

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Honorable R. Keith Kelly, Circuit Court Judge

MARION E. STEWART,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-001243

APPENDIX

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SC Court of Appeals
S.C. SUPREME COURT

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1 STATE OF SOUTH CAROLINA
 2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS

3
 4 STATE OF SOUTH CAROLINA,)
 5 PLAINTIFF,)
 6)
 7 VS.)
 8 MARION STEWART,)
 9 DEFENDANT.)

TRANSCRIPT
 OF
 RECORD
 2010-GS-42-494

10 April 11th - 13th, 2011
 11 Spartanburg, South Carolina

12
 13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

15
 16 A P P E A R A N C E S:

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 18 SOLICITOR
 Attorney for the State

19 WES BOYD
 20 Assistant Solicitor
 Attorney for the State

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 23 Attorney for the Defendant

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 Seventh Judicial Circuit

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P R O C E E D I N G S

1
2
3 THE COURT: All right. Mr. Barnette, you want to call
4 the case please, sir?

5 SOLICITOR BARNETTE: Your Honor, this is the State
6 versus Marion Stewart. It's Indictment Number
7 2010-GS-42-0494. It's for armed robbery, Your Honor. It
8 has been true billed, and I'll pass it up, Your Honor.

9 THE COURT: Please do.

10 Mrs. Hodges, you're here to represent Mr. Stewart, is
11 that correct?

12 MRS. HODGES: That is correct, Your Honor.

13 THE COURT: Now, Mrs. Hodges, I have received the
14 indictment.

15 Has your client been arraigned on the indictment?

16 MRS. HODGES: Yes, sir, he was.

17 THE COURT: All right. And I'm assume he's demanding
18 trial by jury, is that correct?

19 MRS. HODGES: That is correct, Your Honor.

20 THE COURT: All right. Any matters that we need to
21 take up before we bring the jury panel in for jury
22 selection?

23 MRS. HODGES: Not for, prior to jury selection, Your
24 Honor.

25 THE COURT: And from the State's perspective?

1 SOLICITOR BARNETTE: Your Honor, just one. There's a
2 stipulation of fact that -- I'll hand that up. Counsel was
3 nice enough to -- we had a witness who was gonna be out, out
4 of the area for armed forces duty --

5 THE COURT: Yes, sir.

6 SOLICITOR BARNETTE: -- from that standpoint, and the
7 State -- basically he collected one white tennis shoe from
8 Lake Blalock off Rainbow Lake Road and Timberlake Road.

9 Your Honor---

10 THE COURT: All right. That is a stipulation that's
11 gonna be placed into the record.

12 MRS. HODGES: That is correct, Your Honor.

13 THE COURT: All right. I'll hold on to that. Once the
14 jury's sworn, we'll make that, put that into the record at
15 that time.

16 MRS. HODGES: Yes, sir.

17 THE COURT: All right. You've received the requested
18 voir dire from the defense.

19 Is there any objection on the State's part to the
20 defense voir dire?

21 SOLICITOR BARNETTE: I don't think so, Your Honor.
22 No, sir, there's no, there's no objection.

23 THE COURT: All right. And does the defense have any
24 objections to the State's requested voir dire?

25 MRS. HODGES: No, sir, no objection.

1 THE COURT: All right. At this time we'll bring the
2 jury panel in.

3 Mr. Bailiff, thank you, sir.

4 SOLICITOR BARNETTE: Your Honor, just for record, this
5 is an LWOP case. We're served notice on the defendant.
6 There was some offers made previously. Obviously they've
7 been revoked since he did not accept them.

8 THE COURT: Is that your understanding, Mrs. Hodges?

9 MRS. HODGES: That is correct, Your Honor.

10 THE COURT: And your client is aware of the State's
11 request?

12 MRS. HODGES: Yes, sir, he is.

13 THE COURT: All right. Thank you.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: All right. Ladies and gentlemen of the
17 jury, we're about to begin the trial of the State of South
18 Carolina versus Marion Stewart. I'm going to go over with
19 you some things before we actually begin questioning of you
20 again.

21 The first thing that I'm going to go over with you is
22 the indictment in this case. I will explain to you that the
23 indictment is the document that brings this case before this
24 Court. It informs the Court of the trial or the issue to be
25 tried in this matter. It informs the defendant of the

1 charge that has been lodged against the defendant.

2 However, an indictment is not evidence. It's simply
3 the document that informs us of the trial to be held, and it
4 can not be used by a jury in any manner whatsoever in the
5 reaching a verdict in this case. Again, it does not
6 constitute evidence in this case.

7 I'm going to go over the indictment with you because it
8 does contain some information concerning the allegations as
9 to when and where and who was involved in this particular
10 incident because, later on, I'm going to ask you some
11 questions that apply specifically to this case, and, of
12 course, if you're aware of who, what, when, and where,
13 perhaps you will be in a better position to answer the
14 questions that I'm about to ask.

15 The indictment in this case is in Case Number
16 10-GS-42-494. The indictment is for the offense of armed
17 robbery.

18 The indictment states that the defendant, Marion
19 Stewart, did, in Spartanburg County, on or about October 14,
20 2009, while armed with a pistol, dirk, slingshot, metal
21 knuckles, razor, knife, or other deadly weapon, or while
22 alleging, either by actions or words, word that he was armed
23 while using a representation of a deadly weapon or any
24 object which a person present during the commission of the
25 robbery reasonably believed to be a deadly weapon

1 feloniously take from the person or presence of Casey Pitts
2 and/or Tara Rice and/or Erika Duncan and/or Terry Netherton
3 and/or RxCare located at 2510 Boiling Springs Road, Boiling
4 Springs, South Carolina, by means of force or intimidation,
5 goods or monies of Casey Pitts and/or Tara Rice and/or Erika
6 Duncan and/or Terry Netherton and/or RxCare again located at
7 2510 Boiling Springs Road, Boiling Springs, South Carolina
8 described as follows: Medication, with the intent to
9 deprive the owner permanently of such property in violation
10 of Section 16-11-330(a) of the Code of Laws of South
11 Carolina, 1976 as amended, against the peace and dignity of
12 the state, and contrary to the statute in such case made and
13 provided.

14 Again, that is the, the indictment that brings the case
15 before this Court. I've gone over that with you simply for
16 the purpose of allowing you to more fully answer some
17 questions that I'm about to ask you.

18 Now, again, you were sworn earlier concerning jury
19 qualifications. It is necessary that you be sworn again
20 concerning the answers that you're about to give to the
21 questions that I'm going to ask that apply specifically to
22 this case.

23 Madam Clerk, please swear the prospective jury panel.

24 (WHEREUPON, the jury panel was placed under oath at
25 this time.)

1 THE COURT: Now, if any of you either failed or refused
2 to take the oath just administered by the clerk, please
3 stand.

4 (No response.)

5 THE COURT: The Court record will reflect then that all
6 jurors have been sworn for purposes of my questioning.

7 Now, before I begin the questioning, I want to allow
8 the attorneys an opportunity to introduce themselves to you
9 so that you're aware of the attorneys who are involved in
10 the trial of this case, and in the case of the defense, I'd
11 ask that you introduce the defendant.

12 First of all, for the State.

13 SOLICITOR BARNETTE: May it please the Court, Your
14 Honor?

15 THE COURT: Yes, sir.

16 SOLICITOR BARNETTE: I'm Barry Barnette, the solicitor.
17 This is Wes Boyd, assistant solicitor, in the case.

18 THE COURT: Thank you.

19 For the defense.

20 MRS. HODGES: Thank you, Your Honor. May it please the
21 Court?

22 THE COURT: Yes, sir.

23 MRS. HODGES: Morning, ladies and gentlemen. I'm Kathy
24 Hodges, attorney here in Spartanburg, and this is my client,
25 Marion Stewart.

1 THE COURT: Thank you very much. You can be seated.

2 (Parties comply.)

3 THE COURT: Now, we'll go through the same process that
4 we went through earlier. When I ask a question, if you have
5 a response, I'll be asking you to stand. Again, before I
6 can receive the response that you might have, it will be
7 necessary for me to put your name and juror number on the
8 record so that we can have a record of who's responding to
9 my questions.

10 The first question, has any member of the jury panel
11 ever been related by marriage or are you related by blood to
12 the defendant, Marion Stewart, or the alleged victims, Casey
13 Pitts, Tara Rice, Ericka Duncan, and Terry Netherton, if
14 that's true, please stand.

15 (Juror responds.)

16 THE COURT: Ma'am, name and number.

17 JUROR: Cynthia O'Shields, 121.

18 THE COURT: Yes, ma'am.

19 JUROR: Erika Duncan is my niece by marriage, my
20 sister-in-law---

21 THE COURT: All right. Ma'am, since you have a family
22 member involved in the case, I'll excuse you from the trial
23 of the case, but remain seated. Thank you very much. But
24 you don't have to answer any other questions, you're
25 excused.

1 Anyone else?

2 (No response.)

3 THE COURT: Now, has any member of the jury panel ever
4 had a close personal or a social relationship with either
5 the defendant, Marion Stewart, or the alleged victims, Casey
6 Pitts, Tara Rice, Erika Duncan, or Terry Netherton, if
7 that's true, please stand.

8 (Juror responds.)

9 THE COURT: Name and number please, ma'am.

10 JUROR: I'm Patsy Harris, Number 62.

11 THE COURT: Yes, ma'am.

12 JUROR: Terry Netherton and I went to high school
13 together, and we also live as neighbors.

14 THE COURT: All right, ma'am. Would that fact, I don't
15 know how close that relationship might be, but would that
16 affect your ability to be fair and impartial during the
17 trial of the case?

18 JUROR: No, it wouldn't.

19 THE COURT: All right, ma'am. You can be seated.
20 Thank you very much.

21 Anyone else?

22 (No response.)

23 THE COURT: Now, as far as the attorneys are involved
24 in this case, has any member of the jury panel ever been
25 represented by either of the attorneys involved in this case

1 or are any of the attorneys that are involved in this case
2 or have they ever appeared on the other side of some legal
3 matter from you, if that's true, please stand.

4 (No response.)

5 THE COURT: Is there any member of the jury panel who
6 has ever been related by marriage or are you related by
7 blood or have you ever had a close personal or a social
8 relationship with any of the attorneys that are involved in
9 the trial of this case, if that's true, please stand.

10 (Juror responds.)

11 THE COURT: Yes, ma'am, I need your name and number.

12 JUROR: My name is Patracia Nesbitt. I'm Juror Number
13 114.

14 THE COURT: Yes, ma'am.

15 JUROR: If I can remember correctly, I think the two
16 attorneys, my uncle, Wendell Williams was---

17 THE COURT: Uh-huh. (Affirmative).

18 JUROR: ---was.

19 THE COURT: They were involved in a trial that he was
20 involved in?

21 JUROR: Yes, sir, it was two, both uncles.

22 THE COURT: All right. Would that affect your ability
23 to be fair and impartial in this case, ma'am?

24 JUROR: No, sir.

25 THE COURT: Okay. You can be seated.

1 Anyone else?

2 (No response.)

3 THE COURT: Now, ladies and gentlemen, I have a rather
4 lengthy list of potential witnesses. I'm going to go
5 through these. Looks like I've got about 27 names I'm going
6 to call out. And, so, as I go through these, pay close
7 attention. I don't know how many of these might be in the
8 courtroom at this time. If they are present, when I call
9 out their name, I'd ask that they stand and face the jury
10 panel. That will help you at least put a face with that
11 particular name.

12 All right. Of course, we've discussed the defendant.
13 You're aware of him.

14 Lee Ann Nichols.

15 Billy Stewart.

16 Wanda Gail Stewart.

17 Donald Stepp.

18 Lieutenant Harlow with the Sheriff's Department.

19 Michael Derrick Gibson.

20 Christopher Chuck Wyatt.

21 Investigator William Gary with the Sheriff's Office.

22 (Witness stands.)

23 THE COURT: Thank you, sir.

24 Investigator Lorin Williams with the Sheriff's Office.

25 Investigator Matt Hutchins with the Sheriff's Office.

1 Investigator Tim Davis with the Sheriff's Office.
2 (Witness stands.)
3 THE COURT: Thank you, sir.
4 Terry Netherton from Boiling Springs.
5 (Witness stands.)
6 THE COURT: Sir, if you'll turn and face the jury
7 panel.
8 (Witness complies.)
9 THE COURT: Thank you, sir.
10 Casey Pitts.
11 Tara Rice.
12 Erika Duncan all from Boiling Springs.
13 Charles Gilbert with Verizon.
14 Captain Mike Jones with the detention center.
15 Shirley Gilbert from Boiling Springs.
16 Deputy Rosenberg with the Sheriff's Office.
17 Grady Taylor from Boiling Springs.
18 Bryan Crow from Spartanburg.
19 Sergeant Kimberly Ashley with the detention center.
20 Sergeant Deanna Arnold with the Sheriff's Office.
21 (Witness stands.)
22 THE COURT: Thank you, ma'am.
23 Investigator Richard Foster with the Sheriff's Office.
24 Investigator Anita Mullinax with the Sheriff's Office.
25 Now, that's the list of potential witnesses in this

1 case, and as to those names, has any member of the jury
2 panel ever been related by marriage or are you related by
3 blood or have you had a close personal or a social
4 relationship with any of the individuals that I just named
5 as potential witnesses in this case, if that's true, please
6 stand.

7 (Jurors respond.)

8 THE COURT: Name and number please, sir.

9 JUROR: Reginald Fowler, Juror Number 50.

10 THE COURT: Yes, sir.

11 JUROR: Went to high school with Lorin Williams.

12 THE COURT: All right. Would that fact affect your
13 ability to be fair and impartial in this trial?

14 JUROR: No, sir.

15 THE COURT: Thank you, sir. You can be seated.

16 Name and number please.

17 JUROR: Brandon Bishop, Number 9.

18 THE COURT: Yes, sir.

19 JUROR: Matt Hutchins and I were neighbors for a while
20 and I've worked with him before.

21 THE COURT: All right. But not at the present time?
22 You don't work with him now?

23 JUROR: No. No, sir.

24 THE COURT: And you're not neighbors with him now?

25 JUROR: No, sir.

1 THE COURT: All right. Would that affect your ability
2 to be fair and impartial in this case?

3 JUROR: No, sir.

4 THE COURT: Thank you. You can be seated.
5 Anyone else?

6 (No response.)

7 THE COURT: Did you get his name and number?

8 SOLICITOR BARNETTE: Yes, sir.

9 THE COURT: All right.

10 SOLICITOR BARNETTE: May I approach for one second,
11 Your Honor?

12 THE COURT: Yes, sir, please do.

13 Mrs. Hodges.

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 THE COURT: Has any member of the jury panel ever been
17 represented by or do you know anyone who is employed in the
18 Seventh Judicial Circuit Public Defender's Office or have a
19 family member or close, close friend who is currently being
20 represented or knows anyone who's employed by the
21 Seventh Judicial Circuit Public Defender's Office, if that's
22 true, please stand.

23 (No response.)

24 THE COURT: Has any member of the jury panel or a
25 member of your immediate family ever been arrested for,

1 charged with, or convicted of any violent crime involving,
2 involving such things as homicide, assault and battery,
3 kidnapping, armed robbery, resisting arrest, a weapons
4 charge, or any similar offense in any State Court such as
5 the General Sessions Court, the Family Court, the
6 Magistrate's Court, or any City Courts, if that's true,
7 please stand.

8 (Jurors respond.)

9 THE COURT: I'm gonna start over here on this end.
10 I'll ask everyone over here to be seated. I'll come over
11 there in a minute.

12 Ma'am, your name and number please.

13 JUROR: Anita Quinn, 128.

14 THE COURT: Your situation?

15 JUROR: My daughter and son-in-law were recently
16 arrested, arrested and went to court on assault and battery
17 charges against me, and they still have one case.

18 THE COURT: So, you were the, you were the alleged
19 victim in that case?

20 JUROR: Right.

21 THE COURT: Has that case been ended or is it still
22 pending?

23 JUROR: No, the domestic, domestic violence was, but
24 the auto theft where they took my car, it's still pending.

25 THE COURT: All right, ma'am. Would the fact that you

1 have that case ongoing, would that affect your ability to be
2 fair and impartial in this trial?

3 JUROR: Not at all.

4 THE COURT: Thank you, ma'am. You can be seated.
5 Name and number please.

6 JUROR: Cynthia Lewis, Number 87.

7 THE COURT: Yes, ma'am.

8 JUROR: My nephew is charged with armed robbery.

9 THE COURT: All right. That charge is still pending?

10 JUROR: No.

11 THE COURT: It's been ended now.

12 JUROR: Uh-huh. (Affirmative).

13 THE COURT: would that affect your ability to be fair
14 and impartial in this case?

15 JUROR: No, sir.

16 THE COURT: Thank you. You can be seated.
17 Name and number please, ma'am.

18 JUROR: Linda Bobo, Number 13.

19 THE COURT: Yes, ma'am.

20 JUROR: Been the victim of domestic violence.

21 THE COURT: All right, ma'am. Would that affect your
22 ability to be impartial in this trial?

23 JUROR: No, sir.

24 THE COURT: Thank you. You can be seated.

25 Ma'am.

1 JUROR: Laura Jones, Number 80. I was the victim of
2 assault and battery in 1994.

3 THE COURT: All right. And that case is ended
4 obviously?

5 JUROR: Yes, sir.

6 THE COURT: Would that affect your ability to be fair
7 and impartial in the case?

8 JUROR: No, sir.

9 THE COURT: Thank you. You can be seated.
10 Name and number please.

11 JUROR: Natasha Nesbitt, 114.

12 THE COURT: Yes, sir.

13 JUROR: My uncle shot and killed his brother, and he
14 has been charged. So --.

15 THE COURT: Is that case still pending?

16 JUROR: No.

17 THE COURT: It's been ended?

18 JUROR: Yes, sir.

19 THE COURT: Would that affect your ability to be fair
20 and impartial in this case?

21 JUROR: No, sir.

22 THE COURT: You can be seated.

23 I'll start with the young lady in the striped top.

24 JUROR: Cynthia Candy, 157.

25 THE COURT: Yes, ma'am.

1 JUROR: My sister's ex-husband was charged with armed
2 robbery.

3 THE COURT: All right. And is -- it's an ex-husband of
4 your sister's?

5 JUROR: Right.

6 THE COURT: All right. Would that affect your ability
7 to be fair and impartial in this case, ma'am?

8 JUROR: No, sir.

9 THE COURT: Thank you.

10 Ma'am, name and number please.

11 JUROR: Tiffany Hughes, 72. My child's father and my
12 cousin is charged with armed robbery and kidnapping.

13 THE COURT: All right, ma'am. Would that affect your
14 impartiality in this case?

15 JUROR: No, sir.

16 THE COURT: Thank you. You can be seated.

17 All right. Everyone who was standing here, if you'll
18 stand again for me please on my right.

19 (Jurors comply.)

20 THE COURT: I'll start with you, sir, name and number.

21 JUROR: Jake Penfield, 124.

22 THE COURT: Yes, sir.

23 JUROR: Assault and battery on a police officer.

24 THE COURT: All right.

25 JUROR: It's---

1 THE COURT: What relationship did you have to that?

2 JUROR: I -- well, I just stood up because I thought
3 you said a---

4 THE COURT: Well, were you charged or was a family
5 member charged or I'm trying to find out---

6 JUROR: I was.

7 THE COURT: You were.

8 Okay. Is that case still pending or is it ended?

9 JUROR: No, it's old now. It won't matter.

10 THE COURT: All right. Would it affect your ability to
11 be fair and impartial in the case.

12 JUROR: I don't guess.

13 THE COURT: Thank you. You can be seated.

14 Name and number please.

15 JUROR: Tim Dutton, Number 40.

16 THE COURT: Yes, sir.

17 JUROR: Brothers assault and battery, domestic
18 violence, and I think grand larceny.

19 THE COURT: All right. Is that case still pending,
20 sir?

21 JUROR: No.

22 THE COURT: Would that affect your impartiality?

23 JUROR: No.

24 THE COURT: Thank you, sir.

25 Lady on my right, your name please, ma'am.

1 JUROR: Margaret Cook, Number 29..

2 THE COURT: Yes, ma'am.

3 JUROR: My son was arrested for different drug charges
4 and also for receiving stolen property.

5 THE COURT: All right. Are those cases still pending?

6 JUROR: No, sir.

7 THE COURT: Would that affect your impartiality in this
8 case, ma'am?

9 JUROR: No, sir.

10 THE COURT: Thank you. You can be seated.

11 Name and number please, ma'am.

12 JUROR: Patty Tilley, Number 18.

13 THE COURT: Yes, ma'am.

14 JUROR: I have a son that's arrested on drug charges as
15 well, firearm charge, and assault and battery.

16 THE COURT: Are those cases still pending, ma'am?

17 JUROR: No, sir.

18 THE COURT: All right. Would that affect your
19 impartiality in this case?

20 JUROR: No, sir.

21 THE COURT: You can be seated. Thank you, ma'am.

22 Anyone else?

23 (No response.)

24 THE COURT: Has any member of the jury panel or a
25 member of your immediate family ever been prosecuted by

1 either the attorneys involved in this case, Mr. Barnette or
2 Mr. Boyd, or anyone else serving in the Seventh Judicial
3 Circuit Solicitor's Office, if that's true, please stand.

4 (No response.)

5 THE COURT: Has any member of the jury panel ever been
6 arrested or charged in a warrant by the Spartanburg County
7 Sheriff's Office, if that's true, please stand.

8 (Jurors respond.)

9 THE COURT: Yes, sir, name and number.

10 JUROR: Brandon Bishop, Number 9, Number 9.

11 THE COURT: Yes, sir, and your charges?

12 JUROR: Possession of scheduled IV drugs.

13 THE COURT: All right, sir. And that case has been
14 ended now?

15 JUROR: It's still ongoing.

16 THE COURT: It's still ongoing?

17 JUROR: Yes, sir.

18 THE COURT: Would that affect your impartiality in this
19 trial?

20 JUROR: No, sir.

21 THE COURT: You can be seated.

22 Name and number please.

23 JUROR: Karen Robinson, 135.

24 THE COURT: Your situation, ma'am?

25 JUROR: Writing bad checks.

1 THE COURT: All right. Would that affect your
2 impartiality in this trial?

3 JUROR: No, sir.

4 THE COURT: Is that still pending, ma'am?

5 JUROR: No, it's a long time ago.

6 THE COURT: Thank you, ma'am.

7 Name and number please.

8 JUROR: Tiffany Hughes, Number 72.

9 THE COURT: Yes, ma'am.

10 JUROR: I was arrested for PWID.

11 THE COURT: All right. Is that case been ended?

12 JUROR: It was dropped, but I was arrested and it's
13 ended.

14 THE COURT: Oh, I understand that. I asked if you'd
15 been arrested or charged. I asked you is it still going on
16 or is it been dropped?

17 JUROR: It's been dropped.

18 THE COURT: Thank you. Would that affect your
19 impartiality, ma'am?

20 JUROR: No, sir.

21 THE COURT: Thank you. You can be seated.

22 Is there any member of the jury panel who has a belief
23 or are you a member of any organization that does not
24 recognize the governments of the United States of America or
25 the State of South Carolina, if that's true, please stand.

1 (No response.)

2 THE COURT: Has any member of the jury panel or a
3 member of your immediate family ever been the victim of a
4 armed robbery or a crime involving a handgun, if that's
5 true, please stand.

6 (No response.)

7 THE COURT: Is there any member of the jury panel or a
8 member of your immediate family or a close friend of yours
9 who has ever been employed or involved in law enforcement,
10 if that's true, please stand.

11 (Jurors respond.)

12 THE COURT: I'm gonna ask this side to remain seated.
13 I'll take care of this side first this time.

14 All right. Ma'am, I'll start with you.

15 You can be seated over here. I'll come back to you.

16 Ma'am, your name and number please.

17 JUROR: Karen Robinson, 135, and my son is a police
18 officer in Landrum.

19 THE COURT: All right. Would that -- he's currently
20 serving?

21 JUROR: Yes, sir.

22 THE COURT: Would that affect your ability to be fair
23 and impartial, ma'am?

24 JUROR: No, sir.

25 THE COURT: Thank you. You can be seated.

1 Yes, ma'am.

2 JUROR: My name is Heather Nettles, Juror Number 176.
3 My cousin is a police officer in Columbus, North Carolina.

4 THE COURT: Would that affect your impartiality in a
5 trial, ma'am?

6 JUROR: No, sir.

7 THE COURT: You can be seated.

8 Name and number please, sir.

9 JUROR: My name is Rufus Workman. I'm Juror Number
10 170---

11 THE COURT: Yes, sir.

12 JUROR: And my mother is a former county sheriff's
13 deputy.

14 THE COURT: All right. Would -- so, she's either
15 retired or no longer serving?

16 JUROR: That's correct.

17 THE COURT: Would that affect your ability to be fair
18 and impartial in this matter?

19 JUROR: No, sir.

20 THE COURT: Thank you, sir.

21 Ma'am, name and number please.

22 JUROR: Jerry Simpson, 147. My son use to be a
23 corrections officer in Greenville County.

24 THE COURT: All right.

25 JUROR: Three or four years ago.

1 THE COURT: Would that affect your impartiality in this
2 case, ma'am?

3 JUROR: No, sir.

4 THE COURT: You can be seated.

5 Yes, ma'am, name and number.

6 JUROR: Kim Miller, Juror Number 103. I have a former
7 brother-in-law who's a police officer in Louisiana.

8 THE COURT: Louisiana.

9 JUROR: Louisiana.

10 THE COURT: All right. Would that affect your ability
11 to be fair and impartial in the case, ma'am?

12 JUROR: No.

13 THE COURT: You can be seated.

14 Sir, name and number again, please.

15 JUROR: Brandon Bishop, Number 9.

16 THE COURT: Yes, sir.

17 JUROR: My brother-in-law was a narcotic's officer in
18 Cherokee County, and my uncle is, works with the Solicitor's
19 Office in Spartanburg County. A guy named Rick Burgess.

20 THE COURT: All right. Would that affect your
21 impartiality in this case?

22 JUROR: No, sir.

23 THE COURT: Thank you. You can be seated.

24 Ma'am, name and number please.

25 JUROR: Laura King, 84. My brother was a solicitor in

1 Columbia, South Carolina a long long time ago.

2 THE COURT: All right.

3 JUROR: And now he works for the South Carolina Highway
4 Department as -- he's an attorney, but he teaches school.

5 THE COURT: All right, ma'am. Would that affect your
6 impartiality in this case?

7 JUROR: It does not.

8 THE COURT: Thank you very much.

9 All right. On this side, if you'll stand again please.
10 Start with you, ma'am, name and number please.

11 JUROR: Laura Jones, Number 80. My father-in-law is a
12 retired police officer in Gaffney, South Carolina.

13 THE COURT: And would that affect your impartiality?

14 JUROR: No, sir.

15 THE COURT: Thank you.

16 Ma'am.

17 JUROR: 13, Linda -- probation officer. My brother was
18 a probation officer. He's retired.

19 THE COURT: Would that affect your impartiality, ma'am?

20 JUROR: Hu-huh. (Negative).

21 THE COURT: Thank you.

22 Name and number please.

23 JUROR: 130, and my sister-in-law works for Spartanburg
24 Public Safety.

25 THE COURT: All right. Would that affect your

1 impartiality?

2 JUROR: No.

3 THE COURT: Thank you.

4 Name and number, please.

5 JUROR: Cathy Nevock, 119.

6 THE COURT: Yes, sir.

7 JUROR: My sister-in-law is a police officer with the
8 City of Spartanburg.

9 THE COURT: Would that affect your impartiality in this
10 case, ma'am?

11 JUROR: No.

12 THE COURT: Thank you.

13 Sir, name and number.

14 JUROR: Reggie Fowler, Juror Number 50. Your Honor,
15 you did say friends, correct?

16 THE COURT: Yes, sir.

17 JUROR: Also with that---

18 THE COURT: Close personal friends, right.

19 JUROR: Okay. I've got two close personal friends who
20 are with the Spartanburg County Sheriff's Department now.

21 THE COURT: All right. Would that affect your
22 impartiality?

23 JUROR: No, sir.

24 THE COURT: They're not involved in this case from what
25 I've heard, is that right?

1 Did I call out their names as potential witnesses?

2 JUROR: Yes, sir, you actually did mention Lorin
3 Williams.

4 THE COURT: All right.

5 JUROR: I do believe---

6 THE COURT: And would that affect your impartiality in
7 this case if he's involved in it?

8 JUROR: No, sir.

9 THE COURT: All right. You can be seated.

10 JUROR: Okay.

11 THE COURT: Name and number please, sir.

12 JUROR: 93, Eugene Lyles. My brother works for
13 Spartanburg County.

14 THE COURT: All right. And would that affect your
15 impartiality in this case?

16 JUROR: No, sir.

17 THE COURT: Thank you.

18 Ma'am, you just stood. So, name and number please.

19 JUROR: Elizabeth Cooper, 85. My step father is a
20 circuit court judge.

21 THE COURT: Would that affect your impartiality in this
22 case?

23 JUROR: No, sir.

24 THE COURT: Thank you very much.

25 Name and number please.

1 JUROR: Thomas Foster, Number 48. Got an uncle
2 employed with the county, and I had a cousin who's retired
3 from SLED.

4 THE COURT: And would that, in any way, affect your
5 impartiality?

6 JUROR: No.

7 THE COURT: Thank you.
8 Sir, name and number.

9 JUROR: Number 173. I got a cousin who's a retired
10 captain in New York.

11 THE COURT: All right. Would that affect your
12 impartiality?

13 JUROR: No, sir.

14 THE COURT: Thank you.
15 Ma'am.

16 MRS. HODGES: Your Honor, I'm sorry. I missed his
17 number, name and number.

18 THE COURT: I'm sorry, sir. If you'll stand and give
19 me your name and number please.

20 JUROR: Eddie Aiker, Number 173.

21 THE COURT: Thank you.

22 MRS. HODGES: Thank you, Your Honor.

23 THE COURT: I'm sorry. Yes, ma'am.

24 JUROR: I'm sorry. I forgot to mention -- I'm Laura
25 Johnson, Number 80. Doug Bishop is also -- we have

1 grandchildren in common.

2 THE COURT: Okay. All right. Would that affect your
3 impartiality?

4 JUROR: No, sir.

5 THE COURT: All right.

6 JUROR: I do know a couple of---

7 THE COURT: I've got to get your name and number first,
8 ma'am.

9 JUROR: I'm sorry. Laura King, 84.

10 THE COURT: Thank you.

11 JUROR: I do know Mark Hayes and also Derham Cole, but
12 it will not affect my impartiality.

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

14 Is there any member of the jury panel who is related to
15 or is close friends with any member of or anyone working in
16 the Seventh Circuit Solicitor's Office, if that's true,
17 please stand.

18 (Juror responds.)

19 THE COURT: Yes, sir, name and number.

20 JUROR: Brandon Bishop, Number 9.

21 THE COURT: Yes, sir.

22 JUROR: Rick Burgess.

23 THE COURT: All right. You had indicated him earlier I
24 believe, is that right?

25 JUROR: Yeah.

1 THE COURT: Okay. Thank you, sir.

2 Is there any member of the jury panel or a member of
3 your immediate family or a close personal friend who is ever
4 been represented by or are you, or are, are they a victim of
5 any or a witness -- excuse me. Let me start over on this
6 one.

7 Have you or any close relatives or friends ever been
8 represented by or are any close relatives or friends
9 currently represented by the Solicitor's Office as a victim
10 or a witness to a crime, if that's true, please stand.

11 (No response.)

12 THE COURT: Has any member of the jury panel gathered
13 any information concerning the matter that's involved in
14 this trial outside of this courtroom such that you have
15 either expressed or formed an opinion about any matter or
16 issue that might be involved in the trial of this case, if
17 that's true, please stand.

18 (No response.)

19 THE COURT: Is there any member of the jury panel who
20 is aware of any bias or prejudice that you might have either
21 for or against the State or the defense in this case, if
22 that's true, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who
25 is a member of or a contributor to any group that has as its

1 primary concern the promotion of law enforcement or victims
2 rights?

3 These groups would include, but not limited to such
4 groups as Mothers Against Drunk Driving, Students Against
5 Drunk Driving, Citizens Against Violent Crime, the South
6 Carolina Sheriff's Association, the South Carolina Troopers
7 Association, or other similarly oriented organizations, if
8 that's true, please stand.

9 (Juror responds.)

10 THE COURT: Name and number please.

11 JUROR: Laura King, 84. I am not currently, but I have
12 been a member of Mothers Against Drunk Driving---

13 THE COURT: All right.

14 JUROR: ---and that---

15 THE COURT: Ma'am, would that affect your impartiality
16 in the case?

17 JUROR: No.

18 THE COURT: Any other group that you may of been
19 associated with?

20 JUROR: I think I've given to the South Carolina
21 Troopers Association or something.

22 THE COURT: All right. Okay. would that affect your
23 impartiality, ma'am?

24 JUROR: No.

25 THE COURT: Thank you.

1 Anyone else?

2 (No response.)

3 THE COURT: Does any member of the jury panel know of
4 any reason whatsoever why he or she should not serve as a
5 juror in this case with particular emphasis being placed
6 upon your ability to be both fair and impartial to the State
7 and the defense, if that's true, please stand.

8 (No response.)

9 THE COURT: Any additional questions from the State?

10 SOLICITOR BARNETTE: None from the State, Your Honor.

11 THE COURT: Any additional questions from the defense?

12 MRS. HODGES: No, sir. Thank you.

13 THE COURT: All right. We'll begin the jury selection
14 process. The State will have five strikes. The defense
15 will have ten. We'll pick one alternate. Again, State, one
16 strike, defense two.

17 At this time, ladies and gentlemen, let me explain to
18 you what we're doing. Back when I first started practicing
19 law in the early 70's we use to have a barrel that we put
20 everybody's name in, and we would spin it around. We had a
21 blind person actually -- by law, it was required a blind
22 person pick the names of the jurors out of that barrel, and
23 now the State allows us to do that by computer by random
24 selection from the list of jurors still in the pool. I'll
25 tell the juries that means that I guess the State believes

1 that computers are legally blind. So, they can, they can
2 pick juries.

3 But she, she's developing a list. Once that list is
4 developed, we'll begin to call names in the order in which
5 the computer has placed those names on the list. When your
6 name is called, I'm going to ask that you step out, come
7 forward right in front of where the clerk is, they'll be a
8 bailiff right there, stand and face the back of the
9 courtroom. At that point in time the attorneys will be in a
10 position to exercise their strikes.

11 Now, if you're selected to serve on the jury panel,
12 you'll immediately have a seat in the jury box to my left.
13 So, bring with you any pocketbooks, whatever you brought
14 into the courtroom because, if you're selected, you'll be
15 going over here. You won't be going back to your seat.

16 Madam Clerk, you can begin the jury selection process.

17 (WHEREUPON, a jury panel was selected at this time.)

18 THE COURT: All right. We're now selecting the
19 alternate in the case.

20 (WHEREUPON, an alternate juror was selected at this
21 time.)

22 THE COURT: Thank you, Madam Clerk.

23 Any objection to the jury selection process from the
24 State?

25 SOLICITOR BARNETTE: None from the State, Your Honor.

1 THE COURT: Any objection from the defense?

2 MRS. HODGES: No, sir. Thank you.

3 (Pause.)

4 THE COURT: All right. Ladies and gentlemen, you've
5 been selected to serve on the jury in this case. We're
6 going to actually begin the trial of this case about 2:30
7 this afternoon. There's some matters I'll, preliminary
8 matters I'll be going over getting the case ready for trial.

9 During the break that we're going to take at this time
10 there's some instructions that I need for you to follow for
11 me. When you return to this courtroom, you're going to find
12 that you're going to take an oath to decide this case solely
13 based upon the evidence and the law that's presented during
14 the trial. The only evidence that you're going to hear will
15 be witnesses who are sworn to tell the truth who will
16 testify from this witness stand, and whatever documents or
17 physical evidence that comes into the court record through
18 the testimony of those witnesses. Therefore, it would be
19 highly improper and it would be a violation of your, of your
20 oath, as jurors, for you to attempt to gather any
21 information concerning this case from any source outside of
22 this courtroom.

23 For that reason, you should not listen to, read, watch
24 any media report concerning this case. You should not
25 attempt to gather information on your own from such as,

1 sources such as the Internet or any other source. Because,
2 again, when you return to the courtroom, you'll take an oath
3 to decide the case solely based upon the evidence, and that,
4 again, that will be the evidence that comes into the record
5 through the testimony of witnesses who will testify in this
6 courtroom and whatever evidence comes into the record
7 through that particular testimony.

8 Also, you've been selected as fair and impartial jurors
9 with open minds who've gone to great pains to pick people
10 who have an open mind concerning this case, and I will, will
11 tell you now, you should not discuss this case even though
12 you know very little about this case at this point in time.
13 You shouldn't even discuss the nature of the charge with
14 anyone even among yourselves because those conversations
15 might begin to color your ultimate decision in this case,
16 and I'm going to ask you to keep an open mind about this
17 matter until you've heard the arguments of counsel, the
18 evidence that will be presented during the trial, the final
19 arguments of counsel, my charge concerning the law, and only
20 when I tell you to begin your deliberations should you begin
21 any discussions concerning this case, and then only among
22 yourselves in deliberation in the jury room.

23 So, again, if someone asked you about this case, just
24 tell them I've been picked on a case. When I finish, I'll
25 tell you about it if I choose to do that because I'll tell

1 you, as a juror, you owe no one an explanation for your
2 service on jury. You don't have any duty to explain
3 anything to anybody about that service. So, again, I'm
4 going to ask you not to discuss it with anyone, not to
5 gather any information, not to listen to any media reports
6 concerning this case.

7 Now, I'm going to ask you to return back to the jury
8 room. The bailiffs will show you. It's right outside this
9 door. They'll show you how to get there. Don't go back to
10 the assembly room this time. When you come back, go back to
11 this jury room, and, at that point in time, once we have
12 everybody gathered we should be able to start. Again,
13 2:30 this afternoon, be, be back in the jury room. We
14 should be in a position to begin at that time.

15 Have a good lunch. We'll see you at that time. You're
16 free to go. The bailiffs will show you where to return.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: All right. Any objections to my
20 instruction for the jury from the State?

21 SOLICITOR BARNETTE: None from the State, Your Honor.

22 THE COURT: Any from the defense?

23 MRS. HODGES: No, sir, thank you.

24 THE COURT: All right. Any -- are there gonna be any
25 pretrial motions in the case?

1 MRS. HODGES: Just briefly, Your Honor. We need to do
2 a Jackson/Denno motion.

3 THE COURT: All right. I'm gonna let you go ahead with
4 your, your hearing.

5 SOLICITOR BARNETTE: We have a third party guilt
6 motion, but I don't know -- it, it depends on what
7 they're -- they gave an alibi defense. I don't know if
8 the---

9 THE COURT: Well, why don't we -- say about 2:15 we'll
10 get back together.

11 MRS. HODGES: Yes, sir.

12 THE COURT: All right. We'll see you at that time.

13 SOLICITOR BARNETTE: Okay.

14 THE COURT: Court's in recess. Defendant remains in
15 custody.

16 (WHEREUPON, Court was in recess for the lunch hour.)

17 THE COURT: Mrs. Hodges, you indicated you had a
18 pretrial motion.

19 MRS. HODGES: I do, Your Honor. I believe the State
20 may have one as well.

21 SOLICITOR BARNETTE: That's correct.

22 THE COURT: We'll proceed with yours, Mrs. Hodges.

23 MRS. HODGES: Your Honor, my understanding is that, in
24 the course of the investigation into this case, there were,
25 there were at least one conversation in, not in the very

1 course, short period of course of time. A couple
2 conversations between Mr. Stewart and two of the
3 investigators with the Spartanburg County Sheriff's Office.
4 Specifically I believe Mr. Gary and Investigator Hutchins.

5 At the time that he was being questioned at his
6 residence, at the time -- and that there -- my understanding
7 is that the State may wish to try to introduce some of those
8 statements that would potentially be tantamount to another
9 confession or admission as to guilt in this case, and we
10 would object to the entry of those statements on the
11 grounds, Your Honor, that they were, number one, obtained by
12 erroneous, misleading, and false information, and, number
13 two, that they were not voluntarily and intelligently made
14 by Mr. Stewart under Jackson v. Denno, and the cases that
15 basically interpreted that U.S. Supreme Court case.

16 THE COURT: Mr. Barnette, do you intend to use any
17 statements made by the defense during that period of time?

18 SOLICITOR BARNETTE: Yes, sir, we do.

19 THE COURT: All right. Do you want to put up evidence?

20 SOLICITOR BARNETTE: Yes, sir, we'd like to.

21 THE COURT: All right. I'll be happy to hear from you.

22 SOLICITOR BARNETTE: Like to call Investigator Gary to
23 the stand, Your Honor.

24 THE COURT: All right. Come forward and be sworn.

25 SOLICITOR BARNETTE: Your Honor, before we, before we

1 get started, we're probably gonna be making a motion to
2 sequester the witnesses ahead of time.

3 THE COURT: All right.

4 SOLICITOR BARNETTE: And the reason why there is an
5 alibi defense has been put up the defense and that's the
6 reason, and I may, before we start putting up testimony, I
7 thought I better put that on the record.

8 THE COURT: All right. Any objection to sequestration?

9 MRS. HODGES: Your Honor, as long as sequestration is
10 across the board, we have no objection.

11 THE COURT: All right. I'll grant, I'll grant the
12 state's motion. We'll sequester all witnesses.

13 Anyone who is a potential witness in this case will be
14 required to be seated outside other than the chief
15 investigating officer for the State. So, anyone who intends
16 to be a witness in the case should be seated outside.

17 MRS. HODGES: Your Honor, the only thing that, prior to
18 the, the beginning of this case, I know that the State
19 approached you as to their desire to get some medical
20 records from Mr. Billy Stewart. He is present at this
21 moment in the courtroom.

22 Would the Court like to take that issue up first and
23 then we sequester him?

24 THE COURT: Perhaps. That will be fine.

25 Mr. Stewart, are you present?

1 MR. STEWART: Yes, sir.

2 THE COURT: Sir, if you'll step up please to the
3 counsel table here.

4 (Witness complies.)

5 THE COURT: That's good. Right there.

6 Mr. Stewart, I've received a request from the State for
7 me to sign an order for them to be able to obtain certain of
8 your medical records.

9 Are you aware of that?

10 MR. STEWART: No, I'm not.

11 THE COURT: All right. Would you show him a copy of
12 the documents that you've---

13 SOLICITOR BARNETTE: Your Honor, I don't have the
14 documents with me. I can get those shortly or whatever.
15 But just put on the record, under HIPA, we have to have a
16 Judge's order in order to---

17 THE COURT: Well, I understand that.

18 SOLICITOR BARNETTE: And the reason why we're asking
19 for those, Your Honor, he is listed as a witness. He's had
20 some medical treatment near the day before, day after, or
21 the day -- some time in that range he's had medical
22 treatment from there, and we wanted to see when he received
23 the medical treatment, where he went to the hospital at, and
24 I understand it's in the Spartanburg Regional Medical
25 Center. I don't know if it's at Pelham or whatever.

1 THE COURT: Well, let's, let's -- Mr. Stewart, you
2 understand -- I believe you're listed as a potential
3 witnesses in this case, is that correct?

4 MR. STEWART: I think so.

5 THE COURT: And what the State is saying is that they
6 are of the belief that you perhaps underwent some medical
7 treatment in close proximity to the time that this occurred.

8 Are you -- did you, in fact, undergo some medical
9 treatment at that point in time?

10 MR. STEWART: I did.

11 THE COURT: All right. The State is asking for, for me
12 to issue an order for them to be able to receive the records
13 of that treatment to see what you were treated for, maybe
14 what kind of medications you were on, things of that nature.

15 Do you understand that?

16 MR. STEWART: I do.

17 THE COURT: Do you object to them receiving that
18 information?

19 MR. STEWART: I do.

20 THE COURT: Tell me the nature of your objection.

21 MR. STEWART: It's, it's a private thing, and it's got
22 no bearing on this case. If I'm asked the question, I will
23 answer it truthfully, and then if I have to back it up I
24 will.

25 THE COURT: Well, can you tell me something about the

1 nature of the treatment?

2 Do you understand---

3 SOLICITOR BARNETTE: Your Honor, the only thing I
4 understand it. We got a lot of phone conversations in
5 talking. That's all we're trying to gather through what --
6 I think he had a heart stint or something like that got
7 placed in there, and supposedly received treatment. I'm not
8 sure -- without the records themselves, I can't---

9 THE COURT: I understand that. I'm just trying to
10 find, to, to determine whether or not the treatment would of
11 been so extensive that he may of received medications and
12 medications obviously can have effects on peoples' ability
13 to understand and remember things. So, that -- to the
14 extent it may be important to know that information.

15 You understand that, Mr. Stewart?

16 MR. STEWART: Yes, sir, I do.

17 THE COURT: All right. Defense have any position in
18 regard to this?

19 MRS. HODGES: Your Honor, I respectfully would ask the
20 Court not to issue the records. The nature of what I intend
21 to ask Mr. Billy Stewart in this case in terms of his
22 knowledge of the case is such that there are other witnesses
23 that can, that -- the nature of his treatment and I think
24 the medications he may or may not have been given, Your
25 Honor, I don't think actually are gonna bear, have any

1 bearing on his testimony in terms of what he's able to
2 remember.

3 In my conversations with Mr. Billy Stewart over the
4 course of the last month or so, he has been able to
5 essentially remember the events around this time period.
6 He's able to relate to me where he was, what he was doing
7 at, during the time period of this particular case, and the,
8 the -- and essentially, you know, what he had asked other
9 people to do, which is basically a part of our alibi
10 defense. But he is not a, a -- Mr., Mr. Billy Stewart is
11 not being offered by the defense as an, as a witness in
12 terms of the complete alibi. He is, he is a part of our
13 alibi defense, but he is not our complete alibi defense, and
14 I just don't think that the nature of the medical procedure
15 or the medication is, is, quite frankly, relevant in terms
16 of, of the, for the State to try and disprove our alibi.

17 You know, I think the State's other witnesses are, you
18 know, or what they're gonna have to rely on. Not
19 necessarily Mr. Stewart's medical records. And, you know,
20 we ask the Court respect Mr. Stewart's wishes that those not
21 be disclosed to the State.

22 THE COURT: Anything further?

23 SOLICITOR BARNETTE: Your Honor, the problem I got is,
24 is normally I'd be entitled to it if I did a search warrant.
25 I made a good faith effort. The problem I got now with HIPA

1 is that adds that extra requirement it has to be a Judge's
2 signature.

3 THE COURT: Oh, I understand.

4 SOLICITOR BARNETTE: That's the problem.

5 THE COURT: And I think I need to make a determination
6 as to whether or not the request could possibly lead to
7 relevant information. There's no way for me to judge
8 whether it is relevant or not relevant other than to judge
9 the possibility of the existence of evidence that would be
10 bearing on a question in fact or the credibility of the
11 witnesses who will testify. In this case, it's my
12 determination that that would be a relevant inquiry, and
13 I'll sign the order ordering the release of the records.
14 However, I'm going to limit the scope to the, to the time
15 around this incident.

16 SOLICITOR BARNETTE: Yes, sir.

17 THE COURT: So, if you'll prepare the order. The date
18 of the incident was, according to the indictment,
19 October 14th.

20 SOLICITOR BARNETTE: I, I'd ask the day before, day
21 after, Your Honor. Just that three day period if that's
22 okay with the Court.

23 THE COURT: I think that's reasonable, and I'll sign an
24 order to that effect.

25 MRS. HODGES: Your Honor, will we have an opportunity

1 to review that record once the State's received them?

2 THE COURT: Oh, absolutely. Once the State's received
3 them, I'll say they're available to both sides.

4 SOLICITOR BARNETTE: Yes, sir.

5 MRS. HODGES: Thank you, Your Honor.

6 SOLICITOR BARNETTE: I have no objection, no objection
7 to that either.

8 THE COURT: Okay. Thank you, Mr. Stewart.

9 MR. STEWART: Yes, sir.

10 MRS. HODGES: Your Honor, at this point I think that
11 Mr. Stewart and Ms. Nichols could just stay outside during
12 the course of the---

13 THE COURT: All right, sir. If you'll step outside
14 while we continue with the hearing. Thank you, sir.

15 MR. STEWART: Yes, sir.

16 SOLICITOR BARNETTE: And, Your Honor, William Gary,
17 we're gonna ask to appoint him as the chief agent or the
18 agent in this.

19 THE COURT: All right. He'll be the investigating
20 officer that will be allowed to remain in the courtroom.

21 SOLICITOR BARNETTE: And Mr. Netherton, he's actually
22 the owner of the store, the victim in the case. He had to
23 step out for a minute, but we'd ask him to be available to
24 stay in the courtroom too.

25 THE COURT: All right. Any objection to him being

1 available in the courtroom?

2 MRS. HODGES: No objection to Mr. Netherton, Your
3 Honor.

4 THE COURT: All right.

5 MRS. HODGES: We would ask that any other witnesses be
6 excused.

7 THE COURT: All right. That's it.

8 All right. Now, you were calling Investigator Gary I
9 believe?

10 SOLICITOR BARNETTE: Yes, sir.

11 THE COURT: Come up and be sworn, sir.

12 WILLIAM GARY, having been first duly
13 sworn, testified as follows:

14 THE COURT: Have a seat, sir. And once you're seated,
15 officer, state your name.

16 WITNESS: My name is William Gary.

17 THE COURT: Mr. Barnette, your witness.

18 SOLICITOR BARNETTE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR BARNETTE:

21 Q Where do you work at, sir?

22 A The Spartanburg County Sheriff's Office.

23 Q And what position do you have there, sir?

24 A I'm an investigator assigned to the violent crimes
25 division of the Sheriff's office.

William Gary - Direct examination
by Solicitor Barnette

1 Q And how long have you been with the Sheriff's
2 Department, sir?

3 A A little bit over 16 years.

4 Q I believe as was -- back on October 20th, I believe,
5 of 2009, did you go to the residence of the defendant in
6 this case?

7 A I did.

8 Q And who went with you to that residence, sir?

9 A Let's see. Investigator Matt Hutchins, David Taylor,
10 Dwight Garcia, and I.

11 Q Okay. When y'all arrived there, what did y'all do?

12 A When I got there, I thought I saw -- the front door was
13 opened. There was a glass storm door. Saw someone moving
14 around at the door. I don't know if they went, were outside
15 and went in or just at the door and went in.

16 So, when I pulled up, and walked up, I went around to
17 the left side of the house, and just with that motion
18 appeared -- a lot of times people will go to the back to run
19 or whatever. I didn't know what was going on. So, I just
20 went around to the left side of the house. I heard someone
21 talking at the front. When I came back around Investigator
22 Hutchins was walking down from the front porch with
23 Mr. Stewart down towards the car that was in front.

24 Q At that time was he under arrest?

25 A He was not.

William Gary - Direct examination
by Solicitor Barnette

1 Q Why did y'all go to the house?

2 Did y'all receive his name just in---

3 A His name had come from another defendant in this.

4 Q Okay. And was you just talking to him at that time?

5 A Yeah, just going to follow-up on the information that
6 we received from that, the other person.

7 Q Okay. And was he free to go at that point?

8 Did he have to go with y'all at that point?

9 A No, he, he could have left or whatever.

10 Q What happened after that point, sir?

11 A We talked to him briefly at the, in front of the house.
12 It was a pretty cold night, and, and he -- we were all cold.
13 He didn't have a coat on and he was shaking. So, the offer
14 was made we could step inside the house or sitting, sit in a
15 vehicle where we could warm up and talk, and he requested to
16 sit in a car.

17 So, we went to Investigator Hutchins vehicle. He
18 drives a Trailblazer. A little bit more comfortable to sit
19 and talk. He was sitting in the front passenger seat.
20 Investigator Hutchins was in the driver's seat, and I was in
21 the right rear passenger seat of the car, and that's where
22 the interview was taking place at that point.

23 Q What -- if you would, tell the court what happened from
24 that point, sir.

25 A We're sitting there talking about, about this incident.

William Gary - Direct examination
by Solicitor Barnette

1 His name had come up, trying to find out his knowledge, his
2 background. He denied any knowledge or, or anything of the
3 case. He told us some of his background with what had
4 happened there.

5 At one point Investigator Hutchins received a phone
6 call. He stepped out of the vehicle, and I made the
7 statement to Mr. Stewart, I'm still talking to him about it,
8 and I asked him -- let me get to my, part of my notes. I
9 asked him why we shouldn't believe someone who took us to a
10 location where we found a bag of pills, why we shouldn't
11 believe that person when they're saying that he was
12 involved, and I asked him, if I told him we found the pills
13 off Rainbow Lake Road, that he turned around to me and said
14 that I stuck the key, the right key in the lock and it
15 turned. He then asked where off Rainbow Lake Road that we
16 found the bag of pills, and I told him well, if I stuck the
17 key in the lock and it turned, I should get something in
18 return for that, and that's when he said Ghost Valley, and I
19 told him yes, it was Ghost Valley Road where we found the
20 pills. That's when he asked for Investigator Hutchins to
21 come back to the vehicle.

22 So, I opened the door, called for Investigator Hutchins
23 to come back to the vehicle at that point.

24 Q What happened once Investigator Hutchins came back?

25 A He, he sat down in the car, and Investigator Hutchins

William Gary - Direct examination
by Solicitor Barnette

1 said you, you had something to say, and Mr. Stewart asked
2 for some handcuffs, and he said I'm sure -- if he had some
3 handcuffs. He said he's sure that he could find some. He
4 had -- he held his hands out in front of him as if he wanted
5 to be handcuffed. He said you got your man, I did the
6 robbery.

7 Q Okay. What happened after that point?

8 A After that he didn't have anything else to say. Told
9 us he wanted a lawyer at that point.

10 Q Okay.

11 A After we stopped any questioning, you know, he had
12 asked for a cigarette. So, I went up to the porch and got a
13 cigarette from who I believed to be his wife at the time.
14 She was asking what was going on. I told her I couldn't
15 tell her a whole lot about it right now. I took the
16 cigarette back up to him where the car was parked where he
17 was standing and he asked to talk to her. So, we allowed
18 her to come over there, and he -- she asked him what was
19 going on. He told her he made a mistake and that he would
20 see her in 30 years.

21 Q Okay. He said that directly to her?

22 A Correct.

23 Q Okay. You never Mirandized him, is that right?

24 A No, sir.

25 Q Why didn't you Mirandize him?

William Gary - Direct examination
by Solicitor Barnette

1 A Well, at the time he was not under arrest. He was
2 never told he was under arrest, and we never did anything to
3 insinuate that.

4 Q Uh-huh. (Affirmative).

5 A You know, we never did handcuff him until after he said
6 that he had done the robbery, and at that point is when
7 Investigator Hutchins had told me that there was a warrant
8 on him at that time.

9 Q So, you didn't know there was a warrant on him at that
10 time?

11 A No, I had no idea.

12 Q When did Investigator Hutchins find out?

13 A I believe it was during the phone call when he was
14 outside the car.

15 Q Okay. So, you never knew --

16 A No.

17 Q -- until afterwards?

18 A I did not.

19 Q And when he put his hands out to get handcuffed, was
20 that in response to any of y'all's questions or anything?

21 A No, he -- well, which time?

22 Q The time---

23 A In the car?

24 Q ---that Investigator Hutchins came back in.

25 A No, he made the statement, he put his hands out, and

William Gary - Direct examination
by Solicitor Barnette

1 asked him about the handcuffs, and he made the statement you
2 got your man, I did the robbery.

3 Q Okay. So, did he volunteer -- was that in questioning
4 from y'all?

5 A Well, no, Investigator Hutchins got back in the car.
6 He said, you know, what do you need, do you have something
7 to say like that, but it wasn't a direct question about the,
8 the robbery itself.

9 Q So, it wasn't a -- you wasn't questioning him about
10 that or anything?

11 He just freely gave that information to him?

12 A Correct, cause after he talked about the sticking the
13 key in the lock and, and all that, he never told me what he
14 was gonna say. He just asked for Investigator Hutchins to
15 come back, and that's when I opened the door and called him
16 back over there. I didn't know what was gonna be said.

17 Q Okay. And he wasn't in custody at the time---

18 A No, he wasn't.

19 Q ---y'all took him in the car or whatever?

20 There was no warrant at that time?

21 A No, not that I knew.

22 Q And y'all didn't know of any warrant at that time?

23 A No.

24 Q And it wasn't until he received a phone call?

25 A Correct.

William Gary - Direct examination
by Solicitor Barnette

1 Q And you didn't know at that time?

2 A No, I did not.

3 Q And when he came back in after the phone call, that's
4 when he volunteered this information, is that right?

5 A Yes.

6 Q Is that in response to any questioning or anything at
7 that part?

8 A The only thing was Investigator Hutchins asked, you
9 know, what do you want, want or something of that effect.

10 Q And he asked -- and he asked to talk to Investigator
11 Hutchins---

12 A Yes.

13 Q ---is that right?

14 He asked for him to come back in?

15 A Yes.

16 Q Did -- of course, Investigator Hutchins wasn't there at
17 that point?

18 He came in the car afterwards, I mean the second time
19 around?

20 A The second -- well, he was standing out like at the
21 edge of the driveway. We were parked at the road.

22 Q Okay.

23 A It's off to the right rear of the car.

24 Q Up to the point until the phone call, was he free to
25 leave at that point?

William Gary - Direct examination
by Solicitor Barnette

1 A Yes.

2 Q would y'all have stopped him if he said I'm not gonna
3 talk to y'all anymore?

4 A wouldn't of had a reason to.

5 Q Okay. And he'd been free to go at that point?

6 A Yes.

7 Q Okay. If you would, please answer any questions that
8 the judge or Mrs. Hodges may have for you.

9 THE COURT: Mrs. Hodges, your witness.

10 MRS. HODGES: Thank you, Your Honor.

11 May it please the Court?

12 THE COURT: Yes, ma'am.

13 CROSS-EXAMINATION

14 BY MRS. HODGES:

15 Q Investigator Gary, my understanding is, is that
16 Investigator Hutchins was outside of the vehicle at the time
17 that the comment was made I stuck the right key in the lock
18 and it turned or he said you stuck the right key in the lock
19 and it turned?

20 A Correct

21 Q Okay. So, you're the only person that, that heard that
22 statement?

23 A Yes, ma'am.

24 Q All right. Did you, at that time, have any sort of
25 audio or video recording equipment available to you?

William Gary - Cross-examination
by Mrs. Hodges

1 A No, ma'am.

2 Q Okay. Is there a video camera or anything in
3 Investigator Hutchins vehicle?

4 A No, ma'am, not that I'm aware of.

5 Q Okay. The -- how long was Investigator Hutchins
6 outside of the Trailblazer?

7 A A couple of minutes.

8 Q Okay.

9 A It wasn't very long at all.

10 Q All right. Do you know who he received the phone call
11 from?

12 A No, I know he, he got a call and he said he's got to
13 step out that's when he -- I mean, at the time, I didn't
14 know.

15 Q Right.

16 Do you know now who he got the phone call from?

17 A My understanding, it was from Detective Lorin Williams.

18 Q Okay. And I know at the point that, that, that you
19 continued the conversation with Mr. Stewart, you were not
20 aware that the warrant had been issued for his arrest at
21 that time?

22 A Correct.

23 Q Do you know, was Investigator Hutchins aware of the
24 warrant?

25 A At the---

William Gary - Cross-examination
by Mrs. Hodges

1 Q At the time that the statement, the conversation
2 continued, do you know, did you know, at that time, that
3 Investigator Hutchins was aware of the warrant?

4 A I believe he was made aware during the phone call.

5 Q Okay. During that, that two minute or so phone call---

6 A Correct.

7 Q ---with Investigator Williams?

8 A Correct.

9 Q Okay. But he did -- but Investigator Hutchins, when he
10 came back to the car, did not, not say anything about that a
11 warrant has been issued?

12 A No, he didn't.

13 Q Okay. At that time once a, an investigator for the
14 Sheriff's Office receives information that a -- I assume
15 it's an arrest warrant that you're talking about?

16 A Yes.

17 Q All right. So, at the time that an arrest warrant had
18 been issued, then would Mr. Stewart have been free to leave
19 at that point?

20 A No.

21 Q So, once you know that an arrest warrant has been
22 issued, Mr., the, the nature of whether Mr. Stewart is free
23 to leave at that point changes?

24 A Yes.

25 Q So, based on the information that once an investigator

William Gary - Cross-examination
by Mrs. Hodges

1 knows an arrest warrant has been issued, then, at that
2 point, was Miranda read to Mr. Stewart?

3 A No, ma'am.

4 Q Okay. The comment of you've got your man, I did the
5 robbery, was that comment made prior to Investigator
6 Hutchins sticking his head back into the car or after
7 Investigator Hutchins had already received a phone call from
8 Lorin Williams?

9 A It was after the phone call when he sat down and said
10 basically what do you need.

11 Q Okay. And, at that point, then your understanding
12 today is that Investigator Hutchins already knew that an
13 arrest warrant had been issued?

14 A Yes.

15 Q Okay. After Mr. Stewart said, according to your, to
16 your testimony today you've got your man, I did the robbery,
17 did you-all make a decision to arrest Mr. Stewart based on
18 that information alone?

19 A It -- no, not that alone; no.

20 Q Okay. So, at that point, on, on October the 20th, is
21 that right?

22 A I believe it's after midnight. So, I think it was from
23 the 19th over to the 20th.

24 Q So, but basically on, on that -- this, this is
25 October 20th or the night that you're doing this interview

William Gary - Cross-examination
by Mrs. Hodges

1 or conversation is several days after the, the armed robbery
2 happened at, at the pharmacy, is that correct?

3 A I believe so. I don't remember the exact date.

4 Q If the pharmacy indictment says it happened on
5 October the 14th---

6 A Right, be about five or six days later.

7 Q Okay. So---

8 THE COURT: Just one second, Mrs. Hodges.

9 MRS. HODGES: Yes, sir.

10 Mr. Barnette.

11 SOLICITOR BARNETTE: Yes, sir.

12 THE COURT: The young lady's come into the courtroom, I
13 don't know if she's a witness in the case or not.

14 SOLICITOR BARNETTE: She's not. She's not, Your Honor.

15 THE COURT: Okay. That's fine. Good.

16 MRS. HODGES: Thank you, Your Honor.

17 THE COURT: Go ahead. I just wanted to be sure.

18 MRS. HODGES: Yes, sir.

19 Q So, on the, the 20th or the 19th or whatever day it
20 is that you're having the conversation in the Trailblazer
21 with Mr. Stewart and Investigator Hutchins, you heard
22 Mr. Stewart say you've got your man, I did the robbery, at
23 that point you had not, did not decide that there was enough
24 information to arrest him at that point for the armed
25 robbery?

William Gary - Cross-examination
by Mrs. Hodges

1 A Well, once -- I wasn't told that there was a warrant
2 until after all this was said.

3 Q Right. I understand that.

4 A And, in my mind as an investigator, with what we had
5 previously from the codefendant and then with his statement
6 on top of it, absolutely, that would be enough, in my mind,
7 to make an arrest.

8 Q So, once that statement was made, according to your
9 testimony you've got your man, I did the robbery, was
10 Mr. Stewart then free to leave?

11 A No, he wouldn't have been.

12 Q He would not have been free to leave at that point?

13 A No.

14 Q All right. So, then at the time that he's making the
15 statement to the female -- do, do you know that woman's
16 name?

17 A I, I saw her outside. I don't know her name.

18 Q Okay. Did -- are you familiar with the name Shirley
19 Taylor or Shirley Gilbert?

20 A Yes.

21 Q Okay. So, was, was that the same person?

22 A I think so.

23 Q Okay. So, at the time -- and we'll just do Shirley for
24 ease of, of the record.

25 At the time that the statement is being made to

William Gary - Cross-examination
by Mrs. Hodges

1 Shirley, I made a mistake, I'll see you in 30 years, at that
2 time Mr. Stewart was not free to leave?

3 A No, at that point he was handcuffed.

4 Q Okay. At that point he was handcuffed.

5 A At that point he had already asked for a lawyer. So,
6 we stopped asking him any questions.

7 Q All right. So, at the time that he asked for a lawyer,
8 was that when you decided to handcuff him and place him
9 under arrest?

10 A Yes.

11 Q Okay. So, at the time that he was handcuffed, was his
12 rights under the Miranda decision read to him?

13 A No, cause we, we were done asking questions at that
14 point. He already invoked his right.

15 Q He had invoked his right to a lawyer, but he had not
16 been advised that he had a right, a right to remain silent
17 at that time by law enforcement, is that correct?

18 A No.

19 Q Okay. And at that time, he, you hear him make a
20 statement, see you in 30 years, I made a mistake, see you in
21 30 years?

22 A Right.

23 Q Okay. And none of these conversations are audio or
24 video recorded in any manner?

25 A No.

William Gary - Cross-examination
by Mrs. Hodges

1 Q Okay. It is true, is it not, that at the beginning of
2 your conversation when you first arrived at that residence
3 and start talking to Mr. Stewart that a comment is made by
4 either you or Investigator Hutchins that, that you have his
5 DNA?

6 A Correct.

7 Q Okay. Did you make that statement or did Investigator
8 Hutchins?

9 A I heard Investigator Hutchins make it.

10 Q All right. So, Investigator Hutchins tells Mr. Stewart
11 that they have his DNA or that, or that law enforcement has
12 his DNA?

13 A Yes.

14 Q In relationship to this particular incident?

15 A Yes.

16 Q Okay. Did you tell Mr. Stewart why you were there,
17 what, what; why you wanted to talk to him?

18 A I told him he was there and we needed to speak with him
19 about a robbery at RXCare.

20 Q Okay. And tell him that we've got your DNA, but you
21 didn't?

22 A Right.

23 Q Is that correct?

24 A No.

25 Q There is, in fact, no DNA involved in this case, is

William Gary - Cross-examination
by Mrs. Hodges

1 there?

2 A No.

3 Q All right. And the DNA was designed, the DNA statement
4 was designed to elicit a reaction from Mr. Stewart, wasn't
5 it?

6 A Correct.

7 Q And, in fact, you're attempting to elicit some sort of
8 admission or confession or acknowledgment that he was
9 involved in this armed robbery?

10 A Yeah, I mean it -- to see what information he may have,
11 whether it's direct knowledge or, or, or not.

12 Q All right. So, your attempt, essentially hoping that,
13 you know, we've got your DNA, okay, guys I did it, I
14 confess?

15 That's what you were hoping for, isn't it?

16 A That's what you always hope for in an interview if
17 you're talking to someone you believe could possibly have
18 something to do with it.

19 Q All right.

20 A So, yes.

21 Q So -- but you -- the statement was made knowing that
22 this statement was false?

23 A Absolutely.

24 Q And was -- and, in fact, y'all lied to him?

25 A Yes, ma'am.

William Gary - Cross-examination
by Mrs. Hodges

1 Q Okay. And you lied to him in order to gain more
2 information from him as a suspect in the armed robbery?

3 A Yes.

4 Q All right. Isn't it true that you also told him that
5 he is not the person that you're looking for, that, in fact,
6 you knew he was not the person that was able to have
7 committed this robbery because he was the wrong size?

8 A I don't remember that.

9 Q You don't remember that?

10 A No.

11 Q You're, for the record, looking at your notes
12 re-reading what you've written in your supplemental report?

13 A Correct.

14 Q Is that correct?

15 A Yes, ma'am.

16 Q All right. And this report was done at or around the
17 time that you had the interview in October of 2009, is that
18 correct?

19 A Yes, ma'am.

20 Q How many cases have you investigated since
21 October 20th of 2009 as a violent crimes investigator for
22 the Spartanburg County Sheriff's Office?

23 A I have no idea. It's been quite a few. Not as many as
24 normally cause currently I'm assigned to the unsolved
25 homicide.

William Gary - Cross-examination.
by Mrs. Hodges

1 Q All right.

2 A So, I don't get active day-to-day cases. So, I don't
3 get as many as other investigators do.

4 Q When did, when did you get that new case assignment?

5 A Let's see. 2008.

6 Q In 2008?

7 A Yes.

8 Q All right. But you have worked or been involved in,
9 would you say, dozens or hundreds, thousands?

10 what -- I mean---

11 A It depends on the type of investigation. But as far as
12 investigations, it'd probably be several hundred.

13 Q Okay. Since this report was written?

14 A Yes.

15 Q Okay. And it's fair to say that you would not remember
16 every topic of conversation that you've had with, with an
17 individual?

18 That's why you write reports?

19 A Right.

20 Q Okay. And, so, it's entirely conceivable that you did
21 have a conversation or a conversation was had with
22 Investigator Hutchins in your presence with Mr., presence
23 with Mr. Stewart that says we know you're not our guy, you
24 don't fit the height, you're too big, you're not, you know,
25 you're too tall, you're too big, and it's not your M.O.?

William Gary - Cross-examination
by Mrs. Hodges

1 A I'm not gonna say it's not possible that that was, was
2 said. I don't recall it and didn't write it down.

3 Q Okay.

4 A You know, it's, it's -- when he talked about his past
5 and the other robbery, and how, what happened there, you
6 know, that's -- if it was talking about an M.O., it would
7 have to be in relationship to that would be the only time
8 you would say it's not your M.O. that was said. It would
9 have to be in relation to a previous crime that he told us
10 about.

11 Q Okay. And did he tell you about a previous crime?

12 A He did.

13 Q All right. That's not in your report, is it?

14 A I believe it is. He said he was arrested for robbery
15 in the past and did time for it. He asked what was robbed.
16 He stated it was a drug store, and a couple of other things.

17 Q Okay. How does that fit with telling somebody what
18 their M.O. is?

19 A I don't know. I said you brought up the M.O. thing,
20 and it's not in my report talking about that.

21 Q Right.

22 A But I'm saying if that was mentioned, it would have to
23 be -- that's the only time M.O. would of come up if it ever
24 did. I don't remember talking about how these crimes
25 happened versus those other than he said he got caught up

William Gary - Cross-examination
by Mrs. Hodges

1 with someone, someone else.

2 Q Okay. Did he tell you when he got caught up in
3 something else?

4 A I think he said he was around 17.

5 Q So, he's much younger than he was on the day that
6 you're talking to him on, on this particular occasion?

7 A How old was he then?

8 Q Well, he was younger than when you were talking to him?

9 A Well, he was younger, yes, ma'am.

10 Q Okay.

11 A But I don't know about much younger.

12 Q So, you have no idea how old the man was that you were
13 going to talk to?

14 A At that point with him, no.

15 Q You didn't have any identifying information with the
16 person that you're going to go talk to that day?

17 A I didn't have it. We pulled up and asked for him.

18 That was his -- it's suppose to be his residence and he came
19 out and said that's me.

20 Q Okay. So, you didn't verify that in any way?

21 A I didn't, no, ma'am.

22 MRS. HODGES: Okay. Beg the Court's indulgence one
23 moment.

24 THE COURT: Yes, ma'am.

25 (Pause.)

William Gary - Cross-examination
by Mrs. Hodges

1 Q The person that he got the cigarette from, how, how did
2 he get the cigarette?

3 well, let me ask you the question first. Did he get a
4 cigarette?

5 A He did. And looking through my notes, evidently it was
6 not his girlfriend. It was a nephew. Yeah, it was on the
7 porch. She was out there as well, but I actually got the
8 cigarette him.

9 Q All right.

10 A And I took it out there to him.

11 Q All right. So, you took the cigarette from the nephew
12 and brought it to him.

13 where was Shirley when this conversation was, was, that
14 you overheard?

15 A About -- okay. When I got the cigarette or the
16 conversation when I heard him make the statement to her?

17 Q where was Shirley when you got the cigarette?

18 Let's start with that.

19 A On the porch.

20 Q All right. And then at what point -- did she, did she
21 move?

22 A Yes.

23 Q where did she move to?

24 A He wanted to speak to her. We allowed her to come down
25 to the driveway where he was standing --

William Gary - Cross-examination
by Mrs. Hodges

1 Q Okay.

2 A -- for her, for him to be able to talk to her.

3 Q Okay. And at that point he was under arrest?

4 A Yes, ma'am.

5 Q All right. Thank you, sir.

6 Nothing further, Your Honor.

7 THE COURT: Mr. Barnette.

8 SOLICITOR BARNETTE: A few on redirect.

9 THE COURT: Yes, sir.

10 REDIRECT EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q You didn't have any identifying information cause
13 you -- was you gonna, gonna plan to arrest him at that
14 point?

15 A I didn't have a plan to arrest him.

16 Q Okay. And talking about Shirley or whatever, when he
17 talked to Shirley, was that in answer to any of y'all's
18 questions?

19 A Not at all.

20 Q Any questions from Mr., Investigator Hutchins?

21 A No.

22 Q So, he freely and voluntarily talked to Shirley?

23 A Correct.

24 Q Shirley is not a law enforcement officer, is she?

25 A Not that I'm aware of.

William Gary - Redirect examination
by Solicitor Barnette

1 Q okay. And going back to talking to him and everything,
2 would he have been free to go if he decided not to talk to
3 y'all?

4 A If he said I'm getting out of this car and I'm leaving,
5 I'm -- we would of had no reason to stop him.

6 Q Uh-huh. (Affirmative).

7 okay. And Investigator Hutchins actually went to the
8 front door, is that right?

9 A Yes.

10 Q Do you know what happened at the front door?

11 A No, sir.

12 Q Okay. No further questions. Thank you.

13 THE COURT: Mrs. Hodges.

14 MRS. HODGES: No, sir, nothing on recross.

15 THE COURT: You may step down.

16 Any other witnesses on this issue from the State?

17 SOLICITOR BARNETTE: I'd like to call Investigator
18 Hutchins just about what happened at the front door, Your
19 Honor.

20 THE COURT: All right, sir.

21 SOLICITOR BARNETTE: And, Your Honor, I---

22 THE COURT: I'm sorry.

23 SOLICITOR BARNETTE: One other thing. I'd like to
24 enter Investigator Gary's report since it was discussed in
25 the---

1 THE COURT: Any objection to it being made an exhibit
2 for this hearing?

3 MRS. HODGES: No, sir.

4 THE COURT: All right. A copy of it will be marked for
5 purposes of this hearing.

6 MRS. HODGES: Well, judge, I would object to the, the
7 report as amended.

8 THE COURT: Has it been amended?

9 MRS. HODGES: He's written on it, Your Honor. He's
10 written---

11 THE COURT: All right. Well, let's get a clean copy.

12 SOLICITOR BARNETTE: Yes, sir, I think I got one.

13 THE COURT: Okay.

14 SOLICITOR BARNETTE: We'll get you one.

15 THE COURT: Okay.

16 SOLICITOR BARNETTE: Thank you.

17 THE COURT: And let's see, is the next witness in the
18 courtroom?

19 SOLICITOR BARNETTE: He's here, yes, sir.

20 THE COURT: Why don't you come up and be sworn?

21 We'll take care of you while they're doing that.

22 SOLICITOR BARNETTE: Call Investigator Hutchins to the
23 stand.

24 MATT HUTCHINS, having been first duly
25 sworn, testified as follows:

1 THE COURT: Have a seat and state your name please.

2 WITNESS: Investigator Matt Hutchins.

3 SOLICITOR BARNETTE: May I approach the witness with
4 his notes, Your Honor?

5 THE COURT: Yes, you may.

6 SOLICITOR BARNETTE: And, Your Honor, those are the
7 exhibit.

8 THE COURT: Show that to Mrs. Hodges to make sure she
9 has no objection to that copy coming in.

10 (Pause.)

11 THE COURT: All right. Without objection then, the
12 report of Investigator Gary will be made an exhibit for
13 purposes of this hearing.

14 (WHEREUPON, the report was marked as Court's Exhibit
15 No. 1 for identification purposes only at this time.)

16 SOLICITOR BARNETTE: Your Honor, can I go ahead and
17 question the witness?

18 THE COURT: Yes, you may proceed.

19 DIRECT EXAMINATION

20 BY SOLICITOR BARNETTE:

21 Q All right. Where do you work at, sir?

22 A Spartanburg County Sheriff's Office.

23 Q And what is your position there, sir?

24 A I'm a narcotics investigator.

25 Q And how long have you been there, sir?

Matt Hutchins - Direct examination
by Solicitor Barnette

1 A I've been at the Sheriff's Office since 2002.

2 Q Okay. Back on October 20th of 2009, did you have an
3 occasion to meet Mr. Taylor or Mr. Stewart in this case,
4 Marion Stewart?

5 A I did.

6 Q And did y'all meet him at his residence?

7 A In front of his residence, yes.

8 Q Yes, sir.

9 Did you approach the front door of his residence?

10 A I did.

11 Q If you would, tell the Court what happened when you
12 approached the front door, sir.

13 A Let me find the place in my notes please. When I got
14 to the residence, as I approached the residence, I observed
15 a white male and female go inside. When I knocked on the
16 door, it took two to three minutes for anybody to come to
17 the door. Could see people scurrying around in there,
18 moving back and forth. Then a female did come to the door,
19 and I asked to speak to Marion Stewart.

20 Q Then what happened, sir?

21 A After a few minutes, Mr. Marion Stewart came to the
22 front door. I asked him for his full name. He stated
23 Marion Stewart. Investigator William Gary walked up. At
24 that point I informed him that we were there -- when I'm
25 saying him, I'm talking about Mr. Stewart. We were there to

Matt Hutchins - Direct examination
by Solicitor Barnette

1 talk with him in reference to some pills that were stolen.
2 I observed him to be very nervous and he immediately held
3 his hands out and said let's go. I then asked him where
4 were we going, and he said to jail I guess. I found this to
5 be odd being that I just told him we were there in reference
6 to some pills.

7 MRS. HODGES: Your Honor, I'm gonna object to
8 Investigator Hutchins reading his report into the record.
9 He can testify from his recollection.

10 THE COURT: I'd ask the officer to use the report to
11 refresh his recollection. Please don't read the report.

12 WITNESS: Okay.

13 THE COURT: Thank you.

14 Q I'll go back.

15 So, he put his hands out?

16 A Yes.

17 Q Was that in response to anything you asked him to do or
18 anything like that?

19 A No, not at all, and that's what I found odd.

20 Q And what -- and he asked -- what did he say exactly?

21 A He said come on, let's go. I said where we want to go,
22 and he said to jail I guess.

23 Q Okay. What happened next, sir?

24 A Continued to talk, noticed him to be nervous and
25 shaking. It was cool outside that night, and I asked him,

Matt Hutchins - Direct examination
by Solicitor Barnette

1 since it was cool, if he, you know, wanted to sit in the
2 vehicle where it was warm, and he said yes, he wanted to go
3 to the vehicle.

4 Q So, he voluntarily went to the vehicle?

5 A Yes.

6 Q What happened then, sir?

7 A Began talking back and forth. I stated to him that his
8 name had come up in the investigation, in the investigation
9 at RxCare in Boiling Springs in reference to it being
10 robbed, and he -- at that point he said he didn't understand
11 why his name would be coming up in, in the robbery
12 investigation.

13 Q What happened then, sir?

14 A I then asked him about his past, if he had ever been
15 convicted of anything, and he stated he had.

16 Q And what did he tell you he had been convicted of?

17 A He stated that he had done time for armed robbery in
18 the past.

19 Q Okay.

20 A I asked him what was it that he robbed and he stated a
21 drug store.

22 Q What happened then, sir?

23 A He stated that the past few days he had had a stomach
24 virus, and that he, he had an upset stomach. I told him
25 that I believed that was just his conscious bothering him.

Matt Hutchins - Direct examination
by Solicitor Barnette

1 We continued to talk in the vehicle. He stated that he was
2 out of work at the time and that times was hard, and I then
3 told him that I felt that he'd feel much better if he just
4 told the truth about everything.

5 We continued to talk, told him that people were
6 trying to put this whole robbery on him, and that we just
7 wanted his side of it. He continued to rub his face and,
8 and stare into space out the window as we talked. After a
9 period of time I stepped out of the vehicle to answer a call
10 from Lorin Williams. At that point, as I was talking with
11 Lorin Williams, William Gary told me to step back to the
12 vehicle, that Mr. Stewart had wanted to talk back with me.

13 Q During that phone conversation, did you find out there
14 was an arrest warrant for the defendant in this case?

15 A Yeah, Lorin, Lorin advised me that he had just signed
16 an arrest warrant for Marion Stewart.

17 Q If you would, go ahead, sir.

18 A William Gary asked me to step back to the vehicle. As
19 I got back in the vehicle, Mr. Stewart asked me if I had a
20 set of handcuffs in the vehicle. At that point I told him
21 that I'm sure I could find a pair in there. He then put his
22 hands out and said and let's go. He stated I'm your man. I
23 asked him my man for what. He said I robbed the pharmacy.
24 He then stated that was all he wanted to say.

25 Q Okay. Afterwards did he get -- I don't know if you

Matt Hutchins - Direct examination
by Solicitor Barnette

1 know who Shirley is or whatever.

2 Did he approach his girlfriend or wife later on?

3 A Yes, after -- at that point we did arrest him on the
4 warrant. He did approach the female that was there who, who
5 he stated was his girlfriend. I'm not sure of what her name
6 was.

7 Q Did he, did he say -- did y'all ask him any more
8 questions or did he just say something to his girlfriend?

9 A No, he -- I think he asked for a cigarette and wanted
10 to talk to her. Then she brought him the cigarette, and he
11 told her that he was going to jail, I'll see you in 30
12 years. She said for what and he stated to her I robbed the,
13 the store.

14 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to add
15 his report in as Court Exhibit 2 just for purposes of this
16 hearing.

17 THE COURT: Any objection?

18 MRS. HODGES: Not after I've reviewed it, Your Honor.

19 THE COURT: All right. If you'll let her take a look
20 at the copy you want to put in.

21 SOLICITOR BARNETTE: Yes, sir, I will.

22 MRS. HODGES: For the purpose of the Court's records,
23 Your Honor, I have no objections to the three page report
24 the solicitor has just showed me.

25 THE COURT: All right. It will be made an exhibit for

Matt Hutchins - Direct examination
by Solicitor Barnette

1 purposes of this hearing.

2 (WHEREUPON, the report was marked as Court's Exhibit
3 No. 2 for identification purposes only at this time.)

4 Q Please answer any questions the judge or Mrs. Hodges
5 may have for you.

6 A Okay.

7 THE COURT: Mrs. Hodges, your witness.

8 MRS. HODGES: Thank you, Your Honor.

9 May it please the Court?

10 THE COURT: Yes, ma'am.

11 CROSS-EXAMINATION

12 BY MRS. HODGES:

13 Q Investigator Hutchins, when you first talked to
14 Mr. Stewart, at what point did you tell him you had his DNA
15 in this case?

16 A I don't recall mentioning DNA to him.

17 Q You don't recall mentioning DNA to him?

18 A No, ma'am.

19 Q Was DNA mentioned to him?

20 A Not to my knowledge.

21 Q All right. Were you -- other than the time frame that
22 you were out of the -- it was a Trailblazer you're referring
23 to?

24 A Yes.

25 Q Okay. Other than the time that you were out of the

Matt Hutchins - Cross-examination
by Solicitor Barnette

1 Trailblazer that day, were you basically present for all of
2 the conversations with Mr. Stewart by law enforcement at, at
3 that house?

4 A At that house I was.

5 Q Okay.

6 A From the time we knocked on the door till the time he
7 was transported other than when I was out of the vehicle.

8 Q And how long would you say that phone call with Lorin
9 Williams was?

10 A At most would be five minutes. David Taylor was there.
11 He's who told me, who called and told me to step out of the
12 vehicle.

13 Q Okay.

14 A And then that's who's put on the phone with Lorin.

15 Q Okay.

16 A So, I mean long enough to have a conversation.

17 Q All right. So, did you actually receive the phone call
18 on your phone or did David Taylor receive it on his phone?

19 A I -- honestly I don't recall which phone.

20 Q Okay.

21 A I talked personally with Lorin Williams.

22 Q Okay.

23 A I believe it was, I believe it was on mine where we,
24 where it was bad reception. I believe he got through to
25 David and David told me to call Lorin --

Matt Hutchins - Cross-examination
by Solicitor Barnette

1 Q Okay.

2 A -- I believe is how it happened.

3 Q All right. Is it fair to say that this area of
4 Spartanburg County is more remote, kind of difficult to get
5 cell phone reception and peaks and valleys?

6 A It's remote, yes.

7 Q Okay. During the conversation you had with Lorin
8 Williams, you were advised by Investigator Williams, at that
9 point, that that was an arrest warrant for Marion Stewart?

10 A That's correct.

11 Q Is that correct?

12 All right. And when you got back into the car, after
13 you were told by Investigator Gary that Mr. Stewart wishes
14 to talk to you some more, did you advise either Investigator
15 Gary or Mr. Stewart that there was an arrest warrant?

16 A When I was called back to the vehicle, as soon as I got
17 back to the vehicle, of course, William Gary told me that
18 Marion had something he wanted to tell me. At that point he
19 said that William Gary, to my knowledge, found out about the
20 arrest warrant at the time I told him well, Marion, we've
21 got an arrest warrant for you, you're under arrest.

22 Q Okay.

23 A To my knowledge.

24 Q And, so, at that -- at what point did you tell Mr.
25 Stewart that you had an arrest warrant and that he was under

Matt Hutchins - Cross-examination
by Solicitor Barnette

1 arrest?

2 A Once he put his hands out the second time and told I'm
3 you're man and said he robbed the store, at that point I
4 told him that we did have an arrest warrant at this time.

5 Q Okay. So, at the point that you got back into the car,
6 you knew that there was an arrest warrant, is that correct?

7 A Uh-huh. (Affirmative).

8 That's correct.

9 Q And you did not Mirandize Mr. Stewart at that point?

10 A Did not because Mr. Stewart was initiating the contact
11 back with me. I, I did not Mirandize him at that point due
12 to that.

13 Q All right. But you knew that there was an arrest
14 warrant and that at that point he was not free to leave?

15 A I did know at that point there was an arrest warrant,
16 yes, ma'am.

17 Q And, so, if Mr. Stewart had basically said I don't want
18 to talk to you guys anymore, I'm out of here, I'm going, you
19 know, wherever, you would not have allowed him to leave
20 those premises?

21 A That's correct. He would of been arrested at that
22 time.

23 Q He would of been arrested at that point?

24 A That's correct.

25 Q All right. And, at that point, is it your

Matt Hutchins - Cross-examination
by Solicitor Barnette

1 understanding that his rights under the Miranda decision
2 would have attached---

3 SOLICITOR BARNETTE: Your Honor, I object.

4 Q ---in terms of---

5 SOLICITOR BARNETTE: That's asking for legal
6 speculation on that.

7 THE COURT: I'll sustain the objection.

8 Q At the time that Mr. Stewart told you that I'm your
9 man, isn't it true that what he told you is if you're
10 looking for a drug dealer I'm your man?

11 A No, we never talked about drug dealing.

12 Q Y'all didn't talk anything about drug dealing or the
13 pills that, that he had known Grady Dale Taylor to have in
14 his possession?

15 A We talked about -- the robbery was the main focus of
16 our conversation and the pills that resulted from that
17 robbery.

18 Q All right. And that Taylor was the person that was in
19 possession of those pills?

20 A Yes.

21 Q Okay. And your testimony is that this female, when
22 Mr. Stewart asked for a cigarette and to talk to the female,
23 that she brought cigarettes to the, to the car?

24 A No, we had stepped back out of the vehicle.

25 Q All three of you?

Matt Hutchins - Cross-examination
by Solicitor Barnette

- 1 A Me, Marion Stewart, and William Gary --
- 2 Q Okay.
- 3 A -- stepped out. We were standing in the, on the edge
- 4 of his driveway in his yard. He wanted a cigarette and
- 5 wanted to talk to his girlfriend.
- 6 Q Okay.
- 7 A She brought him the cigarette out there.
- 8 Q All right. So, she brings the cigarette out there and
- 9 he talks to her?
- 10 A Uh-huh. (Affirmative).
- 11 Q All right. In your presence?
- 12 A Yes.
- 13 Q Okay. And what's that conversation?
- 14 A She -- he told her that he was going to jail, he'd see
- 15 her in 30 years.
- 16 Q All right.
- 17 A And she asked him why, and he said I robbed the store.
- 18 Q And at that point you still had not advised him that he
- 19 had a right to remain silent and that anything he said could
- 20 be used against him?
- 21 A I was not talking to him at that point. So --
- 22 Q But you had told him that he was under arrest for armed
- 23 robbery?
- 24 A Uh-huh. (Affirmative).
- 25 Q And you still had not advised him he had a right to

Matt Hutchins - Cross-examination
by Solicitor Barnette

1 remain silent at that point?

2 A I had not because I didn't intend to interview him
3 anymore.

4 Q All right. And you never told him that you-all had his
5 DNA in connection to this robbery from the RxCare?

6 A I don't recall anything about telling him about DNA
7 because as far as actually the evidence at the scene, I had
8 no knowledge of what evidence was at the scene.

9 Q Okay. And you never heard anybody else mention DNA to
10 him?

11 A Not in my presence. I don't recall that.

12 Q Okay. What was the purpose of telling Mr. Stewart that
13 it was, that you felt that his stomach virus or his stomach
14 problems were his conscious?

15 A In my experience in law enforcement since 1998,
16 interviewing people, dealing with people on a day-to-day
17 basis, you see different, how different people react, and in
18 the time frame he told me that he had the upset stomach was
19 in the time frame since the robbery had happened, and I was
20 just -- I was putting that out there to, to, in my opinion,
21 it could of been his conscious, and he might would feel
22 better to get it off his conscious.

23 Q So, you were essentially trying to, by, by mentioning
24 the fact that you thought it was his conscious that was
25 bothering him, you were trying to elicit an admission from

Matt Hutchins - Cross-examination
by Solicitor Barnette

1 him as to his involvement in this robbery?

2 A I was telling him my opinion.

3 MRS. HODGES: Beg the Court's indulgence one moment.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 MRS. HODGES: Thank you, Your Honor. That's all we
7 have.

8 SOLICITOR BARNETTE: No further questions of this
9 witness, Your Honor.

10 THE COURT: You may step down.

11 SOLICITOR BARNETTE: That would be the State's showing,
12 Your Honor.

13 THE COURT: Defense wish to call any witnesses?

14 MRS. HODGES: Your Honor, we would call Marion Stewart.

15 THE COURT: Come forward, sir, and be sworn.

16 SOLICITOR BARNETTE: Your Honor, can Investigator
17 Hutchins -- he's got a trial next door.

18 Can he go over there since he's needed right now?

19 THE COURT: He can step across the hall. That's fine.

20 MARION STEWART, having been first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat please.

23 (Witness complies.)

24 THE COURT: State your name please.

25 WITNESS: Marion Stewart.

Marion Stewart - Direct examination
by Mrs. Hodges

1 DIRECT EXAMINATION

2 BY MRS. HODGES:

3 Q Mr. Stewart.

4 THE COURT: Your witness, counselor.

5 MRS. HODGES: Thank you.

6 Q You're Marion Earl Stewart, is that correct?

7 A Yes, ma'am.

8 Q And how old are you?

9 A I'm 35.

10 Q All right. So, back in October of 2009, how old were
11 you?

12 A Thirty-three.

13 Q Okay. I want to direct your attention to the night
14 that Investigator Gary and Investigator Hutchins came to
15 where you were residing.

16 What was the, the address of that residence, do you
17 remember, or what street was it?

18 A [REDACTED] off of -- I can't remember
19 exactly.

20 Q I'm gonna ask you to speak up. I'm having a hard time
21 hearing you.

22 A [REDACTED] I believe is what it's called.

23 Q Okay.

24 A I can't remember exactly.

25 Q And what community was that in?

Marion Stewart - Direct examination
by Mrs. Hodges

1 A New Prospect.

2 Q All right. And is that considered Spartanburg or
3 Campobello?

4 A It's considered Inman.

5 Q Inman.

6 Okay. And do you remember having a conversation with
7 Investigator Gary and Investigator Hutchins?

8 A Yes, ma'am.

9 Q All right. When they came to your house, tell me what,
10 how you first knew that they were there.

11 A I walked out our front door, me and Shirley did, and we
12 was going around the front of our new truck we had just got,
13 and I seen five people walking across the front yard of my
14 neighbor's yard, and I started to turn around and go back
15 inside the house, and Investigator Hutchins called out hey,
16 I need to speak to Marion Stewart, and I went inside and I
17 picked up my granddaughter, gave her a hug and a kiss, and I
18 told Shirley I was gonna go back outside and talk to them,
19 and then I went back out on the front porch, and, at that
20 point in time, the rest of the, about three of the
21 investigators went around back, I'm assuming that's where
22 they went, and I spoke with Mr. Williams and Mr. Hutchins.
23 Q Okay. And did anybody say anything -- well, did they
24 tell you why they were there to talk to you?

25 A Yes, they did.

Marion Stewart - Direct examination
by Mrs. Hodges

1 Q What did they say?

2 A They told me that they had to talk to me about an armed
3 robbery that had occurred and wanted to know if I knew
4 anything about it.

5 Q All right. Did they tell you any specifics about what
6 armed robbery they were talking about?

7 A At that point in time, no. They just -- they stated
8 that, wanted to know did I know anything about some pills
9 and an armed robbery.

10 Q Okay. And what did you tell them?

11 A I told them no, I didn't know anything about it. That
12 I didn't, I didn't want, didn't want nothing to do with the
13 situation at hand, but I had -- and then I turned around and
14 he told me it would be best for me to tell the truth, and I
15 said am I under arrest and he told me no, you're not under
16 arrest. I said well, am I free to go. He said well, we
17 need to talk to you then. He said we did find your DNA at
18 the scene.

19 Q All right. And who told you that they found your DNA
20 at the scene?

21 A Matt Hutchins.

22 Q All right. And when he told you that they found your
23 DNA at the scene, what did you do?

24 A I stuck my arms out like a smartalik and said arrest me
25 then.

Marion Stewart - Direct examination
by Mrs. Hodges

1 Q Okay. Were you -- when you, when you told him that,
2 what did they do?

3 A They told me that I wasn't under arrest. He didn't
4 state, state nothing else at that time about the DNA not
5 being real or that they didn't find any DNA. I didn't
6 really know if they did or they didn't, and he asked me did
7 I know where the drugs was hid at and did I know Grady Dale
8 Taylor. And I told him I knew Dale Taylor, but no, I didn't
9 never know his name was Grady. And he just asked me more
10 questions about the drugs and where they was, and I was kind
11 of caught in the middle of I didn't want to be a part of it,
12 but I already knew and bought drugs from Dale already.

13 So, I tried to keep my mouth shut. At the same time,
14 they kept asking me questions.

15 Q Okay. At any point did you move the conversation from
16 the porch to the car?

17 A Yes.

18 Q All right. How did that happen?

19 A I think it was, it was Matt or Mr. Williams one had
20 asked me why was I shaking, and I told them I had a stomach
21 virus and I had been sick for about a week, and they told me
22 to clear my conscious and tell them the truth. Excuse me.
23 And I told them, I said, I really had a cold. You know, I
24 had a stomach virus, and he said well, you want to go sit in
25 our truck and I said yeah, I guess so. And, so, we went

Marion Stewart - Direct examination
by Mrs. Hodges

1 over to his truck and that's where they initiated the
2 conversation.

3 Q Okay. At any point did you feel like you were free to
4 leave?

5 A No.

6 Q And why not?

7 A Because they had done surrounded me and kept asking me
8 questions, and I asked them -- I had previously asked them
9 was it over with, you know, was I under arrest, and they
10 told me no, that they needed to ask me the questions.

11 Q All right. And---

12 A So, I was under, under the assumption that I had to
13 answer the questions.

14 Q And at any point did you ask them if you were free to
15 leave?

16 A No.

17 Q All right. Did you feel, based on their actions and
18 appearances towards you, that you were free to leave?

19 A No, I did not.

20 Q All right. In the car when you're having a
21 conversation, did you, at any point, say something about
22 having a key, putting a key in the right, right lock or
23 finding the right key and a lock turning?

24 A No, I did not.

25 Q Okay. At any point in the conversation of the car did

Marion Stewart - Direct examination
by Mrs. Hodges

1 Mr., did Investigator Hutchins come out of the car?

2 A Yes, he got out of the car and walked off for about
3 five minutes and then came back.

4 Q Okay. And at the time that he came back, did he tell
5 you that you were under arrest?

6 A No, he didn't.

7 Q All right. At the time that he came back, did you tell
8 him -- did you hold out your hands and tell him I'm your
9 man, I did the robbery?

10 A No, I did not.

11 Q What did you say?

12 A I told him -- the exact words was if you're wanting
13 somebody for selling drugs, I've done told you I bought
14 drugs and I sold them. If you're wanting, wanting somebody
15 who sold drugs, I'm your man. I never said nothing about an
16 armed robbery. I had talked -- they asked me about my
17 record, and I had previously told them about that, and as
18 far as committing an armed robbery, I didn't have nothing to
19 do with it.

20 Q All right. Did -- the conversation about your record,
21 did you initiate that conversation, start that part of that
22 conversation or did they ask you about your record?

23 A I can't exactly remember. But I think they asked me
24 about the, about the record. They said something to the
25 point of we knew that you didn't have nothing to do with the

Marion Stewart - Direct examination
by Mrs. Hodges

1 crime because your M.O. wasn't the right one. I said my
2 M.O. and they said yeah, when they, that guy robbed this
3 place, he said I'm sorry. And I said he said he's sorry.
4 He's like yeah, we said we already know that's not you.

5 Q All right. Did he say anything else as to why they
6 felt that you were not the person that committed this crime?

7 A Yes, ma'am.

8 Q What, what else did they say?

9 A They said I was too tall. They said I was six foot.
10 The guy who robbed the place was 5'6" to 5'8". They said I
11 weighed too much, that I weighed 200 pounds plus, and the
12 other guy weighed 160 to 180, and they asked me where a red
13 Nissan was and an AK47.

14 Q Okay. And do you own a red Nissan?

15 A No, ma'am, I do not.

16 Q All right. Do you know anything about an AK47?

17 A No, ma'am, I do not.

18 Q Okay. The -- when Matt Hutchins gets back in the car,
19 what happens?

20 A He tells me that they're still talking to Dale down at
21 the Sheriff's Office, and told that I would be transported
22 down there, and I told him so, I am under arrest, and he
23 said that's when he told me that there was a warrant, a
24 warrant for my arrest.

25 Q Okay.

Marion Stewart - Direct examination
by Mrs. Hodges

1 A And I asked him what it was for, and he told me it was
2 for armed robbery, and four counts of kidnapping.

3 Q And at that point, did you -- well, did they advise you
4 that you had a right to remain silent and that anything that
5 you say, said at that, from that point forward would be used
6 against you?

7 A No, ma'am, still to this day they have not been no
8 Miranda rights.

9 Q All right. The conversation that you had with a
10 female, who is that female?

11 A Shirley.

12 Q Okay. And, and what's Shirley's last name?

13 A It's Blackwell.

14 Q Okay. Is she also known as Shirley Taylor or Shirley
15 Gilbert?

16 A Yes, ma'am, she is.

17 Q All right. And the -- how did you have a conversation
18 with Shirley?

19 A I walked, started walking toward the front porch, and I
20 think it was Mr. Williams that asked me where was I going.
21 I said can I speak to her and give her, her cell phone back
22 and some money and he said yes. And she -- he told her to
23 come, come to me at the front yard. She walked around our
24 truck off the front porch, walked up to me about two feet
25 from me and said can I hug him, and they told her yes. I

Marion Stewart - Direct examination
by Mrs. Hodges

1 walked -- she, she walked on closer to me, I hugged her. I
2 told her, I said, well, we'll just have to wait and see
3 what's going on. I handed her two cell phones and \$1,100.

4 Q All right. And at that point, did she give you a
5 cigarette?

6 A Yes, she did.

7 Q All right. Did you say anything about that you had
8 done a robbery and you'd see her in 30 years?

9 A No, I did not.

10 Q All right. If you'd answer any questions that the
11 solicitor or the judge might have.

12 A Yes, ma'am.

13 SOLICITOR BARNETTE: May it please the Court, Your
14 Honor?

15 THE COURT: Mr. Barnette.

16 CROSS-EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q You're the same gentleman that's been convicted of five
19 counts of armed robbery?

20 A Yes, sir.

21 Q Okay. And you are -- and you've also been convicted of
22 burglary second violent in 2007?

23 A Yes, sir.

24 Q And you got a YOA sentence on these armed robberies, is
25 that right?

Marion Stewart - Cross-examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Okay. So, they voluntarily -- you asked to go see
3 Shirley at the end, is that right, to give her, get a
4 cigarette and to give her the money and everything?

5 A No, I initially asked her, asked them could I hand her
6 two cell phones and some money.

7 Q Right.

8 A Cause we was on the way to the store, and they told me
9 yes, and I started to cross the yard, and then I think it
10 was Investigator Williams told them, told her, told me to
11 stop and told her to come forward, and she walked off the
12 front porch to come to me.

13 Q You mean Investigator Gary?

14 A Well, they's two, two Williams. So, I can't remember
15 if his name's Williams or his last name's Gary. I'm not
16 sure which one it is.

17 Q Okay. And -- but you went to Shirley -- you asked to
18 give this, give this stuff to Shirley, is that right?

19 A Yes, I did.

20 Q Okay. So, you asked for that permission to speak to
21 her, to get the hug from her and everything?

22 A I asked her -- I asked to hand them the money and the
23 phone. She asked me for the hug.

24 Q The police did not make you do that, is that right?

25 A No, the police did not make me do that.

Marion Stewart - Cross-examination
by Solicitor Barnette

1 Q Okay. And they didn't tell you to go to their car, is
2 that right?

3 A They didn't tell me to go to their car?

4 Q They didn't tell you to go to their car, right?

5 A No, they asked me did I want to go to their car to
6 finish the conversation.

7 Q And that's because you were shaking or something at
8 that point, is that right?

9 A Yes, sir.

10 Q Was you cold or was it from the stomach virus or both?

11 A No, I had a cold. Plus we had been at the races. I
12 was a little bit sunburnt. It's a combination of both.
13 Plus it was really cold outside. Kind of cold outside to be
14 wearing shorts.

15 Q Okay. And was this at night or what time of day was
16 this?

17 Nighttime or---

18 A Yes, sir, it's nighttime, about 12:30 or so at night.

19 Q Okay. And you, you admit putting your arms out when
20 Investigator Hutchins was on the porch with you?

21 A Sir?

22 Q You, you admit, when, when Investigator Hutchins was
23 talking to you on the front porch---

24 A He never was on my front porch.

25 Q Well, I guess on your -- where did he meet you?

Marion Stewart - Cross-examination
by Solicitor Barnette

1 A He was in my, he was in my front yard a whole entire
2 vehicle away from my front porch, and he never approached my
3 front door nor came on my front porch. I was out, out in
4 front of my front yard in front of my car when he walked up
5 to me, and then when he told me he had DNA from my arrest,
6 like a smartalik, I guess, I stuck my arms out and said
7 well, arrest me then.

8 Q Okay. And you were in the car by yourself with
9 Investigator Gary at one point?

10 A Yes, sir.

11 Q No one else stepped out.

12 Okay. And the only thing you admitted to them, if your
13 testimony is right, is the pills?

14 A sir?

15 Q You admit, you admit to the pills is the only thing you
16 admitted to them in the car?

17 A Admitted to them what now?

18 You're saying, you're saying pills and I don't---

19 MRS. HODGES: Judge, I'm gonna object to the form of
20 the question.

21 THE COURT: The objection is?

22 MRS. HODGES: To the form of the question. I think the
23 question is confusing. The only thing you admit to is the
24 pills. I don't understand the solicitor's questions.

25 SOLICITOR BARNETTE: I think it's cross-examination. I

Marion Stewart - Cross-examination
by Solicitor Barnette

1 think it's just a leading question, Your Honor. So --.

2 THE COURT: Well, I'll let you ask the question. I
3 think that he -- I'll let you go ahead and ask the question.

4 SOLICITOR BARNETTE: Thank you, Your Honor.

5 The only thing you admit to is the pills in the car?

6 A Still, I don't have no idea what the question is. The
7 pills meaning I knew about them or the pills I knew that I
8 told them I had already sold him?

9 Q Okay. You told him -- well, you told him you sold
10 pills?

11 A I told them that I sold pills, that I bought pills from
12 Dale and I had sold them earlier that, that day.

13 Q When had you got the pills from Dale?

14 A Sir?

15 Q When did you get the pills from Dale?

16 A The day the crime was committed.

17 Q The day the crime was committed?

18 A Yes, sir.

19 Q Where at?

20 A At my front yard.

21 Q Your front yard?

22 A Yes, sir.

23 Q Okay. And how many pills did you get from him?

24 A Approximately 1,300, 1,200, 1,300.

25 Q You got 12 to 1,300 pills from him?

Marion Stewart - Cross-examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q How much did you pay for them?
- 3 A We split the money of \$10,000.
- 4 Q So, you split the money?
- 5 A Yes, sir.
- 6 Q So, you split the money.
- 7 How much money was it you split?
- 8 A \$10,000.
- 9 Q Y'all split \$10,000?
- 10 A We split \$10,000.
- 11 Q Where did the \$10,000 come from?
- 12 A When I just sold the pills.
- 13 Q Well, who did you sell \$10,000 worth of pills the day
- 14 of the robbery to?
- 15 A Well, I offered that information to you from the
- 16 beginning with this thing, and you never did would -- you
- 17 were never---
- 18 Q Well, no, you're under oath now. You got to answer the
- 19 question.
- 20 Where did you get the \$10,000 from?
- 21 A I sold them to someone.
- 22 Q When?
- 23 A The day of the robbery.
- 24 Q I understand.
- 25 Who did you sell it to?

Marion Stewart - Cross-examination
by Solicitor Barnette

1 A Give you the name of the person?

2 Q Yes, sir.

3 WITNESS: Your Honor, do I have to answer that question
4 by name?

5 THE COURT: You're under oath.

6 WITNESS: By name?

7 THE COURT: You're under oath.

8 WITNESS: I can not invoke my Fifth on answering that
9 question?

10 THE COURT: I can't advise you.

11 You want to talk to your lawyer?

12 WITNESS: Yes, I do.

13 SOLICITOR BARNETTE: Your Honor, I would object to him
14 talking to his lawyer about --.

15 THE COURT: Well, he's asking me if he can invoke his
16 Fifth. I can't answer that question.

17 SOLICITOR BARNETTE: I know you can't, Your Honor. I
18 know you can't.

19 THE COURT: I can't give him legal advice. If he
20 chooses to do that, he chooses to do that.

21 SOLICITOR BARNETTE: The only reason I object is he, he
22 knows you -- I mean---

23 THE COURT: Well---

24 SOLICITOR BARNETTE: He's in a position to answer that
25 question.

Marion Stewart - Cross-examination
by Solicitor Barnette

1 THE COURT: I understand that, but he's asking if he
2 can invoke his right to the Fifth Amendment.

3 Sir, do you wish to invoke your right to the Fifth
4 Amendment?

5 WITNESS: Yes, I do.

6 THE COURT: All right. He's invoked his right. Move
7 on.

8 Q What time did you make this transaction that day?

9 A It was about 12:15, 12:30.

10 Q 12:10 or 12:30.

11 And this is in the front yard?

12 A No, no, I made the initial transaction with -- you
13 talking about selling them or when I bought them from Dale?

14 Q When you bought them.

15 A When I bought them was at about 11:30.

16 Q Okay. And when did you sell them?

17 A About 12:15. About 45 minutes later.

18 Q Okay. This all happened in the front yard?

19 A No, I bought them in my front yard, and went to Inman
20 and sold them.

21 Q Where in Inman did you go?

22 A I invoke my Fifth.

23 Q So, how many pills did you sell?

24 A 1,200. A thousand to 1,200. It was about 1,300 pills
25 altogether.

Marion Stewart - Cross-examination
by Solicitor Barnette

1 Q How many pills did Dale have?

2 A When he left my house?

3 Q Yes, sir.

4 A Or when he initially got there?

5 Q How many -- either one. How much did he have?

6 A Okay. Let's start from the beginning then. When he
7 initially got there it was a whole entire black trash bag.
8 But I didn't even see this bag of pills until I came back
9 from selling the first 1,200 pills.

10 Q Okay. So, when did you see -- what time did you see
11 the trash bag?

12 A When I came back about 12:30, 12:35 when I came back
13 from Inman from selling the 1,200 pills is when I initially
14 seen the black trash bag. First he gave it to me in a
15 Ziploc bag. When I got back, I seen the trash bag. That's
16 when I told him to leave my house.

17 Q Okay. And what car was he driving?

18 A He wasn't in a car.

19 Q These pills he gave you, what did he give -- he gave
20 them out of a zip bag, Ziploc box?

21 A Ziploc bags.

22 Q Was these pills in bottles, were they in bags, or what?

23 A No, they was just in -- they was poured out in bags.

24 The narcotics I originally bought from him was Lortab 10's
25 and 75's.

Marion Stewart - Cross-examination
by Solicitor Barnette

- 1 Q Did you see how many pills he had total?
- 2 A At that point in time, no. But after I came back, all
- 3 I seen was there was a black trash bag. That's when I told
- 4 him to leave. I left again and I'm assuming that Angie
- 5 Blackwell came and picked them up.
- 6 Q Okay. What time did Angie Blackwell pick them up?
- 7 A I do not know that.
- 8 Q Did you get any more pills from him?
- 9 A No, sir, I sure didn't. I left that same night and
- 10 went to Lowe's Motor Speedway in Concord, North Carolina.
- 11 Q So, that night you went to Lowe's Speedway?
- 12 A Yep.
- 13 Q How long did you stay at Lowe's Speedway?
- 14 A Till Sunday.
- 15 Q Till Sunday.
- 16 What day was this, the 14th, the transaction?
- 17 Do you remember what day that was?
- 18 A I want to say it was a Wednesday.
- 19 Q Okay. And you stayed at Lowe's still Sunday you say?
- 20 A Yes, sir.
- 21 Q Where did y'all stay at?
- 22 A Just to be honest with you, I was messed up on pills
- 23 myself. I can't remember the exact, exact name of the
- 24 motel.
- 25 Q So, you went to Lowe's Speedway Wednesday till Sunday?

Marion Stewart - Cross-examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Was you working then?

3 A Was I working at Lowe's or---

4 Q No, working, working a job at that time?

5 A Yes, sir.

6 Q Where was you working at?

7 A I was working off and on with my dad. Earlier that day
8 I was at my dad's working.

9 Q Earlier that day you was at your dad's working.
10 What time was you at your dad's?

11 A I got over there that morning -- I left my house at
12 9:35. I, I guess we got there about, about 10:00, and we
13 worked till about 11:15 when my phone kept ringing and I
14 came back to my house and that's when I bought the pills.

15 Q Your phones was ringing.

16 Who called you on your phone?

17 A Shirley and Dale.

18 THE COURT: Mr. Solicitor, this is concerning the
19 voluntariness of his statement. So, let's try to keep it---

20 SOLICITOR BARNETTE: Yes, sir, I apologize. Well, I'm
21 just trying to figure out the times and everything.

22 THE COURT: Oh, I understand. But let's try to keep it
23 to whether or not he's made a voluntary statement or whether
24 or not he didn't.

25 Q On the 20th, had you taken any pills?

Marion Stewart - Cross-examination
by Solicitor Barnette

- 1 A On the 20th had I taken any pills?
2 I'm sure I had. I was a pill addict.
3 Q And was you -- what kind of pills were you taking on
4 the 20th?
5 A I only took Lortabs.
6 Q Okay. Do you know how many you took that day?
7 A Maybe, maybe five Lortab 10's.
8 Q Okay.
9 A Throughout the whole entire day.
10 Q Okay. When Investigator Gary and Investigator Hutchins
11 came to talk to you, had you took the pills before they got
12 there?
13 A Yeah, throughout the day.
14 Q Uh-huh. (Affirmative).
15 How does that effect -- does that effect your thinking
16 or whatever?
17 A No, I hurt my back a long time ago and it always gave
18 me the initial feeling that my back wasn't hurting no more.
19 So, finally I got leaning on the pills so much that I always
20 thought I had back pain when it wasn't back pain. It was
21 just something in my mind told me I had back pain.
22 Q Okay. You know what I'm getting at, does it effect
23 what you can remember from that day?
24 A No, sir.
25 Q So, you think clearly taking Lortabs?

Marion Stewart - Cross-examination
by Solicitor Barnette

1 A I guess as clear as anyone can take, can, you know, can
2 remember from taking Lortabs.

3 Q What milligram was you taking?

4 What dosage?

5 A Ten milligrams. Watson blue 385's.

6 Q Watson's -- what was that again?

7 A Blue 385.

8 Q Are they part of this robbery?

9 A I don't know. I can't remember. I don't know if
10 they -- I don't know if she, if we got them from there or,
11 you know, if it's a prescription I bought or what.

12 Q And did you see the bottles that these pills came from?

13 A When I, when I came back the second time from selling
14 the pills, yes, I did.

15 Q All right. Did you see which pharmacy it was from?

16 A It wasn't no pharmacy name on the bottles. It was just
17 pharmaceutical names of the pills and what company's made
18 them, and I picked up several of the bottles and scraped
19 them back into the trash bag.

20 Q Would you say---

21 A That's why I initially, when they told me that I had
22 DNA, they had DNA on me, that's why I was acting like a
23 smartalik and stuck my arms out. I thought they really had
24 me as far as having my handprint or DNA on the bottle. I
25 thought they really had me because I had picked the bottles.

Marion Stewart - Cross-examination
by Solicitor Barnette

1 up and threw them back in the trash bag.

2 Q So, so, you deny making a statement to Shirley in front
3 of two police officers about the statement you made at the
4 end when you wanted to get a cigarette from her?

5 A I can't hear what you're saying.

6 Q You deny making the statement to Shirley after the, the
7 officers had arrested you and everything, after the
8 cigarette and everything, you deny making any kind of
9 statement to her?

10 A I can -- about they, they arrested me for armed
11 robbery, I'll see you in 30 years is what their statements
12 are saying?

13 Q Yeah, or the statement---

14 A Yes, I do deny that.

15 Q Did you make any statement to her?

16 A No, I did not. I told her here's the money and here's
17 the pills. If you need anything else, call my dad cause he
18 knew to get me an attorney. Matter of fact, I think both
19 the statements state two different things too. One of them
20 states one thing, one of them states another.

21 Q What about your dad being in the hospital, sir---

22 A Sir?

23 Q ---when you're supposedly at Lowe's Speedway?

24 Forget it. I'm done.

25 No further questions, Your Honor.

1 THE COURT: Mrs. Hodges, anything further?

2 MRS. HODGES: No, sir, thank you.

3 THE COURT: You may step down.

4 WITNESS: Thank you, sir.

5 THE COURT: Any other witnesses for the defense?

6 MRS. HODGES: No, sir.

7 THE COURT: I'll hear arguments.

8 Your motion, Mrs. Hodges.

9 MRS. HODGES: Thank you, Your Honor.

10 Your Honor, best as I can determine from the testimony
11 that the Court is heard today, I think they're basically
12 three separate, I guess, phases of statements or, or three
13 separate statements that, that the, the State may intend to
14 try and introduce. The first statement is made, I guess, at
15 the time that Mr. Stewart and Investigator Gary are in the
16 car alone when the comment is made that I guess
17 Investigator, Investigator Gary had stuck the key, the right
18 key in the lock and it turned.

19 Your Honor, I'm not entirely sure what that statement
20 in and of itself means. But if it's gonna be tried to be
21 argued or extrapolated that that is an admission regarding
22 knowledge of this armed robbery or participation in this
23 armed robbery, Your Honor, then we would object to it based
24 on the fact that that was a statement that was obtained
25 basically on the, the grounds of an outright lie to

1 Mr. Stewart and that he felt that he was not free to leave,
2 he felt he was not free to go, he felt that he was in a, in
3 an arrest situation when he's having conversations with the
4 officers. He feels like -- he's asked if he's under arrest
5 and they say no, but he, but we still need to talk to you
6 about this case, and he feels like he's not free to leave,
7 and, and that was Mr. Stewart's testimony. So, I would
8 argue that that statement ought to be suppressed.

9 The second incident of statements, Your Honor, would be
10 after Investigator Hutchins has left, has come back to the
11 car. Either he has a conversation with Investigator Lorin
12 Williams, knows that there's an arrest warrant now for
13 Mr. Stewart, and that, at that point, Mr. Stewart's
14 conversations and, and status, at that point, Your Honor, we
15 would argue has, has turned custodial because, at that
16 point, he's not free to leave.

17 THE COURT: Now, isn't, isn't the question of whether
18 or not someone is in custody as viewed from the defendant's
19 prospective, not from the police prospective?

20 MRS. HODGES: Well, it is, Your Honor. But Mr. Stewart
21 felt that he was basically not free to leave from---

22 THE COURT: But he wasn't informed there was a warrant
23 outstanding until later in the conversation.

24 MRS. HODGES: Until much later in the conversation.

25 THE COURT: Yes.

1 MRS. HODGES: Yes, sir.

2 THE COURT: Okay. All right. Go ahead.

3 MRS. HODGES: But my, but my concern, Your Honor, is
4 that once the investigators know that there is an arrest
5 warrant and that, and that the entire posture, if you will,
6 of the case has turned. I mean it's dramatically changed.

7 THE COURT: From the police prospective perhaps, yes.
8 I'm looking---

9 MRS. HODGES: Yes, sir.

10 THE COURT: I'm looking at it from the suspect's
11 prospective.

12 MRS. HODGES: Well, the problem at that point, Your
13 Honor, is that, is that Mr. Stewart is already inside a
14 police vehicle. He is -- and at that point Miranda should
15 have attached because, at that point, if they're going to
16 arrest him, that they need to then advise him, Your Honor,
17 that any further statements that he makes can and will be
18 used against him. Even if they're not planning on
19 questioning him anymore, I mean it, it is dramatically
20 changed in terms of the posture and the terms of, of the
21 point at which Miranda should have been, his Miranda
22 warnings should have been given, and at that point, Your
23 Honor, we feel that, that the statement of I'm your man, I
24 did the robbery, or whatever variation -- I think there are
25 different variations in terms of, of the way the two

1 officers testified that those particular statements were
2 made.

3 We would argue that, at that point, it was custodial,
4 and that he should of already been Mirandized, and those
5 statements were not made freely and voluntarily.

6 Finally, then, Your Honor, is the third statement or
7 the third phase of the statements in which it's alleged that
8 he told Shirley, you know, I committed a robbery, I'll see
9 you in 30 years, and at that point is clearly in custody.
10 And, you know, he still is not been warned that any
11 statements he make could be used against him, and, you know,
12 we would argue that, you know, that all of those statements,
13 you know, should be suppressed.

14 THE COURT: I'll hear from you, Mr. Barnette.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 What I thought was interesting, I think the Court's on
17 point, what the defendant's prospective was. In listening
18 to his testimony -- I'm kind of working backwards from what
19 she did. Shirley, to me, that's not in response to any
20 police investigation. I mean he makes that to Shirley
21 himself. The two officers overhear it. Shirley overhears
22 it. I know she wasn't called as a witness, but she will be
23 called as a witness in this case. I think that statement's
24 freely and voluntarily given. It don't matter if you're in
25 custody or not from that standpoint.

1 The next part would be, is concerning the vehicle going
2 into it. Hearing his testimony of his prospective, he said
3 yeah, I went, I was cold, I went to the car himself. They
4 never placed him under arrest from that standpoint. They
5 kept talking to him and so forth. The argument could be up
6 to that point there had not been an arrest warrant given or
7 anything at that point.

8 The interesting thing about what William Gary said
9 talking about the key situation or whatever, Ghost Valley is
10 where the pills are found.

11 THE COURT: Beg your pardon?

12 SOLICITOR BARNETTE: Ghost Valley was where the pills
13 were found. That's where they were taken. That's the key
14 thing about the Ghost Valley --

15 THE COURT: Okay.

16 SOLICITOR BARNETTE: -- definitely from there and the
17 testimony would show that.

18 From that standpoint, I think that he's not in custody.
19 Obviously they're talking to him about the case and so
20 forth. But he hasn't been placed under arrest. He's freely
21 and voluntarily talking to them at that point.

22 Obviously, when Investigator Hutchins finds out about
23 the arrest warrant, it does change things. However, he
24 don't talk about the arrest. He talks about -- basically he
25 initiates the conversation when Officer Hutchins comes back

1 in and says that. He denies saying that part. But
2 obviously I think that would be up to the jury to hear that
3 part of it from there.

4 But I, I agree it's three different parts. I think
5 Shirley -- there's no question about the statements that
6 happened before the warrant. There's no, there's no custody
7 there from that standpoint. I know they argued about the
8 DNA situation or whatever, but Courts have held before that
9 may not be liked, but State versus Goode was one where the
10 Court of Appeals tells that it does condemn an officer lies
11 about the benefits when it finds that such lies did not
12 overbore, overbore the defendant's will.

13 I don't think it overbore his will in this case. I
14 think it's just something he started talking to him. He
15 said he's smart. I confirm that he put his hands out the
16 first time in that case and showing it.

17 So, I would ask surely that all three statements go in,
18 but I think there's -- surely there's no question, that's
19 not even in response to police questioning.

20 The second -- the first part of the statement, he
21 admits going in the car. He admits being with them or
22 whatever. He did say something about the police officers
23 being around. But he never asked to leave or anything from
24 that. I think that was his own testimony, and then once the
25 warrant's done, the way he volunteers the information, I

1 don't know if that was in respect to police questioning.

2 So, I'd asked for all three parts of the statement to
3 be in.

4 THE COURT: Last statement, Mrs. Hodges.

5 MRS. HODGES: Your Honor, respectfully, once the, the,
6 Investigator Hutchins knew that an arrest warrant had been
7 issued, you know, Mr. Stewart had essentially, you know, at
8 some point in this conversation they said that he asked for
9 a lawyer, you know. They knew that, that they're going to
10 arrest him. They knew, at that point, he's no longer free
11 to leave.

12 THE COURT: But I didn't hear anything about any police
13 questioning after he invoked his right to an attorney. I
14 didn't hear that they questioned him any further after that.

15 Did I miss, did I miss something?

16 MRS. HODGES: No, judge. I mean but -- what, what I'm
17 saying is they say they're not going to ask him any more
18 questions --

19 THE COURT: Uh-huh. (Affirmative).

20 MRS. HODGES: -- once they know an arrest warrant has
21 been issued.

22 THE COURT: And he's invoked his right to counsel.

23 MRS. HODGES: Right. But he doesn't even know that an
24 arrest warrant has been issued because they didn't bother to
25 tell him that. They get back in the car, what is it, what

1 is that you want to know, what is it that you want. He
2 already -- Investigator Hutchins already knows, at that
3 point, that an arrest warrant has been issued, and that
4 Mr. Stewart is no longer, is, is now, you know, going to be
5 in the custody of the Spartanburg County Sheriff's Office,
6 that he's no longer free to leave, he is in the car, and, at
7 that point, he should of been Mirandized, and that, and
8 that, you know, we wouldn't be here having to, you know,
9 argue about whether Miranda attached or not because, you
10 know, it would of already been read, and, at that point,
11 then whatever statements Mr. Stewart might have made, if he
12 chose to make a statement to that point, would of basically
13 been on him. He'd already been warned.

14 The investigators didn't warn him at that point.
15 Investigator Hutchins knew, the minute he opens the door of
16 the car, gets in and sits down, and then, under Investigator
17 Gary's testimony, what do you want, what do you need,
18 Investigator Hutchins already knows that the, that there is
19 an arrest warrant and that they are going to be leaving with
20 Mr. Stewart in custody.

21 THE COURT: Well, that, that presents a troubling issue
22 because, again, the cases that I've been reading indicate
23 that the question of whether or not someone's in custody or
24 whether or not their will's being overborne by the
25 circumstances all state that you have to observe that from

1 the prospective of the accused. That's the reason I was
2 talking to about that.

3 I realize that the one officer knew that an arrest
4 warrant had been issued at that point in time. But he
5 didn't place him under arrest or inform him that he was
6 under any type of custody at that point in time. So, he's
7 not been formally arrested at that point in time.

8 MRS. HODGES: That is correct, Your Honor.

9 THE COURT: And, so, again, we're looking at it from,
10 we're looking at it from the accused prospective, the
11 situation really hasn't changed. He just changed -- he came
12 back from a phone conversation and got back in the car.

13 MRS. HODGES: Well, and the accused perspective, Your
14 Honor, they initially tell him that Investigator Hutchins,
15 whether he remembers telling him or not, I mean there's
16 testimony that he's the one that said we have your DNA, you
17 know, the client---

18 THE COURT: I just haven't seen a case, I don't mean to
19 interrupt, that says that as soon as the police realize that
20 an arrest warrant has been issued by someone else or some
21 other agency or however that happens because apparently they
22 didn't participate in that, getting that warrant, that you
23 have an obligation, at that point in time, to place him
24 under arrest immediately.

25 MRS. HODGES: And I understand that, Your Honor, and

1 I've -- and I have not researched that issue because that
2 was not known to me until about three o'clock this afternoon
3 during the course of today's testimony. That, that is
4 not---

5 THE COURT: Well, I, I understand that.

6 MRS. HODGES: That is an issue that has come up during
7 the course of today's hearing that I was, you know, had not
8 researched because I wasn't expecting to hear that.

9 THE COURT: Okay. Go ahead.

10 MRS. HODGES: So, so, you know, I don't have an answer
11 for the Court in terms of whether that's an issue that has,
12 has arisen. I have never---

13 THE COURT: I just don't see that---

14 MRS. HODGES: -- encountered that issue previously.

15 THE COURT: I don't see it in the cases that I've lined
16 up on, on Fourth Amendment questions that, that says that at
17 the moment a police officer knows -- there are cases that
18 say that the fact that the, the investigation is focused on
19 one individual doesn't mean you have to immediately give
20 Miranda rights---

21 MRS. HODGES: Right.

22 THE COURT: ---when you're questioning someone. It's
23 kind of what we're talking about here although it doesn't
24 talk about a warrant. And, so, that's, that's -- I didn't
25 get that far. But it says when the investigation focuses on

1 one individual, even that is not sufficient to, to trigger a
2 requirement that Miranda has to be given in a noncustodial
3 interrogation.

4 MRS. HODGES: Yes, sir, and I, and I don't have an
5 answer for the Court. I do think, however, in terms of the,
6 the Court's question regarding from the, Mr. Stewart's
7 perspective as to whether he was in custody, I mean his
8 testimony was clear that he felt that, even though they said
9 he was not under arrest, he felt he was obligated to talk to
10 them. He felt that he was not free to leave, and he felt
11 that because they had, had said that they had the DNA, that
12 he felt that the, knowing my client better than the Court
13 and others do, I can see Mr. Stewart sticking out his hands
14 as a smartalik response to that. But, you know, be that as
15 it may, Your Honor, you know, he also testified that he
16 felt, at that point, that, you know, that they had
17 sufficient evidence to be placing him into custody, and, and
18 he felt he was not free to leave.

19 THE COURT: well, he basically called their bluff and
20 they didn't arrest him.

21 MRS. HODGES: That's one way of interpreting it, yes,
22 sir.

23 THE COURT: Uh-huh. (Affirmative).

24 Might of told me something if I would of been him. But
25 I'm speculating. I won't use that in my decision.

1 MRS. HODGES: Your Honor, but that, you know, but, but
2 that's, that's the basis of our asking that, that the, that
3 the three statements be suppressed.

4 THE COURT: All right. Anything further from the
5 State?

6 SOLICITOR BARNETTE: No, sir.

7 THE COURT: All right.

8 MRS. HODGES: And, Your Honor, they're also issues, I
9 guess, in terms of when the Court does make its decision, if
10 the Court allows those statements, there are, I think,
11 perhaps some -- I think we may have some Doyle versus Ohio
12 issues as well as perhaps some prior bad act issues that,
13 that some of those statements and conversation that were had
14 may not be testified to in front of the jury unless the
15 defendant takes the stand and the door gets opened.

16 THE COURT: You understand what she's saying,
17 Mr. Barnette?

18 SOLICITOR BARNETTE: I think I do. Well, the Doyle
19 violation is very interesting. I mean we're not gonna
20 mention he asked for an attorney at that obviously from that
21 standpoint. I'm not going to do that. But the second thing
22 was -- I do understand about previous armed robberies. You
23 can't mention that, and I think that---

24 THE COURT: No, we're not, we're not going to let those
25 in.

1 SOLICITOR BARNETTE: But---

2 THE COURT: If, if the statements come in. I'm not
3 sure.

4 SOLICITOR BARNETTE: Yes, sir, if the statements come
5 in. I do understand that.

6 THE COURT: All right. All right. Give me a minute to
7 see, see about this one issue, and then I'll make a ruling.
8 Let me see if I've got anything else.

9 (Pause.)

10 SOLICITOR BARNETTE: May it please the Court, Your
11 Honor?

12 THE COURT: Yes, sir.

13 SOLICITOR BARNETTE: May we go ahead and premark the
14 evidence while we're waiting?

15 THE COURT: You can get started. Sure.

16 (WHEREUPON, State's Exhibit Nos. 1, 2-A, 2-B, 2-C, and
17 3 through 31 were marked for identification purposes only at
18 this time.)

19 THE COURT: All right. The test of voluntariness in
20 this situation is whether or not the accused in this case or
21 now the defendant's will was overborne by the circumstances
22 surrounding the giving of the statements that he gave. The
23 test the Court is suppose to use is to look at the totality
24 of the circumstances and both the characteristics of the
25 accused and the details of the interrogation involved in the

1 case. The Court should consider such factors as the length
2 of the interrogation, its location, its continuity. The
3 defendant's maturity, education, physical conditions, and
4 mental health should all be taken into consideration in
5 determining whether or not the statement given was
6 voluntarily, and, of course, the Court, at this time, is
7 weighing that by the greater weight of the preponderance of
8 the evidence involved in this matter.

9 In this particular case, the interrogation or the
10 questioning took place at the residence of the defendant.
11 Not at a police facility. When he asked direct questions
12 concerning whether or not he was in custody or under arrest,
13 he was told that he was not under custody or under arrest.
14 Even when he was, when he went to the police vehicle, he
15 went so, went there at his own request. The officers asked
16 him if he would feel better sitting in the police vehicle
17 because he was shivering on the outside, and he made the
18 choice of going there. He was not ordered to go there nor
19 was he required to go there and sit down and discuss the
20 matters.

21 And, again, as I indicated during arguments, the Court
22 is required to view these circumstances and factors not from
23 the perspective of the police, but from the perspective of
24 the accused. And, in this particular case, the accused
25 would have been informed that he was not under arrest, that

1 they were there to ask questions concerning the
2 investigation that was ongoing, and the cases indicate that,
3 even though the investigation may have focused on one
4 individual, and the police were focusing on one individual,
5 does not automatically require that Miranda warnings be
6 given at the time that questioning take place.

7 The fact that an arrest warrant has been issued, I find
8 nothing in my, my searching under the law, of course, it's
9 fairly brief, but I find nothing that requires that the
10 police execute any warrant that they have in their
11 possession. In fact, I guess they could decide that the
12 that, the warrant should not be executed at any given time.
13 They choose the time and place of the execution of the
14 warrant generally, and the accused has no control over that
15 decision as well.

16 And in this particular situation, the accused was not
17 informed that an arrest warrant had been issued. So, his
18 circumstances really hadn't changed when the officer got
19 back into the vehicle concerning his perception of the
20 situation that, that he faced at that point in time.

21 I do find that, therefore, that his statements were
22 given not in a custodial situation. I do not find that his
23 will was overborne by the circumstances that he faced at
24 this point in time. Now, once he invoked his right to have
25 an attorney, when he stated he wished to have an attorney

1 present, questioning should cease, and, in fact, it did
2 cease. No questioning took place of the defendant after
3 that, that discussion, and after he invoked that right.

4 Now, his statement to his girlfriend was made to a
5 third party. While it was overheard by the police, it was
6 not the result of police questioning or any action taken by
7 the police, and, therefore, I do not find that that
8 statement should be excluded either.

9 So, I'm denying the motion. I'll allow the testimony
10 to go forward concerning his statements. Of course, I --
11 that would be subject to the fact that the State can not
12 bring up the fact that he did invoke his right to counsel at
13 any given time, and further the fact that he may have
14 discussed his prior criminal record, those matters would be
15 excluded as well. I would not allow any testimony
16 concerning those matters given during their statements.

17 So, with those exceptions, I will allow the police, the
18 testimony concerning the statements, and, of course, this is
19 simply a question of whether or not its presented to the
20 jury. The defendant has the right to challenge the
21 voluntariness of the statements during the trial of the
22 case, and discuss that issue with the jury during the trial
23 as well.

24 Anything further that I need to rule on from the
25 State's prospective?

1 SOLICITOR BARNETTE: No, sir.

2 THE COURT: Anything further from the defense's
3 perspective?

4 MRS. HODGES: Beg the Court's indulgence one moment,
5 Your Honor.

6 THE COURT: Yes, ma'am.

7 (Pause.)

8 MRS. HODGES: No, Your Honor, not at this time.

9 THE COURT: Mrs. Hodges, later on if you determine, and
10 we'll still be doing continuing research concerning this
11 question of the, of the, whether or not the State had a duty
12 to effect an immediate arrest---

13 MRS. HODGES: Yes, sir.

14 THE COURT: ---if you find something on that I'll be
15 happy to hear from you, but I'm gonna continue to look for
16 it. But to be quite frank with you, I hadn't found anything
17 at this point in time.

18 MRS. HODGES: I understand, Your Honor, and I shall
19 continue as well when I have a, a less distracted moment for
20 research.

21 THE COURT: Oh, I understand. But I mean -- so, you,
22 you can bring it back -- I'll reconsider it if you find
23 something that indicates that I, what I've indicated, what
24 I've ruled on is not correct. Again, my general
25 understanding concerning warrants is it's in the police's

1 discretion as to when and how to execute warrants.

2 MRS. HODGES: Yes, sir.

3 THE COURT: So, that's the way I'll leave it.

4 MRS. HODGES: Thank you, Your Honor.

5 SOLICITOR BARNETTE: Can I show Mrs Hodges?

6 This is the order for the record thing, the record of
7 Mr. Stewart.

8 THE COURT: Show that please to, to counsel.

9 (Pause.)

10 SOLICITOR BARNETTE: May we approach on another matter
11 too, Your Honor?

12 THE COURT: You may.

13 (WHEREUPON, a bench conference was held at this time.)

14 SOLICITOR BARNETTE: May we approach for a second, Your
15 Honor?

16 THE COURT: Mrs. Hodges.

17 MRS. HODGES: Yes, sir.

18 (WHEREUPON, a bench conference was held at this time.)

19 MRS. HODGES: We're ready to proceed with opening
20 statements to the jury at the Court's pleasure, Your Honor.

21 THE COURT: Okay.

22 MRS. HODGES: Your Honor, for the record, we had
23 offered armed robbery straight up and withdraw the LWOP. He
24 has refused. I understand from Mrs. Hodges he's declined
25 that offer.

1 THE COURT: Correct, Mrs. Hodges?

2 MRS. HODGES: That, that is correct, Your Honor.

3 THE COURT: All right.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE COURT: All right. The record will reflect that
7 the jury has returned to the courtroom.

8 First of all, let me apologize to you for the length of
9 time I've had you in the jury room, but our trial
10 preparations took a little longer than I expected. But we
11 are, at this time, ready to begin the trial of this case.

12 As I told you earlier, upon your return to the
13 courtroom, that you would be taking an oath concerning your
14 duties and responsibilities in this matter.

15 Madam Clerk, at this time, swear the jury panel.

16 (WHEREUPON, the jury panel was placed under oath at
17 this time.)

18 THE COURT: Thank you. You may be seated.

19 Now, if any member of the jury failed or refused to
20 take the clerk's oath on this occasion, please stand.

21 (No response.)

22 THE COURT: It appears that all jurors have been sworn
23 for purposes of our trial.

24 Now, before we begin the trial, I want to tell you a
25 few things about the trial and about our duties and

1 responsibilities that we each have in the trial of this
2 case, and a few things about the procedure that we're going
3 to follow as the trial goes forward.

4 The reason I'm doing that is, is because probably for
5 most of you, this is your first experience in actually being
6 selected and serving in the trial of a criminal matter, and
7 there's some issues and things that I think that you need to
8 be beware of in regards to these trials and what you have to
9 do as jurors.

10 Probably, for those of you who have never served in a
11 jury before, most of what you know about our jury system and
12 how courts work you would have learned from such sources as
13 TV shows that you've watched, movies that you've seen, maybe
14 books that you've read, perhaps from your educational
15 process. In the case of television shows and books and
16 movies, those all have interesting story lines, and in case
17 of TV and movies, they have good acting and, and plots that
18 twist and turn. It never ceases to amaze me that in cases
19 of television, you can have a crime committed, the person
20 charged and the trial held, and a verdict reached all in the
21 space of an hour, and they still have time to stop for
22 commercials. So, obviously you can tell from that facts and
23 the way that works out that they take what they call
24 literary license with what goes on in courtrooms and how
25 trials proceed.

1 That's because those particular forms of information
2 are intended for, for your entertainment. I can assure you
3 that what you're engaged in today is intended for anything
4 but your entertainment.

5 As I told you earlier, you're engaged in a fundamental
6 part of our democracy. I hope you realize that in most
7 countries around this world today, citizens are not allowed
8 to participate in the judicial systems of most countries on
9 the face of this earth. Our system is different. Citizens
10 such as yourselves are brought for your day-to-day lives.
11 You come into the courtroom and you take an oath as jurors,
12 and you take on the role of important decision makers in
13 the, in the issues that exist in the courts of our
14 countries. I hope you realize that, in this case, that
15 issue is between the State of South Carolina that is brought
16 charge against one of its citizens, the defendant in this
17 case.

18 What you're engaged in is a search for the truth, and I
19 think you're probably already aware, from the wait that you
20 had this afternoon, that a search for the truth is going to
21 be slow. It's going to be deliberate. Sometimes it's going
22 to be repetitive. Just as you would expect a search for the
23 truth to be. To, to search for the truth and, and make an
24 effort to see that justice is done between the parties here
25 is, is going to be a slow and repetitive process because

1 this courtroom is a place of honor. It's dedicated to the
2 preservation sayings of citizen's rights through the
3 Constitution and the laws of both this state and the United
4 States.

5 Some people think that the justice system that you're
6 participating in, because of the fact that we allow direct
7 participation by citizens in the process, is the greatest
8 system ever devised on the face of this earth. Now, I
9 didn't say it's a perfect system. Anything that's devised
10 and operated by man is never perfect. But, again, it's an
11 effort to see, and it's our best effort, to see that justice
12 is done between the parties that are before this Court.

13 Now, the attorneys that are here, and they're going to
14 be appearing in front of you during this trial, are here to
15 represent their client's interest, and I'm sure they'll do
16 an excellent job in presenting those cases to you during
17 this trial.

18 But first and foremost, those lawyers are also officers
19 of this court. At some point in time they've appeared
20 before this court or some other tribunal and they've taken
21 an oath concerning their position as officers of this court
22 to assist you in your search for the truth. For that
23 reason, you can expect that they'll act in the reasonable,
24 professional, and an ethical manner in the presentation of
25 this client's cases before you during this trial.

1 I'm gonna remind you too now that you've come before
2 this court as well. You've taken an oath to decide this
3 case based upon the law and the evidence presented during
4 the trial. You too are expected to act in a reasonable,
5 professional, and an ethical manner in the discharge of your
6 duties as jurors during this trial.

7 It's my personal belief that service on a jury is the
8 second highest service a citizen can render to your
9 government. First, of course, being service in the
10 military, and while we're not asking anybody to pick up a
11 gun or go to war, we are asking you to assist us in the
12 search for the truth that we're engaged in in this
13 courtroom. Again, I want to thank you very much for your
14 willingness to come forward and serve as a member of a jury
15 in Spartanburg County this week.

16 Now, what I'm telling you now is not intended to be a
17 charge concerning the law. Once you're heard all the
18 arguments of the attorneys, and all the evidence has been
19 presented, then I will charge you concerning the law to be
20 applied in this case. This is merely an explanation, again,
21 of the procedure that we'll follow and the roles and
22 responsibilities that we all have in the, in this trial.

23 Now, I've already gone over with you earlier the
24 indictment in this case. It's the document that brings the
25 case before the court, and I've explained to you that that

1 indictment is for the offense of armed robbery. I'm not
2 gonna read it to you again. I'll go over it with you at the
3 close of the trial before you begin your deliberations so it
4 will be fresh on your mind at that point in time.

5 But I will tell you that, to this indictment, the
6 defendant has pled not guilty, and by that plea, under the
7 law and the Constitution of this state, that plea places the
8 burden of proof upon the State, and the State has the only
9 burden of proof in this case, and that is to prove the
10 allegations contained in the indictment by proof beyond a
11 reasonable doubt, and it will be your solemn responsibility,
12 at the close of this trial, to determine whether or not the
13 State has met that burden of proof in this matter.

14 Now, your purpose as jurors is to find and determine
15 the facts of this case, and I will tell you that the law and
16 the Constitution of this state and of the United States
17 places you as the sole judges of the facts in this case.
18 You are to determine the facts from the testimony that
19 you'll hear during the trial and any other evidence that
20 comes into the record of the case, and it's up to you to
21 determine what inferences that you think can be drawn from
22 the evidence that you will hear.

23 Therefore, it's important, it's especially important
24 that you pay close attention to what goes on during the
25 trial, perform your duties diligently and conscientiously.

1 Because, under our system of justice, ordinarily there's no
2 means by which an erroneous determination of facts made by a
3 jury can ever be corrected.

4 Now, the same law that makes you the sole judges of the
5 facts makes me the sole judge of the law. The law, as I
6 give it to you at the close of the trial, is the only law
7 that you can use in making a determination in this case. I
8 will tell you that if you came into the courtroom today with
9 any notion or idea as to what the law is or some belief of
10 yours as to what the law ought to be, you should leave those
11 notions outside of the jury room before you begin your
12 deliberations because, under the oath that you've taken as
13 jurors, it's your duty to take the law exactly as I give it
14 to you, apply it to the facts as you determine them to be,
15 and that will put you in a position to reach a just and a
16 true and a fair verdict in this case at the close of the
17 trial.

18 Now, I've already told you, and I'll tell you at every
19 stage of the proceedings, I'll tell you till you're tired of
20 hearing me tell you this, that you shouldn't begin any
21 discussions or deliberations about this case until you,
22 until I've advised you to do so and that is at the close of
23 the trial because only then will you have heard all of the
24 testimony and all of the arguments and seen all of the
25 evidence to be introduced and I will, at that, at that time,

1 charge you concerning the law. Only then will you have all
2 the tools and all the facts that you need to begin an
3 intelligent discussion concerning the decision that you're
4 required to make in this case.

5 Again, I will caution you not to attempt to gather any
6 information from any other source outside of this courtroom.
7 Be it media reports, Internet reports, or any other reports.
8 It's a, it's a violation of your oath to do so because
9 you're to decide the case solely upon the evidence and upon
10 the law as presented to you during this trial.

11 Now, I've already told you that you've been selected as
12 fair and impartial jurors with an open mind in this case,
13 and it's important that you keep that open mind throughout
14 the trial. Don't attempt to decide any issue until you've
15 heard all the information that you'll need to make your
16 decision in this case. Again, at the close of this trial,
17 it's your solemn responsibility to determine the guilt or
18 the innocence of the defendant for the crime that has been
19 charged in the indictment.

20 Now, in a few minutes we're going to begin the trial
21 and I'm going to allow the attorneys to make what's called
22 an opening statement, and that's how the trial will begin.
23 And, again, I've already told you that the burden of proof
24 is only upon the State in this case. The defendant has no
25 burden of proof because the defendant is presumed to be

1 innocent in this matter.

2 So, the State will go first with its opening argument
3 followed by the defense. The State will then follow with
4 the presentation of its evidence followed by any evidence
5 the defendant chooses to put up. And then, after that,
6 we'll have closing arguments and I'll charge you concerning
7 the law, but I mainly want to make the point to you that the
8 opening statements made by attorneys and the closing
9 statements made by attorneys do not constitute evidence in
10 this case. They can't be taken by you as evidence in this
11 case.

12 Again, the only evidence in this case will be the
13 testimony of witnesses testifying from this witness stand
14 who've been placed under oath and whatever evidence comes
15 into the record through those statements.

16 The opening statement will serve to let you know what
17 the case is about. Perhaps what they intend to show during
18 the trial. The closing statements will sum up the evidence
19 that you've already heard from their client's prospective,
20 but, again, those statements by lawyers don't constitute
21 evidence and can't be used directly by you in determining
22 the guilt or the innocence of the defendant in this case.

23 Now, during the trial, I will serve as the presiding
24 officer of this case, of this court, and it may be my
25 responsibility to rule on the appropriateness of questions

1 that might have been asked, the admissibility of evidence
2 that might be presented to be placed into the record. If
3 it's my belief that, during those questions and my
4 discussions with the lawyers about those issues, that that
5 discussion may lead into a discussion about matters that
6 would not be admissible under the rules of evidence that
7 govern our courts, then it will be up to me and I will
8 normally ask you to leave the courtroom during those
9 discussions.

10 Don't take from the fact that I've asked you to leave
11 the courtroom that I have an opinion one way or the other as
12 to how you determine the facts in this case. That's simply
13 me doing my job, and my job is to see that you decide the
14 case solely on evidence that is properly admitted under the
15 rules that govern trials in this state, and not concerning
16 matters that might be inadmissible. So, if I ask you to
17 step out, I'll make my decision. I'll ask you to step back
18 in, I'll make my ruling and we'll move on. But, again,
19 don't take from the fact that I've asked you to step outside
20 that I have an opinion one way or the other as to how you
21 determine the facts in this case. You see the law doesn't
22 allow me an opinion on that subject. I don't have an
23 opinion as to how you determine the facts in this case.
24 Again, it's simply me doing my job concerning the admission
25 of evidence in this case.

1 Now, I've told you you're the sole judges of the facts
2 in this case. As the sole judges of the facts in this case,
3 that means it will be your responsibility to determine the
4 credibility or believability of the, of the individuals who
5 testify during this trial, and that's what credibility
6 means. It means believability.

7 I'm going to tell you to use your own good common sense
8 in making those determinations. Every day each of you make
9 common sensical decisions as to what you choose to believe
10 and what you choose not to believe, and today and tomorrow
11 will be no different. You'll be making those decisions
12 based on your good common sense.

13 Now, in determining whether or not to believe a
14 witness, you have a right to consider whether or not the
15 witness has any interest or bias in the, in their testimony,
16 whether or not the witness actually had the ability or the
17 opportunity to know the facts about which that witness
18 testifies. You have the right to observe the witnesses as
19 they testify, the way they speak, the way they deliver their
20 testimony. You have the right to consider anything that
21 goes on the courtroom that's in the record of the case in
22 reaching your decision.

23 So, pay close attention to the witnesses as they
24 testify, the way they deliver their testimony. Again, make
25 a common sense determination as to who you choose to believe

1 and who you choose not to believe.

2 As the sole judges of the facts, you can believe all of
3 what a witness tells you, part of what a witness tells you,
4 or none of what a witness tells you. You can believe one
5 witness against all the others or all the others against the
6 one because you're the sole judges of the facts. You're the
7 sole judge of credibility. You're the sole judge of the
8 weight that you choose to give to each witness' testimony.

9 So, again, pay close attention to what goes on during
10 the trial and during the testimony given by the witness.
11 You have the right to consider anything that's in the record
12 of this case to help you evaluate the testimony of the
13 witnesses in this matter.

14 Now, I, I do something that they don't do on
15 television, and I appoint the foreperson of the jury at the
16 close of the trial. So, during the trial of this case,
17 there will not be a foreperson of the jury. I, I appoint
18 that person when I charge you concerning the law. And the
19 one reason I do that is to emphasize to you that, that no
20 juror has any greater say in the outcome of this case than
21 any other juror. At the close of the trial, your verdict
22 must be unanimous.

23 Each and every one of you must agree upon the verdict
24 before it becomes the verdict of the jury. And, so, the
25 foreperson has no greater say in the outcome of this case,

1 and has no greater responsibility than each juror has to pay
2 attention to what goes on during the trial.

3 Now, at the close of the trial I'll appoint that
4 person, and that person's job will be to preside over your
5 deliberations, to write questions back to the court if that
6 becomes necessary, and, of course, write the verdict once a
7 verdict has been reached. But, of course, all those things
8 will take place during deliberations. So, I'm going to
9 appoint the foreperson of the jury at the close of the trial
10 as opposed to at the beginning of the trial. So, don't
11 think I've forgotten that. I haven't forgotten that. I'll
12 be taking care of that later on.

13 Now, I want to be sure that I haven't violated anyone's
14 rights in my opening comment to you.

15 Does the State have any objection to any of my opening
16 comments?

17 SOLICITOR BARNETTE: The State does not, Your Honor.

18 THE COURT: Does the defense have any objection?

19 MRS. HODGES: No, sir. Thank you.

20 THE COURT: All right. As I indicated to you now, the
21 State has the burden of proof, and we allow them to go first
22 with the opening statements followed by the defense, and
23 that will be the order also that we will allow presentation
24 of evidence.

25 Mr. Barnette, at this time the State may proceed with

1 its opening comments. Oh, excuse me.

2 SOLICITOR BOYD: May it please the Court, Your Honor.

3 THE COURT: Mr. Boyd, yes, sir. You may proceed.

4 SOLICITOR BOYD: I'm giving the opening statement.

5 THE COURT: I thought it was Mr. Barnette.

6 Go ahead.

7 SOLICITOR BOYD: Thank you, Your Honor.

8 A few minutes ago, Judge Couch expressed gratitude for
9 your patience this afternoon. I want to do the same thing
10 with that sentiment. In light of that, I want to get right
11 into what we're here about today.

12 We're about what happened, we're about what happened on
13 October 14th of 2009. That morning, Terry Netherton and
14 Erika Duncan and a couple other boys were at work at RxCare
15 off of Highway 9 in Boiling Springs. That morning, there's
16 also another person in that room. We're gonna have evidence
17 to say it's that man, Marion Stewart.

18 You'll hear evidence that he walked in, he forced them
19 to open the safe containing controlled substances, he forced
20 them to put it in a black trash bag, and he forced them into
21 the bathroom, and he walked out of the store with over 9,000
22 pills. You'll hear evidence about the Sheriff's Office
23 subsequent investigation. You're gonna hear about how they
24 left from that pharmacy to a side, off the side of the road
25 on Rainbow Lake Road, in a wooded area with a trash bag full

1 of drugs and buried it in the ground.

2 You're gonna see surveillance video from that robbery,
3 and you're gonna hear from the codefendants. You're gonna
4 hear what happened from his, his own mouth right there in
5 that chair. You're also gonna hear from a couple of other
6 people. You're gonna hear from, from a relation of
7 Mr. Stewart. She'll tell you what happened before and after
8 that, this robbery.

9 You're gonna hear a lot of things. You're gonna see
10 some evidence, and you're gonna hear some testimony. And
11 all I ask of you right now is to use common sense to apply
12 what you've heard and what you've seen throughout the trial,
13 and to give both sides a fair, a fair shake, and, at the end
14 of this trial we'll come back and we'll revisit what you've
15 heard and what you've seen, and we'll try to work our way
16 through it together.

17 All I ask right now is that you use your common sense
18 in what you're about to see. Thank you.

19 THE COURT: Mrs. Hodges, for the defense.

20 MRS. HODGES: Thank you, Your Honor.

21 May it please the Court?

22 THE COURT: Yes, ma'am.

23 MRS. HODGES: Ladies and gentlemen, you met Marion Earl
24 Stewart a little bit earlier today. He stood up in front of
25 you, and as you know, he's charged with armed robbery. And

1 as the Court has told you, he's presumed innocent, which
2 means that right now Mr. Stewart is just like any one of us,
3 presumed innocent until proven guilty, and that's what our
4 Constitution requires. Both the State of South Carolina as
5 well as the United States Constitution.

6 The fact that he's been indicted, which basically means
7 that another body of people listened to some evidence to
8 determine whether any facts, did a crime occur, and whether
9 any facts that might associate Mr. Stewart with that crime,
10 and they returned an indictment. The indictment's not
11 evidence. The fact that Mr. Stewart was arrested, the fact
12 that he was booked, the fact that, you know, he's here
13 today, all of those are simply means in which you are now
14 here for us to be able to determine what really happened on
15 October the 14th of 2009.

16 You are not going to hear the defense argue that an
17 armed robbery did not happen at the Boiling Springs, in
18 Boiling Springs at the RxCare on October the 14th of 2009.
19 It is absolutely clear, on the video that you will see, and
20 the testimony that I expect you to hear from Mr. Netherton
21 and from any other people that were in that store that day
22 that were working at the RxCare, that someone walked through
23 the front door of that pharmacy with a pistol in his hand,
24 we'll presume it's a male, it could have been a woman, but
25 we don't know, but a person walked through with a pistol in

1 their hand, walked straight up to Mr. Netherton, and you'll
2 see the two women at a safe taking out a bunch of bottles,
3 and putting them into a trash bag.

4 What you're not gonna see on that video, and what not a
5 single witness from the State is going to be able to tell
6 you, other than a man named Grady Dale Taylor, and Grady
7 Dale Taylor's sister, Shirley Taylor, not a single person
8 from the State such as an impartial witness to this is going
9 to be able to tell you the identity of that person in that
10 store. That person is covered from head to toe. They are
11 wearing sneakers on their feet. They are wearing blue
12 jeans. They are wearing a hooded sweatshirt. They are
13 wearing gloves. They are wearing a mask.

14 Absolutely no way you're gonna be able to tell, from
15 the video that you see, who that person is. All you're
16 gonna be able to tell is, from testimony you're, I suspect
17 you're gonna hear from this stand, people that have an
18 interest in the outcome of this case, telling you that it's
19 Marion Stewart that was in the pharmacy that day.

20 The judge told you that credibility is going to be
21 something that you have to determine. Credibility, ladies
22 and gentlemen, and identification are the two most important
23 things that you're going to have to decide, and at the end
24 of the day, at the end of the trial, the State is not going
25 to be able to prove their case to you beyond a reasonable

1 doubt I submit. And it's gonna be your sworn duty to find
2 Mr. Stewart not guilty.

3 We're gonna talk a lot more about why he's not guilty,
4 why the State hasn't proven their case to you, ladies and
5 gentlemen. As the sole fact finders, it is very important
6 that you be able to hear everything in this case because the
7 only way that you're gonna be able to make your decision is
8 gonna be from what you see and what you hear.

9 I suspect that you're going to have some audio visual
10 things that you're able to see. Make sure you can see it.
11 If you can't see it, each and every one of you has to be
12 able to see it, and if you can't see it, make sure we get
13 you in a position where you can. If you can't hear what's
14 going on in this courtroom, make sure that somebody speaks
15 up because it's highly important that you hear everything in
16 this case, see everything in this case.

17 And then consider what you don't see, what you don't
18 hear because that too is just as important, what the State
19 doesn't present to you in this case, because that, ladies
20 and gentlemen, is where the rubber meets the road, and where
21 reasonable doubt is gonna be found.

22 Thank you.

23 THE COURT: All right. Ladies and gentlemen, it's,
24 it's about 15 till 5:00, and I've got a feeling the first
25 witness is gonna take longer than 15 minutes. I've imposed

1 on your time enough this afternoon. We're going into
2 tomorrow anyway. And, so, I'm going to stop at this point
3 in time, and ask you to be back in the jury room at nine
4 o'clock in the morning.

5 Same instruction I gave you when you left for lunch,
6 not to listen to, watch, or read media reports. Don't
7 gather any information. Don't discuss the case with anyone.
8 One other thing, if anyone attempts to discuss this matter
9 with you, contacts you concerning your service on the jury,
10 I'd ask that you report that to the Court.

11 I've already discussed with you jury tampering. I take
12 that very seriously. I will see that the appropriate
13 investigations are begun should anybody try to contact you
14 concerning your service on this jury.

15 Be back in the jury room at nine o'clock in the
16 morning. I can assure you we'll start on time better in the
17 morning. So, be there at nine o'clock.

18 Thank you very much and you're free to go at this time.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: All right. Anything further before we
22 break for the afternoon?

23 SOLICITOR BARNETTE: Nothing from the State, Your
24 Honor.

25 THE COURT: Anything from the defense?

1 MRS. HODGES: No, sir. Thank you.

2 THE COURT: All right. Just be sure to hold him till
3 the jury's left before you take him out.

4 Court's in recess.

5 Defendant remains in custody.

6 Thank you very much.

7

8 (WHEREUPON, Court was in recess for the evening.)

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1 Tuesday, April 12th, 2011

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3 THE COURT: All right. We're on the record in the case
4 of the State of South Carolina versus Marion Earl Stewart.

5 I do want to mention, both parties have entered a
6 stipulation of fact regarding Officer Lather Graham
7 concerning the location of a tennis shoe. I don't know when
8 you want that published to the jury, but I will get, get on
9 the record it is your stipulation, Mr. Barnette, the
10 stipulation of fact being presented in writing to the Court?

11 SOLICITOR BARNETTE: Yes, sir.

12 THE COURT: And is that your stipulation as well, Mrs.
13 Hodges?

14 MRS. HODGES: Yes, sir, it is.

15 THE COURT: All right. I'll have this marked as a
16 Court's Exhibit. When you like, when you'd like to have
17 that published to the jury let me know, and we'll see that
18 it is properly published to them.

19 (WHEREUPON, the stipulation was marked as Court's
20 Exhibit No. 3 for identification purposes only at this
21 time.)

22 THE COURT: Also, Mr. Barnette, there was a motion
23 concerning third party guilt we didn't really address
24 yesterday. I understand that it is there. I will allow you
25 to make contemporaneous objections, or if you wish to take

1 that up before the defense presents their case, I'll be
2 happy to do that.

3 SOLICITOR BARNETTE: Yes, sir, I don't, I don't know of
4 any purpose -- she did not mention anything in her opening
5 about third party guilt. I don't know if she's planning to
6 introduce any for purposes of this. If she is, then---

7 THE COURT: Well, I don't know either, and, so, I don't
8 know how extensively we have to address that, extensively we
9 have to address that.

10 MRS. HODGES: Your Honor, I don't think that that's
11 going to be an issue. Obviously, we are on notice that the
12 State objects to it, and I will be candid with the Court
13 that if I think that I'm -- I have -- I've always tried to
14 practice and err on the side of caution and get a ruling
15 from the Court prior to having to try a case over. So---

16 THE COURT: I understand.

17 MRS. HODGES: ---I will -- if, if I think that I'm
18 going to come anywhere close to that, I will alert the Court
19 and then, at that time, reserve---

20 THE COURT: All right.

21 MRS. HODGES: ---reserve---

22 THE COURT: Then you, you've reserved your rights, Mr.
23 Barnette, and if that becomes an issue we'll address it at
24 the---

25 SOLICITOR BARNETTE: Yes, sir.

1 THE COURT: ---appropriate time.

2 All right. Anything further before I bring the jury
3 in, Mr. Barnette?

4 MRS. HODGES: Your Honor, in regards to the
5 stipulation, I just, for the record, I did speak with my
6 client about that last week when the unavailability of Mr.
7 Graham became known to the solicitor and he immediately
8 called me. I talked to Mr. Stewart about that, and my
9 understanding is that Mr. Stewart was also in agreement with
10 the stipulation as it's drafted that, essentially that the
11 white tennis shoe was found in the location where it was
12 found, and collected by Technician Graham by the Sheriff's
13 office.

14 THE COURT: All right. Mr. Stewart, is that a correct
15 statement?

16 DEFENDANT: Yes, sir.

17 THE COURT: All right. Thank you.

18 SOLICITOR BARNETTE: Your Honor, the only other thing
19 is I may bring in just -- we have a witness coming up that
20 was on the scene who was the victim in the case.

21 THE COURT: Yes, sir.

22 SOLICITOR BARNETTE: And have another one that's
23 probably gonna testify later today. I may ask Mr. Stewart
24 to stand up to them so they can look at his height just for,
25 to show him on that, and then we have the codefendant. I'm

1 gonna ask him to be brought in too for them to look too to
2 measure the differences in height.

3 THE COURT: For identification purposes?

4 SOLICITOR BARNETTE: Just for ID purposes.

5 THE COURT: I understand.

6 SOLICITOR BARNETTE: And just let the Court be aware of
7 that.

8 THE COURT: All right. I'm aware of it.

9 MRS. HODGES: Your Honor, also I -- my client actually
10 brought this to my attention this morning. When the Court
11 made its ruling regarding the admissibility of the
12 statements that are subject of our motion hearing
13 yesterday---

14 THE COURT: Yes, ma'am.

15 MRS. HODGES: ---I think Investigator Hutchins was not
16 in the room while this Court was ruling in terms of what
17 could not be discussed. I'm sure that the solicitor will
18 make sure that Mr., that Investigator Hutchins knows---

19 THE COURT: Well, what I'll do is I'll amend my
20 sequestration order and direct the solicitor to make him
21 aware of my rulings as to what could be testified to and
22 what can't be testified to.

23 SOLICITOR BARNETTE: We appreciate it, Your Honor.

24 THE COURT: All right.

25 SOLICITOR BARNETTE: And before he testifies, we'll let

1 you know that---

2 THE COURT: All right.

3 SOLICITOR BARNETTE: ---that I've touched base with him
4 again and make sure that he understands to make no mention
5 of attorneys as asked for in a prior record or prior---

6 THE COURT: Thank you, sir. I appreciate it.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 MRS. HODGES: Thank you, Your Honor.

9 THE COURT: All right. Anything further before we
10 bring the jury in from the State?

11 SOLICITOR BARNETTE: None from the State, Your Honor.

12 THE COURT: From the defense?

13 MRS. HODGES: No, sir. Thank you.

14 THE COURT: All right. Let's bring the jury in.

15 (WHEREUPON, the following takes place within the
16 presence of the jury.)

17 THE COURT: Good morning, ladies and gentlemen. I
18 trust everyone had a good evening. The jury has returned to
19 the courtroom at this time.

20 If anyone had any difficulty in complying with my
21 instructions concerning your behavior in, over the night,
22 overnight, please stand if you had any difficulty.

23 (No response.)

24 THE COURT: It appears the jury was able to comply with
25 my instructions.

1 Again I'm apologizing to you. I had an issue come up
2 in another case that I had to deal with. So, I'm a little
3 late again this morning, and I do apologize to you for that.
4 I'll try to do better as we go along.

5 When we broke yesterday, we completed the opening
6 statements by counsel, and at this time I told you the State
7 would be in a position to present its case.

8 The State may call its first witness.

9 SOLICITOR BARNETTE: May it please the Court, Your
10 Honor?

11 THE COURT: Yes, sir.

12 SOLICITOR BARNETTE: Like to call Mr. Netherton to the
13 stand please.

14 THE COURT: Sir, if you'll come forward to my left and
15 be sworn in please.

16 TERRY NETHERTON, having been first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat, sir, in the witness stand, and
19 once you're comfortable, I'd ask you state your name please.

20 WITNESS: My name is Terry Bryson Netherton.

21 THE COURT: Mr. Barnette, your witness.

22 SOLICITOR BARNETTE: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q where do you work at, sir?

Terry Netherton - Direct examination
by Solicitor Barnette

- 1 A I'm employed by QS1 Data System as senior pharmacy
2 manager, and we're the owners of RxCare Plus.
- 3 Q Okay. And do you work at the RxCare Plus off Highway 9
4 in Boiling Springs, sir?
- 5 A For sick leaves and vacations, yes, sir.
- 6 Q And how long have you been a pharmacist, sir?
- 7 A Since October of 1970. Forty years.
- 8 Q And you help work as a pharmacist at the different
9 pharmacies for RxCare?
- 10 A Yes, we have two locations and I fill in as needed.
- 11 Q Okay. On October 14th, 2009, which location was you
12 at, sir?
- 13 A I was working in Boiling Springs.
- 14 Q Okay. And is that located off Highway -- when you go
15 into Boiling Springs, is it on the -- which shopping center
16 is it or the store?
- 17 A It's in Rocky Creek. It's on the left, on the right
18 about a mile off the interstate going into Boiling Springs.
- 19 Q If you pull that mic a little bit closer to you, sir,
20 so they can hear you, if you will.
- 21 A (Witness complies.)
- 22 Q Thank you.
- 23 So, this is located in Spartanburg County?
- 24 A Yes, sir, it is.
- 25 Q Okay. Is Sterling Estates right behind this or near

Terry Netherton - Direct examination
by Solicitor Barnette

1 this?

2 A That's right. In fact, we have a little problem with,
3 with them using our parking lot as an entrance into Sterling
4 Estates.

5 Q Okay. On this morning, around 10:15, can you tell the
6 jury what happened?

7 A Yes, sir, there were four of us in the store. Myself,
8 my two regular technicians, Tara Rice, and Erika Duncan, and
9 we had on site a, a student from Spartanburg Community
10 College who was pursuing a degree in, as a pharmacy
11 technician, and she was doing a rotation. So, there were
12 four of us there.

13 The three young ladies were on the right end of the
14 counter, and they were doing what we call profiling
15 prescriptions. These were prescriptions that had been left
16 by our customers but weren't to be filled. They were just
17 to be held until they needed them, and they were passing
18 them down the counter to me for verification to make sure
19 that they had indeed entered the proper drug and
20 instructions and so forth.

21 The front door opened, and we have a buzzer on the
22 front door, and I sort of raised up to see who was coming in
23 the front door. And there was a man with a bright orange
24 hoodie with the hood up coming through the front door and
25 all in one motion he took his left-hand and pulled a mask up

Terry Netherton - Direct examination
by Solicitor Barnette

1 over his face and took his right-hand and pointed a gun at
2 me and sort of rushed the counter where I was standing. And
3 I had stood up at this time and put both hands over my head
4 when I realized he had a gun still holding the
5 prescriptions.

6 He held the gun on me, made his way around the end of
7 the counter, and said he wanted everything out of the safe
8 in a black plastic bag. I started toward the safe, and he
9 stopped me and made me lay down in the floor face down, and
10 instructed two of the other young ladies to lay down beside
11 me and directed Erika to the safe to start putting the drugs
12 into the black plastic bag which he had provided. She was
13 having trouble holding the bag and getting the merchandise
14 in it. So, he asked one of the other young ladies who was
15 laying in the floor, he says you, black girl, get up and
16 help her. So -- and that happened to be my other regular
17 technician.

18 So, she gets up and, and helps Erika hold the bag and
19 they're raking the stuff out of the shelf or out of the safe
20 rather, and he speaks to the other young lady who's left
21 laying in the floor, and he says you get up and get me the
22 money out of the til, which I thought was an unusual choice
23 of words at the time. But anyway, I spoke up and defended
24 her because she was a student, and we don't give those folks
25 access, access to the cash register. So, I explained that

Terry Netherton - Direct examination
by Solicitor Barnette

1 to him as best I could and he dropped it. He let that go.

2 All the time this was going on he was moving back and
3 forth around me continuously and doing some talking. I
4 can't remember all that was said. At some point he asked me
5 if the back-door was unlocked, and I said yes, all you have
6 to do is push it and it will come right open. It seemed
7 like forever that we laid there. But when he thought he had
8 enough stuff in the sack, he ordered us all into the
9 bathroom. And if you come out of the pharmacy, there's a
10 door, a conference room, or a consultation room, and then a
11 little bathroom.

12 So, we all go in the bathroom and lay down in the
13 bathroom floor, and then he informs us that if we make a
14 move, he has an accomplice outside with an AK47 who will
15 come in and spray the place I believe was the terminology he
16 used. And, so, we laid there for a while. We finally sat
17 up. I had my cell phone, but that building has metal studs
18 so I had no, no phone access. So, I couldn't make a phone
19 call. So, I sat there for a while, and I finally got brave
20 enough to get up and go out the door, and I walked by and
21 hit the holdup button and locked the front door and waited
22 on the police to come.

23 Q What size was this fellow that came in?

24 A My guess was he was six feet, 200 pounds. He was
25 obviously a white male. I could see just right here.

Terry Netherton - Direct examination
by Solicitor Barnette

1 Because he had that hood pulled down and the mask pulled up,
2 I could see about this much and I could see just about this
3 much of his wrist where his gloves and his jacket sleeve
4 didn't meet, and then I could tell, of course, from his
5 voice that he was a, he was a male.

6 Q And do you remember what kind of shoes he was wearing?

7 A He had on white sneakers of some sort.

8 Q White tennis shoes?

9 A White tennis shoes, blue jeans, and an international
10 orange hoodie.

11 Q Sir, if you would, take a look at -- I believe you've
12 seen this before and actually had this made.

13 State's Exhibit 1, is that a video of the robbery?

14 A Yes, sir, it should be.

15 Q And is that a fair representation of what happened that
16 day?

17 A Yes, sir, that's a -- that system runs continuously.

18 So --.

19 Q And this is approximately what time of the morning,
20 10:15?

21 A Roughly 10:15 on October 14th of '09.

22 SOLICITOR BARNETTE: Your Honor, I'd like to enter this
23 into evidence at this time.

24 THE COURT: Any objection?

25 MRS. HODGES: No, sir.

Terry Netherton - Direct examination
by Solicitor Barnette

1 THE COURT: Without objection it will be marked and
2 received into evidence.

3 Has it already been marked?

4 SOLICITOR BARNETTE: Yes, sir, it has.

5 (WHEREUPON, State's Exhibit No. 1 was received into
6 evidence at this time.)

7 THE COURT: All right. You wish to publish?

8 SOLICITOR BARNETTE: Yes, sir, may I publish it?

9 THE COURT: You may do so.

10 Q Mr. Netherton, there was four different cameras in
11 these---

12 A That's right. That's right.

13 (WHEREUPON, State's Exhibit No. 1 was published to the
14 jury at this time.)

15 Q Is this the front of the store coming from the front
16 door?

17 A Yes, sir, that's that -- that's me seated on the -- you
18 can see me raise up.

19 Q And that front desk, how tall is it?

20 A At the point at which he---

21 Q The counter.

22 A ---confronted me, we measured it, and it's five feet
23 one-half inch.

24 Q So, his whole head was over the top of that, is that
25 right?

Terry Netherton - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q And this defendant had gloves on too, is that right?

3 A Yes, sir, he did have on a pair of -- it seemed like
4 they were mesh looking gloves of some sort.

5 Q This last one, is this the safe area that we're looking
6 at the---

7 A It should be, yes, sir. Yeah, that's the safe. That
8 black box right there is the safe. See, he stops me right
9 there, and makes me lay down in the floor.

10 Q Is that Erika trying to fill that bag up?

11 A Yes, sir, it is, and that, and that's the other
12 technician, Tara, who, who had been laying in the floor
13 beside me, but he asked her to get up and help her.

14 Q What color tennis shoes was he wearing again, sir?

15 A White.

16 Q And that's?

17 A And that's where we're being taken out of the pharmacy
18 into the, into the restroom. The restroom's actually on the
19 side of the wall from that safe.

20 Q And your description, again, of this individual's size
21 and weight was what, sir?

22 A I, I guessed that he was six feet tall and weighed
23 roughly 200 pounds was my, was my guess.

24 SOLICITOR BARNETTE: Your Honor, at this time I'd like
25 for Mr. Stewart to stand up.

Terry Netherton - Direct examination
by Solicitor Barnette

1 THE COURT: Mr. Stewart, if you would, just stand
2 please right where you are.

3 (Defendant complies.)

4 THE COURT: Thank you, sir.

5 SOLICITOR BARNETTE: Can Mr. Netherton go towards that
6 direction just from a height standpoint?

7 THE COURT: Yes, sir, you may stand up to observe the
8 defendant.

9 (Witness complies.)

10 Q I'm sorry.

11 A That's all right.

12 Q Height wise, was he similar to the man you saw that
13 day?

14 A Yes, sir, I would say he is close enough.

15 Q And the weight?

16 A Yeah, pretty much. Of course, he had on a jacket, that
17 sort of thing.

18 Q Yes, sir, if you would, just have a seat back in that
19 chair.

20 (Witness complies.)

21 SOLICITOR BARNETTE: And, Your Honor, I'd ask---

22 THE COURT: Could the jury, could the jury hear that
23 testimony?

24 Could everyone hear that?

25 (Jurors nod affirmatively.)

Terry Netherton - Direct examination
by Solicitor Barnette

1 THE COURT: All right. You may proceed, Mr. Barnette.

2 SOLICITOR BARNETTE: Your Honor, may I step out for a
3 second and check on the other individual we talked about?

4 THE COURT: You may.

5 SOLICITOR BARNETTE: If you would, just have a seat
6 please.

7 A (Witness complies.)

8 (WHEREUPON, Mr. Grady Taylor was brought into the
9 courtroom at this time.)

10 Q Mr. Netherton, if you would, come down for a second.
11 If you would, sir, just stand right there.

12 (Witness complies.)

13 Q Mr. Netherton, was this man -- is this -- was this
14 man's size the one you saw that day?

15 A No, sir, he's too short.

16 Q Okay. Thank you, sir.

17 If you would, just take him back.

18 (WHEREUPON, Mr. Grady Taylor leaves the courtroom at
19 this time.)

20 Q Mr. Netherton, let me show you what's been marked for
21 ID purposes at this time.

22 How much -- what was the value of the drugs that was
23 stolen that day during the armed robbery?

24 A At our cost, we inventoried roughly \$30,000 worth of
25 merchandise at our costs.

Terry Netherton - Direct examination
by Solicitor Barnette

1 Q Okay. Let me let you look here if you can. Like I
2 say, these are marked for ID purposes at this time. Be
3 State Exhibit. I apologize. These items are gonna be
4 Exhibit 2-A.

5 If you would, take a look inside these bags and see if
6 that's the, some of the merchandise that was stolen from
7 y'all's pharmacy.

8 I apologize.

9 A They all have the fingerprint---

10 Q They do have I think. Most of them.

11 A Let me see. Yes, sir, this merchandise came out of our
12 store---

13 Q Okay.

14 A ---or the ones, the ones I'm handling did. I can tell
15 by looking at them. These stickers on here are stickers
16 that are supplied by our wholesaler---

17 Q Yes, sir.

18 A ---and our account number is on here. So, account [REDACTED]
19 belongs to the Boiling Springs store.

20 Q So, these items was items stolen from that store --

21 A Yes, sir.

22 Q -- or came from that store?

23 A Yes, if they have that sticker and have this [REDACTED], then
24 that's where they came from.

25 SOLICITOR BARNETTE: Your Honor, at this time I'd like

Terry Netherton - Direct examination
by Solicitor Barnette

1 to enter 2-A into evidence at this time.

2 THE COURT: Any objection?

3 MRS. HODGES: May I approach, Your Honor?

4 THE COURT: You certainly may and view the evidence.

5 SOLICITOR BARNETTE: I'm sorry. I should of brought it
6 over to you. I apologize.

7 MRS. HODGES: Your Honor, without objection.

8 THE COURT: All right. Without objection then, it will
9 be admitted into evidence as marked.

10 (WHEREUPON, State's Exhibit No. 2-A was received into
11 evidence at this time.)

12 Q Let me show you what's been marked as 2-B,
13 Mr. Netherton. If you would, take a look at that, at those
14 items. See if these items came from y'all's store too.

15 A Well, these are all in baggies. So, I wouldn't, I
16 wouldn't be able to identify that. Yes, sir.

17 Q Have the, the information on the same as you said
18 before?

19 A Yes, sir, they do, uh-huh. (Affirmative).

20 SOLICITOR BARNETTE: I don't know if Mrs. Hodges wants
21 to look at this, Your Honor. We'll move this into evidence
22 at this time.

23 MRS. HODGES: Your Honor, I would object to the items
24 that are in the baggies that he can not identify. The other
25 items, I don't know that Mr. Netherton's placed sufficient

Terry Netherton - Direct examination
by Solicitor Barnette

1 foundation in terms of how he can identify the second half
2 of 2-B.

3 THE COURT: I understood his testimony was the stickers
4 were on those, is that---

5 WITNESS: Yeah, there were stickers on there just like
6 they were on the others.

7 MRS. HODGES: Your Honor?

8 WITNESS: The baggies I couldn't identify. There's
9 nothing on there.

10 MRS. HODGES: With that, with the additional testimony
11 that the stickers are on there, then, judge, I have no
12 objection to the stickered items.

13 THE COURT: All right.

14 MRS. HODGES: The baggies he can not identify.
15 obviously then those---

16 THE COURT: All right. Then those items that have been
17 identified as having the appropriate merchandising stickers
18 would be admitted, and what numbers is that?

19 SOLICITOR BARNETTE: This is gonna be 2-B, Your Honor.
20 I did remove the bags with the, the---

21 THE COURT: All right.

22 SOLICITOR BARNETTE: ---the individual pills.

23 THE COURT: All right. We'll have to deal with that
24 separately, but this right here will be admitted as 2-B.

25 (WHEREUPON, State's Exhibit No. 2-B was received into

Terry Netherton - Direct examination
by Solicitor Barnette

1 evidence at this time.)

2 SOLICITOR BARNETTE: One moment, Your Honor, please.

3 THE COURT: Yes, sir.

4 (Pause.)

5 Q If you would, please answer any questions Mrs. Hodges
6 may have for you, sir.

7 A Okay.

8 THE COURT: Mrs. Hodges, your witness.

9 MRS. HODGES: Thank you, Your Honor.

10 May it please the Court?

11 THE COURT: Yes, ma'am.

12 MRS. HODGES: Your Honor, could I get these marked as
13 Defendant's 1, 2, and 3?

14 THE COURT: All right. For ID purposes, they'll be
15 marked.

16 MRS. HODGES: For ID purposes.

17 THE COURT: All right.

18 (WHEREUPON, three photographs were marked as
19 Defendant's Exhibit No. 1 through 3 for identification
20 purposes only at this time.)

21 CROSS-EXAMINATION

22 BY MRS. HODGES:

23 Q Mr. Netherton, how long have you been associated with
24 the store there on Boiling Springs?

25 A We opened that store in October of '05.

Terry Netherton - Cross-examination
by Mrs. Hodges

1 Q Okay. And have you, you -- have you worked with RxCare
2 or QS1 all forty years of your career as a pharmacist?

3 A No, ma'am, I worked as an employee pharmacist. I
4 worked for a drug company for a short while, and then I
5 owned my own business for 26 years.

6 Q Okay. How long have you been associated with the Rx
7 Company?

8 A QS1?

9 Q QS1, yes, sir.

10 A I've been, I've been an employee for six years.

11 Q Okay. And that -- you said that the store in Boiling
12 Springs was opened in 2005?

13 A October of '05. I went to work there in March of '05.

14 Q Okay. And, so, then I would assume that you're
15 familiar with the layout of, of that entire complex of the
16 of the, the shopping center where it's located?

17 I assume that you're quite familiar with the layout of
18 the building, the parking lot, and those sorts of things?

19 A Sure.

20 Q Okay. The reason why I asked is I actually have some
21 photographs that my investigator took, and I'd like to show
22 them to you and see if you can identify them.

23 I'm first gonna show you Defendant's Exhibit No. 1, and
24 ask if you can identify that photograph.

25 A That looks to be the back entrance to that pharmacy.

Terry Netherton - Cross-examination
by Mrs. Hodges

1 Q Okay. And would that be the opposite side -- we saw,
2 in the video, the person go through a door.

3 A That's right.

4 Q Would that be the door that that person went through?

5 A That would of been, that would of been the door they
6 came through --

7 Q All right. So, that would be---

8 A -- or went out rather.

9 Q So, that's the outside, the outside part of that door?

10 A Yes.

11 Q Okay. And I show you Defendant's Exhibit No. 2, and
12 ask if you can identify that for me.

13 A That appears to be a side view of this.

14 Q Okay. So, my understanding is that the pharmacy itself
15 is actually at the end of a strip of the building in, in
16 that shopping center?

17 A Yeah, it's at the drive through window right here.

18 Q Okay. And Defendant's Exhibit No. 3, I'm gonna ask if
19 you can identify that for me.

20 A Yeah, that shows the drive through window, and there's
21 the back-door that---

22 Q Okay.

23 A ---that whoever would have come out of.

24 Q All right. And the, this view where that photograph is
25 taken, can you determine whether that's taken standing from

Terry Netherton - Cross-examination
by Mrs. Hodges

1 like where the Sterling Estates area is?

2 A I don't think so. I think this is from the road back
3 there.

4 Q Okay. The Sterling Estates is on the opposite side of
5 that road, on the other side of the road?

6 A It's -- Sterling Estates is, is on the opposite side,
7 but the entrance is down here.

8 Q Okay.

9 A It's to the left of this picture.

10 Q Okay. And there's actually a, a, an entrance both into
11 the backside of that parking lot -- like if you come out of
12 Rocky Branch Road or Drive or whatever that is, you turn
13 left to go into the parking lot for your business, and you
14 then turn right to go into Sterling Estates, is that
15 correct?

16 A Yeah, off of this road.

17 Q Correct.

18 A Yes.

19 Q Okay. All right. Thank you, sir.

20 Did you have an opportunity to speak to the police
21 when, when they came to the store to investigate the robbery
22 that day?

23 A Yes.

24 Q Okay. Do you remember, did you talk to a uniformed
25 officer or to a detective or both or something different?

Terry Netherton - Cross-examination
by Mrs. Hodges

1 Do you remember?

2 A I think there were both. They were, you know, the
3 door's looked, and they're four of us, employees, and there
4 were several people who showed up there. To the best of my
5 memory, the first person was a uniformed county policeman.

6 Q Okay.

7 A And -- but there were several people at any given time
8 in there.

9 Q And did you give a description of the person in terms
10 of height and weight to the police that day if you remember?

11 A I'm, I'm sure I did --

12 Q Okay.

13 A -- you know.

14 Q All right. Have you had an opportunity to, to review
15 the incident report that was written in this case?

16 A No, I haven't.

17 Q All right. Have you had a discussion with the
18 solicitor's Office as to the description that was given to
19 the police that day?

20 A Not that I remember, no.

21 Q All right. So, the solicitor didn't ask you to, about
22 whether the person was 5'10" and 175 pounds?

23 A No, he asked me how big -- to my knowledge, he asked me
24 what size person I thought he was.

25 Q Okay. So, you never told the police that the person

Terry Netherton - Cross-examination
by Mrs. Hodges

1 was 5'10" and 175 pounds?

2 A I can't say yes or no. I don't remember.

3 Q Okay.

4 A Okay.

5 Q That's fair.

6 A Is that fair enough?

7 I---

8 Q And all I'm asking you to do is---

9 A I mean I've just gone through an armed robbery and
10 they're people all over me, and, and I don't know what I
11 might of said.

12 Q I understand.

13 A Okay.

14 Q So, I was just asking what you remember, what you
15 recollect from that day in terms of what you remember you
16 may have told the police. If you don't remember, I don't
17 want you to speculate.

18 A I don't remember.

19 Q Okay. That's fair.

20 A Okay.

21 Q That's fair. Thank you.

22 You said that the hoodie this person was wearing was
23 international orange, is that right?

24 A Yes, ma'am.

25 Q Okay. So, by international orange, I mean are, are

Terry Netherton - Cross-examination
by Mrs. Hodges

1 you -- I'm not a hunter; but I've learned a lot about it
2 since from being a city girl moved to the country.

3 I mean it is like somebody that you, that they wear out
4 in the woods something bright enough you could be seen if
5 you're out in the woods?

6 A It would be acceptable for that, yes.

7 Q Okay. And the gloves this person was wearing, it
8 looked to me like they were camouflaged or some sort of
9 pattern on the gloves.

10 Could you tell or do you remember?

11 A I can't remember.

12 Q Okay. The mask, do you remember anything about the
13 mask at, at the face?

14 A I'm pretty sure the mask with camo.

15 Q Okay.

16 A Okay.

17 Q And, and you said all you could see was just basically
18 the eyes?

19 A Yes, when he pulled it up, he pulled it up over his
20 nose. And, so, if I had from---

21 Q Okay.

22 A ---where the hood came down to where the mask came up
23 was what---

24 Q Okay.

25 A ---what I could see.

Terry Netherton - Cross-examination
by Mrs. Hodges

1 Q So, basically in your -- just so the record's clear,
2 you're kind of basically showing basically from the
3 eyebrows---

4 A That's right.

5 Q ---to maybe the top of the nose?

6 A That's right.

7 Q Okay. And you said you also saw a little part of the
8 wrist?

9 A I thought I could see part of his wrist.

10 Q And, so, that's why you're able to determine that the
11 person looked to be, appeared to be a white, a white male?

12 A That's correct.

13 Q And the voice sounded like a male?

14 A That's right.

15 Q Okay. Where is the holdup alarm located in that
16 pharmacy?

17 A Right under -- right above where I was laying in the
18 floor.

19 Q Okay. So, it's back behind the counter area?

20 A Yes, ma'am.

21 Q Okay.

22 A Underneath the edge of the prescription counter.

23 Q Okay. And the -- what was the distance from where you
24 were laying on the floor to the safe where the, the, the
25 prescriptions were held?

Terry Netherton - Cross-examination
by Mrs. Hodges

1 A I'd say ten feet or so.

2 Q Okay. All right. I believe that's all I have.

3 Beg the Court's indulgence, Your Honor.

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 Q Thank you, sir. That's all I have.

7 SOLICITOR BARNETTE: No further questions of this
8 witness.

9 THE COURT: Sir, you may step down. Thank you very
10 much.

11 SOLICITOR BARNETTE: Your Honor, I'd like to call
12 Mr. Taylor to the stand. I have to get somebody to go next
13 door to get him.

14 THE COURT: All right.

15 (Pause.)

16 THE COURT: Sir, if you'd come forward here to be
17 sworn.

18 GRADY TAYLOR, having been first duly
19 sworn, testified as follows:

20 THE COURT: Have a seat please.

21 (Witness complies.)

22 THE COURT: State your name.

23 WITNESS: Grady Dale Taylor.

24 THE COURT: Mr. Barnette, your witness.

25 SOLICITOR BARNETTE: Thank you, sir.

Grady Taylor - Direct examination
by Solicitor Barnette

1 DIRECT EXAMINATION

2 BY SOLICITOR BARNETTE:

3 Q Mr. Taylor, where did you live back in October of 2009?

4 A [REDACTED] -- I mean -- well, yeah, [REDACTED], [REDACTED]
5 Road at that time.

6 Q Okay. And did you know the defendant in this case,
7 Marion Stewart?

8 A Yes, I do.

9 Q And how did you know him, sir?

10 A Through my sister.

11 Q And who's your sister, sir?

12 A Shirley Taylor.

13 Q And was Shirley dating him at that time?

14 A Yes, sir.

15 Q And where did her and Marion live at that time?

16 A In Inman.

17 Q Okay. On the night before or going back to
18 October 9th, 2000, October 14th, 2009, did you see
19 Marion Stewart that day?

20 A Yes, sir.

21 Q And where did you see him that morning?

22 A At Shirley's house.

23 Q Okay. And had y'all stayed overnight there?

24 A Yes, sir.

25 Q And who else was with you at the house?

Grady Taylor - Direct examination
by Solicitor Barnette

- 1 A Me and Marion and his sister and Shirley's and some
2 kids.
- 3 Q And whose kids were there?
- 4 A Mine and Shirley's.
- 5 Q Okay. How many kids of your children were there, sir?
- 6 A I got four. She's got three.
- 7 Q And how many of your kids were there that day?
- 8 A Two of them.
- 9 Q And Shirley's other three kids was there?
- 10 A Yes, sir.
- 11 Q So, it would be a total of five?
- 12 A Yes, sir.
- 13 Q So, you, your sister Shirley, which dated Marion, was
14 there?
- 15 A Yes, sir.
- 16 Q And Marion was there?
- 17 A Yes, sir.
- 18 Q And who was the other person, the other adult?
- 19 A Lee Ann.
- 20 Q And who is Lee Ann?
- 21 A Marion's sister.
- 22 Q So, Lee Ann's Marion's sister?
- 23 A Yes, sir.
- 24 Q That morning, did y'all discuss going to a pharmacy?
- 25 A Yes, sir.

Grady Taylor - Direct examination
by Solicitor Barnette

- 1 Q If you would, tell the jury what y'all discussed.
2 A We discussed to go down and rob it.
3 Q And who went to rob it?
4 A Me, and Marion, and his sister.
5 Q Is that Lee Ann?
6 A Yes, sir.
7 Q Did -- who drove?
8 A Marion's sister, Lee Ann.
9 Q And who was in the front seat?
10 A Marion.
11 Q Who was in the back seat?
12 A I was.
13 Q And whose car did y'all take?
14 A Lee Ann's.
15 Q When y'all discussed this robbery, had y'all talked
16 about this before, about breaking into a pharmacy and so
17 forth?
18 A Yes, sir.
19 Q So, when y'all went, what happened after y'all left the
20 house?
21 A We went and rode around, waited for the coast to clear,
22 and then he went in to rob it.
23 Q Okay. When y'all parked the car, where did you park it
24 at?
25 A Behind the building.

Grady Taylor - Direct examination
by Solicitor Barnette

- 1 Q Okay. And who went in the building?
- 2 A Marion did.
- 3 Q And what was he wearing?
- 4 A He was wearing a orange hoodie and white tennis shoes
- 5 and blue jeans.
- 6 Q Did he take a gun in with him?
- 7 A Yes, sir.
- 8 Q what kind of gun was it?
- 9 A It was a plastic toy gun.
- 10 Q And where did he get the toy gun from?
- 11 A From, from my oldest son at his house.
- 12 Q Did it look like a real gun except it's plastic?
- 13 A Yes, sir. I mean if you didn't know it, it'd probably
- 14 pass for a real gun, yes, sir.
- 15 Q Okay. So, he went in the store?
- 16 A Yes, sir.
- 17 Q And did he go in the front door?
- 18 A Yes, sir.
- 19 Q And y'all was in the back?
- 20 A Yes, sir.
- 21 Q When he came out, did -- which door did he come out of?
- 22 A Out the back.
- 23 Q And what happened?
- 24 what did he have in his hands?
- 25 A A black trash bag.

Grady Taylor - Direct examination
by Solicitor Barnette

1 Q Okay. When he got in the car, what happened then?

2 A We left, went back to Shirley's house, and then went
3 and hid the pills.

4 Q Did, did Shirley -- did y'all show Shirley the pills or
5 did she see the pill?

6 A I don't think she seen the pills.

7 Q Okay. Did he have them in a black bag and have them
8 out on the bed at some point, some point in time?

9 A Yes, sir.

10 Q So, he did have them out on the bed at some point?

11 MRS. HODGES: Your Honor, I object to leading the
12 witness.

13 THE COURT: I will ask, Mr., Mr. Barnette, that you not
14 lead the witness.

15 SOLICITOR BARNETTE: I'll rephrase the question.

16 THE COURT: Thank you.

17 SOLICITOR BARNETTE: I apologize, Your Honor.

18 THE COURT: That's quite all right.

19 Q So, after y'all had the pills at the house, what
20 happened then?

21 A We took them and hid them at Ghost Valley.

22 Q And who went out with you to hide them?

23 A Just me and Marion.

24 Q Okay. And whose car did y'all take?

25 A Shirley's I think.

Grady Taylor - Direct examination
by Solicitor Barnette

1 Q And in Ghost Valley, how did y'all hide them in the
2 woods?

3 A We hid them a few feet off the road underneath some old
4 limbs and stuff.

5 Q And later on, afterwards, did the police talk to you
6 about this case?

7 A Yes, sir.

8 Q And did you take them to the location?

9 A Yes, sir.

10 Q And did you show them where y'all buried the pills at?

11 A Yes, sir.

12 Q And you were also charged with armed robbery in this
13 case?

14 A Yes, sir.

15 Q And have you pled to your armed robbery charge?

16 A Yes, sir, I did.

17 Q You realize you face ten to thirty years for what
18 you've done?

19 A Yes, sir.

20 Q And you haven't been promised anything for what your
21 sentence is gonna be, have you?

22 A No, sir.

23 Q That will be determined by the judge?

24 A Yes, sir.

25 Q The only thing you've been told is that you will

Grady Taylor - Direct examination
by Solicitor Barnette

1 tell---

2 MRS. HODGES: Object to leading, Your Honor.

3 THE COURT: I'll ask that you not lead the witness.

4 SOLICITOR BARNETTE: I'll rephrase the question then.

5 THE COURT: Thank you.

6 Q What, what have you been promised?

7 A I ain't been promised nothing.

8 Q Was your part being in the car being an accomplice?

9 A Yes, sir.

10 Q Who is the man that went in the store?

11 A Marion.

12 Q And how tall are you, sir?

13 A Five something. 5'3", 5'4".

14 Q Okay. If you would, come down again. I know the
15 jury's seen you before.

16 A (Witness complies.)

17 Q Cause I'm 6'1".

18 Okay. So, what size do think you are?

19 A 5'5".

20 Q Okay. And how much did you weigh back then, sir?

21 A About 130 pounds.

22 Q And are you still in jail now?

23 A Yes, sir.

24 Q And if you would ID the man that went into that store
25 that day, sir?

Grady Taylor - Direct examination
by Solicitor Barnette

1 A (Witness points.)

2 Q Can you tell, tell the jury and the Court what he's
3 wearing?

4 A White shirt, spotted tie.

5 Q Is he the gentleman sitting beside Mrs. Hodges in the
6 green or he's actually in the, the -- what color tie was it
7 again, sir?

8 A Burgundy and gray.

9 SOLICITOR BARNETTE: Your Honor, I'd like the record to
10 reflect he's identified the defendant in this case.

11 THE COURT: The record will so, so reflect.

12 SOLICITOR BARNETTE: One moment, Your Honor, please.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q If you would, sir, please answer any questions Mrs.
16 Hodges has for you.

17 A Yes, sir.

18 THE COURT: Mrs. Hodges, your witness.

19 MRS. HODGES: Thank you, Your Honor.

20 May it please the Court?

21 THE COURT: Yes, ma'am.

22 CROSS-EXAMINATION

23 BY MRS. HODGES:

24 Q Mr. Taylor, when you were booked into the Spartanburg
25 County Jail, did you tell them how tall you were?

Grady Taylor - Cross-examination
by Mrs. Hodges

1 A I don't think so, ma'am.

2 Q All right. Do you have -- tell them that you were
3 5'6"?

4 A That I don't remember, ma'am.

5 Q Okay. Did you tell them you weighed 135 pounds?

6 A Probably did, yes, ma'am.

7 Q All right. So, you probably told them you weighed
8 135 pounds, you probably told them you were 5'6", didn't
9 you?

10 A Yes, ma'am.

11 Q Okay. And today you're saying that you're 5'3" or
12 5'4"?

13 A Yes, ma'am, I mean I really don't know how tall I am.

14 Q Okay. Is Shirley your older or younger sister?

15 A Older.

16 Q And she, at that time, had custody of two of your
17 children, is that right?

18 A Yes, ma'am.

19 Q And your father had custody of your other two children?

20 A Yes, ma'am.

21 Q And, in fact, that's an arrangement that is still in
22 place today, is that correct?

23 A Yes, ma'am.

24 Q And you -- after this robbery occurred, you actually
25 gave pills to Angie Blackwell to sell for you, didn't you?

Grady Taylor - Cross-examination
by Mrs. Hodges

1 A Yes, ma'am.

2 Q And you told Angie Blackwell that you're doing that so
3 you could get your kids back, isn't that right?

4 A Yes, ma'am.

5 Q Cause you're trying to get money so you can get your
6 kids back?

7 A Yes, ma'am.

8 Q Okay. And, in fact, you wrote a letter to Marion
9 Stewart telling him that you missed your kids really
10 badly---

11 A Yes.

12 Q ---while you're in jail, didn't you?

13 A Yeah, I did.

14 Q All right. And, in fact, you told him that you would
15 do anything to try and help him, didn't you?

16 A Help Marion?

17 Q Uh-huh. (Affirmative).

18 A I told Marion in the letter that I am sorry for what I
19 got to do, but I got to do what I got to do.

20 Q And you got to do what you got to do so that you can be
21 able to get yourself in a position to get your kids back,
22 right?

23 A I mean yes, ma'am.

24 Q Okay. On this particular day, what car was Lee Ann
25 driving?

Grady Taylor - Cross-examination
by Mrs. Hodges

1 A I think it was a blue four door car.

2 Q Blue four door what?

3 A I don't know the make of it.

4 Q Okay. And this car that she was driving, where were
5 you-all when, when, when all this was suppose to have
6 happened?

7 A What do you mean where we was?

8 Q Where were you when, when you, this whole incident
9 started out?

10 Where did it start?

11 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
12 the form of the question. It's misleading.

13 THE COURT: I will ask that you rephrase the question
14 to specifically refer to what time or place you're referring
15 to.

16 Q What time did, did you-all leave to go do this robbery?

17 A In the morning time.

18 Q What time?

19 A I really don't know. I just know it's in the morning
20 and it was raining.

21 Q It was in the morning, and it was raining?

22 A Yes, ma'am.

23 Q Okay. Was it early morning?

24 A Early morning.

25 Q Okay. To you, what does early morning mean?

Grady Taylor - Cross-examination
by Mrs. Hodges

- 1 A 9:30, something like that.
- 2 Q So, 9:30 is early morning to you?
- 3 A Yes, ma'am.
- 4 Q Okay. And it was -- how hard was it raining?
- 5 A It wasn't raining real real hard. It was like a steady
- 6 mist rain.
- 7 Q Okay. And how long did it take you to get from
- 8 Shirley's house to this pharmacy?
- 9 A I mean I really don't know. Probably 15, 20 minutes.
- 10 But we also rode around too. So, I mean I really, I really
- 11 don't know how long it took us because we rode around.
- 12 Q Okay. Where did you ride around?
- 13 A We rode around in the housing development behind the
- 14 store.
- 15 Q Okay. Do you know the name of that development?
- 16 A Not right offhand I sure don't, ma'am.
- 17 Q Okay. Why were you riding around in that housing
- 18 development?
- 19 A Cause there was people at the drive through window.
- 20 Q Okay. How long -- do you have any idea how long you
- 21 drove around, around---
- 22 A No, ma'am.
- 23 Q ---rode around in this housing development?
- 24 A No, ma'am.
- 25 Q Is it a big development or a small development?

Grady Taylor - Cross-examination
by Mrs. Hodges

1 A Yeah, it's average size.

2 Q Okay. You said that you, that Lee Ann parked behind
3 the building.

4 where behind the building did she park?

5 A Behind the building.

6 Q All right. Next to -- was she parked right up next to
7 the building?

8 A No, ma'am.

9 Q Was she in the parking lot?

10 A She was behind, she was behind the building. There's
11 no parking lot behind the building.

12 Q There's no parking lot behind the building?

13 A No, ma'am.

14 Q Is there a driveway behind that building?

15 A Yes, ma'am, you can go all the way around the building.

16 Q Okay. So, that's the area that she parked in?

17 A Yes, ma'am.

18 Q All right. Did she park next to any trees?

19 A Yes, ma'am, there's trees there. But we parked in the,
20 on the asphalt.

21 Q Okay. When you parked on the asphalt, were you closer
22 to the building or were you closer to the trees?

23 A We was closer to the trees.

24 Q Okay. How far -- how -- how far would you say it is
25 between the building to the trees if you remember?

Grady Taylor - Cross-examination
by Mrs. Hodges

1 A I don't know. I don't, I don't remember. I mean I
2 wasn't paying, I wasn't paying that no attention.

3 Q Okay. So, you parked behind the building near trees.
4 Are you parked anywhere near that subdivision?

5 A No, ma'am, the subdivision is across, across, across
6 the road.

7 Q The subdivision's across the road.

8 So, your testimony today is you weren't parked anywhere
9 near that subdivision?

10 A I mean we stopped, I mean we stopped there for a while.
11 But we, we was not parked there when he came out. We was
12 behind the building.

13 Q Do you remember talking to the police when, a few days
14 after this robbery happened?

15 A I remember talking to the policemen when they came and
16 got me.

17 Q Okay. That was a few days after this robbery happened,
18 is that right?

19 A Yes, ma'am.

20 Q Okay. Do you remember telling the police that the car
21 was parked at the entrance of Sterling Estates waiting for
22 Marion to come out?

23 A I don't remember that, but I probably did.

24 Q Okay. So, you told the police that the car was parked
25 at the entrance of Sterling Estates and that was incorrect,

Grady Taylor - Cross-examination
by Mrs. Hodges

1 is that your, my understanding?

2 A Okay. Yeah.

3 Q Okay. So, you told the police a lie?

4 A I told one lie. Okay.

5 Q All right. Well, you told more than one lie, didn't
6 you?

7 A No, ma'am.

8 Q You didn't?

9 A No, ma'am.

10 Q When the police first came to talk to you about this
11 case, isn't it true that you told them to go up to Midnight
12 Road cause that's where the pills were?

13 A I don't, I don't remember, ma'am.

14 Q You don't remember?

15 A No, ma'am.

16 Q You don't remember telling the investigators that the
17 pills were hidden up on Midnight Road?

18 A I told them that, yeah.

19 Q Okay. And then you changed it and said no, no, it's
20 suppose to be Ghost Valley Road?

21 A I got the names mixed up.

22 Q Okay. And then you told the police that, on Ghost
23 Valley Road, that supposedly the pills were hidden there as
24 well as the gun and the clothes were up underneath the bag,
25 isn't that true?

Grady Taylor - Cross-examination
by Mrs. Hodges

- 1 A No, ma'am.
- 2 Q You didn't tell them that?
- 3 A No, ma'am.
- 4 Q You didn't tell the officers, when they were
- 5 investigating you and you were showing them where the pills
- 6 were hidden, that, and they got there, looked at the pills,
- 7 you didn't tell them that the guns and the clothes are
- 8 underneath the bag, be careful because there's a gun
- 9 underneath there?
- 10 A No, ma'am.
- 11 Q You didn't tell them that?
- 12 A No, ma'am.
- 13 Q All right. And did you tell the police that Marion had
- 14 come back and gathered the gun and the clothes?
- 15 A Yes, ma'am.
- 16 Q Okay. So, you didn't tell them that the gun was
- 17 underneath there?
- 18 A No, ma'am.
- 19 Q But you do tell them that Marion had come back to get
- 20 the gun and the clothes?
- 21 A Yes, ma'am.
- 22 Q Were you with them that day?
- 23 A Yes, ma'am, I was.
- 24 Q All right. This robbery's been testified to it
- 25 happened on October the 14th.

Grady Taylor - Cross-examination
by Mrs. Hodges

1 Is that the same day, the day you went up and hide the
2 clothes?

3 A No, ma'am.

4 Q You don't hide the clothes on the same day?

5 A No, ma'am.

6 Q So, you did not just testify today that you and Marion
7 went and hid the pills and the clothes?

8 A Yes, ma'am.

9 Q On the same day?

10 A Yes, ma'am, we hid them on the same day.

11 Q All right. Well, you just testified that you didn't?

12 A No, ma'am.

13 Q So, which one is it?

14 A No, ma'am, we hid the clothes on the same day with the
15 pills.

16 Q Okay.

17 A But we went back to hide, to dispose of the other
18 stuff.

19 Q All right. So, you did hide the clothes and the gun
20 and the pills all in the same day?

21 A Yes, ma'am.

22 Q Okay. When did you go back?

23 A I don't remember.

24 Q Was it the next day?

25 A No, ma'am, it's a couple days later.

Grady Taylor - Cross-examination
by Mrs. Hodges

- 1 Q Couple days later?
- 2 A Yes, ma'am.
- 3 Q Do you know how many days later?
- 4 A No, ma'am, I don't.
- 5 Q Okay. What time of day did you go back?
- 6 A It was at night.
- 7 Q At nighttime?
- 8 A Yes, ma'am.
- 9 Q Like dark nighttime?
- 10 A Yes, ma'am.
- 11 Q Okay. And how did you get there to go back?
- 12 A I went with Marion.
- 13 Q Okay. And how did you get there?
- 14 What kind of car did you use?
- 15 A We was in Shirley's car.
- 16 Q You were in Shirley's car?
- 17 A Yes, ma'am.
- 18 Q All right. And in Shirley's car, you go and are the
- 19 guns and the clothes and everything still there where you
- 20 hid them?
- 21 A Yeah, with the pills?
- 22 Q Uh-huh. (Affirmative).
- 23 A Yes, ma'am.
- 24 Q Okay. Where did you go after you took out the gun and
- 25 the, and the clothes?

Grady Taylor - Cross-examination
by Mrs. Hodges

- 1 A We went to Rainbow Lake.
- 2 Q All right. Where at Rainbow Lake?
- 3 A At the old iron bridge.
- 4 Q And what did you do there?
- 5 A We was gonna get rid of the stuff.
- 6 Q What did you do there?
- 7 A We threw -- Marion threw a shoe and everything in,
- 8 but---
- 9 Q A shoe and everything.
- 10 Shoe and what?
- 11 A A shoe and the gun.
- 12 Q Okay. Shoe and the gun?
- 13 A Yes, ma'am.
- 14 Q A plastic gun?
- 15 A Yes, ma'am.
- 16 Q Okay. What happened?
- 17 A The shoe didn't sink. So, he didn't throw nothing else
- 18 in.
- 19 Q What happened to the gun?
- 20 A It disappeared.
- 21 Q All right. Did you ever tell the police this was a
- 22 plastic gun?
- 23 A Yes, ma'am.
- 24 Q You did?
- 25 A Yes, ma'am.

Grady Taylor - Cross-examination
by Mrs. Hodges

1 Q Did you write it in your statement that it was a
2 plastic gun?

3 A I'm sure I -- I did not write my statement, ma'am. I
4 can't, I can't read or write that well, ma'am.

5 Q All right. Did you---

6 A So, I did not write my statement, but I am sure that I
7 told them that it was a plastic gun.

8 Q All right. Did you have somebody -- did you try to
9 read your statement back to make sure it was accurate?

10 A Yes, ma'am.

11 Q All right. And was it accurate?

12 A Pretty much so, yes, ma'am.

13 Q Pretty much so?

14 A Okay. It was.

15 Q Okay. So, your statement's accurate, but in your
16 written statement you don't tell the police that there's a
17 plastic gun?

18 A They probably didn't ask me, ma'am, or I would of.

19 Q They didn't ask you?

20 A No, ma'am, all---

21 Q You're telling the police that a weapon, a, a gun, a
22 firearm, something that can kill people, has been thrown off
23 a bridge into Rainbow Lake and you don't bother to tell them
24 that it's a plastic gun?

25 A No, ma'am.

Grady Taylor - Cross-examination
by Mrs. Hodges

1 Q So, you're giving the police the impression that a
2 firearm that can kill somebody has been thrown into the lake
3 for somebody else to be able to go and recover potentially,
4 is that right?

5 Is that what I'm understanding you to say?

6 A You can take it like that, ma'am. I mean I'm, I'm
7 high, ma'am, when they came and got me. I mean so,
8 they're -- when I said gun, I did not say plastic gun. I
9 probably did not. I should of, but I didn't. I mean I was,
10 I was high when they came and got me.

11 Q High on what?

12 A I was high on weed that day.

13 Q On marijuana?

14 A Yes, ma'am.

15 Q How much marijuana had you smoked that day?

16 A I smoked, I smoked quite a bit, ma'am.

17 Q How much for you is quite a bit?

18 A Quarter bag if not more.

19 Q Okay. How much is a quarter bag?

20 Are you saying like a quarter of an ounce, a quarter of
21 a pound?

22 A Quarter of an ounce.

23 Q Quarter of an ounce.

24 Do you smoke it in a bowl or do you smoke it as a, as a
25 cigarette?

Grady Taylor - Cross-examination
by Mrs. Hodges

- 1 A I smoke it both ways.
- 2 Q All right. How about -- how were you smoking it that
- 3 day?
- 4 A Rolled up in a cigarette.
- 5 Q All right. And how many cigarettes does a quarter
- 6 ounce make?
- 7 A Depends on how big you roll them, ma'am.
- 8 Q How big did you roll them?
- 9 How many cigarettes did you smoke that day?
- 10 A I really don't know how many I smoked that day, ma'am.
- 11 Q But you're pretty sure it was about a quarter of an
- 12 ounce?
- 13 A It was a lot, ma'am.
- 14 Q Okay. You told both Investigator Lorin Williams and
- 15 Investigator Matt Hutchins that you would show them where
- 16 the pills were if they promised that they wouldn't arrest
- 17 you, isn't that true?
- 18 A I don't think so, ma'am.
- 19 Q You don't think so?
- 20 A No, ma'am.
- 21 Q Did you or did you not tell the investigators that you
- 22 parked that, when this robbery happened, that you-all parked
- 23 on the side of the street behind the pharmacy?
- 24 A Yes, ma'am, I mean the road that goes around the
- 25 building, I mean you can consider that a street. I told

Grady Taylor - Cross-examination
by Mrs. Hodges

1 them we parked behind the building.

2 Q And did you tell them that you pulled to the entrance
3 of Sterling Estates and let Marion out and waited there for
4 him?

5 A I don't think I did, ma'am, because I would not tell
6 them something that we did not do, and we did not wait for
7 Marion there at the entrance of Sterling Estates.

8 Q Did you tell the police that you did not know Marion
9 was going to rob the store until he comes running out with a
10 bag of pills?

11 A I told the police I didn't think he really was gonna do
12 it with a plastic gun, yes, ma'am. I sure did. I did not
13 think he was gonna do it with a plastic gun myself.

14 Q Well, when you were planning this great caper, what did
15 you think the purpose of the plastic gun was?

16 A I'll be honest with you, ma'am, I really didn't think
17 we was gonna do it. I mean I really didn't think he was
18 gonna go, go through with it.

19 Q Okay. The police asked you about surveillance cameras
20 at the entrance of Sterling Estates, didn't they?

21 A No, ma'am.

22 Q They didn't?

23 A Not at Sterling Estates, no, ma'am.

24 Q Did you say -- where did they ask you about the
25 surveillance cameras?

Grady Taylor - Cross-examination
by Mrs. Hodges

1 A I don't even remember them asking me about surveillance
2 cameras, ma'am.

3 Q Well, when they asked you about surveillance cameras,
4 didn't you immediately say that you thought the film had
5 already been deleted?

6 A No, ma'am.

7 Q You didn't say that to the police?

8 A No, ma'am.

9 Q Did they question you about the tag on the vehicle?

10 A No, ma'am.

11 Q So, you had no conversation with the police about the,
12 the tag on the vehicle that was used that day?

13 A No, ma'am.

14 Q And getting the tag from the vehicle off the
15 surveillance footage?

16 A No, ma'am.

17 Q Were you ever asked to do the robbery?

18 A I was asked to go in, yes, ma'am.

19 Q Isn't it true that, prior to this day, you actually had
20 been asking somebody go to do the robbery with you, somebody
21 other than Marion Stewart?

22 A No, ma'am.

23 Q Isn't it true that you were asked Chuck, Christopher
24 Chuck Wyatt to go do the robbery with you prior to that day?

25 A No, ma'am.

Grady Taylor - Cross-examination
by Mrs. Hodges

1 Q You didn't do that?

2 A No, ma'am.

3 Q Do you know Christopher Chuck Wyatt?

4 A I know Chuck.

5 Q In fact, he's a cousin of Angie Blackwell's, isn't he?

6 A Yes, ma'am.

7 Q All right. And Angie Blackwell was your girlfriend at
8 the time?

9 A You can say that.

10 Q You know that you're facing between ten to thirty years
11 on a charge of armed robbery, isn't that correct?

12 A Yes, ma'am.

13 Q And you basically are testifying in the hopes that the
14 State's going to, or the Court when he sentences you, is
15 going to give you consideration for your testimony, isn't
16 that right?

17 A That's what I'm hoping and praying, yes, ma'am.

18 Q All right. And you understand that your testimony
19 is -- the reason that they want you to testify is they want
20 your testimony to be used to convict Marion Stewart?

21 A I understand.

22 Q Okay. So, essentially your testimony is suppose to be
23 what puts him away, a part of it?

24 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
25 this line. I think it's asking for speculation on his part.

Grady Taylor - Cross-examination
by Mrs. Hodges

- 1 THE COURT: Overruled.
- 2 Q Did you understand the question?
- 3 A Say it again.
- 4 Q Your testimony is a part of the evidence that's suppose
5 to be able to put Marion Stewart away?
- 6 A Yes, ma'am.
- 7 Q And that's the reason why you're testifying today is so
8 you can get consideration for that?
- 9 A I'm hoping the judge that I go in front of have, look,
10 look out and see what I've done and have mercy upon me. But
11 if he don't, then I'll take what's coming to me.
- 12 Q And, in fact, you've told Michael Derrick Gibson that
13 it doesn't matter if the judge gives you 15 years or more,
14 you've still got pills out there, that you'll be all right
15 once you get out, isn't that true?
- 16 A No, ma'am.
- 17 Q That's not true?
- 18 A No, ma'am.
- 19 Q Did you know Michael Derrick Gibson?
- 20 A No, ma'am.
- 21 Q You don't?
- 22 A No, ma'am.
- 23 Q Okay. Do you play cards at the jail?
- 24 A I play cards at the jail?
- 25 Q Yes, sir.

Grady Taylor - Cross-examination
by Mrs. Hodges

1 A I use to.

2 MRS. HODGES: Okay. I have nothing further for this
3 witness, Your Honor.

4 THE COURT: Redirect.

5 SOLICITOR BARNETTE: Thank you, Your Honor.

6 REDIRECT EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Going back to the clothes and everything, was a tennis
9 shoe thrown into a lake?

10 A Yes, sir.

11 Q And you say it floated?

12 A Yes, sir.

13 Q Let me show you what's been marked as State's Exhibit
14 No. -- let me show you what's been marked for ID purposes,
15 State Exhibit No. 3.

16 Does that appear to be the tennis shoe that was thrown
17 away?

18 A Yes, sir.

19 Q And what size shoe do you wear, sir?

20 A I wear a nine and a half.

21 Q Okay. And once he threw the shoe in, it floated?

22 A Yes.

23 Q So, he didn't throw anything else in there?

24 A Yes, sir.

25 Q You realize what you're facing?

Grady Taylor - Redirect examination
by Solicitor Barnette

1 A Yes, sir.

2 Q And you've admitted to what you did in this case?

3 A Yes, sir.

4 Q Would you tell a lie on Marion Stewart?

5 A I ain't told a lie all day. I mean it ain't gonna help
6 me if lie or I don't lie.

7 Q Who's the man that went in that store?

8 A Marion Stewart.

9 Q And was you waiting outside in the car?

10 A Yes, sir, I was.

11 Q Was you the accomplice in this case?

12 A I was.

13 Q Was you the one that's suppose to had the AK47?

14 A Yes, sir.

15 Q Thank you, sir.

16 A Yes, sir.

17 THE COURT: Recross.

18 REXCROSS EXAMINATION

19 BY MRS. HODGES:

20 Q This white shoe, you don't know for a fact that that's
21 the white shoe that was used in this robbery, do you?

22 A I don't know a hundred percent sure, no, ma'am.

23 Q It's just a white tennis shoe?

24 A Yes, ma'am.

25 Q Looks kind of like most any other white tennis shoe,

Grady Taylor - Recross examination
by Mrs. Hodges

1 doesn't it?

2 A It does.

3 Q Okay. And when you were arrested, they got a
4 camouflaged wallet off of you as part of your property,
5 isn't that right?

6 A Yes, sir. I mean yes, ma'am.

7 Q Okay. All right. And you wear a nine and a half?

8 A Yes, ma'am.

9 Q Okay. Thank you, sir.

10 THE COURT: Sir, you may step down.

11 SOLICITOR BARNETTE: We ask this witness be excused,
12 Your Honor.

13 THE COURT: Oh, certainly. We're gonna take a short
14 break.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 THE COURT: Ladies and gentlemen, at this point in time
17 we're gonna take a short break. The bailiffs will take care
18 of you in the jury room. If you need anything, just let
19 them know, and we do allow smokers to step outside. If you,
20 if any of you smoke, you will have to be accompanied by a
21 bailiff.

22 I'll caution you, as I always will when you leave the
23 courtroom, not to begin any discussions at this time.
24 Again, you only have partial information. Only begin your
25 discussions when I've advised you to begin your

1 deliberations.

2 You may retire to the jury room at this time. Thank
3 you very much.

4 (WHEREUPON, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right. Court will be in recess.
7 Defendant remains in custody. I would like to see the
8 attorneys in chambers.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: All right. Before we begin, again, I want
11 to put on the record that I had a conference with the
12 attorneys. At that time I made everyone aware that I had
13 become aware that the pharmacy in question is apparently
14 owned by QS1 Data Systems. It's a division of the JM Smith
15 Corporation. My brother is also involved with the JM Smith
16 Corporation in that he is a, the president in the drug
17 division.

18 I own no financial interest in that, and, of course,
19 the drug division is not QS1. QS1 is another division of
20 that corporation. As far as I know, has no interest in the
21 drug store that QS1 was operating.

22 But at any rate, I wanted to make everyone aware of
23 that potential connection. I see no conflict in the matter,
24 but I did make everyone aware.

25 Have you had an opportunity to discuss that with your

1 client?

2 MRS. HODGES: Yes, sir, I have, Your Honor. I
3 explained to my client that essentially just what you put on
4 the record, and I informed the Court in the, in the chambers
5 I felt -- you know, I personally was not concerned about it.
6 I did talk to my client, and he's advised me that he does
7 not feel that there is any conflict of interest sufficient,
8 that he doesn't feel there's any conflict of interest---

9 THE COURT: All right.

10 MRS. HODGES: ---and certainly it does not rise to the
11 level of asking the Court to recuse itself.

12 THE COURT: All right. Is that correct, sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. Thank you.

15 All right. Are you ready to call your next witness?

16 SOLICITOR BARNETTE: Yes, sir.

17 THE COURT: All right. Let's bring in the jury.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect that
21 the jury has returned to the courtroom.

22 The State may call its next witness.

23 SOLICITOR BARNETTE: Thank you, Your Honor.

24 May it please the Court.

25 We got to call a few witnesses out of order. They'll

Kimberly Ashley - Direct examination
by Solicitor Barnette

1 be in and out real quick.

2 THE COURT: All right.

3 SOLICITOR BARNETTE: Call Sergeant Ashley to the stand.

4 THE COURT: Ma'am, come forward to the left and be
5 sworn, please.

6 KIMBERLY ASHLEY, having been first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat please, ma'am, and once you're
9 seated, state your name.

10 WITNESS: Sergeant Kimberly Ashley.

11 THE COURT: Mr. Barnette, your witness.

12 SOLICITOR BARNETTE: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Where do you work at, ma'am?

16 A At the Spartanburg County Jail.

17 Q And how long have you been there, ma'am?

18 A Just about 20 years.

19 Q And what is your position there?

20 A I am a supervisor over the ID and property division,
21 which takes care of the inmate clothing, money, and any
22 personal property they may have whenever they're brought to
23 the facility.

24 Q Okay. When an inmate's brought to the facility, their
25 clothes is taken into evidence, into custody at that time,

Kimberly Ashley - Direct examination
by Solicitor Barnette

1 is that right?

2 A Yes, if an individual has to stay, we keep them.

3 Q Okay. And did we ask you -- did we send a subpoena
4 over for the clothes of Marion Stewart?

5 A Yes, you did.

6 Q And let me show you what's been marked as, I believe
7 these are marked as State's Exhibit 28. If you would, take
8 a look at those, ma'am.

9 Are those the shoes that was in his evidence?

10 A Yes, sir.

11 Q And these are the ones you provided to the Sheriff's
12 Department, is that right?

13 A Yes, it is.

14 SOLICITOR BARNETTE: Your Honor, I'd like to move these
15 into evidence at this time.

16 THE COURT: Moving the entire exhibits?

17 SOLICITOR BARNETTE: Yes, sir.

18 THE COURT: All right. Let her take a look at it.

19 (Pause.)

20 THE COURT: Any objection?

21 MRS. HODGES: No, sir.

22 THE COURT: Without objection, they'll be received into
23 evidence as, as they have been marked.

24 (WHEREUPON, State's Exhibit No. 28 was received into
25 evidence at this time.)

Kimberly Ashley - Direct examination
by Solicitor Barnette

1 Q If you would, take them and see what size shoe that is,
2 ma'am.

3 A Mens size ten.

4 Q Mens size ten?

5 A Yes, sir.

6 Q Thank you, ma'am.

7 And these are the boots that Marion Stewart had on when
8 he came to, to jail and was placed into property?

9 A Yes, sir.

10 Q If you would, please answer any questions that Mrs.
11 Hodges may have for you.

12 THE COURT: Mrs. Hodges, your witness.

13 SOLICITOR BARNETTE: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MRS. HODGES:

16 Q Sergeant Ashley, when somebody's booked into the jail,
17 are certain, certain identifying characteristics taken of
18 them in terms of height, weight, eye color, race, that sort
19 of thing?

20 A Yes.

21 Q Okay. And I would presume that, that the officer who's
22 taking in that information can look at the person and
23 determine if they're white or male, female, that sort of
24 thing?

25 So, I assume that they, they -- the officer would make

Kimberly Ashley - Cross-examination
by Mrs. Hodges

1 those characteristics based, write that information down on
2 their booking sheets based on their personal observations?

3 A The jail paperwork is transferred over from the booking
4 card which is provided by the arresting officer.

5 Q Okay.

6 A But if there is something that needs to be changed,
7 yes, that would be, that would take place.

8 Q So, in terms of height and weight, where does that
9 information come from?

10 A The arresting officer.

11 Q The arresting officer, and that would be -- have you
12 ever observed -- when are the booking cards filled out?

13 A Prior or whenever the arresting officer brings the
14 individual inside the facility.

15 Q So, the, the booking cards are actually there inside
16 the facility are filled out there at the facility by the
17 arresting officer?

18 A Yes, we have an area that's considered prebooking,
19 which is just right outside, and that's where the officer,
20 arresting officer does all his paperwork, and then he, in
21 turn, turns over a booking card and any charging documents
22 along with the individual bringing, being brought to the
23 jail.

24 Q And does -- and those charging documents are, most
25 typically, are arrest warrants or, or traffic tickets?

Kimberly Ashley - Cross-examination
by Mrs. Hodges

1 A Uh-huh. (Affirmative).

2 Correct.

3 Q Okay. Thank you. That's all I have.

4 SOLICITOR BARNETTE: No further questions. We ask this
5 witness be excused, Your Honor.

6 THE COURT: Any objection?

7 MRS. HODGES: No objection.

8 THE COURT: Without objection, ma'am, you're free to
9 go.

10 WITNESS: Thank you.

11 THE COURT: Thank you very much.

12 SOLICITOR BARNETTE: Like to call Captain Mike Jones to
13 the stand.

14 THE COURT: All right. If you'll have him step into
15 the courtroom please.

16 SOLICITOR BARNETTE: Thank you, Your Honor.

17 THE COURT: Sir, if you'll come forward to my left and
18 be sworn please.

19 MIKE JONES, being first duly sworn,
20 testified as follows:

21 THE COURT: Have a seat please, and once you're seated,
22 state your name for the record.

23 WITNESS: Captain Mike Jones.

24 THE COURT: Mr. Barnette, your witness.

25 SOLICITOR BARNETTE: Thank you, Your Honor.

Mike Jones - Direct examination
by Solicitor Barnette

1 DIRECT EXAMINATION

2 BY SOLICITOR BARNETTE:

3 Q Where do you work at, sir?

4 A Spartanburg County Jail.

5 Q And what's your position there, sir?

6 A I'm a captain over the support services.

7 Q And how long have you been there, sir?

8 A Since '84.

9 Q Is part of your job handling inmate phone calls?

10 A Yes, sir.

11 Q And are you -- you're the records keeper concerning
12 those things?

13 A Yes, sir.

14 Q And in the, in a case of where an inmate comes in,
15 could you tell the procedure of how a phone call is made by
16 an inmate and what's done, recording wise, what's done?

17 A They come in. They've got a pen number on their arm
18 band. They put that arm band, that number in the phone,
19 they make a collect call, and the receiver that picks up
20 accepts the call.

21 Q Okay. Now, are they notified that these calls are
22 recorded?

23 A At least twice.

24 Q So, they, they know -- the person calling as well as
25 the inmate?

Mike Jones - Direct examination
by Solicitor Barnette

1 A Yes, on each call.

2 Q Okay. And that's put on the, actually on the tape
3 itself?

4 A Yes.

5 Q Did you receive a subpoena from the Solicitor's Office
6 asking you to get the telephone calls for Marion Stewart?

7 A Yes, sir.

8 Q And let me show you what's been -- I think 11, 11 of
9 those calls have been placed on this, State's Exhibit 29.
10 Are those 11 of the phone calls that you got off the
11 records system---

12 A Yes, sir.

13 Q ---that's in place at the jail?

14 A Yes, sir.

15 SOLICITOR BARNETTE: Your Honor, I'd like to enter this
16 into evidence at this time.

17 MRS. HODGES: Your Honor, I would object on the grounds
18 that the contents of the exhibit have not been
19 authenticated.

20 SOLICITOR BARNETTE: Okay. I'll go ahead and take that
21 up with the next witness, Your Honor.

22 THE COURT: Okay.

23 SOLICITOR BARNETTE: We'll go from there. No further
24 questions.

25 THE COURT: Then it will, it will be marked for ID

Mike Jones - Direct examination
by Solicitor Barnette

1 purposes since it's been identified.

2 You may proceed.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 So, the phone calls that were recorded from these are
5 the ones that Marion Stewart did on his PIN number?

6 A Yes.

7 Q Okay. Thank you, sir. If you would, please answer any
8 questions that Mrs. Hodges may have for you.

9 THE COURT: Mrs. Hodges, your witness.

10 MRS. HODGES: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MRS. HODGES:

13 Q Captain Jones, not to quibble unnecessarily, but
14 essentially you can testify that the PIN number matches that
15 that was given to Marion Jones (sic)?

16 You don't, you don't actually know the identity of the
17 people on those phone calls?

18 A No.

19 Q Is that correct?

20 A No.

21 MRS. HODGES: Okay. I have no further questions, Your
22 Honor.

23 THE COURT: Any other questions?

24 SOLICITOR BARNETTE: No, sir, I'm gonna ask this
25 witness be excused, Your Honor.

Mike Jones - Cross-examination
by Mrs. Hodges

1 THE COURT: Any objection?

2 MRS. HODGES: We have no objection, Your Honor.

3 THE COURT: Sir, you may step down and you're free to
4 go as well.

5 SOLICITOR BARNETTE: Like to call Shirley Gilbert to
6 the stand.

7 THE COURT: Ask her to step into the courtroom please.

8 Ma'am, if you'll come forward to my left to be sworn
9 please.

10 SHIRLEY GILBERT, having been first
11 duly sworn, testified as follows:

12 THE COURT: Have a seat please, ma'am. Once you're
13 seated, state your name.

14 WITNESS: Shirley Marie Gilbert.

15 THE COURT: Mr. Barnette, your witness.

16 SOLICITOR BARNETTE: Thank you.

17 DIRECT EXAMINATION

18 BY SOLICITOR BARNETTE:

19 Q Ms. Gilbert, do you know Grady Dale, Grady Dale Taylor?

20 A Yes, sir.

21 Q Who is he?

22 A He's my brother.

23 Q And do you know Marion Stewart?

24 A I do.

25 Q How do you know Marion Stewart?

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 A He's my boyfriend.

2 Q And do you know Lee Ann?

3 A I do.

4 Q Who is Lee Ann?

5 A Marion's sister.

6 Q Okay. Back on October, I, I guess, October 13th, 2009,
7 the day before this happened, where was you living at,
8 ma'am?

9 A Oh, my gosh. I'm sorry.

10 Q Take your time.

11 A A subdivision. I can't remember. I'm sorry. I'm
12 sorry.

13 Q What community was you living in, ma'am?

14 A Campobello.

15 Q And who lived with you at the, at the house there?

16 A Marion and my children and my granddaughter.

17 Q Okay. And how many children do you have, ma'am?

18 A I have three.

19 Q And was there any other children living there with you?

20 A Yes, sir, I have custody of my brother's two kids.

21 Q Okay. And how many children did you have at the house
22 with his kids?

23 A Five. I mean six with my granddaughter.

24 Q So, you actually had two of his?

25 A Uh-huh. (Affirmative).

Shirley Gilbert - Direct examination
by Solicitor Barnette

- 1 Q Three of your own and your own granddaughter.
2 A Uh-huh. (Affirmative).
3 Yes, sir.
4 Q So, you had six kids there?
5 A Yes, sir.
6 Q Okay. And did Marion live there?
7 A Yes, sir.
8 Q And was Lee Ann there that night before?
9 A Yes, sir.
10 Q Did you work?
11 A Yes, sir.
12 Q Where did you work at, ma'am?
13 A Lake View Steak House.
14 Q And what do you do there or did you do there?
15 A Server.
16 Q Okay. And did you work the day before?
17 A I did.
18 Q What time did you work?
19 A I went in probably about -- I got home about 3:30 or
20 4:00 that afternoon.
21 Q If you would, just pull that mic a little bit closer to
22 you, okay, so they can hear you back here.
23 And when you got home that day, who was there?
24 A All the children, Marion, Dale, and Lee Ann.
25 Q And that night, what time, what time did you go to bed?

Shirley Gilbert - Direct examination
by Solicitor Barnette

- 1 A Probably 11:30 or 12:00.
- 2 Q And who was still up when you went to bed?
- 3 A Marion, Lee Ann, and Dale.
- 4 Q And what were they talking about?
- 5 MRS. HODGES: Object to hearsay, Your Honor.
- 6 THE COURT: Not -- he asked, he asked subject matter.
- 7 Not for a quote. That's the way I've taken the question.
- 8 Rephrase the question---
- 9 SOLICITOR BARNETTE: I'll rephrase the questions.
- 10 THE COURT: ---so we don't have a problem.
- 11 Q Were they still up talking that night?
- 12 A Yes, sir.
- 13 Q Did you hear Marion talking about something?
- 14 A Yes, sir.
- 15 Q What was he talking about?
- 16 A Robbing a pharmacy.
- 17 Q Okay. So, you went to bed.
- 18 Did anybody go to bed with you that night?
- 19 A No, sir.
- 20 Q Later the next morning, did Marion wake you up late in
- 21 the morning?
- 22 A Yes, sir.
- 23 Q And who was with him when he woke you up?
- 24 A Marion and Lee Ann. I mean Marion, Dale, and Lee Ann
- 25 woke me up.

Shirley Gilbert - Direct examination
by Solicitor Barnette

- 1 Q Okay. And about what time was it when they woke you
2 up?
- 3 A Fifteen till 11:00, eleven o'clock.
- 4 Q And when they woke you up, what did you see?
- 5 A They were all sweaty, nervous, had a black trash bag.
- 6 Q They had a black trash bag with them?
- 7 A Yes, sir.
- 8 Q Did you ask them about the black trash bag?
- 9 A I did.
- 10 Q And what did Marion say to you?
- 11 A He told me that he had bought some pills, but they were
12 all nervous and they poured some on the bed, pill bottles on
13 the bed. Marion gave some to Lee Ann and to Dale and said
14 that was payment.
- 15 Q Did he say payment for what?
- 16 A No, sir.
- 17 Q Did you ask him where he got these pills at?
- 18 A I did.
- 19 Q And what did he say to you?
- 20 A He never admitted anything like that. He just said
21 that I didn't need to know, and -- but I, I think I knew.
22 But he never would actually tell me that.
- 23 Q So, he told you you didn't need to know?
- 24 A Uh-huh. (Affirmative).
- 25 Q Did you want to know?

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 A No.

2 Q Did you have anything to do with this?

3 A No, sir.

4 Q So, all three people your, brother, Grady or Dale?

5 A Yes, sir.

6 Q Marion Stewart?

7 A Yes, sir.

8 MRS. HODGES: Object to leading, Your Honor.

9 THE COURT: Overruled.

10 SOLICITOR BARNETTE: Thank you.

11 THE COURT: He hasn't finished the question. I don't
12 know where it's going.

13 Q And Lee Ann?

14 A Yes, sir.

15 Q Did you see them in your room?

16 A Yes, sir.

17 Q And they were altogether with the trash bag?

18 A Yes, sir.

19 Q And what was in that trash bag?

20 A Pill bottles.

21 Q How many?

22 A I can't count how many. It's a lot.

23 Q After that, what happened?

24 A As they -- they asked me did I want to go eat

25 breakfast. It was just too late to eat breakfast. So,

Shirley Gilbert - Direct examination
by Solicitor Barnette

- 1 Marion and I got in my car, Lee Ann and Dale got in her car.
2 We went to his -- Marion's dad's. Audi was there. We went
3 in the living room for a while and then we went to the
4 garage. Marion was getting some tools and stuff, looking at
5 tools and stuff. We left and we went back to my house.
6 Dale and Marion left for a while. They come back, and not
7 long after that Dale left with Angie---
- 8 Q Is Angie---
- 9 A ---which was his girlfriend at the time.
- 10 Q Angie was his girlfriend at the time?
- 11 A Yes, sir.
- 12 Q Did you ever see a black trash bag or anything else
13 after that?
- 14 A I did not. I did tell them to get it out of my house,
15 my kids.
- 16 Q Why did you tell them to get it out of the house for?
- 17 A I don't want to be a part of it.
- 18 Q You was talking about your kids.
19 why was you worried about your kids?
- 20 A Cause I love them. I'm all they have. I don't want
21 them to be around it, none of that.
- 22 Q Let me show you what's been marked State's Exhibit No.
23 3.
- 24 Was you with Marion Stewart when he bought white tennis
25 shoes?

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 A I was.

2 Q Show you this for ID purposes.

3 Is that like the tennis shoe that he bought?

4 A It is.

5 Q Is it the tennis shoe?

6 A Yeah, it is.

7 Q Do you still love Marion?

8 A Yes, sir.

9 Q Did he use to call you from the jail?

10 A Yes, sir.

11 Q Did he use to talk to you about what, what he wanted
12 everybody to say?

13 A Yes, sir.

14 Q What did he want them to believe?

15 A He was at work.

16 Q He wanted them to believe he was at work during this
17 time?

18 A (Witness nods affirmatively.)

19 Q Was he even working at that time?

20 A No, sir.

21 Q Showing you State's Exhibit No. 29, did you listen to
22 these phone calls, ma'am?

23 A I did.

24 Q And did you identify the voices on these phone calls?

25 A I did.

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 Q The gentleman from the jail, who is that gentleman
2 calling from the jail?

3 A Who is it calling me?

4 Q Yeah, who was calling from the jail?

5 Who was the person in jail on the phone?

6 A Marion.

7 Q And did he talk to you sometimes?

8 A He did.

9 Q And who else did he talk to on his phone calls?

10 A My kids and I heard him talking to Lee Ann.

11 Q Okay. Do you know Lee Ann's voice?

12 A I do.

13 Q Do you know Marion Stewart's voice?

14 A I do.

15 Q Are those, those voices on these phone conversations?

16 A Yes, sir.

17 SOLICITOR BARNETTE: Your Honor, I'd like to enter
18 State Exhibit No. 29 into evidence at this time.

19 THE COURT: Any objection?

20 MRS. HODGES: Your Honor, could we approach the bench
21 briefly?

22 THE COURT: You certainly may.

23 (WHEREUPON, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: Ladies and gentlemen of the jury, this is

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 one of those occasions I need to deal with the evidence
2 that's, that's being offered outside of your presence. So,
3 I'm going to ask you to step to the jury room for just a
4 moment. As always, I'm going to advise you and instruct you
5 not to begin any discussion about this case until I advise
6 you to do so.

7 You may retire to the jury room.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Mrs. Hodges, I'll ask that you put your
11 concerns concerning the proffered evidence on the record at
12 this time.

13 MRS. HODGES: Yes, sir. Thank you, Your Honor.

14 Your Honor, I have been made aware of, of phone calls
15 that we, I believe that the solicitor intends to enter, and
16 I reviewed those phone calls, Your Honor. The problem with
17 the recording that I have is many times the recording of the
18 person from the jail making the, the phone call, that
19 person's conversation is very difficult to hear. It's hard
20 to hear you. Again, based on what I know about the case,
21 you can hear the person that is receiving the phone call
22 much better, and I can kind of try and gleam what I suspect
23 may be information that is going on, but you can't tell for
24 sure.

25 My concern with the -- I don't know if the State's

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 Exhibit is clearer, more intelligible recording. But my
2 concern is if we're playing phone calls that can't be heard,
3 only bits and pieces can be heard, I mean I think we have
4 the right to have the whole substance of that portion of the
5 conversation that the solicitor intends to elicit, and I
6 just don't know if they have the ability to produce that.

7 THE COURT: Well, let's, let's -- Mr. Solicitor, can
8 you make us aware of what you do intend to publish to the
9 jury?

10 SOLICITOR BARNETTE: Your Honor, there's 11 phones
11 calls. Obviously, I've never -- I'm not gonna enter all 11
12 of them in. They speak for themselves. I can play them for
13 the Court to see. The good thing about my program, I can
14 actually increase the volume on them, on my program. That's
15 the program I use VL -- it's a VLC, which is just a
16 programming. It does pretty good overall. I mean it's not
17 perfect, but I can understand it.

18 THE COURT: All right. At this point in time, your
19 objection doesn't go to authenticity, is that correct?

20 MRS. HODGES: That's correct.

21 THE COURT: Your objection is to completeness?

22 MRS. HODGES: That's correct, Your Honor.

23 THE COURT: All right. Mr. Barnette, if you don't
24 mind, put it in, let's place it, and let's see what it
25 sounds like---

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Yes, sir.

2 THE COURT: ---and see if we can get the complete
3 conversation on the record.

4 (WHEREUPON, the phone call was played at this time.)

5 SOLICITOR BARNETTE: Your Honor, if you don't mind,
6 I'll move it ahead a little bit.

7 (WHEREUPON, the remainder of the phone call was played
8 as this time.)

9 SOLICITOR BARNETTE: That would be what we would try to
10 play in this case, Your Honor. If they want to play any
11 extra or whatever, it would be similar.

12 THE COURT: Is that the quality of the tapes you heard?

13 MRS. HODGES: Your Honor, that is the quality of the
14 tapes I've heard, and it is just as garbled on that as it
15 is---

16 THE COURT: Well, I was, I was able to understand what
17 was being said. It's -- it has a rough quality to it, but I
18 can understand the words.

19 MRS. HODGES: That's, quite frankly, one of the better
20 recordings, judge. I mean---

21 THE COURT: Well, you want to, you want to play the
22 others that you have?

23 SOLICITOR BARNETTE: Yes, sir, I can play a couple of
24 the others too.

25 MRS. HODGES: But, judge, I think we need to determine

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 all of them that he's gonna try and play.

2 THE COURT: I'm, I'm asking him to do that.

3 MRS. HODGES: Well, he just said a couple others. So,
4 that's what I'm concerned about.

5 THE COURT: I don't, I don't know what he's planning to
6 put in, but I'll listen to all of them.

7 (WHEREUPON, more recorded phone calls were played at
8 this time.)

9 SOLICITOR BARNETT: Your Honor, I'm gonna move it ahead
10 if that's okay with Your Honor.

11 THE COURT: I just need to get the quality of the ones
12 that you're planning to play. That's what I need to hear of
13 them.

14 SOLICITOR BARNETTE: Yes, sir.

15 (WHEREUPON, another recorded phone call was played at
16 this time.)

17 SOLICITOR BARNETTE: That would be the part we'd like
18 to play on that, Your Honor.

19 (WHEREUPON, another recorded phone call was played at
20 this time.)

21 SOLICITOR BARNETTE: That would be the three main calls
22 that we'd review at this time, Your Honor, with her.

23 MRS. HODGES: Your Honor, that third call, I, number
24 one, the only thing I can hear is that there's somebody
25 talking about that, coming up for some probation hearing. I

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 don't think that that's at all relevant to the proceedings
2 in this case, and I can not understand anything that the,
3 the, the male voice is saying on that call in terms of, you
4 know, other than somebody's coming up for probation. So,
5 you know---

6 SOLICITOR BARNETTE: I can cut it real short, Your
7 Honor. It's a ten second mark, Your Honor, after he says
8 that Shirley knows too much information.

9 MRS. HODGES: Your Honor, quite frankly, I think
10 Shirley knows too much information is not a reference to
11 this case, but it's gonna be a reference to other issues
12 that are completely beyond the scope of this particular
13 case.

14 THE COURT: Well, but that, that quote is intelligible,
15 and what inferences could be drawn from it would be up to a
16 jury. It's not for me to decide.

17 MRS. HODGES: Judge, I think it's more prejudicial than
18 probative. I mean there's nothing there that, that -- I
19 mean that's not specific to the, to this case that Shirley
20 knows too much information. I mean the Court heard
21 testimony yesterday regarding issues and things that are not
22 a part of, of the allegations that, that we're here on trial
23 for today in terms of the actual armed robbery.

24 THE COURT: Mr. Barnette.

25 SOLICITOR BARNETTE: Your Honor, Shirley means, knows.

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 too much information, he's talking to her on the phone.
2 He's talked about developing an alibi. She's -- he's done
3 all he can do there. He -- I don't know what his defense is
4 gonna be, but I'm assuming he's gonna say he's selling
5 pills, but he wasn't involved in the armed robbery. To me,
6 this goes to it's more prejudicial -- she says it's more
7 prejudicial, it's more probative than prejudicial in this
8 situation cause none of that evidence's been put out anyway.
9 The only thing we're talking about is the armed robbery at
10 this point, and he's talking to her specifically about
11 developing an alibi for him, and talking to witnesses for
12 him, and having witnesses talk to her to develop an alibi.

13 MRS. HODGES: Respectfully, Your Honor, I don't think
14 that he's -- that those conversations are not asking her to
15 develop an alibi for him. Quite frankly, everybody in this
16 case has used enough, so many drugs and pharmaceuticals that
17 I don't know which brain cells are quite functioning on any
18 particular day, and, quite frankly, I think it's a matter
19 of, you know, this is where I was, this is where I'm at. I
20 mean he knows, at that point, that, that he, what his record
21 is, what he's facing in terms of the charges, and---

22 THE COURT: But Shirley is this lady here.

23 MRS. HODGES: Yes, sir.

24 THE COURT: Okay. And she's already testified -- what
25 I've heard is that he didn't have a job at that time, that

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 she was telling him -- he was telling her to tell everybody
2 that he was at work, and now he's saying to someone that
3 Shirley has too much information. And you're saying that --
4 I'm not sure what the prejudicial effect of that is as
5 opposed to a probative value. Maybe you can explain that to
6 me.

7 what is the prejudicial effect of that?

8 MRS. HODGES: Can I have just one moment, Your Honor?

9 THE COURT: Yes.

10 (Pause.)

11 MRS. HODGES: Your Honor, I'm gonna have to give -- in
12 order to answer the Court's questions, I'm gonna have to
13 give the court a little background in terms of some of what
14 my understanding of what's gone on between these parties
15 prior to this particular day. My understanding, Your Honor,
16 and, and you heard Mr. Stewart's testimony yesterday, is
17 that he tells me and he, and he told the Court that, when
18 the investigators came up and talked to him on October the
19 20th or whatever it was, that he told them, you know, if
20 you're looking for a drug dealer, I'm your man.

21 Mr. Stewart was involved in the trade and sale of
22 narcotics and specifically pills. Mr. Taylor was involved
23 in that. Ms. Shirley Taylor Gilbert was involved in terms
24 of knowing, in terms of using those, and in terms of knowing
25 who he was getting pills from, who he was selling pills too,

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 the kind of quantities that he was using, the kind of
2 amounts he was selling, the kinds of quantities of monies
3 that, that were coming through in those sales and
4 transactions.

5 Quite frankly, the conversation that he's having in
6 terms of Shirley knows too much information is going to all
7 of those sales and transactions and those sorts of things.
8 It was not until, up until basically we got prepared to take
9 this case to trial the last term of Court on Wednesday or
10 Thursday, I'm told, the Thursday I'm told before that term
11 of Court that Shirley Taylor's finally come in and given a
12 statement to investigators and to police and the Solicitor's
13 office putting Marion Stewart and Lee Ann Nichols into the
14 fray. For the last 18 months she hasn't made any sort of
15 conversation. They're plenty of jail phones on there where
16 she's basically saying I know you didn't do anything, I know
17 you're not involved, you know, just waiting for this to get
18 over with.

19 That's the sort of thing---

20 THE COURT: Well, now, if that, if that CD goes in,
21 you'll be able to use those on cross-examination.

22 MRS. HODGES: Well, quite frankly, judge, there are
23 five CD's of phone calls and hundreds of phone calls and
24 we're gonna be here through next week if you try and put all
25 of those in.

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 THE COURT: Well, I don't want them all put it. But if
2 it's some that she says, she's making statements contrary to
3 what she's saying today, you certainly have the right to
4 pick those out and use them.

5 MRS. HODGES: And I understand that, Your Honor. But
6 the problem is, is that the Shirley knows too much, quite
7 frankly, goes to issues and things that, you know, that the,
8 that I don't think are relevant to the trial of whether
9 Marion Stewart's involved in the robbery or not. Whatever
10 his dealings are in the narcotics trade are not relevant to
11 this. Quite frankly, there are things that Shirley Taylor
12 herself has been in in North Carolina with Grady Dale Taylor
13 that involved other robberies and other involvement in
14 narcotics that, quite frankly, I think is part of what the
15 Shirley knows too much as well, you know, and none of that I
16 think is relevant to the trial of this case, and that's why
17 the Shirley knows too much is so ambiguous that, you know, I
18 think it's an unfair inference and not anything that's gonna
19 be corroborated by, you know, other testimony in terms of
20 what she knows and what she doesn't know.

21 THE COURT: Mr. Barnette.

22 SOLICITOR BARNETTE: Well, Your Honor, now we're
23 talking about North Carolina cases and everything else from
24 that standpoint. Supposedly she did -- there's no evidence
25 showing that whatsoever, her or Grady Taylor was involved in

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 it, number one.

2 Number two -- that may be what they allege. I don't
3 know. But number two is from this standpoint, obviously he
4 feels like she knows, she knows too much. She basically
5 made that statement. I think that statement and the jury
6 makes -- it's not -- I understand it may be prejudicial, but
7 it's a lot more probative than prejudicial.

8 THE COURT: Well, I assume, if you're trying to put it
9 in, it has some prejudice. The question is whether the
10 prejudice outweighs its probative value. That's what I'm
11 trying to deal with.

12 SOLICITOR BARNETTE: Yes, sir, and they have served an
13 alibi defense.

14 THE COURT: Overrule the objection. It's my
15 determination that its probative value does outweigh any
16 prejudicial effect.

17 Now, anything else that you need to show, play---

18 SOLICITOR BARNETTE: No, sir, those are the---

19 THE COURT: Is that the extent of what you intend to
20 play for the jury?

21 SOLICITOR BARNETTE: Yes, sir, if, if I decide to go to
22 something else, I'll let the Court know.

23 THE COURT: Is there any other objections to the CD and
24 its contents?

25 MRS. HODGES: No, Your Honor. Although I may need some

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by Solicitor Barnette

1 time to be able to, be able to prepare my cross-examination
2 in terms of the specifics. I mean if those are the only 11
3 calls that they outlined from the hundreds that they've
4 provided to me, you know, I --.

5 SOLICITOR BARNETTE: Your Honor?

6 THE COURT: Well, I tell you what we'll do, I can let
7 him put them in, and we can take a break over lunch and then
8 you can deal with it.

9 How long will you need?

10 I mean the entire transcripts have been available to
11 you I assume?

12 MRS. HODGES: Oh, there are no transcripts whatsoever,
13 Your Honor.

14 THE COURT: I'm talking about -- excuse me. I
15 misspoke. I'm sorry. The CD, the DVD, whatever that is. I
16 assume that's been available to you.

17 MRS. HODGES: That's been available to me, yes, sir.

18 THE COURT: Okay. All right. Any other objections to
19 authenticity or any other points that you want to have --
20 I'm getting ready to either put it in evidence or not put it
21 in evidence. I've ruled on the question of whether or not
22 its probative value outweighs its prejudicial effect.

23 Any other any other objections to that CD?

24 MRS. HODGES: No, sir, Your Honor.

25 THE COURT: All right.

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 MRS. HODGES: We would like to make sure that all of
2 our objections, however, are preserved for the record.

3 THE COURT: Oh, they're on the record. We're, we're --
4 everything we're doing is on the record.

5 MRS. HODGES: I understand.

6 THE COURT: All right.

7 MRS. HODGES: I just want to make sure it's clear to
8 the Court of Appeals and the Supreme Court they are
9 preserved.

10 THE COURT: I'll admit it. It's admitted as marked.

11 (WHEREUPON, State's Exhibit No. 29 was received into
12 evidence at this time.)

13 THE COURT: Let's bring the jury in.

14 (WHEREUPON, the following takes place within the
15 presence of the jury.)

16 THE COURT: The record will reflect the jury has
17 returned to the courtroom. I've overruled objections to the
18 CD. It has been admitted.

19 You may proceed.

20 SOLICITOR BARNETTE: Thank you, Your Honor.

21 May I publish part of the phone calls to the jury?

22 THE COURT: Yes, you may.

23 SOLICITOR BARNETTE: With the Court's permission, Your
24 Honor, what I may do is stop and start it so she can
25 identify who the folks are on video, on the---

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 THE COURT: That will be fine.

2 SOLICITOR BARNETTE: ---on the audio.

3 THE COURT: You have the right to publish.

4 SOLICITOR BARNETTE: And, Your Honor, we are publishing
5 I believe it's State Exhibit No. 29 to, to the jury.

6 THE COURT: All right.

7 CONTINUED DIRECT EXAMINATION

8 BY SOLICITOR BARNETTE:

9 (WHEREUPON, a portion of State's Exhibit No. 29 was
10 played for the jury at this time.)

11 Q Let me stop that.

12 Whose, whose voice is that on the phone?

13 A Marion's.

14 Q And is that Marion Stewart?

15 A It is.

16 Q Is he in this courtroom today?

17 A He is.

18 Q Can you identify him for us please?

19 A Right there.

20 SOLICITOR BARNETTE: Your Honor, like the record to
21 identify she's pointed to the defendant.

22 THE COURT: The record will so reflect.

23 (WHEREUPON, another portion of State's Exhibit No. 29
24 was published to the jury at this time.)

25 Q And who was the lady on that recording?

Shirley Gilbert - Direct examination
by Solicitor Barnette

- 1 A Lee Ann.
- 2 Q That's his sister?
- 3 A Yes.
- 4 Q And they're saying you didn't know nothing about it?
- 5 A Yes, sir.
- 6 MRS. HODGES: Object to leading, Your Honor.
- 7 THE COURT: Sustained.
- 8 Rephrase the question.
- 9 SOLICITOR BARNETTE: Yes, sir.
- 10 Q In listening to the phone conversation, they said you
- 11 knew nothing about it?
- 12 A Right.
- 13 Q Did you know nothing about what they did?
- 14 A No.
- 15 Q At the time?
- 16 A No, I didn't.
- 17 Q Did you use to go talk to him at the jail?
- 18 A I did.
- 19 Q And would he talk to you about his alibi?
- 20 A Said he was at work.
- 21 Q Is that what he wanted you to say?
- 22 A Yes.
- 23 Q And was he actually at work?
- 24 A No.
- 25 Q He wasn't at work, was he?

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 A No.

2 Q Was he working at that time?

3 A No.

4 Q Matter of fact, he talked to you on the phone about his
5 alibi, didn't he?

6 MRS. HODGES: Object to leading.

7 THE COURT: It is a leading question.

8 Q Did he talk to you about his alibi on the telephone?

9 A Yes, sir.

10 (WHEREUPON, another portion of State's Exhibit No. 29
11 was played for the jury at this time.)

12 Q Okay. Whose, whose voice is that on the phone with
13 Marion?

14 A Me.

15 Q And did you talk to him on this phone conversation?

16 A Yes, sir.

17 (WHEREUPON, another portion of State's Exhibit No. 29
18 was played for the jury at this time.)

19 Q Maybe that's not the right one. Wait a minute. That's
20 the wrong one.

21 Okay. Who is -- who are these folks on the phone?

22 A That's me and Marion.

23 (WHEREUPON, another portion of State's Exhibit No. 29
24 was played for the jury at this time.)

25 Q Okay. So, in talking to you, he's asking you to talk

Shirley Gilbert - Direct examination
by Solicitor Barnette

1 to who?

2 A Audi and Lee Ann.

3 Q And he wanted to make sure what?

4 A That they said he was at work.

5 Q So, they wanted to make sure that was their only alibi?

6 A Yes. Yes, sir.

7 Q But who was the man that saw, that brought in that
8 black trash bag in your bedroom?

9 A Marion.

10 Q And he is the man that brought it in to you?

11 A Yes, sir.

12 Q And the one that had the pills in it with him?

13 A Yes, sir.

14 Q And you said lots of pills?

15 A Yes, sir.

16 Q And what did you tell them to do with those pills once
17 they brought them in?

18 A Get them out of the house.

19 Q Let me ask you this one question, ma'am.

20 why did you wait so long to come to talk to law
21 enforcement?

22 A I was afraid. I didn't, I didn't want to be involved
23 in this. I've just never been around all this. I was
24 afraid I'd lose my kids.

25 Q And have you been involved with pills before?

Shirley Gilbert - Direct examination
by Solicitor Barnette.

1 A I do take prescription medicine. He has gave me pills
2 and I'm not gonna lie. But I'm not involved in no pharmacy,
3 and I've not been involved in robbing pharmacies.

4 Q who was the three people that brought the black bag in
5 to you?

6 A My brother, Dale, and Marion Stewart, and Lee Ann
7 Nichols.

8 Q And this was in late morning?

9 A Yes, sir.

10 SOLICITOR BARNETTE: One moment, Your Honor, please.

11 (Pause.)

12 Q Please answer any questions that Mrs. Hodges may have
13 for you.

14 THE COURT: Mrs. Hodges, your witness.

15 MRS. HODGES: Thank you, Your Honor.

16 May it please the Court?

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MRS. HODGES:

20 Q Ma'am, you introduced yourself to us as Shirley
21 Gilbert.

22 Do you also go by Shirley Taylor?

23 A Shirley Taylor is my maiden name.

24 Q Okay.

25 A Shirley Taylor Gilbert.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 Q Shirley Taylor Gilbert.

2 All right. How long have you known Marion?

3 A Around -- now, about four and a half, five years.

4 Q Okay. So, this happened in 2009. So, you-all had been
5 together a couple years by that point.

6 Is that correct?

7 A Yes, ma'am.

8 Q So, how long had y'all been living together?

9 A The whole time.

10 Q The whole time.

11 Okay. And in your home were not only your children,
12 but also two of your brother's children and a granddaughter?

13 A (Witness nods affirmatively.)

14 Q Is that correct?

15 A Yes, ma'am.

16 Q Okay. What was the age range of the children?

17 A My son, Anthony, he's 19 now. So, he was 17 then. My
18 daughter, Brittany, was two years younger, and then I have
19 Brianna, she's 14 now. Jacob is ten. Carrie is seven. My
20 granddaughter is two now.

21 Q Okay. So, basically your granddaughter was basically a
22 newborn at that point?

23 A She was a baby.

24 Q Okay. So, basically at that time you had from newborn
25 up to 17 in terms of children living in the home?

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 A Uh-huh. (Affirmative).

2 Q Plus you and Marion?

3 A Right.

4 Q All right. And my understanding is that Dale's your
5 younger brother, is that correct?

6 A Yeah, he's my only real brother. I have a half
7 brother.

8 Q Okay. All right. You saw the police at your residence
9 when Marion was arrested, is that correct?

10 A Yes, sir. I mean yes, ma'am. I'm sorry.

11 Q That's all right.

12 Did the police ever ask to talk to you that evening
13 about what you knew about this robbery?

14 A No.

15 Q All right. Did the police ever come to you, within the
16 next couple of days, asking to talk to you about this?

17 A No, ma'am.

18 Q Did the police come to you within the next month?

19 A No, ma'am.

20 Q Did the police come to you within the first year that
21 Marion, after Marion had been arrested?

22 A No, ma'am.

23 Q All right. At what point did the police come to you
24 and ask you about what you knew about this case?

25 A When I got the subpoena.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 Q When you got the subpoena, and who did you get the
2 subpoena from?

3 A It was delivered to my work, two detectives.

4 Q All right. Was it delivered -- were you subpoenaed by
5 the police or by the solicitor's office?

6 A Solicitor's Office.

7 Q All right. And when you got the subpoena from the
8 Solicitor's Office, did -- how did you come to have
9 conversations with law enforcement?

10 A I come down here and talk to them.

11 Q Okay. You came to the solicitor's office to talk to
12 them?

13 A I did.

14 Q All right. So, you never went to the Sheriff's Office
15 to tell them what you told us now, is that correct?

16 A No, ma'am.

17 Q All right. When you were at the solicitor's office,
18 who did you meet with?

19 A Christy Barry.

20 Q Is this Christy here in the front in the hot pink---

21 A Yes, sir.

22 Q ---shirt and gray suit?

23 Mr. Barnette?

24 A Mr. Barnette, yes.

25 Q And who else?

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 A The detective. I don't know his name.

2 Q All right. This detective here in the blue, blue shirt
3 and the gold tie?

4 A No.

5 Q All right. You mean Mr., Mr. Rick Gregory?

6 A Yes.

7 Q Okay. Dark hair.

8 A Rick, yeah.

9 Q Okay. All right. And who else?

10 A I think there was -- I think -- and this gentleman
11 right here with the striped tie on.

12 Q Mr. Boyd

13 A Yes.

14 Q Okay. So, was anybody from, from the Sheriff's Office
15 involved in that conversation?

16 A No.

17 Q Okay. So, just the Solicitor's Office?

18 A Right.

19 Q Okay. And how long ago was that?

20 A Two weeks ago. I think right before the first time it
21 was suppose to go to trial.

22 Q Okay. So, about three weeks ago or so?

23 A Uh-huh. (Affirmative).

24 Q Okay. And how long did that conversation last?

25 A Not very long.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

- 1 Q Not very long?
- 2 A About an hour and a half maybe.
- 3 Q Okay.
- 4 A Two hours.
- 5 Q Did you actually do a written statement?
- 6 A No, ma'am.
- 7 Q All right. So, you just talked to them?
- 8 A I did.
- 9 Q All right. Was there any sort of recording made of
- 10 that statement to your knowledge in terms---
- 11 A No.
- 12 Q ---like audio or video or anything like that?
- 13 A No.
- 14 Q Okay. So, the first time that you tell anybody that
- 15 Marion Stewart's involved in what happened on October the
- 16 14th of 2009 is three weeks ago approximately?
- 17 A I told them what I knew, yes, ma'am.
- 18 Q Okay. And, in fact, you had conversations with Marion
- 19 all along on the telephone telling him that you loved him,
- 20 is that correct?
- 21 A I haven't, I haven't talked to him in over a year --
- 22 Q Haven't talked to him in over a year?
- 23 A -- until a few weeks ago.
- 24 Q Okay.
- 25 A Till I got Pay Tel so my brother could call his kids.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 Q All right. So, you've made Pay Tel available. You had
2 Pay Tel on your phone at one point though, didn't you?

3 A I did. I did, in the first -- before Christmas of '09.

4 Q Before Christmas of '09.

5 A A little bit after probably.

6 Q And was your brother calling his kids at that point?

7 A I didn't have Pay Tel. No, he -- Dale called his kids
8 a couple times.

9 Q When you had Pay Tel the first time?

10 A Yeah, and then I didn't have it for a long time, and
11 then I just got it again so my brother could call his kids.
12 I have a new number and everything.

13 Q Okay. So, you were making Pay Tel available for your
14 brother to be able to call his children, is that correct?

15 A So he could talk to his two kids, right.

16 Q All right. But you've not talked to Mr. Stewart until
17 after you got, for, for a long time cause you didn't have
18 Pay Tel?

19 A Yeah, I didn't have Pay Tel anymore.

20 Q All right. And just so the jury -- I know what you
21 mean by Pay Tel, and you know what you mean, but so the jury
22 understands, Pay Tel, my understanding, is basically a
23 system that you can use to basically be able to accept calls
24 from the jail?

25 A Correct.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 Q Okay. And it's a service that you have to have on the
2 phone in order to be able to accept calls from the jail or
3 otherwise they're really expensive, is that correct?

4 A Right. I don't have any way other to do that. I don't
5 have---

6 Q Okay. All right. All right. Were you present at the
7 courthouse when there was a preliminary hearing in this
8 case?

9 A No.

10 Q You weren't?

11 A No, I told Marion I was there, but I wasn't. That's
12 why he never saw me. I wanted away from it.

13 Q So, you didn't have a conversation with me at that
14 point?

15 A I called you on the phone.

16 Q All right. You called me on the phone, and told me
17 that Marion didn't have anything to do with this, right?

18 A I did.

19 Q Okay. So, you lied to me?

20 A I did. I still don't know exactly what they---

21 Q And you lied to Marion?

22 A I don't know what his exact involvement is. That's
23 what I'm trying to tell you.

24 Q I'm sorry?

25 A I didn't know the exact involvement, involvement.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 That's all I'm saying here. I'm testifying to what I seen.

2 Q Okay. So, you saw Marion with Dale?

3 A Uh-huh. (Affirmative).

4 Q And Lee Ann?

5 A I did.

6 Q And some pills?

7 A I did.

8 Q And that's all you saw?

9 A That's all I saw.

10 Q So, you don't know if Marion was involved in this?

11 A I didn't, I didn't actually see him do it, no.

12 Q All right. And you don't know if Lee Ann was involved
13 in this?

14 A I didn't actually see her do it, no.

15 Q Okay. So, all you saw was just some people there with
16 pills?

17 A I didn't see Dale do it, yes.

18 Q Okay.

19 A That's what I say.

20 Q And you said that you were asleep when they came to
21 your house that morning?

22 A When -- yes, they woke me up.

23 Q Okay. They woke you up.

24 You were in the bed asleep?

25 A I was in my bed asleep, yes, ma'am.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 Q Okay. And how did they wake you up?

2 A They said Shirley, get up.

3 Q Okay. So, they actually came---

4 A And I woke up and I was -- I mean I was just dazed. I,
5 you know, just woke up.

6 Q Okay. So, they actually came into the bedroom and said
7 Shirley, wake up?

8 A Yes, I just -- yeah, I didn't have a bedroom door on my
9 bedroom.

10 Q All right. So, so, you have absolutely no idea,
11 because you were asleep, you have absolutely no idea what
12 happened in terms of prior to them coming into your bedroom
13 and saying Shirley, wake up?

14 A No, ma'am.

15 Q Okay. All right. And you've been convicted of
16 fraudulent checks in the past, is that correct?

17 A Yes, I have.

18 Q Okay. Have you talked with Dale about this case
19 recently?

20 A We've talked, but it's been -- it's just about that
21 he's telling the truth, he's wanting to do his time and get
22 out to see his kids.

23 Q Okay. And today, even though you've told people in the
24 past that Marion didn't have anything to do with this, today
25 you're saying that he did, is that correct?

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 A I'm saying -- I'm testifying to what I saw. That's
2 what I'm doing.

3 Q Okay. And you never told anybody before what you saw,
4 is that correct?

5 A No.

6 Q Never volunteered to say hey, I know some information
7 about this case, you never went to the police and said, you
8 know---

9 A No, I didn't. I didn't -- no, I didn't.

10 Q Okay. And, so, for 18 months you've been telling
11 Marion Stewart, basically writing him letters saying I know
12 you didn't have anything to do with this, I love you, and I
13 want you back?

14 A I can't remember this last time -- yes, I've told him
15 that. I have.

16 MRS. HODGES: Okay. Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 (Pause.)

19 Q Do you remember having a conversation with Mr. Stewart
20 back in 2009 right after he was first arrested that you were
21 coming to the jail, that you were getting harassed by the
22 cops when you came to the jail?

23 A I didn't say I was getting harassed by the cops. I
24 just said I feel awkward coming down here because of
25 everything.

Shirley Gilbert - Cross-examination
by Mrs. Hodges

1 Q So, you didn't say that they kept asking you to come in
2 and give a statement?

3 A I don't know if I did or not.

4 Q Well, if you did, was that true?

5 A So much was going on, I'm gonna be honest, I don't
6 remember a lot of things that was said.

7 Q Okay. But you do remember what you saw?

8 A I do remember what I saw.

9 Q But you can't remember what you said?

10 A I don't remember everything I said. I'm sorry. But I
11 don't, and I'm not gonna say something that I don't
12 remember. Sorry.

13 Q All right. Other than the prescription pills that you
14 were using, were you using, using any other kinds of drugs?

15 A Yes, ma'am, I did.

16 Q What kind of drugs were you using?

17 A I used cocaine.

18 Q And you were using it at the time this, that this
19 happened, is that correct?

20 A Not, not at the present time that this happened. No, I
21 was working, but I did use it prior to that, yes.

22 Q Thank you.

23 I have nothing further, Your Honor.

24 THE COURT: Redirect.

25 SOLICITOR BARNETTE: Yes, sir, just a few on redirect.

Shirley Gilbert - Redirect examination
by Solicitor Barnette

1 THE COURT: Yes, sir.

2 REDIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

4 Q Mrs. Hodges asked you about the police coming to your
5 home.

6 A Yes.

7 Q Is this gentleman one of the officers that came to
8 y'all's home?

9 A Yes, that's one of them. I don't remember the other
10 one, but --.

11 Q He was one of the two?

12 A He was.

13 Q Okay. And they came to the front door when they came
14 to your house?

15 A No, we were walking out the door. They never got a
16 chance to actually knock.

17 Q That what, what happened?

18 A We was going out the door, and the two officers asked
19 could they speak to Marion Stewart. We said yeah. They
20 said they need to speak to him, and he said sure, and he
21 went to the car with them. I went back in the house.

22 Q Okay. Did they force him to go to the car?

23 A No.

24 Q Did he voluntarily go to the car?

25 A He did. They asked to talk to him. He went.

Shirley Gilbert - Redirect examination
by Solicitor Barnette

1 Q Okay. So, after talking to them, was he placed under
2 arrest?

3 A I don't know. I didn't see. He -- that's when he said
4 to me cause he -- I asked could I give him a hug, and he
5 said, I said what's going on, and he said I done something I
6 shouldn't of done, and I'm gonna be gone for a long time.

7 Q So, he said that to you?

8 A Yes.

9 Q Was the police officers present?

10 A They were standing beside the car.

11 Q So, this is after they had a discussion with him?

12 A Yes, this was at the end of it after a long while. I
13 don't know how long, hour and a half.

14 Q Okay. So, he came up to you and gave you a hug?

15 A He gave me some money, cell phone, and I said what's
16 going on, and he said he done something wrong, he's done
17 something he shouldn't of done, and he was gonna be gone for
18 a long time.

19 Q Thank you, ma'am. Please answer any questions Mrs.
20 Hodges may have.

21 THE COURT: Recross.

22 RECROSS EXAMINATION

23 BY MRS. HODGES:

24 Q And he didn't give you any specifics as to what he did,
25 did he?

Shirley Gilbert - Recross examination
by Mrs. Hodges

1 A No.

2 Q All right. And he gave you money and gave you a cell
3 phone?

4 In fact, gave you two cell phones, isn't that correct?

5 A I don't, I don't remember two. I remember one. I
6 don't remember two. I'm sorry.

7 Q Okay. All right. And you didn't hear any of that
8 conversation that he had with the officers?

9 A No, I did not.

10 Q Okay. You were in the house?

11 A I was in the house.

12 Q All right. And you brought him a cigarette, is that
13 true?

14 A I did.

15 Q Okay. And you don't know whether the -- you don't know
16 any of the specifics of what he had done at that point?

17 A No.

18 Q All right.

19 A Not the specifics, no.

20 MRS. HODGES: Okay. Nothing further, Your Honor.

21 THE COURT: Just one question on redirect, Your Honor.

22 THE COURT: Go ahead.

23 REDIRECT EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q But he did tell you the night before talking about

Shirley Gilbert - Redirect examination
by Solicitor Barnette

1 robbing, is that right, or tell exactly what he said the
2 night before that you overheard?

3 A What I -- when everybody was talking?

4 Q Yes, ma'am.

5 A Just talking about robbing a pharmacy. Never -- just,
6 just got generally talking is what it was.

7 Q And who was present for that conversation?

8 A Lee Ann, Marion, Dale. Everybody was there, but it's
9 just like everybody -- it's just like being out at with your
10 home guys, you know.

11 You what I'm saying?

12 You don't know to listen for some things pretty much.
13 So, they were in there talking in the living room, but
14 everybody was home.

15 Q Yes, ma'am. Thank you.

16 RECROSS EXAMINATION

17 BY MRS. HODGES:

18 Q And you don't know any of the specifics of that
19 conversation?

20 A No.

21 Q You do not know what they were talking about?

22 A No.

23 Q Thank you.

24 THE COURT: All right, ma'am. You may step down.

25 Do you wish to excuse the witness?

1 SOLICITOR BARNETTE: Yes, sir, Your Honor.

2 THE COURT: Ma'am, you're free to go unless there's any
3 objection.

4 Is there any objection?

5 MRS. HODGES: No, sir. Thank you.

6 THE COURT: You're free to go. Thank you very much.

7 WITNESS: Thank you.

8 THE COURT: All right. Ladies and gentlemen, at this
9 time we're past 12:00. So, we're gonna stop for lunch, and
10 I will give you the same instructions I give you everytime
11 that you leave the courthouse. Don't listen to, watch, or
12 read any media reports. Don't attempt to gather any
13 information from any other source concerning this matter.
14 Don't discuss the case with anyone. Don't allow anyone to
15 discuss it with you, and should anyone try to contact you
16 about your participation in this trial, please report that
17 upon your return.

18 I'm going to ask that you be back in the jury room at,
19 we'll say about 1:30, and we'll be in a position to start
20 again at that time. You're free to go to lunch at this
21 time.

22 Thank you very much.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. Court's in recess.

1 Defendant remains in custody.

2 Thank you very much.

3 (Whereupon, Court was in recess for the lunch hour.)

4 THE COURT: Is the State ready to proceed at this time?

5 SOLICITOR BARNETTE: We are, Your Honor.

6 THE COURT: Defense ready to proceed?

7 MRS. HODGES: Yes, sir.

8 THE COURT: Bring the jury in.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: All right. The record will reflect that
12 the jury has returned to the courtroom.

13 If anyone had any difficulty in complying with my
14 instructions, please stand.

15 (No response.)

16 THE COURT: It appears the jury has been able to
17 comply.

18 At this time, the State is in the process of presenting
19 its evidence.

20 The State may call its next witness.

21 SOLICITOR BOYD: Thank you, Your Honor.

22 The State calls Investigator Tim Davis.

23 THE COURT: Come forward, sir, to my left and be sworn.

24 TIM DAVIS, having been first duly
25 sworn, testified as follows:

Tim Davis - Direct examination
by Solicitor Boyd

1 THE COURT: Have a seat please, sir. State your name
2 for me.

3 WITNESS: Tim Davis.

4 THE COURT: Mr. Boyd, your witness.

5 SOLICITOR BOYD: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY SOLICITOR BOYD:

8 Q Good afternoon, Mr. Davis.

9 Please state your occupation.

10 A I'm employed by the Spartanburg County Sheriff's
11 Office.

12 Q And how long have you been there?

13 A Almost 17 years now.

14 Q And what do you do there?

15 A At the time I was assigned to the crime scene unit.
16 I'm currently over uniform patrol.

17 Q Were you with the crime scene unit in October 2009?

18 A I was.

19 Q Okay. Are you familiar with this case?

20 A Yes, sir.

21 Q How were you brought into this case?

22 A The only involvement I had in this particular case was
23 simply that I got called by the investigators to collect a,
24 some evidence.

25 Q Okay. When you were called there, where did you go?

Tim Davis - Direct examination
by Solicitor Boyd

1 A I went to a location in Spartanburg County, Ghost
2 valley and Rainbow Lake I believe was the intersection.

3 Q Okay. why were you called there?

4 A To collect a plastic bag, trash bag type bag that
5 contained several different bottles and different things
6 that was inside of it.

7 Q I show you what's been marked as State's Exhibit 30 for
8 identification.

9 what's inside that bag?

10 what's in that bag?

11 A A plastic trash bag.

12 Q Okay. Is that the same trash bag you found when you
13 went out to Ghost Valley and Rainbow Lake Road?

14 A Appears so, yes, sir.

15 Q Has it been altered in any way or is it the same thing?

16 A Same thing.

17 SOLICITOR BOYD: Your Honor, the State moves Exhibit 30
18 into evidence.

19 THE COURT: Any objection?

20 MRS. HODGES: No objection, Your Honor.

21 THE COURT: Without objection it will be received in
22 evidence as marked.

23 SOLICITOR BOYD: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit No. 30 was received into
25 evidence at this time.)

Tim Davis - Direct examination
by Solicitor Boyd

1 THE COURT: You may proceed.

2 Q Mr. Davis, I'm gonna show you several exhibits marked
3 States 13 through 27 or, excuse me, 13 through 20. Take a
4 look at these please.

5 Are you familiar with what's contained in these
6 pictures?

7 A Yes, I am.

8 Q Okay. What's contained in these pictures?

9 A That was the evidence I collected that night. I had,
10 again, a plastic trash bag containing several different
11 viles of boxes of various medication or that's what it
12 appeared to be. The -- also a single bottle where the seal
13 had been broken or appeared not to be there really was found
14 adjacent to that trash bag as well.

15 Q Are these pictures of the area that you found it?

16 A Yes, it is.

17 Q Did you take these pictures?

18 A I did, sir.

19 Q To your knowledge, has these been altered in any way?

20 A No.

21 SOLICITOR BOYD: Okay. Your Honor, at this time I'd
22 like to move State's Exhibit 13 through 20 into evidence and
23 publish to the jury.

24 MRS. HODGES: Without objection, Your Honor.

25 THE COURT: Without objection, they'll be received into

Tim Davis - Direct examination
by Solicitor Boyd

1 the record as marked.

2 SOLICITOR BOYD: Thank you, Your Honor.

3 (WHEREUPON, State's Exhibit Nos. 13 through 20 were
4 received into evidence at this time.)

5 THE COURT: You may publish.

6 SOLICITOR BOYD: Approach the witness, Your Honor?

7 THE COURT: You may.

8 Q Explain to the jury what's been marked as State's
9 Exhibit 13.

10 Could you show us what we're looking at?

11 A That right there is a, the black trash bag, and it's,
12 of course, partially covered up with leaves.

13 Q Okay. This is State's 14.

14 Again, what are we looking at?

15 A The same thing.

16 Q Is that a close-up of the previous picture?

17 A Yes, sir.

18 Q Okay. And 15?

19 A Again, this is the black trash bag. This is after we
20 removed some of the leaves as we're getting ready to collect
21 it.

22 Q And 16, what are we looking at?

23 A This is a photograph here. You have the trash bags and
24 there's, there's a bottle of the oxycodone, again, that did
25 not have the seal on it. That was adjacent to it.

Tim Davis - Direct examination
by Solicitor Boyd

1 Q Okay. Is this that same bottle you referred to?

2 A Yes, it is.

3 Q That was 17. This is 18.

4 A This is after we brought it from the wooded area back
5 up on the roadway, and we just took an additional photograph
6 of it.

7 Q What distance was between where that is and where you
8 located the items originally?

9 A I couldn't provide an exact distance. It was a, a
10 walking distance. We did have to walk down in there to get
11 to it.

12 Q Okay. State's 19.

13 A Again, just a closer up photograph of the bottles.

14 Q The same bottle that was located next to the trash bag?

15 A The trash bag, yes, sir.

16 Q Okay. And, finally, State's 20, what are we looking
17 at?

18 A That's simply where we opened up the top of the trash
19 bag and took a quick photograph to show what was inside of
20 it.

21 Q Okay. What size was this trash bag?

22 A This was your garbage, garbage bags type you're getting
23 on with like leaves and things of that nature in it.

24 Q What did you do after you took pictures of this?

25 A After that they were simply collected and they were

Tim Davis - Direct examination
by Solicitor Boyd

1 taken to the evidence room and the crime scene unit, and I,
2 I, at the Sheriff's Office and secured in that room.

3 Q Okay. When you put it into evidence, did you take any
4 pills outside out of that bag?

5 A I did not.

6 Q So, when you put it in, everything else was in that bag
7 was in that bag?

8 A That is correct.

9 Q Okay. No further questions. Please answer any
10 questions Mrs. Hodges might have for you.

11 THE COURT: Mrs. Hodges, your witness.

12 MRS. HODGES: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MRS. HODGES:

15 Q Investigator Davis, were you present when the bag was
16 actually located or had it already been found before, by the
17 time you were called?

18 A There were several detectives already present, and they
19 were the ones that called me to respond to the scene.

20 Q Okay. And did you do anything other than photograph,
21 collect the, the evidence?

22 Did you do any processing on it at all?

23 A I, I did not.

24 Q Thank you.

25 I have nothing further, Your Honor. I have no

Deanna Burgess - Direct examination
by Solicitor Boyd

1 objection to the officer being excused.

2 THE COURT: Any other questions.

3 SOLICITOR BOYD: No questions, Your Honor.

4 THE COURT: Sir, you may step down. You're free to go.

5 WITNESS: Thank you, Your Honor.

6 THE COURT: Thank you, sir.

7 The State may call its next witness.

8 SOLICITOR BOYD: State calls Deanna Arnold, Your Honor.

9 DEANNA BURGESS, having been first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat please.

12 (Witness complies.)

13 THE COURT: State your name.

14 WITNESS: Deanna Burgess.

15 THE COURT: Your witness, counsel.

16 DIRECT EXAMINATION

17 BY SOLICITOR BOYD:

18 Q Good afternoon. Can you state your occupation?

19 A I'm a sergeant with the Sheriff's Department in the
20 criminal, the crime scene unit.

21 Q Okay. And how long have you been in that position?

22 A Twenty-six years.

23 Q Okay. What is the criminal investigations unit, crime
24 scene unit?

25 A Yes.

Deanna Burgess - Direct examination
by Solicitor Boyd

1 Q What are the duties in that occupation?

2 A Collect evidence, preserve it for court, process it for
3 fingerprints. Anything that we do with collecting evidence.

4 Q Okay. How were you brought into this case?

5 A I was contacted by Detective Lorin Williams and asked
6 him -- he asked could I do an inventory on the evidence that
7 Tim Davis collected.

8 Q Okay. Let me show you what's already in evidence as
9 State's Exhibit 30. If you look in that bag.

10 What's in that bag?

11 A A black plastic garbage bag.

12 Q Did you have occasion to open the trash bag.

13 A I did it. It had been stored in our evidence room.
14 When they inquired about having an inventory done, I went in
15 and took that evidence out of that garbage bag.

16 Q What was in that bag?

17 A Lots of medications.

18 Q Okay. Was there anything else besides medication in
19 that bag?

20 A I don't recall anything except for the medications.

21 Q Was there an inner bag?

22 A I don't remember.

23 Q I show you what's been marked as State's Exhibit 30.
24 Please look in that bag.

25 A Yes.

Deanna Burgess - Direct examination
by Solicitor Boyd

1 Q Okay. What is that?

2 A Those are brown paper bags.

3 Q Where were these bags taken from?

4 A The black bag.

5 Q That you found in evidence?

6 A Yes.

7 SOLICITOR BOYD: Your Honor, State moves Exhibit 31
8 into evidence, Your Honor.

9 THE COURT: Have you seen that, Mrs. Hodges?

10 MRS. HODGES: Thank you. Without objection.

11 THE COURT: Without objection, it will be admitted into
12 the record as marked.

13 (WHEREUPON, State's Exhibit No. 31 was received into
14 evidence at this time.)

15 THE COURT: You may proceed.

16 SOLICITOR BOYD: Thank you, Your Honor.

17 Q When you opened that black trash bag, what was in it?

18 A A lot of pills style medications.

19 Q Okay. And what was your task in opening that bag?

20 A It was my task to open it up and count each, each
21 individual tablet to see how many total we had.

22 Q Okay. Approximately how long did that take you?

23 A All day.

24 Q Okay. I show you a bag that was in 2-A, and it has
25 been placed in evidence, Your Honor.

Deanna Burgess - Direct examination
by Solicitor Boyd

1 Please look at this bag and tell me what you see.

2 A These are all the individual bags that I counted the
3 tablets and put them in and sealed up.

4 Q How do you know that those, those are the pills that
5 you counted?

6 A Because we dated and signed each individual one on this
7 little tab right here.

8 Q Have those bags been tampered with?

9 A No.

10 SOLICITOR BOYD: Okay. Your Honor, at this time the
11 State would move the rest of Exhibit 2-A into evidence.

12 THE COURT: Objections?

13 MRS. HODGES: No, Your Honor.

14 THE COURT: Without objection they'll be received --
15 have they been marked?

16 That bag, I think, was taken out of another exhibit.

17 SOLICITOR BOYD: The bag was taken out. We can
18 supplement that as State's Exhibit 32.

19 THE COURT: It needs to be marked.

20 SOLICITOR BARNETTE: Your Honor, can we mark that as
21 2-C?

22 THE COURT: That's fine as long as the court reporter
23 agrees to it. She's got to keep up with it. I'll allow her
24 to make that decision.

25 SOLICITOR BARNETTE: Thank you, Your Honor.

Deanna Burgess - Direct examination
by Solicitor Boyd

1 THE COURT: She keeps the record for me.

2 (WHEREUPON, the remaining drugs were marked as State's
3 Exhibit No. 2-C and received into evidence at this time.)

4 THE COURT: All right. Has it been marked?

5 SOLICITOR BOYD: It has been marked as State's Exhibit
6 2-C.

7 THE COURT: 2-C. It's in. It's in.

8 Q Okay. What did you do after you, after you counted the
9 pills?

10 A Turned them over to the evidence department.

11 Q Okay. And that was the last time you had contact with
12 these pills?

13 A Yes.

14 SOLICITOR BOYD: Okay. No further questions, Your
15 Honor.

16 Please answer any questions that Mrs. Hodges might
17 have.

18 THE COURT: Mrs. Hodges, your witness.

19 MRS. HODGES: Thank you.

20 CROSS-EXAMINATION

21 BY MRS. HODGES:

22 Q Sergeant Burgess, the pills that you took out of the --
23 were these contained in something else or were they loose in
24 the bag?

25 How, how did you find the pills when you, when you

Deanna Burgess - Cross-examination
by Mrs. Hodges

1 started counting them?

2 A Some of the packages were open. Some of them were,
3 still had the pharmaceutical seal on them. Very few, but
4 most of them, at some point, had been opened.

5 Q Okay. And the, the ones that were sealed bottles, did
6 you open the sealed bottles?

7 A No.

8 Q So, the -- okay. So, the -- basically you only counted
9 the bottles, bottles that, that basically the seals had
10 already been broken or already opened?

11 A I counted all the bottles. But the ones that were
12 still sealed from the company I just took off the label---

13 Q Okay.

14 A ---how many they were.

15 Q Okay. And then -- but then all the bottles that were
16 opened, you actually counted each of those individual pills
17 from each of those bottles?

18 A Yes.

19 Q All right. Did you combine any of the, the pills from
20 any of the bottles into, into the plastic bags?

21 A The only thing that was combined is what had spilled
22 out in the bottom of the trash bag. Everything else is
23 separate.

24 Q So, there were some pills and things that, that were,
25 were already loose in the bottom of the trash bag when, when

Deanna Burgess - Cross-examination
by Mrs. Hodges

1 you came into contact with it?

2 A Yes.

3 Q Okay. Did you do any other processing on these
4 bottles?

5 A I did not.

6 Q Okay. You've had a chance to review some of the
7 evidence.

8 Does it appear that it's been processed?

9 Let me ask you this question. Have any of the bottles
10 been processed by the time you, you came into contact with
11 them?

12 A I think a couple of the bottles had been processed, but
13 I'm not really sure.

14 Q Okay. You don't remember or you just didn't take
15 notes?

16 A I think they were separately packaged.

17 Q Okay. So, there were a couple of items that were
18 separately packaged?

19 A Yeah, I don't believe any of the things that I counted
20 were processed. They were only counted.

21 Q Okay. I hand you what appears to be considered items
22 2-B.

23 Can you look at that for me?

24 A Okay.

25 Q And, and do you recognize those pills?

Deanna Burgess - Cross-examination
by Mrs. Hodges

1 A Yes, these are some of the bottles.

2 Q Okay. And are those the bottles that you would of
3 dumped the medication out of to, to count?

4 A Yes.

5 Q Okay.

6 A If these are not -- if these are the ones that are
7 sealed. Yes. No, these are the empties.

8 Q Okay. So, the empties -- they're empty by virtue of
9 the fact that you actually took the medication out in order
10 to count them?

11 A Right.

12 Q Okay. And were they -- well, it appears that there's
13 some sort of black powder dust or something on these
14 bottles.

15 A Yes, they're processed.

16 Q Okay. And by process, basically it looks like that
17 they've used some sort of fingerprint powder---

18 A Right.

19 Q ---or dust to try and see if you can lift a fingerprint
20 off of it?

21 A Uh-huh. (Affirmative).

22 Q All right. Were they -- had they been processed at the
23 time that you saw them?

24 A When -- I don't believe they were processed at the
25 time. I think they were processed after the fact.

Deanna Burgess - Cross-examination
by Mrs. Hodges

1 Q Okay. And did you have anything to do with after the
2 fact processing of those bottles and fingerprints?

3 A There was two of us. I was doing most of the counting.
4 I think somebody else must of, must of been in there with me
5 to help me process them because I really don't remember.

6 Q Do you remember who was in there with you?

7 A I believe it was Lather Graham that was helping me that
8 day.

9 Q Okay. Thank you, sergeant. That's all I have.

10 THE COURT: Redirect.

11 SOLICITOR BOYD: Yes, Your Honor.

12 Beg the Court's indulgence for a moment.

13 THE COURT: Yes, sir.

14 (Pause.)

15 REDIRECT EXAMINATION

16 BY SOLICITOR BOYD:

17 Q Did you have any other involvement in this case besides
18 counting the pills?

19 A Yes.

20 Q What was that?

21 A I collected a pair of boots from the county jail, and I
22 also responded with the dive team to a bridge at Rainbow
23 Lake.

24 Q Okay. What were your results of that search?

25 A The only thing that we recovered was a tennis shoe.

Deanna Burgess - Redirect examination
by Solicitor Boyd

1 SOLICITOR BOYD: Okay. Your Honor, at this time --
2 Your Honor, can we approach the bench?

3 SOLICITOR BARNETTE: We have that stipulation with the
4 officers that's not on the, not available, and---

5 THE COURT: We'll take care of that once this witness
6 is finished.

7 SOLICITOR BARNETTE: Okay. I may introduce the shoe
8 through that witness if that's okay, Your Honor.

9 THE COURT: All right. Pass that up. The court
10 reporter has it.

11 SOLICITOR BOYD: Approach, Your Honor?

12 THE COURT: Thank you.

13 Ladies and gentlemen, let me explain something to you.
14 Occasionally, during a trial, the, the attorneys involved in
15 the case or the parties agree to a stipulation. Now, a
16 stipulation is an agreement that, between the parties, that
17 a certain fact or facts are true. Therefore, it's not
18 necessary to bring someone in to testify about those facts.

19 Prior to trial, we entered, the parties entered into a
20 stipulation of fact. It's been marked as Court's Exhibit
21 No. 3. I'm going to read the stipulation to you. Again,
22 this is a fact that's been agreed upon, and, therefore, no
23 proof is required on this point.

24 It states, by the consent of the parties, the following
25 statement is submitted to the Court and jury as fact:

Deanna Burgess - Redirect examination
by Solicitor Boyd

1 Officer Lather Graham, with the Spartanburg County Sheriff's
2 Office, is the ID officer that located one white Nike tennis
3 shoe. The shoe was located on October 20th, 2009, from
4 the lake at Rainbow Lake Road and Timberlake Road in
5 Spartanburg County. The tennis shoe was placed into
6 evidence at the Spartanburg County Sheriff's Office by
7 Officer Lather Graham.

8 And, again, that has been consented to by the parties,
9 and, therefore, that fact is -- it's not necessary to prove
10 the fact stated in the stipulation. That will be a Court's
11 Exhibit. It will be made available to you during your
12 deliberations.

13 You may proceed, Mr. Boyd.

14 SOLICITOR BOYD: Thank you, Your Honor.

15 Q Mrs. Burgess, I'm gonna show you what's marked as
16 State's Exhibit 3. You can look at that bag.

17 What's in that bag?

18 A A white tennis shoes.

19 Q Can you pull it out and show it to the jury?

20 A Sure.

21 Q Thank you.

22 Is that the same white tennis shoe that was recovered
23 by Officer Graham?

24 A It is.

25 Q Can you look and see what size shoe that is?

Deanna Burgess - Redirect examination
by Solicitor Boyd

1 A It says a size ten.

2 Q Size ten.

3 Okay. At this time, State moves Exhibit 3 into
4 evidence, Your Honor.

5 THE COURT: Any objection?

6 MRS. HODGES: No, sir.

7 THE COURT: Without objection, the exhibit will be
8 received into evidence as marked.

9 SOLICITOR BOYD: Thank you, Your Honor.

10 (WHEREUPON, State's Exhibit No. 3 was received into
11 evidence at this time.)

12 SOLICITOR BOYD: No further questions, Your Honor.

13 THE COURT: Recross.

14 RECROSS EXAMINATION

15 BY MRS. HODGES:

16 Q Sergeant Burgess, you indicated that you had responded
17 along with the dive time.

18 What was the dive team responsibilities that you
19 observed that day?

20 A We were to look for any evidence that may be tied to
21 this case.

22 Q Okay.

23 A I think it's specifically they had requested that we
24 search for a gun, and this tennis shoe -- we operate under
25 the assumption if it's better to have it and not need it

Deanna Burgess - Recross examination
by Mrs. Hodges

1 then need it and not have it. It was floating, it was out
2 of place, and we collected it.

3 Q Okay. And it was, it was actually floating in the
4 water?

5 A Yes, it was up close to the shoreline.

6 Q Okay. And was any gun located?

7 A No.

8 Q All right. How deep is the, the water in that, in that
9 area?

10 A well, at different times of year it's, it's something
11 different. But I think the deepest part of the bridge that
12 we went in that day was like 15 feet.

13 Q Okay. And is there any sort of current that, that,
14 that runs through that, that area of the lake at that that,
15 that you observed that particular day?

16 A Right in the center of the bridge there is a, a faster
17 current on the bottom than just -- I mean you wouldn't be
18 able to tell it just by looking at it. But it runs pretty
19 quickly right directly under the center of the bridge.

20 Q Were you actually involved in, with the, with the dive
21 team as part of the search?

22 A I am. I'm a supervisor of the dive team also.

23 Q Okay. And how large an area did, was, was searched for
24 this, for this weapon?

25 A well, we searched by boat in, in both directions of, of

Deanna Burgess - Recross examination
by Mrs. Hodges

1 the river. We went up past the bridge and down below by
2 boat. But as far as the divers being in the water, we
3 searched almost all the way across the bridge.

4 Q And, so, did you feel that you had searched the area as
5 thoroughly as you could that day?

6 A Yes.

7 Q And did you return the next day to continue the search?

8 A Yes, we did go for a little while the next day.

9 Q Okay. Thank you, ma'am. That's all I have.

10 THE COURT: Anything further?

11 SOLICITOR BOYD: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY SOLICITOR BOYD:

14 Q In your experience as supervisor of the dive team, just
15 because you don't find anything, does it mean it's not
16 there?

17 A No.

18 Q So, it's possible that something could be there that
19 you don't find?

20 A It's true. The water in the Spartanburg County area
21 has a really thick layer of sediment on the bottom, and we
22 get down and probe in that. But also, with that current
23 under that bridge going as fast as it could, if, if
24 something got in that current, it could of been washed away
25 from the area.

Erika Duncan - Direct examination
by Solicitor Boyd

1 SOLICITOR BOYD: Okay. No further questions, Your
2 Honor.

3 THE COURT: Anything further?

4 MRS. HODGES: No, sir.

5 THE COURT: Any objection to the witness being excused?

6 MRS. HODGES: Absolutely none.

7 THE COURT: Ma'am, you may step down, and you're free
8 to go at this time. Thank you very much.

9 WITNESS: Thank you.

10 THE COURT: State may call its next witness.

11 SOLICITOR BOYD: State calls Erika Duncan, Your Honor.

12 THE COURT: Ma'am, come forward to my left and be
13 sworn.

14 ERIKA DUNCAN, having been first duly
15 sworn, testified as follows:

16 THE COURT: Have a seat please. Once you're seated,
17 state your name.

18 WITNESS: Erika Duncan.

19 THE COURT: Counsel, your witness.

20 SOLICITOR BOYD: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY SOLICITOR BOYD:

23 Q Ms. Duncan, where do you work?

24 A RxCare Plus Pharmacy.

25 Q How long, how long have you worked there?

Erika Duncan - Direct examination
by Solicitor Boyd

1 A Since September of '07.

2 Q Okay. Were you working on the morning of
3 October 14th, 2009?

4 A Yes.

5 Q What were you doing that morning?

6 A I was transferring a prescription.

7 Q Okay. Where in the pharmacy were you located?

8 A At the technician section in front of the computer.

9 Q Who else was in that?

10 Who else was working with you that morning?

11 A Terry Netherton, the other tech, Tara, and a clinical
12 student, Casey.

13 Q Okay. What happened that morning?

14 A We were working, and the next thing I know, the
15 pharmacist threw his hands up, and I looked over and there
16 was a gun in his face, and he said you know what this is.
17 And then he said something about getting the drugs.

18 So, the pharmacist went to go get them and he stopped
19 him, told him to get down on the floor, and he told the
20 other two technicians that were beside me to get down on the
21 floor, and handed me a trash bag and told me to go get them.

22 So, I went to the safe and started putting some drugs
23 in the bag and he told the other technician, he said, you,
24 black girl, get up and help her. So, she got up and came to
25 help me, and he told the clinical student to get the til,

Erika Duncan - Direct examination
by Solicitor Boyd

1 and Terry told him that she didn't have the password, she
2 couldn't get it, and then he came back to the safe and
3 started pointing to some drugs and told me to make sure I
4 got all of that.

5 And he started walking around again, and said that he
6 hate that he had to do stuff like that. And we continued to
7 unload the safe. And he went, he told us that was good,
8 that we could go, told us to go into the bathroom. We went
9 into the bathroom. He told us to put our heads on the
10 floor, and that if we called the police that he had somebody
11 waiting out back with an AK47 that would come out and spray
12 us.

13 Q Now, the person who did all this, what was he wearing?

14 A He had on blue jeans, white tennis shoes, and orange
15 hoodie, and he had on gloves, and a mask on his face.

16 Q Okay. You mentioned that you're behind the counter
17 working that morning.

18 A Yes.

19 Q How high is this, is this counter?

20 A It's pretty tall. It comes up to about my shoulders.
21 Maybe a little taller.

22 SOLICITOR BOYD: Your Honor, may the witness stand up
23 and demonstrate the height of the counter?

24 THE COURT: She may.

25 A About up here.

Erika Duncan - Direct examination
by Solicitor Boyd

1 Q Thank you.

2 The, the person who entered the pharmacy and walked
3 around the counter, how much could you see of him?

4 A I could see all of his head and a little bit of his
5 shoulder.

6 Q From the other side of the counter?

7 A Right.

8 Q Okay. And when you're behind the counter, when you saw
9 him, where was he?

10 A When I seen him, he was right in front of Terry is the
11 first time I seen him at the other computer.

12 Q Okay. I'm trying, I'm trying to -- approximately how
13 tall is he?

14 A About six foot.

15 Q Six foot.

16 Okay. No further questions, Your Honor.

17 THE COURT: Mrs. Hodges, your witness.

18 MRS. HODGES: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MRS. HODGES:

21 Q Ms. Duncan, did you have an opportunity to talk to the
22 police that day when they came to the pharmacy?

23 A Yes.

24 Q Okay. Did they take any sort of written statement from
25 you?

Erika Duncan - Cross-examination
by Mrs. Hodges

1 A I spoke with them and they wrote it.

2 Q Okay. Did they actually write, have, have you actually
3 sign a statement or did they just take notes that you were
4 telling them or do you remember?

5 A I don't remember.

6 Q Okay. The person that -- could you see anything about
7 the, the gloves that, that the person was wearing?

8 A Yes.

9 Q Okay. Were they camouflaged gloves?

10 A I don't remember.

11 Q Okay. But they were kind of like a greenish tannish
12 color?

13 A They were a tannish color.

14 Q Okay. Do you notice anything about the mask on the
15 face?

16 A I don't remember.

17 Q Okay. Don't remember what color it was or if it was
18 camouflaged or printed?

19 A No.

20 Q Okay. Were you ever asked to look at any sort of
21 pictures to try and, in terms of like photographic lineup or
22 anything like that?

23 A No.

24 Q Okay. And how long did, did the entire event take?

25 A About three minutes.

Erika Duncan - Cross-examination
by Mrs. Hodges

1 Q About three minutes?

2 A Almost three minutes.

3 Q Almost three minutes or 30 minutes?

4 A Three.

5 Q Three.

6 Okay. So, basically from the time the person walks
7 into the store, gets drugs from the safe, and has, puts
8 you-all in the, the bathroom and goes back out, that whole
9 time frame was about three minutes?

10 A Yes, ma'am.

11 Q Okay. All right. Thank you, ma'am.

12 THE COURT: Redirect.

13 SOLICITOR BOYD: No further questions, Your Honor.

14 THE COURT: Ma'am, you may step down.

15 Do you wish to excuse the witness?

16 SOLICITOR BOYD: Yes, Your Honor.

17 THE COURT: Any objections?

18 MRS. HODGES: No, sir.

19 THE COURT: You're free to go if you'd like. You can
20 stay if you'd like as well.

21 State may call its next witness.

22 SOLICITOR BARNETTE: Like to call Investigator Hutchins
23 to the stand please.

24 THE COURT: Sir, come forward to my left and be sworn.

25 MATT HUTCHINS, having been first duly

Matt Hutchins - Direct examination
by Solicitor Barnette

1 sworn, testified as follows:

2 THE COURT: Have a seat please.

3 (Witness complies.)

4 THE COURT: State your name.

5 WITNESS: Investigator Matt Hutchins.

6 THE COURT: Mr. Barnette, your witness.

7 DIRECT EXAMINATION

8 BY SOLICITOR BARNETTE:

9 Q Where do you work at, sir?

10 A Spartanburg County Sheriff's Office.

11 Q And what is your position there, sir?

12 A I'm a narcotics investigator.

13 Q And how long have you been there, sir?

14 A I've been at the Sheriff's Office since 2002.

15 Q Okay. Back on October 20th of 2009, was you helping
16 the Sheriff's Department involved in the investigation on an
17 armed robbery?

18 A I was.

19 Q And did you go to a location where Marion Stewart was
20 staying?

21 A I did.

22 Q If you would, tell the jury what happened when you or
23 who was with you when you went to the --?

24 A Myself, Investigator William Gary, David Taylor, and
25 Dwight Garcia.

Matt Hutchins - Direct examination.
by Solicitor Barnette

1 Q When y'all arrived there, tell the jury what happened,
2 sir.

3 A When I arrived, I observed a male and female coming out
4 of the residence. As I walked, it was dark. They went back
5 in, knocked on the door, a female came. I asked for Marion
6 Stewart. Shut the door. Could see the scurrying around in
7 there. About two to three minutes later a guy came to the
8 door, stated he was Marion. I asked for his full name. He
9 said Marion Stewart.

10 Q Do you see him in the courtroom here today, sir?

11 A Yes, seated at the table in the white shirt.

12 SOLICITOR BARNETTE: Your Honor, I ask the record show
13 he's identified the defendant.

14 THE COURT: The record will so reflect.

15 You may proceed.

16 Q Please continue, sir.

17 A When I came to the door I told him I was standing in
18 the front yard. Told him that we was there in reference to,
19 investigating some pills that were stolen. At that point he
20 put his hand out and said let's go. I found that odd
21 because I just told him we was there to talk about stolen
22 pills. At that point it was cold out that night. He was
23 shaking, nervous. I asked him if we could, if he was cold,
24 and he wanted to step to my vehicle and he agreed.

25 Q Then what happened after that, sir?

Matt Hutchins - Direct examination
by Solicitor Barnette

1 A Began talking about -- I told him we wanted to talk to
2 him about the robbery at the RxCare in Boiling Springs, and
3 I told him his name had come up in the investigation, and he
4 stated that he didn't understand why his name would come up
5 in the investigation. I told him that pretty much several
6 people was trying to blame him for the robbery alone and
7 wanted his side of the story.

8 I noticed him being nervous. He'd cry at times, stare
9 into a dead stare into the window at times, shifting in his
10 seat, back and forth, and whatnot. Continued to talk. I
11 got a call from Investigator Lorin Williams, and I stepped
12 out of the vehicle at that time to take the call.

13 Q And who was in the car with him at the time when you
14 stepped out of the vehicle?

15 A Investigator William Gary.

16 Q And was he the only officer with Marion, I mean the
17 defendant at that time?

18 A Yes, and they was seated inside my vehicle.

19 Q After you received the phone call, did you go back
20 inside the car?

21 A While I was outside taking the phone call, Investigator
22 Gary told me that Marion wanted to talk with me.

23 MRS. HODGES: Your Honor, at this time we renew our
24 objections previously made.

25 THE COURT: Those objections are noted and the Court

Matt Hutchins - Direct examination
by Solicitor Barnette

1 will make the same ruling.

2 You may proceed.

3 A He had stated Marion wanted to talk with me. I went
4 back to the vehicle to see what Marion wanted. At that
5 point Marion asked me if I had a set of handcuffs in my
6 vehicle, and I told him I was sure I could find a set
7 somewhere. He put his hands out and stated that I'm your
8 man, and I asked him my man for what, and he stated I robbed
9 the pharmacy. And at that point he was then -- when I was
10 talking with---

11 Q At that point, was he arrested later, sir?

12 A Yes, he was arrested at that point.

13 Q Did y'all let him go outside the vehicle after that
14 sir?

15 A He did. He requested to speak with his girlfriend and
16 smoke a cigarette.

17 Q And is this girlfriend Shirley---

18 A Yes.

19 Q ---the blonde hair lady seated in the courtroom today?

20 A Yes.

21 Q Okay. And did he speak to her?

22 A He did.

23 Q Can you tell the jury what was said and what happened?

24 A She brought him a cigarette and Marion told her I will
25 see you in 30 years. At that point she asked why, and

Matt Hutchins - Direct examination
by Solicitor Barnette

1 Marion stated I robbed a store. At that point he was
2 transported to jail.

3 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
4 please.

5 THE COURT: Yes, sir.

6 Q And this robbery occurred in Spartanburg County, is
7 that right?

8 A Yes.

9 Q If you would, please answer any questions that Mrs.
10 Hodges may have for you. Thank you.

11 A Okay.

12 THE COURT: Mrs. Hodges, your witness.

13 MRS. HODGES: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MRS. HODGES:

16 Q Investigator Hutchins, the male and female that came
17 out of the house when you first arrived at the residence of
18 Shirley Taylor and Marion Stewart, was that somebody other
19 than Mr. Stewart and Ms. Taylor?

20 A It was dark. Really can't tell you who, who that was
21 that, that came out at that time.

22 Q Okay. So, you only caught a quick glimpse of those two
23 people?

24 A That's correct.

25 Q And you actually came up and knocked at the door?

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 A We actually parked I guess it's the neighbor's
2 driveway. Really couldn't tell which address it was. Found
3 it and it was dark, and then went up to the porch of
4 Stewart's residence.

5 Q Okay. Did you actually get as far as the door to knock
6 or did, or did Ms. Taylor come out at that point?

7 A To my recollection, I actually knocked cause they came
8 out, didn't see us, went back in, and knocked, and they was
9 standing right inside the door.

10 Q Okay. And at that point, you asked for Marion and a
11 few minutes later he comes out?

12 A That's correct.

13 Q Okay. And, in fact, at that point is when you tell
14 them that you want to talk to them about some pills that
15 have been stolen, is that right?

16 A That's correct.

17 Q And at that point you tell them that basically the
18 DNA's been found?

19 A Don't recall, I don't recall mentioning DNA at all.

20 Q You didn't say anything to him about DNA?

21 A Don't recall DNA being mentioned.

22 Q Okay. And, and at that point after the DNA was
23 mentioned is when he said well, then you must be here to
24 arrest me, isn't that right?

25 A I don't remember DNA being mentioned at all.

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 Q Okay. When you went to the car, how long were you
2 sitting in the car prior to the time you got the phone call
3 from Investigator Williams?

4 A Exact time I don't know. I would guesstimate---

5 Q Approximately.

6 A ---ten to fifteen minutes, somewhere in that, maybe 20.

7 Q Okay. So, you're in your car ten to fifteen minutes,
8 you get a phone call from Investigator Lorin Williams, is
9 that correct?

10 A Yes, ma'am.

11 Q And you actually step out of the car to take that phone
12 call?

13 A Yes, ma'am.

14 Q And during the course of that phone call is when
15 Investigator Williams tells you that an arrest warrant has
16 been signed for Marion Stewart, isn't that right?

17 A That's correct.

18 Q All right. And were you finished with the phone call
19 when Investigator Gary tells you that, that you're wanted
20 back in the car?

21 A I just finished the phone call. Investigator David
22 Taylor was there. We had talked back and forth shortly, and
23 that's when William Gary told me that Marion wanted to talk
24 with me.

25 Q Okay. When you get back in the car, do you tell

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 Investigator Gary or Mr. Stewart that a warrant had been
2 signed for his arrest?

3 A No, I went back to the vehicle to see what Mr. Stewart
4 wanted to tell me.

5 Q Okay. And at that time, what did you say when you got
6 back into the car?

7 A When I got back in the car is when Mr. Stewart asked me
8 if I had a set of handcuffs.

9 Q All right. So, you didn't ask, say anything to get,
10 when you get into the car?

11 A No, I was called back to the vehicle and that's when he
12 told me what he had to tell me.

13 Q And, so, you didn't say anything in terms of what do
14 you need, what do you want, what can I do to help you,
15 what's up?

16 You didn't say anything?

17 A I don't recall saying anything.

18 Q Okay. And you don't have it reflected in the incident
19 report that you wrote up or your notes of what, what
20 happened?

21 A No, my notes state that --.

22 Q Well, no, the question is easy.

23 Do you have anything reflected in there that you asked
24 anything---

25 A No.

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 Q ---of Mr. Stewart?

2 A No.

3 Q Okay. And then Mr. Stewart asked you do you have a set
4 of handcuffs, and you then say I'm sure I can find some?

5 A Yes, ma'am.

6 Q Okay. Do you ask any additional questions at that
7 point?

8 A Yeah, as I testified earlier, I asked him -- oh, he
9 stated, when he said that, he put his hands out, stated I'm
10 your man, and I asked him my man for what.

11 Q Okay. So, he says I'm your man, and then at that point
12 you know that there's an arrest warrant pending for Marion
13 Stewart for armed robbery?

14 A Yes, ma'am.

15 Q And at this point you have not advised him that there's
16 an arrest warrant pending?

17 A No, ma'am, because he initiated the contact with me.

18 Q That's not my question.

19 You have not advised him that there's an arrest warrant
20 pending, have you?

21 A No, I was explaining my answer.

22 Q You did not advise him there was an arrest warrant
23 pending, did you?

24 SOLICITOR BARNETTE: Your Honor, I think he has a right
25 to answer---

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 THE COURT: I'll instruct the witness.

2 Sir, I'll ask you to be responsive to the question.

3 Then I'll give you every opportunity that you need to
4 explain your answer.

5 A No, I did not advise him his rights at that time.

6 Q Thank you.

7 THE COURT: Now, do you wish to explain the answer?

8 WITNESS: Yes.

9 THE COURT: You may do so.

10 A Because he had initiated the contact with me.

11 Q And even though he initiated the contact with you, you
12 knew that an arrest warrant was pending, isn't that correct?

13 A I did at that time, yes, ma'am.

14 Q And you advised, did not advise him, at that point,
15 when he says I'm your man, I have an arrest warrant for you?

16 A No, ma'am, I did not.

17 Q You asked him your man for what?

18 A That's correct.

19 Q And isn't it true that he actually told you if you're
20 looking for a man that sells pills, if you're looking for a
21 drug dealer, I'm your man?

22 A No, that's not true.

23 Q Okay. And the -- you don't advise him, at that point,
24 of his rights, that he has a right to remain silent?

25 A Did not.

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 Q So -- but did you tell him that he's under arrest at
2 that point?

3 A I told him he was under arrest after he had stated that
4 he had robbed the pharmacy.

5 Q All right. So, the answer to the question is yes?

6 A I'm sorry?

7 Q The answer to my question is yes?

8 A The arrest of him---

9 SOLICITOR BARNETTE: Your Honor, may we approach the
10 bench for a second?

11 THE COURT: You certainly may.

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 Q So, you told Mr. Stewart that he was under arrest after
15 he says I'm your man, you asked him the question your man
16 for what, your man for the robbery, and you put him under
17 arrest at that point?

18 A That's correct.

19 Q At that point did you advise him that he had the right
20 to remain silent and that he, anything he said or did after
21 that point could be used against him?

22 A No, I did not because I did not intend to interview him
23 anymore.

24 Q All right. But you did not tell him that he had the
25 right to remain silent and that anything he said in your

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 presence could be used against him?

2 A I did not.

3 Q And it's your testimony that when Shirley comes --

4 does, does Shirley come and ask to hug Mr. Stewart good-bye?

5 A He had wanted to smoke a cigarette, and she brought him
6 the cigarette.

7 Q Okay. So, did she ask to, to hug him good-bye?

8 A I don't remember if she asked. Well, they hugged
9 good-bye.

10 Q Did you see him give her anything?

11 A I did not.

12 Q Okay. The conversation, as you recollect it, is he
13 says I'll see you in 30 years?

14 A As I recollect, yes.

15 Q And she asked why and he says I robbed the store?

16 A A store.

17 Q A store.

18 A Yes.

19 Q And is that verbatim of what you recollect?

20 A It's what I recollect.

21 Q Did you write your notes for this incident immediately
22 after it happened?

23 A Wrote notes that night, yes, ma'am, I did.

24 Q When did you type up your incident report?

25 A Typed the notes up roughly be a day or two later.

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 Q A day or two later?

2 A Yes. At the time we was in the process of changing
3 systems. They're saved into like draft form. Computers was
4 changing over. We had been handwriting supplementals, and
5 then the draft, the draft would of been put into the system
6 on a later date.

7 Q So, you're telling me that the system date that says
8 that it's entered on 11:20 of, 11:12:57 on December the
9 4th of 2009 is an inaccurate date?

10 A That's when it would of been entered into the new
11 system, yes.

12 Q When it's entered in from your handwritten notes?

13 A Yes. Well, from typed up notes that are saved into
14 draft form.

15 Q Okay. Did you type up those notes?

16 A I did.

17 Q All right. The notes that are saved in the draft, are
18 they verbatim for what's in the system now?

19 A Yes, these are verbatim my notes.

20 Q Okay. And do you have your handwritten notes?

21 A Don't have handwritten notes. It's typed up notes.
22 They're typed into the system and saved into a draft form.

23 Q Okay. But you wrote your -- you handwrote your notes
24 that night?

25 A I -- typically what I do is type the notes up from what

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 happened that night.

2 Q Okay.

3 A And then saved them. They're saved in draft form, and
4 then when this was put in the system, then it's copy and
5 pasted into the system once everything got online.

6 Q So, you immediately type your notes?

7 You never write your handwritten notes?

8 You immediately type them in the draft form?

9 A I usually type them within a day, yes.

10 Q Within a day.

11 All right. Previous to going to Mr. Stewart's house,
12 you also had a conversation with Grady Dale Taylor, isn't
13 that true?

14 A That's correct.

15 Q Where did that conversation happen?

16 Do you remember?

17 A The initial conversation happened on Jonestown Road.

18 Q And where is that?

19 A In Chesnee in Spartanburg County.

20 Q Spartanburg County.

21 All right. When you talked to Mr. Taylor, you
22 immediately or basically give him his Miranda rights, don't
23 you?

24 A That's correct.

25 Q In fact, you tell him at that point before you even

Matt Hutchins - Cross-examination
by Mrs. Hodges:

1 start talking with him that he has the right to remain
2 silent?

3 A That's correct.

4 Q All right. And you're going to talk to Mr. Taylor
5 based off the information that another witness in this case
6 had given you and Investigator Lorin William, is that
7 correct?

8 A At that time, Lorin Williams had called requesting me
9 to come up to the area. At that time I was not sure if
10 there was an arrest warrant on Mr. Grady or not. I was just
11 getting up to speed on things. That's why I read him his
12 rights at that time.

13 Q Okay. So, you -- so, you have absolutely no knowledge
14 of the case other than Lorin Williams is asking for your
15 help presumably because it involves the substance of
16 narcotics, and you immediately tell Mr. Taylor he has a
17 right to remain silent?

18 A That's correct.

19 Q All right. It's true, is it not, that Mr. Taylor told
20 you that he would show you and Investigator Williams where
21 the pills are if you can promise that he not be arrested?

22 A That's correct.

23 Q All right. And it's true, is it not, that he first
24 tells you that these pills are on the side of the road on
25 Midnight Road?

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 A That's correct.

2 Can I explain my previous answer?

3 Q Oh, I'm sorry.

4 A He did ask us or tell us that he would show us if he
5 could not be arrested. At that time I told him that we
6 could not make him any promises on that. We could not
7 coerce him, threaten him, anything like that.

8 Q Right.

9 A And he -- and we made clear to him that we was not
10 making that guarantee to him.

11 Q Right.

12 And y'all -- and y'all didn't make him any promises or,
13 or considerations for leniency or anything in your
14 conversations with him, did you?

15 A I did not, no, ma'am.

16 Q Okay. And he tell you that, despite the fact that
17 y'all can't make him any promises, he tells you that the
18 pills are on the side of the road off of Midnight Road?

19 A That's correct, and stated that he would take us and
20 show us where they were.

21 Q Okay. And you-all were using your vehicle at the time,
22 is that correct?

23 A That's correct.

24 Q That's a Trailblazer?

25 A That's correct.

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 Q The -- so, you start driving towards Midnight Road, is
2 that correct?

3 A That's correct.

4 Q When you -- had you actually gotten to Midnight Road?

5 A I don't believe we had actually made it to Midnight
6 Road. We were -- I was heading towards Rainbow Lake Road,
7 which Midnight runs off of, and that's when he advised me,
8 no, it's not Midnight, I was wrong, it's Ghost Valley.

9 Q It's Ghost Valley Road.

10 All right. So, he then tells you that it's on Ghost
11 Valley Road.

12 Did you go to Ghost Valley Road?

13 A Yes, ma'am.

14 Q All right. And were you -- did you find any pills?

15 A I stayed in the roadway. He walked with Lorin
16 Williams.

17 Q Okay.

18 A Showed Lorin where they were at.

19 Q Okay.

20 A I stayed on, at the road that was down a little ways
21 off the road.

22 Q Okay. Could you see, from where you were standing on
23 the road, where, where they went or did they get far enough
24 away that you couldn't really tell what was going on?

25 A It wasn't that far, but it was falling trees, but it

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 was dark, and Ghost Valley has no lights on it.

2 Q Got you.

3 A Hence the name Ghost Valley.

4 Q Got you.

5 A It's very dark. That were some trees that had fallen
6 and they were just on the, the right at those trees. So --.

7 Q Okay.

8 A And I never walked there to see them.

9 Q All right. Did you hear any conversation regarding the
10 clothing or gun being under the bag?

11 A There was a conversation on the clothing that was wore.
12 The conversation that Lorin Williams asked was what kind of
13 mask was worn at the robbery.

14 Q Okay.

15 A At that time Taylor stated it was a hunting mask.

16 Q Okay.

17 A Taylor then stated or Investigator Williams asked him
18 what color the hoodie was that was worn, and Taylor
19 responded it was -- the news said it was red, but it was
20 actually orange.

21 Q Okay. Had there been some sort of news report shortly
22 after the robbery had occurred?

23 A I assume so.

24 Q Don't remember anything, reading, seeing anything on
25 the news?

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 A I don't watch the news.

2 Q Okay. Live it every day, you don't need to watch it?

3 A No, I don't care to hear it.

4 Q I understand.

5 The -- but you didn't hear anything in terms of, of
6 whether the gun or the clothing or anything was up
7 underneath the bag being, having Taylor warn Lorin Williams
8 about the fact to be careful, the gun was underneath the
9 bag?

10 A I don't recall that.

11 Q Okay.

12 A But I was not there to every conversation that Lorin
13 Williams had with Mr. Taylor --

14 Q Okay.

15 A -- back and forth.

16 Q Okay. Did you go have a conversation with Mr. Taylor
17 where he told you that, that he and the woman driving were
18 parked on the, the street behind the pharmacy?

19 A Yes, ma'am.

20 Q All right. And does he -- does Mr. Taylor tell you
21 that they pulled to the entrance of Sterling Estates, the
22 subdivision behind this shopping center?

23 A He does.

24 Q And does he say that they let Mr. Stewart out and
25 waited there for him?

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 A Let me find the place in my notes. I believe that's,
2 that's correct.

3 Q At that point Mr. Taylor also says that he did not know
4 that Mr. Stewart was going to rob the store until he comes
5 running out with a bag of pills?

6 A That's correct.

7 Q Did Mr. Taylor -- did you ask Mr. Taylor about
8 surveillance cameras at Sterling Estates?

9 A At the point he stated that he did not know Lee Ann's
10 last name, whose the vehicle that was used. I told him we
11 probably could find out because I thought they were
12 surveillance cameras at the entrance. Then he stated
13 something to the effect well, he thinks it records over;
14 something like that, and I advised him that I believed they
15 stayed for at least a week.

16 Q Okay. And then you -- he then says that he also
17 thought that the tag had been changed?

18 A At that point he stated that he remembered them talking
19 on the way there that the tag had been changed on the
20 vehicle.

21 Q Okay. Did you ever respond to the scene of the Rx
22 Pharmacy that, that, the time that the robbery happened or
23 shortly thereafter?

24 A No, ma'am.

25 Q All right. Had you ever been -- are you familiar with

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 the area behind the pharmacy in Sterling Estates?

2 A I'm familiar with the area, yes, ma'am.

3 Q Okay. Do you -- would you know the approximate
4 distance of Sterling Estates from the back door of the
5 pharmacy?

6 A I, I don't know the exact distance. To my
7 recollection, maybe 40 or 50 yards at the most.

8 Q Okay. So, a hundred feet or so?

9 A Roughly.

10 Q Maybe a little bit more, a little less.

11 A Yeah.

12 Q Okay. And, in fact, the back park, the back parking
13 lot area, they're a bunch of trees and things that kind of
14 separate the parking lot area from the street and then
15 Sterling Estates, isn't that right?

16 A I honestly couldn't tell you on that.

17 MRS. HODGES: Okay. All right. Beg the Court's
18 indulgence one moment, Your Honor.

19 THE COURT: Yes, ma'am.

20 (Pause.)

21 Q Thank you, sir. That's all I have.

22 SOLICITOR BARNETTE: NO further questions. We ask that
23 the witness---

24 THE COURT: All right. Investigator Hutchins, you may
25 step down.

Matt Hutchins - Cross-examination
by Mrs. Hodges

1 MRS. HODGES: We have no objections to the investigator
2 being excused.

3 THE COURT: You're free to go if you'd like, sir.

4 SOLICITOR BARNETTE: I'd like to call---

5 THE COURT: You may call your next witness.

6 SOLICITOR BARNETTE: Like to call Investigator Gary to
7 the stand.

8 THE COURT: Come forward, sir, and be sworn.

9 WILLIAM GARY, having been first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat, sir. Once seated, state your
12 name for the record.

13 WITNESS: My name is William Gary.

14 THE COURT: Mr. Barnette, your witness.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Where do you work at, sir?

19 A Spartanburg County Sheriff's Office.

20 Q And what is your position there, sir?

21 A Currently assigned to the homicide violent crimes
22 division at the Sheriff's Office. My main focus right now
23 are cold case, unsolved homicides.

24 Q And how long have you been at the Sheriff's Department,
25 sir?

William Gary - Direct examination
by Solicitor Barnette

1 A Been at the Sheriff's Office a little bit over sixteen
2 years.

3 Q On October 20th, 2009, were you called -- did you go
4 to the residence of Marion Stewart?

5 A I did.

6 Q And who went with you, sir?

7 A Investigator Hutchins, Dwight Garcia, and David Taylor.

8 Q Okay. And would you tell the jury what happened once
9 you arrived there?

10 What location was this house at?

11 A It's 146 Fairview Oaks Drive I believe. That's what I
12 have in my notes.

13 Q Okay.

14 A It's up around the Inman area.

15 Q Yes, sir.

16 If you would, tell, tell the jury what happened once
17 your arrived there, sir.

18 A When we got there, we actually parked in the neighbor's
19 driveway thinking that was the residence we were going to,
20 and we end up -- we found out it was next door. So, we walk
21 across the yard, and there was a car parked in front of the,
22 of the residence in front of, in the yard. And as we were
23 walking across, I don't, I don't know if someone at the
24 door, on the porch, or -- but I saw someone go back in to
25 the residence. So, I went around to the left side of the

William Gary - Direct examination
by Solicitor Barnette

1 house not knowing where they were going, whatever.

2 I heard some conversation up front, and realized that
3 Investigator Hutchins had actually made contact with
4 Mr. Stewart. So, that's when I came back around to the
5 front of the house, and I walked up just as they were
6 starting to talk and standing in the yard between the porch
7 and the car that was parked in the yard.

8 Q And do you see Marion Stewart here in the courtroom,
9 the man you talked to?

10 A Yes, sir.

11 Q Can you identify him for us?

12 A He's the gentleman sitting at the table with the light
13 shirt, red tie, been here all week.

14 SOLICITOR BARNETTE: Your Honor, I would ask the record
15 reflect he's identified the defendant.

16 THE COURT: The record will reflect he has identified
17 the defendant.

18 You may proceed.

19 Q If you would, continue on, sir.

20 A When I walked up, Investigator Hutchins was starting to
21 talk with him about this. Told him we needed to talk with
22 him about a robbery where some pills were stolen, and
23 Mr. Stewart acted, you know, I don't what you're talking
24 about. He was told by Investigator Hutchins, you know, no
25 reason to deny, we've got your DNA there. He turned around,

William Gary - Direct examination
by Solicitor Barnette

1 puts his hand behind his back, and both of us were what are
2 you doing. If you got my DNA, I must be under arrest. We
3 told him, no, you're not under arrest, we need to talk to
4 you about this, what, you know, what's going on.

5 He said he didn't know anything about it. The
6 conversation there was not very long. That night was, was
7 pretty cold, and he was -- I was cold. He was shaking and,
8 so, the offer was made to step inside, let's get in the car,
9 you know, cause he said he was cold. It would make him more
10 comfortable to talk, and he said let's sit in your car.

11 So, we went to Investigator Hutchins' car cause he was
12 driving an SUV, a Chevy Trailblazer. A little bit easier to
13 sit in and talk than, than other cars we had there. And,
14 so, Investigator Hutchins got in the driver's seat.
15 Mr. Stewart was in the passenger front seat and I was in
16 the, in the rear right side seat.

17 During the time we were talking to him about what's,
18 about this case, we've gotten information he's involved, had
19 knowledge of it. He kept denying every, any involvement or
20 knowledge of the case. At one point during this
21 Investigator Hutchins stepped out to receive a phone call.

22 while he was out, I made the comment to him that why
23 shouldn't we believe someone who took us to a location, and,
24 and we found a black trash bag full of pills, and they tell
25 us that you're the one that did this, you're involved. If

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by Solicitor Barnette

1 they can take us---

2 MRS. HODGES: Objection, Your Honor. I'm gonna renew
3 my objection at this time cause the anticipated testimony
4 is---

5 THE COURT: The objection is noted. The Court will
6 make the same ruling.

7 You may proceed.

8 A If we shouldn't, you know, if we can, if he can take us
9 and show us that, and tell us who else was involved, why
10 shouldn't we believe them when they can take us and show us
11 that, and there's really no response. And I said what if I
12 told you that we went up off Rainbow Lake Road and found
13 this, and his response was -- let me look. He told me that
14 I finally stuck the key in the right, in the lock and it
15 turned. Then he's asking me where off Rainbow Lake Road it
16 was. So, my response back to him was if I turned the key in
17 the lock and it turned, then I shouldn't get something back
18 for that, and he immediately said Ghost valley like, you
19 know, is that where it was cause Ghost valley runs off of
20 Rainbow Lake Road.

21 I told him yeah, it was off, it was off Ghost valley
22 where we got the pills, and that's when he asked to speak to
23 Investigator Hutchins again. So, I opened the door and got
24 in touch, called, got Matt's attention, and told him he
25 wanted to talk to him, and, so, Investigator Hutchins got

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1 back into the front seat of the car. And when he got in, it
2 was myself, what you need, I don't know exactly what he
3 said. But it's, you know, basically just okay, here I am
4 kind of thing, and he immediately stuck his hands out and
5 said give me some handcuffs. Investigator -- and I'm
6 sitting back there, what's going on, and Investigator
7 Hutchins said I'm sure I can't find some.

8 MRS. HODGES: Your Honor, I renew our objection to this
9 particular statement as well.

10 THE COURT: Noted. The Court will make the same
11 ruling.

12 A He said I'm sure I can find some, and his, his
13 statement, as I heard it, was you got your man. I did the
14 robbery. And at that point or interview, question, answer
15 ended. Then that's when we got out of the vehicle, he was
16 handcuffed, and we were waiting on a transport unit to come
17 transport him to the office.

18 while we were waiting, he asked about a cigarette. I
19 went up and I believe it was his nephew that was on the
20 porch. I got a cigarette from him. Of course, they're
21 asking me what's going on, and I just told him, you know, I
22 can't talk to all of you about it right now, but he's gonna
23 be going with us. Got a cigarette and took it back to him.
24 At some point he wanted to talk to his girlfriend that was
25 there, and she had expressed an interest on would we

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1 consider to talk to him, but at the time, you know, I told
2 her not right now, maybe in a little bit.

3 So, we eventually let her come down to where he was to,
4 to talk to him. He hugged her. She was asking what was
5 going on, and he said something like I made a mistake, but
6 he was---

7 MRS. HODGES: Objection, Your Honor.

8 THE COURT: Same objection. Noted. The Court will
9 make the same ruling.

10 You may proceed.

11 A Told her that he made a mistake, and that he would see
12 her in 30 years.

13 Q Talking about Ghost Valley, you never mentioned Ghost
14 Valley to him, did you?

15 A No.

16 Q Did Matt Hutchins, Investigator Hutchins mention it?

17 A No, nothing about us finding the pills before I said
18 something about that to him had ever been mentioned to him.
19 We were talking to him about a robbery where pills were
20 stolen, but we had never told him that we had found this bag
21 of pills anywhere much less on Ghost Valley.

22 Q And he admitted to you robbing the pharmacy, is that
23 correct?

24 A Yes.

25 Q And his girlfriend -- do you see his girlfriend in the

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1 courtroom here today?

2 A Yes, sir, she's sitting in the back, blond hair, black
3 jacket with the pink top.

4 Q Okay. Thank you.

5 And do you know her as Shirley now I assume?

6 A Yeah, I do now. I didn't know her name then.

7 Q And that was the person you saw give a hug to?

8 A Yes.

9 Q And that was the person he made the statement to?

10 A It is.

11 SOLICITOR BARNETTE: One moment, Your Honor, please.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q Please answer any questions that Mrs. Hodges may have
15 for you, sir. Thank you.

16 THE COURT: Mrs. Hodges, your witness.

17 CROSS-EXAMINATION

18 BY MRS. HODGES:

19 Q Investigator Gary, were you present during part of the
20 conversation that Investigator Lorin Williams and
21 Investigator Hutchins had with Dale Taylor prior to going to
22 Mr. Stewart's home?

23 A Not really. I was there when he was approached --

24 Q Okay.

25 A -- at his house, and I was told that he indicated he

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by Mrs. Hodges

1 wanted to go away from the house to talk to them.

2 Q Okay.

3 A So, he actually rode with them somewhere else, and the
4 other investigators that were there waited in the area not
5 knowing, you know, just tell us what's going on while
6 they're talking to him. And then while we're on Ghost
7 valley recovering the pills, I was present when, you know,
8 he told us where it was and, and -- well, he told them where
9 to stop, and, so, when they stopped, the rest of us stopped.
10 And then I was out when he, had saw him point to the area
11 where it would be in the woods, and that's about the extent
12 of my, me being around during his conversations.

13 Q Did you go down into the woods where the pills were
14 found?

15 A Not until after they were initially located.

16 Q All right. So, did you hear any of the conversation
17 between Mr. Taylor and Mr. Williams regarding the gun and
18 the clothing?

19 A The only thing I remember with that is something being
20 said about he thought it was there, but it may have been
21 taken away from where it was, and, you know, be careful, the
22 gun may be there cause I remember Investigator Davis being
23 told, you know, just when you move the bag just be careful.
24 It's normally a gun just sitting there, if you move
25 something off of it, you don't have to worry about it, but

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1 it's a good precaution when you're in the woods. I don't
2 know if a stick could of gotten on a trigger guard or
3 whatever. It's always a good precaution.

4 Q So, you did actually hear Mr. Taylor say be careful,
5 the gun may be under the bag or the gun may be present near
6 the pills?

7 A Right. He said that, but he said he thought it had
8 been taken away from there. But he thought, at one point,
9 it was there.

10 Q Okay. You actually identify Grady Dale Taylor as Dale
11 Horton in your investigative supplemental report, is that
12 correct?

13 A I do.

14 Q And that's based on information you were given by
15 somebody or---

16 A That's based off of my error.

17 Q Just, just---

18 A I know a couple of Dale Horton's, and when I was typing
19 it just got natural, and you---

20 Q Okay.

21 A It, it was a continuation of errors throughout.

22 Q Okay. The conversations that are had on Fairview Oak
23 Drive, you were not privy to any of the conversation that
24 Investigator Hutchins had with Lorin Williams at the time
25 Investigator Hutchins comes back to the Trailblazer and gets

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1 back in the car, is that correct?

2 A No, I was not.

3 Q And, in fact, I believe there's previous testimony,
4 previous sworn testimony you said that Investigator Hutchins
5 gets back into the car and says what do you need?

6 A I don't remember exactly what I said then. But it
7 was -- and I didn't put in my notes exactly what he said.
8 But it was something to that effect, what do you need, what
9 do you want, something like that. Basically when somebody
10 says hey, this person wants to talk to you, you walk up, you
11 know, you usually acknowledge something with that.

12 Q Okay.

13 A And he, he did something to that effect. I don't
14 remember exactly what he said.

15 Q So, he actually did say something when he comes back
16 into the car along the lines of what do you need, what do
17 you want?

18 A Yeah, I mean basically saying here I am, you know, do
19 you have something to say or what do you want. But, but
20 nothing of do you have something to tell me. You know,
21 are -- that is admitting any -- you know, he didn't ask any
22 direct question about this case. Just basically
23 acknowledging I'm back.

24 Q And what do you need, what do you want?

25 A Like I said, I don't know exactly how he said it, but

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1 it was something to that effect, I'm here, what do you want,
2 you know, what's up. You know, it's something like that.

3 Q Okay. You were not advised, at that point, that there
4 was an arrest warrant for Mr. Stewart, were you?

5 A No.

6 Q At what point did you learn that there was an arrest
7 warrant for Mr. Stewart?

8 A After he was taken out of the car.

9 Q Okay. So, after -- basically at that point when, when
10 Investigator Hutchins arrests him is, is when you learned
11 there's an arrest warrant for him?

12 A Yeah, that's when he told me that the phone call he got
13 was him being told we got an arrest warrant on him. So, you
14 know, it's -- as far as I knew, nothing had changed.

15 Q And at any point did you advise Mr. Stewart, once he's
16 being placed under arrest by Investigator Hutchins, that
17 Mr. Stewart has the right to remain silent, that anything he
18 says can be used against him or anything that he does in the
19 presence of police officers can be used against him?

20 A I don't remember the thing about the presence being in
21 the Miranda warnings, but---

22 Q That's not my question, Investigator Gary.

23 A I understand. But no, we didn't tell him -- we did not
24 read him his Miranda warnings because we had no intention,
25 at that point, to ask him any additional questions about

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1 this case. Statements he made after made were an utterance
2 that he made to someone else that walked up asking him
3 what's going on that was not a police officer, and we just
4 overheard what he said to her.

5 Q So, you did not advise him that anything that he said
6 or anything that he did could be used against him in a Court
7 of law?

8 A No, I did not.

9 Q All right. And you actually write in your report that
10 it is his nephew that brings him the cigarette, is that
11 correct?

12 A No, I wrote in my report that I went to the porch and
13 got a cigarette from his nephew.

14 Q You got a cigarette from a nephew?

15 A Yes.

16 Q So, she, she does not bring him a cigarette?

17 You go and get a cigarette from the nephew and bring it
18 to him?

19 A That may of been cigarette number two. I know I went
20 to the porch and got his cigarette from the nephew and
21 brought it to him. We were out there 15 minutes or so
22 waiting on the transport unit to come pick him up, and, you
23 know, if he wants to smoke while we're standing out there,
24 have at it, you know. He's not pulling a gun or knife or
25 anything on us. He's standing there smoking when it's kind

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1 of cold. We're standing outside. Give him some comfort and
2 I -- if she brought him a cigarette, I couldn't tell you.
3 But I know I went to the porch and got a cigarette from the
4 nephew and brought it to him.

5 Q So, the question was, is you went and got the cigarette
6 from the nephew and brought it to him?

7 Is that a yes?

8 A If that's the question, yes, it is.

9 Q Okay. And to the best of your recollection, she, he
10 says I made a mistake, I'll see you in 30 years?

11 A That's what I heard, yes.

12 Q Okay. That's what you heard?

13 A Yes.

14 Q And you wrote it down?

15 A Well, I did my notes. I typed it up.

16 Q Okay. And when did you do your notes?

17 A I'd say it was a week later. I don't -- this -- the
18 printed copy that I'm looking at here doesn't show the exact
19 time that it was put into the system. I don't think.

20 Q Okay.

21 A It may of been on December the 4th, but I'm not sure.

22 MRS. HODGES: May I approach the witness, Your Honor?

23 THE COURT: You certainly may.

24 Q Investigator Gary, I'm gonna hand you three pieces of
25 paper, and I'm gonna ask if you recognize what these are.

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by Mrs. Hodges

1 A Okay. Yeah, this would be the top page. It wasn't on
2 the copy that I had.

3 Q Okay.

4 A This shows the date that it was put into our records
5 system.

6 Q All right. And what date was that?

7 A November the 25th.

8 Q Okay. Now, did you actually taken handwritten notes
9 that night or did you just type up a draft for it to be
10 entered into the system later on?

11 A In this particular cases with most, all my cases, I do
12 take handwritten notes. Once I transcribe those over to a
13 typed version and save, I destroy the handwritten notes,
14 and, and just go with what I type up in the system.

15 Q All right. Do you remember what you did in this
16 situation?

17 A I think -- I had some notes that I had taken, but I,
18 in -- when we were interviewing, I didn't have anything. I
19 wasn't making notes on it while we were talking. This is
20 something I did, and once I got to the point where I could
21 sit down and just kind of jot some things down, just some of
22 that, and then once I did this report here, those were
23 disposed of.

24 Q And do you remember when you did that, when you, when
25 you actually jotted down your notes from what you can

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by Mrs. Hodges

1 remember?

2 A The time that's in the system because what I did, we
3 had just started putting in our new, in this record system.
4 We had just started the investigation. The property crime,
5 the personal crime -- the property crimes started before us.
6 We had just started in the violent crimes of actually
7 putting our own into the system. So, actually typed it in a
8 word document, copied, and pasted it over to the new system
9 and saved it in the system.

10 Q So, you actually typed it and put it in the system on
11 November the 25th of 2009?

12 A Yes.

13 Q Okay. When did you make your handwritten notes to
14 remind yourself of what happened before or to be able to
15 then go and type this and put it into the system?

16 A It was that, well, morning I guess it would be. When
17 we left from there, I drove to my house, ten minutes away,
18 fifteen minutes away, and my wife doesn't like me smoking.
19 I wanted a couple cigarettes. I was sitting outside in my
20 car in the driveway, I don't know, three, four o'clock in
21 the morning, make my notes right then, and sat them aside
22 and just waited till then to type, type up this report.

23 Q So, you're making your handwritten notes approximately
24 within three hours or so of when you actually had the
25 conversation?

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1 A Correct.

2 Q And, so, the incident is fresh in your mind?

3 A Correct.

4 Q And it's fresh in your mind that you heard Matt
5 Hutchins say we've got your DNA, you might as well tell us,
6 come clean with it?

7 A Yes.

8 Q Okay. And it's fresh in your mind that you hear
9 Mr. Stewart say I made a mistake, I'll see you in 30 years?

10 A Right, that -- I was from me to you when that was going
11 on, and the part about the DNA, one reason that stood out to
12 me, I didn't like it. I mean I don't mind bluffing, lying
13 to someone as far as having the evidence that you don't
14 necessarily have if they're a suspect in the case. But it
15 was, to me, a little bit early, as I've done it before, kind
16 of early in an interview to throw something like that out to
17 someone. You know, it might of been something to do later
18 on when it's going nowhere, but just to see what kind of
19 reaction or response you get from that.

20 But it's a, it's a gamble to take, and it was kind of
21 early. That's one reason that stood out. The comments
22 there -- they said more things cause when they were hugging
23 I couldn't hear everything they were saying.

24 Q Sure.

25 A But as the hug was going on, that's what I heard him

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by Mrs. Hodges

1 say to her.

2 Q Okay. And, in fact, you write in your report
3 parenthetically that, after you hear the, this comment made
4 that the DNA was located on some of the evidence, you put
5 parenthetically this was not true, but it was an attempt to
6 get a reaction from him?

7 A Correct.

8 Q So, this basically was done in an attempt to elicit a
9 reaction and hopefully a confession or some sort of
10 admission from him?

11 A You only hope to get a confession from someone -- well,
12 let me, let me answer first and then I'll explain. Yes,
13 that's the reason you would say something like that.

14 Q Thank you.

15 A But you're only hoping to get that kind of reaction,
16 especially a confession, if they were involved in something.

17 Q And you-all were basing the consideration that Mr.
18 Stewart was involved based off of what Mr. Taylor had told
19 other investigators?

20 A Yes.

21 Q Okay. So, it came down to what Mr. Taylor had told you
22 that led the Sheriff's Office to go talk to Marion Stewart?

23 A Yes.

24 Q Okay. Did you go to the pharmacy?

25 A I did.

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by Mrs. Hodges

1 Q Okay. Did you go to the pharmacy the day that the,
2 robbery happened?

3 A I did.

4 Q Are you familiar with that area independently from this
5 incident?

6 A Yes.

7 Q I'm going to hand you what's previously been marked for
8 identification purposes as Defendant's 1, 2, and 3, and ask
9 if you recognize what's depicted in these photographs.

10 A There's only one that I can tell you I definitely
11 recognize.

12 Q Okay. And which one is that?

13 A No. 3.

14 Q Okay. And what is No. 3?

15 A No. 3 is the end of the strip mall where the RxCare is
16 located in Rocky Branch Plaza.

17 Q Okay. And does Defendant's No. 3 show a back-door?

18 A It does.

19 Q All right. Are you familiar with---

20 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
21 this point. If she's gonna enter it, enter it in, that's
22 fine. But if she's not, I don't think he can describe off
23 the picture what's being said.

24 THE COURT: Are you offering those into evidence?

25 MRS. HODGES: I can, Your Honor.

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1 THE COURT: Do you wish to offer them into evidence?

2 I'm not gonna let you publish something that's not
3 going to be in evidence.

4 MRS. HODGES: I understand, Your Honor.

5 THE COURT: So, if you---

6 MRS. HODGES: I'm thinking.

7 THE COURT: All right.

8 Q Are you familiar with Sterling Estates?

9 A I'm familiar with the location. I think I've been in
10 the neighborhood twice.

11 Q Are you familiar with the distance from Sterling
12 Estates driveway to the parking lot that's behind RxCare?

13 A Not, not really. I mean I know it's -- I know Rocky
14 Branch Road or whatever it's called runs in front of
15 Sterling Estates and behind the, the shopping center. But I
16 couldn't tell -- I couldn't tell you right now if there's a
17 back entrance from the shopping center on to that road.
18 I've heard there was, but I can't tell right now that I've
19 seen it, and then where, exactly where Sterling Estates
20 comes in in relationship to that I couldn't tell you
21 exactly.

22 MRS. HODGES: Okay. I have nothing further, Your
23 Honor.

24 SOLICITOR BARNETTE: Nothing further from this witness,
25 Your Honor.

1 THE COURT: All right. You may step down.

2 Ladies and gentlemen of the jury, at this point in time
3 we're gonna take a short break. As always, when you leave
4 the courtroom, I'll advise you not to begin any discussions
5 until I've asked you to do so. The bailiffs will take care
6 of anything you'd like. Just let them know if you have any
7 problems or issues, and at this time we'll be in on a short
8 recess.

9 You may retire to the jury room.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. We're in recess.
13 Defendant remains in custody.

14 (WHEREUPON, a short recess was taken at this time.)

15 THE COURT: All right. Is the State ready to proceed?

16 SOLICITOR BARNETTE: Your Honor, the State rests at
17 this time.

18 THE COURT: Oh, okay. We need to take care of some
19 things then.

20 MRS. HODGES: Yes, sir.

21 THE COURT: Be happy to hear from you, Mrs. Hodges.

22 MRS. HODGES: Thank you, Your Honor.

23 At this time I would renew my objections to the
24 statements that came in that Investigator Gary and
25 Investigator Hutchins testified to that occurred at the

1 residence on, in, on Fairview Oaks Drive in Inman based on
2 the previous motions and arguments that we have made and the
3 Court has ruled upon.

4 Your Honor, we would also renew our objections to the
5 jail phone calls based on the objections that we had made
6 previously as well as it did not sound to me during our in
7 camera session that the same calls were played or same
8 number of calls were played for the jury. I'm not sure of
9 the same substantive, same substantive information was heard
10 by the Court both times. But we just basically renew our
11 objections to those calls based on the arguments made
12 previously, and we would make a motion for directed verdict
13 based on the fact that the State has not been able to
14 produce sufficient evidence for the case to go forward to
15 the jury at this time.

16 THE COURT: All right. My rulings concerning the
17 statements made by the defendant at the residence would not
18 change. I had mentioned to you that if there was any -- if
19 the, if the defense had any argument concerning the service
20 of a warrant or immediate requirement of arrest, I assume
21 you've not produce any other authority other than what we've
22 seen?

23 MRS. HODGES: I've searched diligently last night, Your
24 Honor.

25 THE COURT: I could not find any myself. So, my ruling

1 would, would remain the same on that particular issue for
2 the reasons that I stated previously.

3 MRS. HODGES: Yes, sir.

4 THE COURT: As to the jailhouse conversations, I'm not
5 sure you played the one that said something about she knew
6 too much.

7 SOLICITOR BARNETTE: I didn't at that time, Your Honor.

8 THE COURT: Okay. So, it was not -- that was not put
9 in front of the jury.

10 MRS. HODGES: That's correct, Your Honor.

11 THE COURT: And -- but my rulings would remain the same
12 on the other conversations.

13 As to the motion for directed verdict, of course, I
14 have to take the evidence in the light most favorable to the
15 State, and any inferences that can be drawn from that
16 evidence must also be drawn in favor of the State. Based on
17 that standard, and the evidence that's been presented, I
18 deny the motion at this time.

19 MRS. HODGES: Yes, sir.

20 THE COURT: Now, as to your clients right to testify.

21 THE COURT: Yes, sir.

22 THE COURT: I'm gonna ask that the clerk please swear
23 the defendant for me.

24 (WHEREUPON, the defendant was placed under oath at this
25 time.)

1 THE COURT: You may be seated, sir.

2 Before we begin that, Mr. Barnette, is there any
3 convictions the State would propose that could be used to
4 attack the defendant's credibility in this matter?

5 SOLICITOR BARNETTE: Yes, sir, there are six armed
6 robberies that he pled guilty to. He received a YOA
7 sentence not to exceed one to six years. That would be
8 within the ten year period, Your Honor, and we would argue
9 that. And then he also had a burglary second violent, Your
10 Honor, that he was convicted of in 2007.

11 THE COURT: I'm sorry. I couldn't hear that last.

12 SOLICITOR BARNETTE: He was convicted of burglary
13 second violent in 2007, Your Honor. That would --.

14 THE COURT: All right. Now, excuse me.

15 You have something?

16 MRS. HODGES: Your Honor, I am concerned. I think the
17 armed robberies are not actually all armed robberies because
18 there's at least predicate armed robbery. I think the
19 others may actually be common law robberies, Your Honor.

20 SOLICITOR BARNETTE: And I correct that, Your Honor.
21 It is common law robbery, 15 years suspended to five years
22 probation in these cases I guess to run consecutive to the
23 YOA sentence he received for the armed robberies at the
24 time.

25 THE COURT: All right. And in this particular case, it

1 would be, if they were presented to me, and that issue was
2 presented as to whether or not they could be mentioned, I
3 would not allow the nature of the offense to be mentioned.
4 I would allow you to ask him concerning prior convictions.

5 Do you understand that, Mr. Barnette?

6 SOLICITOR BARNETTE: Yes, sir, the only thing I would
7 ask, on the armed robbery conviction and the robbery, I
8 think State versus Almen will allow us to ask that question
9 if it's a crime going to dishonesty or going from that
10 standpoint.

11 THE COURT: Well, I think you could ask him about it.
12 I'm not -- they are also very similar to the crime that he's
13 charged with in this particular case.

14 SOLICITOR BARNETTE: Yes, sir.

15 THE COURT: And the prejudicial effect of referring to
16 them by the nature of the charge may out -- the prejudicial
17 effect may outweigh the probative value as to credibility.
18 So -- but we'll cross that bridge if the time came.

19 SOLICITOR BARNETTE: Yes, sir, I understand.

20 THE COURT: Now, Mr. Stewart, I'm going to go over some
21 matters with you and explain to you certain of your
22 Constitutional rights at this time. If you do not
23 understand anything that I go over with you at this time,
24 when I finish, I'm going to give you an opportunity to ask
25 any questions. So, if you don't understand what I'm going

1 over with you, you'll have an opportunity to ask for
2 additional explanation.

3 Do you understand what we're doing, sir?

4 DEFENDANT: Yes, sir.

5 THE COURT: We've reached the stage of your trial where
6 you have the right to present evidence. You have the right
7 to, also to claim the protections which are given to you by
8 the Fifth Amendment to the United States Constitution. That
9 amendment reads, in part, that no person shall be compelled,
10 in any criminal case, to be a witness against himself.

11 Now, what that means is that you have, while you have
12 the right to testify in this case, no one can make you
13 testify. You can not be required to testify. You have the
14 right to remain silent.

15 Now, the right to testify on your own behalf is, is a
16 right that you have and is a personal right, however, the
17 right to remain silent, and no one can waive or give up your
18 right to remain silent except yourself.

19 Now, I will advise you that if you decide to testify in
20 this case, you will be subject to the same rules that govern
21 the testimony of any other witness. That means you would be
22 examined by your lawyer and you'd be cross-examined by the
23 State's attorneys. In addition, if you have any convictions
24 involving dishonesty or false statement or for crimes which
25 were punishable by imprisonment for more than one year, and

1 this Court makes the determination that the probative value
2 of admitting this evidence outweighs its prejudicial effect,
3 the solicitor would be able to introduce your record to
4 attack your credibility.

5 Now, if you decide to testify, the decision on your
6 part must be made freely, voluntarily, and intelligently.
7 That means that you have knowledge of the protections given
8 to you by the Fifth Amendment and also have knowledge of the
9 consequences of your decision to testify should you decide
10 to do that.

11 Now, if you decide not to testify, I will advise you
12 that I will instruct the jury that they can not give the
13 fact that you did not testify any consideration whatsoever
14 in reaching a verdict in this case. Therefore, there would
15 be absolutely no prejudice to you because you did not
16 testify. In fact, my instruction to them would be they
17 could not even discuss that issue during their
18 deliberations.

19 Now, the decision as to whether or not to testify is
20 left entirely up to you. You have the right to talk it over
21 with your attorney, with family members, friends, or anyone
22 else that you would like to discuss the decision with, but
23 the final decision is yours and yours alone.

24 Now, do you understand the right that I've explained to
25 you?

1 DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about the rights
3 that I have gone over with you?

4 DEFENDANT: No, sir.

5 THE COURT: Have you discussed with your attorney as to
6 whether or not you should testify in this case?

7 DEFENDANT: No, sir, not yet. I'd like a moment to
8 confer with counsel.

9 THE COURT: All right. I will give you -- we'll take a
10 short break while you have that discussion with your
11 attorney, and we'll come back, and at that time I'll inquire
12 into the matter further.

13 MRS. HODGES: Your Honor, I, actually, the way that I
14 had intended to present his defense, we would not be calling
15 Mr. Stewart first if he chose to testify or not. We'll
16 actually be calling other witnesses.

17 THE COURT: All right. So, you'd like to defer that
18 decision till later?

19 MRS. HODGES: We'd like to defer that decision until a
20 later moment. I think this is the appropriate time to
21 advise him of his rights.

22 THE COURT: Okay. I'll---

23 MRS. HODGES: Then we can---

24 THE COURT: Well, I have no problem with him discussing
25 it further.

1 MRS. HODGES: Thank you.

2 THE COURT: Mr. Stewart, do you understand that before
3 we get to a point where your attorney might call you as a
4 witness, I will be coming back to you and asking you
5 concerning this decision.

6 DEFENDANT: Yes, sir.

7 THE COURT: Do you understand that?

8 DEFENDANT: Yes, sir.

9 THE COURT: All right. In the mean time, you have
10 every right to discuss this decision with anyone you choose
11 to discuss this decision with.

12 You understand that as well?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, are you ready to proceed?

15 MRS. HODGES: I am, Your Honor.

16 THE COURT: And is the State?

17 SOLICITOR BARNETTE: State's ready, Your Honor.

18 THE COURT: Let's bring the jury in.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: All right. The record will reflect the
22 jury has returned to the courtroom.

23 When we broke, the State was in the process of
24 presenting its evidence in the case. I've been informed by
25 the State that the State intends to call no other witnesses,

1 is that correct?

2 SOLICITOR BARNETTE: That's correct, Your Honor.

3 THE COURT: So, the State has rested. I told you that
4 when we reached this point in the trial the defense would
5 have the opportunity to present any evidence that the
6 defense wishes to present.

7 You may call your first witness, Mrs. Hodges.

8 MRS. HODGES: Thank you.

9 We would call Billy Stewart.

10 THE COURT: Sir, if you'd come forward, Mr. Stewart, to
11 my left to be sworn.

12 BILLY STEWART, having been first duly
13 sworn, testified as follows:

14 THE COURT: Have a seat please, sir.

15 (Witness complies.)

16 THE COURT: State your name.

17 WITNESS: I'm Billy Russell Stewart.

18 THE COURT: Mrs. Hodges, your witness.

19 MRS. HODGES: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MRS. HODGES:

22 Q Mr. Stewart, do you know Marion Earl Stewart?

23 A Yes, that's my youngest son.

24 Q Okay. And I'm gonna direct your attention to back in
25 October of 2009, approximately October the 14th of 2009.

Billy Stewart - Direct examination
by Mrs. Hodges

1 Do You remember that time period?

2 A Oh, yes.

3 Q Okay. Do you remember seeing your son or your daughter
4 at your home on October the 14th at 2009?

5 A I wasn't there when they were there.

6 Q Okay. Where were you?

7 A Well, I went to work in the morning, had a heart
8 attack, and went to the hospital.

9 Q Okay. Had there been any sort of problems at your home
10 that you asked your son to help you with?

11 A Yes, I had a fan went out on my condensing unit, and
12 then a skunk got in my duct work somehow, and I asked him to
13 get rid of the skunk and fix it.

14 Q Okay. And do you remember when you asked him to do
15 that?

16 A Actually I believe it was the day before.

17 Q Okay.

18 A I think.

19 Q And do you know how long you were in the hospital?

20 A Four days I think.

21 Q Okay. And when you got home, had the, the duct work
22 and the skunk problem been resolved?

23 A Yeah, it had.

24 Q All right. Thank you, sir. That's all I have. If
25 you'd answer any questions the solicitor might have for you.

Billy Stewart - Direct examination
by Mrs. Hodges

1 THE COURT: Mr. Barnette, your witness.

2 SOLICITOR BARNETTE: May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 SOLICITOR BARNETTE: Briefly.

6 CROSS-EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q So, you, you had to go to the hospital that day, is
9 that right, sir?

10 A Pardon me?

11 Q You went to the hospital on the 14th, is that correct,
12 2009?

13 A Yeah, it was about one o'clock in the afternoon I
14 think.

15 Q Okay. So, you don't know, you don't know who was at
16 your house?

17 You was at work actually?

18 A I was at work.

19 Q So, you don't know who was at your house and who
20 wasn't, is that right?

21 A No, I do not.

22 Q Okay. Thank you.

23 That's all the questions I have, Your Honor.

24 THE COURT: Anything further?

25 MRS. HODGES: No, sir.

Billy Stewart - Cross-examination
by Solicitor Barnette

1 THE COURT: Sir, you may step down.

2 MRS. HODGES: Your Honor, we would ask that Mr. Stewart
3 be excused from his subpoena and be allowed to remain in the
4 courtroom if he wishes to.

5 THE COURT: Any objection?

6 SOLICITOR BARNETTE: No objection, Your Honor.

7 THE COURT: All right, sir. You are free to stay or
8 you're free to go. Thank you, sir.

9 You may call your next witness.

10 MRS. HODGES: Lee Ann Nichols.

11 THE COURT: Step out and ask her to come into the
12 courtroom please.

13 SOLICITOR BARNETTE: Your Honor, may we approach the
14 bench for one second?

15 THE COURT: You may.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 THE COURT: Come forward please, ma'am, to my left and
19 be sworn.

20 LEE ANN NICHOLS, having been first
21 duly sworn, testified as follows:

22 THE COURT: Have a seat please, ma'am, and once you're
23 seated, state your name.

24 WITNESS: My whole name?

25 THE COURT: Yes, ma'am.

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 WITNESS: Lee Ann Nichols.

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, there is a matter I have to take up with the attorneys
4 before we begin with this witness. It shouldn't take long.
5 I'll ask you to step to the jury room for just a moment.

6 As always, I'll ask you not to begin any discussion
7 until I've asked you to do so.

8 You may retire to the jury room.

9 (WHEREUPON, the following takes place outside the
10 presence of the jury.)

11 THE COURT: All right. Mr. Barnette, you indicated at
12 the bench conference that this defendant may be involved in
13 some type of prosecution or something of that nature.

14 Could you make the Court aware of the situation?

15 SOLICITOR BARNETTE: Yes, sir, she's been charged with
16 armed robbery in this same case, and I don't know if she has
17 an attorney at this point. So, I thought maybe she might
18 be -- her Fifth -- she should be given her Fifth Amendment
19 rights by the Court.

20 THE COURT: Oh, I understand.

21 Ma'am, you understand that you've been charged
22 apparently with armed robbery in this case, is that correct?

23 WITNESS: Yes, sir.

24 THE COURT: Do you have an attorney at this point in
25 time?

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 WITNESS: Not at this time.

2 THE COURT: All right, ma'am. I have to advise you
3 then, as a witness, you have the right to invoke the
4 protections that are given to you by the Fifth Amendment to
5 the United States Constitution. That amendment reads, in
6 part, that no person shall be compelled in any criminal case
7 to be a witness against himself. Now, that provision means
8 that you can not be required to testify in any case where
9 you might serve as a witness against yourself.

10 Now, that means you have the right to remain silent if
11 you choose to do so. Now, the right to remain silent is a
12 personal right to which only, only you can claim that right.
13 You have the right to refuse to answer any question that's
14 asked of you which you think gives you reasonable doubt
15 cause to believe that the answer to that question, if given,
16 might tend to incriminate you in any way.

17 Now, if you wish to exercise the right to remain silent
18 when a question is asked of you, you will have to state that
19 to the Court, and that you are refusing to answer the
20 question because it may tend to incriminate you.

21 Now, do you understand what I've gone over thus far?

22 WITNESS: Pretty sure, yes.

23 THE COURT: Well, if you have any questions, now would
24 be the time to ask it.

25 WITNESS: Well, I mean---

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 THE COURT: And I will advise you---

2 WITNESS: So, if there's a question and I feel like I
3 don't want to answer it, do I say I---

4 THE COURT: Well, it's not a question of whether you
5 want to answer it or not. It's whether you think the answer
6 to that question--

7 WITNESS: Right.

8 THE COURT: ---might tend to incriminate you.

9 WITNESS: Uh-huh. (Affirmative).

10 THE COURT: If you believe that that's the case, then
11 you have the right to claim the protections given to you
12 under the Fifth Amendment. In other words, you can't be
13 required to be a witness against yourself.

14 Now, the Court will be the final decision maker as to
15 whether or not the question that's been asked will violate
16 the Fifth Amendment protections that you have. So, it's up
17 to the Court to determine whether your silence is justified
18 and whether or not you have, do have the right to remain
19 silent, but only you can invoke the right to remain silent.
20 That means if someone asked you a question that you believe
21 that might tend to incriminate you, you will need to inform
22 the Court that you are not refusing -- that you are refusing
23 to answer because it's your belief that your answer might
24 tend to incriminate you.

25 WITNESS: Okay.

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 THE COURT: Do you understand what I'm saying?

2 WITNESS: Yes, sir.

3 THE COURT: Other than that, if you choose to answer
4 the question, I will advise you that anything you say in
5 this courtroom can and will be used against you in a court
6 of law if your case later comes to trial.

7 Do you understand that as well?

8 WITNESS: Yes, sir.

9 THE COURT: So, anything that you say could be used.
10 It's gonna be on the court record. It will be available to
11 any of the attorneys to use against you.

12 Do you understand that, ma'am?

13 WITNESS: Yes, sir.

14 THE COURT: Now, you have the right to discuss the
15 decision as to whether or not you should testify in this
16 case with anyone you wish to. But, of course, you don't
17 have an attorney.

18 Is there anybody you'd like to discuss that with before
19 we proceed in this case?

20 WITNESS: I'd like to ask Kathy a few questions real
21 quick.

22 THE COURT: Well, I'm gonna take a short recess. If
23 you want to step outside, you're welcome to discuss it.

24 WITNESS: Okay.

25 THE COURT: Ma'am, you may step down for a moment.

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 I'm gonna stay on the bench. Court's in recess right
2 now.

3 MRS. HODGES: Thank you, Your Honor.

4 (Pause.)

5 THE COURT: Ma'am, if you'll resume the stand please.

6 (Witness complies.)

7 THE COURT: Now, ma'am, have you had an opportunity to
8 discuss this matter with anyone you wish to discuss it with?

9 WITNESS: Yes, sir.

10 THE COURT: Do you understand the rights that I have
11 explained to you?

12 WITNESS: Yes, sir.

13 THE COURT: Are you ready to proceed?

14 WITNESS: Yes, sir.

15 THE COURT: All right. Let's bring the jury in.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE COURT: All right. The record will reflect the
19 jury has returned to the courtroom.

20 Mrs. Hodges, your witness.

21 MRS. HODGES: Thank you, Your Honor.

22 May it please the Court?

23 THE COURT: Yes, ma'am.

24 DIRECT EXAMINATION

25 BY MRS. HODGES:

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 Q Ms. Nichols, can you state your full name for the
2 record?

3 A Lee Ann Stewart Nichols.

4 Q And I'm gonna ask you to speak up loud enough so the
5 bailiff over here by the door can hear you.

6 okay?

7 A (Witness nods affirmatively.)

8 Q All right. And do you know Marion Stewart?

9 A Yes, I do.

10 Q And how do you know him?

11 A He's my baby brother.

12 Q Okay. Are you married?

13 A Yes, ma'am.

14 Q And do you have any children?

15 A Yes, ma'am.

16 Q Do you have any grandchildren?

17 A Yes, ma'am.

18 Q All right. Back on October the 14th of 2009 when
19 this robbery is alleged to have occurred, did you see your
20 brother that day?

21 A Yes, I did.

22 Q All right. And where did you see him?

23 A I went to his home and picked him up.

24 Q Okay. Do you know what time you went to his home to
25 pick him up?

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 A About nine o'clock, a little bit after 9:00 that
2 morning is when I arrived at his home.

3 Q Okay. And when you got to his home, who was there?

4 A He was there. Shirley, his girlfriend, at the time was
5 there.

6 Q Okay.

7 A And that's all I seen.

8 Q Okay. Did you see -- do you know a man named Dale
9 Taylor?

10 A Yes.

11 Q All right. Did you see Dale there?

12 A No.

13 Q Okay. How long were you at your brother's home that
14 morning?

15 A Thirty, forty-five minutes. I had a hard time getting
16 him up.

17 Q Okay. And once he got up, where did you go?

18 A We went over to our dad's.

19 Q Okay.

20 A And---

21 Q Your dad is who.

22 Q Billy Stewart?

23 A Okay. And where, where do you live in relation to your
24 brother or where he was living at the time?

25 A I live right off Highway 11 in New Prospect. About.

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 three minutes from Marion's house maybe.

2 Q Okay. And how long would it take you to get from
3 Marion's house to your dad's house?

4 A Twenty-five minutes maybe.

5 Q Okay. So, you get to Marion's house you said a little
6 bit after 9:00, is that correct?

7 A Yes, ma'am.

8 Q And you were there for 30 to 45 minutes.

9 Do you go directly to your dad's house from there or do
10 you go somewhere else?

11 A We went to dad's.

12 Q Okay. What did you do at your dad's house?

13 A We went and worked on his heat pump.

14 Q Okay. Did you see anybody at your dad's house?

15 A My mom was there.

16 Q Okay. Who is -- what's your mom's name?

17 A Gail Stewart.

18 Q And did you anybody else?

19 A My young sister, she was there earlier, but she went to
20 work.

21 Q Okay. Was your dad at home?

22 A No.

23 Q Okay. Do you know how long you were at your dad's
24 house?

25 A Two or three hours, maybe longer.

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 Q All right. And did you leave from your dad's house?

2 A Yes.

3 Q And where did you go at that point?

4 A We went to get something to eat for lunch.

5 Q Did you ever -- do you know where the RxCare Pharmacy
6 is on Boiling Springs Road?

7 A Can you say that again?

8 Q Do you know where the Rx Pharmacy is or RxCare
9 Pharmacy, do you know where that is in Boiling Springs?

10 A I do now.

11 Q Okay. Did you at that point?

12 A No.

13 Q All right. On October the 14th of 2009, did you go
14 to the RxCare with Marion and Dale Taylor?

15 A No, I did not.

16 Q Did you drive them there with the purpose to rob that
17 pharmacy?

18 A No, I did not.

19 Q Did you go to, back to Marion's house with pills and
20 wake Shirley up and show her pills that were taken from that
21 pharmacy?

22 A No.

23 Q The night before you went to your dad's house with
24 Marion, were you at Shirley and Marion's house?

25 A The night before?

Lee Ann Nichols - Direct examination
by Mrs. Hodges

1 Q Uh-huh. (Affirmative).

2 A I may of been there the evening because I been going
3 over in the evenings with my grandson to let him play with
4 the kids in the pool.

5 Q Did you stay---

6 A Overnight?

7 Q ---the night there?

8 A No.

9 Q Okay. Did you have any conversations the night before
10 this incident is alleged to have happened about robbing a
11 pharmacy with Marion and Dale?

12 A No.

13 Q I believe that's all I have. Thank you, ma'am. Just
14 answer any questions the solicitor might have for you.

15 THE COURT: Mr. Barnette.

16 SOLICITOR BARNETTE: May it please the Court, Your
17 Honor?

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY SOLICITOR BARNETTE:

21 Q So, that evening, the night before, you took them over,
22 the kids to play in the pool?

23 A I'm sorry?

24 Q You took your grandson to play in the pool, that
25 evening in the pool?

Lee Ann Nichols - Cross-examination.
by Solicitor Barnette

- 1 A Yes.
- 2 Q And they played in the pool with the other kids?
- 3 A Yes, sir.
- 4 Q And how long did they play in the pool?
- 5 A Thirty minutes, maybe an hour, I don't know. It's just
- 6 different times. Just depending on how warm it was and how
- 7 tired we were.
- 8 Q Okay. And what time of day was this?
- 9 A Probably 4:30, five o'clock.
- 10 Q 4:30, five o'clock.
- 11 Okay. And how long did they play in the pool?
- 12 A Most of the time we'd let them play about an hour.
- 13 Q Okay. So, they played till 5:30 that evening?
- 14 A Yes, sir.
- 15 Q It's October 13th, there wasn't any pool open, was
- 16 there?
- 17 A Yes, at, at Marion's in the subdivision.
- 18 Q October 13th they're out swimming in that at 5:30 in
- 19 the evening?
- 20 A At the complex that he lived in it was a community
- 21 pool.
- 22 Q So, this complex, this complex is opened, the pool's
- 23 opened October 13th?
- 24 A It was still hot in October.
- 25 Q It's still hot October 13th?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 It was raining that day?

2 A Well, not blazing hot; no, but it was still warm. Warm
3 enough to play in the pool. It hadn't closed yet.

4 Q It hadn't closed yet?

5 A No, sir.

6 Q October 13th -- when all pools close usually on Labor
7 Day.

8 A It was still opened.

9 Q Your testimony today is it was still opened?

10 A (Witness nods affirmatively.)

11 Yes, sir.

12 Q Okay. Let me ask you a question, ma'am. Didn't you
13 call Marion from the jail all the time and you talked to him
14 or he called you?

15 A I've talked to him once or twice.

16 Q Your testimony is once or twice on the telephone?

17 A It depended on where -- I don't have a phone where
18 Marion could reach me and I would have to be at my dad's in
19 order for me, to be, you know, I just happened to be there
20 at dad's when he called.

21 Q How many times have you talked to him on the jail over
22 anybody's phone, your phone, anybody's phone?

23 A Since he's been down there, I -- maybe four times, five
24 times.

25 Q You're saying---

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 A Total.

2 Q ---it's four or five times?

3 A That I can recall, yes, sir.

4 Q That's your testimony here today?

5 A Yes, sir.

6 Q You realize those, those are recorded?

7 A Yes, sir.

8 Q Do you remember, on November, November 2nd, 2009,
9 approximately 9:14 p.m. did you talk to him that day?

10 A That was a possibility. I mean I don't remember the
11 dates that I actually talked to him.

12 Q Was you actually working at that time?

13 A Who?

14 Q Mr. Stewart, was he working at that time?

15 A He was working with me and my dad off and on when we
16 needed some work, you know, help.

17 Q Well, why were you having a phone conversation when
18 that day, and then everybody -- you know, it says
19 basically -- I'll be glad to play the conversation for you.

20 "Look here, you already know what the deal is with
21 everything, right? You need to make sure that Shirley
22 understands what the deal is with everything too. Do you
23 understand?"

24 "You make sure that you really emphasize, really stress
25 to her that she understands that. You make sure she

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 realizes and understand and stress to her, and really
2 emphasize to her that she needs to know that I was at work
3 that morning. When she woke up that morning, I was there."

4 If he's with you, why are y'all having a conversation
5 at the jail talking about building an alibi showing that
6 he's at work and that he was there when she woke up?

7 A I don't recall having that, but I'm not saying I didn't
8 because it's recorded. But he was with me at my dad's
9 working that day and we worked the next day.

10 Q But let me ask you a question.

11 Why are you having this discussion with him at the jail
12 building an alibi?

13 A I don't see how that's building an alibi.

14 Q Are you saying that he was with you and you went over
15 to your dad's place, you picked him up?

16 A Yes, I did, and we went to my dad's.

17 Q So, you picked him up around what time, again?

18 A It was -- I got to his home about 9:00, 9:10, and I was
19 there -- it took me about 30 to 45 minutes to get him up out
20 of the bed and get dressed so we could go.

21 Q Okay. Which bed was he sleeping in?

22 A In his bed with Shirley.

23 Q So, him and Shirley was together then?

24 A Yes.

25 Q You didn't wake Shirley up?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 A Well, she's trying to help me wake Marion up, and she
2 was somewhat coherent. She wouldn't get up out of the bed.

3 Q Okay. And y'all went over to your dad's house?

4 A Yes, sir.

5 Q Okay. Why is he telling Shirley make sure they all
6 have their story in mind, daddy, make sure Leon and Audi's
7 story is the same for when I got to work, they're my only
8 alibi?

9 MRS. HODGES: Your Honor, we object to that. It calls
10 for speculation. This witness isn't qualified to answer
11 that question.

12 THE COURT: I'll sustain the objection. That does call
13 for speculation.

14 Q What actually happened that day on October the 14th?

15 A You mean after we got to my dad's, what did we do?

16 Q Or what, what happened the rest of the day?

17 You got to your dad's and everything, and when you
18 left, where did you go?

19 A We went back to Marion's house.

20 Q Okay. What happened then?

21 A We went and fixed something to eat. It was sandwiches
22 I think we fixed to eat.

23 Q Fixed some sandwiches and eat?

24 A Yeah.

25 Q Okay. And you ate there at the house?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 A Uh-huh. (Affirmative).

2 Q So, y'all didn't go get any lunch or anything?

3 A Well, that was going to get lunch for us.

4 Q Okay. What happened after that?

5 A I got in my car and left. I don't think we went -- no,
6 we went back over to dad's cause we weren't done with all
7 the, we weren't done with everything on the heat pump. We
8 started on the, the ducting under the house, and then we
9 left and then we went back cause he had to work on the fan,
10 a fan motor or something like that.

11 Q What time did you go back to his house?

12 A It's probably 1:30. It took longer than an hour.

13 Q Okay. So, you got back at 1:30.

14 What else did you do at the house?

15 A I carried tools while Marion worked on the fan motor.

16 Q Okay. How long did that take?

17 A About an hour or so cause I mean we weren't rushed, you
18 know.

19 Q So, you said for about an hour y'all worked on that,
20 and what did you both do after that?

21 A I took him back home, and then I went and got my
22 grandson.

23 Q You went and got your grandson.

24 What time did you drop him back -- you said it's 20, 25
25 minutes back to his house?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

- 1 A Uh-huh. (Affirmative).
- 2 Q So, what time did you get back, get back to his house?
- 3 A I don't know. It's 4:30, five o'clock cause we, like I
- 4 said, we wasn't in no hurry. We stopped and got a drink and
- 5 cigarettes.
- 6 Q So, you said 4:30 to five o'clock you dropped off --
- 7 who did you drop off?
- 8 I'm sorry.
- 9 A Marion.
- 10 Q Marion.
- 11 You dropped him back off at his house at 4:30 or 5:00?
- 12 A Yes, sir.
- 13 Q Okay. What did you do after that?
- 14 A I went to my home, which is about three minutes away,
- 15 and picked my grand mom, my grandson up from my
- 16 mother-in-law.
- 17 Q Okay. What did you do after that?
- 18 A I went -- I stayed at home with my grandson.
- 19 Q You stayed at home?
- 20 A Uh-huh. (Affirmative).
- 21 Q Okay. Did you go anywhere else?
- 22 A Not that I can recall I don't. I didn't.
- 23 Q Okay. So, you never went anywhere else that night?
- 24 A Hu huh. (Negative).
- 25 Q You didn't see Marion?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 A The rest of the night, no.

2 Q No.

3 Did you see anybody else the rest of the night?

4 A My son. I mean they live at the house with me.

5 Q Okay. Did you stay there the rest of the evening?

6 A Yes, sir.

7 Q Did you do anything that night?

8 A No.

9 Q What you said didn't happen, did it?

10 A Yes, it did.

11 Q Don't you consider your dad very important?

12 A Yes, I do.

13 Q What happened to your dad that day?

14 A He had a heart attack.

15 Q Why didn't you go help him?

16 A Because he is the type of person that says there's no
17 sense in everyone rushing down here to the hospital. So, I
18 stayed at home with my grandson and waited on word from my
19 son.

20 Q Why didn't you mention anything else about this?

21 Isn't that an important event to be mentioning?

22 A Yes, sir.

23 Q Y'all are gonna work at the house while he's at the
24 hospital?

25 A That's what he wants us to do. We have to get it done

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

- 1 cause that's what he wants us to do.
- 2 Q Okay. So, you was driving your car?
- 3 A No, sir.
- 4 Q So, whose car was you driving?
- 5 A I drove Shirley's son's car over to my dad's.
- 6 Q Where was your car?
- 7 A I left it at Marion's.
- 8 Q Does Marion have a car?
- 9 A No.
- 10 Q Does Grady have a car?
- 11 A I'm sorry?
- 12 Q Does Grady have a car?
- 13 A I don't know who Grady is.
- 14 Q Dale.
- 15 A Oh, no, not that I know of.
- 16 Q Dale don't have a car either, does he?
- 17 Marion don't have a car and Dale don't have a car?
- 18 A (witness nods negatively.)
- 19 Q Do you have a car?
- 20 A Uh-huh. (Affirmative).
- 21 Q What kind of car do you have?
- 22 A It was a, a black Buick, black and silver Buick.
- 23 Q And your testimony is you don't know where the RxCare
- 24 is?
- 25 A I do now, but I didn't at the time.

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 Q And your testimony is that Marion was with you the
2 whole time?

3 A Yes, he was.

4 Q He never left your side?

5 A Other than to go to the bathroom in the house or
6 crawling under the house when I didn't see him under dad's,
7 no.

8 Q Why would you drive Shirley's car and not drive your
9 car?

10 A I had a bad tire on the back driver's side. It had a
11 knot on it.

12 Q You had a knot on your back tire?

13 A Yes, sir.

14 Q Well, when did you drive your car back home?

15 A That evening.

16 Q Okay. And what happened?

17 What was the difference?

18 A I lived three minutes from Marion's house versus 25
19 minutes from my dad's, and I didn't have a spare.

20 Q Okay. Your testimony is you never saw this black bag?

21 A I'm sorry?

22 Q You never saw this black bag, trash bag?

23 A (Witness nods negatively.)

24 I've seen trash, black trash bags, but---

25 Q So, you never saw a black trash bag with pills in it?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

- 1 A No, I did not.
- 2 Q And you never saw -- let me ask you a question.
- 3 That day, did you ever see Marion with any pills that
- 4 day?
- 5 A No, I did not.
- 6 Q You didn't see at 11:30 have any pills?
- 7 A No, I did not.
- 8 Q You never saw him take any pills from Grady or Dale?
- 9 A No.
- 10 Q You never saw him ever give pill bottles to Dale?
- 11 A No.
- 12 Q Did you ever see Dale that day have any pills?
- 13 A No, I did not.
- 14 Q Either one?
- 15 A No.
- 16 Q It's your testimony you never saw Dale that day?
- 17 A I seen him later on. I didn't see him that morning.
- 18 It was around noon that day when I seen him.
- 19 Q So, you saw him at noon?
- 20 A Around noon.
- 21 Q Where did you see him at noon?
- 22 A The -- Shirley and him came over to dad's, and then we
- 23 went back over there to get something to eat.
- 24 Q Well, wait a minute.
- 25 You said that -- you was at your dad's at noon?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 A We left at noon and went, around noon, and went and got
2 something to eat and then -- no, Shirley showed up at noon
3 and we stayed there working a little bit longer and then we
4 left. It was a little bit after 1:00 when we left.

5 Q Okay. So, they---

6 A And we went---

7 Q Shirley showed up at your house, I mean at your dad's
8 house at noon?

9 A Yes.

10 Q What car was she driving?

11 A She was driving her car, but I don't recall what kind
12 it was. It was a little SUV thing. I don't recall what
13 kind it was. I know she had several cars at the time.

14 Q How many cars did she have?

15 A She had a -- one that the transmission went out of, and
16 it was a, a white Blazer or Bronco. I'm not sure exactly
17 the shape of it. And at one time she owned a Kia Sportage
18 or something like that. A little SUV thing. And I think
19 that's -- I don't remember what the other one was. There's
20 one gold one, and I don't remember what it was, what the
21 make of it was. I'm thinking she had the Kia at the time
22 and that's what she drove.

23 Q Which car did you drive over to your dad's house?

24 A I drove Anthony's little silver Mitsubishi. I think it
25 was an Eclipse. It's a little silver sports car like thing.

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 Q So, now it's Anthony's car?

2 A That's what I said. Shirley's son is Anthony.

3 Q Okay. So, your testimony is Shirley comes over to meet
4 y'all at noon?

5 A Yeah, it was around noon when she came over.

6 Q And---

7 A With Dale.

8 Q And with Dale?

9 A Yes.

10 Q And you stayed there at your dad's house till one
11 o'clock?

12 A Yeah. When -- yeah, when we left to go get something
13 to eat.

14 Q And where did y'all go to get something to eat at?

15 A At Marion's.

16 Q So, you get back at one o'clock?

17 A Yes, sir.

18 Q Okay. You realize you just testified earlier that
19 y'all came over and got, met Shirley for lunch at the house
20 in your earlier testimony?

21 A No, I don't recall having said that. I said we went
22 back to Marion's and got something to eat.

23 Q Do you remember giving a statement to Lorin Williams,
24 an investigator in this case?

25 A Yes, I do.

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 Q Let me give you a chance to read it and see if that's
2 your statement, ma'am?

3 A Yes.

4 Q Does that help refresh your memory?

5 A I know that the times on there are different.

6 Q Okay. There's more than the times are different, isn't
7 there?

8 Didn't you write on here we left dad's around
9 1:00 a.m.?

10 A Yes, I did.

11 Q And you went to see if Shirley wanted to eat for lunch?

12 A Yes, I did.

13 Q So, y'all went back to Shirley's now according to this?

14 A Yes, sir, and I was under a lot of stress. I was being
15 threatened, and I had never been questioned or, and, or
16 anything having to do with anything illegal, and I -- they
17 just had me in there asking me all kind of questions, making
18 comments to me. I mean I was totally crying uncontrollably,
19 and I -- I mean, after I had written the statement, I
20 realized, when I got calmed down, that I did not write down
21 everything that happened. I left some stuff out. I forgot
22 to mention this. The times weren't right. But I mean I
23 just -- they kept putting, trying to put things into my
24 mouth.

25 Q Well, let me ask you this question.

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 A Or make comments.

2 Q Where did you give this, where did you give this -- is
3 this -- you're writing this to the officers, right?

4 A That's mine.

5 Q Where did you give a written -- where did you give a
6 statement at?

7 A In their car. They questioned me in their car.

8 Q But you wrote this statement?

9 A Yes, sir.

10 Q They didn't write it for you, did they?

11 A No, sir.

12 Q So, you wrote down what you -- you wrote this down?

13 A Yes, I did.

14 Q So, what is the truth of happened that day?

15 Is it this version?

16 Is it the version you gave first or the last version
17 you gave?

18 A The version that I'm telling you today. I mean that's
19 just different times and all. I did not mention that I,
20 that Shirley and Dale came over to dad's. I mean I realize
21 I left a lot out. But, like I said, I was being threatened
22 and accused of different things and there were just popping
23 things out at me, both of them at one time, and I -- they
24 were confusing me.

25 Q Well, was you confused earlier when you gave testimony

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 today?

2 A No, sir.

3 Q Tell us what happened that day, ma'am.

4 A I went over to Marion's and woke him up. We went back
5 to my dad's and we worked on the heat pump and the ducting.
6 We left when Shirley and Dale got there, went to Marion's,
7 got a few sandwiches, kicked around his house for about an
8 hour, little over that, and then we went back to dad's, and
9 finished working on a fan motor.

10 Q And who drove back over to your dad's?

11 A I did.

12 Q And what car did you take?

13 A Anthony's.

14 Q And after you left there, where, where did everybody go
15 after you left your dad's house?

16 A I took what -- well, me and Marion was the only ones
17 who went back to dad's.

18 Q Okay. And you dropped him off where again?

19 A Back at his home.

20 Q Okay. And where did you go?

21 A I went to my mother-in-law's and picked up my grandson.

22 Q Okay. And how far is your mother-in-law's house?

23 A I have to -- my driveway goes right by her house. I
24 lived down behind her. I've got a half an acre behind her
25 house. So, I pulled in the driveway, stop and get my

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 grandson, and pull on down to my house.

2 Q Okay. And she's not here today, is she?

3 A I'm sorry?

4 Q Your mother-in-law's not here today, is she?

5 A No, sir.

6 Q And was Shirley working at that time?

7 Did she work at a steak house?

8 A I think she still worked over at the steak house on 14.

9 I'm thinking that she did. But I honestly can't remember if
10 she was still there or at the other restaurant.

11 Q Okay. But she did work there or work at a steak house
12 or restaurant---

13 A Yes.

14 Q ---at that time?

15 And she would work, is that right?

16 A I'm sorry?

17 Q And she would work?

18 Either -- she had shifts, different shifts?

19 A Yeah, she worked night shift mainly.

20 SOLICITOR BARNETTE: One moment, Your Honor, please.

21 THE COURT: Yes, sir.

22 (Pause.)

23 Q So, your testimony is you took Anthony's car?

24 A Yes, I did.

25 Q Anthony was old enough to drive?

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

- 1 A Yes, he was.
- 2 Q And this was during the day, right?
- 3 A Uh-huh. (Affirmative).
- 4 Q Was Anthony at school?
- 5 A No, he wasn't. I thought he was, but I did realize,
- 6 found out later that day that he was not at school.
- 7 Q So, your testimony, your testimony is he was not in
- 8 school?
- 9 A He was not.
- 10 Q Wouldn't he have took his car if he was in school?
- 11 A If he had went to school he would have.
- 12 Q Right.
- 13 Wasn't this a wednesday?
- 14 A Yeah, I'm thinking it was, yes.
- 15 Q Where was Anthony?
- 16 A I thought he was at school, but I was told later that
- 17 he wasn't. So, I mean I don't know. I didn't see him till
- 18 that evening when me and Marion got back to the house.
- 19 Q So, your testimony is he, he didn't take his car that
- 20 day?
- 21 A No, he didn't.
- 22 Q Okay. But he would of took his car if he was in school
- 23 if he went?
- 24 A Normally he would unless his mom took it from him or
- 25 something.

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

- 1 Q Okay. And your testimony is that -- you were actually
2 I think, when you first testified, that you took Lee Ann's
3 car, right?
- 4 A No.
- 5 Q You want to play the testimony back for you or have the
6 court reporter read back to you?
- 7 A If you took whose -- that I took---
- 8 Q You took Lee Ann's car.
- 9 A That was my car.
- 10 Q Over to your dad's house
- 11 A Well, you're saying Lee Ann. I'm Lee Ann.
- 12 Q I mean Shirley's.
- 13 A No, I didn't.
- 14 Q And you didn't take, you didn't take your car either?
- 15 A No, that's why -- I left my car at Marion's.
- 16 Q Okay. And what was Marion wearing that day?
- 17 A Blue jeans and a shirt, t-shirt. I don't remember what
18 color his shirt was.
- 19 Q What was he wearing total?
- 20 I mean you spent the day with him I'm assuming.
- 21 A A pair of work boots that he's got, a pair of old
22 jeans, and a t-shirt.
- 23 Q Okay. And you said in the statement you gave that they
24 harassed you into that statement?
- 25 A Yeah, I mean I was totally confused and they -- I

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 can't -- I don't remember the names. Mr. Williams I think
2 was one of them.

3 Q Did you ever, did you ever go back and try to correct
4 it?

5 A No, sir.

6 Q And your testimony is you've never seen Marion Stewart
7 with drugs that day or with pills that day or anything---

8 A No, I did not.

9 Q ---like that?

10 Even the next day, have you seen him with anything?

11 A No.

12 Q And your testimony is on October of 13th the pool was
13 opened in this subdivision?

14 A I'm pretty sure that they were playing in the pool that
15 day.

16 Q No, ma'am, it's not pretty sure, ma'am.

17 A Well, I'm gonna say yes.

18 Q So, you say you---

19 A Cause I went over every evening and hung out at
20 Marion's and the kids played and played in the pool, played
21 around there at Marion's house. I mean I'm pretty sure the
22 pool was opened that day.

23 Q And you're sure you took Anthony's car over that day?

24 A Yes, I am.

25 Q Okay. What other -- you say how many other cars did

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 Shirley have?

2 Four?

3 A There was Anthony's car, and she had the one white
4 vehicle that the transmission was out of, and then she had
5 one that she drove, and I'm thinking it's a Kia, but I'm not
6 positive about the make on it, on the one that she was
7 actually driving at the time.

8 Q How many cars did you have?

9 A One.

10 Q One.

11 A At the time, yes, sir, I had one. Well, no, I had two
12 at the time. I had a, a Nissan, a little beat up, probably
13 red Nissan and it was knocking. So, it was at the house and
14 then I had the black and silver Buick.

15 Q What color was Anthony's car?

16 A Silver.

17 Q Silver.

18 Thank you, Your Honor.

19 THE COURT: Redirect?

20 MRS. HODGES: Nothing further, Your Honor.

21 THE COURT: You may step down.

22 MRS. HODGES: Your Honor, may this witness be excused
23 from her subpoena?

24 THE COURT: Any objection?

25 SOLICITOR BARNETTE: None, Your Honor.

Lee Ann Nichols - Cross-examination
by Solicitor Barnette

1 THE COURT: You're free to go, ma'am.

2 Defense may call its next witness.

3 MRS. HODGES: Gail Stewart.

4 THE COURT: Come forward please, ma'am, to my left and
5 be sworn.

6 GAIL STEWART, having been first duly
7 sworn, testified as follows:

8 THE COURT: Have a seat please, ma'am.

9 WITNESS: Thank you.

10 THE COURT: Once seated, state your name.

11 WITNESS: Wanda Gail Stewart.

12 THE COURT: Mrs. Hodges, your witness.

13 MRS. HODGES: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MRS. HODGES:

16 Q Mrs. Stewart, I'm gonna ask you to make sure you speak
17 up loud enough whether the bailiff right here behind me can
18 hear everything you're saying.

19 All right?

20 A Okay.

21 Q And do you know Marion Earl Stewart?

22 A Yes, I do.

23 Q And how do you know him?

24 A He is my son.

25 Q Okay. And on October the 14th of 2009, when this

Gail Stewart - Direct examination
by Mrs. Hodges

1 incident is alleged to have happened, did you see Marion
2 that day?

3 A Yes, I did.

4 Q Where did you see him?

5 A At my house.

6 Q And where is your house?

7 A [REDACTED] [REDACTED]. It's in the Campobello
8 mailing district.

9 Q Okay. Is it near the Greenville line?

10 A Very.

11 Q Okay. And do you remember about what time you saw
12 Marion that day?

13 A He arrived with his, between around, between 10:00 and
14 10:30 as close as I can remember. It was in that -- I was
15 watching something and I can't remember how far along it
16 was.

17 Q Okay. And did he arrive alone or was he with somebody?

18 A He was with Lee Ann. Lee Ann had went to get him.

19 Q Okay. And is Lee Ann your daughter?

20 A Yes, she is.

21 Q All right. Was there anybody else with Marion and Lee
22 Ann that day?

23 A No.

24 Q Okay. Did you see Marion and Lee Ann at your home --
25 how long did they stay at your home?

Gail Stewart - Direct examination
by Mrs. Hodges

1 Do you know?

2 A They stayed until shortly after lunch time. He had
3 worked on the house, under the house. And ducts had come
4 loose.

5 Q Okay. And did they come back to your house that day
6 after, after -- you said they stayed until lunch time.

7 Did they leave at lunchtime?

8 A Well, Shirley and her brother showed up.

9 Q Okay.

10 A And wanted to go to lunch.

11 Q Okay.

12 A And some time shortly after that, I didn't go out there
13 to see what was going on because, you know, I don't get into
14 what the kids are squabbling, and, you know, talking about.
15 And I had to leave shortly thereafter. So, they were gone
16 when I got back. I wasn't gone too long.

17 Q Okay.

18 A And, so, I assume they went to lunch.

19 Q Okay. And do you work outside of the home?

20 A Yes, I do.

21 Q And where do you work?

22 A Post office.

23 Q Okay. And here in Spartanburg or---

24 A I work out of Taylors now. I did work in Campobello.

25 Q Okay. And back in October of 2009, were you working at

Gail Stewart - Direct examination
by Mrs. Hodges

1 the Campobello post office or in Taylors or do you remember?

2 A I was out of Campobello I believe at that time.

3 Q Okay. Do you remember what time you got -- you said
4 you had to leave the home for a little while that afternoon.

5 Do you remember what time you got back to the home?

6 A Oh, I was probably back by two o'clock.

7 Q Okay. And was anybody there at the house at that time?

8 A No. No, nobody there.

9 Q Okay. How certain are you about the time frame that
10 you saw Marion and Lee Ann at your house that morning?

11 A Ninety-nine percent.

12 Q Okay. Thank you, ma'am. That's all I have. If you'd
13 answer any questions the solicitor might have.

14 A Okay.

15 SOLICITOR BARNETTE: May it please the Court, Your
16 Honor?

17 THE COURT: Your witness, Mr. Barnette.

18 CROSS-EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q Mrs. Stewart, you work at the post office, is that
21 right, ma'am?

22 A Yes, sir.

23 Q And which one was it?

24 A I believe I was still at Campobello at that time.

25 Q Okay. What was your hours?

Gail Stewart - Cross-examination
by Solicitor Barnette

- 1 A I worked every other Saturday.
- 2 Q Also as part-time?
- 3 A Oh, it's part-time, yes.
- 4 Q Okay.
- 5 A I'm RCA.
- 6 Q Okay. I got you.
- 7 And if I understood your testimony, two o'clock, when
- 8 you got back from your errand, there wasn't anybody at the
- 9 house?
- 10 A That's right.
- 11 Q Did anybody ever show up at the house after you?
- 12 A I believe they may of been back later that afternoon
- 13 and talked with their father, but that would of been up in
- 14 the afternoon.
- 15 Q What time was it they talked to their father, ma'am?
- 16 A Probably between 4:30 and 5:30. That's generally when
- 17 he gets home. So --.
- 18 Q Okay. So, they, they talked to their father at 4:30 or
- 19 five o'clock that evening?
- 20 A It's possible. I'm not exactly sure on that.
- 21 Q Okay. So, you saw your husband that evening come home
- 22 from work?
- 23 A That's where I have a problem.
- 24 Q Yes, ma'am.
- 25 What, what's the problem if I could ask?

Gail Stewart - Cross-examination
by Solicitor Barnette

1 A He's -- my memory -- that was like two something years
2 ago. I'm thinking -- I'm going by this is the every day
3 pattern.

4 Q Yes, ma'am.

5 A So, as far as I know they did.

6 Q You're going by the every day pattern?

7 A Every day pattern from my memory. I'm -- you're asking
8 me to talk about over two years ago and take this out, and
9 I've thought and thought and thought, you know. I remember
10 the morning well because of what happened, but, the, the
11 afternoon is a blur because I believe -- it seems like
12 something else happened that day. I believe Billy was sick
13 that day, got sick. But I'm not sure. I can not
14 100 percent tell you either way there.

15 Q Yes, ma'am.

16 I would think a heart attack, if he had a heart attack,
17 my husband did, I would think I would remember that, don't
18 you?

19 A He goes to the hospital quite often, and that was two
20 years ago, and he's been in and out of there four, five, six
21 times since then. I'm thinking it, but I don't want to
22 swear something one way or swear it the other way on that
23 because I can't remember.

24 Q Okay. So, you can't remember that?

25 A Not exact, no.

Gail Stewart - Cross-examination
by Solicitor Barnette

1 Q Okay. And that morning, what time did you get up?

2 A I was up around -- well, I got up and got Billy off to
3 work, and then I was up.

4 Q Okay.

5 A So, I was up no later than probably seven o'clock.

6 Q Okay. So, your testimony was that Marion and your
7 daughter came over then?

8 A Well, Billy sent, Billy sent Lee Ann to get Marion to
9 come work on the house.

10 Q What time was that?

11 A That was that morning early before he went to work.

12 Q Okay. And he talked to Lee Ann?

13 A Yes, he did.

14 Q Okay. Did Lee Ann come over and talk to him or---

15 A No, I believe he talked to her on the phone.

16 Q Okay. And, so, your testimony is -- what time did they
17 show up to work?

18 A She -- they arrived there between 10:00 and 10:30 cause
19 I was keeping up with the time because I knew he wanted to
20 know what time they got there.

21 Q Why would he want to know what time they got there?

22 A Cause he was gonna pay them to work on the house.

23 Q Oh, okay. And when they came over, they came over in a
24 car?

25 A Yes.

Gail Stewart - Cross-examination
by Solicitor Barnette

1 Q Okay. And what kind of car was it?

2 A I'll tell you that it was a light colored car. Seems
3 like it might of been a silver car.

4 Q Uh-huh. (Affirmative).

5 A And it was one of the little cars that they come and go
6 in. They change cars like crazy, but I couldn't tell you
7 the type and model. I don't keep up with it.

8 Q So, Lee Ann was -- whose car was it?

9 A I believe it was one of Marion's.

10 Q One of Marion's cars?

11 A Yeah.

12 Q Okay. So, Marion would change cars often?

13 A Well, no, his kids all had cars and he would drive
14 whatever was in the yard that they weren't driving.

15 Q Okay. And -- but you can't remember the make or model
16 or anything like that?

17 A No, I remember them arriving, I remember them getting
18 out, but I couldn't tell you now exactly which one it was.

19 Q And how long did they work there?

20 A They worked on till after lunch, till Shirley and her
21 brother got there. They wanted to go eat, and he wanted to
22 finish something and then they were going to go eat, and
23 then I left, and they were gone when I got back.

24 Q What time did he get there or what time did, did you
25 talk about?

Gail Stewart - Cross-examination
by Solicitor Barnette

1 A Around noon, between 11:30 to 12:30, right in there.

2 Q Okay. 11:30 and 12:30.

3 And did she -- so, they left and where did they go?

4 Do you know?

5 A I do not know.

6 Q Okay. They never came -- they left and got lunch and
7 that was it?

8 A Well, I talked to Lee Ann on the phone later that day,
9 but that's all I can remember clearly.

10 Q Okay. But you can't remember anything that happened in
11 the evening?

12 A No, not the way I would like to say that I can say I
13 knew this way, that way, or that way. I don't want to lie
14 to you, but---

15 Q I understand, ma'am.

16 Did you ever talk to Marion on the phone at the jail?

17 A I'm sure that I have.

18 Q Do you know if Lee Ann did?

19 A Well, I'm sure we all have.

20 Q Okay. And has she told you about her conversations
21 with him?

22 MS. HODGES: Object to hearsay, Your Honor.

23 A Actually no.

24 THE COURT: Just one second, ma'am. I've got an
25 objection.

Gail Stewart - Cross-examination
by Solicitor Barnette

1 WITNESS: Excuse me.

2 THE COURT: He did not ask for a quote. He just asked
3 if he related -- that's not asking for what someone said.
4 So, right now it's overruled. I don't know where he's going
5 with it. We'll see.

6 Q Did Lee Ann talk to you about the conversations she had
7 with Marion?

8 A Not really other than to say that he said he didn't do
9 it. That's all.

10 Q Okay. Did -- when Shirley and her -- is it Dale that
11 you was talking about?

12 A Yes, Dale.

13 Q What were they driving?

14 A They were driving an SUV, and it was one I've seen at
15 their house, but that's about all I can tell you. It was an
16 SUV.

17 Q Okay. And let me ask you a question.

18 They come over to work on the heat, is that right?

19 A The ducts had come off. We had a problem with a skunk
20 and a raccoon in the ducts.

21 Q Sure.

22 And did -- and was y'all having to use your heat?

23 Is that the reason why you needed to get it done?

24 A Yeah, they were there cause no heat is not a good
25 thing, no.

Gail Stewart - Cross-examination
by Solicitor Barnette

1 Q So, it was cold at that time then or getting cold?

2 A It was getting cold. We were trying to get ready,
3 yeah, cold weather. Getting it ready.

4 Q Okay. So, that would be why they were working on the
5 heating and the duct?

6 A Yeah.

7 SOLICITOR BARNETTE: One moment, Your Honor, please.

8 THE COURT: Yes, sir.

9 (Pause.)

10 Q Just a couple more questions, ma'am.

11 You said something about them squabbling or arguing.

12 Do you know what they was arguing about?

13 A No, I mean the kids and their wives and their
14 girlfriends do it so much that I tune it out. I'm not
15 taking sides and I'm not getting in their little squabbles.

16 Q So, all you can say is they were arguing?

17 A Well, not -- I don't know if you call it arguing, but
18 they were talking back and forth and it kind of --.

19 Q Got loud?

20 A A little bit cause Marion wanted to finish and not go
21 right now.

22 Q Okay. And did your grand -- the grand kids and stuff,
23 did they play or do anything in the evenings?

24 A Grand kids?

25 Q Yeah, kids, grand kids, or anything like that.

Gail Stewart - Cross-examination
by Solicitor Barnette

1 Do you know anything they did?

2 A The grand kids weren't there.

3 Q Okay. I mean in the evening.

4 A Might, might of been a great grand kids. But the grand
5 kids weren't there.

6 Q Okay. Did you ever go over to Shirley and Marion's
7 house?

8 A I did.

9 Q You did.

10 When was the last time you went over there?

11 A It was one of the girls' birthday. We went to the
12 house and then out to the -- they had a pool party.

13 Q Okay. But that was down the road at that time?

14 A It's just right there in the subdivision where he
15 lives.

16 Q Date wise?

17 A Huh?

18 Q Date wise.

19 When was the date?

20 A I'm -- excuse me. I didn't hear.

21 Q I'm sorry.

22 What was the date?

23 Do you know?

24 A I don't remember their birthdays. I can't remember
25 half their birthdays.

Gail Stewart - Cross-examination
by Solicitor Barnette

1 Q Okay. And how many cars did Marion have?

2 A Well, he -- him and Shirley had one, and I think the
3 girls had one, and, and the boy had one. There was at least
4 three. There might been of four. I mean I don't know
5 exactly if he had one for each child that was old enough to
6 drive or just a couple extra.

7 Q So, the boy had one?

8 A Uh-huh. (Affirmative).

9 Q Yeah.

10 And which car did he drive?

11 What car did he drive that day or Shirley, did Lee Ann
12 drive or who was driving that came to your house the first
13 time that morning?

14 A I believe that Lee Ann was.

15 Q Okay. And was it one of Marion's cars you say?

16 A I believe that it was. It didn't look like Lee Ann's
17 car.

18 Q Okay. Thank you, ma'am.

19 A Thank you.

20 THE COURT: Wait a second, ma'am.

21 WITNESS: Okay.

22 THE COURT: Redirect?

23 MRS. HODGES: Your Honor, nothing further.

24 THE COURT: All right.

25 MRS. HODGES: We ask that she be excused.

Derrick Gibson - Direct examination
by Mrs. Hodges

1 THE COURT: All right. Any objection?

2 SOLICITOR BARNETTE: No objection, Your Honor.

3 THE COURT: You can step down. You're free to go if
4 you'd like to go, ma'am.

5 WITNESS: Thank you.

6 THE COURT: The defense may call its next witness.

7 MRS. HODGES: Your Honor, we could call Mr. Gibson,
8 Derrick Gibson to the stand.

9 THE COURT: Is he outside the courtroom?

10 MRS. HODGES: Yes, sir, Sergeant Lyles is going out to
11 get him.

12 THE COURT: Going to get him.

13 All right. Thank you.

14 Sir, step here to be sworn.

15 DERRICK GIBSON, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat please. Once seated, state
18 your name.

19 WITNESS: Michael Derrick Gibson.

20 THE COURT: Your witness.

21 MRS. HODGES: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MRS. HODGES:

24 Q Mr. Gibson, I'm gonna ask you to speak up loud enough
25 so that the bailiff right here behind me can hear you.

Derrick Gibson - Direct examination
by Mrs. Hodges

1 All right?

2 A Yes, ma'am.

3 Q All right. And do you know a man named Grady Dale
4 Taylor?

5 A Yes, ma'am.

6 Q And where did you meet Mr. Taylor?

7 A In the county jail.

8 Q All right. And were you housed in the same pod with
9 him?

10 A Yes, ma'am.

11 Q Do you remember when that was?

12 A It's between December and March.

13 Q Of?

14 A 2009, 2010.

15 Q Okay. So, December of 2009 to March of 2010?

16 A Yes, ma'am.

17 Q Were you-all actually in the same cell together or just
18 in the same pod?

19 A Just the same pod.

20 Q All right. Did you ever have an occasion to talk with
21 Mr. Taylor or hear Mr. Taylor talk about what he was in jail
22 for?

23 A Yes, ma'am.

24 Q All right. What did he tell you about the, the pills
25 involved in this case?

Derrick Gibson - Direct examination
by Mrs. Hodges

1 A He stated that he had, he had a large quantity of pills
2 still hid, that when he got out, he'd be, he'd be well set.

3 Q Okay. Did he ever make any mention about a male
4 codefendant in this case?

5 A No, ma'am, just female.

6 Q All right. The female, did he ever use the name as to
7 who that person was?

8 A No, ma'am, just girlfriend.

9 Q Just girlfriend.

10 All right. You were obviously in, incarcerated at this
11 time, is that correct?

12 A Yes, ma'am.

13 Q All right. Have you been convicted in the past of any
14 crime that carries more than a year?

15 A Just until last month.

16 Q What do you mean just until last month?

17 A I mean---

18 Q Have, have you been convicted of something that carries
19 more than a year?

20 A Yes, ma'am, last month.

21 Q Okay. So, last month you got that conviction?

22 A Yes, ma'am.

23 Q Okay. Have you ever been convicted, convicted of a
24 crime that involves deceit or dishonesty?

25 A No, ma'am.

Derrick Gibson - Direct examination
by Mrs. Hodges

1 Q Okay. Have you been threatened or coerced or promised
2 anything for your testimony today?

3 A No, ma'am.

4 Q All right. And are you represented by an attorney
5 outside of my office?

6 A What you---

7 Q I mean you're not represented by anybody that's a
8 member of my office?

9 A No, ma'am. No, ma'am.

10 Q You have your own private attorney?

11 A Yes, ma'am.

12 Q Okay. All right. If you'd answer any questions the
13 solicitor might have.

14 THE COURT: Mr. Barnette.

15 SOLICITOR BARNETTE: Yes, sir, may I approach counsel
16 for a second?

17 THE COURT: You may.

18 CROSS-EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q I have a few questions, sir, and I just want to make
21 sure I'm clear for the record.

22 You just -- the last, I guess the last conviction you
23 had was conspiracy to, PWID meth?

24 A Yes, sir.

25 Q Is that right?

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 And that's what you just pled to or you was convicted
2 of too?

3 A Yes, sir, felony charges.

4 Q Okay. Isn't it true, back in 2009, you was convicted
5 of breach of trust with fraudulent intent?

6 A 2009?

7 No, sir.

8 SOLICITOR BARNETTE: May I approach the witness, Your
9 Honor?

10 THE COURT: You may.

11 MRS. HODGES: Your Honor, could we approach the bench
12 first before he asks---

13 WITNESS: would that be---

14 THE COURT: Sir, just one second.

15 WITNESS: Wait a minute. Wait a second there.

16 (WHEREUPON, a bench conference was held out of the
17 hearing of the jury at this time.)

18 THE COURT: Ladies and gentlemen, this is one of those
19 times I'm gonna ask you to step back to the jury room and
20 not begin any discussions while I go over an evidentiary
21 matter with the attorney. So, at this time, I'll ask you
22 step back again. Don't begin any discussion until I ask you
23 to do so.

24 Thank you very much.

25 (WHEREUPON, the following takes place outside the

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 presence of the jury.)

2 THE COURT: All right. It's my understanding that you
3 have a wrap sheet that indicates a Spartanburg County
4 conviction. I'll give you a moment to step into the Clerk's
5 Office and determine whether or not that was, in fact, a
6 conviction and bring back whatever documentation.

7 SOLICITOR BARNETTE: Your Honor, can I follow-up with
8 one other question?

9 I ask Mrs. Hodges just to try to shorten things.

10 THE COURT: Okay. Please do.

11 Q Have you ever been convicted of burglary second
12 nonviolent in 2009?

13 A That, that was -- I got charged with them in 2009. I
14 just went through this with the federal -- I just got
15 sentenced by the federal and this all got took off my
16 federal sentencing guidelines cause you know how I guess you
17 get guidelines in the federal. So, that was took off my
18 background. I don't know how many.

19 SOLICITOR BARNETTE: We'll check, Your Honor, to see.

20 WITNESS: I just got charged, I got charged with the --
21 I got charged with two burglary seconds and a burglary
22 third, breach of trust. I mean -- no, breach of peace. It
23 was an obtaining goods by false pretense and receiving
24 stolen goods and then my two grand larceny. That was all in
25 2009. That's what I'm, that's what I'm here for and I've

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 not pled to nothing cause I caught federal charges. So,
2 I---

3 Q So, your testimony is these are pending charges and
4 these are not---

5 A Yeah, yeah, they're not -- there's nothing found guilty
6 on it.

7 SOLICITOR BARNETTE: Okay. We'll just check, Your
8 Honor.

9 THE COURT: All right. We'll take a short recess.
10 I'll ask the witness just to remain seated. It shouldn't
11 take long to step in and confirm this one way or the other.

12 (WHEREUPON, a short recess was taken at this time.)

13 THE COURT: All right.

14 MRS. HODGES: Yes, sir.

15 SOLICITOR BARNETTE: They are pending, Your Honor.
16 He's correct.

17 THE COURT: That's correct?

18 MRS. HODGES: Yes, sir.

19 THE COURT: All right. So, ready to bring the jury
20 back?

21 SOLICITOR BARNETTE: Yes, sir.

22 THE COURT: All right. Bring the jury in.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE COURT: All right. Let the record reflect the jury

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 has returned to the courtroom.

2 During the break we have checked on some of the
3 convictions that the solicitor was asking this witness
4 about. We have determined that those convictions, while
5 they're reported on a document as convictions, in fact, do
6 not, have not been convicted. And, so, therefore, I'm
7 striking the last questions from the record. That means you
8 should not consider those matters at all in reaching your
9 verdict. They are no longer a part of the record, and I'll
10 give you a further instruction concerning how to handle that
11 sort of situation during my instruction on the law. But I
12 have stricken the last references to convictions for this
13 particular witness from the record at this time.

14 You may proceed, Mr. Barnette.

15 SOLICITOR BARNETTE: May it please the Court.

16 Just to recap, the federal charges are still standing,
17 is that right?

18 THE COURT: As far as -- yeah, that, that -- just the
19 state charges that you've referred to.

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: That's what's been stricken.

22 CONTINUED CROSS-EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q So, you have been convicted on the conspiracy charge
25 that we talked about for marijuana, for the meth?

Derrick Gibson - Cross-examination
by Solicitor Barnette

- 1 That has been, been a conviction?
- 2 A Yes, sir.
- 3 Q Right.
- 4 Okay. Whose your cellmates?
- 5 A At this month?
- 6 Q Yes, or whose been your cellmates?
- 7 A I had a whole bunch of them.
- 8 Q No, whose, whose been your cellmate recently or who is
- 9 your cellmate?
- 10 A Right now?
- 11 Q Yes, sir.
- 12 A Marion Stewart.
- 13 Q Marion Stewart's your cellmate, isn't he?
- 14 A (Witness nods affirmatively.)
- 15 Q Who else is your cellmate?
- 16 A Ray Grubbs and Antonio Ballasteras.
- 17 Q And when you say cellmate, you're in the cell together?
- 18 I mean it's not a pod?
- 19 We're not talking about a large group?
- 20 We're talking about your cell, your, that you're in
- 21 there together with during the night and stuff?
- 22 A Yeah.
- 23 Q How long has Mr. Stewart been your roommate?
- 24 A Two or three months I guess.
- 25 Q Okay. Have y'all talked about this case?

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 A No, I don't talk about cases. I got, I got---

2 Q You don't talk about case?

3 A I got enough on my own.

4 Q Well, you talked to Dale Taylor supposedly about his
5 case?

6 A Playing cards. He talked about his own case. I didn't
7 talk about it.

8 Q Oh, okay. During cards.

9 Okay. So, he just volunteered this information about
10 his case?

11 A Yeah, I'm not the only one who heard it. It's a whole
12 bunch of them that heard it.

13 Q Well, where are they at?

14 A I don't know. That was a year and a half ago.

15 Q Okay. Well, one thing -- what have you and Mr. Stewart
16 talked about for the past two or three months?

17 A Just -- I mean not much of nothing. I mean---

18 Q You don't, you don't talk about anything?

19 A I don't talk about cases, no. I've got -- I have 14
20 cases of my own to worry about. It's best not to talk about
21 no cases to nobody in jail you don't really know. So --.

22 Q I understand.

23 So, supposedly he told you that he did an armed
24 robbery?

25 A Yes, sir, you talking about Taylor?

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 Q Yes, sir.

2 A Yes, sir.

3 Q How do you know this fellow?

4 A who, Taylor?

5 Q Yeah.

6 How do you know who he is?

7 A Just playing cards. We play cards at the same table
8 every day for months.

9 Q Okay. And what was the date you did this at?

10 A He did this various times. I mean he was known in the
11 pod as Pills. That's what they called him.

12 Q Okay. You're saying he gave pills out in prison?

13 A No, that's what his nickname was.

14 Q Okay. You said during cards -- what's the, what's the
15 dates again that you was talking about?

16 A Between -- I was there from December 2nd till March
17 19th.

18 Q That's March 19th, 2010, or eleven?

19 A Ten.

20 Q Ten.

21 which pod was this?

22 A Three.

23 Q which cell was you in at that time?

24 A Three.

25 Q Pod three, cell three?

Derrick Gibson - Cross-examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q Where are you at now?
- 3 A 427.
- 4 Q Pod four, Cell 27?
- 5 A Yes, sir.
- 6 Q And how many roommates you got again?
- 7 A Four.
- 8 Q And who were they again?
- 9 A Where at?
- 10 Q Right now. Presently.
- 11 A Ray Grubbs, Antonio Ballastersas, and Marion Stewart.
- 12 Q Okay. And your testimony is you never talked to Marion
- 13 Stewart about your case?
- 14 A No, I don't talk about the case. I just seen his
- 15 codefendant across the hall. That's how we -- I
- 16 recognize -- I mean I recognized that he was the one, they
- 17 know each other. We seen through the windows. You can see
- 18 through the windows over there.
- 19 Q You saw his codefendant.
- 20 How do you know it was his codefendant?
- 21 A Cause we was standing right beside each other.
- 22 Q And how did you know his codefendant?
- 23 A Cause he was talking about him.
- 24 Q Who was?
- 25 A Marion Stewart.

Derrick Gibson - Cross-examination
by Solicitor Barnette

- 1 Q Oh, now, he's talking about him?
- 2 A No, he was talking to him.
- 3 Q Talking to him where?
- 4 A Through the, through the glass.
- 5 Q Where is this glass at?
- 6 A You can see through two different glass.
- 7 Q Where, where -- which glass, which glass, which pod?
- 8 A Pods four and three are right across the hall from each
- 9 other.
- 10 Q When was this that he talked to him?
- 11 A About three, three months ago I guess. I don't know.
- 12 Q Well, when did he become -- when did Marion Stewart
- 13 become your cellmate?
- 14 A I guess around January or December. I'm not exactly
- 15 sure.
- 16 Q When did you come in -- when did you come into the jail
- 17 or have you been in the jail since that time?
- 18 A I been -- June, June 1st.
- 19 Q June 1st.
- 20 A July 1st, July 1st of this year.
- 21 Q July 1st of this year?
- 22 A Yes, sir.
- 23 Q Did you see Dale Taylor after that or Grady Dale
- 24 Taylor?
- 25 A Huh huh. (Negative).

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 Q Did you see him after that?

2 A I seen him, I seen him yesterday.

3 Q You saw him yesterday?

4 A Yeah.

5 Q Is that the first time you seen him since you've been
6 back?

7 A Besides through the windows, yeah. So, we have
8 adjoining rec yards. You can see -- I mean we can watch
9 them play basketball and they can watch us play basketball.

10 Q But you've been talking to him?

11 A Talking to him?

12 Q During this time.

13 A No, I mean you can't---

14 Q I mean talking---

15 A You can't, you can't exactly talk. I mean they can't
16 hear you. It's like you got to mouth stuff across through
17 there.

18 Q What was Marion saying to Mr. Taylor?

19 A I don't know.

20 Q Well, you're standing right there.

21 What was he saying?

22 A I don't know. I can't tell you.

23 Q Well, you say he was talking to him, how do you, how
24 are you standing and he's talking---

25 A I was trying to talk to somebody else and he was

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 talking to somebody. So, I mean you don't really talk to
2 nobody. You just -- it's through the window. I mean it's
3 like me looking through that window at somebody in that back
4 room. You can't understand them. I mean you can't, you
5 can't hear them. There's no voice relay. You're just
6 mouthing.

7 Q So, your testimony is that he -- when did you see him
8 talk to, through the window at pod three?

9 A This was before he was my roommate.

10 Q Before he was his roommate, your roommate, your
11 roommate?

12 A Yeah.

13 Q How did you know who Marion Stewart was?

14 A We's just in the same -- we're --- I mean there's a
15 whole bunch of people in that same pod together. We
16 basically know everybody in there.

17 Q So, you talked through the window?

18 I want to make sure---

19 A I was talking---

20 Q I want to make sure---

21 A I was talking to somebody I know over there cause I
22 was -- I came from that pod. So, I knew everybody over in
23 that pod as well as everybody in my own pod.

24 Q So, Marion Stewart was over talking to his codefendant?

25 A Yes.

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 Q Okay. And you saw him talking through the window?

2 A And I said that's pills, you know.

3 Q What else did he say about pills?

4 A He said that's who was trying to set him up on these
5 charges.

6 Q But you say, but you say you talked to him through the
7 window?

8 A Mouthed back and forth, yeah. You know, I mean it's
9 like---

10 Q It's between pod three and four?

11 A Yes, sir.

12 SOLICITOR BARNETTE: One moment, Your Honor, please.

13 THE COURT: Yes, sir.

14 (Pause.)

15 SOLICITOR BARNETTE: May I have one moment, Your Honor,
16 please?

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q What's pod five?

20 A Lockup.

21 Q How can a man be talking to somebody through a window
22 when he's been in lockup seven months?

23 A He wasn't locked up when they did that. Maybe it was
24 more than seven months ago. I been there 12 months ago.

25 Q So, now, it's more than 12 months ago?

Derrick Gibson - Cross-examination
by Solicitor Barnette

1 A No, I been in, I been in -- I been sitting since
2 July 1st. You're trying to put words in my mouth. I was
3 there July 1st. I don't know about when -- I don't know
4 nothing about Dale. I just know this is before. This was
5 before Marion came in my room, and he's been in my room
6 three or four months. So, I mean this could of been---

7 Q But you don't know -- well, the problem is you say he
8 looks through the window, and you can't look in the window
9 at pod five, can you?

10 A Not from pod -- no, uh-huh. (Affirmative).
11 Pod three and pod four.

12 Q Uh-huh. (Affirmative).

13 So, you're saying it was two or three months ago, but
14 before July 1st, and now you're saying it was earlier?

15 A July 1st. I'm saying this is happened since I've been
16 there.

17 Q And Marion Stewart's been in your pod the whole time?

18 A Yes, sir.

19 SOLICITOR BARNETTE: One moment, Your Honor, please.
20 (Pause.)

21 SOLICITOR BARNETTE: No further questions, Your Honor.
22 If I need to, I'll do it in reply.

23 THE COURT: Oh, I understand.

24 Redirect.

25 REDIRECT EXAMINATION

Derrick Gibson - Redirect examination
by Mrs. Hodges

1 BY MRS. HODGES:

2 Q My understanding is that you've been -- you were in pod
3 three for a period of time as a pod mate with Dale Taylor?

4 A Yes, ma'am.

5 Q And that was when he made the comments to you that it
6 didn't matter if they gave 15 years, he's got enough pills
7 for when he gets out he'll be set?

8 A Yes, ma'am.

9 Q Okay. After that time, after you got released from
10 jail back in March of 2009 or March 2010. Excuse me.

11 A Yes, ma'am.

12 Q You subsequently were arrested and were housed where?

13 A I violated my house arrest and I came -- when they
14 brought me back to the county, I went to pod four.

15 Q Went to pod four.

16 A Yes.

17 Q Okay. When you first came to pod four, were you housed
18 with Marion Stewart as a roommate other than an actual
19 cellmate?

20 A No, ma'am.

21 Q So, you've been with Mr. -- you've been roommates with
22 Mr. Stewart for how long?

23 A Like four months ago.

24 Q Okay. The conversations that you saw happening through
25 the glass from the, the, the rec yard in pod four to the rec

Derrick Gibson - Redirect examination
by Mrs. Hodges

1 yard in pod three---

2 A Yes, ma'am.

3 Q ---was between Marion Stewart and Grady Dale Taylor.

4 Were you roommates with Mr. Stewart at that time?

5 A No, this was before then.

6 Q Okay. Do you remember when you came to jail, back to
7 jail in, in pod four?

8 A It was July 1st.

9 Q of 2010?

10 A 2010, yes, ma'am.

11 Q Okay. All right. Was it -- do you have any memory as
12 to how soon after you were back in pod four that you saw
13 this conversation happen?

14 A I mean when I first came back in, I was talking to a
15 lot -- I mean you can't talk to nobody, but you -- I mean I
16 was -- but I was---

17 Q Communicating?

18 A Communicating between a lot of these people because I
19 just left and I was already back.

20 Q Okay.

21 A So, I was trying to have a conversation. So, I mean it
22 was within the first few months I was there. I mean I'm not
23 exactly sure.

24 MRS. HODGES: Okay. All right. Thank you, judge.

25 That's all I have.

1 THE COURT: Recross.

2 SOLICITOR BARNETTE: Nothing on recross, Your Honor.

3 THE COURT: You may step down.

4 Ask the attorneys to approach.

5 MRS. HODGES: Yes, sir.

6 (WHEREUPON, a bench conference was held out of the
7 hearing of the jury at this time.)

8 THE COURT: Okay. Ladies and gentlemen, we're about 12
9 minutes until five o'clock, and anybody we put up now would
10 go past 5:00. So, we're gonna stop for the evening. Same
11 instructions I've given you when you left the court house
12 before, and, again, that is -- and I'll go through them
13 again. Don't attempt to gather any information from any
14 other source. Don't listen to, watch, or read any media
15 reports. Do not discuss the case with anyone. Don't allow
16 anyone to discuss it with you, and should anyone try to
17 contact you about your service on the jury, please report
18 that to the court.

19 We'll ask that you be back in the jury room at nine
20 o'clock in the morning. I trust everyone will have a good
21 evening. You're free to go at this time.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right. Court's in recess until nine
25 o'clock.

1 Defendant remains in custody.

2 Thank you very much.

3

4 (WHEREUPON, Court was in recess for the evening.)

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1 Wednesday, April 13th, 2011

2

3 THE COURT: All right. Good morning.

4 Defense ready to proceed?

5 MRS. HODGES: We are, Your Honor.

6 THE COURT: State ready to go?

7 SOLICITOR BARNETTE: Yes, sir.

8 THE COURT: Bring the jury in.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE COURT: The record will reflect that the jury has
12 returned to the courtroom.

13 If anyone had any difficulty in following my
14 instructions of yesterday evening, I'd ask that you now
15 please stand.

16 (No response.)

17 THE COURT: It appears everyone was able to comply.

18 When we broke yesterday afternoon the defense was in
19 the process of calling its witnesses, and, Mrs. Hodges, you
20 may call your next witness.

21 MRS. HODGES: Thank you, Your Honor.

22 We call Christopher Wyatt.

23 THE COURT: Sir, if you'll come right here to be sworn.

24 CHRISTOPHER WYATT, having been first
25 duly sworn, testified as follows:

Christopher Wyatt - Direct examination
by Mrs. Hodges

1 THE COURT: Have a seat please.

2 (Witness complies.)

3 THE COURT: State your name.

4 WITNESS: I'm Christopher Chuck Wyatt.

5 THE COURT: Your witness, Mrs. Hodges.

6 MRS. HODGES: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MRS. HODGES:

9 Q Mr. Wyatt, I'm gonna ask you to speak up loud enough so
10 the bailiff over here will be able to hear you.

11 Okay?

12 A Yes, ma'am.

13 Q All right. And you're Christopher Chuck Wyatt, and how
14 old are you?

15 A I'm 35.

16 Q All right. And do you know Marion Stewart?

17 A Yes, ma'am, we went to high school together.

18 Q And do you know a man named Dale Taylor?

19 A Yes, ma'am, I do.

20 Q And how do you know Mr. Taylor?

21 A He dated my cousin.

22 Q All right. And who is your cousin?

23 A Angie Blackwell.

24 Q All right. Back in October of 2009, did you have an
25 occasion to be around Mr. Taylor?

Christopher Wyatt - Direct examination
by Mrs. Hodges

1 A Yes, ma'am, I did. I stayed with Dale Taylor and my
2 cousin, Angie.

3 Q Okay. And did you have any conversations with
4 Mr. Taylor regarding robbing a pharmacy?

5 A I mean yeah, it kind of got brought up one night, and I
6 asked him could I help him out to where I could come make
7 some money, and he said maybe yeah, later on. But it
8 never -- I got locked up before it ever came along.

9 Q Okay. And what specifically did Mr. Taylor say that,
10 that you could do?

11 A I mean he didn't really say. He just -- I mean it's
12 just -- I just seen him with pill bottles and stuff. I mean
13 the pharmacy getting robbed, the pharmacy didn't matter. I
14 didn't know that he actually robbed the pharmacy. I seen
15 the pill bottles and I asked if I could make money to come
16 up, and he said he might let me help him do a job. It never
17 was brought up as robbing a pharmacy.

18 Q Okay.

19 A I just seen, I just seen pill bottles he had. I mean I
20 could tell it was not no individual pill bottle. It was
21 pharmacy pill bottles. I mean I kind of figured that out
22 myself.

23 Q Okay. So, these were -- were these full bottles of
24 pills or---

25 A They was like half full maybe, full, some of them.

Christopher Wyatt - Direct examination
by Mrs. Hodges

1 Q Were they like the typical brown plastic prescription
2 bottles or were they something different?

3 A They was the big pill bottles like the pharmacy pill
4 bottles.

5 Q Okay. And at any point during that conversation you
6 had with Mr. Taylor did Mr. Stewart's name come up?

7 A No, ma'am, it didn't.

8 Q All right. Do you know -- do you remember when the,
9 the pharmacy got robbed in Boiling Springs?

10 Do you remember -- did you ever hear about when that
11 happened?

12 A Yes, ma'am, I was in the jail when that happened.

13 Q All right. What was the time frame from the, from when
14 that pharmacy, you heard about the pharmacy getting robbed,
15 when did you have that conversation with Mr. Taylor?

16 A Probably a week and a half, maybe two weeks before
17 that.

18 Q Okay. And you're obviously in, in, in custody now?

19 A Yes, ma'am.

20 Q All right. Have you ever been convicted of a crime
21 that carries a penalty greater than one year?

22 A No, ma'am.

23 Q All right. Have you ever been convicted of a crime
24 involving deceit or dishonesty?

25 A No, ma'am.

Christopher Wyatt - Direct examination
by Mrs. Hodges

1 Q All right.

2 A Driving charges.

3 Q I'm sorry?

4 A Just driving charges.

5 Q Okay. Thank you, sir.

6 Your Honor -- answer any questions that Mr. Barnette
7 might have.

8 THE COURT: Mr. Barnette, your witness.

9 SOLICITOR BARNETTE: Thank you.

10 May I share something with counsel real quick before---

11 THE COURT: (Nods affirmatively.)

12 You may proceed.

13 SOLICITOR BARNETTE: Thank you, Your Honor.

14 May it please the Court?

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Mr. Wyatt, wasn't you convicted of failure to stop in
19 2005?

20 A Yes, sir.

21 Q Okay. And was you convicted of petty larceny in 2006?

22 A No, I haven't been convicted of no petty larceny. I
23 been convicted of shoplifting.

24 Q Okay. Shoplifting.

25 So, it's shoplifting instead of petty larceny?

Christopher Wyatt - Cross-examination
by Solicitor Barnette

1 A Yeah, I ain't got, I ain't got petty larceny and
2 shoplifting. Just shoplifting.

3 Q Okay. And you said you had this conversation with?

4 A With Dale.

5 Q With Dale?

6 A Yes, sir.

7 Q A week or---

8 A Probably a week and a half, two weeks prior to me
9 getting locked up.

10 Q Okay. So, the robbery -- I mean in relationship to the
11 robbery?

12 when was the robbery occurred?

13 A The robbery that -- I was in the county jail when that
14 happened. I was -- see I was running from the law when I
15 was staying with my cousin. This is my cousin, Angie
16 Blackwell, the one that -- where the DNA ran in and caught
17 the pills up, and I was staying with her. I was running
18 from the police and that's how I met Dale is through her.
19 He was dating her.

20 Q Okay. So, you're running from the police at this time?

21 A Yes, sir, I was, on violation of probation.

22 Q Okay. And, so, you talked to him -- the robbery
23 occurred while you was in jail?

24 A Yes, sir.

25 Q In relation to the conversation you had with Dale, when

Christopher Wyatt - Cross-examination
by Solicitor Barnette

- 1 was it in relationship to the robbery?
- 2 A It was like a week and a half before I came to jail.
- 3 We was both staying at my cousin's. He was dating my
- 4 cousin.
- 5 Q Okay. And when did you go to jail?
- 6 A I can't remember exact days. It's been two years ago,
- 7 sir.
- 8 Q Okay. But you remember everything else pretty well?
- 9 A I mean I can't -- I don't remember the exact day I got
- 10 locked up, no, sir, I don't.
- 11 Q Okay. And you say you saw these bottles.
- 12 A Yes, sir.
- 13 Q Was that when you first talked to him?
- 14 A Yes, sir, him and my cousin got into it, and my cousin
- 15 threw them out the window and said she wanted that shit out
- 16 of her house.
- 17 Q Okay.
- 18 A He was actually burning them when I seen them.
- 19 Q Okay. Which pod are you staying in right now?
- 20 A Pod four.
- 21 Q With Marion Stewart, right?
- 22 A Sir?
- 23 Q In with Mr. Stewart, right?
- 24 A Yeah, I'm on top rack. He's on the bottom rack.
- 25 Q Okay. And how long you been in pod four?

Christopher Wyatt - Cross-examination
by Solicitor Barnette

1 A Three weeks now.

2 Q Okay. When did you first talk to his attorney about
3 this?

4 A I would say about a week and a half ago.

5 Q So, you've known this the whole time and not told
6 anybody till a week and a half ago?

7 A I mean I didn't know that old Marion was -- I haven't
8 talked to Marion. Last -- I haven't talked to him since
9 high school.

10 Q And started -- so, you saw Marion and started talking
11 to him?

12 A Yeah, in the pod. I mean he come up to him, and I
13 noticed it was him in the pod.

14 Q Okay.

15 A I mean I seen him. I haven't seen him since high
16 school. I've just -- the point is that Dale was talking
17 about this things and bringing all these names up and Marion
18 asked me did you ever hear my name and I said no, I never
19 heard your name.

20 Q Okay. But you don't know if he did the robbery with
21 him or not, do you?

22 A I mean I never heard his name. I mean he -- Dale did,
23 he said a couple names, but I don't remember the names he
24 said was with him when they -- he actually never said that
25 he was robbing a pharmacy. He just said a job and brought

Christopher Wyatt - Cross-examination
by Solicitor Barnette

1 some names up.

2 Q Okay. But he never said robbing a pharmacy or anything
3 now?

4 A No, sir, nothing was brought up. I mean I kind of
5 figured that out with the big pill bottles with a pharmacy
6 wrote on them.

7 Q Okay. But you don't know where the pill bottles came
8 from you, do you?

9 A No, sir, I don't.

10 Q You don't know if they came from Marion Stewart or not,
11 do you?

12 A I can't say that, no, sir, I don't know if they came
13 from there.

14 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
15 please.

16 THE COURT: Yes, sir.

17 (Pause.)

18 Q If you -- I've heard and understand your testimony
19 right, you said you saw the bottles before the robbery?

20 A I mean it was not the Rx Pharmacy. I was locked up
21 when the Rx Pharmacy got robbed.

22 Q No, that's not the question.

23 My question is you said you saw the bottles before the
24 robbery occurred?

25 A Before the Rx Pharmacy robbery?

Christopher Wyatt - Cross-examination
by Solicitor Barnette

1 Q Yes, sir.

2 A I mean I didn't say nothing about a robbery. I said I
3 seen some pill bottles. I didn't say nothing about no
4 robbery. I just said I seen some pill bottles in Dale's
5 possession.

6 Q You said these pills, these pill bottles -- you
7 mentioned the robbery and the pill bottles, but the robbery
8 occurred after you saw these, you allegedly saw these pill
9 bottles, right?

10 A Yes, sir. Yes, sir.

11 SOLICITOR BARNETTE: Thank you, Your Honor.

12 THE COURT: Redirect.

13 REDIRECT EXAMINATION

14 BY MRS. HODGES:

15 Q Were you able to tell where the bottles came from---

16 A No, ma'am, I couldn't.

17 Q ---that, that you saw?

18 A I just seen the -- I just know they was pharmacy label.
19 I mean there's, there's pill bottles. I've seen peoples'
20 prescription and pill bottles are not that big when peoples
21 got prescriptions. It was big pill bottles with large
22 quantities of them.

23 Q Okay. And, and where did you see these pill bottles?
24 where were you when you saw these pill bottles?

25 A I was at Angie Blackwell's house.

Christopher Wyatt - Redirect examination
by Mrs. Hodges

1 Q okay. Thank you, sir.

2 SOLICITOR BARNETTE: No further questions, Your Honor.

3 THE COURT: You may step down.

4 MRS. HODGES: Your Honor, we ask that Mr. Wyatt be
5 excused from his subpoena.

6 THE COURT: He is.

7 MRS. HODGES: Thank you.

8 THE COURT: Thank you.

9 WITNESS: Thank you, sir.

10 THE COURT: You may call your next witness.

11 MRS. HODGES: We call Donald Stepp.

12 THE COURT: Come forward and be sworn please, sir.

13 DONALD STEPP, having been first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat please. Once seated, state
16 your name.

17 WITNESS: Donald Stepp.

18 THE COURT: Mrs. Hodges, your witness.

19 MRS. HODGES: Thank you, Your Honor.

20 (WHEREUPON, two photographs were marked as Defendant's
21 Exhibit Nos. 4 and 5 for identification purposes only at
22 this time)

23 MRS. HODGES: Your Honor, may the record reflect that
24 I've just showed counsel Defendant's Exhibits 1 through 5
25 that have been marked for identification.

Donald Stepp - Direct examination
by Mrs. Hodges

1 THE COURT: It will so reflect.

2 MRS. HODGES: And may I approach the witness?

3 THE COURT: You may.

4 DIRECT EXAMINATION

5 BY MRS. HODGES:

6 Q Mr. Stepp, I'm gonna ask that you look at these
7 photographs for me, and if -- are you able to identify them?

8 A Yes, ma'am, I am.

9 SOLICITOR BARNETTE: Your Honor, I'll stipulate to the
10 pictures. I think those are pictures of the pharmacy area.

11 THE COURT: All right. So, you---

12 SOLICITOR BARNETTE: Just as long as---

13 THE COURT: So, you'll say they're admissible?

14 SOLICITOR BARNETTE: As long as they give what date
15 they were taken. The only thing might be the trees or
16 whatever, but---

17 THE COURT: Okay. Well, we'll go ahead and then admit
18 them into evidence without objection if that's what you'd
19 like to do.

20 MRS. HODGES: Yes, sir, please.

21 THE COURT: All right. They're admitted as marked.

22 (WHEREUPON, Defendant's Exhibit Nos. 1 through 5 were
23 received into evidence at this time.)

24 THE COURT: You may proceed.

25 MRS. HODGES: Thank you.

Donald Stepp - Direct examination
by Mrs. Hodges

1 Q Mr. Stepp, where are you currently employed?

2 A Investigator with the Public Defender's Office.

3 Q All right. And did I ask you to accompany me to the Rx
4 Pharmacy recently?

5 A You did.

6 Q All right. And what was the purpose of that?

7 A To take these pictures.

8 Q Okay. And do you remember which date it was that---

9 A It was, it was last Friday. 8th of April.

10 Q Okay. And the -- Defendant's Exhibit No. 1, what does
11 it show?

12 A It's a scene of the back door of the pharmacy.

13 Q Okay. And what about Defendant's Exhibit No. 2?

14 A It's the backside of the entire building. It shows the
15 area between the pharmacy and the bank with trees and
16 shrubbery on it.

17 Q All right. And Defendant's 3.

18 A It's the back of the building. It shows the back door
19 and the side of the building. That was taken from Sholey
20 Branch Road.

21 Q Okay. And what about Defendant's 4?

22 SOLICITOR BARNETTE: You need, you need some help?

23 MRS. HODGES: Yeah.

24 A It's the picture taken from the back door of the
25 pharmacy looking toward the rear entrance, the rear exit of

Donald Stepp - Direct examination
by Mrs. Hodges

1 the parking lot and into Sholey Estates.

2 Q Okay.

3 A Excuse me. Sterling Estates.

4 Q Sterling Estates.

5 All right. And what about Defendant's 5?

6 A It's a picture of the side of the pharmacy and showing
7 the back-door and the drive through window of the pharmacy.

8 Q Okay. And do you remember approximately what time we
9 were at the pharmacy?

10 A It's around 11:00 a.m.

11 THE COURT: It's slowly coming up.

12 MRS. HODGES: Yes, sir.

13 THE COURT: It's -- there we go. You're up there now.

14 Lower the lights please.

15 Q All right. And this is Defendant's 1 you said, and
16 this is the back door?

17 A Yes, ma'am.

18 Q All right. And are there any parking spaces behind
19 that, that back door of the pharmacy?

20 A Three I believe.

21 Q Okay. And were there any cars parked behind the
22 pharmacy when we were there that day?

23 A No, ma'am.

24 Q Okay. Are you familiar with this area of Boiling
25 Springs independent of this investigation?

Donald Stepp - Direct examination
by Mrs. Hodges

1 A Yes, ma'am.

2 Q And, and how are you familiar with it?

3 A Lived there all my life.

4 Q Okay. Are you familiar with the amount of vehicle
5 traffic that's usually there mid-morning?

6 A Not during the week cause I'm usually at work.

7 Q Okay. The is Defendant's No. 2.

8 Can you -- what are we actually seeing here?

9 A The building to the left is, is the -- the corner is
10 the back corner of the pharmacy. The other building is a
11 separate, completely separate building. There's -- in that
12 plaza, there are three separate strip, small strip malls.

13 Q Okay.

14 A That's the area between the back of the pharmacy and
15 the bank where the shrubbery and the trees are at.

16 Q And this area here where I'm pointing, is that
17 ordinarily, about where, where the back door would of been?

18 A No, ma'am.

19 Q The back---

20 A The back door would of been around to the right of your
21 finger where that little yellow post is sticking up out of
22 the ground.

23 Q Okay.

24 A That's the back door.

25 Q That's the back door.

Donald Stepp - Direct examination
by Mrs. Hodges

1 A The post would keep people from blocking the door.

2 Q So, the post is actually to the corner of the driveway?

3 A Yes, ma'am, that's to the, just to the right of the
4 drive-in window.

5 Q Okay. And it -- the -- this particular pharmacy, is,
6 is this, or this picture, is this similar to what it would
7 of been like in 2009?

8 A Yes, ma'am.

9 Q Okay. And were the trees there in 2009?

10 A They were. They were put there by the developers when
11 it was built, but they were much smaller then.

12 Q Okay. Do you know when this, this subdivision or
13 shopping center was developed?

14 A At varying times I think that building opened probably
15 about 2006, maybe 2007.

16 Q Okay. And this is Defendant's 3.

17 Can you tell us what we're seeing there?

18 A That's the back and the side of the pharmacy as seen
19 from Sholey Park, Sholey Creek Road. That's directly up
20 behind the pharmacy.

21 Q Okay. The trees, are they on any sort of a hill or an
22 incline?

23 A Yes, ma'am, there's an embankment there that runs from
24 the driveway all the way up behind the entire part of the
25 property, far corner of the property.

Donald Stepp - Direct examination
by Mrs. Hodges

1 Q And this is a, the actual back door of the pharmacy?

2 A Yes, ma'am, that is the back door.

3 Q Okay. Defendant's 5, what does this show?

4 A That shows the back door to the right and the drive-in
5 window in the center.

6 Q All right. And is there a parking area there on the
7 end of the, the building?

8 A Yes, ma'am, there's a drive through area that comes
9 from the front driveway and it goes out to the back to
10 Sholey Park, Sholey Creek Road, and there's a fairly large
11 parking area from where that picture's taken.

12 Q And then Defendant's 4, what does that show?

13 A That is the rear exit to the parking lot that's
14 directly across from. Where that truck is coming out of is
15 the entrance to Sterling Estates---

16 Q Right here?

17 A ---housing development. Yes, ma'am, right there.

18 Q Okay. And how far is it approximately from the back
19 door to that Sterling Estates?

20 A Approximately a hundred feet.

21 Q Okay. And from the back door to the tree line, do you
22 remember how far that was?

23 A Probably 75 to 80 feet probably --

24 Q Okay.

25 A To the upper, upper side of the tree line to the

Donald Stepp - Direct examination
by Mrs. Hodges

1 street.

2 Q Okay. As part of your duties for -- do you need this?

3 As part of your duties with the, the, my office, do you
4 also help provide clothing for client's?

5 A We do.

6 Q And in that clothing, do you help provide shoes?

7 A We do.

8 Q And what size pair of shoes actually fit Mr. Stewart?

9 A Twelves.

10 Q Thank you, sir. If you'd answer any questions the
11 solicitor might have.

12 THE COURT: Mr. Barnette.

13 CROSS-EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q These pictures were taken when, Mr. Stepp?

16 A Last Friday morning around 11:00 a.m.

17 Q Okay. So, they weren't taken October 14th, 2010?

18 A No, sir.

19 Q So, the cameras on the outside, you don't know if they
20 were there or not then, do you?

21 A Well, the cameras on the outside, I asked -- when we
22 arrived at the scene, I went and asked the pharmacist on
23 duty, told him what we were there, to make some pictures
24 outside, and asked if they had any camera's, and he said
25 there's a camera on the back of the building, but there was

Donald Stepp - Cross-examination
by Solicitor Barnette

- 1 a camera on the back of that building that date.
- 2 Q Right.
- 3 So, that camera wasn't outside---
- 4 A Correct.
- 5 Q ---at the time?
- 6 Okay. And showing you State Exhibit No. 2, there's a
- 7 drive through there, isn't there?
- 8 A Yes, sir.
- 9 Q You can drive around the building?
- 10 A Yes, sir, you can. It goes all the way -- like I said,
- 11 there's three buildings in that complex, and that drive goes
- 12 all the way around all three of them.
- 13 Q So, it can go all the way around it?
- 14 A Yes, sir.
- 15 Q Okay. So, it can be considered a road by some people
- 16 driving around?
- 17 A It could be and just not marked as such.
- 18 Q And in the, in the -- did you help interview the two
- 19 inmates that testified?
- 20 A No, sir.
- 21 Q Okay. Was you -- do you know when they, were they
- 22 contacted or who contacted y'all's office about them?
- 23 A That I do not know. Mrs. Hodges take, took care of
- 24 that.
- 25 Q Okay. One other thing, you was talking about the shoes

Donald Stepp - Cross-examination
by Solicitor Barnette

1 or whatever.

2 Do you know what boots or what shoes he wore when he
3 went to the jail?

4 A I have no idea, Mr. Barnette.

5 Q If I showed them to you and said it was a ten, would
6 you have any disagreement with that?

7 A I would not -- I wouldn't know.

8 Q Did he request a 12 or---

9 A No, sir, we put him -- we tried him in some elevens and
10 they were too small and we went up a size.

11 Q Okay. So, your testimony is that his feet are too big
12 for them?

13 A He said they were.

14 Q He said they were?

15 A Yes, sir.

16 Q Thank you, sir.

17 A Yes, sir.

18 THE COURT: Redirect?

19 MRS. HODGES: No, sir, thank you.

20 THE COURT: You may step down.

21 MRS. HODGES: Your Honor, the defense rests.

22 THE COURT: All right. The State have any reply
23 witnesses?

24 SOLICITOR BARNETTE: Yes, sir, we do.

25 THE COURT: You may call them.

Elizabeth Baldwin - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, Your Honor.

2 The first one is Ms. Baldwin I'd like to call.

3 THE COURT: Ma'am, if you'll come forward to my left
4 and be sworn please.

5 ELIZABETH BALDWIN, having been first
6 duly sworn, testified as follows:

7 THE COURT: Have a seat please, ma'am.

8 (Witness complies.)

9 THE COURT: State your name.

10 WITNESS: Elizabeth Lynn Baldwin.

11 THE COURT: Mr. Barnette, your witness.

12 SOLICITOR BARNETTE: Thank you, sir.

13 DIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q If you would, move that mic closer to you, ma'am, so
16 they can hear you all the way back here.

17 A Okay.

18 Q I'm gonna have to ask you to speak up.

19 A Okay.

20 Q I know you're soft spoken, soft spoken.

21 Ma'am, where do you live at?

22 A In Morgan Forest Development at [REDACTED]
23 Drive.

24 Q Okay. And who was -- was Shirley a neighbor of yours
25 at one time?

Elizabeth Baldwin - Direct examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q And where did she live at?
- 3 A Right behind me.
- 4 Q Okay. what kind of work do you do, ma'am?
- 5 A I'm an insurance agent.
- 6 Q And where is your business at, ma'am?
- 7 A In Boiling Springs.
- 8 Q Okay. Is it on Highway 9?
- 9 A It use to be, yes, sir.
- 10 Q Yes, ma'am.
- 11 Back on October of 2009 was it on Highway 9?
- 12 A Yes, sir.
- 13 Q Okay. The swimming pool that's in y'all's community --
- 14 A Yes, sir.
- 15 Q -- when does it close?
- 16 A It closes no later than the second week of September.
- 17 Q And how do you know that?
- 18 A Because I live directly across from the pool.
- 19 Q Okay. And you watch over the pool?
- 20 A Yes, sir, I do.
- 21 Q If anything happened around the pool, what do you do?
- 22 A I chase them off or I call the deputies to come get
- 23 them if they don't belong there.
- 24 Q And, so, you're like the watch dog of that pool?
- 25 A Yes, sir.

Elizabeth Baldwin - Direct examination
by Solicitor Barnette

1 Q Okay. And when they closed the pool, what do they do
2 to close it?

3 A They winterize it. They take all the ladders down.
4 They put a cover over the pool. They remove all the patio
5 furniture. They cover the baby pool, and they put a padlock
6 on the gate.

7 Q Okay. So, there's no question, October 13th, 2009,
8 that pool is closed?

9 A That pool was closed.

10 Q No question in your mind?

11 A No, sir.

12 Q Okay. Let me take you back to October 14, 2009.

13 A Yes, sir.

14 Q Do you remember that day, ma'am?

15 A Yes, sir, I do.

16 Q Why do you remember that day?

17 A Because the deputies came to our office and told us we
18 had to lock our doors and not even let our customers in.

19 Q Why was that?

20 A Because there had been a robbery in Boiling Springs.

21 Q Okay. So, when you get -- what time did you leave that
22 morning?

23 A I left that house, my house at 7:45.

24 Q And do you check around your house before you leave?

25 A I check the whole neighborhood before I leave.

Elizabeth Baldwin - Direct examination
by Solicitor Barnette

1 Q Why is that?

2 A Just to make sure everything is where it's suppose to
3 be, that the kids aren't out where they're not suppose to
4 be, that nothing has gone wrong within the neighborhood.

5 Q Okay. And that's just, I guess, your business and
6 everything that you deal with?

7 A That comes from my business and the fact that my son --
8 I have a 16 year old that's at home when I'm not there
9 sometimes.

10 Q Do you try to watch out for things?

11 A And our neighbors and just look over, make sure
12 everything's okay.

13 Q So, you watch over the neighborhood and things?

14 A Yes, sir.

15 Q Okay. I understand.

16 That morning, did you see Anthony's car?

17 A Yes, sir.

18 Q And where was it?

19 A In the driveway.

20 Q And what color car was it?

21 A It was a silver car.

22 Q Okay. And when you came back at four o'clock that
23 evening, was that car still there?

24 A Same place it was when I left that morning.

25 Q Okay. And you remember this cause of this robbery that

Elizabeth Baldwin - Direct examination
by Solicitor Barnette

1 day?

2 A Yes, sir.

3 Q And you was just checking around the neighborhood too?

4 MRS. HODGES: Judge, I object to the solicitor,
5 solicitor leading his witness.

6 SOLICITOR BARNETTE: I'll rephrase the question.

7 THE COURT: Thank you, sir.

8 Q So, did you notice anything odd about the car or
9 anything from there?

10 A No, sir.

11 Q And who is Anthony?

12 A Anthony was Shirley's son that lived behind me.

13 Q Okay. So, the car was there when you left that
14 morning?

15 A Yes, sir.

16 Q And the car was there in the same spot when you came
17 back?

18 A Yes, sir.

19 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
20 please.

21 THE COURT: Yes, sir.

22 (Pause.)

23 SOLICITOR BARNETTE: Please answer any questions Mrs.
24 Hodges may have for you, ma'am. Thank you.

25 MRS. HODGES: Mrs. Hodges, your witness.

Elizabeth Baldwin - Cross-examination
by Mrs. Hodges

1 CROSS-EXAMINATION

2 BY MRS. HODGES:

3 Q How big is the Morgan Forest development, Mrs. Baldwin?

4 A We have about 20 houses.

5 Q Okay. And how long have you been neighbors with
6 Shirley Taylor?

7 A I've been in the development since May of '05. So --.

8 Q And how long, how long was she in your neighborhood?

9 A About six, seven months.

10 Q And they're no longer there in that, in that
11 development, are they?

12 A No.

13 Q Okay. When did they, they leave that development?

14 A Well, there's a new family there that's been there
15 about a year and a half.

16 Q Okay. Do you know what type of car Anthony drives?
17 We know it's silver.

18 Do you know what the model is?

19 A It was a little silver sports car. I think it was an
20 Eclipse or something in that range.

21 Q Okay. And you were not -- you said you left at 7:45
22 that morning on October 14th?

23 A Yes, ma'am.

24 Q Okay. Do you remember what time the deputies came to
25 your office to, to tell you about the robbery?

Elizabeth Baldwin - Cross-examination
by Mrs. Hodges

1 A We were told right after I got back from lunch to lock
2 the doors and not let anyone.

3 Q Right after you got back from lunch?

4 A I left for lunch at eleven o'clock.

5 Q Okay. All right. And do you know what time you got
6 back?

7 A At 12:00.

8 Q At 12:00.

9 How far is your business from the RxCare Pharmacy?

10 A My office was about a half a mile.

11 Q Half a mile.

12 Okay. North or south?

13 I mean towards Spartanburg or going away?

14 A Towards Spartanburg.

15 Q Okay. And between 7:45 and when you got home at you
16 said 4:00 p.m. that evening, you were not back in the Morgan
17 Creek development?

18 A No, ma'am.

19 Q So, you don't know, have any idea whether anybody had
20 driven Anthony's car and parked in the same spot or not, do
21 you?

22 A In our -- the way our driveways are made, it's very
23 easy to tell if a car's been moved because you have to run
24 up on the grass. That car had not been moved that day.

25 Q Had it rained that day?

Elizabeth Baldwin - Cross-examination
by Mrs. Hodges

1 A No, ma'am.

2 Q Had not rained that day?

3 A Not that I remember.

4 Q Okay. Thank you, ma'am. That's all I have.

5 THE COURT: Mr. Barnette, any further questions?

6 SOLICITOR BARNETTE: No further questions. We ask the
7 witness be excused.

8 THE COURT: Any objection?

9 MRS. HODGES: No, sir.

10 THE COURT: Ma'am, you may step down. You're free to
11 go as well. Thank you very much.

12 State may call its next witness.

13 SOLICITOR BARNETTE: They're going to get him, Your
14 Honor.

15 THE COURT: All right.

16 Sir, if you'll come forward to my left and be sworn in
17 please.

18 ANTHONY GILBERT, having been first duly
19 sworn, testified as follows:

20 THE COURT: Have a seat please, sir.

21 (Witness complies.)

22 THE COURT: State your name.

23 WITNESS: Anthony Gilbert.

24 THE COURT: Your witness, Mr. Barnette.

25 DIRECT EXAMINATION

Anthony Gilbert - Direct Examination
by Solicitor Barnette

1 BY SOLICITOR BARNETTE:

2 Q I'm gonna have to ask you to speak up, okay, so they
3 can hear you and get close to that mic.

4 Okay?

5 A Yes.

6 Q Mr. Gilbert, who is your mom?

7 A Shirley Gilbert.

8 Q And back in October of 2009, the 14th or 13th, 2009,
9 where did you live at, sir?

10 A We lived in a subdivision off of -- I really can't
11 remember the name of the subdivision. It's Woodfin Ridge I
12 think.

13 Q Okay. And did you live with your mom there?

14 A Yes, ma'am. Yes, sir.

15 Q And what kind of car did you drive, sir?

16 A 2003 Mitsubishi Eclipse.

17 Q And what color was it, sir?

18 A It was silver.

19 Q Okay. Were you home that day?

20 A Yes, sir.

21 Q What happened the night before?

22 A Really I can't remember. The only thing I know is my
23 daughter got sick.

24 MRS. HODGES: Your Honor, I can not hear Mr. Gilbert.

25 THE COURT: Okay. Well, you can step around if you'd

Anthony Gilbert - Direct Examination
by Solicitor Barnette

1 like, but I'll ask him to speak up.

2 You may proceed, sir.

3 Speak up so that gentleman back there by the door can
4 hear you.

5 WITNESS: Okay.

6 Q You said your daughter got sick that night?

7 A Yes, sir.

8 Q And who was with you that night?

9 A It was me, and my girlfriend, and my daughter.

10 Q Okay. And where did y'all stay at in the house?

11 A We stayed in -- you walk in the door, the first bedroom
12 door on your left right off the living room.

13 Q Okay. Did you stay up with your daughter that night?

14 A Till about 3:00 or 4:00 in the morning.

15 Q Okay. And did your girlfriend stay up with you that
16 night too?

17 A Yes, sir.

18 Q And did she finally go to bed?

19 A Yes, sir.

20 Q And did y'all go to bed?

21 A Yes, sir.

22 Q How many keys do you have to your car?

23 A Just one.

24 Q And where are they kept at, sir?

25 A They was in my drawer in my bedroom.

Anthony Gilbert - Direct Examination
by Solicitor Barnette

- 1 Q Okay. Did anybody else have a key to your car?
- 2 A No, sir.
- 3 Q Do you let anybody else drive your car?
- 4 A No, sir.
- 5 Q When you go into the room, what do you do with the
- 6 door?
- 7 A I lock it.
- 8 Q So, you lock it from inside?
- 9 A Yes, sir.
- 10 Q Can anybody get inside and unlock it?
- 11 A No, sir.
- 12 Q How long did you sleep the next day?
- 13 A Till about close to one o'clock.
- 14 Q Okay. And did anybody come in your room or come in
- 15 your room?
- 16 A No, my door was still locked when I woke up.
- 17 Q Was the keys still on the drawer?
- 18 A Same position.
- 19 Q Where was your car at, sir?
- 20 A Same spot.
- 21 Q And where is that spot at, sir?
- 22 A In the driveway.
- 23 Q The driveway?
- 24 A Yes, sir.
- 25 Q So, it was there when you woke up?

Anthony Gilbert - Direct Examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Has the defendant, Marion Stewart, ever driven your
3 car?

4 A No, sir.

5 Q Has your sister, Lee Ann, ever driven your car?

6 A No, sir.

7 Q Have you ever given him permission to drive your car?

8 A No, sir.

9 Q And there's nobody else that has keys to your car?

10 A No, sir.

11 SOLICITOR BARNETTE: One moment, Your Honor, please.

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q Please answer any questions Mrs. Hodges has.

15 THE COURT: Mrs. Hodges, your witness.

16 MRS. HODGES: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MRS. HODGES:

19 Q Mr. Gilbert, you were not here yesterday for the
20 testimony, were you?

21 A No, sir.

22 Q Okay.

23 A No, ma'am.

24 Q When were you contacted to come to court today?

25 A Yesterday.

Anthony Gilbert - Cross-examination
by Mrs. Hodges

- 1 Q And who contacted you?
- 2 A My mom told me.
- 3 Q Your mother told you to come?
- 4 A Yes, ma'am.
- 5 Q And that was after your mother had been here and been
- 6 in the courtroom after she testified, is that correct?
- 7 A Yes, ma'am.
- 8 Q Okay. Were you told by your mother what was testified
- 9 about in court yesterday?
- 10 A No, ma'am.
- 11 Q You weren't?
- 12 A No, ma'am.
- 13 Q All right. So, how did you know to come to court
- 14 today?
- 15 A Cause she told me I needed to be here.
- 16 Q She told you you needed to be here?
- 17 A Uh-huh. (Affirmative).
- 18 Q Okay. Did she tell you why?
- 19 A That I needed to testify.
- 20 Q Did she tell you what you needed to testify about?
- 21 A For this case.
- 22 Q Okay. Did she tell you what to say?
- 23 A No, ma'am.
- 24 Q And did you even ask her?
- 25 A No, ma'am.

Anthony Gilbert - Cross-examination
by Mrs. Hodges

1 Q So, your mom tells you that you need to come and
2 testify for the state in the case against your stepfather,
3 and you don't even ask her why you're being asked to come to
4 Court to testify?

5 A I knew I was coming to court to be testified because of
6 this case.

7 Q All right. But you didn't ask what, what kind of
8 questions they had for you and why you were getting
9 involved?

10 A No, because I'm gonna tell the truth either way it
11 goes.

12 Q That's not my question.

13 My question is you weren't even a little tiny bit
14 curious---

15 A No, ma'am.

16 Q ---as to why they were asking you to come to court to
17 testify?

18 A No, ma'am, I knew why they was asking me to come to
19 court to testify for this case.

20 Q Well, why is that?

21 A Because of this case.

22 Q What about this case---

23 SOLICITOR BARNETTE: Objection, Your Honor. I think
24 it's been asked and answered.

25 THE COURT: It has been.

Anthony Gilbert - Cross-examination
by Mrs. Hodges

1 MRS. HODGES: Judge, he hasn't answered the question.
2 That's the problem.

3 SOLICITOR BARNETTE: I think he has.

4 THE COURT: Beg your pardon?

5 MRS. HODGES: He has not answered the, the---

6 THE COURT: Well, he's given answers to the questions
7 and they've been the same a couple of times. I'll let you
8 go around one more time.

9 Q Other than your car, why in the world would you be here
10 to testify in this case?

11 What do you know about this case?

12 A I know nothing about this case.

13 Q You don't know anything about this, do you?

14 A No, ma'am.

15 Q You've never been contacted by the solicitor's office
16 to come and testify about this case prior to your mother
17 telling you to come today to talk about it, have you?

18 A Yes, ma'am.

19 Q And, in fact, your mother doesn't even have a door to
20 her bedroom, does she---

21 A Well---

22 Q ---in that house?

23 A The old house, it was broken.

24 Q She didn't have a door to that room at all, did she?

25 A Well, she had a door, but there was a big old hole

Anthony Gilbert - Cross-examination
by Mrs. Hodges

1 through it.

2 Q So, your testimony today is that the door was there,
3 but there was a hole in it?

4 A Yep, big old hole.

5 Q Big old hole?

6 A Yeah.

7 Q Okay. So, the house that has a door with a big old
8 hole also has a lock on another door?

9 A What do you mean?

10 Q So, you're saying that your bedroom door has a lock on
11 it?

12 A Yes, my bedroom door has a lock on it.

13 Q Okay. And you didn't talk about your testimony at all,
14 the reason why you're here today --

15 A No, ma'am.

16 Q -- with your mother?

17 A No, ma'am.

18 Q When did you talk to the solicitor's office?

19 A I never talked to the solicitor's office today, except
20 besides today.

21 Q When did you talk to the solicitor's office?

22 A This morning.

23 Q What time?

24 A I don't know. About 8:00. As soon as I got here.

25 Q And who did you talk to?

Anthony Gilbert - Cross-examination
by Mrs. Hodges

1 A Her and that gentlemen right there.

2 Q The lady here in the, the tan and orange?

3 A Yeah, her and---

4 Q And the man just asking you questions?

5 A Uh-huh. (Affirmative).

6 Q What time did your mother say that you had to come to
7 court?

8 A We got up this morning about 7:30. We came straight
9 here.

10 Q Did she tell you last night you were coming or this
11 morning?

12 A She told me last night.

13 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
14 this point. We've asked and answered this so many times.

15 MRS. HODGES: No, judge, those are different questions.
16 Those are all the questions I have of Mr. Gilbert.

17 THE COURT: All right. Mr. Barnette, anything further?

18 SOLICITOR BARNETTE: Just one on redirect, Your Honor.

19 REDIRECT EXAMINATION

20 BY SOLICITOR BARNETTE:

21 Q The first time I met you was what time this morning?

22 A It was about 8:00 something I guess. I don't, really
23 don't recall.

24 Q Is that the first you talked to anybody about this
25 incident?

Anthony Gilbert - Redirect Examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Thank you.

3 THE COURT: Recross.

4 MRS. HODGES: No, sir.

5 THE COURT: You may step down.

6 You wish to excuse the witness?

7 SOLICITOR BARNETTE: Yes, sir.

8 THE COURT: Any objection?

9 MRS. HODGES: Oh, no, sir.

10 THE COURT: He is free to go if he'd like.

11 State have any other witnesses?

12 SOLICITOR BARNETTE: Your Honor, can I have just one
13 second?

14 THE COURT: Yes, sir.

15 (Pause.)

16 SOLICITOR BARNETTE: That would be all the reply at
17 this time, Your Honor.

18 THE COURT: All right. Ladies and gentlemen of the
19 jury, at this time I need to take up some matters with the
20 attorneys. I'm going to ask you to step back to the jury
21 room. And as always, I'll instruct you not to begin any
22 discussions concerning this case until I've advised you to
23 begin your deliberations.

24 You may retire to the jury room.

25 (WHEREUPON, the following takes place outside the

1 presence of the jury.)

2 THE COURT: All right. Anything from the State at this
3 time, sir?

4 SOLICITOR BARNETTE: Nothing from the State, Your
5 Honor.

6 THE COURT: Anything from the defense?

7 MRS. HODGES: Yes, sir, Your Honor.

8 We would renew our objections that have been previously
9 made simply to the statements that were entered that we had
10 made objections to during our Jackson v. Denno motions, and
11 your audiotapes or, or recordings from the jail phone calls.
12 We renew any other objections in our motion for directed
13 verdict at this time based on the arguments made therefore,
14 and based on the fact that the, now that the defense has
15 entered its case, that there is not sufficient evidence for
16 the case to go forward to the jury.

17 THE COURT: All right. One thing I want to go over
18 with counsel concerning specifically the phone calls CD that
19 was entered. I don't intend to allow that to go back to the
20 jury room in its complete, in its full -- the full CD.

21 MRS. HODGES: Yes, sir.

22 THE COURT: I don't know that there's a means by which
23 they could find those locations that were put in, put into
24 evidence or not. So, I'm gonna limit what the jury has a
25 right to review to those that were played to the jury. I

1 don't know what else is on that CD, and so, I don't intend
2 to allow that to go to the jury. If they wish to hear that,
3 I you instruct them they could be brought back into the
4 courtroom. We'll only play the cuts that were played for
5 the jury during the examination.

6 Do you understand that, Mr. Barnette?

7 SOLICITOR BARNETTE: Yes, sir, I do.

8 THE COURT: You understand that?

9 MRS. HODGES: Yes, sir.

10 THE COURT: Now, as to motion for directed verdict, for
11 the same reason, I find that there is substantial evidence
12 in the possession of or before the jury from which they
13 could determine that the defendant committed the offense,
14 and I find that there is sufficient evidence placed into the
15 record for it to go to the jury. I make the same ruling
16 concerning the statements made by the defendant prior to
17 trial.

18 MRS. HODGES: Yes, sir.

19 THE COURT: Now, you'll be going first?

20 MRS. HODGES: Yes, sir.

21 THE COURT: Are you prepared to go forward or do you
22 want a few minutes to think about it?

23 MRS. HODGES: If I could have just, just a few minutes,
24 Your Honor.

25 THE COURT: All right. We'll be in recess briefly.

1 I'm gonna stay on the bench and work on something, but we'll
2 be in recess for about ten minutes.

3 MRS. HODGES: Yes, sir. Thank you.

4 THE COURT: Yes, sir, mr. Barnette.

5 SOLICITOR BARNETTE: And, Your Honor, the only -- I
6 know the standard charges of the Court, we'd ask for a hand
7 of one hand of all charge.

8 THE COURT: I had intended to put that in the charge.

9 SOLICITOR BARNETTE: Thank you.

10 MRS. HODGES: I have no specific request to charge,
11 Your Honor.

12 THE COURT: All right. Thank you.

13 (WHEREUPON, a short recess was taken at this time.)

14 THE COURT: All right. Again, Mr. Barnette, we're only
15 going to play those that were placed into evidence.

16 SOLICITOR BARNETTE: Yes, sir, that's the reason --
17 that's the reason I started to make sure---

18 THE COURT: Okay.

19 SOLICITOR BARNETTE: ---I got the right one.

20 THE COURT: All right. Mr. Barnette, have you reviewed
21 the evidence and are you in agreement with what should be
22 submitted to the jury?

23 SOLICITOR BARNETTE: Yes, sir, I am.

24 THE COURT: And we're in agreement concerning those
25 pills that are loose or in baggies, that they will be sealed

1 and will be only opened upon the jury's request?

2 Is that your agreement?

3 SOLICITOR BARNETTE: Yes, sir.

4 THE COURT: Mrs. Hodges?

5 MRS. HODGES: Yes, sir, Your Honor.

6 THE COURT: Is that your agreement as well?

7 MRS. HODGES: It is, Your Honor.

8 THE COURT: And have you reviewed the evidence and are
9 you in agreement that that's to be sent back?

10 MRS. HODGES: I am, Your Honor.

11 THE COURT: And now have you reviewed also the verdict
12 form, Mr. Barnette?

13 SOLICITOR BARNETTE: Yes, sir, Your Honor.

14 THE COURT: Any objection?

15 SOLICITOR BARNETTE: No, sir.

16 THE COURT: Any objection from the defense?

17 MRS. HODGES: No, sir.

18 THE COURT: All right. Now, before we bring the jury
19 back, in your case, Mrs. Hodges, I had deferred hearing from
20 your client concerning his decision to testify. You
21 announced to the Court that you have rested. I assume that
22 that means that he had made the decision not to testify.

23 But, at this time, Mr. Stewart, I am going to inquire
24 specifically of you. If you'll stand, sir.

25 (Defendant complies.)

1 THE COURT: Did you have an opportunity to fully
2 discuss your decision to testify with your attorney?

3 DEFENDANT: Yes, sir.

4 THE COURT: And did you make the decision not to
5 testify in this case?

6 DEFENDANT: Yes, sir.

7 THE COURT: Okay. So, our proceeding without you
8 having testified was in, was in agreement with your
9 decision, is that correct?

10 DEFENDANT: Yes, sir.

11 THE COURT: All right. Thank you, sir. You can be
12 seated.

13 All right. Anything else before we bring the jury back
14 from the State?

15 SOLICITOR BARNETTE: Not from the State.

16 THE COURT: From the defense?

17 MRS. HODGES: No, sir. Thank you.

18 THE COURT: Let's bring the jury in.

19 (WHEREUPON, the following takes place within the
20 presence of the jury.)

21 THE COURT: All right. The record will reflect the
22 jury has returned to the courtroom.

23 We completed the presentation of evidence in this case,
24 and I told you that when we reached this point in the trial
25 that the attorneys would have the opportunity to make a

1 closing statement or argument to you, and, at this time,
2 Mrs. Hodges, you may proceed for the defense.

3 MRS. HODGES: Thank you, Your Honor.

4 May it please the Court?

5 THE COURT: Yes, ma'am.

6 MRS. HODGES: Ladies and gentlemen, this is Marion
7 Stewart. You met him at the beginning of the trial. You've
8 seen him throughout the course of this trial. And he still
9 sits before you, at this very moment, an innocent man. He
10 is not been found guilty unless and until the 12 of you that
11 will sit in the jury room in the deliberations later this
12 morning decide whether the State has proved its case to you
13 beyond a reasonable doubt.

14 The judge is going to give you the legal official
15 definition of reasonable doubt. I dare say that you could
16 probably put every lawyer in Spartanburg County end to end,
17 we may all give you a different definition of reasonable
18 doubt based on the way that our experience and practice
19 basically has shown us. The judge is gonna be the final
20 decision as to what the law is to apply.

21 But for the most part, ladies and gentlemen, all
22 lawyers agree that reasonable doubt is the highest level of
23 proof that we have in our nation's judicial system. The
24 State has to prove it to you not necessarily beyond all
25 doubt, but it has to be to such a degree of certainty that

1 you will not hesitate to act.

2 They're a lot of things that we do in our lives that we
3 do to the degree of we're pretty sure or we have suspicion
4 or more likely than not. They're a lot of things that we do
5 in our lives that we know beyond a reasonable doubt.

6 The love of a parent and a child or the love between
7 siblings, we pretty much know beyond a reasonable doubt.
8 Whether we like broccoli or not, we pretty know beyond a
9 reasonable doubt. That's not to trivialize that particular
10 standard if you will, ladies and gentlemen. But it is
11 something that we deal with on a regular basis to that we
12 know beyond a reasonable doubt.

13 Civil cases, ladies and gentlemen, when you're suing
14 somebody for damages, you have an automobile wreck and the
15 insurance company won't pay you for the injuries you had to
16 your back and your neck. Those types of cases are civil in
17 nature, and they are required to prove things beyond a
18 preponderance of the evidence. That simply means, if you
19 look at the, the scales of justice, everything being even,
20 simply tips one side or to the other. Fifty percent,
21 fifty percent plus, just a little iota, puts it beyond a
22 preponderance of the evidence.

23 Beyond a reasonable doubt, you have to tip the scales
24 much greater. Much greater, ladies and gentlemen.

25 The testimony that you've heard in this case, ladies

1 and gentlemen, basically revolves around three areas from
2 the state's prospective. You have a group of witnesses that
3 I will call the Taylor's. You have Dale and Shirley and
4 Shirley's son, Anthony. You kind of have the Taylor/Gilbert
5 section of evidence. You have a body of evidence that came
6 to you from law enforcement, from the police. And you have
7 a body of evidence and testimony that came from the people
8 that were at the RxCare. Those are your three separate
9 pieces of, of evidence.

10 Now, in those three components of the evidence, you've
11 heard both testimony as well as seen exhibits. You've seen
12 some of the physical evidence that the state found and that
13 the officers testified to in terms of the pills and the,
14 that they were able to, that Mr. Netherton was able to
15 identify to you particular pill bottles, have a sticker on
16 them that they're able to show that those pill bottles were
17 the ones taken from the Rx Pharmacy. You also have the
18 video and you've had pictures. That's the sum total of the
19 evidence that you have.

20 Let's talk about the RxCare because that's where the
21 case started. On October the 14th of 2009, something that
22 somebody, that people were involved in that case will never
23 forget happened. A man walks into the store, pulls a mask
24 up over his face, pulls out a gun, points it at Terry
25 Netherton, and says give me all the drugs, give me what's in

1 the safe, I'll take what's in the till.

2 That person is dressed basically covered head to toe.
3 The only thing visible is a spot of skin on the wrist. The
4 hands are covered in camouflaged gloves. The face is
5 covered with some sort of mask that will be described as a
6 hunting mask, camouflaged. He's in international orange,
7 something that a hunter would use, blue jeans, and white
8 tennis shoes.

9 That person's taller than five feet because they're
10 above the counter. They go around, you see on the video,
11 that person takes some of the drugs out of the, the safe
12 itself. Has other people put things in the bag.

13 Some of the most honest testimony you've heard from the
14 courtroom today comes from the RxCare component of the
15 evidence. Mr. Netherton, the very first witness, is able to
16 tell you there's some things he absolutely positively
17 remembers, sticks in his mind to this day, will probably
18 stick into his mind all of his days. But even on that most
19 dramatic event, there are still things he does not remember
20 specifically from that particular day, and that he couldn't
21 testify to specifically, and he was very honest to you, with
22 you about that.

23 When asked on cross-examination, he says I can't
24 necessarily tell you. I was kind of focused on the fact
25 that there was a black thing that could kill me, pointed in

1 my face, and this guy was saying give me the drugs and get
2 the money out of the till. But there were other things that
3 even in that, that three minute time frame, ladies and
4 gentlemen, two years later he can not testify to you with
5 absolute certainty, and, therefore, he did not want to
6 testify to you about that or give you a story or give you a
7 supposition because he wanted to make sure that he told you
8 what he remembered to the best of his recollect. Remember
9 that.

10 Because the one person in this case, ladies and
11 gentlemen, that has the most reason to remember absolutely
12 everything that happened that day can't even tell you
13 everything. He has some lapse in memory of the event, of
14 other events of that day.

15 You also heard from Erika Duncan. She too was kind of
16 focused on what was happening, but she couldn't tell you --
17 never shown a lineup, never asked to try and identify
18 somebody from the bits and pieces of what she saw in terms
19 of the, the eyes. There's nothing necessarily distinctive
20 about the eyes. Somebody was cross-eyed, somebody didn't
21 have a lazy eye, they definitely didn't have a drooping
22 eyelid, somebody didn't have a scar on the eyebrow, you
23 know. Couldn't tell you whether the eyes were blue.
24 Couldn't tell you whether the eyes were green. The eyes
25 were brown. Nothing to be able to describe anything further

1 other than seeing just a strip cause the hood came down to
2 here and the mask came up to here basically between the
3 eyebrows and the bridge of the nose.

4 You have the police. The police get information based
5 on what the folks at RxCare are able to tell you. A man
6 comes in, robs the store, leaves out the back door. Notice
7 that when the video, and I suspect that -- I don't know if
8 the solicitor's gonna replay the video or not, but you saw
9 the video, and you'll have the opportunity to look at the
10 video again if you want to during your deliberations. But
11 in the video itself, when you see that person going out the
12 back door, that person goes out the back door and to the
13 left.

14 And, so, the door opens, you see sun shining in, light
15 shining in, and then he goes out to the left. That's
16 important. Sun shining in, out to the left. Police arrive.
17 They do their investigation, get the video, put it into
18 evidence, you get to see it.

19 During the course of their investigation, several days
20 afterwards, they develop some suspects. They develop a
21 woman named Angie Blackwell, who then leads them to a man
22 named Dale Taylor. Dale Taylor comes into contact with the
23 police. First thing out of Matt Hutchins mouth when he
24 comes into contact with Dale Taylor is you have the right to
25 remain silent. You have the right not to say anything to us

1 because, if you do say anything to us, anything that you say
2 will be used against you in a court of law. You have the
3 right to an attorney. If you can not afford an attorney,
4 one will be appointed to you. You have the right to stop
5 questioning at anytime. That's what we call the Miranda
6 rights.

7 Since day one of criminal law, every lawyer, since day
8 one of criminal law, every police officer that's gone to the
9 academy, been certified, been able to work at the Sheriff's
10 Office for umpteen years, becomes an investigator, they have
11 dealt with the decision that's called Miranda versus
12 Arizona, and that decision says that when you are a criminal
13 suspect, and you're being interrogated by the police, and
14 you're potentially gonna be in custody, you have to be told
15 that you are not obligated to speak to the police, that you
16 can remain silent, and that anything you say can and will be
17 used against you in a court of law.

18 First thing out of Matt Hutchins mouth to Dale Taylor
19 is you have the right to remain silent. He didn't know
20 anything about the case. All he knew is he got a call from
21 Lorin Williams who said hey, I need you to come talk to this
22 guy. He doesn't know if there's been a warrant issued. He
23 doesn't know the few in the facts. He doesn't know the
24 subject of the case. He doesn't know anything about the Rx
25 Pharmacy. He doesn't know how many pills Angie Blackwell

1 had. He doesn't know anything about the case until he's
2 called by Lorin Williams, I need you to come talk to a guy
3 about some pills. First things out of his mouth, you have
4 the right to remain silent.

5 Dale Taylor says I'll talk to you if you promise you
6 won't arrest me for anything. Rightfully so, the police
7 tell him we can't make that promise to you. If you want to
8 talk to us, you can. We can't promise you anything. We're
9 not gonna give you any grants of leniency. We're not gonna
10 tell you that, you know, you're not gonna be okay in all of
11 this. Dale Taylor chooses to continue to give a story to
12 the police.

13 Let's talk about Dale Taylor's story. Dale Taylor says
14 okay, I gave my girlfriend, Angie, some pills, and I can
15 show you where the pills are hidden. Again, if you promise
16 not to arrest me. Let's go ahead and go up to this place
17 called Midnight Road. So, they get in the car, take the
18 Trailblazer, go towards Midnight Road. On the way to
19 Midnight Road, oh, oh, wait a minute. They're not on
20 Midnight Road. I'm sorry. I was wrong. I forgot, my
21 mistake, my bad. They're on Ghost Valley Road.

22 Let's go over to Ghost Valley Road. Go the Ghost
23 Valley Road. It's dark, hence the name Ghost Valley. They
24 find off in the woods, where Dale Taylor says that they are,
25 a big bag of pills and a black trash bag consistent with

1 what you see on the video of those pills being put into.
2 He -- Dale Taylor says be careful with that bag because the
3 gun that was used in this robbery and the clothing are
4 underneath the bag. He doesn't tell the police that it's a
5 plastic gun. We hear that for the first time yesterday,
6 and, therefore, you know, y'all just need to be careful
7 because the clothes are underneath there and a plastic gun.

8 He says the gun. He's putting the police officers on
9 notice, people that know how to safely handle firearms, that
10 there's a gun potentially in here. Then he says oh, wait,
11 no, that's right. We came back a few days after we buried
12 this stuff and Marion threw the gun over the iron bridge
13 into Rainbow Lake. Threw a shoe. Shoe floated. Gun
14 didn't. So, he didn't throw anything else.

15 The second time he changes his story within a very
16 short period of time. Not at Midnight Road. No gun, no
17 clothes where they're suppose to be. He also, and, of
18 course, when Dale Taylor comes to testify to you in Court
19 when he's actually put his hands on the Bible, raised his
20 other hand, sworn to tell the truth, the whole truth, and
21 nothing but the truth, he says he never said that.

22 You heard the police officers. You heard William Gary
23 get up and say yeah, I heard part of that conversation
24 between Lorin Williams and Dale Taylor. He did tell them
25 that there was a gun underneath it. We told Tim Davis that

1 when he went to collect those, those pills and things that
2 he was taking photographs of that you saw on the, on the
3 this screen yesterday. We told Tim Davis, be careful, there
4 might be a gun under there, don't get shot. Oh, I didn't
5 tell him that. I'm Dale Taylor, I'm out to save my skin, I
6 didn't tell them that.

7 Dale Taylor tells you in his testimony yesterday that
8 Lee Ann and Marion and Dale had planned this whole scheme
9 the night before, had gotten into the car, into Lee Ann's
10 car, driven to the pharmacy area, drove around waiting for
11 it to clear, and then they parked on the street behind the
12 pharmacy. Couldn't really describe the street. Kind of
13 parked more towards the tree line as opposed to the
14 buildings. Can't really describe it. Didn't even tell you
15 where he parked in terms of the pictures.

16 You saw the pictures. You saw there's a whole big area
17 back there where he could of parked. No description to you
18 whatsoever as to where he parked. You're not even able to
19 see the back of the pharmacy or this whole getaway scheme
20 that's suppose to happen had my investigator not gone out
21 and taken pictures for you so you could see that. The
22 police didn't even bring that to them. The Solicitor's
23 office didn't show you what the back of this pharmacy looked
24 like. They didn't show you what Sterling Estates looks
25 like. They didn't show you what the parking lot looks like.

1 The State didn't want you to see that. We brought it to
2 you.

3 Dale Taylor is asked, on cross-examination, didn't you
4 tell the police that you drove around and you parked at the
5 entrance of Sterling Estates and waited there for somebody
6 who Dale said was Marion Stewart, but waited there for the
7 guy to come out of the store, come out the pharmacy?

8 Oh, I didn't tell them that. Nope, nope, didn't tell
9 them that. Nope.

10 You sure?

11 No, ma'am, didn't tell them that. Nope, nope.

12 All right. Investigator Hutchins, what did Dale Taylor
13 tell you about Sterling Estates?

14 They drove around. They parked at the entrance of
15 Sterling Estates. Parked at the entrance of Sterling
16 Estates over 100 feet away from the back of the pharmacy on
17 a day that's raining. A hundred feet away. A man with a
18 big black trash bag, a gun, a hoodie, a mask running through
19 the parking lot, a hundred feet away, to Sterling Estates.
20 There's plenty of room to be parking on the side.

21 Well, let's see. Here's the back door. This goes
22 around to the front of the thing. Could of parked right
23 back here. Could of parked here. Could of parked along the
24 tree line.

25 Nope, nope, nope.

1 Could of parked right back here.

2 Nope, didn't happen.

3 Told the investigators, it's most fresh in his mind,
4 despite the fact that he was high on marijuana and whatever
5 else he'd taken. Parked at Sterling Estates. Absolutely
6 sure.

7 Why do we know he's absolutely sure about that?

8 Because Matt Hutchins says that doesn't make a whole
9 lot of sense to me. Let's talk about this.

10 Aren't there some surveillance cameras at Sterling
11 Estates?

12 Oh, well, you know, immediate response to that is those
13 things get changed within the week. Well, we can get the
14 tag off. Well, I don't think they're really changed that
15 quickly, and maybe we can still get the tag for the car that
16 Lee Ann was supposedly driving. Oh, well, no, no, they
17 changed the tags on that car.

18 Every time somebody questions Dale Taylor trying to get
19 more specifics from him to try and corroborate what he's
20 telling the police, to try and corroborate what he's telling
21 you, he changes his story.

22 Why does he change his story, ladies and gentlemen?

23 Because he is doing this to do whatever it is that he
24 thinks he needs to do to try and get money to try and get
25 his kids back from his sister and from his father, and he

1 told you that. That was his motivation.

2 He's out to save Dale Taylor. He's not out to be the
3 good samaritan, the good citizen, the good codefendant, the
4 good friend to Marion. He's out to save Dale Taylor.

5 And what does he do?

6 He gets his sister, nineteen months later, to
7 corroborate what he's saying. Gets his sister to say I
8 heard them all talking about it the night before. Everybody
9 was talking about it. They all planned it. I don't want
10 any part of it. I went to bed. Eleven o'clock at night. I
11 go to bed. I wake up the next morning. They come into my
12 room that has no door on it, come into my room to wake me
13 up, Lee Ann's there. I tell them to get that stuff out of
14 my house. Don't want any part of it. And then sits on that
15 information. She's so worried about her children, and so
16 worried about any ramifications she says nothing until three
17 weeks ago when the case is coming up for trial and she's got
18 to do what she's got to do to help Dale because blood's
19 thicker than water.

20 The police. Get all this information from Dale, and
21 they go and look for Marion Stewart. Show up at Marion
22 Stewart's house later the same day, late on into the
23 evening. We're talking 11:30, midnight, some time dark.
24 It's cooler cause the sun's gone down. Need to talk to
25 Marion, get him outside. Tell him well, you might as well

1 just go ahead and confess now because we've got you're DNA,
2 and we already know that you're in it. They lied to him and
3 they're kind of proud about it. Yep, we lied. Wanted to
4 get a reaction from him.

5 Now, it's curious, the person that tells him that we've
6 got your DNA, you might as well confess and come clean with
7 it, won't even admit to it on the stand. Matt Hutchins
8 won't even admit to you. I don't recall that. Nope. I
9 didn't say that, don't recall that, don't recall any
10 conversation about DNA. Any written, any notes down the
11 night of, and actually been honest with you as to when he
12 actually did the summary on his report, and not trying to be
13 evasive about his answers on the witness stand, maybe we
14 could understand why he doesn't remember anything about DNA.

15 But instead we have to do a cold cat and mouse game
16 during cross-examination. Please answer the question I
17 asked you, and then you have a right to explain your answer.
18 Don't remember anything about telling him, about saying to
19 him anything about DNA. And now that he knows that Marion
20 Stewart is a suspect because he's Mirandized Dale Taylor,
21 and told him you have a right to remain silent, they know
22 that Marion Stewart's a suspect, they don't bother to say
23 that.

24 Oh, he's not in custody. He's not being interrogated.
25 We just want to ask him questions. We're just curious. But

1 you might as well confess because you know your DNA is on
2 these bottles anyway.

3 well, Marion Stewart, well, okay, arrest me then.
4 calls their bluff. Oh, no, no, no, no, you're not under
5 arrest. We just need to talk. Okay. So, I'm not under
6 arrest. Yeah, we just need to talk. Why don't you just
7 come and sit in the car cause you're cold and shivering.
8 Let's just go sit in the car.

9 Matt Hutchins gets out of the car when he gets a phone
10 call. He's told, at that point, by another investigator
11 that that's an arrest warrant for Marion Stewart. There's a
12 conversation between William Gary and Marion Stewart in the
13 car about keys turning in locks. No idea what that's that
14 about, ladies and gentlemen. That's up for you to decide.
15 If you consider that to be an admission or a confession or
16 an acknowledgement about information about this case, so be
17 it.

18 The fact that Marion Stewart may or may not have known
19 that Dale Taylor had hidden pills up on Ghost Valley Road
20 does not, in and of itself, prove that Marion Stewart is
21 guilty of armed robbery. Does not, in and of itself, prove
22 that he had planned this robbery, participated in this
23 robbery, concealed any information about this robbery, done
24 anything that could be considered to be an aider, an
25 abettor, an accomplice.

1 You're gonna hear the judge charge you about a concept
2 in the law in South Carolina that's called the hand of one
3 is the hand of all, and what that means is that if one
4 person participates, provides assistance, aids, acts as an
5 accomplice, does anything to promote the underlying crime,
6 the armed robbery itself, that person, even though they may
7 or may not have actually committed the crime themselves, if
8 you believe that that person's done anything to act in
9 concert with that other person, then that person is
10 considered to have acted as, as part of that group. So that
11 the hand of one is hand of all, and they're basically joined
12 together. That's what that means.

13 Just because Marion Stewart knows where his
14 girlfriend's brother has hidden pills does not prove that
15 Marion Stewart committed an armed robbery. Does not prove
16 that he had in his possession weapons or anything that
17 looked like a weapon or could be construed as a weapon or
18 made any sort of threats using any sort of deadly weapon to
19 get property from Casey Pitts, Erika Duncan, Tara Rice,
20 Terry Netherton, or Rx Pharmacy.

21 Have a key in a lock and something turns up on Ghost
22 Valley Road. You know what, go ahead and, Investigator Gary
23 tells us, go ahead and get Matt Hutchins back in the car.
24 Investigator Gary, Gary says Marion Stewart asked for Matt
25 Hutchins to get back in the car. And, again, you have a

1 divergence of testimony. Matt Hutchins said I just got in
2 the car and Marion Stewart started talking how his hands,
3 got your handcuffs, I'm sure I can find some, we need them,
4 I'm your man, your man for what, for robbery.

5 Investigator Gary says Matt Hutchins gets back in the
6 car, and, again, at that point Matt Hutchins knows that
7 there's an arrest warrant for Marion Stewart, gets back in
8 the car and continues the investigation, continues the
9 interrogation, continues the questioning, what do you need,
10 what do you want. You get the I'm your man, the man for
11 what, the robbery.

12 They put Marion Stewart under arrest. Still don't tell
13 him he has the right to remain silent. Still don't tell him
14 anything he does, anything that they observed him doing,
15 anything he says, anything that they can possibly consider
16 some form of communication as an admission of guilt, they
17 still don't tell him he has the right to remain silent, and,
18 again, we get a divergence of testimony between the two
19 officers, both of them there, either Investigator Gary goes
20 and gets the cigarette from a nephew at the porch and brings
21 it back or Shirley Taylor comes down from the porch with the
22 cigarette, gives him a hug, says good-bye, and he still
23 describes in terms of what's being said.

24 One story is they say -- make sure I get this right.
25 William Gary telling us that he hears Marion Stewart say I

1 made a mistake, see you in 30 years. Both there, happened
2 at the same time, same conversation being witnessed, and
3 Matt Hutchins says I'll see you in 30 years, and she asked
4 why, I robbed a store. She tells you I've done something
5 bad.

6 Now, her memory of what was said is clouded by the use
7 of drugs she says that she's used, the fact that nobody in
8 law enforcement asked her any questions that night, the next
9 night, the next week, the next month, the entire next year.
10 Nobody asked her any questions until she's subpoenaed to the
11 solicitor's office three weeks before trial, and all of a
12 sudden we get this plan, this scheme, this conversation, the
13 three of them have been planning it all night long, and I'm
14 here to testify today because that's the truth.

15 Do you believe her?

16 It's up to you to decide whether to believe her or not.

17 Do you believe her under those circumstances?

18 That's up to you to decide whether she's believable
19 under those circumstances.

20 The only reason why the police ever go to Marion
21 Stewart's house is because Dale Taylor's the one that sent
22 them there.

23 So, you have RxCare that can not make sort of
24 identification that Marion Stewart's the person. All they
25 can tell you that he is a similar height, similar weight of,

1 as the person of, that they see in the store. Similar,
2 ladies and gentlemen, is not beyond a reasonable doubt.
3 Similar is not close enough. Similar is not proof. Similar
4 is not an identification.

5 The police, the only reason why they're there is
6 because of what Dale Taylor says. Dale Taylor, everytime he
7 tells his story can't get it straight. Dale Taylor tells
8 people in the jail it doesn't matter if I get ten years.
9 I've got enough pills. I'm set once I get out. Yeah, I can
10 do an arm robbery. I was there. I sat in the back seat. I
11 sat in the car, you know. I've got enough. I'm set.
12 Doesn't matter what happens to me.

13 Dale Taylor is the one that's asking Chuck Wyatt, at
14 least a week and a half before the armed robbery happens,
15 yeah, you can get in the job with me. He's already been
16 seen with these pills from a pharmacy. We don't know which
17 pharmacy. He wasn't here to testify to you that those were
18 pills from this pharmacy. He never in his life said that
19 the pills that Chuck Wyatt saw are the pills that you have
20 here in front of you.

21 All he says is I saw them with a bunch of pills. Asked
22 him if there's some way I can make some money. To be honest
23 with you, I was running from the police, I was on probation.
24 I have, I have a violation of probation. You know, he's
25 honest with you. He doesn't hide anything. And the

1 defense's case, warts, freckles, bumps, pimples, all the bad
2 and the ugly is put out there right there to you.

3 The Solicitor's Office is gonna come up here and he's
4 gonna tell you probably about the telephone calls. He's
5 gonna argue to you that Marion Stewart basically has been
6 trying to create an alibi, get people and witnesses to
7 testify this entire time. They're going to say that he's
8 influenced these jail pod mates to try and testify for him.

9 what do they get from it?

10 Derrick Gibson's got a federal conspiracy sentence
11 dealing with methamphetamine. He's not getting anything out
12 of that. He told you he's got 14 charges of his own. He's
13 got more to worry about. He's not worried about somebody
14 else's stuff. He's not getting anything out of that.

15 Chuck Wyatt, not getting anything out of that. He has
16 somebody tell him a conversation, a guy that's known in the
17 jail as Pills tells him he, they put two and two together,
18 he sees somebody he hasn't talked to since high school, they
19 happened to be in the same pod, they have a conversation,
20 yeah, I'm in here on some armed robberies, this guys tells
21 you bla, bla, bla, you know.

22 wait a minute. I have had a conversation with that guy
23 right before the robbery happened. He's trying to get me to
24 go in on it.

25 Was Marion's name ever mentioned?

1 No.

2 Talk to my lawyer about it. Tell her what you know.

3 It's not Marion Stewart creating anything. That's a
4 defendant accused of a crime, a serious crime, in which his
5 liberty is being put at stake coming in and explaining to
6 you why the State has not enough proof to prove him guilty
7 beyond a reasonable doubt. That's what that is, ladies and
8 gentlemen. That's called the American justice system, and
9 that's why we're here today. That's why men have fought in
10 wars. That's why the Colonists decided to create something
11 called the Constitution. It's so that you're not put in
12 jail and have your liberty put at stake based on the fact
13 that some man gets up here and tries to save his own skin to
14 get his kids back from D.S.S.

15 It's called good lawyering, ladies and gentlemen. It's
16 not called fabrication of evidence. It's not called lies,
17 manufacturing lies. It's not called manufacturing an alibi.
18 Don't buy the red herring you're about to be sold.

19 These alibi witnesses, ladies and gentlemen, God bless
20 her. Lee Ann, God bless her. She knows for a fact she got
21 up that morning. She went to Marion's house, asked, got him
22 out of bed based on what her father asked her to do, get
23 Marion to help with the heat pump underneath the car, excuse
24 me, underneath the house. Help get it fixed.

25 It's October, mid-October. The weather's turning cold.

1 Skunks, raccoons got up underneath the house, damaged the
2 duct work, got into the fan. We need some help. Get
3 daddy's heat fixed.

4 She takes her car cause she's only three minutes from
5 Marion. She gets over to Shirley Dale's house. They drive
6 another car. Now, Anthony comes in today after his mama's
7 told him he's got to come to court to, to go solve that
8 problem that Lee Ann created for, for Dale. Anthony tells
9 you no, no, that wasn't my car. Yeah, Anthony's testimony,
10 it is what it is. Mama comes, tells him he has to come to
11 court and testifies. Do what mama tells you.

12 She doesn't remember exactly what they did the rest of
13 the afternoon, where they were. She tells you about being
14 in the pool. You know, Gail also gets on the stand and
15 tells you I'm kind of telling you sort of what I remember
16 sort of what the routine was from that day. You know, maybe
17 that's what Lee Ann is getting confused about. I don't
18 know.

19 Quite frankly, ladies and gentlemen, this is a pretty
20 important case. You got a man who's charged with armed
21 robbery. Got a lot of kind of things going on. This is
22 gonna be a pretty memorable case.

23 Will I remember necessarily that I got a flat tire last
24 night on my way home in the middle of a trial in two years?

25 I can't tell you.

1 Probably remember the case. Probably remember Marion
2 Stewart's name. Probably remember some of the facts of the
3 case.

4 Will I remember that I had a flat tire, had to get my
5 father-in-law and my husband out to fix it last night on the
6 curb of a dark street?

7 I don't know.

8 Is that something that's kind of a significant event?

9 Sure was last night.

10 Am I gonna remember that in two years?

11 No.

12 The solicitor's Office I suspect is gonna get up and
13 make a big deal out of you don't remember your daddy was in
14 the hospital. He's been out of the hospital for four or
15 five or six times since then.

16 Did you go see your daddy in the hospital?

17 He's one of those folks that's just like, you know, let
18 me be, let the doctors do what they need to do, I need to
19 rest, get my health back, y'all go on to do the work. Get
20 the heat pump fixed. Gail, make sure you know what time the
21 kids come over to get the heat pump fixed so I know how long
22 they're here so I know what to pay them.

23 Gail gets up on the stand. She works at the post
24 office. She's a federal employee, works there part-time.
25 She knows for a fact that they are there between 10:00,

1 10:30 because she remembers what she was watching. She also
2 tells you I can't remember what else went on in the
3 afternoon. She's honest with you about that. I can't tell
4 you what happened after that, but these are the facts as I
5 remember them.

6 And the facts are, ladies and gentlemen, that you have
7 heard testimony that Marion Stewart was not even able to be
8 at the RXCare Pharmacy at the time that the robbery
9 happened. The robbery happens around 10:00, 10:15 that
10 morning.

11 Elizabeth Baldwin comes in and tells you she's told,
12 after she gets back from lunch, to lock the doors. She's a
13 half a mile away. Deputies are going door to door telling
14 businesses saying, look, there's been an armed robbery. We
15 need you to lock your doors, don't let anybody in. You
16 know, she's been told at twelve o'clock.

17 You been out on Highway 9 lately?

18 A lot of businesses within a half a mile going through
19 and telling everybody you need to be careful. It's
20 absolutely conceivable that by the time the police are
21 getting to her it's about an hour or so later.

22 Identity, ladies and gentlemen, the State has not
23 proved to you that Marion Stewart committed an armed
24 robbery. You're gonna hear about size ten shoes. Marion
25 Stewart's wearing size 12. Dale Gilbert was wearing size

1 nine and a half. Marion Stewart has work boots on when he
2 was arrested, when they got them. They brought them in here
3 to show you.

4 what was he wearing that day?

5 Lee Ann, work boots. Not white sneakers and non
6 descript white sneaker that looks just like any other white
7 sneaker that any of us might have in our closets.

8 They can't prove to you that's Marion Stewart's white
9 sneaker. No DNA on him. No fingerprints. They
10 fingerprinted every single bottle. You're gonna see that.
11 Every single bottle is covered in fingerprint powder. Not
12 one single fingerprint.

13 Do they have a fingerprint on it?

14 You haven't heard about it. You haven't heard about it
15 either because it says the only fingerprints we found belong
16 to various folks that were in the pharmacy. You're going to
17 hear the only fingerprints we found were because people were
18 handling them. No testimony from Shirley that everybody was
19 sitting around wearing gloves that day once they got back to
20 the house.

21 Yeah, the person that has gloves on, you know, went
22 into pharmacy with the camouflaged gloves that matched the
23 camouflaged mask and the international orange hoodie and the
24 camouflaged wallet in Dale Taylor's property. You know, no
25 discussion of everybody's wearing gloves. No discussions

1 that they had gloves on when they buried the stuff. No
2 discussion about anything. They process it and there's
3 nothing.

4 And why is there nothing?

5 Because there's nothing to have been found because
6 Marion Stewart wasn't there. He was fixing a heat pump
7 cause a skunk and a raccoon had gotten under the house and
8 he was trying to help his dad, and that, ladies and
9 gentlemen, is the truth.

10 We spent three days in search for the truth. The truth
11 is the State has not proven their case to you beyond a
12 reasonable doubt. They have not presented enough sufficient
13 evidence. Close, almost, maybe, perhaps, similar is not
14 proof beyond a reasonable doubt. Dale Taylor's (sic) not
15 guilty, and the only just verdict, ladies and gentlemen, is
16 to find him so.

17 Thank you.

18 THE COURT: Mr. Barnette, for the State.

19 SOLICITOR BARNETTE: May it please the Court, Your
20 Honor?

21 THE COURT: Yes, sir.

22 SOLICITOR BARNETTE: Interesting thing you heard today
23 when their investigator testified. They said the 12 size
24 shoe. And I asked him, I said, well when y'all was trying
25 or whatever, he said it didn't fit. Marion Stewart said it

1 didn't fit.

2 Marion Stewart, if you look at every witness involved
3 in this case from their side, was working on his alibi. I
4 am gonna tell you about that because that's part of the
5 evidence, and please remember the evidence. You heard it in
6 the courtroom today or yesterday or day before.

7 The phone call that you're -- I'm gonna play it again
8 for you so to make sure you can hear it. We'll go through
9 it again.

10 He's trying to get everybody to say he's at work.

11 well, if he's over there fixing a heat pump, why just
12 tell people he's over there fixing the heat pump?

13 He never said that to the police. He didn't even say
14 that on the phone call.

15 why would you do that?

16 why does he want to talk to Shirley so bad?

17 Cause he knows Shirley knows what she knows.

18 Yeah, we subpoenaed her and I asked her to come in and
19 spoke to her. We played the telephone call for her. Went
20 through those with her. She says well, this is what
21 happened. She didn't add any more or any less. She told
22 you exactly what she say, the bags in there, all three of
23 them coming in, would share that information going through
24 that.

25 You hear their testimony from the defense side. This

1 incident -- listen, he comes in and tells three different
2 stories, and like I said, I apologize. Like I said, you
3 remember the evidence they way you-all heard it. What I
4 heard was three different stories going through. I went
5 through about the swimming pool over and over again because
6 I knew anybody -- the one thing you bring in this courtroom
7 is your common sense, what you deal with every day. You
8 bring your common sense with you, and the one thing I think
9 everybody knows, a neighborhood pool is gonna close after
10 Labor Day. I gave her every chance you could to go through
11 that, and then I brought the lady in here and you heard
12 that.

13 They say now they used a different car. They used
14 Anthony's car. Well, there's an insurance lady. She's the
15 type lady, the lady we brought in today, she's the type --
16 and everybody's neighborhood's got one. There's one in
17 every neighborhood, the neighborhood watch dog. And she
18 stood there and she told you she saw the car there that
19 afternoon. She told you about the pool.

20 I mean that's credible evidence. That's evidence right
21 there that shows you from a common sense standpoint. And
22 the reason she remembers that. Because the robbery on
23 Highway 9, the robbery we're talking about today.

24 She goes through, like I said, you remember that
25 testimony. I'm not gonna go through every piece of it cause

1 I'll be honest with you, I couldn't follow it, try to follow
2 it too. Like I said, any testimony you need to hear, you
3 can rehear that testimony from that standpoint.

4 His mother who was testifying, and I hate, I hate
5 questioning the mother. I mean it's tough because mothers
6 want to protect their kids. There's no question about that.
7 But she couldn't remember. Certain things she remembered to
8 a tee. Certain things she couldn't remember anything about.
9 She couldn't even remember about her husband that day going
10 to the hospital for a heart -- I think that's one thing I
11 think common sense wise everybody would remember.
12 Specifically she could remember what she was told, and I
13 submit to you that Marion Stewart told her what to say
14 through the phone calls and the jail conversation, and you
15 got to remember people at the jail scene. He sent letters
16 how he was developing this alibi and from that standpoint.

17 And another thing too, she keeps talking about
18 Mr. Taylor. Mr. Taylor is what he is. He's pleading to
19 armed robbery. He's got to face some time. The judge will
20 determine the sentence.

21 We will tell you he cooperated, but we're not gonna
22 determine his sentence for what he did. He was involved in
23 this armed robbery from that standpoint. He's not gonna be
24 able to see his kids anytime soon. That's for sure. He's
25 gonna get ten to thirty years. That's what he's facing in

1 this case.

2 But he told you -- and one thing they made a big deal
3 about was the back of the store.

4 Would it make more sense to go up in Sterling Estates
5 where you had go into the thing or go to the side or where
6 he was saying was they parked back where the area you drove
7 through?

8 It was like a road ride. That's exactly what the
9 pictures showed from that standpoint.

10 He told you, as you went in, and the one thing I think
11 is so critical about this is, they make a big deal of
12 telling you, one thing is they can't change the height. You
13 remember when Mr. Netherton came over and stood in front of
14 him and he stood to him right there and he said that's the
15 height that matched up. That was the height that the person
16 right there.

17 Then I brought him in. Mr. Taylor came in, stood right
18 there. Mr. Taylor is 5'5", 5'6" at best. He said this
19 guy's too short. That's the one thing that they can't
20 change. That's the one thing that the defense can not
21 change in this case.

22 Grady Taylor did not go in that store. He's too small.
23 The description was six foot. You're Erika, the clerk, also
24 say six foot, around 200 pounds. It's not Grady Taylor.
25 That's Marion Stewart's build and frame. And like she said,

1 that is honest evidence. That is evidence that somebody,
2 when they see it, they didn't make up anything different,
3 anything from that. He wished he could not be identified.
4 Believe me, he wouldn't, but he didn't, and that can't
5 change from that standpoint, and you heard Erika's testimony
6 he was six foot from that stand point.

7 Now, Mrs. Hodges makes a big deal about the police
8 officers, that statements were made from that standpoint,
9 and you got to take the evidence that you heard. All the
10 evidence that's been introduced today that was testified to
11 and you hear in this case. But the thing was they never
12 told Marion Stewart anything about Ghost Valley. He's the
13 one that told them. Ghost Valley is where the pills were.
14 No question about it.

15 You heard two officers testify that he admitted that he
16 robbed the pharmacy or the store. He goes over -- you had
17 three people where he goes over to Shirley and says to
18 Shirley, she asked, he said I've done something I shouldn't
19 have done and he did. He went and robbed that store in this
20 case.

21 If you look at all the testimony, and they basically
22 comes down to two sides, you come the State's side or the
23 defense side. If you believe the State, he's guilty of
24 armed robbery. If you believe the defense, he's not guilty.

25 In this case, that's what it comes down to. And the

1 one thing I ask you to do is bring your common sense to
2 this. Every one of you got your everyday life experiences
3 from that standpoint.

4 It's a situation -- is it common sense for a woman to
5 drive a car over to a house and get another car to drive
6 off, come back, and get another car?

7 Those are the common sense things that you're looking
8 at, and it's like when you're doing a jigsaw puzzle. You
9 may not have all the pieces, but you can tell what the
10 puzzle will show. Like you're on wheel of Fortune and
11 you've got the word up there, and you got some letters, but
12 you can tell what the word is.

13 We can't give you every piece of the puzzle. He was
14 wearing gloves. He had everything covered up. I wish it
15 would give you the ID right there at the scene, but we can't
16 because you've heard that he had everything covered up. But
17 we can bring you is the statements that were made, and you
18 also consider their evidence. Obviously, the defense said.

19 If you believe that story, those three different
20 versions from Lee Ann, you believe his mother, and the
21 mother would testify for anything to save their son. You
22 got to remember what his father said. I wouldn't know
23 anything. He said I was at the hospital at one o'clock. He
24 was treated, and one o'clock he's in the hospital. I can't
25 imagine that a family wouldn't go to the hospital to help

1 him in that situation and leave it.

2 The truth is, ladies and gentlemen, please look at
3 every piece of evidence. Look through there. We talked
4 about the shoes, and, like I said before, he said they don't
5 fit now. But you wore a ten shoe to the jail. You have
6 that piece of evidence. You're gonna have the tennis shoes.
7 It's in evidence from the standpoint. And Shirley told you
8 that she remembers him buying those shoes, and I submit to
9 you Shirley is as honest as she could be.

10 The shoe really doesn't help or not -- you don't think
11 she would tell a whole lot more?

12 She didn't tell you anymore. You saw her and she
13 didn't tell you anymore. She could of made complete lies.
14 She could of said he had a gun, he had this and that, and
15 you get out of my house. She told you what she could and
16 she talked to him on the phone, and he tried to talk to her
17 to make sure she knew the alibi.

18 (WHEREUPON, the phone call was played for the jury at
19 this time.)

20 SOLICITOR BARNETTE: Why would he want to tell her to
21 make sure she knew he was at work?

22 He was building his alibi.

23 You're darn right I'm gonna tell you about it cause he
24 just told you about it. He knows he's got to build an
25 alibi. The only problem is he's not working. It's easy to

1 check. I don't know why he went that direction, but he's
2 trying to figure out a way to do it.

3 well, now he's worked up an alibi for you hopefully for
4 you to accept it. Hopefully you'll buy it and let him off
5 of this case.

6 what he did to this man and this lady here he needs to
7 be punished for. He did it to them. He was the man. And
8 like I say, I wish I could give you every piece of the
9 puzzle.

10 But, ladies and gentlemen, you've got the pieces of the
11 puzzle. You've got the letters you need to recognize what
12 the verdict is. You've got the pieces of the puzzle you
13 need, and that's what I ask you to look at.

14 The judge will charge you on reasonable doubt, to leave
15 you firmly convinced. Well, ladies and gentlemen, we can't
16 prove beyond all doubt. There's no question we proved that
17 to you in this case, and what I ask you to do is find just
18 verdicts based off the evidence in this case. The State's
19 case has met that burden of proof, and I ask you to return a
20 verdict of guilty of armed robbery against Marion Stewart.

21 Thank you very much.

22 Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 Ladies and gentlemen of the jury, that completes the
25 argument in this case, and I told you, when we reached this

1 stage of the trial, it would be my duty and responsibility
2 to charge you concerning the law to be applied in this case.

3 Now, when we started the case, I went over with you the
4 indictment. I'm going to do that again so that it will be
5 fresh on your mind as you go back into the jury room.

6 Now, the indictment is the document, again, that brings
7 the case before the Court. It informs this Court of the
8 charge to be tried and it informs the defendant of the
9 charge that has been lodged against him.

10 Now, the indictment is not evidence in this case, and I
11 remind you of that fact and I'll discuss that with you in
12 more detail in just a minute. But it does set out the
13 allegations that have been made and the allegations that
14 must be proven, and I'll go over that level of proof with
15 you in a minute as well in order for the defendant to be
16 found guilty of the crime that's charged.

17 Now, the indictment, again, is in Case Number
18 10-GS-42-494. The indictment is for the offense of armed
19 robbery. The indictment states that the defendant, Marion
20 Stewart, did in Spartanburg County, on or about
21 October 14th of 2009, while armed with a pistol, dirk,
22 slingshot, metal knuckles, razor, knife, or other deadly
23 weapon, or while alleging, either by actions or word, he was
24 armed while using a representation of a deadly weapon, or
25 any object which a person present during the commission of

1 the robbery reasonably believed to be a deadly weapon
2 feloniously take from the person or presence of Casey Pitts,
3 and/or Tara Rice, and/or Erika Duncan, and/or Terry
4 Netherton, and/or RxCare located at 2510 Boiling Springs
5 Road, Boiling Springs, South Carolina, by means of force or
6 intimidation, goods or monies, of Casey Pitts and/or Tara
7 Rice, and/or Erika Duncan, and/or Terry Netherton, and/or
8 RxCare located at 2510 Boiling Springs Road, excuse me,
9 Boiling Springs, South Carolina, described as follows:
10 Medication, with the intention to deprive the owner
11 permanently of such property in violation of Code Section
12 16-11-330(a) of the Code of Laws of South Carolina, 1976 as
13 amended, against the peace and dignity of the State and
14 contrary to the statute in such case made and provided.

15 Now, I'll remind you, and I'll go over with you the
16 fact that a defendant has been arrested, charged, and
17 indicted in this case is not evidence in this case and it
18 can not be considered by you as evidence of guilt in this
19 case nor does the indictment create any presumption or
20 inference of guilt. Again, the document is simply the
21 formal written instrument which contains the charges made
22 against the defendant. It's the formal document that is
23 brought this case into this court.

24 Now, to that indictment, the defendant has pled not
25 guilty, and, as I indicated earlier, that plea places the

1 burden upon the State to prove the defendant guilty. A
2 person charged with the commission of an offense in South
3 Carolina is never required to prove himself innocent. I
4 charge you that it's an important rule of law that a
5 defendant, in a criminal trial, no matter what the
6 seriousness of the crime might be, will always be presumed
7 to be innocent of the crime for which the indictment has
8 been issued until and unless guilt has been proven to you,
9 the jury, by evidence that satisfies you of that guilt
10 beyond a reasonable doubt.

11 Now, the presumption of innocence doesn't end when you
12 begin your deliberations. It accompanies the defendant
13 throughout the proceedings and into your deliberations until
14 such time as you might reach a verdict of guilt which is
15 based upon evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 Some people describe the presumption of innocence that
18 a defendant has in the courtroom somewhat like the robe that
19 I wear into the courtroom. It remains about the defendant's
20 shoulders throughout the trial. It accompanies the
21 defendant into your deliberations. It remains about his
22 shoulders until such time as it may, may be stripped from
23 him by evidence which satisfies you of the defendant's guilt
24 beyond a reasonable doubt.

25 Now, the presumption of innocence is not just a legal

1 phrase, and it's not just a legal theory. It's a
2 substantial right that every defendant and citizen is
3 entitled to unless you, the jury, are satisfied, from the
4 evidence, of the defendant's guilt beyond a reasonable
5 doubt.

6 Now, you've heard me refer, on a couple of occasions
7 already in my charge, of proof beyond a reasonable doubt,
8 and you may be asking yourself well, just what is meant
9 legally by a reasonable doubt.

10 A reasonable doubt is that kind of doubt which would
11 cause a reasonable person to hesitate to act. The State has
12 the burden of proving the defendant guilty beyond a
13 reasonable doubt.

14 Now, some of you may have been involved in civil cases.
15 Civil cases are cases where someone is seeking monetary
16 damages. It can be for a breach of contract, a failure to
17 pay a debt. It can be for an injury, things of that nature.
18 Those are civil cases where someone's seeking money in order
19 to make themselves whole for something that's occurred.

20 Now, in those cases, the standard of proof is
21 different. That's by the greater weight or the
22 preponderance of the evidence in civil cases. People
23 describe that as the scales of justice tilting ever so
24 slightly either in favor of a plaintiff or ever so slightly
25 in favor of a defendant. That's what's meant by the greater

1 weight or the preponderance of the evidence. That's not the
2 standard of proof in this case.

3 This case involves a criminal, a criminal matter, and,
4 again, the standard of proof is proof beyond a reasonable
5 doubt. It's a more powerful or a heavier burden of proof
6 than that in a civil case. Proof beyond a reasonable doubt
7 would be that kind of proof which would leave you firmly
8 convinced of the defendant's guilt.

9 Now, there's very few things that go on in the lives of
10 humans that can be proven beyond any doubt whatsoever.
11 That's not the standard to which the State is held in this
12 case. They do not have to present, present proof that
13 overcomes every possible doubt.

14 I will tell you that if, based on your consideration of
15 the evidence, if you are firmly convinced of the defendant's
16 guilt beyond a reasonable doubt you must find the defendant
17 guilty. However, on the other hand, if you think there's a
18 real possibility that the defendant is not guilty, then you
19 must give the defendant the benefit of that doubt and find
20 the defendant not guilty.

21 I'm going to remind you at the beginning of the trial I
22 tried to stress to you and point out to you that you and I
23 have different duties to perform during the trial. It's
24 been my responsibility to rule upon questions of evidence
25 that, and maybe the appropriateness of questions that are

1 being asked, and I've explained to you that you should not
2 take from anything that I have done in the discharge of my
3 duties as the presiding officer in this trial to indicate to
4 you one way or the other as to how, as to how you should
5 determine the facts in this case. Again, it was simply me
6 doing my job as the presiding officer in this case.

7 I will tell you, if there was any matter, and there are
8 matters that I struck from the record or took out of the
9 record of the case, you should not consider those matters at
10 all in reaching a verdict in this case. They should not
11 even be discussed by you. Those matters have been removed
12 from the record of this case and are no longer a part of the
13 record of this trial. You are to consider only the
14 competent evidence before you that was entered into the
15 record of the trial during the trial of this case, and you
16 should disregard any other matters that may be outside of
17 that record.

18 You also have the right to consider stipulations, and
19 in this case there was a stipulation entered into by
20 counsel, and you have the right to consider those as well in
21 reaching your verdict.

22 Now, I have told -- I've told you I have the additional
23 duty of charging you concerning the applicable law, and at
24 the beginning of the trial I explained to you I am the sole
25 judge of the law just as you are the sole judges of the

1 facts in this case. It's your duty, as jurors, to accept
2 the law as I give it to you and apply the law as I now state
3 it to you. And, again, if you came into the courtroom with
4 any idea as to what the law is or what the law ought to be,
5 those notions need to be left outside of the jury room
6 because, under your oath, it's your duty to apply the law
7 exactly as I give it to you to the facts as you find them to
8 be.

9 Now, in every case tried in this court before a jury,
10 the jury is the sole judges of the facts in this case. You
11 are the exclusive judges of the facts in this case. Again,
12 I can't indicate to you and am not allowed to indicate to
13 you any preference concerning your determination of the
14 facts in this case. So, again, don't take from anything
15 that I say or do now during the charge or at any time in
16 this proceeding to indicate or take, indicate, in any way,
17 that I have an opinion one way or the other as to how you
18 determine the facts in this case. The law doesn't allow me
19 an opinion on that subject. I have no opinion as to how you
20 should determine the facts in this matter. It's your duty,
21 as jurors, to determine the weight, the effect, the value,
22 and the truth of the evidence that you've heard during the
23 trial.

24 Now, there's two types of evidence that you have the
25 right to consider, and I want to be sure that I've explained

1 to you what I mean by two types of evidence that you have
2 the right to consider. One is what is called direct
3 evidence.

4 Now, direct evidence is testimony from a witness who
5 claims to have direct knowledge of the facts about which
6 that witness testified. Someone who was an eye witness,
7 someone who is present when something occurred, they
8 experience that, that issue that they're testifying about
9 directly. They saw it. They heard it. They smelled it.
10 They tasted it. Somehow they've had direct knowledge and
11 testify directly about the facts that, that are sought to be
12 proven. That's what we mean by direct evidence.

13 The other type of evidence that you have the right to
14 consider is what is called circumstantial evidence. Now,
15 circumstantial evidence is proof of a chain of facts or
16 circumstances that indicate the existence of a fact. It's
17 often described as proof of collateral facts from which a
18 main fact might be reasonably inferred.

19 Circumstantial evidence, therefore, is based upon
20 inference. Not upon personal knowledge or observation. I
21 like to use a very simple example to, to describe what might
22 be meant by proof of a fact by circumstantial evidence.

23 Let's say last night, before you went to bed, you, you
24 looked outside the window of your house and the stars were
25 shining, it's a beautiful evening, you went to bed, you

1 slept well all night, didn't wake up at all, and you woke up
2 the next morning, you walked to that same window that you
3 looked out the night before, the sun might be shining
4 outside. But there's water dripping from all the trees.
5 There's puddles in your driveway. The lawn or the road
6 outside your home is, is wet and dripping.

7 Now, you slept well all night. So, you didn't hear it
8 rain and you didn't see it rain. But from the collateral
9 facts that you know to be true, you could reasonably infer
10 that, at some time during the night, it did, in fact, rain.
11 So, that's what's meant by proof of a fact from an inference
12 or from other, proof of collateral facts from which a main
13 fact could be inferred.

14 Now, the law makes absolutely no distinction between
15 the weight or value that you, the jury, can give to either
16 direct or circumstantial evidence. Nor is there a greater
17 degree of certainty required of circumstantial evidence than
18 that of direct evidence. As a jury, you should weigh all of
19 the evidence in the case, both direct and circumstantial,
20 and I will tell you that if, after weighing all the evidence
21 in the case, if you are not convinced of the defendant's
22 guilt beyond a reasonable doubt, you must find the defendant
23 not guilty. If, however, you are firmly convinced of the
24 defendant's guilt beyond a reasonable doubt, then you must
25 find the defendant guilty.

1 Now, in doing your jobs as the finders of facts, I want
2 to go over with you again the fact that, that that
3 necessarily means you will be the individuals who will
4 decide the credibility or believability of the witnesses who
5 have testified in this case, and that's what credibility
6 means. It simply means believability. It's your duty, as
7 jurors, to analyze and evaluate the evidence and determine
8 which evidence convinces you of its truth.

9 Now, in determining believability of witnesses who've
10 testified in this case, you, as the sole judge of the facts,
11 can believe one witness against all the other witnesses.
12 You can believe all the others against one witness. You, as
13 the sole judge of the facts, can believe all of, part of, or
14 none of what a witness has told you in the case. Excuse me.
15 You may consider such factors as whether or not a witness is
16 exhibited to you some interest, bias, or prejudice, or other
17 motive for or against either side in the case. You also
18 have the right to consider the appearance and the manner in
19 which a witness has testified.

20 Again, you're the sole judges of the facts, and I've
21 urged you to use your own good common sense in determining
22 the question of the credibility or believability of the
23 witnesses that you've heard during this trial.

24 Now, in order to establish criminal liability, criminal
25 intent is normally also required to be proven. That's the

1 mental state that someone would be required to have for a
2 particular crime to have been committed. It might be
3 purpose, intent, knowledge. It can even be recklessness or
4 criminal negligence.

5 Criminal intent is also something that has to be proven
6 by the State beyond a reasonable doubt. Criminal intent is
7 always a matter that must be determined by the jury from the
8 circumstances surrounding the situation because, you see,
9 there's no way that we can open up someone's head, and look
10 inside, and determine directly what they were intending to
11 do in any given situation. So, it also -- that fact always
12 has to be proven by the facts and circumstances surrounding
13 the event that have been shown or proven to you to be the
14 case in this, in a particular case.

15 So, it's not necessary to establish intent by direct or
16 positive evidence. Again, it can be established by
17 inference, the same way as any other fact, taking into
18 consideration the facts and circumstances in the case.

19 Now, criminal intent, when we talk about that, that's a
20 mental state. It's a conscious wrongdoing, and it's up to
21 you to determine what a defendant intended to do based on
22 the circumstances shown to you to have existed at the time
23 of the alleged event.

24 Now, an issue in this case is also the identification
25 of the defendant as the person who committed the crime, and

1 the State has the burden of proof identity, again, beyond a
2 reasonable doubt. You must be satisfied, beyond a
3 reasonable doubt, of the accuracy, accuracy of the
4 identification of a defendant before you can convict a
5 defendant. Identification testimony is an expression or a
6 belief or an impression by a witness. You must determine
7 the accuracy of identifications of the defendant. You must
8 consider believability of each identification witness the
9 same as any other witness.

10 You can consider whether or not a witness had adequate
11 opportunities to observe the offender at the time of the
12 offense. It can be affected by such things as how long or
13 short a time was involved, how far or close the witness was
14 from the event, the conditions that existed when the
15 observations took place. Once again, I instruct you that
16 the burden of proof extends to the State for every element
17 of the crime. That also includes the burden of proof
18 concerning identification or the identification of the
19 defendant as the person who committed the crime.

20 I will tell you, again, if, after examining, examining
21 the testimony, you have a reasonable doubt as to the
22 accuracy of the identification, you must find the defendant
23 not guilty. However, if you are convinced, beyond a
24 reasonable doubt, of the accuracy of the identification, you
25 must find the defendant guilty.

1 Now, during the trial, testimony has been given
2 concerning potential penalties that might be involved or the
3 time, length of time a person can serve for a crime that may
4 have been committed. In determining the guilt or innocence
5 of the defendant, you, the jury, can not consider any
6 possible penalty for any particular crime. The punishment
7 for crimes is a matter for me, the judge, to decide and
8 determine, and it should never be considered by a jury in
9 any way in reaching a fair and impartial verdict in the case
10 as to the question of guilt or innocence of the defendant.

11 Also, there have been -- there's been evidence
12 presented that perhaps witnesses may have made prior
13 statements which were not consistent with the present
14 testimony that they gave during the trial. You may use this
15 evidence to decide whether or not to believe the witness in
16 question. You may also use the witness of, excuse me, the
17 evidence of the earlier contradictory statements to
18 determine the truth of those statements.

19 It's up to you, as the sole judges of the facts, to
20 decide whether to believe earlier statements or the
21 testimony that may have been given at trial. If a witness
22 is shown to have knowingly testified untruthfully concerning
23 any material matter, you may consider that in determining
24 whether to trust the witnesses testimony as to other
25 matters. You may reject all of the testimony that a witness

1 gave, part of what, the testimony that a witness gave, or
2 none of the testimony. You, again, are the sole judges of
3 the facts and, again, you give the testimony that you've
4 heard the weight that you think that it deserves.

5 Now, I will instruct you, and I'm going to emphasize to
6 you a fact. That is, the fact that the defendant did not
7 testify in this case is not a factor to be considered by
8 you, the jury, in any way in your deliberations and in your
9 consideration of the question of guilt or innocence. It
10 must not be considered by you in any manner whatsoever.

11 A defendant has a Constitutional right to remain
12 silent, and the assertion of that right by a defendant
13 should not be considered by you at all in your
14 deliberations. I repeat to you that, under your oath, you
15 are to draw no conclusion whatsoever from the fact that the
16 defendant in this case did not testify. The fact that the
17 defendant did not testify should not even be discussed by
18 you in your deliberations in the jury room.

19 The burden of proof, as I have told you, is upon the
20 State and only the State has the burden of proof in this
21 case. The defendant is not required to prove his innocence.
22 The burden of proof remains upon the State to prove the
23 defendant guilty beyond a reasonable doubt throughout the
24 trial and into your deliberations.

25 Now, during the trial, statements alleged to have been

1 made by the defendant were admitted into evidence in this
2 case. While the Court has determined that the statement was
3 admissible or the statements were admissible, I instruct you
4 that you make the ultimate decision as to whether or not the
5 defendant made the statement. If the defendant did not make
6 the statement, you must determine whether or not the
7 statement was made -- excuse me. If you determine the
8 statement was made by the defendant, then you must determine
9 whether or not the statement was made by the defendant
10 voluntarily and of his own free will. This means that the
11 statement was not caused by pressure, force, fear, threats,
12 coercion, intimidation, or by hope or a promise of leniency,
13 or a promise of reward of any kind.

14 In determining whether the statement was voluntarily
15 made, you can, should consider both the characteristics of
16 the defendant and the details surrounding the questioning
17 that may of occurred. Some of the factors that you must
18 consider are the age of the defendant, the defendant's
19 education or lack of education, the defendant's mental
20 ability or capacities, the defendant's intelligence, the
21 defendant's background and environment, the place and length
22 of any detention, the nature of questioning, and the advice
23 or lack thereof to the defendant of his or her Constitution
24 at rights including, but not limited to, the right to remain
25 silent, that any statement could be used against him in a