 A (Pause) Looking in the store and we (sic) go into the
6 bathroom, which is the door that opens up in the very
7 bottom corner.

8 Q So that's the bathroom door that ---

9 A Yes. (Pause) And comes back out with the beer and
10 money in his hand and gets in the car.

11 Q At this time we'll move to the next frame, the store
12 video. And begin this frame of the video at 2 minutes 35
13 seconds into the frame.

14 A Okay, this is the interior view of the store. This is
15 the defendant walking in.

16 Q Okay.

17 A And you'll see the way the camera pauses right here.

18 Q And how long would you estimate that it took him once
19 he approached the counter to hand you the beer, give you
20 the note, show you the gun, take the money and leave?

21 A Um, 45 seconds.

22 Q Okay, and how do you explain the brevity of what we
23 just watched?

24 A Like I stated earlier, the camera freezes when there's
25 no motion, so he was off screen, which that's the whole

1 view of the camera right there, so once he walked off
2 screen, that camera froze on the last scene it recorded
3 until he started moving across the front of the store and
4 it started back up again.

5 Q Okay. At this time we'll play the next frame,
6 register one, beginning at 3 minutes, 48 seconds into the
7 frame.

8 MR. PLEMING - Beg the Court's indulgence for just
9 a moment. Appears the camera -- the computer's taking a
10 little bit of time. (Pause) All right, I -- we believe we
11 can get it going now.

12 Q All right, Mr. Felker, provide for us what's going on
13 once the camera resumes.

14 A So that's the lady ---

15 COURT REPORTER - I won't be able to get a record
16 unless you pause it.

17 A This is just a lady who's getting gas or counting out
18 change.

19 Q Do you recall what the suspect was doing at this time?
20 Was he in the store at this time?

21 A I believe so, but I wasn't paying attention to him at
22 this point in time until he actually walked up to the
23 counter. That's him right there.

24 Q Okay. Use the laser point if you would.

25 A See the logo on his shirt right there is the same.

1 Q Okay.

2 A And he just handed me the money, so I will open my
3 drawer ---

4 Q All right, let's stop it for just a moment. What have
5 we just seen before we paused it?

6 A He started to hand me the note.

7 Q Okay. Go ahead.

8 A He says, and this too, and he hands me the note; I
9 look up at him, I say really, and then if you watch his
10 shirt, it moves where he's lifting it up showing me the
11 pistol. Unfortunately, the way they have our cameras set
12 up they're more worried about us stealing money than
13 anything else, so that's why it's straight down.

14 Q All right, so what's -- what's blocking our view from
15 ---

16 A That right there would be a cigarette lighter rack,
17 and then that's our poll sign for the register, tells the
18 price of, you know, whatever they're getting.

19 Q Okay, but you said that he -- you can see him lift his
20 shirt?

21 A Yeah, if you watch closely right here in this area,
22 you can see his shirt move up like he's, you know, pulling
23 it up.

24 Q Okay, let's back it up just a couple of seconds and
25 watch that again.

1 A (Pause) There's the note; I look up to say, really,
2 and he lifts the shirt up and puts it down real quick
3 showing me the pistol.

4 Q Okay. And what are you doing now?

5 A I'm getting -- collecting all the money; he's asking
6 me to show him underneath the drawer to make sure there's
7 no hundreds underneath there, and, you know, I lift it up
8 saying there's none under there, put it back down, he leans
9 over to look and I hand him the cash.

10 Q Okay. All right.

11 A I'm standing there telling -- he's saying, be cool, be
12 cool -- or be calm, I'm not doing anything, I'm staying
13 right there, and I'm watching them in the camera -- there's
14 a monitor above my register where I can watch the cameras
15 and I'm waiting to see if he gets in it -- once he gets in
16 the car, and then I reach for the phone and dial 9-1-1.

17 Q All right, thank you. Now play the next frame from
18 register two. And before we do so, while we're queuing it
19 up, have you watched the footage from all these frames on
20 the video?

21 A Yes.

22 Q And what are you able to hear on the camera from
23 register two?

24 A Register two you're actually able to hear mine and his
25 conversation where he's handing me the note telling me

1 this, too, and he keeps telling me to be calm and
2 everything else.

3 Q Okay. When he said be calm, how did you respond?

4 A I'm -- I'm calm.

5 Q And after he asked you all the hundreds from the
6 bottom, how did you respond?

7 A I told him we don't keep hundreds underneath the
8 drawer.

9 Q All right. All right, let's play that at this time
10 and we won't need any additional commentary here; we'll
11 just listen. (Pause) Mr. Felker, just to be sure we all
12 heard it correctly, what's the first thing that you heard
13 him say, the first thing that he said to you after ---

14 A First thing he ever said to me was, and this, when he
15 handed me the note.

16 Q And what's the next thing that he said to you?

17 A He said uh, be calm.

18 Q Okay. Back it up to 6:22. (Pause)

19 MR. PLEMING - All right, I have no further
20 questions. Please answer any questions Ms. Inzerillo may
21 have for you.

22 MS. INZERILLO - May it please the Court.

23 THE COURT - Ms. Inzerillo?

24 CROSS EXAMINATION

25 BY MS. INZERILLO -

1 Q Mr. Felker, you testified today about what you recall
2 happened on that night and then what was through the videos
3 that we saw. Is that right?

4 A Yes.

5 Q Okay. And that night you called 9-1-1.

6 A (Indicating yes)

7 Q Right?

8 A Yes.

9 Q And we heard that phone call played. Right?

10 A Yes.

11 Q And that was the same phone call, the information was
12 the same.

13 A Yes.

14 Q Okay. So, on that phone call you described the person
15 as a black male wearing a brown shirt.

16 A Yes.

17 Q Okay. I'm going to show you the same picture ---

18 MS. INZERILLO - May I approach the witness, Your
19 Honor?

20 THE COURT - Yes, you may.

21 Q --- of State's Number 2 that was shown to you by the
22 solicitor. Is that the same State's Number 2?

23 A Yes.

24 Q And that person is wearing a black shirt. Is that
25 right?

1 A No, that's a brown shirt.

2 Q Okay. You see that shirt in the picture, that's a
3 black shirt?

4 A No, that is a brown shirt. It's the camera angle and
5 lighting.

6 Q So the same camera angle on the video, that looks like
7 a black shirt, that's also makes it a brown shirt.

8 A I saw a black -- brown shirt.

9 Q Okay. The -- when you talked to 9-1-1, the
10 description that you give is black male, brown shirt. Is
11 that right?

12 A Yes.

13 Q You don't mention anything about a gun until they ask
14 about a gun.

15 A They asked for a description of the person, not the
16 gun.

17 Q Okay. In fact, they say -- you say I just got robbed,
18 and they say, okay, did you see a gun. Is that right?

19 A Yes.

20 Q Okay. The -- do you recall talking to officers that
21 night when they responded?

22 A Yes.

23 Q Okay. And when they responded that night, they also
24 asked you about who -- the person that allegedly robbed the
25 store. Right?

1 A (Indicating yes)

2 Q And about the gun.

3 A Yes.

4 Q Okay. And that night you told them that it was a
5 black male, brown shirt. Right?

6 A Yes.

7 Q I want to make sure I get this right now. Black male,
8 brown shirt and um you gave a -- a height/weight
9 description. Is that right?

10 A Yes.

11 Q You also said, short shaved hair, mid-20s.

12 A Yes.

13 Q Okay. So nothing about a beard in that description.

14 A Might've forgotten about that.

15 Q Okay. But it's not in that description.

16 A No, it's not.

17 Q Okay. You also described a gun that evening. Is that
18 right?

19 A Um, I might have.

20 Q Okay. Do you recall describing a pistol as a silver
21 and black pistol?

22 A That sounds about what I said that night.

23 Q But today when you were asked the color of the gun you
24 said it was silver and nickel-polished. Is that right?

1 A Well, nickel-polished, silver color is the frame of
2 the gun, yes.

3 Q Okay. So is nickel the same as black, the same way as
4 brown is the same as black?

5 A That could've been the inlay in the handle that I was
6 describing. It happened six months ago. I'm not going to
7 remember everything today.

8 Q Today you can remember everything about it though.

9 A No, I said I'm not going to be able to remember
10 everything from back then.

11 Q Okay. Today your description describes the person as
12 coming in and having a beer. Is that right?

13 A Yes.

14 Q And that's what you just testified to under direct.

15 A Yes.

16 Q That description you don't tell 9-1-1. Right?

17 A Apparently I didn't. I was under a lot of duress at
18 that point in time.

19 Q You didn't tell the officers that initially responded.
20 Is that right?

21 A I don't remember at this time.

22 Q Okay. But since -- in between that time and today
23 you've seen this video.

24 A Yes.

25 Q Okay, and you've seen these pictures.

1 A Yes.

2 Q Okay. Now, you indicated that you talked to the
3 officers and then once you calmed down a little bit you
4 gave a statement. Is that right?

5 A Yes.

6 Q And you actually hand-wrote that statement. Is that
7 right?

8 A Yes.

9 Q And in that statement -- it's a signed statement where
10 you tell the truth, the whole truth and nothing but the
11 truth.

12 A Yes.

13 Q Okay. So in that statement you don't mention anything
14 about a beard. Is that right?

15 A Yes.

16 Q Okay. You don't describe the gun at all?

17 A That I was under a lot of stress and they told me to
18 write down what happened and I wrote down a short
19 description of what happened.

20 Q Okay. And -- but they told you to say the whole truth
21 -- Right? -- everything that you knew.

22 A Well, at that time that's all I could remember.

23 Q Okay. That statement was given at 1:10 that morning.
24 Right?

25 A Yes.

1 Q That was probably what, 30, 40 minutes after it
2 happened?

3 A Yes.

4 Q Okay. You mentioned today something about his eye?

5 A Yes, his left eye.

6 Q You mentioned that his eye was red.

7 A Yes.

8 Q When you talked to 9-1-1 you don't mention anything
9 about a person's eye being red, do you?

10 A No.

11 Q When you talked to the initial responding officers who
12 get there 45 seconds later you don't mention anything about
13 his eye being red.

14 A I mentioned it to them later on after everything had -
15 ---

16 Q Later after everything what?

17 A Later on that night after I had written my statement.

18 Q Okay. So the -- you told them, they just didn't put
19 that very important piece of information in the description
20 that you gave.

21 A What they do with it is ---

22 Q And you don't put that in your written statement given
23 half an hour later.

24 A I -- I asked them if I needed to and I can't remember
25 if they told me I did or not.

1 Q So you didn't.

2 A I didn't.

3 Q You do, however, give a second statement about a week
4 later. Is that right?

5 A Yes.

6 Q And you meet with -- did you meet with this detective
7 right here?

8 A I typed that statement out at night because I got a
9 note from my manager telling me that a detective had called
10 ---

11 Q Okay.

12 A --- and wanted a -- they said they had read the police
13 report and read the officer's reports and all and wanted me
14 to actually type out or write a description about the eye,
15 because I had mentioned it.

16 Q And they showed you a picture of someone with a bloody
17 eye. Is that right?

18 A Um eventually they did, yeah.

19 Q Okay. And then ---

20 A But ---

21 Q --- they showed you that picture and then you wrote
22 that statement.

23 A No.

24 Q Do you recall testifying in a hearing prior to this?

25 A I do, but I got mixed up.

1 Q Okay. So in that testimony you said that they showed
2 you the picture and then you wrote that statement.

3 A I have seen the picture, yes.

4 Q Okay.

5 A But it wasn't in congruence with writing out or typing
6 out that statement.

7 Q And that statement was given about a week later, six
8 days later.

9 A That's -- I had a few -- they gave me a few days off,
10 and said the detective had said that I had mentioned it to
11 one of the cops, and they wanted a statement written on it.

12 Q Now, the video that we just saw, you indicated that
13 that is an accurate view of what happened that evening.

14 A Yes.

15 Q Okay. So your testimony was that you were kind of
16 doing your normal things at the store and you don't really
17 notice the guy walk in at first.

18 A I was standing at my register and where you're
19 standing at register one, there's a small beer cooler here
20 to your side, which is directly behind register one, and
21 then there's a big lotto box, so if someone walks in from
22 that door on that side of the store, if you're not actually
23 paying attention, you really don't notice them.

24 Q Okay. And on top of that you're working. I mean
25 you're doing your job.

1 A Yes.

2 Q Right?

3 A Yes, ma'am.

4 Q Because there are parts of these clips that we don't
5 see where you're kind of mopping and your straightening up
6 the area and you're doing what you normally do.

7 A (Indicating yes)

8 Q Right? And prior to this, that person that walks in
9 is just the normal customer; he was not really ---

10 A Yes.

11 Q So he didn't get your attention, do anything odd.

12 A No.

13 Q Okay. On this video that we showed with the person
14 standing there and spotting the note, we don't see a gun.
15 Would you agree with that?

16 A Yes.

17 Q Okay. The -- I think you had kind of walked us
18 through some of the conversation back and forth. Is that
19 right?

20 A Yes.

21 Q And the only thing the person said was, be cool, be
22 cool, give me the hundreds or let me see if there's
23 hundreds, something about that.

24 A Yes.

1 Q Okay. Nothing threatening in terms of I'm going to
2 take this gun and shoot you, nothing like that.

3 A Correct.

4 Q Okay. The interaction between you and the person on
5 the other side of the counter takes about 18 seconds.

6 Would you agree with that?

7 A About there, yes.

8 Q Okay. That's about how much time this -- I mean from
9 the time you ring him up and the time you see the note and
10 all of that. Okay.

11 A (No response)

12 Q Now, you're aware as an employee that you're trained
13 to, whenever there is a robbery, to comply.

14 A Yes.

15 Q Okay. And you had testified that when you saw the
16 note that now you think is written on cardboard, that you
17 are like, really, like why is this happening to me.

18 A I just first thought it was a joke or something, ---

19 Q Okay.

20 A --- honestly.

21 Q Immediately you turn to the till though and start
22 giving him money.

23 A After he showed me the gun, yes.

24 Q Okay. Because that's what you're trained to do is to
25 comply with the request for money.

1 A If there is a weapon involved. If someone just walks
2 up to the counter and says, give me all the money, I'm
3 going to laugh at them.

4 Q Okay. So if someone tries to rob you and there's no
5 weapon, you won't take that very seriously at all.

6 A No, ma'am.

7 Q Okay. The only description that you could -- you
8 remarked that you see the car pull up to the left side and
9 then you see him get back in the car. Is that right?

10 A Yes.

11 Q Okay. And you're not ever able to get a tag number or
12 anything to the car?

13 A No, ma'am.

14 Q All right. And I think you had indicated there was
15 nothing prior to this about the person that walked in the
16 store that was unusual, drew your attention.

17 A No.

18 MS. INZERILLO - Your Honor, I have no further
19 questions.

20 THE COURT - Any re-direct?

21 MR. PLEMING - Just briefly, Your Honor.

22 RE-DIRECT EXAMINATION

23 BY MR. PLEMING -

24 Q Mr. Felker, how would you describe your stress level
25 that night when the defendant showed you the gun?

1 A Pretty high. I've not really been through a situation
2 like that before, so -- I mean at first I was okay, but,
3 you know, after it all happened and I got off the phone
4 with 9-1-1, I was just sitting there shaking, you know, and
5 it took me a while to calm down.

6 Q All right. And just so we can clear the air on this,
7 when did you first mention that the defendant had a red
8 left eye, bloodshot left eye?

9 A When I was standing outside with officers smoking a
10 cigarette.

11 Q And you said you'd -- Ms. Inzerillo asked you if they
12 showed you a photograph later of the defendant with a red
13 eye, how many days later was that?

14 A I don't recall. It was after I gave the typed out
15 statement.

16 Q It was after you gave the typed out statement.

17 A Yeah. Well, it was when they actually came and picked
18 it up, because I was working late that night.

19 Q Okay. Do you recall how many lines that written
20 statement was?

21 A The original written statement that night or that
22 morning it happened? Maybe eight or nine at the most. I
23 said I was shaken up and couldn't remember my own name.

24 Q Okay. And in that statement did you say how many
25 seconds it all took?

1 A I might have.

2 Q Did you say what color shoes the guy was wearing?

3 A I don't think I commented on shoes.

4 Q So did you include what you considered to be all the
5 important things about what had just happened to you?

6 A The robbery, the amount of money, the description of
7 him; I believe I put the color of the car on there, so the
8 things I found important at the moment, yes.

9 Q Did you include the fact that he showed you a gun?

10 A I believe I did.

11 Q Okay.

12 MR. PLEMING - I have no further questions.

13 THE COURT - Any re-cross?

14 MS. INZERILLO - Just briefly, Your Honor.

15 RE-CROSS EXAMINATION

16 BY MS. INZERILLO -

17 Q Mr. Felker, in your statement that night you indicated
18 that you wrote out all of the things that you thought were
19 important.

20 A Yes.

21 Q Like the description -- I'm sorry. I don't want to
22 put words in your mouth. Let's see here, the description,
23 the amount of money and the robbery. Is that right?

24 A Yes.

1 Q Okay. I'm going to show you a copy of this, because I
2 want to make sure we're clear.

3 MS. INZERILLO - May I approach the witness, Your
4 Honor?

5 THE COURT - Yes, you may.

6 Q I want you to read in that statement where you
7 described the person.

8 A (Witness complies) Maybe I didn't describe him in this
9 statement.

10 Q And will you read the section of that where you say
11 how much money is missing?

12 A I didn't. Like I said, I don't remember what I wrote
13 that night. It was six months ago. I gave all that
14 information to the actual cop while we were standing there.

15 Q Okay. But you did testify earlier that this statement
16 was given after you had calmed down. Is that right?

17 A Calmed down enough to write, yes. At first I was
18 shaking so bad I couldn't even -- wouldn't been able to
19 write.

20 MS. INZERILLO - Your Honor, I have no further
21 questions.

22 THE COURT - All right, thank you. Mr. Felker,
23 you can step down.

24 Would the lawyers approach?

1 MR. PLEMING - Thank you, Your Honor. The State
2 calls Juanita Wright.

3 JUANITA WRIGHT, AFTER BEING FIRST DULY SWORN,
4 TESTIFIED AS FOLLOWS -

5 DIRECT EXAMINATION

6 BY MR. PLEMING -

7 Q Good morning, ma'am.

8 A Good morning.

9 Q Thank you for being here. Will you please introduce
10 yourself to the jury by stating your name?

11 A I'm Juanita Wright.

12 Q And Ms. Wright, do you know the defendant in this
13 case, Jonathan Phillips?

14 A Yes, I do.

15 Q And what is your relationship to the defendant?

16 A That's my son.

17 Q Did you raise Jonathan?

18 A Yes, I did.

19 Q And how old is your son?

20 A 24.

21 Q Do you see your son in this courtroom today?

22 A Yes.

23 Q Will you please for the record describe what he's
24 wearing and point to where he's sitting?

1 A He's wearing a blue shirt, and he's sitting right
2 there.

3 Q Thank you.

4 MR. PLEMING - Please let the record reflect that
5 Ms. Wright has identified her son, the defendant.

6 Q Ms. Wright, prior to the date of Thursday, August 13th,
7 2015, when was the last time that you had seen Jonathan?

8 A Probably two weeks or more prior to that day.

9 Q And on that day, August 13th, did you speak with him?

10 A On the day of August 13th?

11 Q Yes, ma'am.

12 A Yes, I did.

13 Q Okay. And did you call him or did he call you?

14 A I called him.

15 Q And on that day did you talk to any police officers?

16 A Yes, I did.

17 Q And with whom did you speak from the police
18 department?

19 A Lieutenant Rick Thomasson.

20 Q And did -- you called him?

21 A Yes, I did.

22 Q Did you know him already personally?

23 A Yes.

24 Q And how did you know Lieutenant Thomasson?

25 A He's a cousin of mine.

1 Q Okay. After you talked to Officer Thomasson on the
2 phone, did you speak with any other officers?

3 A Yes.

4 Q And where did that take place?

5 A At my house.

6 Q Do you recall how many officers were at your house?

7 A Two.

8 Q Did you invite them inside?

9 A Yes.

10 Q And did they talk to you about why they were there?

11 A Yes.

12 Q And was this after you had already spoke with
13 Lieutenant Thomasson?

14 A Yes.

15 Q Did -- the officers present, do you recall their
16 names?

17 A No, I don't.

18 Q Did they show you any photographs that day?

19 A Yes.

20 Q And ---

21 MS. INZERILLO - Your Honor, I'm going to ask
22 permission to renew previous objection to this line of
23 testimony and as it relates to the prior ---

24 THE COURT - All right, your objection is noted;
25 the Court's ruling is the same.

1 MS. INZERILLO - Thank you, Your Honor.

2 MR. PLEMING - Thank you, Your Honor.

3 Q And were you able to identify anybody in the photo
4 that they showed you?

5 A Yes.

6 MR. PLEMING - At this time I'm going to retrieve
7 State's Exhibit Number 2 which has been previously admitted
8 into evidence.

9 Q Ms. Wright, will you please take a look at State's
10 Exhibit 2 which I'm handing to you now. Do you recognize
11 this photo?

12 A Yes.

13 Q And how do you recognize it?

14 A I think this is the photo that they showed me the day
15 that they came to my house.

16 Q Okay. Does that photo depict the same scene and the
17 same person that you identified on the day that they showed
18 you the photograph?

19 A Yes.

20 Q Okay. And who is the man that's featured in State's
21 Exhibit Number 2?

22 A Jonathan Phillips.

23 MR. PLEMING - At this time I'm publishing State's
24 Exhibit Number 2 for the jury. If we could dim the lights.

1 MS. INZERILLO - And, Your Honor, I apologize,
2 again, but for completeness of the record, I would also
3 renew my previous objections to this testimony as it
4 relates to this particular exhibit.

5 THE COURT - Thank you, Ms. Inzerillo. Your
6 objection is noted.

7 MS. INZERILLO - Thank you, Your Honor.

8 MR. PLEMING - If we could dim the lights in the
9 courtroom, please.

10 (WHEREUPON, EXHIBIT IS PUBLISHED TO THE JURY)

11 MR. PLEMING - All right, we can bring the lights
12 back up.

13 Q I have just a couple more questions, Ms. Wright. You
14 stated that you did talk to your son, Jonathan, that day.
15 What was the reason for that call?

16 A I called him to ask him had he gotten his self into
17 some trouble.

18 Q Okay. And did you talk to him about the -- about
19 anything involving Murphy's Express gas station?

20 A I just asked him did he get his self into some
21 trouble.

22 Q Okay. How did he respond to that?

23 A He asked me no (sic) -- he told me, no, he didn't.

24 Q Okay. Did you tell the officers that day at your
25 house that you had spoken with Jonathan?

1 A Yes, but I don't know if I had talked to him before I
2 talked to them; I'm not sure.

3 Q Okay. So you don't remember ---

4 A No.

5 Q --- if you had talked to him or not?

6 A No.

7 Q Okay. So you do not recall telling them that Jonathan
8 admitted to you that he had been at Murphy's that day?

9 A No, I didn't tell them that.

10 Q But that he denied robbing the store?

11 A I said -- he said -- well, yes, he did tell me that he
12 had been to the store, but that he didn't rob the store,
13 yes.

14 Q He did not rob it?

15 A Right.

16 MR. PLEMING - Okay. All right, I have no further
17 questions. Thank you for your time.

18 THE COURT - Ms. Inzerillo?

19 MS. INZERILLO - Thank you, Your Honor. May it
20 please the Court.

21 CROSS EXAMINATION

22 BY MS. INZERILLO -

23 Q Ms. Wright, is it fair to say you really don't want to
24 be here today?

25 A It is. It is.

1 Q And you're Jonathan's mama. Right?

2 A Yes, ma'am.

3 Q Okay. And way back on August 13th when you contacted
4 Lieutenant Thomasson, that was out of concern for Jonathan.
5 Is that right?

6 A Yes.

7 Q And you knew Lieutenant Thomasson was your cousin.

8 A (Indicating yes)

9 Q And he's in law enforcement.

10 A Right.

11 Q And so you called him for help.

12 A Yes.

13 Q Okay. As mamas do.

14 A Right.

15 Q Worry about your son.

16 A (Indicating yes)

17 Q Because you didn't know what was going on.

18 A Right.

19 Q So after you called Lieutenant Thomasson, the next
20 thing that happens is, Lieutenant Thomasson and some other
21 officers showed up to your house, and they asked you if it
22 was your son in a picture.

23 A Yes.

24 Q That's how they responded to your concern.

25 A Yes.

1 Q Okay. And this picture -- I'm going to show you
2 State's Exhibit 2.

3 MS. INZERILLO - May I approach the witness, Your
4 Honor?

5 THE COURT - Yes, you may.

6 Q I'm going to show you the same picture, State's
7 Exhibit 2, that the State showed you. Are you sure that
8 that's the exact same picture they showed you on day?

9 A I can't be exactly sure.

10 Q Okay. Did they show you a picture on a piece of
11 paper, or they show you something on a cell phone?

12 A On a cell phone.

13 Q Okay. Now, -- I'm going take this back and we're
14 going to put it up on the screen. Okay? All right, so
15 this is the picture that the State just showed you. Right?

16 A Yes.

17 Q And in this picture you can't see the color of the
18 person's eyes, can you?

19 A No, ma'am.

20 Q And it's really hard to tell if he's got facial hair
21 or not?

22 A It is hard to tell.

23 Q Okay. And you can kind of tell he's wearing a black
24 shirt. Right?

25 A Right.

1 Q And he's wearing some sort of shorts or pants or
2 something like that.

3 A Yes.

4 Q Okay. But if I were to ask you to give me a specific
5 description of the person in this picture, could you do it?

6 A No.

7 Q Okay. You couldn't tell me how tall he was, how much
8 he weighed, anything like that.

9 A No, I couldn't.

10 Q Now, the State also -- the State also asked you about
11 some conversation that you had with Jonathan that day or
12 some time around this time.

13 A Right.

14 COURT REPORTER - Could I ask that she speak up a
15 little bit, please.

16 MS. INZERILLO - Just say yes or no so everybody
17 can hear you. Okay?

18 MS. WRIGHT - Okay.

19 Q And is it fair to say that you relayed that
20 conversation because you were concerned about Jonathan?

21 A Yes.

22 Q And you called Jonathan that day as a mama concerned
23 about what was going on, what you were hearing.

24 A Yes.

1 Q Okay. So you didn't go to the police that day with
2 the intention of ratting out your son or throwing him under
3 the bus or anything.

4 A No, ma'am, I didn't.

5 Q All you wanted as a mama was to find your son and to
6 help him.

7 A Right.

8 Q Okay.

9 MS. INZERILLO - Your Honor, I have no further
10 questions.

11 THE COURT - Thank you. Anything further, Mr.
12 Pleming?

13 MR. PLEMING - Just one or two questions, Your
14 Honor.

15 RE-DIRECT EXAMINATION

16 BY MR. PLEMING -

17 Q In State's Exhibit Number 2, whether or not this is
18 the exact same photo from the same point in time as the one
19 that they showed you, does the store to the best of your
20 memory pictured in this photo look any different from the
21 photo that they showed you?

22 A I mean it's just a picture of a person in a store; I
23 mean I can't say that.

24 Q Okay. And the person that's in this photograph you
25 stated today that you still recognize him to be your son.

1 A Yes.

2 MR. PLEMING - No further questions.

3 THE COURT - Any re-cross?

4 MS. INZERILLO - No, Your Honor.

5 THE COURT - All right, thank you, Ms. Wright; you
6 can step down. Thank you for being here.

7 State call your next witness.

8 MR. PLEMING - The State at this time calls
9 Lieutenant Rick Thomasson to the stand.

10 LIEUTENANT RICK THOMASSON, AFTER BEING FIRST DULY

11 SWORN, TESTIFIES AS FOLLOWS -

12 DIRECT EXAMINATION

13 BY MR. PLEMING -

14 Q Good morning, sir.

15 A Good morning.

16 Q Will you please state your name and occupation?

17 A I'm James Thomasson, Lieutenant, York City Police
18 Department.

19 Q And how long have you worked for York City Police
20 Department?

21 A About 33 years.

22 Q Did you become involved in an armed robbery
23 investigation with the York County Sheriff's office on
24 August 13th of last year?

25 A Yes, sir, I did.

1 Q Please tell the jury, explain to them how you became
2 involved in that investigation.

3 A I received a phone call from Ms. Wright stating that
4 she had received some information about a possibly ---

5 MS. INZERILLO - Your Honor, I object to the
6 hearsay.

7 THE COURT - All right. Sustained.

8 Q Lieutenant Thomasson, will you tell us how you became
9 involved without stating anything that anybody told you but
10 just what it is that caused you to become involved in the
11 investigation.

12 A I received some information to look at a -- The Herald
13 On-line CrimeStoppers and see can I identify a subject that
14 may have been involved in an armed robbery.

15 Q Thank you. And what did you do after you received
16 that information?

17 A I went to the police department and Detective Mumaw
18 and myself we pulled it up on Herald On-line and looked at
19 a still photo of the subject.

20 Q Okay. And before we get to that photo, let me back up
21 just a moment, you said you received a phone call from Ms.
22 Wright. Is that Juanita Wright?

23 A Yes, sir.

24 Q And did you know Ms. Wright personally?

25 A Yes, sir.

1 Q And how do you know Ms. Wright?

2 A She's married to my cousin.

3 Q Okay. And once you saw this still photo from this
4 alleged incident, did you recognize anyone in that
5 photograph?

6 MS. INZERILLO - Your Honor, I would renew my
7 previously objections to this testimony.

8 THE COURT - Your objections are noted.

9 MS. INZERILLO - Thank you, Your Honor.

10 MR. PLEMING - Thank you, Your Honor.

11 Q And who did you recognize in that photo?

12 A The defendant.

13 Q Would that be Jonathan Phillips?

14 A Yes, sir.

15 Q Okay. Were you familiar with Mr. Phillips personally
16 prior to this incident?

17 A Yes, I see Mr. Phillips.

18 Q And do you see Mr. Phillips in this courtroom today?

19 A Yes, sir.

20 Q Please point out for the Court and describe what he's
21 wearing at this time?

22 A He's the gentleman that's sitting at the defense table
23 with the blue shirt on.

24 Q Thank you.

1 MR. PLEMING - And for the record this witness has
2 identified the defendant.

3 Q When do you believe the last time was that you saw Mr.
4 Phillips prior to August 13th of last year?

5 A It may have been like a couple of weeks before that I
6 saw him a resident off of 321.

7 Q Okay. And where did you see him at that residence?

8 A It was on the porch and actually he was going back
9 inside the resident.

10 Q Okay. And after you spoke with Ms. Wright on the
11 phone and then pulled that photograph, what did you do?

12 A Detective Mumaw and myself, we went to Ms. Wright's
13 resident and Detective Mumaw showed her the photo what we
14 had downloaded to his phone.

15 Q Okay. And who were the other officers present?

16 A Myself and Detective Mumaw.

17 Q Okay. And did any other officers ever arrive at the
18 residence while you were there?

19 A Later on Detective Mumaw he contact uh one of the
20 investigators from the sheriff's department that was
21 working on that case.

22 Q Okay. And do you recall who that was?

23 A Detective Strait.

24 Q And when you and Detective Mumaw met with Ms. Wright
25 at her residence, tell us what took place?

1 A I think that we showed her the photo and I think that
2 she also identified the person in the photo.

3 Q And where did that conversation take place?

4 A Its at her resident.

5 Q Okay. Who showed her the actual photo and in what
6 form was that photo on?

7 A Detective Mumaw showed it to her on his cell phone.

8 Q Okay. And were you present there when he showed her
9 the picture on his cell phone?

10 A Yes. Yes, sir, I was.

11 Q And did you see the photograph on his cell phone that
12 you showed to her -- that he showed to her?

13 A Yes, sir, I did.

14 Q And did she recognize the man in that photo?

15 A Yes, sir, she did.

16 Q Okay. When she -- who did she recognize in that
17 photo?

18 A The defendant.

19 MS. INZERILLO - Your Honor, I would object to the
20 hearsay.

21 THE COURT - Overruled.

22 MR. PLEMING - Thank you, Your Honor.

23 Q Did she say how certain she was that was him?

24 A She just advised that was her son.

RICK THOMASSON - DIRECT BY MR. PLEMING

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1 Q Okay. Did she show you any doubt or hesitation when
2 identifying him?

3 A No, sir, she didn't, not to my knowledge.

4 Q Thank you. I'm showing you and the jury what's been
5 already introduced as State's Exhibit Number 2. Is this
6 the photograph that you or Detective Mumaw showed to her
7 that day?

8 A Yes, sir, it is.

9 Q Okay.

10 MS. INZERILLO - Your Honor, may I have permission
11 to make any objections to State's 2 a standing objection?

12 THE COURT - Yes, you may.

13 MS. INZERILLO - Thank you, Your Honor. And I
14 would ask for that -- I would object to this and any
15 further testimony of this.

16 THE COURT - All right. Your objection's noted.

17 MR. PLEMING - Thank you, Your Honor.

18 Q I just have a couple more questions, Lieutenant
19 Thomasson. Did you talk to the Defendant, Jonathan
20 Phillips in the days following this incident?

21 A I spoke with a young lady that Mr. Phillips was with;
22 they called me and I spoke with her on several occasions.

23 Q What was your reason for talking to her?

24 A Our concern was for Mr. Phillips' safety. We wanted
25 him to go ahead and come in, turn his self in, and I asked

1 the young lady to just bring him to me and I'll make sure
2 that he get to the proper place.

3 Q Okay. And did you see Mr. Phillips in the days
4 following this incident?

5 A She did. I don't -- I don't recall the exact date
6 that she bring him to me to the police department out in
7 the parking lot, but we met there around 5:00 o'clock in
8 the afternoon.

9 Q And what did you do when he came in?

10 A He came in and he asked us to give him a few minutes
11 to say goodbye, and we stood outside the vehicle, myself
12 and another officer did, and he said his goodbyes and he
13 exit the vehicle, and we hand-cuffed him and took him
14 inside the police department.

15 Q Okay. Can you describe his appearance when he turned
16 himself in to you?

17 A I don't know exact clothing that he had on but one
18 thing that really that stood out that his -- one of his
19 eyes, I think his left eye was badly bloodshot and swollen,
20 so I asked him what happened, that he needed to get some
21 type medical attention to his eye.

22 MR. PLEMING - Thank you. I have no further
23 questions.

24 THE COURT - Ms. Inzerillo?

1 MS. INZERILLO - May it please the Court, Your
2 Honor.

3 CROSS EXAMINATION

4 BY MS. INZERILLO -

5 Q Lieutenant Thomasson, you indicated that Ms. Wright is
6 a family relation of yours, married to your cousin?

7 A Yes.

8 Q Okay. And this case was not in your agency. Is that
9 right? Because you ---

10 A That's -- that's right.

11 Q --- it's a county case.

12 A That's right.

13 Q So you wouldn't normally get involved because it
14 didn't happen in the City of York.

15 A That's right. I wouldn't normally.

16 Q The -- when you -- you testified that you looked at
17 something on Herald On-line or something like that and saw
18 a picture, ---

19 A (Indicating yes)

20 Q --- and it was from that picture that you knew that it
21 was Jonathan.

22 A (Indicating yes)

23 Q Okay. Did -- you didn't do any reports or submit any
24 of that as to that identification?

25 A No, ma'am, I didn't.

1 Q Okay. The -- you indicated that when he came and
2 turned himself in that one of the most prominent things you
3 noticed was his eye.

4 A Yes.

5 Q Okay. And because it was kind of red, ---

6 A (Indicating yes)

7 Q --- all the whites of his eye was red.

8 A Well, one of his eyes was red and kind of swollen, but
9 the other one was, you know, clear.

10 Q Was clear. Okay.

11 A Yes.

12 Q But it was enough for you to notice.

13 A Yes, it was.

14 Q Okay. In fact, it was enough for you to even ask him
15 if he needed some medical attention.

16 A Right.

17 Q Okay. Now, Lieutenant, I know this is a stupid
18 question, but you weren't at the Murphy's Express that
19 night ---

20 A No, ma'am.

21 Q --- when this robbery allegedly happened.

22 A No, ma'am, I wasn't.

23 Q So the first time outside of any pictures or anything
24 that you see Jonathan, you see him on the day he turned
25 himself in and you noticed the eye.

EDDIE STRAIT - DIRECT BY MR. PORTER

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1 A Yes, ma'am.

2 Q Okay.

3 MS. INZERILLO - All right. Your Honor, I have no
4 further questions.

5 THE COURT - Thank you. Anything further, Mr.
6 Fleming?

7 MR. PLEMING - No, sir, Your Honor.

8 THE COURT - All right, Lieutenant, you can step
9 down. Thank you. All right, call your next witness.

10 MR. PORTER - State calls Detective Eddie Strait.

11 EDDIE STRAIT, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 DIRECT EXAMINATION

14 BY MR. PORTER -

15 Q Good morning.

16 A Good morning.

17 Q Would you please state your name and spell your last
18 name for the record?

19 A It's Eddie Strait, S-t-r-a-i-t.

20 Q Are you from York County?

21 A Yes.

22 Q How long have you lived here?

23 A 54 years.

24 Q And where are you currently employed?

25 A York County Sheriff's office.

1 Q How long have you been with the sheriff's office?

2 A Little over 22 years.

3 Q And what is your rank or occupation with the sheriff's
4 office?

5 A I'm a detective assigned to the violent crimes unit.

6 Q How long have you been in that position?

7 A 14 years..

8 Q What are your duties -- seems pretty obvious. What
9 are your duties in that position?

10 A We investigate violent crimes, whether homicide, armed
11 robberies, aggravated assaults.

12 Q In that capacity, on August 13th of 2015, did you have
13 occasion to work an armed robbery investigation out of a
14 Murphy's Express in Clover?

15 A I did.

16 Q Is that in York County?

17 A It is.

18 Q How did you come to work on that case?

19 A It was assigned to me the -- actually the morning of
20 the 13th. I think it happened just after midnight on the
21 13th and I got it the next morning.

22 Q When you received that case, did you have anyone
23 identify the suspect?

24 A No, there was none.

EDDIE STRAIT - DIRECT BY MR. PORTER

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1 Q Did you receive any potential information about a
2 suspect?

3 A I noticed the fact that the video surveillance from
4 the store had been collected.

5 Q After the video had been collected, did you receive
6 any tips or identifica -- or potential identifications of a
7 suspect?

8 A Not at the time I was assigned the case, no.

9 Q After you had been assigned the case.

10 A Yes, after we released a portion of the video.

11 Q Do you recall when that identification came in?

12 A I received a call after 3:00 o'clock, between 3:00 and
13 3:30 that York Police Department had some information.

14 Q Do you recall the exact person from York PD that
15 contacted you?

16 A Billy Mumaw, Detective Billy Mumaw.

17 Q And where were you when you received this information?

18 A I was between York and Rock Hill on Highway 5.

19 Q What did you do based upon receiving that information?

20 A I turned around and went back to the City of York and
21 met Detective Mumaw and Lieutenant Thomasson.

22 Q With whom did you meet in addition to those officers?

23 A We went to Ms. Juanita Wright's residence.

24 Q Did anyone show a portion of the surveillance video or
25 any photos to Ms. Wright that day?

1 A Detective Mumaw did.

2 Q To your knowledge, did she identify anyone in those
3 videos?

4 MS. INZERILLO - Your Honor, I apologize, but
5 again I would object and ask the Court consider a standing
6 objection.

7 THE COURT - Your objection is noted.

8 MS. INZERILLO - Thank you, Your Honor.

9 A She did. She identified her son in there.

10 Q Did she state what her relationship with that person
11 was?

12 A She said it was her son.

13 Q Did she hesitate at all?

14 A No.

15 Q Did she say at any point she was unsure of that
16 identification?

17 A No.

18 Q Did you threaten, force or coerce her to view the
19 photo or to make an identification?

20 A No.

21 Q Now, after the identification was made, what did you
22 do?

23 A At that point we got warrants for the armed robbery on
24 Mr. Phillips?

EDDIE STRAIT - DIRECT BY MR. PORTER

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1 Q Did you happen to meet with Mr. Phillips after the
2 warrants had been served?

3 A Yes.

4 Q Did he agree to meet with you?

5 A Yes, he did.

6 Q Did you make any threats or offer him anything in
7 order to meet with you?

8 A No, I did not.

9 Q Where did you meet with him?

10 A In our detention center in an interview room that's
11 adjacent to our booking.

12 Q And, approximately, what's the size of the room?
13 Could you describe the setting of that interview to the
14 jury?

15 A Probably ten by ten, has a table with four chairs.

16 Q Were there any recordings made of your conversation
17 with him?

18 A No.

19 Q And about how long was that conversation?

20 A It was brief, maybe 15 minutes.

21 Q Did you offer him any deals or any kind of -- did you
22 make any offers to him as a result of giving you any
23 information?

24 A No.

1 Q When you began speaking with him, did you advise him
2 of his Miranda Rights?

3 A I did.

4 MS. INZERILLO - Your Honor, I apologize again,
5 but I would renew again the previous objection to this.

6 THE COURT - Your objections are noted.

7 Q Did he appear to understand those warnings?

8 A He did.

9 Q Was he coherent and alert?

10 A Yes.

11 Q Did he have any questions about them?

12 A No, sir.

13 Q Did he refuse to waive any of the rights as you read
14 them to him?

15 A No, he did not.

16 Q Did you show him a written copy of those rights?

17 A I did.

18 Q And what is the standard operating procedure for the
19 sheriff's office when interviewing a potential suspect with
20 respect to Miranda waivers?

21 A We have a standard printed form. The top portion is
22 advising of your rights where we have them sign and date.
23 At the bottom portion is a waiver of those rights. Again,
24 they sign and date it.

1 Q If I showed you a copy of that form, would you
2 recognize it?

3 A Yeah.

4 Q I'm handing you what's been marked as State's Exhibit
5 14. If you would, tell the jury what it is that I've just
6 handed you?

7 A It's actually a form from the sheriff's office, York
8 County Sheriff's office, Waiver of Rights form.

9 Q Is that the actual form that you went over with the
10 defendant that day?

11 A It is.

12 Q Did you read the rights from that form?

13 A Did I?

14 Q Did you read the rights from that form?

15 A Yes, I did.

16 Q Would you please read those Miranda advisements to the
17 jury as you would have that day?

18 A Okay. It says... Before I ask you any questions I
19 want to advise you of your rights. You have the right to
20 remain silent; anything you say can and will be used
21 against you in a Court of Law. You have the right to talk
22 to an attorney and have him or her present with you while
23 you're being questioned. If you cannot afford to hire an
24 attorney, one will be appointed to represent you before any
25 questioning if you wish. You can decide at any time to

1 excise these rights and not answer any questions or make
2 any statements. Do you understand each of these rights
3 that I've explained to you, followed by a yes or no, which
4 he checked yes, signed and dated.

5 Q Thank you. Detective Strait, does that appear to be a
6 true -- in the same condition and appearance as it was on
7 the day that you read it to the defendant?

8 A It does.

9 MR. PORTER - At this point, Your Honor, we ask to
10 move State's Exhibit 14 into evidence.

11 THE COURT - Ms. Inzerillo?

12 MS. INZERILLO - Your Honor, just subject to
13 previous objections.

14 THE COURT - All right. Objections are noted;
15 State's Exhibit 14 is admitted into evidence.

16 (WHEREUPON, STATE'S EXHIBIT NUMBER 14 ADMITTED
17 INTO EVIDENCE.)

18 Q Now, did the defendant sign anything on that waiver
19 form?

20 A Yes, he first signed the -- that he understood his
21 rights and dated it and also signed a waiver of rights
22 below it.

23 Q At that point did you begin your questions?

24 A I did.

25 Q What was your first question to the defendant?

1 A I asked him had he been into the Murphy gas station in
2 Lake Wylie and did he rob it.

3 Q And what was his response to the first question?

4 A He said, yes, he had been in the store, he had bought
5 a drink just like it showed on TV.

6 Q Now, with respect to the second question.

7 A He said -- he repeated again that he had been in store
8 but just to buy a drink, just like it showed on the video
9 on TV, he didn't rob it.

10 Q Did he see -- did he state that he had seen this video
11 surveillance on any local broadcast?

12 A He didn't say that specifically, no.

13 Q Okay. But he did -- did he identify himself as being
14 on that surveillance video?

15 A Yeah, he stated it was just like the video on TV had,
16 that he was inside the store to buy a drink.

17 Q After you asked him about the -- you asked him a
18 question about the investigation, did you proceed with any
19 further questioning?

20 A Yes, I actually -- I had a still photo in my working
21 folder that I showed him and asked him was that him in the
22 store; he stated that it was.

23 Q If I showed you a copy of that photo, would you
24 recognize it?

25 A Yes.

1 Q Is that a -- is that a copy of the photo that you
2 showed to the defendant?

3 A Yes, it is.

4 Q Did he identify himself on that photo?

5 A He did.

6 Q Would you please tell the jury if that is an exhibit
7 that's been entered into evidence?

8 A It is.

9 Q Which -- which exhibit is it?

10 A 2.

11 Q Thank you. Just a few more questions, Detective
12 Strait. After he showed you the video -- I mean the photo
13 that you've just mentioned, did you proceed with any other
14 questions?

15 A I explained to him that there was more video than what
16 was released to the press that actually showed the robbery
17 in the store. He stated that would be between the Judge
18 and his lawyers. At that time I terminated the interview.

19 Q And why did you terminate the interview?

20 A At first I didn't think I would get much more out of
21 him at that point and didn't want to cross the line with
22 him invoking for an attorney.

23 Q Thank you. Do you recall what the defendant looked
24 like when you met with him?

25 A I do.

EDDIE STRAIT - DIRECT BY MR. PORTER

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1 Q Would you be able to authenticate a photo if a photo
2 of him is a true and accurate depiction of the defendant as
3 he appeared the day you met with him?

4 A Yes.

5 Q And what day was it that you met with him?

6 A The 18th.

7 Q Okay. I show you -- could you please tell the jury if
8 you recognize what that appears to be?

9 A It's a picture of the defendant.

10 Q Is it a true and accurate depiction of the defendant
11 as he appeared that day?

12 A It is.

13 MR. PORTER - Your Honor, at this point we move
14 this photo into ---

15 THE COURT - Let's put on the record what -- how
16 it's identified, what exhibit -- State's Exhibit what?

17 MR. PORTER - State's Exhibit 13, Your Honor.

18 THE COURT - Any objection to State's Exhibit 13,
19 Ms. Inzerillo? The Court is taking consideration your
20 prior objections.

21 MS. INZERILLO - Just that, Your Honor.

22 THE COURT - All right, those objections are
23 noted. State's Exhibit -- I'm sorry, is it 14? ---

24 MR. PORTER - 13.

25 THE COURT - --- 13 is admitted into evidence.

1 MR. PORTER - Thank you, Your Honor.

2 (WHEREUPON, DOCUMENT MARKED INTO EVIDENCE AS
3 STATE'S EXHIBIT NUMBER 13.

4 MR. PORTER - Your Honor, at this point I would
5 move to publish that photo to the jury.

6 THE COURT - All right.

7 (WHEREUPON, PHOTO IS PUBLISHED TO THE JURY.)

8 MR. PORTER - Thank you. No further questions.
9 Please answer any questions the defense may have.

10 THE COURT - All right, Ms. Inzerillo?

11 MS. INZERILLO - Thank you, Your Honor. May it
12 please the Court.

13 CROSS EXAMINATION

14 BY MS. INZERILLO -

15 Q Detective Strait, first I want to talk with you a
16 little bit about how investigations work. Is that fair?

17 A Sure.

18 Q Because as a detective you kind of oversee
19 investigations once you're assigned to the case. Is that
20 right?

21 A Yes.

22 Q So generally -- and I know there are exceptions -- but
23 generally what happens is someone reports that a crime may
24 or may not have been committed. Right?

25 A (No response)

1 Q And then responding officers actually come out first.

2 A Correct.

3 Q Okay. Then if the responding -- the responding
4 officers might talk to witnesses, might look at the scene
5 and determine if they need any more help. So, for example,
6 they might call forensics; they might call in a detective;
7 they might call in canine and they make the determination.

8 A Right.

9 Q Okay. So I start here to show that when something is
10 called in, you as a detective may not really be the first
11 person on the scene.

12 A Rarely would be, yes.

13 Q Okay. In this case, for example, the robbery
14 allegedly happened at 12:30 in the morning, little after
15 midnight?

16 A Right.

17 Q And you were assigned to the case the next morning.

18 A Correct.

19 Q And that's pretty typical for how investigations work.

20 A Right.

21 Q All right. So because, obviously you weren't there
22 when any crime was being committed. Right?

23 A Correct.

24 Q So you're not an eye-witness to anything.

25 A Correct.

1 Q And because you sort of get assigned to it later on
2 you weren't there when the responding deputies came.

3 Right?

4 A Right.

5 Q You -- when you get a file, when you get a case, you
6 look over what's already been done.

7 A That's correct.

8 Q Okay. And you kind of touched on this a little bit
9 when the State was questioning you, but part of what you do
10 is, for example, you noticed there was surveillance video
11 in this case.

12 A That's right.

13 Q And so it's pretty typical, and as a detective you
14 would pull the video and see what it showed.

15 A Correct.

16 Q Okay. You might also determine if or see what had
17 been done before you got on the case, for example, were
18 there any fingerprints collected.

19 A Correct.

20 Q Okay. And were there -- what did any of the witnesses
21 say.

22 A Correct.

23 Q Okay. And sometimes in cases DNA might be swabbed or
24 collected and then you would follow that up as well.

25 A Correct.

1 Q The -- and in this case there might be a 9-1-1 call or
2 something like that, so you listen to that as well.

3 A Correct.

4 Q So we're going to kind of break those things down a
5 little bit. When you got on the case you knew there were
6 no fingerprints taken.

7 A I would not have known it that morning.

8 Q Okay.

9 A We would get a forensics report later.

10 Q Okay. But you never got a forensics report saying any
11 fingerprints were taken.

12 A That's correct.

13 Q Okay. And no DNA found.

14 A No.

15 Q Okay. And you were aware that canine was not called
16 out to track anyone.

17 A Correct, which is typical when they know they left in
18 a car.

19 Q Absolutely. Okay. And you knew or you had
20 information or you saw in the video that someone did drive
21 away in a car.

22 A Correct.

23 Q Okay. And there was a description of a car being like
24 a late model Honda or something like that.

25 A (No response)

1 Q And you can see on the video when you watch it that a
2 car pulls up, person gets out, gets back in, drives away.

3 A Correct.

4 Q Okay. At that point though early on you didn't know a
5 tag number for the car.

6 A That's correct.

7 Q Okay. The clerk couldn't get a tag number.

8 A Correct.

9 Q But you could clearly see from the video that someone
10 else was in the car.

11 A Correct.

12 Q Okay. And so as a detective you are accessing the
13 case sort of as you see. There's no fingerprints; there's
14 no DNA; there's no tag when you initially come in.

15 A Correct.

16 Q Okay. The clerk could not give any identification as
17 to name of the person that robbed the store.

18 A That's right.

19 Q Okay. So as a detective, what you have to then do is
20 try to find some leads or follow-up on anything that you
21 can.

22 A Correct.

23 Q So in this case, for example, you sent out stuff to
24 the media, like CrimeStoppers video.

25 A Right.

1 Q And that was hoping that someone would call in with a
2 tip or something that you could follow-up on.

3 A Correct.

4 Q All right. You also at some point in the
5 investigation -- I'm not saying right when you got it --
6 but at some point in the investigation did talk to the
7 person that was in the car.

8 A Correct.

9 Q Okay. And that person indicated to you in a statement
10 that she didn't see anything unusual about Jonathan getting
11 out or coming in the car.

12 A Didn't see anything unusual as far as him getting in
13 and out of the car?

14 Q Right.

15 A Correct.

16 Q She never indicated she saw him with a gun or anything
17 like that.

18 A Right.

19 Q The -- so then the first real sort of tip that you get
20 is the call from York PD.

21 A Right.

22 Q Because that could in your mind lead to a possible
23 identification. Right?

24 A Correct.

1 Q And the reason that's important is because
2 fingerprints can identify someone.

3 A Right.

4 Q And DNA can identify someone.

5 A Correct.

6 Q But you didn't have that in this case so far.

7 A Correct.

8 Q And no one -- and sometimes this happens too in your
9 experience -- sometimes the person's arrested near the
10 scene or at the scene.

11 A Correct.

12 Q Okay. And that did not happen in this case.

13 A Right.

14 Q There was no essentially hard evidence recovered like
15 a gun recovered that you can link back to someone.

16 A Correct.

17 Q And no money was recovered that you can link back to
18 someone.

19 A Correct.

20 Q Okay. So from where you're standing sort of the next
21 morning into the afternoon, really what you have is the
22 surveillance video.

23 A Right.

24 Q So when you get this call, you guys follow-up with Ms.
25 Wright.

- 1 A Correct.
- 2 Q And based on your conversation with her, you had
- 3 testified that you got the warrants in this case.
- 4 A Yes, based on her identification.
- 5 Q Okay. So at that point what you have is the clerk's -
- 6 - the 9-1-1 call, the clerk's statements and his mama's
- 7 identification.
- 8 A And the video.
- 9 Q And the video.
- 10 A Correct.
- 11 Q After that -- so the warrants were issued on the 13th,
- 12 do you recall?
- 13 A Right.
- 14 Q Okay. And the first time that you see Jonathan is on
- 15 the 18th.
- 16 A Correct.
- 17 Q All right. And when you see Jonathan, is it fair to
- 18 say you kind of immediately noticed that eye?
- 19 A Yes.
- 20 Q I mean there's a lot of red in that eye. Am I -- am I
- 21 right on that?
- 22 A Yes.
- 23 Q And I'm going to hold up and show you State's Number
- 24 13. I mean the entire white of his eye is red.
- 25 A Correct.

1 Q Okay. This part right here in his mouth, were they
2 gold teeth? You recall?

3 A It's cap, yes.

4 Q Okay. I think sometimes they're called grills or
5 something like that? I might be showing my age there.

6 A (No response)

7 Q But you recall something like that; he had something
8 covering his teeth that was gold.

9 A I don't -- don't recall that, no.

10 Q Okay. Do you recall seeing that in your conversation
11 with him, the 15 minutes you were in the room?

12 A Do I recall seeing that during the ---

13 Q Yes, when you talked.

14 A No, I don't.

15 Q Okay. So the -- at the -- from the time between the
16 13th and the 18th when you had an identification and the name
17 of Jonathan Phillips, did you put his picture in a six-pack
18 ID and take it back to the clerk?

19 A No.

20 Q Okay. The second statement got -- that the clerk gave
21 was on August 18th. Is that right?

22 A Uh, statement, you referring to the typed ---

23 Q The typed ---

24 A Yes...

1 Q Okay. Mr. Phillips, Jonathan, was arrested on the
2 17th.

3 A Correct.

4 Q Okay. And it was in that statement that Mr. Felkner
5 mentions the eye. Is that correct?

6 A He ---

7 Q That's in his statement.

8 A He did mention it in there, yes.

9 Q Okay. When you're a detective -- I think we talked
10 about -- you also review -- well, let me back up. It's
11 very important to you coming onto the scene when you come,
12 that the information that responding officers or eye-
13 witnesses give is clear and as much information as they can
14 give. Is that right?

15 A Would be nice, yes.

16 Q Because essentially with you coming on board, that's
17 what you're looking at to develop for a case.

18 A Correct.

19 Q Okay. So, for example, this case would be a lot
20 different if the description of the perpetrator was a white
21 male, blond hair, blue-eyed. That would take it a
22 completely different direction than the description that you
23 received.

24 A No.

1 Q Well, if the description was white male, blond hair,
2 blue-eyed and Ms. Wright called and said Jonathan Wright's
3 (sic) the one in that picture, you would think, well,
4 there's something not right here.

5 A Right.

6 Q Right. Okay.

7 A I thought you meant from the very beginning from what
8 you said.

9 Q No, no. Right. But that's why when the responding
10 officers come out and all that information is given, it's
11 important that they take full and complete information.

12 A Correct.

13 Q And any information that you had about a gun in this
14 case was a description of a silver and black pistol. Is
15 that right?

16 A Uh, I think actually semi-automatic in one -- one
17 statement.

18 Q Okay. Silver and black?

19 A Yes.

20 Q All right. And again, a gun was never recovered?

21 A No.

22 Q Okay. And money was never recovered.

23 A No.

24 MS. INZERILLO - Okay. Your Honor, I have no
25 further questions.

EDDIE STRAIT - RE-DIRECT BY MR. PORTER

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1 THE COURT - Anything further, Mr. Porter?

2 MR. PORTER - Just one question, Your Honor.

3 RE-DIRECT EXAMINATION

4 BY MR. PORTER -

5 Q Detective Strait, are you familiar with firearms?

6 A Yes.

7 Q A nickel-plated firearm, would that be what's commonly
8 known as silver?

9 A It could be nickel-plated, stainless, several
10 different types of metal would be silver.

11 Q If someone were to say to you a silver gun, you would
12 think could be nickel?

13 A Right.

14 MR. PORTER - Thank you. No further questions.

15 THE COURT - Any re-cross?

16 MS. INZERILLO - No, Your Honor.

17 THE COURT - Thank you. Detective Strait, you can
18 step down. Would the lawyers approach?

19 (WHEREUPON, BENCH CONFERENCE IS HELD IN THE
20 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
21 WHICH WAS NOT REPORTED.)

22 THE COURT - All right, Mr. Fleming, you can call
23 your next witness.

24 MR. PLEMING - Your Honor, at this time the State
25 rests.

1 THE COURT - Ladies and gentlemen, the State has
2 indicated now that they are resting their case. That means
3 that they have presented all of the evidence that they
4 intend to present to you in this matter. What that means
5 is that we're now going to take a break and have some more
6 issues that we'll take up outside of your present. So I
7 anticipate -- we'll take a break for about 15 or 20 minutes
8 and then we'll have you back in the jury (sic) room after
9 that. Thank you. I'm sorry. We'll have you back in the
10 courtroom after that. I do instruct you again, do not
11 discuss the case. Don't talk about the case at all. Thank
12 you.

13 (WHEREUPON, JURY EXITS THE COURTROOM)

14 THE COURT - Anything further at this time from
15 the State?

16 MR. PLEMING - Not at this time, Your Honor.

17 THE COURT - And, Ms. Inzerillo, other than the
18 normal motions and I'm going -- we'll do those after we
19 take a break -- is there anything you need to bring up or
20 take up before we take a break?

21 MS. INZERILLO - No, Your Honor.

22 THE COURT - All right, we'll be at ease for about
23 15 minutes.

24 MS. INZERILLO - Thank you, Your Honor.

25 MR. PLEMING - Thank you, Your Honor.

1 (WHEREUPON, RECESS TAKEN)

2 THE COURT - All right, back on the record.

3 Before the jury comes in, is there anything from the State?

4 MR. PLEMING - Nothing from the State.

5 THE COURT - Anything from the defense?

6 MS. INZERILLO - Yes, Your Honor. At this time
7 the defense would renew all previous motions and objections
8 and we would move for a finding of a directed verdict by
9 the Court.

10 THE COURT - All right, all the Court's ruling
11 remains the same on all prior motions and particularly
12 those motions that were brought up about the introduction
13 of the -- the identification and then the photos. All
14 right, as far as a directed verdict, there is sufficient
15 evidence by which in taking the light most favorable to the
16 non-moving party, the State, there is direct testimony from
17 the victim in the case that the defendant is the person who
18 came in armed with a pistol, even though he didn't present
19 the pistol, he -- or he didn't -- he didn't point the
20 pistol, his direct testimony is that the pistol was
21 presented by way of lifting his shirt where the pistol was
22 shown to the victim, the store clerk in the case, along
23 with other testimony about identification of the defendant
24 as being the one in the store, being at the counter, and so
25 there is that, along with other evidence that's in the

1 record, and there is sufficient evidence for it to go to
2 the jury, so I'm going to deny the motion for a directed
3 verdict. Anything else?

4 MS. INZERILLO - Your Honor, I would ask the Court
5 to voir dire Mr. Phillips about his intention to testify.

6 THE COURT - All right. All right, Mr. Phillips,
7 if you would please stand.

8 (WHEREUPON, MR. PHILLIPS COMPLIES)

9 THE COURT - Mr. Phillips, we're at the point of
10 the trial now where you have an opportunity to present any
11 testimony or any evidence on your behalf in your case. You
12 also have an opportunity to testify yourself if you wish at
13 trial. You're not required to do that. You may want to
14 exercise your right to not testify. So I'm going to ask
15 you some questions about that, and so to do that I need to
16 place you under oath. I'm only going to talk to you about
17 your right to testify at trial or not. So if you would
18 raise your right hand, please.

19 Madam Clerk, if you would place him under oath.

20 (WHEREUPON, JONATHAN PHILLIPS IS DULY SWORN BY
21 THE DEPUTY CLERK)

22 THE COURT - Let me ask you, Mr. Phillips, have
23 you and your attorney already discussed about whether you
24 intend to testify or not?

25 MR. PHILLIPS - Yes, sir.

1 MR. PLEMING - Thank you, Your Honor. May it
2 please the Court.

3 Good afternoon, ladies and gentlemen. State's
4 Exhibit Number 12. This contains all the evidence that you
5 need in this case to find the Defendant, Jonathan Phillips,
6 guilty of armed robbery. State's Exhibit 12 is the
7 surveillance footage from Murphy's Express of Lake Wylie
8 from August 13th, 2015, and it shows the defendant, as you
9 know, enter that store armed with a deadly weapon, get a
10 beer, approach the counter, have the store clerk ring him
11 up, and as that cash register is opened, he robs him of all
12 the cash in the register. You know that it is the
13 defendant that's on this video because his own mother
14 identifies him; Lieutenant Thomasson of the York Public --
15 I mean excuse me -- the York Police Department identifies
16 him; Jeremy Felker, the store clerk that night, was
17 standing two feet away from the man that robbed him
18 identified him in this courtroom. And most importantly,
19 the defendant admitted to you -- well, not to you, but to
20 Detective Strait that he was the person that's seen in this
21 footage. And now that the 12 of you have seen this video,
22 each of you are now able to identify him as well. He's
23 been sitting in this courtroom throughout the entire trial;
24 you've been able to look at him; you know what he looks
25 like; you've seen the man on this video; you'll have this

1 video; you'll have ten photographs that were taken from
2 this same footage that you can look at while you're
3 deliberating and I submit to you that once you do that,
4 there will be no question that the man that was in that
5 store that night that robbed Jeremy Felker, that walked out
6 of there with the cash in hand as clearly seen by all of
7 you is Jonathan Phillips.

8 I don't know what Ms. Inzerillo is going to say
9 to you during her closing argument, but I expect that she
10 may try to make a great deal out of the fact that you don't
11 see a gun in that video. And that's right; you don't. You
12 can't, because where the gun was located in Mr. Phillips'
13 waistband was blocked from view on camera that night. But
14 you don't need to see the gun in that video to know that
15 the defendant had a gun, because you can see on that video
16 -- if you look closely -- it happens very quickly, but it's
17 there, and it's obvious that he lifts his shirt and lowers
18 his shirt, and you can see the way that Jeremy Felker
19 reacts to that, that immediately after he lifts his shirt
20 he begins pulling cash out of the register, hands it over
21 to the defendant.

22 Now, Abraham Lincoln when he was an attorney once
23 said that one can better know that there is a fire once he
24 sees smoke arising than by the testimony of one or two
25 witnesses to it. For those witnesses they may perjure

1 themselves, but the smoke cannot, and I submit to you that
2 there is plenty of smoke where the defendant raises his
3 shirt and then Mr. Felker hands over the cash to know that
4 the defendant had a gun in his waistband just like Mr.
5 Felker testified. I submit to you that it was not -- it
6 was not his stomach, his belly button or his belt buckle
7 that intimidated Mr. Felker into just handing over all the
8 cash in the register that night. That is all that you need
9 to know, that what Mr. Felker told the police, what he told
10 the 9-1-1 dispatcher, what he told you in this courtroom is
11 the truth. But let's note a few other things that prove
12 this defendant had a gun that night. Consider Mr. Felker's
13 precise description that he gave of the gun, having only
14 one -- a quick second to view it, that memory stayed locked
15 in his mind. He told you -- we'll get to the description
16 of the gun in just a moment. Let's also consider the 9-1-1
17 call that you've heard, which is also in evidence and you
18 can review again. Hear Mr. Felker's voice; it's the voice
19 of someone who has just been the victim of an armed
20 robbery. He's nervous. But when the dispatcher asked him
21 about it he answers immediately, quickly without
22 hesitation. He calls and says I've just been robbed; I
23 need police at this location, gives the address; she asks
24 him for a description of the suspect; he gives it. She
25 immediately says, did he have a weapon, and did he

1 hesitate? No, not for a second. He says, yes, yeah, he
2 had a pistol in his waistband. He didn't take a moment to
3 go, oh, let me conjure up this lie and make up a story
4 about how he had a gun; that didn't happen. Notice that
5 when the defendant first walks up to the counter and he
6 puts that note in front of him and says, all the money, or
7 give me all the money, Mr. Felker doesn't immediately start
8 handing over cash. He doesn't start giving the cash to the
9 defendant until he sees the gun. Notice when -- when you
10 watch the video on register two, you can clearly hear the
11 defendant state, be calm, be calm, right as he shows him
12 the gun. If he didn't have a gun, why would he need to
13 warn Mr. Felker to be calm? If he did not have a weapon,
14 what would be the need for that warning? Notice the body
15 language of Mr. Felker as the defendant walks out. He's a
16 little shaky, a little hesitant, and notice that he does
17 not call 9-1-1 until he noticed the defendant has
18 completely left the store. He stands there for a moment
19 watching the monitor that he told you was in the store, and
20 why would someone do that right after an armed robbery?
21 Because, a person may be concerned, I would submit to you,
22 that the guy that just robbed him looks back in the window
23 and sees him on the phone, what might he do? So he waits;
24 he waits until the defendant's gone and then he calls 9-1-
25 1. And lastly, Mr. Felker has no reason to make this up,

1 and the defense cannot give you any reasonable reason for
2 why he would make up the part about the gun if there wasn't
3 a gun. Now, we played this video and we played the part
4 with him right -- raising up his shirt a couple of times,
5 but as I mentioned, it's quick, and it's at just the top of
6 the frame, and just in case any of you didn't see it the
7 first time, I want to play it once more before you return
8 to deliberate.

9 Would you dim the lights, please?

10 Now, if we could just pause it for just a moment
11 -- I don't have the pointer with me, but if you'll please
12 draw your attention to the very top of the frame where you
13 can see the suspect's -- the defendant's t-shirt and the
14 emblem that's on the front of that t-shirt, and I submit to
15 you that in just a few moments after he hands the note up
16 and Mr. Felker looks up, you will see his hand. You will
17 see it come into the frame, lifting up, rising up and
18 you'll see it come down, and that is exactly what Mr.
19 Felker testified that he did in lifting his shirt and
20 revealing that gun.

21 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY)

22 MR. PLEMING - Right there. In case anyone missed
23 it, show it one more time.

24 (WHEREUPON, VIDEO IS PLAYED FOR THE JURY)

1 MR. PLEMING - At 04:52 his hand is -- is visible
2 there; he's just barely lifted the shirt up and drops it
3 down. Now, if y'all need to review that some more it will
4 be available to you in the deliberation room; you can take
5 as much time as you need. According to Mr. Felker's
6 testimony, the defendant robbed him of approximately
7 anywhere from a hundred and sixty to a hundred and ninety
8 dollars that night from the register. But this case is not
9 about the money that he took that night; this case is about
10 the fear that he inflicted and the threat that he created.
11 This is a serious and important matter, ladies and
12 gentlemen. This defendant brought a deadly weapon into
13 convenience store, a gas station, a place where ordinary
14 men and women must go every single day to go about their
15 ordinary daily affairs. It's right next door to a Publix
16 grocery store. His Honor will instruct you on the law in
17 this case, will go over the elements of armed robbery, and
18 I submit to you that once he does so and you consider the
19 evidence in this case, you will be firmly convinced that
20 this defendant -- that the evidence in this case proves
21 this defendant's guilt on every element of the offense.
22 This defendant is guilty of an armed robbery, because he
23 took money from Mr. Felker by putting him in fear of
24 violence, and he was armed with a deadly weapon while he
25 did so. A deadly weapon also defined -- and his Honor will

1 give you instruction on that. A deadly weapon is any
2 instrument or article that's likely to cause great bodily
3 injury or death. A pistol certainly is a deadly weapon.
4 It's the quintessential deadly weapon I would submit. The
5 gun doesn't have to be operable to be a deadly weapon. It
6 doesn't -- the defendant didn't have to pull it out, point
7 it or shoot it for it to be a deadly weapon. We don't have
8 to prove that it was even capable of firing. The fact that
9 the gun that Mr. Felker described in defendant's waistband
10 was -- looked like a gun enough that it reasonably caused
11 him to fear -- to be fearful enough to hand over the money;
12 that is enough. It's a deadly weapon, because the
13 defendant -- Mr. Felker reasonably believed that it was
14 likely to cause great bodily injury or death. Now, Mr.
15 Felker, he presented himself confidently, as if he held it
16 together pretty well and on the video he did, but that
17 doesn't mean that he wasn't in fear that night, because if
18 he had not been in fear he wouldn't have turned that money
19 over. That gun placed him in fear. Ms. Inzerillo, during
20 her cross examination of Mr. Felker said -- she asked him
21 rather, -- isn't it -- aren't you required to comply with a
22 robber that come into the store, and he said, if they have
23 a weapon. And she said, well, you mean if someone just
24 walks up to the store and hands you a note that says give
25 me all the money or says, give me all the money you

1 wouldn't you do it? And he said, no, I'd laugh at them.
2 Well, Mr. Felker wasn't laughing that morning, because he
3 saw a gun, and he handed over the money because he saw a
4 gun. He knew exactly what he saw. He described it as a
5 silver nickel-plated pistol. Those two terms don't
6 conflict with one another. Don't allow Ms. Inzerillo to
7 confuse you into thinking that he gave two conflicting
8 descriptions of the gun. He stated that it was a semi-
9 automatic pistol and that it was not a revolver. Said it
10 looked to be a small caliber pistol. He described it
11 tucked in the defendant's waistband on the right side of
12 his stomach with the handle pointing towards the left side
13 of the defendant's body, and when he saw that gun, he acted
14 as any reasonable person would under those circumstances,
15 he handed over the money. As the defendant said, be calm,
16 be calm; he said, okay, I'm calm. The threat of serious
17 bodily injury of death, that's what these laws are made to
18 protect us from. And in a few moments you're going to be
19 deliberating over the verdict that you should reach in this
20 case, and the term verdict is from Latin, and it means to
21 speak the truth, and so I'm asking you to return a verdict
22 that does that, that speaks the truth. I ask you to return
23 a verdict that speaks the truth to Jonathan Phillips and to
24 anyone else out there who would bring a deadly weapon into

1 a place of business threatening the safety and lives of
2 store clerks and customers.

3 MS. INZERILLO - Your Honor, I'm going to object
4 to this argument.

5 THE COURT - Lawyers approach.

6 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
7 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
8 WHICH WAS NOT REPORTED.)

9 THE COURT - Thank you. The Court denies the
10 objection.

11 MR. PLEMING - Ladies and gentlemen, I'll wrap it
12 up here. I -- I ask you to take the time that you need,
13 apply your common sense to the evidence in this case. I
14 submit that it's clear to you what happened here. I
15 believe it's clear. I just ask that you return a verdict
16 that -- a verdict of guilty to the charge of armed robbery,
17 because that is the only verdict that the truth calls for
18 in this case and which justice demands.

19 Thank you very much for your time.

20 THE COURT - Thank you, Mr. Fleming. Ms.
21 Inzerillo?

22 MS. INZERILLO - Thank you, Your Honor. May it
23 please the Court. Counselor.

24 When I stood before you yesterday and I was
25 debating what to say in my opening, I debated whether to

1 tell you a story from my youth about something that
2 happened between me and my sister, but in that story I
3 would have to admit that I was obsessed with a certain 80s
4 pop-star and I wasn't quite sure if I was able to do that,
5 but the point of the story was going to be that her
6 perception of the event and my perception of the event are
7 two different things. In fact, she'll swear to you to this
8 day that she never did scratch that record, and I would
9 swear to you today that she did. And I found that
10 incredibly relevant to this case because the idea of
11 perception goes through this case. You've now heard all
12 the testimony; you've now heard the State's case, and you
13 heard testimony on two main points, (1) was Jonathan
14 Phillips in the store, and (2) did he have a gun. And this
15 becomes important because the Judge is going to charge you
16 not only as to armed robbery but what's called strong-armed
17 robbery, which is in its essence robbing someone with force
18 but not with a deadly weapon. It's the equivalent of
19 threatening someone verbally or threatening someone with a
20 fist perhaps, but not with a gun. And so both of those
21 pieces of evidence are very important. Now, you've heard
22 not only from each witness, but you've heard them outline
23 in their own way their piece of this puzzle. You heard
24 Detective Strait kind of walk you through how a normal
25 investigation goes, how this investigation went, what they

1 knew at what point and then what they did as a result of
2 that. And what you heard was, when this robbery or this
3 taking took place, they had no idea who did it. In fact,
4 they had so little idea they had to put it out on the news,
5 and as a result of that, a concerned mama called, not the
6 news, not the sheriff's office, but she called her cousin,
7 because she was concerned for her son. She didn't know
8 what was going on. And instead of sitting down with her
9 and addressing the concerns of the mama, they pulled her
10 into this case as a witness. They sat down with her and
11 showed her something on the cell phone or something and had
12 her identify her son and then used that in order to get
13 warrants against Jonathan Phillips. And you heard at the
14 beginning of this case and you heard again in the State's
15 closing that even this man's own mama came in and testified
16 against him, that even she came in and identified him. The
17 Judge is going to tell you that you can look at the
18 demeanor of the people that took this stand and I would
19 submit to you this was not a woman that wanted to testify
20 against her son, and I think if she had a time machine and
21 could go back, she might think twice about making that
22 phone call. What it comes down to is who is the best
23 person to make that identification. This woman knows her
24 son; there's no doubt about that. Lieutenant Thomasson
25 who's also a family member, knows his cousin, his second

1 cousin. But what is the one -- who is the one person in
2 this case whose perception and identification counts the
3 most? It's the clerk. He's the only person that was at
4 the store that night; he was the only person that was
5 arguably within two or three feet of Mr. Phillips, and he
6 was the only person that interacted with him for I would
7 contend about 18 seconds that evening.

8 What do we know from Mr. Felker's testimony? We
9 know that yesterday I should say, he came in and distinctly
10 remembers the person in front of him having a beard and
11 having a bloody eye. And that eye is pretty gross, so I'm
12 not going to show you a picture of that again. But at the
13 time he doesn't tell 9-1-1, the responding officers, he
14 doesn't put it in a statement about the bloody eye, and he
15 doesn't say anything about the beard. Now, that may seem
16 silly, and y'all may be thinking I don't understand what
17 that lady's doing, his own mama said he was in there, he
18 said he was in there, what's the point of this? The point
19 of this is, Mr. Felker, what did he notice and what did he
20 not notice? Everyone who saw Mr. Phillip's eye said it was
21 obvious. It's obvious. It -- Lieutenant Thomasson even
22 said it was so bad I thought he might medical attention.
23 And yet Mr. Felker didn't notice that. He didn't say
24 anything that night about the person having a beard. And
25 why is that important? This took place in August. It's

1 now February. Mr. Felker has now looked at the video; he's
2 now, of course, come into Court and seen Mr. Phillips
3 sitting here, and he, I believe, testified that he gave the
4 statement once he saw a picture of someone with a red eye.
5 The perception of things can change, so by the time he
6 comes into Court he would -- distinctly remembers the
7 person having a beard; he remembers the red eye, but no one
8 else testified that they had that information that night.
9 And Detective Strait told you we need as much information
10 as we can get, especially in a case like this they don't
11 know. Mr. Felker does not know Mr. Phillips, can't
12 identify him by name, doesn't say I went to high school
13 with them; they need all the information they can get, but
14 he doesn't see that. And I made a little light of the
15 color of the shirt. It's clear he's wearing a black shirt.
16 Mr. Felker still swore to you it was a brown shirt, because
17 that's what he told them that night. Ladies and gentlemen,
18 I think this is important also as it applies to the gun.
19 We've often heard the devil's in the details. That night
20 only when prompted does he say, oh, yeah, there was a gun.
21 He doesn't get on 9-1-1 and say, oh, my goodness, y'all, I
22 just got robbed, and there was a gun, and then he lifted it
23 up and y'all got to get him because I don't know what's
24 going to happen. It's only when he's prompted does he say,
25 oh, yep, yeah, okay. When he's asked by a responding

1 officer to give a description of the gun, he said it's a
2 black and silver gun. And, again, Detective Strait told us
3 every bit of information is important. When they're out
4 that night and when Detective Strait's looking at a case,
5 if he comes across a purely silver gun and the description
6 he has is of a black and silver gun, is that not going to
7 affect how he treats that evidence? That detail is
8 important. And it's not the same as if he had said that
9 night it's silver or nickel-plated and today he came in and
10 said it was silver, that's -- you got me; there's not much
11 difference there. But black and silver is much different
12 than silver, and when he took the stand yesterday, he swore
13 it was silver and nickel-plated. It is in the detail,
14 because in the surveillance video you do not see Jonathan
15 Phillips with a gun. And I would submit to you outside of
16 the 18 seconds involved in the robbery of this case, you
17 see a lot of Jonathan Phillips; you see him sitting in a
18 car; you see him talking to the person in the car; you see
19 his leg out; you see him walk; you see him go to the
20 bathroom; you see him come into the store; you see him look
21 around, go to a couple of coolers, not just one; you see
22 him walk up to the counter and you see him walk out. At no
23 point is he shifting anything; you see his hand grab
24 something. If you believe Mr. Felker and it was up front,
25 there's nothing here, and yet he is sitting -- I'll mess

1 this up, I'm sure -- he's sitting in a car; he gets out of
2 the car and walks; doesn't adjust anything. Detective
3 Strait said they went so far in this investigation as to
4 find the mystery person that was in the car with them.
5 That person said I never noticed anything unusual; I never
6 noticed a gun. So Mr. Felker is being presented as the
7 main person that's interacted with him that night, but I
8 would submit to you there is a second person in that car
9 who never saw a gun. And you can watch that video and you
10 can see Mr. Phillips walk around, but you don't see him do
11 anything to indicate he's got a gun. A gun -- I think it's
12 uncontroverted in this case -- has never been found.
13 Money's never been found. Mr. Felker's perception of the
14 gun is more important now, because if he only was mistaken
15 or he wasn't sure, he thought what he saw in that quick
16 second was a gun, I would submit to you that's not enough
17 for armed robbery. When they're asked specifically, okay,
18 you say you saw a gun, now describe it. Any reasonable
19 person could think, oh my goodness, I just got threatened
20 with a gun, that's what I'm focused on, that's what I'm
21 seeing. I would be able to describe that gun all day long.
22 That night I would be telling the officers, he had it in
23 here, it was turned this way, this is what it looked like,
24 but that's not what we have here.

1 You're going to be asked to consider strong armed
2 robbery. Like I told you, that can be considered if you
3 believe Jonathan went into the store that night, slid a
4 note across the counter and took the money. If you think
5 the manner that he did it, saying he calm was enough,
6 that's by force. By violent it doesn't have to mean
7 Jonathan reached over and grabbed him by the throat or
8 punched him out; it doesn't have to be that much. Mr.
9 Felker said, after watching the video, if you look at this
10 two second splice of it you'll see his -- the shoulder and
11 the arm go up. He never mentions that at the beginning.
12 That's something he's seen after watching the video. You
13 don't see Mr. Phillips with a gun. Mr. Felker said, upon
14 my questioning, that, yeah, if they just slid a note over
15 to me, I may not follow it, I may laugh, but he's not
16 laughing in that video when he sees that note. In fact,
17 what does he say? Really? He's annoyed. Really? He
18 doesn't laugh it off and throw it back. We don't know what
19 happened after that. You can't see the person's head.
20 Maybe he gave him a look. Maybe he did something that told
21 Mr. Felker he was serious. Maybe he shifted in a way where
22 Mr. Felker thought he saw a gun. But I would ask you to
23 consider that any of the conversation nothing references
24 the gun. There's nothing; I'm going to kill you; look at

1 what I've got; don't make me pull this out; nothing to
2 indicate that Mr. Phillips had a gun.

3 Now, the Judge will tell you that because the
4 burden is on the State to prove Mr. Phillips guilty, they
5 have to prove it to you beyond a reasonable doubt. They
6 also have to prove each and every element to you beyond a
7 reasonable doubt. You may be satisfied that, yes, there
8 was a robbery, yes, goods were taken. Could be you can see
9 in there that money's taken out of the till, it's given
10 they're missing close to two hundred dollars. That may not
11 be an issue for you. They have to prove beyond a
12 reasonable doubt it was Jonathan Phillips that went into
13 the store and did that; that may also not be an issue for
14 you based on what you've heard. They also have to prove
15 beyond a reasonable doubt Jonathan Phillips was armed with
16 a deadly weapon when he did it, and they have not proven
17 that. And if they have not proven that element, then I ask
18 you to consider strong armed robbery with all the other
19 elements in your mind from that. I told you at the
20 beginning that Jonathan Phillips was not guilty of armed
21 robbery, and he's not. There's no gun in this case, and I
22 would ask you to take that into consideration and find Mr.
23 Phillips not guilty or find him guilty of strong armed
24 robbery. Thank you.

1 THE COURT - Ladies and gentlemen, we're now at
2 the part of the trial where I am going to give you
3 instruction on the law. In a few moments when I finish
4 giving you the instructions on the law, you'll take what I
5 tell you back to your jury room and then begin to combine
6 that with the facts that you determine to be to reach a
7 verdict in this case. This next process is going to take
8 about 15 to 20 minutes, and in fact, what I'll be doing is
9 reading a majority of that to you, so I ask that you listen
10 very carefully. I'll tell you and I'll give you
11 instructions a little bit later on, I will also send this
12 written charge with you back to your jury room so you'll
13 have it back there, and I'll give you some instructions on
14 that in just a minute.

15 I remind you that during this trial you and I
16 have certain duties to perform. As the Trial Judge it is
17 my responsibility to preside over the trial of this case,
18 and I also have the duty to rule on the admissibility of
19 evidence offered during this trial. You are to consider
20 only the competent evidence before you. You are to
21 consider only the testimony which has been presented from
22 this witness stand, any exhibits which have been made a
23 part of the record in this case, any stipulations of
24 counsel. I have the additional duty to charge you the law
25 applicable to this case. As the presiding Judge I am the

1 sole Judge of the law of this case, and it is your duty as
2 jurors to accept and apply the law as I now state it to
3 you. If you already have any idea as to what the law is or
4 what the law ought to be and it does not agree with what I
5 now tell you the law is, you must abandon this idea,
6 because you're sworn to accept the law and apply the law
7 exactly as I state it to you. In every case tried in this
8 Court before a jury, the jury becomes the sole and
9 exclusive Judge of the facts in the case. A Trial Judge
10 cannot intimate, state, comment on or make any statement to
11 a trial jury about the facts in a case. Since you the jury
12 are the sole Judge of the facts in this case, you are not
13 to infer from anything that I have said during the progress
14 of this trial in ruling on the admissibility of evidence or
15 otherwise or anything that I say you to you now during the
16 course of this instruction to you that I have any opinion
17 about the facts in the case. The law does not allow me to
18 have an opinion about the facts in this case. That is a
19 matter solely for you the jury to determine.

20 As jurors it is your duty to determine the
21 effect, value, weight and truth of the evidence presented
22 during this trial. The indictment charges the defendant
23 with armed robbery. I remind you that the fact that the
24 defendant was arrested, charged and indicted in this case
25 is not evidence in this case and cannot be considered by

1 you as evidence of guilt in this case, nor does it create
2 any presumption or inference of guilt. This document is
3 simply the formal written instrument which contains the
4 charges made against the defendant. It is the formal
5 document by which this case is brought into this Court. I
6 remind you that the fact that the defendant was arrested,
7 charged and indicted in this case is not evidence in this
8 case and cannot be considered by you as evidence of guilt
9 in this case, nor does it create any presumption or
10 inference of guilt. This document is simply the formal
11 written instrument which contains the charges made against
12 the defendant. It is the formal document by which this
13 case is brought in to this Court. The defendant has pled
14 not guilty to these indictments, and that plea puts the
15 burden on the State to prove the defendant guilty. A
16 person charged with committing a criminal offense in South
17 Carolina is never required to prove his own innocence. I
18 charge you that it is an important rule of the law that the
19 defendant in a criminal trial no matter what the
20 seriousness of the charges may be will always be presumed
21 to be innocent of the crimes for which the indictments were
22 issued unless guilt has been proven by evidence satisfying
23 you of that guilt beyond a reasonable doubt. This
24 presumption of innocence does not end when you begin your
25 deliberation, but it accompanies the defendant throughout

1 the trial until you reach a verdict of guilt based on
2 evidence satisfying you of that guilt beyond a reasonable
3 doubt. The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the defendant
5 which remains with the defendant until it has been stripped
6 from the defendant by evidence satisfying you of the
7 defendant's guilt beyond a reasonable doubt. The
8 presumption of innocence is not mere legal theory. It is
9 not just a legal phrase. It is a substantial right to
10 which every defendant is entitled unless you the jury are
11 satisfied from the evidence of the defendant's guilt beyond
12 a reasonable doubt. What is a reasonable doubt in the law?
13 A reasonable doubt is the kind of doubt that would cause a
14 reasonable person to hesitate to act. The State has the
15 burden of proving the defendant guilty beyond a reasonable
16 doubt. Some of you may have served as jurors in civil
17 cases where you were told that it is only necessary to
18 prove that a fact is more likely true than not true as by
19 the greater weight or preponderance of the evidence. In
20 criminal cases the State's proof must be more powerful than
21 that. It must be beyond a reasonable doubt. Proof beyond
22 a reasonable doubt is proof that leaves you firmly
23 convinced of the defendant's guilt. There are very view
24 things in this world that we know with absolute certainty,
25 and in criminal cases the law does not require proof that

1 overcomes every possible doubt. If based on your
2 consideration of the evidence you are firmly convinced that
3 the defendant is guilty of the crime charged, you must find
4 the defendant guilty. If on the other hand you think there
5 is a real possibility that the defendant is not guilty, you
6 must give the defendant the benefit of the doubt and find
7 him not guilty.

8 There are two types of evidence which are
9 generally presented during a trial, direct evidence and
10 circumstantial evidence. Direct evidence directly proves
11 the existence of a fact and does not require a deduction.
12 Circumstantial evidence is proof of a chain of facts and
13 circumstances indicating the existence of a fact. Crimes
14 may be proven by circumstantial evidence. The law makes no
15 distinction between the weight or value to be given to
16 either direct or circumstantial evidence. However, to the
17 extent the State relies on circumstantial evidence, all of
18 the circumstances must be consistent with each other, and
19 when taken together point conclusively to the guilt of the
20 accused beyond a reasonable doubt. If these circumstances
21 merely portray the defendant's behavior as suspicious, the
22 proof has failed. The State has the burden of proving the
23 defendant guilty beyond a reasonable doubt. This burden
24 rests with the State regardless of whether the State relies
25 on direct evidence, circumstantial evidence or some

1 combination of the two. Necessarily, you must determine
2 the credibility of the witnesses who have testified in this
3 case. Credibility simply means believability. It becomes
4 your duty as jurors to analyze and to evaluate the evidence
5 and to determine which evidence convinces you of its truth.
6 In determining the believability of witnesses who have
7 testified in this case, you may believe one witness over
8 several witnesses or several witnesses over one witness.
9 You may believe a part of the testimony of the witness and
10 reject the remaining part of the testimony of that same
11 witness. You may believe the testimony of a witness in its
12 entirety or reject the testimony of a witness in its
13 entirety. You may consider whether any witness has
14 exhibited to you any interest, bias, prejudice or other
15 motive in this case. You may also consider the appearance
16 and manner of a witness while on the witness stand.

17 I instruct you and emphasize that the fact that
18 the defendant did not testify is not a factor to be
19 considered by you in any way in your deliberation and in
20 your consideration on the question of the guilt or the
21 innocence of the defendant. It must not be considered by
22 you in any manner whatsoever. A defendant has the
23 constitutional right to remain silent, and the assertion of
24 this right must not be considered by you in your
25 deliberations. I repeat, under your oath you're to draw no

1 conclusion whatsoever from the fact that the defendant in
2 this case did not testify. The fact that this defendant
3 did not testify should not even be discussed in the jury
4 room. The burden of proof as I have stated to you is on
5 the State. The defendant is not required to prove his
6 innocence. The burden of proof remains on the State to
7 prove the defendant's guilt beyond a reasonable doubt. In
8 order to establish criminal liability, criminal intent is
9 required. For example, the mental state required to be
10 proven by the State for a particular crime might be
11 purpose, intent, knowledge, recklessness or criminal
12 negligence. Criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent is always a
14 matter that must be determined by the jury from the
15 circumstances surrounding the situation. There is no way
16 to prove intent to a mathematical certainty. There is no
17 way medical science can dissect a person's brain and
18 determine what the person had in mind, so that the law says
19 that criminal intent may be inferred from the circumstances
20 shown to have existed. This is how you make a
21 determination of whether or not the element requiring
22 intent was present. It is not necessary to establish
23 intent by direct and positive evidence, but intent may be
24 established by inference in the same way as any other fact
25 by taking into consideration the acts of the parties and

1 all the facts and circumstances of the case. Criminal
2 intent is a mental state, a conscious wrong-doing. It is
3 up to you to determine what the defendant intended to do
4 based on the circumstances shown to you to have existed.
5 Criminal intent can arise from action or a failure to act.
6 It may arise from negligence, recklessness or an
7 indifference to duty or to consequences that is considered
8 by the law to be the equivalent of criminal intent.

9 A statement alleged to have been made by the
10 defendant has been admitted into evidence in this case.
11 While the Court has determined the statement is admissible,
12 I instruct you that you make the ultimate decision of
13 whether or not the defendant made the statement. If the
14 defendant did make the statement, you must determine
15 whether the statement was made by the defendant voluntarily
16 and of his own free will. This means that the statement
17 was not caused by pressure, force, fear, threats, coercion
18 or intimidation or by hope or promise of leniency or a
19 reward of any kind. In determining whether the statement
20 was voluntary, you should consider both the characteristics
21 of the defendant and the details of the questioning. Some
22 of the factors that you must consider are, (1) the age of
23 the defendant, (2) the defendant's education or lack of
24 education, (3) the defendant's mental ability or capacity,
25 (4) the defendant's IQ or intelligence, (5) the defendant's

1 background and environment, (6) the place and length of
2 detention, (7) the nature of the questioning and (8) the
3 advice or lack thereof to the defendant of his
4 constitutional rights including, but not limited to, the
5 right to remain silent, that any statement could be used
6 against him in a Court of law, the right to have a lawyer
7 present, that if he could not afford a lawyer, a lawyer
8 would be appointed to represent him without any cost and
9 that he could stop making a statement at any time. You
10 must carefully consider all of the surrounding
11 circumstances before you give any weight to the alleged
12 statement. The State has the burden of proving beyond a
13 reasonable doubt that the alleged statement was voluntary.
14 If you determine it was, you may give the statement any
15 further consideration that you deem proper. You must
16 decide what weight, if any, should be given to the alleged
17 statement. If you determine the alleged statement was not
18 the free and voluntary statement of the defendant, you
19 should not consider the statement at all.

20 An issue in this case is the identification of
21 the defendant as the person who committed the crime
22 charged. The State has the burden of proving identity
23 beyond a reasonable doubt. You must be satisfied beyond a
24 reasonable doubt of the accuracy of the identification of
25 the defendant before you may convict the defendant.

1 Identification testimony is an expression of belief or
2 impression by a witness. You must determine the accuracy
3 of the identification of the defendant. You must consider
4 the believability of each identification of witness in the
5 same way as any other witness. You may consider whether
6 the witness had an adequate opportunity to observe the
7 offender at the time of the offense. This will be affected
8 by things like how long or short a time was available, how
9 far or close the witness was, the lighting conditions and
10 whether the witness had the chance to see or know the
11 person in the past. Once again, I instruct you the burden
12 of proof on the State extends to every element of the crime
13 charged and this specifically includes the burden of
14 proving beyond a reasonable doubt the identity of the
15 defendant as the person who committed the crime. If after
16 examining all the testimony and evidence you have a
17 reasonable doubt as to the accuracy of the identification,
18 you must find the defendant not guilty.

19 The defendant is charged with armed robbery. In
20 order to prove this offense, the State must first prove
21 beyond a reasonable doubt that the defendant took personal
22 property from the person or presence of another person with
23 the felonious intent to steal the property. Property is
24 the presence of a -- property is in the presence of a
25 person if it is within the person's reach, inspection,

1 observation or control so if the person could, if not
2 overcome with violence or prevented by fear, keep
3 possession of the property. The State must also prove
4 beyond a reasonable doubt that the defendant carried the
5 property away intending to permanently deprive the owner of
6 the property and to keep the property for the defendant's
7 own use. The slightest removal of property or the complete
8 possession of the property even for an instant by the
9 defendant is sufficient to show a taking and carrying away
10 of the property. The taking and carrying away of the
11 property must have been done with violence or by putting
12 the owner of the property in fear of violence. Finally,
13 the State must prove beyond a reasonable doubt that the
14 defendant was armed with a deadly weapon during the
15 robbery. A deadly weapon is any article, instrument or
16 substance which is likely to cause death or great bodily
17 harm. Whether an instrument has been used as a deadly
18 weapon depends on the facts and circumstances of each case.
19 The following are examples of instruments which may be
20 deadly weapons: a pistol, a shotgun, a rifle, a razor,
21 gasoline or fire bomb or molotov cocktail and lighter
22 fluid. A gun may be a deadly weapon even if it is not
23 operating. You may find the defendant guilty of the armed
24 robbery even if you find he used a weapon that was
25 inoperable or was, in fact, not a real weapon provided that

1 the appearance of the weapon appeared real and operable to
2 the victim at the time of the offense, and, too, that the
3 victim was put in fear of bodily harm or threat of bodily
4 harm was reasonably apparent to the victim. You may also
5 consider strong-armed robbery or common-law robbery, which
6 is a lesser included offense to armed robbery. Robbery is
7 defined as the felonious taking away of the goods of
8 another against the owner's will and without his consent by
9 force, intimidation or violence. That is essentially
10 larceny by force. Larceny is defined as the felonious
11 taking and carrying away by any person of the personal
12 goods or things of another with the intent to appropriate
13 them to one's own use and to deprive the owner permanently
14 of his property. Therefore, elements of larceny are:
15 there was a taking, the taking was of the personal property
16 of another, the property was carried away after it was
17 taken. This is commonly known as asportation of stolen
18 property. Asportation means the act of carrying away. It
19 can be established by the slightest removal of the property
20 with felonious intent. The taking and carrying away of the
21 property, and then (4) the taking and carrying away of the
22 property was done with the intent to steal.

23 In addition to these four elements of larceny,
24 the crime of robbery additionally requires two more
25 elements. These element are: (1) the property must be

1 taken from the person of another or in his presence;
2 property is considered to be in the presence of a person if
3 it is within the person's reach, inspection, observation or
4 control so that the person could, if not overcome with
5 violence or prevented by fear, retain possession of the
6 property, and (2) the taking must be accomplished by
7 violence or putting the person in fear. This violence must
8 be actual, personal violence or the threat of it. The
9 degree of force used is immaterial so long as force or
10 threat of force is actually sufficient to overcome the
11 victim's resistance. This violence or intimidation must
12 either precede or be contemporaneous with the taking.

13 During your deliberations you may refer to the
14 instructions that I send back with you to guide your
15 decision-making. You must consider the instructions as a
16 whole and not follow some and ignore others. Please return
17 the instructions to the Court when you come back and your
18 verdict is rendered.

19 Under the constitution of this State the jury
20 verdict must be unanimous. Unanimity is mandated. Every
21 single juror must agree on the jury verdict. There cannot
22 be any split or divided vote in any form or fashion such as
23 eleven to one, ten to two, nine to three. The foreperson's
24 required to sign the jury verdict. The form that will be
25 sent back to you states, (1) We the jury find the defendant

1 not guilty of armed robbery. If you find that, you would
2 go to question (3) which is: We the jury find the
3 defendant guilty of strong-armed robbery, or if you answer
4 the defendant guilty -- not guilty of armed robbery, you
5 would then consider: We the jury find the defendant of
6 armed robbery. So there's guilty and not guilty on armed
7 robbery. There's guilty and not guilty of strong-armed
8 robbery. Place no importance in the order in which I said
9 those. We have to say something and so you have to put one
10 in front of the order (sic). There's no -- there's no
11 importance in the way these are put on the -- on the
12 verdict form.

13 Once you reach a verdict, Madam Forelady, I'm
14 going ask that you sign the jury form and date it, you
15 knock on the door and tell the foreperson that you've
16 reached a verdict; you keep the verdict form and bring it
17 with you here in the courtroom when you are seated. I'll
18 ask you if you've reached a verdict; at that time you will
19 hand the verdict form to the bailiff and he will then hand
20 it to the Court. Do not sign the verdict form until every
21 single juror agrees. If when you're in the jury room
22 somebody needs to be excused, go to the restroom, you are -
23 - if some of you smoke -- sometimes if we allow jurors to
24 go out to smoke -- you must stop deliberation. There'll be
25 no deliberations unless all 12 jurors are present in the

1 courtroom. When you go back to the jury room you'll have
2 in addition to the verdict form, you'll have some of the
3 evidence that was introduced -- we'll send that back with
4 you. We will not send the video back with you. If you
5 desire to see that video, just write that on a note, hand
6 it to the bailiff, he'll instruct the Court, we'll bring
7 you back out here and you'll be allowed to see the video
8 here on the equipment that we have here in the courtroom.

9 In just a moment I'm going to allow you to return
10 to your jury room. We will have to take up some matters
11 outside of your presence before you can begin deliberating.
12 Once the bailiff brings the verdict form and the pieces of
13 evidence back to you, you can then begin deliberating. Do
14 not discuss the case until the bailiff brings the verdict
15 form and the evidence back to you. We're going to need to
16 take up a few matters outside of your presence before
17 that's done, but at this point I'm going to allow you to be
18 excused and go to the jury room, that is, now at this point
19 everybody except the alternate, and if you would just come
20 down and wait right here until all of the other jurors are
21 excused. So at this point the jury can return to the jury
22 room.

23 (WHEREUPON, JURY EXITS THE COURTROOM)

24 THE COURT - All right thank you. You are --
25 you're Ms. Trovinger?

1 MS. INZERILLO - Your Honor, may I take a quick
2 look at that verdict form?

3 THE COURT - Yes. I ---

4 MS. INZERILLO - But nothing as to the charges?

5 THE COURT - Yes, what I did -- okay, nothing as
6 to the charges. Okay, we'll be at ease then while y'all
7 come up and make sure we know what goes back to the jury
8 and look at the verdict.

9 (WHEREUPON, BENCH CONFERENCE IS HELD WHICH WAS
10 NOT REPORTED.)

11 (WHEREUPON, BRIEF RECESS TAKEN)

12 THE COURT - All right, bring the jury back in.

13 (WHEREUPON, JURY RETURNS TO THE COURTROOM)

14 THE COURT - Thank you, ladies and gentlemen. We
15 need one further brief instruction. When you have the jury
16 -- the verdict form back there with you, there are four
17 questions on the jury form: (1) We the jury find the
18 defendant not guilty of armed robbery; (2) We find the
19 defendant guilty of armed robbery; (3) We find the -- we,
20 the jury find the defendant guilty of strong armed robbery;
21 (4) We the jury find the defendant not guilty of strong
22 armed robbery. Obviously he cannot be found guilty of
23 both. You must choose one or the other as far as guilt.
24 He also may be found not guilty on both. That would be the
25 decision that you make and again, place no importance on

1 the order in which I've stated that to you. All right,
2 thank you.

3 (WHEREUPON, JURY EXITS THE COURTROOM)

4 THE COURT - All right, anything further from the
5 State?

6 MR. PLEMING - No, sir, Your Honor.

7 THE COURT - From the defense?

8 MS. INZERILLO - No, Your Honor.

9 THE COURT - All right, Mr. Dunlap, if you'll take
10 what they have assembled there from that and instruct
11 the jury they can begin their deliberations. That pile
12 right there on the corner. Put the verdict form on the top
13 if you don't mind.

14 All right, we're going to take about a five
15 minute break.

16 (WHEREUPON, JURY DELIBERATES AT 3:34 P.M.)

17 (WHEREUPON, COURT IN RECESS AWAITING VERDICT.)

18 THE COURT - All right, back on the record on the
19 trial; I have been handed a note from the bailiff from the
20 jury, says we have a verdict. So let's bring the jury in.

21 (WHEREUPON, JURY RETURNS WITH VERDICT AT 3:51
22 P.M.)

23 THE COURT - Thank you, ladies and gentlemen,
24 Madam Forelady, has the jury reached a verdict?

25 FORELADY - Yes, sir.

1 THE COURT - If you'd hand your verdict form up to
2 the bailiff.

3 (WHEREUPON, VERDICT IS HANDED UP TO THE COURT;
4 WHEREUPON, COURT PASSES THE VERDICT TO THE DEPUTY CLERK.)

5 THE COURT - Madam Clerk, if you'd publish the
6 verdict.

7 DEPUTY CLERK - Indictment Number 2015-GS-46-3438,
8 State of South Carolina versus Jonathan A. Phillips, we the
9 jury find the defendant guilty of armed robbery, signed by
10 the foreperson, dated February the 11th, 2016. If this be
11 your verdict, please say so by raising your right hand.

12 (WHEREUPON, JURORS RAISE THEIR RIGHT HANDS.)

13 DEPUTY CLERK - Let the record reflect all jurors
14 affirm.

15 THE COURT - Thank you, ladies and gentlemen.
16 Anything further from the State?

17 MR. PLEMING - Nothing from the State, Your Honor.

18 THE COURT - Anything further at this point from
19 the defense?

20 MS. INZERILLO - Not at this point, Your Honor.

21 THE COURT - Thank you, ladies and gentlemen.

22 That has concluded your service this week. You won't have
23 to come back any longer. Thank you for your service; thank
24 you for your conscientious, prompt attention, and I think
25 you're free from jury service for at least three more years

1 here in York County, so thank you, and the bailiff will
2 show you your way out.

3 (WHEREUPON, JURY EXITS THE COURTROOM.)

4 THE COURT - Anything further at this point from
5 the State?

6 MR. PLEMING - No, sir.

7 THE COURT - From the defense?

8 MS. INZERILLO - Your Honor, at this time we would
9 renew all previous objections and motions and move for a
10 new trial.

11 THE COURT - All right, that motion is denied.
12 The State -- the Court is -- tried him by all previous
13 rulings, however, your objections are noted for the record.

14 MS. INZERILLO - Thank you, Your Honor.

15 THE COURT - Thank you. Mr. Fleming, you have a
16 sentencing sheet?

17 MR. PLEMING - Yes, sir, Your Honor.

18 (WHEREUPON, DISCUSSION IS HELD BETWEEN THE DEPUTY
19 CLERK AND THE COURT WHICH WAS NOT REPORTED.)

20 THE COURT - Can we check -- see if we can stop
21 the forelady; we need her to sign the indictment.

22 MR. PLEMING - Your Honor, there is one thing that
23 was just brought to my attention. I don't recall whether
24 Your Honor made a factual finding on the record with regard

1 to the State v. Greene issue with admission of the mug shot
2 of the defendant. If we could ---

3 THE COURT - I -- my recollection is that I did
4 admit into evidence and there's sufficient evidence -- I
5 did admit it, but there is sufficient evidence in the
6 record by which it would be admitted, so I'm not going to
7 put anything else on the record.

8 MR. PLEMING - Yes, sir. I do actually think it
9 was during the trial. Someone had reminded me ---

10 THE COURT - That's right.

11 MR. PLEMING - --- that during pre-trial you
12 hadn't and now that I remember, you did. I just wanted to
13 make sure we cover our bases though.

14 THE COURT - Ms. Inzerillo, if you would bring
15 your client around.

16 (WHEREUPON, MS. INZERILLO COMPLIES)

17 THE COURT - All right, solicitor, do you wish to
18 be heard on -- well, give me any prior record and then I'll
19 hear you as far as sentencing.

20 MR. PLEMING - Yes, sir, Your Honor. Your Honor,
21 the defendant does have a prior criminal history. In 2011
22 he was convicted of possession of marijuana in North
23 Carolina, also, 2013, DWI North Carolina, another DWI from
24 that same year in North Carolina. He was also convicted in
25 2014 of larceny by employee in Gastonia, North Carolina.

1 For that he received a sentence of seven to 18 months
2 imprisonment; in 2008 he was convicted of disorderly
3 conduct, 2011, public disorderly conduct, 2012, giving
4 false information to the police, 2013 failure to stop for a
5 blue-light, received a 60 day sentence for that, and in
6 2013 in York County a possession of marijuana.

7 THE COURT - All right, thank you. Does the State
8 wish to be heard as far as sentencing?

9 MR. PLEMING - Your Honor, I would relay to you
10 his plea offer was for attempted armed robbery for a -- of
11 eight years negotiated. Originally I had discussed with
12 Ms. Inzerillo a ten year sentence suspended on five years
13 to attempted armed robbery also, but I withdrew that and
14 the official offer which was conveyed to him which he
15 rejected was attempted armed robbery for eight years
16 negotiated, and the State -- we believe that up to 15 years
17 for this charge would be appropriate under the
18 circumstances.

19 THE COURT - All right, thank you, Mr. Fleming.
20 Ms. Inzerillo, I'll be glad to hear from you and anyone on
21 the defendant's behalf.

22 MS. INZERILLO - Thank you, Your Honor, may it
23 please the Court.

24 Your Honor, I would ask the Court to consider
25 something in the low range, perhaps around ten or eleven in

1 this case, and I don't make that request not recognizing
2 the seriousness of the crime, but just because essentially
3 my discussions with Mr. Phillips he, of course, had always
4 maintained that there was no gun, which is why he had an
5 initial issue with the offer, but also I think more of
6 reality was he does have a record, but he's not served any
7 substantial time, and North Carolina does a little more
8 truth in sentencing than we do, but I think even with that
9 scheme about a year, year and a half was the most time that
10 he had served. There is a notation on the NCIC that he did
11 a little bit of South Carolina SCDC time but that was on
12 consecutive magistrate sentences, so the idea of making a
13 leap to an eighty-five percent sentence was a little hard
14 for him to get his mind around, and I don't say that
15 because I want you to think that he's been resistant to
16 anything. He has conveyed to me that he did wish to trial
17 and certainly abide by the jury's verdict with the evidence
18 that's been presented, but I did wish the Court to know
19 that even though he's got some record, his time in prison
20 has not been extensive, therefore a ten or eleven year
21 eighty-five percent sentence would be a very substantial
22 amount of time for him to serve. Your Honor, from my
23 review of his record, and I know Mr. Fleming just read it
24 out, but there's a lot of charges in a short amount of
25 time. I think the Court heard testimony from his mom. She

1 raised him, which I think he left the house about 18 or 19.
2 He did work at some point, but I think fell into I think an
3 addiction type issue, and if you look at his record, it's a
4 lot of stuff in a short amount of time. I've not been
5 apprised of any juvenile issues or anything like that, and
6 I think the Court has heard the circumstances under which
7 he was arrested in this case and the fact that he did turn
8 himself in once he was aware that they were looking for
9 him, that his mother contacted law enforcement more out of
10 concern for his safety than any concerns that he was a
11 violent individual or would hurt anybody and I know that,
12 you know, that's been some discussion between the two of
13 us, and so I don't wish for Mr. Felker or anyone on the
14 State's side to misinterpret my request to be making light
15 of the situation or that we, you know, disregarded the
16 jury's verdict in any way, but specifically as to Mr.
17 Phillips, a ten year or eleven year eighty-five percent
18 sentence would be a very, very significant sentence for
19 him. I've reviewed his record. It doesn't appear he's got
20 anything else really violent on his record, and so I don't
21 -- I think if anything this was probably very out of
22 character for Mr. Phillips.

23 THE COURT - All right, thank you. Mr. Phillips,
24 anything you want to say?

25 MR. PHILLIPS - No, sir.

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MS. INZERILLO - Your Honor, I believe he's done
176 days in jail.

THE COURT - Indictment 2015-GS-46-3438, State vs.
Jonathan Alexander Phillips having been found guilty at
trial by a jury of his peers here in York County, the
sentence of the Court -- to armed robbery -- the sentence
of the Court he be committed to the State Department of
Corrections for a determinate term of 15 years, credit for
176 days.

Thank you.

MS. INZERILLO - Thank you.

MR. PLEMING - Thank you, Your Honor.

THE COURT - We'll be at ease just for about five
minutes for those of y'all in the courtroom, if you need to
leave, this will be a good opportunity for you to be able
to leave the courtroom.

(WHEREUPON, FORELADY COMES FORWARD TO SIGN
INDICMENT)

(WHEREUPON, COURT IN RECESS)

* * * * *

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

At a Court of General Sessions, convened on November 12, 2015, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

The defendant, Jonathon Alexander Phillips, did on or about August 13, 2015 in York County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as a quantity of US currency from the person or presence of Jeremy Lee Felker while Mr. Felker worked as a store clerk at Murphy's Express. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


T. BLAINE PLEMING
ASSISTANT SOLICITOR

WITNESSES

YCSO

Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2015A4610201289

ACTION OF GRAND JURY

TRUE BILL

Shirley Carter
Foreperson of Grand Jury
Date: 11/2/15

VERDICT

Guilty

Kristin Corbaine
Foreperson of Grand Jury
Date: 2-11-16

DOCKET NO. 2015-GS46- 03438

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

NOVEMBER 12, TERM 2015.

THE STATE

VS.

JONATHON ALEXANDER
PHILLIPS

INDICTMENT FOR

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

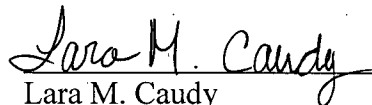
17 STATES
EXHIBIT 13
2/10/15



CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of February, 2017.

RECEIVED

FEB 14 2017

SC Court of Appeals