

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Richland County

Honorable Tanya A. Gee, Circuit Court Judge

S.C. SUPREME COURT

NATHANIEL MURRAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000901

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2009-GS-40-1532, 1533, 1531

The State)
vs.) TRANSCRIPT OF RECORD
Nathanial Murray)
_____)

October 12, 13 and 14, 2009
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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Crystal Holmes

Official Court Reporter

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1 MONDAY, OCTOBER 12, 2009:

2 (Whereupon, State's Exhibit Numbers 1 through
3 40, were pre-marked for identification.)

4 (Whereupon, Court's Exhibit Number 1,
5 Defendant's Requested Voir Dire, was marked for
6 identification.)

7 (Whereupon, Court's Exhibit Number 2,
8 Defendant's Pretrial Motions, was marked for
9 identification.)

10 (Whereupon, Court's Exhibit Number 3,
11 Defendant's Potential Witness List, was marked
12 for identification.)

13 THE COURT: Are you ready?

14 MS. CAMPBELL: I've just got to -- as far as
15 number one, Your Honor, been a victim of a violent
16 crime. This is actually a robbery and failure to stop
17 for a blue light case. I just think it might be
18 appropriate to limit it to that more so ---

19 THE COURT: How about that Mr. Schnee, you have
20 any problems with that -- well, y'all approach for a
21 minute.

22 (Whereupon, a bench conference was held off the
23 record.)

24 THE COURT: Two counts of armed robbery and
25 failure to stop for a blue light, is that correct?

1 MR. JOPHLIN: Yes, sir.

2 THE COURT: All right. Ms. Pendergrass, you
3 want to invite them to come up.

4 THE CLERK: Okay.

5 (Pause.)

6 THE COURT: Y'all don't look too happy to be
7 here this afternoon. Are you? Well, I want to thank
8 you all for your service, members of the jury panel, and
9 to welcome y'all here this afternoon.

10 I think y'all finally met Judge Barber this
11 morning, he qualified y'all.

12 Do we have anybody of Italian descent on the
13 jury panel?

14 PROSPECTIVE JURORS: (Hands raised.)

15 THE COURT: Happy Columbus Day, you know. In
16 fact, I called a friend of mine, Davis Pennazella
17 (phonetic) who is in Norfolk, Virginia. I think he's
18 Sicilian more so than Italian but I still wished him a
19 happy Columbus Day, so. It's too bad we're not the
20 federal government, y'all wouldn't have to be here today
21 because I think they have a federal holiday.

22 Now, members of the jury panel, we're going to
23 select a jury in the case of the State of South Carolina
24 versus Nathaniel Murray.

25 Now, first of all, let me tell you what this

1 case is all about. It's an armed robbery case and a
2 failure to stop for a blue light. There's three
3 indictments. There's two counts of armed robbery, one
4 count of failure to stop for a blue light. And I'm going
5 to read the allegations contained in these three
6 indictments so you have an idea of what the case is all
7 about, sort of who it involves to a certain extent. And
8 I emphasize that as I read the indictments and the
9 allegations, these are allegations, okay. It's not --
10 it's not proof of anything and if you're selected on this
11 jury, I'll explain that in more detail later.

12 But everybody in America is presumed innocent
13 until proven guilty beyond a reasonable doubt. I'm sure
14 y'all know that before you came in here.

15 So we have three indictments and the first one
16 is indictment number 2009-1-5-3-3, the State versus
17 Nathaniel Murray. It's an indictment for armed robbery.
18 And this indictment reads:

19 That Nathaniel Murray did in Richland County on
20 or about February the 17th of 2009, commit robbery by
21 feloniously taking from the person or presence of Jimmy
22 Hanson, by means of force or intimidation, goods or
23 monies of Jimmy Hanson, such goods or monies being
24 described as a 1996 Toyota Corolla with the intent to
25 deprive the owner permanently of such property while he

1 was armed with some weapon.

2 I think in this case the weapon is supposed to
3 be a gun, is that correct? I don't know, I'm asking.

4 MS. CAMPBELL: Yes, Your Honor, the
5 representation of a gun.

6 THE COURT: The representation of a gun.

7 So y'all understand armed robbery. And so
8 February 17th, Mr. Murray with some weapon, presumably a
9 gun, robbed Jimmy Hanson.

10 That's the first count of armed robbery.

11 The second count of armed robbery is contained
12 in indictment number 2009-1532, the State versus
13 Nathaniel Murray. Once again this is an indictment for
14 robbed robbery. It alleges:

15 That Nathaniel Murray did in Richland County on
16 or about February the 17th of 2009, commit robbery by
17 feloniously taking from the person or presence of Walter
18 Langford by means of force or intimidation, goods or
19 monies of Walter Langford, such goods or monies being
20 described as a wallet and its contents with the intent
21 to deprive the owner permanently of such property while
22 armed with what appeared to be -- not actually but what
23 appeared to be a gun. I'll explain that to you more
24 later on, so.

25 There's two counts of armed robbery. It's

1 alleged that he robbed Walter Langford of a wallet and
2 Jimmy Hanson of a car.

3 The third indictment is an indictment for what
4 we refer to as failure to stop for a blue light, that's
5 a police vehicle as you all know. It's indictment
6 number 2009-1531. This particular indictment alleges:

7 That Nathaniel Murray did in Richland County on
8 or about February 17th of 2009, unlawfully fail to stop
9 while driving a motor vehicle on a road, street or
10 highway of the state, for a law enforcement vehicle
11 after being signaled to do so by a duly constituted
12 active law enforcement officer of the state after he
13 activated a blue light and siren. It would have been a
14 member of the Richland County Sheriff's Department.

15 So there's three charges, two counts of armed
16 robbery and one count of failure to stop for a blue
17 light.

18 Now, members of the jury panel, I am going to
19 introduce Mr. Murray to you. Mr. Murray, would you be
20 kind enough to stand up and turn around and face the
21 jury panel.

22 (Complied.)

23 THE COURT: This is Mr. Nathaniel Murray. He's
24 the Defendant and he's the one charged in these three
25 indictments.

1 Thank you Mr. Murray.

2 (Mr. Murray is seated.)

3 THE COURT: Now what I'm required to do at this
4 time, members of the jury panel, is ask you this
5 question. Is any member of the jury panel related by
6 blood or connected by marriage or employment, or are you
7 a close personal acquaintance of Mr. Nathaniel Murray,
8 the Defendant?

9 If so, please stand. Basically what I'm trying
10 to determine is, anyone of you out there know Mr.
11 Murray, live near Mr. Murray or know anything about him
12 at all.

13 If so, please stand.

14 (No response.)

15 THE COURT: All right. Now, members of the
16 jury panel, I'm now going to read you a list of
17 potential witnesses in this case, okay. They all may
18 not be called but they're a potential witness, that's
19 why I phrased it that way. And it's a long list. I
20 count 22 quickly, 22 potential witnesses. But actually
21 that would probably be 23 potential witnesses.

22 So it's going to be the same question about
23 these potential witnesses that I asked you about Mr.
24 Murray. I mean, do you know them, do you live by them,
25 do you work with them, that sort of thing.

1 So these are the potential witnesses that may
2 be called by the State in this case. And the first one
3 is a lady by the name of Jennifer Blair. She works for
4 one of the communications companies. It's listed as 911
5 operator, okay, Jennifer Blair. And then Lee Blatt, is
6 it Blatt or Blatt -- Lee Blatt. Is that a man or a
7 woman?

8 MR. JOPHLIN: A man, Your Honor.

9 THE COURT: A man, Lee Blatt. And who is he
10 with? He's a fact witness?

11 MR. JOPHLIN: Formally with the Sheriff's
12 Department.

13 THE COURT: Formerly with the Sheriff's
14 Department. Jonathan White, formerly with the Sheriff's
15 Department or what?

16 MR. JOPHLIN: A lay witness.

17 THE COURT: Lay witness, okay. Chris Burnett?

18 MR. JOPHLIN: Yes, sir.

19 THE COURT: From the Richland County Sheriff's
20 Department.

21 THE COURT: An -- Antoine or Antonie Robinson.

22 MR. JOPHLIN: Antoine Robinson.

23 THE COURT: Antoine Robinson of the Richland
24 County Sheriff's Department. It just says Deputy
25 Pennington of the Richland County Sheriff's Department.

1 Do we have a first name for Deputy Pennington?

2 MR. JOPHLIN: Brendon.

3 THE COURT: What?

4 MR. JOPHLIN: Brendon, Your Honor.

5 THE COURT: B-r-e-n-d...

6 MR. JOPHLIN: O-n.

7 THE COURT: All right. Brendon Pennington of
8 the Richland County Sheriff's Department. Harold
9 Bouknight or Bouknight, Bouknight, Bouknight, B-o-u-k-n-
10 i-g-h-t of the Richland County Sheriff's Department.

11 John Barron of the Richland County Sheriff's
12 Department. Sergeant Kevin Isenhoward of the Richland
13 County Sheriff's Department. William Cedarstaff of the
14 Richland County Sheriff's Department. Christine
15 Barickman -- Barickman, B-a-r-i-c-k-m-a-n of the
16 Richland County Sheriff's Department.

17 Christopher Duke of the Richland County
18 Sheriff's Department. Josh Woodley of the Richland
19 County Sheriff's Department.

20 Walter Langford, that is a lay witness?

21 MR. JOPHLIN: Yes, sir.

22 THE COURT: Walter Langford is one of the
23 victims in this case. Julie Langford I would assume
24 would be Mr. Langford's wife or?

25 MR. JOPHLIN: Yes, sir.

1 THE COURT: His wife?

2 MR. JOPHLIN: Yes, sir.

3 THE COURT: Okay. Jimmy Hampton is a lay
4 witness that was ---

5 MR. JOPHLIN: Victim, Your Honor.

6 THE COURT: Victim, okay. Lester Woods.
7 Branford -- yes, sir?

8 MR. JOPHLIN: I was going to say witness,
9 sorry.

10 THE COURT: Just a lay witness ---

11 MR. JOPHLIN: Yes, sir.

12 THE COURT: --- or fact witness. Somebody that
13 was supposedly at the scene or knows something about the
14 case.

15 Branford Hampton who would be a lay witness,
16 somebody not involved in law enforcement just a regular
17 citizen.

18 Claudine Florence, another lay witness. Just
19 somebody that knows about the case, is that correct?

20 MR. JOPHLIN: Yes, sir.

21 THE COURT: Okay, that's fine. Claudine
22 Florence, another lay witness?

23 MR. JOPHLIN: (Affirmative response.)

24 THE COURT: Okay. Sergeant Hinson of the
25 Richland County Sheriff's Department. It would probably

1 be better if I gave his first name or her first name.

2 MR. JOPHLIN: Frank, Your Honor.

3 THE COURT: Grant?

4 MR. JOSPHLIN: Frank.

5 THE COURT: Frank Hinson of the Richland County
6 Sheriff's Department.

7 Kia Whitaker of the Richland County Sheriff's
8 Department. And Investigator Don McRae of the Richland
9 County Sheriff's Department.

10 Did I call out everybody, I think?

11 MR. JOPHLIN: (Affirmative response.)

12 THE COURT: Additionally, there's a possibility
13 Mr. Murray may testify. He doesn't have to. And
14 Investigator Elizabeth Cook of the Richland County
15 Sheriff's Department?

16 MR. JOPHLIN: A private investigator, Your
17 Honor.

18 THE COURT: A private investigator, okay.

19 Now, the question I'm going to ask you about
20 all those names, are you related by blood or connected
21 by marriage or employment, or are you a close personal
22 acquaintance of any of those names I just called out?
23 And I'm going to repeat them for you and I ask that you
24 listen carefully. And I'm going to go a little bit
25 quicker this time.

1 And if you aren't sure when I finish all this,
2 if you're not sure about somebody, stand up and we'll
3 try to make sure that you either know them or don't know
4 them.

5 So once again, Jennifer Blair, 911, Lee Blatt,
6 Jonathan White, Chris Burnett of the Richland County
7 Sheriff's Department, Antoine Robinson of the Richland
8 County Sheriff's Department, Brendon Pennington of the
9 Richland County Sheriff's Department, Harold Bouknight
10 of the Richland County Sheriff's Department, John Barron
11 of the Richland County Sheriff's Department, Sergeant
12 Kevin Isenhoward of the Richland County Sheriff's
13 Department, William Cedarstaff of the Richland County
14 Sheriff's Department, Chrisine Brickman (sic) --
15 Barickman, B-a-r-i-c-k-m-a-n of the Richland County
16 Sheriff's Department, Christopher Duke of the Richland
17 County Sheriff's Department, Josh Woodley of the
18 Richland County Sheriff's Department, Walter Langford,
19 Julie Langford, Jimmy Hampton, Lester Woods, Branford
20 Hampton, Claudine Florence, Sergeant Frank Hinson of the
21 Richland County Sheriff's Department, Kia Whitaker of
22 the Richland County Sheriff's Department, and
23 Investigator Don McRae of the Richland County Sheriff's
24 Department. Once again, along with Nathaniel Murray as
25 well as Investigator Elizabeth Cook who's a private

1 investigator.

2 Now, once again, are you related by blood or
3 connected by marriage or employment, or are you a close
4 personal acquaintance of any of those names I just
5 called out?

6 If so, please stand.

7 (No response.)

8 THE COURT: If there's somebody you think you
9 might know, just stand up anyway and we'll try to figure
10 it out.

11 (Jurors stand.)

12 THE COURT: And yes, sir, would you please give
13 me your name and your juror number.

14 PROSPECTIVE JUROR: Mack Scott, number 237. I
15 work with Jennifer Blair and Frank Hinson, we used to
16 work at the police department.

17 THE COURT: You work with Jennifer Blair.

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: And who else?

20 PROSPECTIVE JUROR: Frank Hinson.

21 THE COURT: Okay. How long have you known
22 these two individuals?

23 PROSPECTIVE JUROR: About 12 years.

24 THE COURT: About 12 years. In what capacity
25 did you work with them or do you work with them?

1 PROSPECTIVE JUROR: Well, Frank Hinson used to
2 work -- worked down at supply.

3 THE COURT: So you work with the county?

4 PROSPECTIVE JUROR: I work for the city.

5 THE COURT: Oh, you work for the city.

6 PROSPECTIVE JUROR: Yes, sir and Jennifer works
7 at the City now.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: At dispatch and I work --
10 when I was at the police department, she worked ---

11 THE COURT: All right. So you've known them
12 both for about 12 years, you said?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: Now, would that or could that
15 affect your ability to be a fair and impartial juror in
16 the trial of this case, this work relationship with
17 these two individuals?

18 PROSPECTIVE JUROR: No, sir.

19 THE COURT: Are you sure about that?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Beg your pardon?

22 PROSPECTIVE JUROR: No, I can be fair, Judge.

23 THE COURT: Okay. What I mean, sir, you're
24 sure that that relationship over the 12 years you've
25 worked and known them, wouldn't affect your ability to

1 be a fair juror?

2 PROSPECTIVE JUROR: No, it wouldn't.

3 THE COURT: Okay. All right, thank you, sir.

4 PROSPECTIVE JUROR: All right.

5 THE COURT: Yes, sir, your name and number.

6 PROSPECTIVE JUROR: Ramone Jackson.

7 THE COURT: I can't hear you.

8 PROSPECTIVE JUROR: Ramone Jackson.

9 THE COURT: Bernard Jackson.

10 PROSPECTIVE JUROR: Ramone Jackson.

11 THE COURT: Ramone Jackson. What's your
12 number, sir?

13 PROSPECTIVE JUROR: My number's 140.

14 THE COURT: 140?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: And who do you know, Mr. Jackson?

17 PROSPECTIVE JUROR: I couldn't make out, did
18 you say Shawn (phonetic) McRae?

19 THE COURT: Let me find it again, let's see.
20 I don't think it's ---

21 MR. SCHNEE: Don McRae, the last one.

22 THE COURT: Oh an investigator, Don, D-o-n, D-
23 o-n.

24 PROSPECTIVE JUROR: Yes, sir, that's not the
25 person I know.

1 THE COURT: Okay, Don McRae of the Richland
2 County Sheriff's Department.

3 PROSPECTIVE JUROR: Yes, sir, it's someone
4 different.

5 THE COURT: Okay, I'm sorry.

6 PROSPECTIVE JUROR: Thank you..

7 THE COURT: I'm from Dillon County so my accent
8 might be a little funny. I'll be happy to repeat
9 myself.

10 Yes, sir, you raised your hand?

11 PROSPECTIVE JUROR: Yes, sir, number 50.

12 THE COURT: Yes, sir, your name.

13 PROSPECTIVE JUROR: James Carrero.

14 THE COURT: Carrero, Yes, sir.

15 PROSPECTIVE JUROR: I know an officer but not
16 very well.

17 THE COURT: What's his ---

18 PROSPECTIVE JUROR: Mr. Woodley, Josh Woodley.

19 THE COURT: Let's see, hold on. Kia Whitaker?

20 PROSPECTIVE JUROR: Woodley.

21 THE COURT: Woodley?

22 PROSPECTIVE JUROR: Josh Woodley.

23 MR. SCHNEE: Middle of the list, Your Honor.

24 THE COURT: Oh, Josh Woodley, W-o-o-d-l-e-y
25 with the Richland County Sheriff's Department.

1 PROSPECTIVE JUROR: My wife and her friend, we
2 did a wedding, a catering for his wedding last year. I
3 really don't know him. We knew the daughter ---

4 THE COURT: He got married?

5 PROSPECTIVE JUROR: Got married.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: Back last ---

8 THE COURT: There's nothing wrong with that.

9 PROSPECTIVE JUROR: Other than that, I really
10 don't him.

11 THE COURT: So you've had one contact with him,
12 you catered his wedding last year, you think?

13 PROSPECTIVE JUROR: December of last year.

14 THE COURT: Let's assume it is the same Josh
15 Woodley, you did cater the wedding. Would that or could
16 that affect your ability to be a fair and impartial
17 juror in the trial of this case?

18 PROSPECTIVE JUROR: No, Your Honor.

19 THE COURT: You're sure about that?

20 PROSPECTIVE JUROR: I'm sure.

21 THE COURT: You know -- you may sit down. I'm
22 not trying to be funny, ladies and gentlemen. I don't
23 mind weddings as long as it's not my own, as they say.

24 All right. So anybody else? If you're not
25 sure -- like the gentleman in the back there, if you

1 think it's a name you recognize, just stand up. It's no
2 harm, no foul, okay.

3 Now, none of you have been on the grand jury in
4 the last three years here in Richland County? Any of
5 y'all serve as a member of the Richland County grand
6 jury in the last three years?

7 (No response.)

8 THE COURT: Now, has any member of this jury
9 panel formed or expressed any opinion about this case or
10 as to the guilt or innocence of Mr. Nathaniel Murray?

11 If so, please stand.

12 (No response.)

13 THE COURT: Basically, have you heard anything
14 about this case, you know anything about Mr. Murray or
15 anything about this case?

16 If so, please stand.

17 (No response.)

18 THE COURT: Now is any member of this jury
19 panel aware of any bias or prejudice in connection with
20 this case or any of the parties thereto? And of course
21 one party would be Mr. Murray, Nathaniel Murray, who is
22 the Defendant in this case or Jimmy Hanson (sic), one of
23 the victims, or Walter Langford, one of the victims or
24 any of the witnesses I called out?

25 If so, please stand.

1 (No response.)

2 THE COURT: Any reason why you would be bias or
3 prejudice against Mr. Murray or anybody else or any
4 other names I called, particularly the victims?

5 If so, please stand. I should say alleged
6 victims to be more accurate, okay.

7 (No response.)

8 THE COURT: Now, does any member of this jury
9 panel know of any reason why they cannot give both the
10 State, that's the prosecution, as well as Mr. Murray,
11 the Defendant, a fair and impartial trial based on the
12 law and the evidence to be presented? Any reason you
13 feel you cannot be a fair juror in an armed robbery case
14 and a failure to stop for a blue light case?

15 If so, please stand.

16 (No response.)

17 THE COURT: Now, members of the panel, I have
18 some additional questions to ask you -- ask of you all.
19 I ask that you be patient. And the idea is, of course,
20 to try to select a fair and impartial jury, a jury that
21 will be fair to the State as well as a jury that will be
22 fair to Mr. Murray. So it's not an easy thing to do
23 necessarily but that's the attempt.

24 And if I ask a question that may be sensitive
25 or you feel uncomfortable answering, and I don't know

1 whether I will yet or not yet, but I will invite you to
2 come down and speak with me privately about your
3 situation.

4 Does that make sense? Is that fair enough?

5 Okay. Now has any member of this jury panel or
6 a member of your immediate family or a close friend been
7 the victim of a crime of violence or has -- or have you
8 or a member of your immediate family been accused of a
9 crime of violence? We're trying to ask that both ways
10 so it covers both sides.

11 So has any member of the jury panel or any
12 member of your family or a close friend been a victim of
13 a violent crime or been accused of committing a violent
14 crime?

15 If so, please stand.

16 (Jurors stand.)

17 THE COURT: That's one of those questions, if
18 you feel more comfortable coming down and talking to me,
19 I will invite you to do so. In fact, I would encourage
20 you to do so.

21 So those of you who stood, if you form a line
22 over to your left, my right, then I'll talk to y'all
23 privately down here with the lawyers.

24 (Pause.)

25 THE COURT: I need your name and juror number

1 for the court reporter.

2 PROSPECTIVE JUROR: Simon Moore, III, 188.

3 THE COURT: Now, have you or a member of your
4 family been a victim or accused, which one?

5 PROSPECTIVE JUROR: A member of my family has
6 been a victim.

7 THE COURT: A victim. What was that family
8 member, a wife, brother, mother?

9 PROSPECTIVE JUROR: It was my aunt.

10 THE COURT: Your aunt.

11 PROSPECTIVE JUROR: She was murdered by her ---

12 THE COURT: She was murdered. I'm sorry to
13 hear that. How long ago was it?

14 PROSPECTIVE JUROR: That was 19 -- 20 years
15 ago. And her son was just murdered last month by ---

16 THE COURT: Okay, so you had your aunt 20 years
17 ago and her son just a month or so ago?

18 PROSPECTIVE JUROR: Yeah, my cousin, first
19 cousin.

20 THE COURT: Both were murdered, okay. Would
21 that experience or could that experience affect your
22 ability to be a fair juror? This is an armed robbery
23 case and a failure to stop so it's a little bit
24 different but it's still considered a crime of violence.

25 Would that affect your ability to be a fair

1 juror?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Do you feel comfortable serving?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: You sure?

6 PROSPECTIVE JUROR: Sure.

7 THE COURT: All right. Thank you, sir. Y'all
8 got his number, right?

9 Yes, ma'am. Good afternoon, how are you? Come
10 up a little bit. I'm going to ask you your name and
11 juror number.

12 PROSPECTIVE JUROR: Okay. Barbara Walker.

13 THE COURT: Barbara Walker, yes, ma'am.

14 PROSPECTIVE JUROR: 277.

15 THE COURT: 277.

16 PROSPECTIVE JUROR: Uh-huh.

17 THE COURT: Now, Ms. Walker, you or a family
18 member been a victim?

19 PROSPECTIVE JUROR: I was in a bank when it was
20 robbed and a gun was put in my back.

21 THE COURT: You were in a bank when it was
22 robbed and the gun was put in your back. How long ago
23 was that, ma'am?

24 PROSPECTIVE JUROR: '91.

25 THE COURT: In 1991?

1 PROSPECTIVE JUROR: Uh-huh. And then in 2005,
2 somebody broke in my house.

3 THE COURT: In 2005, somebody broke into your
4 house, okay.

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Would those two experiences affect
7 your ability to be a fair juror in this armed robbery
8 and failure to stop for a blue light case?

9 PROSPECTIVE JUROR: I would tend to go with the
10 victims because I know how it feels.

11 THE COURT: I understand, I understand. That's
12 why I brought you up here. So I'm going to have to
13 excuse you from this jury, okay. Not that you're not a
14 good juror but you understand, don't you?

15 PROSPECTIVE JUROR: Uh-huh.

16 THE COURT: Thank you, ma'am. Y'all got her
17 number? You got that? All right.

18 Good afternoon. Your name and number, please.

19 PROSPECTIVE JUROR: Patricia Manigault.

20 THE COURT: Come on up, we're not going to hurt
21 you.

22 PROSPECTIVE JUROR: 164.

23 THE COURT: Patricia what?

24 PROSPECTIVE JUROR: Manigault.

25 THE COURT: Say that again.

1 PROSPECTIVE JUROR: Manigault.

2 THE COURT: Manigault, oh ---

3 PROSPECTIVE JUROR: Uh-huh.

4 THE COURT: Was it you or a family member been
5 a victim?

6 PROSPECTIVE JUROR: No.

7 THE COURT: Somebody -- somebody was accused?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Who was it?

10 PROSPECTIVE JUROR: My son and my ---

11 THE COURT: Your son, how old ---

12 PROSPECTIVE JUROR: --- and my brother.

13 THE COURT: Your son and your brother. How old
14 -- I mean, how long ago was it, let me ask you that?

15 PROSPECTIVE JUROR: My son is still on
16 probation.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR: Until 2011.

19 THE COURT: And your brother?

20 PROSPECTIVE JUROR: My brother, he's running
21 from the police now.

22 THE COURT: He's what?

23 PROSPECTIVE JUROR: He's running now. He served
24 like nine years ---

25 THE COURT: Okay. How long ago -- when did

1 this happen?

2 PROSPECTIVE JUROR: My brother's was about 10
3 years ago.

4 THE COURT: Uh-huh.

5 PROSPECTIVE JUROR: And my son's was about six
6 years ago.

7 THE COURT: Okay. I want to ask you this.
8 Would that experience with your brother and son affect
9 your ability to be a fair juror in this case?

10 PROSPECTIVE JUROR: Yeah, because every time
11 they do something, I always say they guilty.

12 THE COURT: Okay, that's fine.

13 PROSPECTIVE JUROR: Even if they hadn't done
14 it.

15 THE COURT: I understand, I understand. That's
16 why we brought you up here, okay. So I'm going to take
17 you off this jury, okay.

18 Thank you, ma'am.

19 PROSPECTIVE JUROR: Thanks.

20 THE COURT: Hello.

21 PROSPECTIVE JUROR: Hi.

22 THE COURT: Your name and number, please,
23 ma'am.

24 PROSPECTIVE JUROR: 72, Penny Davis.

25 THE COURT: Penny Davis, number 72.

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Now, Ms. Davis, you or family
3 member or friend was the victim or somebody ---

4 PROSPECTIVE JUROR: My sister was a victim.

5 THE COURT: Your sister was a victim.

6 PROSPECTIVE JUROR: I mean ---

7 THE COURT: That's all right. Was she killed?

8 PROSPECTIVE JUROR: (Affirmative response.)

9 THE COURT: How long ago was it?

10 (Pause.)

11 THE COURT: I tell you what, I want you to go
12 sit down. I'm not going to let you serve on this jury,
13 okay. Help her back to her seat.

14 THE CLERK: Yes, sir.

15 THE COURT: Did we get her number?

16 THE CLERK: Yes, sir.

17 THE COURT: All right.

18 Yes, sir, come up a little bit. Your name and
19 number.

20 PROSPECTIVE JUROR: Number 158, Robert League.

21 THE COURT: League?

22 PROSPECTIVE JUROR: Correct. Just like
23 National Football.

24 THE COURT: League.

25 PROSPECTIVE JUROR: Correct.

1 THE COURT: Okay. Now, was it you, your friend
2 or a family member the victim or somebody been accused?

3 PROSPECTIVE JUROR: It was a family member, my
4 bother.

5 THE COURT: Was a victim?

6 PROSPECTIVE JUROR: Correct.

7 THE COURT: Okay. Of what, a robbery?

8 PROSPECTIVE JUROR: A home invasion.

9 THE COURT: A home invasion. How long ago was
10 that?

11 PROSPECTIVE JUROR: Almost exactly a year ago.

12 THE COURT: Okay. Now -- right here in
13 Columbia?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Okay. Would that experience or
16 could that affect your ability to be a fair juror in
17 this case?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Are you sure about that?

20 PROSPECTIVE JUROR: I'm positive.

21 THE COURT: Okay. Thank you, sir.

22 PROSPECTIVE JUROR: Sure thing.

23 (Pause.)

24 PROSPECTIVE JUROR: Joseph Goff, 105.

25 THE COURT: Okay. Let me ask it this way. Was

1 it you, your family member or friend that was the victim
2 or a member of your family been accused, which one?

3 PROSPECTIVE JUROR: Well, my brother's been in
4 and out of trouble all his life. And I've had several
5 neighbors been broke into in the last couple of years,
6 so.

7 THE COURT: Okay. Like burglaries and stuff
8 like that?

9 PROSPECTIVE JUROR: (Affirmative response.)

10 THE COURT: And your brother's been in and out
11 of trouble all of his life. So it's both sides for you.

12 PROSPECTIVE JUROR: (Affirmative response.)

13 THE COURT: Okay. Would that, that is your
14 brother being in and out of trouble all his life and
15 your neighbors being broken into, would that or could
16 that affect your ability to be a fair juror in this
17 case, an armed robbery and failure to ---

18 PROSPECTIVE JUROR: It's a possibility.

19 THE COURT: You think it would. Okay, that's
20 fine. What's your number again?

21 PROSPECTIVE JUROR: 105.

22 THE COURT: Okay, thank you, sir.

23 THE COURT: Go have a seat -- go have a seat in
24 the back, will you? Okay, thank you.

25 THE COURT: All right. Good afternoon. Come

1 on up a little bit and your name and number, sir.

2 PROSPECTIVE JUROR: Bradley Budde, 43.

3 THE COURT: And, Mr. Budde, was it you, a
4 family member or a friend that was the victim or
5 accused?

6 PROSPECTIVE JUROR: It was my first cousin over
7 20 years ago was randomly beaten on the street.

8 THE COURT: He was what?

9 PROSPECTIVE JUROR: Randomly beaten on the
10 street.

11 THE COURT: Okay. I mean, was he killed or ---

12 PROSPECTIVE JUROR: No, no.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: Just beaten up.

15 THE COURT: Okay. The fact that -- you said
16 your brother, right?

17 PROSPECTIVE JUROR: First cousin.

18 THE COURT: First cousin. The fact that your
19 first cousin was beaten on the street randomly 20 years
20 ago, would that or could that affect your ability to be
21 a fair juror in this case, an armed robbery and failure
22 to stop?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Are you sure about that?

25 PROSPECTIVE JUROR: Yes.

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

2 PROSPECTIVE JUROR: Uh-huh.

3 THE COURT: Yes, sir. How you doing? Your
4 name and number, sir.

5 PROSPECTIVE JUROR: Ramone Jackson, 140.

6 THE COURT: Mr. Jackson, right?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Now, was it you or a close friend
9 or family member a victim or somebody in your family ---

10 PROSPECTIVE JUROR: My brother.

11 THE COURT: Was a victim?

12 PROSPECTIVE JUROR: Actually he was
13 incarcerated.

14 THE COURT: He was accused of something?

15 PROSPECTIVE JUROR: Yes, accused.

16 THE COURT: And convicted.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: How long ago was that?

19 PROSPECTIVE JUROR: About 10 years ago.

20 THE COURT: What was he -- do you remember what
21 it was?

22 PROSPECTIVE JUROR: Armed robbery and murder.

23 THE COURT: Okay, armed robbery and murder.

24 Now would that or could that affect your ability to be a
25 fair juror in this armed robbery case?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Are you sure about that?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: All right, sir. Okay. Thank you,
5 sir. Did you get his number and everything, make a
6 little note? All right.

7 Come on up, sir.

8 PROSPECTIVE JUROR: 194, Harry Nelson.

9 THE COURT: Harry what?

10 PROSPECTIVE JUROR: Nelson.

11 THE COURT: Mr. Nelson. Mr. Nelson, I've got
12 to ask you the question, was it you, a family member or
13 a friend that was a victim or somebody in your family or
14 a friend was accused?

15 PROSPECTIVE JUROR: My brother was a victim.

16 THE COURT: Your brother was a victim?

17 PROSPECTIVE JUROR: Yeah.

18 THE COURT: Of what sort of crime?

19 PROSPECTIVE JUROR: Armed robbery.

20 THE COURT: How long ago was it?

21 PROSPECTIVE JUROR: Two months ago, twice in
22 the past two months.

23 THE COURT: Okay. Two months ago your brother
24 was -- your same brother?

25 PROSPECTIVE JUROR: Twice, a taxi cab driver.

1 THE COURT: Oh, okay, that makes a little bit
2 of sense. And would that experience or could that
3 experience affect your ability to be a fair juror in the
4 trial of this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Are you sure about that?

7 PROSPECTIVE JUROR: I'm positive.

8 THE COURT: Okay. Thank you, sir.

9 Come on up. Yes, sir, your name and number,
10 please.

11 PROSPECTIVE JUROR: Robert Higgins, 125.

12 THE COURT: All right, come on up here a little
13 bit. All right, two ways, you or a friend or a family
14 member was a victim ---

15 PROSPECTIVE JUROR: Personal victim.

16 THE COURT: Okay, you were?

17 PROSPECTIVE JUROR: I was.

18 THE COURT: Okay. What sort of incident was
19 it?

20 PROSPECTIVE JUROR: I was assaulted by two
21 individuals in a park.

22 THE COURT: Okay. How long ago was it?

23 PROSPECTIVE JUROR: About two or three years
24 ago.

25 THE COURT: Would that or could that affect

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

2 PROSPECTIVE JUROR: No. I say it for the
3 benefit of discovery for the lawyers.

4 THE COURT: Yeah, okay. I mean, you mean that,
5 don't you?

6 PROSPECTIVE JUROR: Yeah, I do. Yeah, I mean
7 that.

8 THE COURT: Okay. All right. Thank you, sir.

9 (Pause.)

10 THE COURT: Now, has any member of this jury
11 panel or any member of your family, is or has been in
12 the past employed by any local, state or federal
13 enforcement -- law enforcement agency, including but not
14 limited to the City of Columbia Police Department, the
15 Richland County Sheriff's Department, the State Law
16 Enforcement Division or SLED, or the Federal Bureau of
17 Investigation?

18 And the other side of that question is, is any
19 member of the jury panel or member of your immediate
20 family a member of any prisoner right groups like the
21 Innocence Project -- and what was the other one? It was
22 the Innocence Project and something else was mentioned.

23 MS. CAMPBELL: Any prisoners' rights groups.

24 THE COURT: Just prisoners' right groups and
25 the Innocence Project. Were those the two?

1 MS. CAMPBELL: Yes, sir.

2 THE COURT: Do y'all understand that question?
3 You know you try to balance it on both sides. So I'll
4 repeat it.

5 Is any member of the jury panel or any member
6 of your family is or has been in the past employed by a
7 local, state or federal law enforcement agency,
8 including but not limited to the City of Columbia Police
9 Department, the Richland County Sheriff's Department,
10 the State Law Enforcement Division which is SLED, the
11 Federal Bureau of Investigation?

12 On the other side, have you or any member of
13 your family been or is now a member of the -- any
14 prisoner right groups or the Innocence Project?

15 If so, please stand.

16 (Jurors stand.)

17 THE COURT: Y'all want to come down again.
18 Yeah, bring them on down.

19 (Pause.)

20 THE COURT: Yes, sir.

21 PROSPECTIVE JUROR: 125, Robert Higgins, again.

22 THE COURT: Yes, sir, Mr. Higgins.

23 PROSPECTIVE JUROR: I'm providing counter
24 terrorism consultative services to SLED at the prison.

25 THE COURT: Oh, really. Okay. How long have

1 you done that?

2 PROSPECTIVE JUROR: Since December of last
3 year.

4 THE COURT: I hope they pay you well.
5 That's all right. Would that or could that affect your
6 ability to be a fair juror in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you, sir.

9 Yes, sir. And your name again.

10 PROSPECTIVE JUROR: Simon Moore, III, 188.

11 THE COURT: Yes, sir.

12 PROSPECTIVE JUROR: I have a brother that's a
13 sergeant with Cary, North Carolina Police Department.

14 THE COURT: Okay. Cary, North Carolina Police
15 Department. That's still in Wade County, right?

16 PROSPECTIVE JUROR: Yeah, I believe so.

17 THE COURT: Would that or could that affect
18 your ability to be a fair juror?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Okay. Thank you, sir.

21 Tell me your name, please.

22 PROSPECTIVE JUROR: Rose Bumpers.

23 THE COURT: Rose what?

24 PROSPECTIVE JUROR: Bumpers.

25 THE COURT: Bumpers.

1 PROSPECTIVE JUROR: Yeah.

2 THE COURT: All right, Ms. Bumpers, which side,
3 which group?

4 PROSPECTIVE JUROR: My brother is federal for
5 Florida.

6 THE COURT: He works for the F B I in Florida?
7 He's in law enforcement?

8 PROSPECTIVE JUROR: Law enforcement.

9 THE COURT: Would that or could that affect
10 your ability to be a fair juror in this case?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Are you sure about that?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: What part of Florida?

15 PROSPECTIVE JUROR: Tampa.

16 THE COURT: That's way down at the bottom.

17 PROSPECTIVE JUROR: Well, about seven, eight
18 hours.

19 THE COURT: I was in Tampa last year. I can't
20 remember why I was in Tampa, some tournament or some
21 game or something like that. Water all over the place.

22 PROSPECTIVE JUROR: Right.

23 THE COURT: Thank you, ma'am -- I don't think I
24 asked you the magic words. Would that affect your
25 ability to be a fair juror?

1 PROSPECTIVE JUROR: No. it will not.

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

3 (Pause.)

4 THE COURT: Now, has any member of jury panel
5 ever testified for the State or the prosecution in a
6 criminal prosecution or for the defense in a criminal
7 prosecution? Have you ever testified for the State or
8 for the defense in a criminal case?

9 If so, please stand.

10 (Juror stands.)

11 PROSPECTIVE JUROR: All right. Can I trust you
12 from right there?

13 PROSPECTIVE JUROR: Sure.

14 THE COURT: Okay. Can I trust you anyway?
15 Your name and number, please.

16 PROSPECTIVE JUROR: Number 93, Richard Floyd.

17 THE COURT: And who did you testify for, Mr.
18 Floyd?

19 PROSPECTIVE JUROR: I testified for the
20 prosecutor, the State.

21 THE COURT: Here in South Carolina or where?

22 PROSPECTIVE JUROR: Yes, it was in Augusta.

23 THE COURT: August in Georgia?

24 PROSPECTIVE JUROR: No, Augusta, South
25 Carolina.

1 THE COURT: You mean North Augusta?

2 PROSPECTIVE JUROR: Sorry, North Augusta.

3 THE COURT: That's all right.

4 PROSPECTIVE JUROR: North Augusta, Aiken ---

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

6 PROSPECTIVE JUROR: That was four years ago.

7 THE COURT: What type of case was it?

8 PROSPECTIVE JUROR: It was a child abuse case.

9 THE COURT: Okay. And the fact you testified
10 on behalf of the prosecution in a child abuse case in
11 North Augusta, South Carolina four years ago, would that
12 or could that affect your ability to be a fair and
13 impartial juror in the trial of this case?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Are you sure about that?

16 PROSPECTIVE JUROR: Pardon me?

17 THE COURT: Are you sure about that?

18 PROSPECTIVE JUROR: Yes, sir, I am.

19 THE COURT: Thank you, thank you.

20 Now, is any member of the jury panel a member
21 of or contributor to any group which has as its primary
22 concern the promotion of law enforcement or victim
23 rights? These groups would include but are not limited
24 to CAVE, CADRE, MADD, SADD or some neighborhood watch
25 programs.

1 If so, please stand.

2 (No response.)

3 THE COURT: All right. Now, any -- is there
4 anything in the nature of the allegations in this case,
5 the armed robbery and failure to stop for a blue light,
6 which would cause any member of the panel any problem as
7 sitting as a fair and impartial juror? Anything about
8 the nature of this case that would make you
9 uncomfortable sitting as a juror?

10 If so, please stand.

11 (No response.)

12 THE COURT: All right. Any additional voir
13 dire on behalf of Mr. Murray, Ms. Schnee?

14 MR. SCHNEE: No, Your Honor.

15 THE COURT: Anything further on behalf of the
16 State?

17 MS. CAMPBELL: No, sir.

18 THE COURT: Very well, I think it's 10 and
19 five, right. Am I correct?

20 MS. CAMPBELL: Correct.

21 THE COURT: All right. Ms. Pendergrass, you
22 may give us the jury.

23 THE CLERK: Ladies and gentlemen of the jury
24 panel, as I call your name, please come to the
25 microphone located here at the center of the courtroom.

1 At the microphone, please restate your name and your
2 place of occupation. Please bring any personal items
3 that you may have with you.

4 Juror number 194, Harry Nelson.

5 (Harry L. Nelson, a black male, now comes
6 forward.)

7 PROSPECTIVE JUROR: Harry Nelson, number 194.

8 THE CLERK: State your name and occupation.

9 PROSPECTIVE JUROR: Oh, I'm a D O T
10 contractor.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. SCHNEE: Please excuse this juror.

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

17 Juror number 35, Anne Brittain.

18 (Anne C. Brittain, a white female, now comes
19 forward.)

20 PROSPECTIVE JUROR: Anne Brittain. I work for
21 Palmetto Health Richland.

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. SCHNEE: Please seat the juror.

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

2 Juror number 254, James Stevens.

3 (James R. Stevens, a white male, now comes
4 forward.)

5 PROSPECTIVE JUROR: Jim Stevens. I work at
6 First Citizens Bank.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. SCHNEE: Please seat the juror.

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

12 Juror number 107, Mary Goodwin.

13 (Mary E. Goodwin, a black female, now comes
14 forward.)

15 PROSPECTIVE JUROR: My name is Mary Goodwin. I
16 am temporary with ---

17 THE COURT: Did y'all hear her? All right, I'm
18 sorry. I had a little bit of trouble hearing her.

19 PROSPECTIVE JUROR: Mary Goodwin. I am a
20 temporary employee at ---

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

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please present the juror.

24 THE CLERK: What says the Defense?

25 MR. SCHNEE: Please seat the juror.

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

2 Juror number 165, Edwin Martin.

3 (Edwin R. Martin, a black male, now comes
4 forward.)

5 PROSPECTIVE JUROR: Edwin Martin, Richland
6 County School District 1.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. SCHNEE: Please excuse the juror.

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

13 THE CLERK: Juror number 132, William Horton.

14 (William R. Horton, a white male, now comes
15 forward.)

16 PROSPECTIVE JUROR: William Horton, retired.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. SCHNEE: Please excuse the juror.

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

23 Juror number 66, Eleanor Cuaresma.

24 (Eleanor L. Cuaresma, female, now comes
25 forward.)

1 PROSPECTIVE JUROR: Eleanor Cuaresma. I work
2 for Shealy Environmental Services.

3 THE CLERK: What says the State?

4 MS. CAMPBELL: Please present the juror.

5 THE CLERK: What says the Defense?

6 MR. SCHNEE: Please seat the juror.

7 THE CLERK: Please have a seat in the jury box.
8 Juror number 21, Nicole Berry.

9 (Nicole W. Berry, a black female, now comes
10 forward.)

11 PROSPECTIVE JUROR: Nicole Berry, Time Warner
12 Cable.

13 THE CLERK: What says the State?

14 MS. CAMPBELL: Please present the juror.

15 THE CLERK: What says the Defense?

16 MR. SCHNEE: Please seat the juror.

17 THE CLERK: Please have a seat in the jury box.
18 Juror number 188, Simon Moore.

19 (Simon Moore, III, a black male, now comes
forward.)

21 PROSPECTIVE JUROR: Simon Moore, III.

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please excuse the juror.

24 THE CLERK: Please return to the back of the
25 courtroom.

1 Juror number 218, Robert Riley.

2 (Robert R. Riley, a black male, now comes
3 forward.)

4 PROSPECTIVE JUROR: My name is Robert Riley.
5 I'm the Chief Financial Officer, GPS Investments.

6 THE CLERK: What says the State?

7 MS. CAMPBELL: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. SCHNEE: Please seat the juror.

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

11 Juror number 136, Sheila Huff.

12 (Sheila Huff, a white female, now comes
13 forward.)

14 PROSPECTIVE JUROR: Sheila Huff, H-D Supply.

15 THE CLERK: What says the State?

16 MS. CAMPBELL: Please present the juror.

17 THE CLERK: What says the Defense?

18 MR. SCHNEE: Please excuse the juror.

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

21 Juror number 67, Susan Cutler.

22 (Susan B. Cutler, a white female, now comes
23 forward.)

24 PROSPECTIVE JUROR: Susan Cutler, stay at home
25 mother.

1 THE CLERK: What says the State?
2 MS. CAMPBELL: Please present the juror.
3 THE CLERK: What says the Defense?
4 MR. SCHNEE: Please seat the juror.
5 THE CLERK: Please have a seat in the jury box.
6 Juror number 13, Catherine August.
7 (Catherine M. August, a white female, now comes
8 forward.)
9 PROSPECTIVE JUROR: Catherine August, wife and
10 mother.
11 THE CLERK: What says the State?
12 MS. CAMPBELL: Please present the juror.
13 THE CLERK: What says the Defense?
14 MR. SCHNEE: Please excuse the juror.
15 THE CLERK: Please return to the back of the
16 courtroom.
17 Juror number 167, Patricia Martin.
18 (Patricia B. Martin, a black female, now comes
19 forward.)
20 PROSPECTIVE JUROR: Patricia Martin, American
21 Red Cross.
22 THE CLERK: What says the State?
23 MS. CAMPBELL: Please present the juror.
24 THE CLERK: What says the Defense?
25 MR. SCHNEE: Please seat the juror.

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

2 Juror number 50, James Carrero.

3 (James A. Carrero, a white male, now comes
4 forward.)

5 PROSPECTIVE JUROR: James Carrero, U. S. Postal
6 Service, Express Clerk.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the Defense?

10 MR. SCHNEE: Please excuse the juror.

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

13 Juror number 127, Anne Hodaly.

14 (Anne C. Hodaly, a white female, now comes
15 forward.)

16 PROSPECTIVE JUROR: Anne Hodaly, Interfaith
17 Community Services.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the Defense?

21 MR. SCHNEE: Please seat the juror.

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

24 Juror number 148, William Kent.

25 (William T. Kent, a white male, now comes

1 forward.)

2 PROSPECTIVE JUROR: Bill Kent. I own a
3 restaurant.

4 THE CLERK: What says the State?

5 MS. CAMPBELL: Please present the juror.

6 THE CLERK: What says the Defense?

7 MR. SCHNEE: Please excuse the juror.

8 THE CLERK: Please return to the back of the
9 courtroom.

10 Juror number 262, David Sykes.

11 (David P. Sykes, a white male, now comes
12 forward.)

13 PROSPECTIVE JUROR: David Sykes, Time Warner
14 Cable.

15 THE CLERK: What says the State?

16 MS. CAMPBELL: Please present the juror.

17 THE CLERK: What says the Defense?

18 MR. SCHNEE: Please seat the juror.

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

20 Juror number 125, Robert Higgins.

21 (Robert Higgins, a white male, now comes
22 forward.)

23 PROSPECTIVE JUROR: Robert Higgins, Elsford
24 (phonetic).

25 THE CLERK: What says the State?

1 MS. CAMPBELL: Please present the juror.

2 THE CLERK: What says the Defense?

3 MR. SCHNEE: Please excuse the juror.

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

6 Juror number 283, Walter Washington.

7 (Walter Washington, Jr., a black male, now
8 comes forward.)

9 PROSPECTIVE JUROR: My name is Walter
10 Washington. I am a painter.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the Defense?

14 MR. SCHNEE: Please seat the juror.

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

16 Juror number 130, Janice Holt.

17 (Janice C. Holt, a white female, now comes
18 forward.)

19 PROSPECTIVE JUROR: Janice Holt, retired.

20 THE CLERK: What says the State?

21 MS. CAMPBELL: Please present the juror.

22 THE CLERK: What says the Defense?

23 MR. SCHNEE: Please excuse the juror.

24 THE CLERK: Please return to the back of the
25 courtroom.

1 Juror number 43, Bradley Budde.

2 (Bradley C. Budde, a white male, now comes
3 forward.)

4 PROSPECTIVE JUROR: Bradley Budde. I work with
5 H P.

6 THE CLERK: What says the State?

7 MS. CAMPBELL: Please present the juror.

8 THE CLERK: What says the Defense?

9 MR. SCHNEE: Please seat the juror.

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

11 THE COURT: Select one alternate.

12 THE CLERK: Juror number 52, Kenneth Casciere.

13 (Kenneth R. Casciere, a white male, now comes
14 forward.)

15 PROSPECTIVE JUROR: Kenneth Casciere, actively
16 seeking employment.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the Defense?

20 MR. SCHNEE: Please seat the juror.

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

22 THE COURT: Any matters need to be taken up at
23 this time in connection with the selection of this jury?

24 Anything from the State?

25 MS. CAMPBELL: No, Your Honor.

1 THE COURT: Anything from the -- Mr. Murray?

2 MR. SCHNEE: No, Your Honor.

3 THE COURT: To the remaining members of this
4 jury panel, let me tell you, in light of the fact,
5 especially because this is Columbus Day and a federal
6 holiday, although we don't get a chance to take it, I
7 want to thank you for your patriotic service. You know,
8 a government of the people, by the people and for the
9 people cannot exist or operate without the people. That
10 means the participation of each and every one of you and
11 this enterprise.

12 So I wish you all the very best. I hope I see
13 you again sometime this week. If I don't, I wish you
14 the very best and calm nights, sunshiny days and I hope
15 you have a pleasant stay here this week.

16 You know, people talk about serving as jurors,
17 you know you read about in the paper, you see it no TV.
18 I don't watch that much TV anymore but it's -- it's hard
19 for me to convey how important is your presence here
20 this week. And although you're not chosen to be on a
21 particular jury, many are called, few are chosen,
22 there's no way to select the 13 that we have here
23 without having all of you out there.

24 So, you've done just as important a service
25 with your presence as you would by actually serving on a

1 particular jury. So you have my best wishes for the
2 rest of the week. Good luck to you and may God bless
3 you.

4 You're free to go back downstairs to the jury
5 room.

6 (The remaining members of the jury panel
7 retired from the courtroom at approximately
8 3:35 P.M.)

9 THE COURT: Now, members of this jury, I've got
10 good news and I've got bad news for you, which would you
11 like to hear first?

12 PROSPECTIVE JUROR: Bad -- bad always first.

13 THE COURT: There's no bad news. The good news
14 is that we'll start sometime in the morning. I'm a
15 little tired and I can look at y'all and tell y'all are
16 tired too. It's difficult on a Monday, you don't know
17 whether you're going to be selected or not.

18 So we'll start in the morning -- what time do
19 you want to start, 9:30 or 10, which is better, 10?

20 MS. CAMPBELL: Probably 10, Your Honor, there
21 are other matters we need to take up before.

22 THE COURT: Okay. But I've got to tell you
23 now, you will hear me say it throughout the course of
24 this trial, the most important thing I can say to you
25 now and continuously in this trial is, please don't talk

1 about this case in any way, shape or form. The time to
2 do so will be at the very end, once you've heard all of
3 the evidence. You've got to have an open mind. Once
4 you have heard all the evidence that's presented by
5 either the State or both sides -- remember that the
6 Defendant is not required to prove anything. So if he
7 doesn't say anything or doesn't put up any evidence, you
8 can't hold that against him.

9 But in the meantime, it would be unfair to the
10 State and unfair to Mr. Murray, that is the prosecution
11 and Mr. Murray for you to talk about this case in any
12 way, shape or form. Once again, the time to do so would
13 be at the very end once you've heard all the evidence.
14 The old expression, on the way we'll wonder, in the end
15 we'll know.

16 So wait until the end and then we'll be --
17 after all the evidence is in, once you hear the
18 arguments from the lawyers, the State as well as Mr.
19 Schnee, who represents Mr. Murray -- let me introduce
20 y'all. I should have asked you earlier but it slipped
21 my mind.

22 For the prosecution, Ms. Luck Campbell and also
23 Mr. Aaron Jophlin. And for Mr. Murray, the Defendant,
24 we have Mr. Mark Schnee. And folks, I forgot to mention
25 that during the voir dire. Is anybody concerned about

1 that in any way, shape or form?

2 MR. SCHNEE: No, Your Honor.

3 MR. JOPHLIN: (Negative response.)

4 THE COURT: And if you think of anything
5 overnight, I'll be happy to take it up. I don't think
6 it makes that much difference.

7 Usually I would do that, ask some questions
8 about the Solicitor. I don't know why, it slipped my
9 mind. I think it's maybe I'm tired, I guess. I've done
10 a lot today, so.

11 I know y'all are a little bit tired. We'll
12 start in the morning. Now in the morning when you come
13 back, don't come through the courtroom. Bailiffs --
14 it's kind of a maze but it's not that difficult. It's a
15 long hallway. The Bailiffs will show you how to get in
16 and out of the jury room that you will use.

17 And so when you come back, come back down the
18 hall, keep your juror buttons on at all times, while
19 you're around the courthouse, during the course of this
20 trial, even if you go to lunch tomorrow sometimes. And
21 I think -- I've been informed that the case may take two
22 days. That is, we'll start in the morning. We may
23 finish by Wednesday, somewhere in that range. But it
24 shouldn't take the whole week.

25 But I'll let you know as things unfold as I

1 find out. I mean, in other words, if I know something
2 about what's going on, I'm going to let you know as soon
3 as I find out so you won't be in the dark. I actually
4 served on a jury years and years ago. And the worst
5 thing is sitting back there not knowing what's going on.
6 So I'll try to keep you informed.

7 I trust and hope you have a pleasant and
8 restful evening and ask that you be back in the jury
9 room tomorrow morning at 10:00, ladies and gentlemen.
10 And we may not -- we may not get started right at 10 but
11 I want you to be back at 10 anyway, okay.

12 So have a pleasant evening, a good night's
13 sleep, we'll see you in the morning.

14 Thank you.

15 (The jury retires from the courtroom at
16 approximately 3:40 P.M.)

17 THE COURT: Any exceptions or additions to
18 remarks made to the jury, anything else?

19 (There was no response.)

20 THE COURT: Y'all come up here for a minute
21 because, you know, I'm tired. I'm going to see how
22 y'all feel.

23 (Whereupon, a bench conference was held off the
24 record.)

25 THE COURT: Y'all all get a good night's sleep

1 and we'll see y'all in the morning.

2 Okay, thank you.

3 (The Court was in recess.)

4 TUESDAY, OCTOBER 13, 2009:

5 THE COURT: So let's see, Motion to Sequester.

6 That's not a problem, y'all worked that out yesterday, I
7 think.

8 MS. CAMPBELL: Yes, sir.

9 THE COURT: Motion in Limine. Y'all were
10 talking of redacting some statement yesterday. Did
11 y'all work that out?

12 MS. CAMPBELL: It was the 911 tape, Your Honor.
13 We have agreed -- there are four different calls on the
14 tape. We've agreed to redact the last call because it's
15 about an unrelated event.

16 THE COURT: Okay.

17 MS. CAMPBELL: I don't know the basis for
18 trying to redact the first and the third call.

19 THE COURT: How about that, Mr. Schnee?

20 MR. SCHNEE: Well, Your Honor, the first call,
21 there's a section on there that -- the caller did not
22 witness anything in particular. I believe it was a
23 store employee where the first victim, Mr. Langford,
24 went inside afterwards. And he's essentially relaying
25 information to 911.

1 I would argue anything that he's relaying to
2 hearsay.

3 THE COURT: What now?

4 MR. SCHNEE: Anything he is relaying, being
5 told and then telling someone else, that's going to be
6 hearsay. And we've got ---

7 THE COURT: Well, in that case, every 911 call
8 will be hearsay. Okay, go ahead.

9 MR. SCHNEE: Well, he's not actually relaying
10 anything he saw.

11 THE COURT: What's that got to do with the 911
12 call? I mean, I can go -- an exception -- go ahead, Mr.
13 Schnee, I'm not going to stop you from arguing, but.

14 MR. SCHNEE: Well, Your Honor, I would argue
15 that would be an issue.

16 THE COURT: Well, what does it say, what does
17 the call say that hurts your client?

18 MR. SCHNEE: The fact that he's claiming that
19 my client had a gun.

20 THE COURT: Okay.

21 MR. SCHNEE: And I would ask that that be
22 stricken because he didn't see my client at all. He
23 never -- he certainly didn't see my client with a gun.
24 But he's relaying information ---

25 THE COURT: How about, let's see, res gestae,

1 there's so many exceptions to hearsay. Well, that's
2 denied.

3 All right, what else?

4 MR. SCHNEE: The third phone call, the caller
5 is not ID'd at all. I have no idea who it is. And I
6 would argue that's a Crawford issue. I have a right to
7 confront that witness ---

8 THE COURT: This is a 911 call?

9 MR. SCHNEE: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. SCHNEE: I still have a right to cross-
12 examine the witness and we don't even know who the
13 witness is. They never identified themselves.

14 THE COURT: I don't know. Ms. Campbell, how
15 about your position on that?

16 MS. CAMPBELL: Your Honor, it's a 911 tape. I
17 think it just comes in under any exception that you've
18 already covered.

19 THE COURT: I agree. That's denied. Next one.

20 MR. SCHNEE: Well, the fourth one we already
21 agreed to redact.

22 THE COURT: Okay. Well, that covers the 911
23 call. What's next?

24 MR. SCHNEE: There are a number of statements.
25 First of all --

1 THE COURT: Do we have a Biggers issue in this
2 case?

3 MR. SCHNEE: Yes, we do, Your Honor.

4 THE COURT: Go ahead.

5 MR. SCHNEE: There is a search warrant
6 affidavit. It mentions a prior act of February 9th,
7 '09.

8 MS. CAMPBELL: We won't be proffering that.

9 THE COURT: That's not a problem.

10 MR. SCHNEE: Okay. I just want to make sure
11 it's on the record.

12 Also, that's mentioned in Investigator
13 Isenhoward's report. It mentions that investigation.
14 It also talks about one of the witnesses, Lester Woods,
15 mentioning he thinks that my client was kidnapping one
16 of the victims. I would ask that that be redacted from
17 Isenhoward's report, that he not mention it. I have no
18 problem if Mr. Woods is going to testify to what he
19 thought was going on but not in his statement ---

20 THE COURT: Is this your Motion in Limine?

21 MR. SCHNEE: Yes, Your Honor. I just want to
22 make sure none of these are brought up by the
23 investigator.

24 THE COURT: I don't really care. What's your
25 position, Ms. Campbell?

1 MS. CAMPBELL: Your Honor, there was two prior
2 incidents the week before, two older men were robbed in
3 the same manner as this. There was some indication that
4 this Defendant was involved in that. We do not intend
5 to go into that ---

6 THE COURT: Okay, all right. You're safe on
7 that, Mr. Schnee. What's next?

8 MR. SCHNEE: That's all I have in terms of In
9 Limine Motions. I would ask to settle the records of
10 all witnesses?

11 THE COURT: Okay. That's easy. They've
12 already done that.

13 MS. CAMPBELL: We've done ---

14 THE COURT: I'm guessing that you have at this
15 point.

16 MS. CAMPBELL: The only thing -- the only
17 person that has anything that could possibly come in is
18 Mr. Woods has a 1989 fraudulent check, Your Honor.

19 THE COURT: That's not ---

20 MS. CAMPBELL: Under the 10 year rule, it
21 doesn't come in.

22 THE COURT: Too old, too stale.

23 MR. SCHNEE: Okay ---

24 THE COURT: But you put your position on the
25 record so you're protected.

1 MR. SCHNEE: It is a crime of dishonesty.

2 Obviously ---

3 THE COURT: It's over 10 years, isn't it?

4 MR. SCHNEE: Yes, sir.

5 THE COURT: All right.

6 MR. SCHNEE: Which under the rules it's still
7 admissible if, Your Honor ---

8 THE COURT: Within the trial judge's
9 discretion.

10 MR. SCHNEE: Yes.

11 THE COURT: Thank you.

12 MR. SCHNEE: I would also ask to settle the
13 record of my client.

14 THE COURT: Okay.

15 MR. SCHNEE: In terms of what is admissible.

16 THE COURT: All right.

17 MS. CAMPBELL: I'm sorry, Your Honor, I need to
18 look at that.

19 (Pause.)

20 MS. CAMPBELL: Beg the Court's indulgence, if
21 you'll just give me the second.

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 THE COURT: Now, Mr. Murray, have you ever been
25 in front of me before for any reason?

1 THE DEFENDANT: For bond?

2 THE COURT: Okay, all right. Maybe for a bond
3 or something like that?

4 THE DEFENDANT: Yes.

5 THE COURT: All right.

6 (Pause.)

7 THE COURT: And I'm inviting Mr. Schnee,
8 whatever these motions I just covered in limine, if it
9 gets close, you can object contemporaneously.

10 MR. SCHNEE: Of course, Your Honor.

11 THE COURT: In case it slips my mind or
12 something.

13 (Pause.)

14 MS. CAMPBELL: Your Honor, as far as his prior
15 record, it's mostly drug convictions, unless you just
16 want me to go through all of those. I would agree that
17 those are not admissible for...

18 THE COURT: I think it would make Mr. Schnee
19 feel better.

20 MR. SCHNEE: Yes, Your Honor.

21 MS. CAMPBELL: And ---

22 MR. SCHNEE: But if she's saying they're not
23 admissible, that's fine.

24 THE COURT: Okay.

25 MS. CAMPBELL: I'm just -- I think the Court

1 has ruled that they aren't.

2 THE COURT: All right. So we're good then.

3 MS. CAMPBELL: And he does have a petit larceny
4 from 2005. In addition to that, Your Honor, he does
5 have two counts of armed robbery and retail thefts in
6 the early 90's. However, it looks like he was convicted
7 in '94 and received a seven year sentence. I need to
8 check ---

9 THE COURT: Outside ---

10 MS. CAMPBELL: --- when we get a break to see
11 when he was paroled.

12 THE COURT: Yeah.

13 MS. CAMPBELL: Because it may come within the
14 10 years if he was paroled after '99.

15 THE COURT: All right. If he's going -- if
16 he's going to take the stand, we'll take a more detailed
17 look at it. Right now, from what I'm just hearing from
18 a distance, it probably won't come in. We'll examine it
19 closely if he decides to take the stand.

20 MR. SCHNEE: Yes, sir.

21 THE COURT: We'll make sure.

22 MR. SCHNEE: Okay.

23 THE COURT: Settling the record now is
24 important but not as important if he's going to take the
25 stand. So, we'll cross that bridge when we get to it.

1 What else is there?

2 MR. SCHNEE: I would actually just ask that if
3 we could clear that up now. It would affect how I would
4 handle my case from the beginning.

5 THE COURT: Well, when was the conviction? You
6 said -- when did he complete his parole eligibility or
7 his parole?

8 MS. CAMPBELL: I just need to make a phone call
9 to Illinois to find out when he actually was paroled
10 out. It looks like -- I don't think it will be in the
11 10 year sentence.

12 THE COURT: Okay.

13 MS. CAMPBELL: But of course, he opens the door
14 by -- if he's going to cross people saying he's never --
15 anyway, I don't know whether ---

16 THE COURT: I understand. I understand. It
17 appears right now, Mr. Schnee, as best information the
18 State has, it probably won't come in. Now that's the
19 best we can do right now. There's a phone call that
20 needs to be made to the great State of Illinois. Knee
21 high by the Fourth of July, that's the corn.

22 So, at some point in time we'll take a break,
23 we'll have somebody make a phone call and try to -- but
24 your client knows better than anybody else when his
25 parole ended in Illinois. So ask your client. He

1 should know better than anybody else, I don't know. The
2 best source would be your client, Mr. Schnee, is what
3 I'm telling you.

4 Of course, yesterday I was talking to somebody,
5 they were hesitant to give me a social security number
6 because they had so many. And he didn't want to give me
7 the wrong one, so.

8 (Pause.)

9 THE COURT: Let me suggest this, Mr. Schnee,
10 get the best information you can from your client.
11 We'll coordinate that, we'll make a phone call at some
12 point in time before -- before lunch.

13 MR. SCHNEE: Yes, sir.

14 THE COURT: I'm going to go tell the jury we're
15 getting started a little bit late because we had to deal
16 with some matters and we'll come back and start in about
17 10 minutes.

18 MR. SCHNEE: Your Honor, are we doing the
19 Biggers motion?

20 THE COURT: Well, that's what I'm going to tell
21 them.

22 MR. SCHNEE: Oh, okay.

23 THE COURT: We're going to do that. Relax,
24 Mr. Schnee. I had forgotten about Biggers. So that's
25 going to take 30 minutes maybe?

1 MS. CAMPBELL: 10.

2 THE COURT: 10 minutes, okay. I'll tell them
3 we'll get started about 10:30 or so, how is that?

4 All right.

5 (The Court was in recess.)

6 THE COURT: Are we ready?

7 MS. CAMPBELL: Yes, Your Honor.

8 MR. SCHNEE: Yes, Your Honor.

9 THE COURT: Yes, ma'am, you may proceed.

10 MS. CAMPBELL: The State calls Lester Woods.

11 (LESTER WOODS, having first been duly sworn,
12 testified as follows:)

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

15 DIRECT EXAMINATION

16 BY MS. CAMPBELL:

17 Q Mr. Woods, you live here in the Columbia area?

18 A Yes, I do.

19 Q And how long have you been living in the Columbia
20 area?

21 A Since 1987.

22 Q And what do you do for a living, sir?

23 A I'm a consultant for F I G Consulting and
24 Investments.

25 THE COURT: Could you speak up, please?

1 A I'm a consultant with F I G Consulting and
2 Investments.

3 Q I want to turn your attention back to February of
4 this year. Did you have occasion to witness
5 basically part of an armed robbery?

6 A Yes, I did.

7 Q And where did it take place, sir?

8 A It was -- it started at Big Lots on Two Notch
9 Road.

10 Q Okay. And were you actually in the Big Lots
11 parking lot that day?

12 A Yes, I was.

13 Q And did a person approach you while you were in
14 the parking lot?

15 A Yes, he did.

16 Q And tell the Judge how that occurred.

17 A I was leaving the gym and I made a stop at Big
18 Lots on Two Notch Road. And I parked in a
19 parking space approximately 30, 40 feet from Big
20 Lots. And as I proceeded to put my car in park,
21 the door was locked and an individual walked up
22 to my passenger side and tried to open the door.

23 I then got out of the vehicle, locked the
24 door and asked him what was he doing. He walked
25 toward me with his hands in his pockets as though

1 he seemed to have something. So I pushed him
2 off. And as I proceeded to do that, I heard a
3 couple of individuals saying that he just robbed
4 them. So I ducked behind the vehicle and he
5 proceeded to walk down Two Notch at that time.

6 Q Okay. And at this point -- and these questions
7 may sound kind of dumb but did you get a good
8 look at his face?

9 A Yes, ma'am, I did.

10 Q And you mentioned that you actually pushed him
11 off of you. So you were standing face to face
12 with him?

13 A Face to face.

14 Q Nothing obstructing your view?

15 A No, ma'am, it wasn't.

16 Q And this was during the daytime?

17 A Yes, ma'am.

18 Q And you got a good look at his face?

19 A I did.

20 Q And you were paying attention to what he looked
21 like?

22 A Yes, ma'am.

23 Q You mentioned that at that point he then started
24 walking down Two Notch Road. What did you do?

25 A Well, I got in my vehicle and I dialed 911.

1 Q Uh-huh.

2 A And as we was driving down Two Notch, we was
3 heading towards the Bi-Lo, I was describing to
4 the dispatcher what the individual looked like,
5 what he was wearing, approximate height,
6 clothing, description, color, etcetera. And as
7 he began to walk down Two Notch, he proceeded to
8 go up to cars as they was going down the street.
9 There's a stoplight in front of Greenbriar (sic).
10 He proceeded to go up to cars and drag on the
11 doors.

12 So I was telling dispatch, he's trying to get
13 into a vehicle. And as we proceeded, he cut
14 through the Bi-Lo parking lot by the Tripp's
15 Cleaners.

16 Q Uh-huh. And you still were maintain ---

17 A I was still maintaining the visual contact at
18 that time and I was letting the dispatcher know
19 exactly what was going on.

20 Q Okay.

21 A And as we proceeded, he then cut through the Bi-
22 Lo parking lot, checking doors, individuals in
23 the cars. And as we proceeded, he went up to an
24 individual in a tan vehicle parked on the curb in
25 front of Citi Financial. And at that time I began

1 to tell the dispatch that it looks like he's
2 attempting to jack -- to carjack someone for
3 their vehicle.

4 Well, I was approximately 10 to 15 feet away
5 from the vehicle that he went up to and entered
6 on the passenger side. And I saw the two
7 individuals, him along with another individual,
8 inside the vehicle struggling as though they was
9 fighting. And at that time, the passenger -- the
10 driver of the vehicle jumped out and I told the
11 dispatcher, he just carjacked a vehicle. And he
12 proceeded and at the same time I'm giving a
13 description of the vehicle, and we started at Big
14 Lots and now we're at the Bi-Lo. And he
15 proceeded to enter Rabon Road. At that time,
16 that's when the officers proceeded to pursue him
17 down Rabon Road.

18 Q And ultimately -- so this entire time -- and this
19 happened over a number of minutes where you
20 followed him actually, from when you first
21 encountered him at the Big Lots, down past, I
22 think, Greengate?

23 A Yes, ma'am. He walked approximately half a mile.
24 So I had visual contact on him for at least 20
25 minutes.

- 1 Q And at that point, when you got down to -- I
2 believe after he got in the car from another man
3 in front of the Citi Financial, at that point is
4 when the police actually fell in behind him ---
5 A Exactly.
6 Q Did you continue down Rabon Road?
7 A I did.
8 Q And did you -- as you went down Rabon road, did
9 you see a number of police officers?
10 A Yes, ma'am, there was.
11 Q And ultimately, down around the 600 block of
12 Rabon Road, did you see that same tan car that
13 the person had taken?
14 A Yes, ma'am, I did.
15 Q And at the point did you observe any individuals
16 there with the police and the tan car?
17 A I did.
18 Q And who did you see?
19 A It was the individual there.
20 Q And was that the same individual that had
21 approached you?
22 A At the Big Lots, yes, ma'am, it was.
23 Q And was that the same individual that you saw get
24 in the car from -- and you didn't know who he
25 took the car from at that point?

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

2 Q And did you indicate to the officers at that
3 point the person that you had called in on 911?

4 A I did.

5 Q Later that day did you have an opportunity to
6 view a photo lineup?

7 A I did.

8 Q I'm going to show you what's been marked as
9 State's Exhibit Number 4 and just ask if you
10 recognize that?

11 A Yes, ma'am.

12 Q And where were you shown this lineup, do you
13 remember where you were?

14 A Richland County Sheriff's Department.

15 Q And I believe you actually made contact with
16 Sergeant Isenhoward there?

17 A I did.

18 Q And that was later that day?

19 A Yes, ma'am.

20 Q And at that point when he showed you this lineup,
21 what if anything did he tell you about this
22 lineup, do you remember?

23 A No, I don't remember vaguely. But he just asked
24 me to pick out the individual that I recognized
25 at the Big Lots. And that's what I did, I

1 circled the individual and I initialed it.

2 Q Did he tell you what to pick?

3 A No, ma'am, he didn't.

4 Q Did he influence your decision in any way?

5 A No, he didn't.

6 Q And after you looked at these six photographs,
7 did you recognize someone immediately?

8 A Yes, ma'am, I did, immediately.

9 Q And is that the one you actually circled on here?

10 A That's him.

11 Q And on State's Exhibit 4, you were the one that
12 actually circled this, right?

13 A Yes, ma'am.

14 Q And then those are your initials?

15 A Those are.

16 Q And then did he also on State's Exhibit Number 3
17 have you fill out an affidavit indicating which
18 one you recognized?

19 A Yes, ma'am, he did.

20 Q And in fact, is that the person that you
21 recognized from Big Lots at that time?

22 A It is.

23 Q The person that approached you ---

24 A And the one I pursued down Two Notch, ma'am.

25 Q When you had gone down to the road where the

1 police had the tan car stopped?

2 A Yes, ma'am.

3 Q Did anyone tell you that you should recognize
4 this person or influence you in any way?

5 A No, they didn't.

6 Q And the person that you recognized as you've just
7 testified in State's Exhibit Number 4, you
8 recognized him from when you saw him at the Big
9 Lots and then followed him down all the way down
10 ---

11 A Yes, ma'am, not only the description of him but
12 the clothing to -- he had the same clothing,
13 everything, description, face and all.

14 Q But in this photograph you're not able to see the
15 actual clothing, you recognized the face?

16 A Yes, ma'am.

17 Q And you base that on what you saw that day?

18 A Of what I seen.

19 MS. CAMPBELL: Thank you.

20 THE COURT: All right, Mr. Schnee.

21 MR. SCHNEE: May it please the Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. SCHNEE:

25 Q Mr. Woods, I just have a few quick questions for

- 1 you.
- 2 A Sure.
- 3 Q You said you first saw Nathaniel Murray when he
- 4 walked up to you?
- 5 A Yes, sir, I did.
- 6 Q And he was within arm's reach of you?
- 7 A Arm's reach.
- 8 Q And you recognized his face from that point?
- 9 A Yes, sir, I do.
- 10 Q Okay. How long was he standing next to you?
- 11 A Approximately eight to ten seconds.
- 12 Q Okay. Did he say anything to you?
- 13 A He walked up to me and I asked him what was he
- 14 doing. And I pushed him off of me. At that
- 15 time, that's when I heard people yelling saying
- 16 he had just robbed them.
- 17 Q Okay.
- 18 A You know.
- 19 Q At what point did you call 911?
- 20 A After I got in the vehicle and proceeded after
- 21 him down -- down Two Notch Road.
- 22 Q Okay. How long after you had pushed him off was
- 23 that?
- 24 A 25, 30 seconds.
- 25 Q Okay. You said at some point after Mr. Murray

1 was stopped and the police put him in custody in
2 the car on Rabon Road, they had you come out
3 there?

4 A NO, sir, they didn't have me to come out. I
5 drove to the scene.

6 Q You drove out there?

7 A Yes, sir.

8 Q Okay. Did they ask -- what exactly did they ask
9 you?

10 A They didn't ask me. I walked up, they had him in
11 custody. And I looked and I said, that's the
12 individual there that just approached me at the
13 Big Lots, I thought he had a weapon. And that's
14 the one I proceeded down Two Notch, that's the
15 one that attempted -- that's the one that got the
16 car at the Citi Financial.

17 Q So they didn't ask you to come down there?

18 A No, sir, they didn't.

19 Q They didn't ask you to identify him on the scene?

20 A Well, they asked me was that the individual that
21 approached me at Two Notch and I told them, yes,
22 it was.

23 Q Okay. So after you got there, they asked you ---

24 A No, sir. I got there. I pointed the individual
25 out, I said, that's the individual that

1 approached me at the Big Lots. That's the
2 individual that I pursued down Two Notch. That's
3 the individual that took the car at the Citi
4 Financial.

5 Q But they didn't ask ---

6 A They didn't ask me anything.

7 Q Okay. When they showed you the photo lineup.

8 A Uh-huh.

9 Q They showed you six photos on the lineup?

10 A Six photos, right.

11 Q Did they tell you that the person they were
12 looking for was in there?

13 A No, sir, they didn't.

14 Q Did they say, do you recognize anyone or do you
15 recognize the suspect? What did they say?

16 A They asked me if the individual on here is this
17 individual that approached me at the Two Notch,
18 asked me was anybody on there familiar. I told
19 them that's the individual that approached me.

20 MR. SCHNEE: Okay. No further questions,

21 Your Honor.

22 THE COURT: That's the end of your questions,
23 Mr. Schnee?

24 MR. SCHNEE: No further questions.

25 THE COURT: All Right. Anything further from

1 the State?

2 MS. CAMPBELL: No, sir.

3 THE COURT: All right. I find and conclude
4 that based on the testimony heard here today,
5 considering the totality of the circumstances, that
6 this is a good ID and that it was -- the ID is not from
7 the hearing but from the incident out on the road so to
8 speak and I'm going to let it in, Mr. Schnee.

9 Anything further?

10 MS. CAMPBELL: Your Honor, there's one
11 additional lineup. One more lineup.

12 THE COURT: Okay, I'm sorry. But this
13 witness is good?

14 MS. CAMPBELL: This witness is good.

15 THE COURT: Who's the other one? You may
16 step down, sir.

17 (The witness leaves the witness stand.)

18 (Pause.)

19 MS. CAMPBELL: The State calls Jimmy Hampton.

20 (JIMMY L. HAMPTON, having first been duly
21 sworn, testified as follows:)

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

24 THE COURT: This is Mr. ---

25 MS. CAMPBELL: Hampton.

1 THE COURT: Hampton. I called you Hanson
2 yesterday, I believe.

3 THE WITNESS: Yeah.

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q Mr. Hampton, where do you work?

7 A I work for the South Carolina Department of Health
8 and Human Services.

9 Q And do you live here in the Columbia area?

10 A I live in the Columbia area.

11 Q I'm going to turn your attention back to February
12 the 17th of this year. Did you have an occasion
13 to be out in the Two Notch area?

14 A Yes, I was.

15 Q And what were you doing out there on that day?

16 A Actually we -- my son and I stopped by Citi
17 Financial to drop a check off there, trying to
18 take care of a bill.

19 Q Okay. And you mentioned that you had your son
20 with you?

21 A I had my son with me. I had just picked him up
22 from Midlands Tech and were on our way home.

23 Q And at that point when you went in to pay the
24 bill, who actually left the car and went inside?

25 A I pulled up at the curb because I was trying to

1 get back to work. And I asked him -- I handed him
2 the check and I asked him to go in to drop the
3 check off.

4 Q So he actually went inside to Citi Financial?

5 A He went inside the Citi Financial.

6 Q And tell the Judge what happened while you were
7 waiting there on the curb in front of Citi
8 Financial? And that's right in that Bi-Lo
9 Shopping Center?

10 A In the Bi-Lo Shopping Center.

11 Q On the corner of Rabon and Two Notch?

12 A Right. At the point where he walked in, I saw the
13 guy with the blue jacket on in my mirror. My son
14 got out of the car and he dropped his cap. But he
15 was running in to pay it so I opened the passenger
16 door and reached over, the car was in park, to
17 pick the cap up.

18 And at that time, I saw this guy walking
19 between the curb. It wasn't very much space so I
20 didn't think anyone should walk in there. By the
21 time I tried to close the door, he snatched the
22 door open and said, take off, bro. And then the
23 second time he said it with more authority with
24 his hands in his jacket like -- it was protruding
25 out like he had some type of weapon. And he said,

1 take off, bro!

2 You know, so I was like -- I was like, no. I
3 mean -- but then I jumped out -- tried to get my
4 seatbelt off because I still had it on. And then
5 he started to try to put his foot over the console
6 to get on the other side.

7 I grabbed him by the jacket. It looked like
8 it was some type of wool double breasted jacket
9 and tried to pull him out of my vehicle, which
10 probably wasn't a smart thing to do. But the
11 jacket popped open and buttons and everything and
12 I stumbled back. By that time he had gotten the
13 foot over and hit the gear. I grabbed him again
14 and he started to drive off and pulled me, I
15 guess, about five to seven yards before -- and
16 when the vehicle started accelerating, I let go.

17 At that point Richland County -- a few
18 seconds later the Sheriff's Department came
19 rushing through going behind him. He pulled out of
20 the parking lot at Bi-Lo and turned right up Rabon
21 Road.

22 Q And you mentioned that he actually got -- you saw
23 him coming up beside the car first?

24 A I saw him -- I saw him through my rearview mirror
25 but he was at a distance. And when my son dropped

1 his cap and I reached over to open the door,
2 before I could close it, he was coming between the
3 curb and the vehicle.

4 Q Okay, so he was getting closer and closer?

5 A He was getting closer and I didn't think anyone
6 --but before I could close the door, he snatched
7 it open.

8 Q Okay. And at that point he actually got in the
9 vehicle with you?

10 A He got in the vehicle.

11 Q So you were actually face to face?

12 A I was face to face with him.

13 Q As close as you and I are?

14 A Uh-huh, very close. And he said -- it's a little
15 Corolla. It's -- it's a small vehicle. When he
16 looked at me he said, take off, bro. And then he
17 said, again with more authority, with his hand
18 protruding out, take off, bro!

19 At that time I tried to get my seatbelt but I
20 didn't think to switch the vehicle off and jump
21 out.

22 Q Okay. So you got face to face. Was anything
23 obstructing your view of his face?

24 A Absolutely nothing.

25 Q And were you paying attention to what he looked

- 1 like?
- 2 A Yes, ma'am.
- 3 Q And what was the lighting like that day? Was it
- 4 in the daylight time?
- 5 A It was in the daylight. I think it was -- I'm not
- 6 sure what time. It could have been ---
- 7 Q But it was daylight?
- 8 A It was daylight.
- 9 Q And at that point, you mentioned that -- and you
- 10 don't have to go through all this again but there
- 11 was a struggle and it took a little while for him
- 12 to actually get the car away from you?
- 13 A Right, uh-huh.
- 14 Q And during this entire time you were face to face
- 15 with him?
- 16 A I was face to face because I was trying to snatch
- 17 him out of my vehicle.
- 18 Q And this would have been a matter of seconds
- 19 and/or minutes?
- 20 A Seconds probably.
- 21 Q But you got a good look at him?
- 22 A I got a very good look at him.
- 23 Q Okay. That day -- you mentioned that he drove
- 24 down Rabon Road. Later on after he drove off --
- 25 you mentioned you saw all the deputies following

1 behind him?

2 A Yes.

3 Q And later on did a deputy come and escort you down
4 to ---

5 A Right.

6 Q Further down Rabon Road?

7 A They came and picked my son and myself up and took
8 us up Rabon Road.

9 Q Okay.

10 A Where the vehicle was.

11 Q And at that point did you observe the same person
12 that you had seen in the -- that took your car
13 that day?

14 A Yes, ma'am, the same person I had just struggled
15 with.

16 Q And how did that occur, tell the Judge?

17 A Well, actually they drove by. And at that point
18 he was in the back of, I think, one of the
19 vehicles. And I noticed -- I knew it was him.

20 Q And you saw him and you knew it was him?

21 A I knew it was him.

22 Q Did anyone influence you and say this should be
23 the person or you have to identify this person or
24 influence you in any way in the recognition of
25 him?

- 1 A No, ma'am.
- 2 Q Later that day did you also go down to -- or did
3 you make contact with investigators at the
4 Sheriff's Department?
- 5 A I did.
- 6 Q And at that point I believe they took a statement
7 from you?
- 8 A They took a statement from me.
- 9 Q And also showed you a series of photos?
- 10 A Yes, ma'am. They showed me, I think, about six or
11 seven pictures or something like that.
- 12 Q And I want to show you what's been marked as
13 State's Exhibit Number 2 for ID purposes at this
14 point. Do you recognize that?
- 15 A Yes, ma'am.
- 16 Q And is that the series of photos that they -- that
17 I believe it was Investigator McRae actually
18 showed you that day?
- 19 A Yes, ma'am, that's it.
- 20 Q And when he showed you this photograph did he do
21 anything to influence you or make you pick
22 someone?
- 23 A No, ma'am.
- 24 Q And do you recall, if anything, he said to you?
- 25 A He asked me was this the vehicle -- I think it was

1 something related to is this the vehicle (sic)
2 that -- that -- that got in you car.

3 Q Is this the person?

4 A Is this the person, right.

5 Q And did he tell you which one to pick or point to
6 any one of them?

7 A No, ma'am.

8 Q And did you look at all six photographs?

9 A I did.

10 Q And did anyone influence you in any way?

11 A No, ma'am.

12 Q And did they suggest you should pick any one?

13 A No, ma'am.

14 Q No influence?

15 A No influence whatsoever.

16 Q And based on what you had seen when the person
17 took your car that day, did you recognize one of
18 these people?

19 A Yes, ma'am.

20 Q And which one was that?

21 A That was Mr. Murray right here.

22 Q And you didn't know his name at that time?

23 A I didn't know his name at that time.

24 Q Okay. And at that point did they ask you to
25 signify that by circling it?

1 A Yes, ma'am.

2 Q And did you then sign it?

3 A I signed it.

4 Q And in addition to that I show you State's Exhibit
5 Number 1 for ID purposes. Did they also have you
6 fill out an Affidavit about who you recognized?

7 A Yes, ma'am.

8 Q And did anyone influence you in any way or do you
9 base your identification there at the scene where
10 they recovered the car as well as your
11 identification at the Sheriff's Department, was
12 that based on what you saw from the person taking
13 your car that day?

14 A Yes, ma'am.

15 MS. CAMPBELL: I have no further questions.

16 THE COURT: Mr. Schnee.

17 CROSS-EXAMINATION

18 BY MR. SCHNEE:

19 Q You said you first saw my client as he was walking
20 off towards the car from behind?

21 A Yes, sir.

22 Q And that was through your review mirror?

23 A Well, I guess it was through the mirror in the
24 vehicle, yeah. I saw somebody.

25 Q You ---

1 A I didn't -- beg your pardon?

2 Q No, please.

3 A It was just noticing the jacket.

4 Q Okay. So you didn't see his face at that point?

5 A I could see -- he was noticeable. He was the only
6 person back there. He's got a lot of gray hair,
7 much like mine. It was easy to kind of -- kind of
8 see.

9 Q Okay. But you couldn't just based on that
10 identify what his face looked like, could you?

11 A From where I was, I may have been. I'm not sure.

12 Q Okay. But obviously he got in your car ---

13 A He got in my car.

14 Q Okay. He was sitting right next to you?

15 A Yes.

16 Q It's a small car?

17 A Yes, it is.

18 Q Okay. How long was he in the car with you before
19 he had driven off?

20 A I'm not entirely sure. From the time that it took
21 someone to say, take off, bro and then say again,
22 take off, bro. And for me to get my seatbelt off
23 because I wasn't going with him.

24 And then I got out and actually got mad when
25 I stepped out and then I tried to -- I tried to

1 get him out of my vehicle.

2 Q Okay.

3 A So that time and the time that he pulled off and
4 pulled me about five to seven yards.

5 Q We're talking 10 seconds?

6 A No, it's more than 10 seconds. That would be more
7 than 10 seconds, I would think.

8 Q In terms of afterwards, did the police take you to
9 the scene where they stopped your car on Rabon
10 Road?

11 A Yes, they did.

12 Q Okay. And you were -- you were in a police car?

13 A I was.

14 Q Okay. Did they ask you if you could identify
15 anyone as you were driving off?

16 A No, they -- I think someone asked me was -- we're
17 going to drive by. Let me know if that's the
18 person who took your vehicle.

19 Q Okay. So ---

20 A And I said, yes, immediately.

21 Q They told you ahead of time they were going to
22 drive you by, they want to know ---

23 A They said -- they did, the suspect was in the
24 vehicle.

25 Q Okay, they said the suspect was in the vehicle?

1 A They were going to drive by and let me know if
2 that's the person that took your car.

3 Q Okay. Now, the photo lineup, when they showed you
4 the pictures. Did they say, could you pick out
5 the suspect from these six?

6 A No, I think they said is this the vehicle (sic) --
7 is this the person that took your car.

8 Q Did they point to one of the pictures?

9 A Absolutely not.

10 Q Okay.

11 A No, no, no. I picked him out before -- when the
12 picture hit the table.

13 Q Okay.

14 A They put it down. I knew it was him. I was
15 really really ticked off.

16 Q Okay ---

17 MR. SCHNEE: No further questions.

18 THE COURT: All right. Anything further of
19 this witness?

20 MS. CAMPBELL: No, sir.

21 THE COURT: You may step down, Mr. Hampton.

22 (The witness leaves the witness stand.)

23 THE COURT: Considering the testimony and the
24 totality of the circumstances, there's not likelihood
25 of misidentification, whatever the magic word. So the

1 ID is coming in, Mr. Schnee. You understand that?

2 MR. SCHNEE: Yes, sir.

3 THE COURT: Anything further? That covers
4 everything, Mr. Schnee?

5 MR. SCHNEE: I actually did forget one thing.

6 THE COURT: All right, what is it?

7 MR. SCHNEE: Investigator Isenhoward's
8 report. He mentions speaking with the first victim in
9 the case, Mr. Langford, and Mr. Langford just going
10 through his -- essentially his life story. And
11 Isenhoward put the comment in that he feels it's common
12 for someone who's had a near death experience. And I
13 would certainly move to exclude that from any
14 testimony.

15 THE COURT: Well, you know, one thing about
16 crossing a river, you can't cross it till you get to
17 it. Just hold off on that a little bit, Mr. Schnee.

18 MR. SCHNEE: Okay.

19 THE COURT: When Mr. Isenhoward gets to that
20 point, we're at that point, object to it, we'll take
21 care of it. I'll send the jury out, we'll make a
22 record in camera.

23 Anything further?

24 MR. SCHNEE: For the record, I need to renew
25 Rule 5.

1 THE COURT: All right.

2 MR. SCHNEE: Make sure I've gotten everything
3 from the State.

4 THE COURT: That's fine, Mr. Schnee. That's
5 your job. Solicitor, have y'all complied, I'm assuming?

6 MS. CAMPBELL: We've shown him every
7 photograph, every ---

8 THE COURT: Okay.

9 MS. CAMPBELL: --- thing that I'm aware of.
10 I even gave him my own notebook.

11 THE COURT: Okay. Mr. Schnee, if anything
12 crops up unexpectedly, bring it to my attention. I'll
13 stop and I'll cure it, if there's any fault to be
14 cured.

15 How is that?

16 MR. SCHNEE: Okay. I know Ms. Campbell has a
17 stack of photographs. She showed them to me this
18 morning. All of them are fine except for the last one.
19 I would object to that. It shows my client leaning up
20 against a police car in handcuffs.

21 THE COURT: My guess is they don't -- they
22 don't intend to present that. I don't see why they
23 would, they don't need it, if that is in fact the case.

24 MS. CAMPBELL: The only reason we need it,
25 Your Honor, is because it shows the coat on the

1 Defendant when he was apprehended. There's a video
2 where they apprehended him too. I don't know how this
3 in any way -- it's on video when they catch him.

4 MR. SCHNEE: And they have the coat, Your
5 Honor. So I would simply object to the photograph
6 itself.

7 MS. CAMPBELL: This actually shows him
8 clearly with the coat on at the time he is apprehended.

9 THE COURT: Well, we all know he was
10 arrested.

11 MR. SCHNEE: Yes, Your Honor.

12 THE COURT: And usually when people are
13 arrested they're in handcuffs.

14 All right, if it's that important -- I'll --
15 make the motion at the time. I'm inclined to let it.
16 I mean, there's no secret that he's under arrest. He's
17 under indictment, what are we going to do?

18 Mr. Schnee, I don't mind. You did the right
19 thing but that's -- I don't think it's going to make
20 any difference.

21 All right, anything further?

22 MS. CAMPBELL: I just need to get Mr. Woods
23 in, Your Honor. Then we'll be ready to go.

24 THE COURT: Mr. Woods.

25 MR. SCHNEE: I would object to him being in

1 here for opening.

2 THE COURT: Beg your pardon?

3 MR. SCHNEE: I would object to the witness
4 being present ---

5 MS. CAMPBELL: I think sequestration only
6 extends to testimony, does it not?

7 THE COURT: Let him stay out there. Let's
8 just ---

9 MS. CAMPBELL: Okay, let him just stay.

10 THE COURT: I think I used to make the same
11 arguments when I was a young defense lawyer, so.

12 All right, we're ready. Bring the jury in.

13 (The jury returned to the courtroom at
14 approximately 10:35 A.M.)

15 THE BAILIFF: Jury's present, Your Honor.

16 THE COURT: Welcome back. Faulkenberry was
17 your what?

18 JUROR: My brother-in-law.

19 THE COURT: He's your brother-in-law. In
20 that case, I'm going to make you the foreperson of this
21 jury. You need to take -- oh, no, no, you've got to
22 sit up here in the front seat. I'm serious, you're the
23 foreperson. And it ain't very heavy lifting, it's all
24 in the shade. You've just got to be the spokesman for
25 the jury. I'll explain it as it goes along.

1 You shouldn't have told me you had a
2 connection with Dillon County. You don't mind do you?

3 JUROR: I don't mind.

4 THE COURT: Okay, thank you. Ms.
5 Pendergrass, you may swear them.

6 THE CLERK: Mr. Foreman, ladies and gentlemen
7 of the jury. Please stand and raise your right hand to
8 be sworn.

9 (Complied.)

10 THE CLERK: At the end of the statement that
11 I'm about to give you, please respond by saying, I do.

12 (The jury was duly sworn.)

13 THE CLERK: You may be seated.

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

20 This is a criminal case commenced by the
21 State, which sometimes is referred to as the
22 prosecution, against Nathaniel Murray. This case is
23 based on three indictments. I've read those three
24 indictments to you. Two counts of armed robbery and
25 one count of failure to stop for a blue light.

1 Members of the jury, you should distinctly
2 understand that the indictments are simply a charge and
3 they are not in any way or any sense evidence of the
4 allegations contained in those indictments. That is
5 what I read to you the other day.

6 The Defendant has pled not guilty to these
7 indictments. The State therefore has the burden of
8 proving each of the essential elements of these three
9 indictments beyond a reasonable doubt. The purpose of
10 this trial is to determine whether the State has met
11 this burden.

12 Your purpose as jurors is to find and
13 determine the facts. Under our system of criminal
14 procedure, you are the sole judges of the facts. If at
15 any time I should make any comments regarding the
16 facts, you are at liberty and it is your duty to
17 disregard my comments.

18 It is especially important that you perform
19 your duties of determining the facts diligently and
20 conscientiously. Ordinarily there is no means of
21 correcting an erroneous determination of the facts by a
22 jury. On the other hand, Mr. Foreman and members of
23 the jury, and with equal emphasis, I instruct you that
24 the law as given by the Court constitutes the only law
25 for your guidance. And it is your duty to accept and

1 follow it.

2 It is your duty to follow the law as I give
3 it to you even though you may disagree with the law.
4 Sometimes even though I may disagree with the law, I've
5 got to tell you what I believe it is and you've got to
6 follow it as I tell it to you.

7 You are to determine the facts from the
8 testimony you hear and the other evidence introduced in
9 court. It is up to you to determine the emphasis which
10 you may feel may properly be drawn from the evidence.
11 You must not consider anything you may have read or
12 heard about the case outside the courtroom, whether
13 before, during -- whether before or during the trial.

14 Until this case is submitted to you, you must
15 not discuss it with anyone, even with your fellow
16 jurors. After it is submitted to you, you must discuss
17 it only in the jury room with your fellow jurors. It
18 is important that you keep an open mind and not decide
19 any issue of the case until the entire case has been
20 submitted to you under the instruction of the Court.

21 It is your added duty, Mr. Foreman, to
22 preside in the jury room and be the jury's -- juror's
23 -- jury's spokesman here in open Court.

24 Now, members of the jury, from time to time
25 either Ms. Campbell or Mr. Jophlin may object to

1 something Mr. Schnee is trying to present or Mr. Schnee
2 may object to something that the prosecution is trying
3 to present. And an objection is the procedure we use
4 for one side or the other to bring a possible violation
5 of the rules of presenting evidence to my attention.
6 And for this reason, you should not hold an objection
7 against Mr. Schnee on behalf of Mr. Murray or against
8 the State if Ms. Campbell or Mr. Jophlin makes an
9 objection. Nor should you conclude on an objection
10 that I favor one side or the other.

11 Mr. Foreman and members of the jury, my
12 answers in this case is I have no answers except to try
13 to ensure that everybody receives a fair trial which is
14 the exact same interest that you all have here.

15 Now from time to time it may be necessary for
16 me to invite the lawyers up here or bring them over to
17 the side with me and engage in some whispering. It's
18 not that I'm trying to hide anything from you. But
19 under the rules, there's only certain things you should
20 hear and it's my job to determine whether or not you
21 should hear certain pieces of evidence trying to be
22 presented. And the only way I can do that is in your
23 absence or out of your hearing range.

24 So it may be necessary for me sometimes to
25 send you back into the jury room while I listen to more

1 extensive arguments on the point of law from the
2 lawyers of law. Once again, I can only hear arguments
3 on the law in your absence or I can bring the lawyers
4 over here and maybe I can solve it real quickly.

5 But that would be the reason. Not an effort
6 to hide anything from you but to try to ensure under
7 the rules that you hear what you should hear under our
8 rules.

9 If somebody objects and I say sustained, that
10 means I think it's a valid objection and you should
11 disregard the answer if it comes out. If somebody
12 objects and I say overruled, I think it's -- I think
13 it's an invalid objection and you -- it's okay for you
14 to hear that evidence. I'm sure y'all all watch TV and
15 CSI or whatever. Y'all sort of follow along with what
16 I'm saying. It sort of works the same way here.

17 So I invite your keen and close attention to
18 the opening statements on behalf of the parties. We'll
19 first hear from the State followed by Mr. Schnee and
20 then we'll get this trial on the way.

21 Keep an open mind until the very end, the
22 conclusion of this trial, okay.

23 Mr. Jophlin.

24 MR. JOPHLIN: Yes, sir.

25 THE COURT: You may proceed, sir.

1 MR. JOPHLIN: Thank you, Your Honor. May it
2 please the Court.

3 THE COURT: Yes, sir.

4 OPENING STATEMENT ON BEHALF OF THE STATE

5 BY MR. JOPHLIN:

6 Ordinary people doing ordinary things at
7 11:30 in the morning on a sunny February day. They're
8 out doing a little shopping, driving down the road.
9 Going to a local Citi Financial just to pay a bill.

10 Then the Defendant comes along. And there's
11 fear and chaos along every one of those single places
12 where he walks that day.

13 My name's Aaron Jophlin. I'm with the
14 Richland County Solicitor's office. Myself along with
15 Ms. Luck Campbell prosecute the crimes here in Richland
16 County.

17 Because of his actions on February 17th,
18 2009, the Defendant is here before you today charged
19 with two counts of armed robbery and a count of failure
20 to stop for a blue light.

21 Let me tell you a little bit about how this
22 occurred on February 17th.

23 Lester Woods, one of the witnesses you will
24 hear from this morning, was in the Big Lots parking lot
25 on Two Notch Road. He had just turned off his ignition

1 in his truck, the doors were locked. But all of a
2 sudden he just sees some guy come up and start pulling
3 on his door handle.

4 He gets out of his truck and just wondered
5 what's going on here, what's going on? They come face
6 to face. He doesn't really hear much from the guy
7 who's pulling on the door handle. But then all of a
8 sudden he hears Mr. Langford, an 88 year old gentleman,
9 standing in the parking lot yelling, he just robbed me.
10 He's got a gun, he just robbed me.

11 So Mr. Woods pushes him off which sends him
12 running. He runs down through that parking lot on to
13 Two Notch Road. And Mr. Woods doesn't let him -- let
14 this person out of his sight. What just happened, he's
15 heard an 88 year old man come out of the store
16 screaming that he'd been robbed. He'd just had some
17 strange person come up and pull on his door handle.

18 So he calls 911 and follows that person down
19 the road, down Two Notch. This occurring between Two
20 Notch and Rabon Road and this person is going towards
21 the Bi-Lo Shopping Center.

22 As he's going along Two Notch Road, Mr. Woods
23 is describing as how he's walking along, he's pulling
24 on people's door handles on their cars. People minding
25 their own business, just driving along the road. He

1 gets to the stoplight. He keeps on pulling on people's
2 door handles until finally he comes to another shopping
3 strip where the Bi-Lo is, Citi Financial, Tripp's Dry
4 Cleaners, full of people.

5 Mr. Woods follows him into that parking lot.
6 He's still on the phone with 911 asking them to send
7 some deputies down here. And then he sees the
8 Defendant dart through that parking lot towards a
9 little Toyota Corolla sitting in front of Citi
10 Financial. He follows him and tells 911, he's
11 approaching this car, y'all have to hurry up.

12 And then he sees the Defendant get in that
13 car. And on the other side comes out Mr. Jimmy
14 Hampton. Jimmy Hampton had just stopped by there to
15 pay a bill that day. His son ran in and dropped off a
16 check. He wasn't in the car. All of a sudden he sees
17 Jimmy Hampton fly out of the driver's side, he's
18 pulling on somebody and fighting inside of that car.
19 The next thing he knows is the car drives off.

20 He follows along a little bit longer and the
21 Sheriff's deputies arrive on the scene. And after a
22 short chase, were able to pullover that Toyota Corolla
23 that was just taken from Mr. Hampton. And they
24 arrested the Defendant for the incidents that had just
25 occurred.

1 Because of what he did that day, the
2 Defendant is charged with three crimes. Armed robbery
3 for robbing Mr. Walter Langford over there. Armed
4 robbery for taking Mr. Hampton's car. And then failure
5 to stop for a blue light.

6 Armed robbery, Judge Manning has already
7 explained to you, he read through the indictments.
8 There's a lot of legalese in those indictments. He'll
9 again instruct you at the end of this case, only the
10 proper definition -- what the legal definition of armed
11 robbery is.

12 But as y'all sit here today and listen to
13 testimony, the next couple of days, just think of armed
14 robbery as in the basics. If somebody comes up to you
15 -- it's one person takes another person's property
16 while armed with a deadly weapon or in this case,
17 alleges he has a deadly weapon, makes a representation
18 that he has a deadly weapon. So the person on the
19 other side that is getting their stuff taken thinks
20 they have a gun, they have a weapon. I have to give
21 them my stuff.

22 Failure to stop for a blue light is just as
23 it states. After the police put on their sirens, blue
24 lights, the person fails to stop is a crime.

25 The State has the burden of proving all the

1 elements of these crimes to you beyond a reasonable
2 doubt. We have the burden of proving these crimes
3 beyond a reasonable doubt.

4 Now, what is a reasonable doubt as you sit
5 here and listen to all of the evidence? It is not
6 proof that goes beyond every possible doubt in your
7 mind. We don't have to prove anything beyond every
8 possible realm of doubt. It's just proof that leaves
9 you firmly convinced of someone's guilt.

10 And how do you, the jury, sit here and
11 determine someone's guilt of these crimes? All of you
12 are wearing black robes today. Judge Manning, he's
13 going to be the judge of the law. What he tells you is
14 the law of the case that you have to apply to the facts
15 as you hear them.

16 But all of you are the judges and triers of
17 fact in this case. It is up to you to determine what's
18 happening that day.

19 Some of the evidence you're going to hear is
20 going to be testimony. There will be witnesses who will
21 get up on the stand and will basically tell their story
22 to you.

23 You're going to hear from Mr. Langford. He's
24 going to tell you that he had had some heart problems
25 recently and wanted to get out of the house that

1 morning. He went with his wife when she went shopping.
2 He wanted to sit out in the car, it was a sunny day.
3 And then you'll hear how the Defendant came up and
4 robbed him.

5 You're going to hear from Mr. Hampton. He's
6 going to sit up here and tell you how he went to Citi
7 Financial, sent his son in to pay the bill, on his way
8 to work, back to work. He was in a hurry. And then
9 all of a sudden the Defendant came up, got in his car
10 and robbed him of his car.

11 You're going to hear from Mr. Woods who
12 called 911. You're going to hear the 911 call. You're
13 going to hear from the deputies that arrived on the
14 scene. You're going to see the videos from their car,
15 showing the chase where the Defendant failed to stop.

16 You're going to hear from investigators in
17 the case who took statements, who showed photo lineups
18 to confirm that, hey, this is the person that did these
19 crimes to you.

20 As you listen to these witnesses, you can
21 either accept all their testimony, part of their
22 testimony or none of their testimony. As the triers of
23 fact, that's your prerogative.

24 Some of the things you can use to evaluate a
25 person's testimony is, what was their demeanor on the

1 stand? Were they forthright or are they hesitant in
2 some ways in telling you their story? Was their story
3 consistent from February 17th, 2009 when this occurred
4 till all the way till today when they get on the stand
5 and tell it to you? Is it corroborated by other
6 individuals' testimony who you hear?

7 And finally, is there any reason that Mr.
8 Langford, Mr. Hampton, Mr. Woods, is there any reason
9 why they would have any bias or prejudice in some way
10 of wanting to see this Defendant being charged with
11 these crimes?

12 And ladies and gentlemen, after you hear all
13 of the evidence, after you see the evidence, after you
14 hear the evidence, the State will be asking you to
15 return guilty verdicts against the Defendant for armed
16 robbery of Mr. Langford, for the armed robbery of Mr.
17 Hampton and for failure to stop for a blue light.

18 Thank you.

19 THE COURT: All right, Mr. Schnee.

20 MR. SCHNEE: May it please the Court.

21 THE COURT: Yes, sir.

22 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

23 BY MR. SCHNEE:

24 Good morning. There is no gun. There is no
25 weapon. You're not going to see a gun. The State of

1 South Carolina has all the resources that they want.
2 This is the government. You can look around this room
3 and see badges on more than half the people sitting
4 back there. There are a lot of police officers. And
5 what did they do to investigate this case?

6 They took statements from three people.
7 That's pretty much it. I'm not saying they did a
8 horrible job. I think they could have done a little
9 more. I think you're going to see they could have done
10 a little bit more. Most importantly, there is no
11 weapon.

12 Now the Judge at the end of this trial is
13 going to instruct you on the law, particularly armed
14 robbery. The State is alleging that it is based on
15 representation of a weapon. The law for representation
16 of a weapon, as you will hear later, is based on
17 reasonableness. Did people in this case reasonably
18 believe that Nathaniel Murray had a gun or a weapon or
19 that he was presenting that he had one? And it is your
20 job as jurors to determine if that is a reasonable
21 belief.

22 I am not going to tell you that Nathaniel
23 Murray is a saint. I'm not going to tell you that he
24 didn't take the wallet or the car, he did those things.
25 But it's not armed robbery. You're going to -- you're

1 going to see that based on all the evidence you're
2 going to hear. You're going to hear the 911 tape.
3 You're going to hear Mr. Woods relaying information to
4 the 911 dispatcher. And I will tell you right now,
5 that's some of the best evidence you're going to see in
6 this trial because it's not based on memory. It's
7 based on the immediate perception and relaying of
8 information. Pay very close attention to that 911 tape
9 as to what people are doing and how they're acting.

10 Also pay attention to timeframes as to how
11 long events take place. When people remember things,
12 it's hard to remember sometimes how long something
13 takes. People are emotional at the time. When they
14 calm down they start reflecting on it. They might add
15 or subtract certain details. Pay attention to the 911
16 tape.

17 But most importantly, when the State is done
18 with their case, you're going to hear from Nathaniel
19 Murray. He's going to get on that stand. He's going
20 to tell you what he did. He's going to tell you why.
21 He's not going to lie to you. He's going to be honest.
22 He's going to tell you exactly what he did.

23 And at the end of this trial you're going to
24 find out and you're going to rule, we certainly hope,
25 that it is not armed robbery.

1 THE COURT: All right, you may call your
2 first witness.

3 MS. CAMPBELL: The State calls Lester Woods.
4 Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 THE COURT: Oh by the way, Madam -- Mr.
8 Foreman and members of the jury, we generally go to
9 about 1:00 before I break for lunch. If any of y'all
10 need to take a break for any sort of emergency reason,
11 just raise your hand and let me know. I'm not going to
12 make you sit here and wait. So generally we'll break
13 about 1 and come back about 2:30. But if you need any
14 breaks before that, Mr. Foreman, just let me know and I
15 will be happy to do so right away.

16 Sorry about that, Ms. Campbell.

17 MS. CAMPBELL: Thank you.

18 (LESTER WOODS, having first been duly sworn,
19 testified as follows:)

20 THE CLERK: Please have a seat. State your
21 full name for the record.

22 DIRECT EXAMINATION

23 BY MS. CAMPBELL:

24 Q Mr. Woods, you live here in the Columbia area?

25 A Yes, ma'am, I do.

1 Q How long have you been living here in Columbia?

2 A Since 1987.

3 Q And what do you do for a living, sir?

4 A I'm a consultant for F I G Investments and
5 Consulting.

6 Q And do you have family here?

7 A Yes, ma'am, I do.

8 Q And do you have any children?

9 A I have three boys and a girl.

10 Q I want to turn your attention back to February the
11 17th, that morning around 11, 11:30 that morning.

12 Do you remember what you were doing?

13 A Yes, ma'am, I do.

14 Q And what were you doing?

15 A I had just left the gym and I stopped by Big Lots
16 on Two Notch Road.

17 Q And which gym were you going to?

18 A I go to the Jewish Community Center on Forest
19 Drive.

20 THE COURT: All right, let me stop you for
21 just a minute. Can y'all hear okay, members of the
22 jury? I don't want y'all to be straining. Can
23 everybody hear?

24 JURORS: (Affirmative response.)

25 THE COURT: All right. I'm sorry. I just

1 wanted to make sure.

2 MS. CAMPBELL: Thank you, Your Honor.

3 Q And you were coming from the gym and you said you
4 stopped by the Big Lots?

5 A Yes, ma'am, I did.

6 Q And tell this jury what happened once you went
7 into the Big Lots.

8 A I proceeded to turn into Big Lots and park. And
9 once I parked, I had an individual to approach the
10 passenger of my vehicle and tried to lift the door
11 handle.

12 Q What kind of vehicle were you driving that day?

13 A It was a 2008 Cadillac Escalade.

14 Q And were you by yourself that day?

15 A Yes, I was.

16 Q And where in the parking lot were you parking
17 approximately?

18 A Approximately in the middle section of the Big
19 Lots parking lot, adjacent from the Dollar
20 General.

21 Q Okay. And once -- you said you -- actually did
22 you stop your car?

23 A I stopped my vehicle and put it in park.

24 Q And then what happened?

25 A The door was locked and I had an individual to

1 approach the passenger of my vehicle and tried --
2 he tried to lift the door handle.

3 Q And did you know that individual?

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

5 Q At that point, what did you do?

6 A Well, I proceeded to exit the vehicle and I
7 approached him and asked him what was he doing.
8 And at that point he proceeded towards me with his
9 hands in his pockets.

10 Q With his hands in his pockets?

11 A Like this (indicating). And I heard some people
12 yelling saying that he just robbed them ---

13 MR. SCHNEE: Objection, hearsay.

14 THE COURT: Overruled.

15 MS. CAMPBELL: Thank you.

16 THE COURT: Res gestae, excited utterance,
17 all the above.

18 A I heard people yelling and saying that he had just
19 robbed them. So he approached me and I pushed him
20 off.

21 Q Did they say anything else besides, he just robbed
22 you (sic)? Anything about a weapon?

23 A I don't remember exactly what they were saying.
24 All I remember is, that he just robbed me.

25 Q Okay. And at that point where was he in relation

1 to your car?

2 A He was -- he had proceeded around the front of the
3 vehicle and was coming towards me and I pushed him
4 off.

5 Q And why did you push him off?

6 A Because I perceived that he was threatening. I
7 heard the people yelling saying, he just robbed
8 me, and was pointing at him. And he walked up on
9 me and I pushed him off.

10 Q And what was going through your mind at that
11 point?

12 A Well, at that point I didn't know if he had a gun
13 because the way he was presenting himself was
14 though he had a gun. And he was walking upon me
15 so I pushed him off and I ran around the back of
16 my vehicle.

17 Q And you actually ran away from him at that point?

18 A I did.

19 Q And why was that?

20 A Ma'am?

21 Q Why did you run away from him?

22 A Because I perceived he had a gun. That's the
23 threat that I was perceiving.

24 Q And again you've mentioned that he had his hands
25 in his pocket like he had a weapon?

1 A Yes, ma'am, he did.

2 Q And that's what you perceived on your own?

3 A Yes, ma'am.

4 Q At that point where did he go, did you see him?

5 A Well at that time he walked towards Two Notch
6 heading towards the Bi-Lo. And at that point I
7 entered my vehicle and I dialed 911.

8 Q And the person that you heard yelling that they
9 had just been robbed, did do you know where that
10 person was?

11 A They were standing by -- approximately 15 to 20
12 feet from me in front of the Dollar General right
13 there where the Big Lots is.

14 Q Okay. And did you -- you didn't know that
15 individual either, did you?

16 A No, I didn't.

17 Q So at that point, you get back into your Escalade
18 and you see him walking toward the -- Two Notch
19 which is front of the Big Lots?

20 A In front of the Big Lots and he proceeded towards
21 the Bi-Lo Shopping Center area.

22 Q Did you try to apprehend him at that point?

23 A No, ma'am, I didn't. I just proceeded and the
24 dispatcher told me to proceed with caution. And I
25 began then to describe to the dispatcher what he

1 was wearing, color, ethnic.

2 Q Okay. And that was actually when you've called
3 911?

4 A Yes, ma'am. It was after I dialed 911, yes.

5 Q And the person that you observed that tried to get
6 into your vehicle and then you pushed him off of
7 you because you thought he had a weapon, what was
8 he -- what did he look like?

9 A Well, he was a light skinned black male,
10 approximately 5-10, 5-11. And at that time he had
11 a hat on with a green pea coat -- black or green
12 pea coat with some green camouflage pants.

13 Q Okay.

14 A Uh-huh.

15 Q And as you saw him walking down Two Notch Road,
16 what did you do?

17 A Well, I proceeded, you know, behind him and as I
18 approximately -- he was on the sidewalk and
19 entering in and out of the street. And I observed
20 him, he was going up to cars as they were stopped
21 at the stoplight. There's a stoplight right there
22 in front of Greenbriar (sic) Apartments. And he
23 proceeded to go to different cars trying to lift
24 the door handles.

25 Q And were you relaying all these events to ---

1 A I was. I was telling 911 exactly what was going
2 on, that they need to get officers on the scene
3 because I felt like something was about to happen,
4 someone was going to get hurt.

5 Q And you were relaying that information to 911?

6 A Everything that happened, yes, ma'am.

7 Q And you mentioned that it was right there at the
8 Greengate or the Greenbriar (sic) ---

9 A At a stoplight and cars were stopped.

10 Q --- at a stoplight?

11 A And he went to different vehicles trying to open
12 the door on the passenger side.

13 Q And did that alarm you?

14 A Yes, it did.

15 Q And did he proceed -- was he able to get into any
16 of those vehicles?

17 A No, ma'am, he wasn't. He proceeded down Two Notch
18 and he turned -- he turned in the parking lot
19 right there by Tripp's Cleaners as you're getting
20 to Bi-Lo Shopping Center.

21 So I proceeded. I had my flashers on. I was
22 on the phone with dispatcher telling them what was
23 going on at the time. And he proceeded to enter
24 the Big Lots (sic) parking lot and I noticed him
25 checking a couple of other cars. And then he went

1 up to a car parked on curbside in Citi Financials,
2 a tan vehicle.

3 Q And did you -- were you able to see whether or not
4 there was anyone actually in that vehicle when he
5 approached it?

6 A Yes, ma'am, it was. As he approached the vehicle
7 from the passenger side, he jumped in the vehicle
8 and I noticed them in there struggling. There was
9 -- as they was fighting and the individual, they
10 was going back and forth. And I put the vehicle in
11 park and that's when the individual jumped out of
12 the vehicle and that's when he sped off. And at
13 that time he turned on Rabon Road and that's when
14 the officers went around and they chased him.

15 Q Okay. Let's back up for a minute. You said you
16 saw the person who's the same person that
17 approached you ---

18 A Approached me at the Big Lots, yes, ma'am.

19 Q That you followed down the road, that he was
20 trying to get in the cars, you actually saw him
21 then get into the passenger side of a tan vehicle?

22 A I did.

23 Q And the person that ultimately -- there's a
24 struggle going on but the person that ultimately
25 comes out of the vehicle, is that the person you

1 saw earlier or is that the original driver of the
2 tan vehicle?

3 A That was the original driver of the tan vehicle.

4 Q Okay. And then the person that sped off and
5 actually ultimately got into the driver's seat of
6 the car ---

7 A Is the one that entered the passenger side.

8 Q Okay. But that's the person you followed down?

9 A Yes, ma'am.

10 Q And then you mentioned that you then saw the
11 police and they fell in behind him?

12 A Yes, ma'am.

13 Q Did you actually proceed down Rabon Road?

14 A I did.

15 Q And did you ultimately see a good ways down the
16 road where the tan car had come to a stop?

17 A I did.

18 Q Were there police officers everywhere?

19 A Yes, ma'am.

20 Q And did you see the person that they had stopped
21 in the vehicle?

22 A I did.

23 Q Was that the same person that you observed first
24 in the Big Lots parking lot, the person you
25 thought had a weapon, and on down the road?

1 A Yes, ma'am, it was.

2 (Pause.)

3 Q Later that day, did you then go down to the police
4 headquarters on Two Notch?

5 A I did.

6 Q I believe it was actually the Sheriff's Department
7 and did they take a statement from you?

8 A Yes, ma'am, they did.

9 Q And did they also show you some photographs that
10 day?

11 A Yes, ma'am, they did.

12 Q And I'm going to show you what's been marked as
13 State's Exhibit Number 4 and ask if you recognize
14 that piece of paper?

15 A Yes, ma'am, I do.

16 Q And those six photographs, was that the
17 photographs that were actually shown to you after
18 all this happened?

19 A It was.

20 Q And when they showed you those photographs, did
21 anyone suggest to you to pick someone or that you
22 should identify anyone or anything of that nature?

23 A No, ma'am, they didn't.

24 Q And when you looked at those six photographs, did
25 you recognize anyone?

1 A I recognized him immediately?

2 Q And who did you recognize?

3 A The picture here (indicating).

4 Q And that's the one that you ultimately circled
5 after you were shown the photos?

6 A Yes, ma'am, I circled and I initialed it.

7 Q Initialed it. And the time period on that --
8 these are stupid questions but the time period as
9 far as the identification, when he first came up
10 to you and approached you and tried to undo your
11 side door, did you get a good look at his face?

12 A Yes, ma'am, I did. It was ---.

13 Q And then you got out of your car and you got
14 actually face to face with him, right?

15 A Yes, ma'am, I did.

16 Q And because you thought he had a gun, you actually
17 pushed him away and went around?

18 A Around the back of my vehicle, yes, ma'am.

19 Q So you had an opportunity to observe him on the
20 side of your vehicle, ultimately around the other
21 side of your vehicle and then when you pushed him,
22 face to face?

23 A Very closely.

24 Q And then you were also -- and what was the
25 lighting like that day?

1 A It was sunny.

2 Q And was anything obstructing the view of his face?

3 A No, ma'am, it wasn't.

4 Q And ultimately as you followed him down Two Notch,
5 you observed him, I believe -- how far away were
6 you from him?

7 A Oh, 20 -- 15, 20 -- about from here to the wall.
8 It was about 30 feet, 40 feet.

9 Q And at that point you were able to observe him as
10 he continued down the road, ultimately robbing the
11 second man of his car?

12 A Yes, ma'am.

13 Q And is there any doubt in your mind that the
14 person that you identified in State's Exhibit
15 Number 4 is the person that you saw ---

16 A No, ma'am, it's not.

17 Q --- that tried to rob you and the other people?

18 A No, ma'am, it's not.

19 MS. CAMPBELL: Your Honor, at this time we
20 would offer State's Exhibits 3 and 4.

21 MR. SCHNEE: No objection.

22 THE COURT: All right, without objection.
23 Let's see, 3 and 4, that's the ---

24 MS. CAMPBELL: Photo lineup and the
25 Affidavit.

1 (Whereupon, State's Exhibit Number 3, Photo
2 Lineup Affidavit by Lester Woods, was moved
3 into evidence.)

4 (Whereupon, State's Exhibit Number 4, Photo
5 Lineup by Lester Woods, was moved into
6 evidence.)

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

8 THE COURT: Yes, ma'am.

9 (Pause.)

10 Q I'm going to show you what's been marked as
11 State's Exhibit Number 33 for identification. You
12 mentioned that you first -- first of all, does
13 this show the Big Lots parking lot on Two Notch?

14 A They all look the same to me.

15 Q This is Two Notch.

16 A That's Two Notch, yes, ma'am.

17 Q And would this be the Big Lots over here?

18 A It is, uh-huh.

19 MS. CAMPBELL: Your Honor, at this time we'd
20 offer State's Exhibit Number 33 into evidence.

21 THE COURT: This is an aerial photo of ---

22 MS. CAMPBELL: An aerial photo.

23 MR. SCHNEE: No, objection, Your Honor.

24 THE COURT: All right.

25 (Whereupon, State's Exhibit Number 33, Blowup

1 Photograph of 9221 Two Notch Road, was moved
2 into evidence.)

3 Q And without stepping down, this is -- this is the
4 Big Lots right here (indicating). Approximately
5 where was it that y'all were parked that day?

6 A Approximately right in here (indicating) ---

7 Q Right in here (indicating)?

8 A --- where the car is. Yes, uh-huh.

9 Q And at that point, the person that you saw that
10 yelled, you know, he'd been robbed right after you
11 saw the man trying to get into your car, was he
12 parked near you in the parking lot?

13 A Well, they were standing out in front of the
14 Dollar General at the time.

15 Q Okay. So you didn't actually see him in the car?
16 You saw him after he got out of the car?

17 A Yes, ma'am.

18 Q And you mentioned that you proceeded down the road
19 into the Bi-Lo parking lot, is that correct?

20 A Yes, ma'am, I did.

21 Q And I'm going to show you what's been marked as
22 State's Exhibit Number 34 for ID. If this is Two
23 Notch, does that look like the Bi-Lo parking lot
24 (indicating)?

25 A Yes, ma'am, it does.

1 Q And I notice over it here it mentions that this is
2 Rabon Road.

3 A It is.

4 Q And is this a fair general overview of the Bi-Lo
5 parking lot?

6 A It is.

7 MS. CAMPBELL: Your Honor, at this time I
8 offer State's Exhibit 34.

9 MR. SCHNEE: No objection.

10 THE COURT: 34 is a different view of ---

11 MS. CAMPBELL: This is the Bi-Lo parking lot
12 versus the Big Lots. This is further down the road.

13 (Whereupon, State's Exhibit Number 34, Blowup
14 Photograph of 9003 Two Notch Road, was moved
15 into evidence.)

16 Q This actually shows -- well it doesn't show the
17 corner but this is Rabon Road over here?

18 A Uh-huh.

19 Q And this would be Two Notch. You mentioned the
20 Tripp's Cleaners. Is that located over here
21 (indicating)?

22 A It's on that end, yes, ma'am.

23 Q And he was coming down the road towards the Bi-Lo,
24 is that correct?

25 A He was.

1 Q And then how did he actually go into the parking
2 lot and end up with Mr. Hampton?

3 A Well he entered from that end (indicating, up top
4 ---

5 Q This end?

6 A --- around the Tripp's and he walked across the
7 parking lot. And Mr. Hinson (sic) was right in
8 this area here in front of the Citi Financial.

9 Q That's the actual Bi-Lo down there, isn't it?

10 A Right and he was right in here (indicating). And
11 that's where I followed him. I turned into the
12 Bi-Lo parking lot at that end. He walked across
13 and that's when I noticed him approach the tan
14 car, the vehicle.

15 Q And once the Defendant was able to gain control of
16 the car, which way did he go?

17 A He sped off here and made a left here (indicating)
18 and that's when the police apprehended him down
19 there.

20 Q Down Rabon Road?

21 A Yes, ma'am.

22 Q And the person that you -- that tried to get in
23 your car that you pushed away that you thought had
24 a weapon, and for the record, you thought he had a
25 weapon?

1 A Yes, ma'am, I did.

2 Q And that's why you pushed him off and ran around
3 the car?

4 A That's why.

5 Q And that's because of how he was holding his hand
6 in his coat?

7 A Yes, ma'am, as well people was yelling saying they
8 just been robbed.

9 Q The person that robbed you (sic), do you see him
10 in the courtroom?

11 A Yes, ma'am.

12 Q Can you point him out to the jury?

13 A Sitting next over there in the white shirt and
14 blue tie (indicating).

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

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 Q There's no doubt in your mind you thought he had a
19 gun?

20 A No, ma'am, ain't no doubt.

21 MS. CAMPBELL: Thank you.

22 THE COURT: Would y'all approach for just one
23 second.

24 (WHEREUPON, a bench conference was held
25 off the record, in the presence of the jury,

1 but out of the hearing of the jury.)

2 THE COURT: All right, Mr. Schnee, you may
3 cross-examine.

4 MR. SCHNEE: Thank you, Your Honor, may it
5 please the Court.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. SCHNEE:

9 Q When Mr. Murray first approached you, you got out
10 of the car and you saw him with his hands in his
11 pocket, was that both hands?

12 A No, sir. When he first approached me he tried to
13 lift the door handle to my vehicle.

14 Q Okay.

15 A And my doors automatically lock. And then I
16 proceeded to get out the vehicle and he approached
17 me like this (indicating).

18 Q Okay.

19 A And I pushed him off me.

20 Q So, you're in your car, the doors are locked. He
21 tries to open the door, it locked and then you get
22 out?

23 A No, sir. He approached my driver's side door. I
24 didn't know what he was doing or what was going on
25 because I didn't hear anything at the time. I

1 don't know if he was asking for money, wanted to
2 talk to me or what. I got out my vehicle,
3 approached him. That's when I heard people
4 yelling saying, he just robbed me. They was
5 pointing at him and I seen him like this
6 (indicating) and I pushed him off me.

7 Q Okay. So he tries to open your door. It is
8 locked but you decide to get out anyway?

9 A Well, I was parked there. That's where I was
10 going, to Big Lots shopping.

11 Q Okay.

12 A So I was going there anyway.

13 Q So did he have one hand or both hands in his
14 pockets?

15 A He had one hand in the pocket like this
16 (indicating).

17 Q Okay.

18 A Uh-huh.

19 Q Now, you say you thought he had a gun. Did he say
20 he had a gun?

21 A He didn't say it.

22 Q Did he say give me your money?

23 A Well, he didn't say anything.

24 Q Did he say, give me your car?

25 A No, he didn't.

- 1 Q Okay. He's just standing there, he has one hand
2 in his pocket ---
- 3 A No, he wasn't standing there. Prior to him
4 standing there, he tried to lift my door handle to
5 get in my ---
- 6 Q I understand that.
- 7 A Okay.
- 8 Q But I'm talking about when you're out of the car
9 and you're standing in front of him. He's got one
10 hand in his pocket ---
- 11 A And he's approaching me.
- 12 Q Okay. He's got one hand in his pocket?
- 13 A Uh-huh.
- 14 Q You hear someone else yelling, he just robbed me,
15 right?
- 16 A Uh-huh.
- 17 Q And at that point you push him off?
- 18 A No, sir. At that point I look over to see them
19 pointing at him.
- 20 Q Okay.
- 21 A And he's still approaching me. That's when I
22 pushed him off me.
- 23 Q Okay.
- 24 A Uh-huh.
- 25 Q So you hear someone say and point, he robbed me?

- 1 A Pointing at him.
- 2 Q Okay and you push him off?
- 3 A And he's still approaching me in a threatening
- 4 manner. Then I push him off me.
- 5 Q You push him off?
- 6 A Uh-huh.
- 7 Q You use both your hands?
- 8 A Well, yes, sir. One, two, whatever means it took
- 9 for me to get him off me.
- 10 Q Okay. Did he actually try to grab you?
- 11 A No, I didn't give him a chance.
- 12 Q Okay. Now at that point you say that because of
- 13 how he was acting with his hand and what you heard
- 14 from the other people, you thought he had a gun?
- 15 A That was -- that was my perception, yes.
- 16 Q So Mr. Murray leaves and goes down, you say, Two
- 17 Notch Road, right?
- 18 A Yes, sir, he does.
- 19 Q So you start following him in your car?
- 20 A I get in my vehicle and I dial 911.
- 21 Q You immediately dial 911?
- 22 A Once I entered my vehicle, yes.
- 23 Q Okay. From the time that you push him off to the
- 24 time you call 911, how long is that?
- 25 A I don't remember, sir, give or take 5 to 15, 10

- 1 minutes, I don't know. It could have been a
2 matter of seconds. Everything was going so fast.
3 Q Okay. But it was going fast?
4 A Not that fast, not enough for me to see what was
5 going on.
6 Q Okay. But you got in the car and you called 911?
7 A I did.
8 Q 15, 20 seconds, something like that?
9 A Give or take, I don't know for sure.
10 Q Okay. So you call 911, you're relaying
11 information and you start following Mr. Murray?
12 A Yes, sir, I did.
13 Q You start following a man that you think has a
14 gun?
15 A Well, whether he had a gun or not, you know, I
16 followed him.
17 Q Okay. But you're testifying now that you thought
18 he had a gun at the time?
19 A That was my perception.
20 Q And you're following in your car. How far behind
21 are you?
22 A 30, 40 feet maybe.
23 Q Okay.
24 A Give or take, uh-huh.
25 Q And you follow him the entire time until the

1 police ---

2 A. The entire time. Yes, sir, I sure did.

3 MR. SCHNEE: Okay, no further questions,

4 thank

5 you.

6 THE COURT: Okay. Anything on redirect?

7 MS. CAMPBELL: No, sir.

8 THE COURT: All right. You may step down,

9 Mr. Woods.

10 (The witness leaves the witness stand.)

11 THE COURT: I'm going to give the jury a

12 little short break. I don't know whether you need one

13 or not but I'm going to give you one anyway. I think

14 it's about time considering the opening statements and

15 all that.

16 I'll probably give you 10 or 15 minutes. An

17 opportunity to refresh yourselves. And I've got to

18 continually remind you, please don't talk about this

19 case, okay? If you want some Cokes or something like

20 that, ask the Bailiff. They can accommodate you.

21 They'll be happy to do so.

22 Thank you all so very much. Go to the jury

23 room, just don't talk about the case, once again.

24 (The jury retires from the courtroom at

25 approximately 11:15 A.M.)

1 THE COURT: All right. Anything we need to
2 take up? Give everybody a chance to go to the
3 bathroom, whatever you need to do, we'll come back. At
4 about 11:30 we'll get started back and then we'll go
5 till about 1:00.

6 Is that good? Is that going to affect your
7 scheduling?

8 MS. CAMPBELL: No.

9 THE COURT: Okay, that's about what we'll do.

10 (The Court was in recess.)

11 MS. CAMPBELL: Your Honor, the next witness
12 is Mr. Langford and I've been talking to his wife. He
13 is having problems hearing in here with the echoes. Si
14 it may just be a little bit ---

15 THE COURT: That's fine.

16 MS. CAMPBELL: --- labored.

17 THE COURT: He -- you remember yesterday he
18 approached the bench and told me that. I think you
19 were present, Mr. Schnee. So we'll just take it real
20 slow and do the best we can.

21 MS. CAMPBELL: Thank you, Your Honor.

22 THE COURT: And I'll be happy to explain that
23 to the jury if you want me to.

24 MS. CAMPBELL: That would be great.

25 THE COURT: All right, I'll do that. You

1 have no objection, do you, Mr. Schnee?

2 MR. SCHNEE: Of going slow, no, Your Honor.

3 THE COURT: No, of explaining that he has
4 difficulty hearing. And I'm sure he's been married for
5 a long time so his wife tells him what he wants to know
6 anyway. He didn't hear that, did he?

7 (Laughter.)

8 MR. SCHNEE: I have no objection to that
9 instruction, Your Honor.

10 THE COURT: Bring the jury in, please.

11 (The jury returned to the courtroom at
12 approximately 11:35 A.M.)

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

14 THE COURT: All right. Welcome back, Mr.
15 Foreman and members of the jury. Our next witness is
16 Mr. Walter Langford. Not only is he a witness but he
17 is a victim, I should say alleged victim would be
18 proper. He's 89 years old. He has difficulty hearing
19 so it might be slow and tedious. But at any time you
20 can't quite hear something, raise your hand, let me
21 know and we'll try to back up a little bit. So I'm
22 going to ask you on behalf of everybody involved for
23 your patience and understanding.

24 You may call Mr. Langford.

25 MS. CAMPBELL: May it please the Court. The

1 State calls Mr. Langford.

2 (Pause.)

3 THE COURT: And we can swear him from there.

4 (WALTER LANGFORD, having first been duly
5 sworn, testified as follows:)

6 THE COURT: All right.

7 MS. CAMPBELL: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q You okay?

11 A (Affirmative response.)

12 Q Mr. Langford, how old are you?

13 A 89.

14 Q And do you live here in Columbia?

15 A I do.

16 Q And how long have you lived here in the Columbia
17 area?

18 A Early 60's.

19 Q Early 60's you moved here?

20 A I came here from Texas and bought some land right
21 out of Lexington.

22 Q Okay. And are you married?

23 A Pardon?

24 Q Are you married?

25 A 20 years.

1 Q And is your wife here in the courtroom?

2 A Right.

3 Q Is she right back here?

4 A She's a doll.

5 (Laughter.)

6 Q That's good. What did you used to do? Are you
7 retired now?

8 A Yes.

9 Q And what did you used to do for a living?

10 A I was chief metal and steel mill superintendent
11 for R. J. Letourneau (phonetic) for 27 years.

12 Q For 27 years.

13 A He's a very religious man and a big supporter of
14 Billy Graham.

15 Q Okay.

16 A And a little bit of it rubbed off on me.

17 Q And what -- did y'all produce steel?

18 A Pardon?

19 Q Did y'all make steel?

20 A Yes, steel plates.

21 Q And ---

22 A I made the plate for the first nuclear submarine,
23 22,000 feet deep it went. They decommissioned it
24 last year and sent me a section in the form of a C
25 that weighs about three pounds and it's mounted on

1 like a preacher's stand. And the lettering on it
2 is 14 karat gold. I wouldn't take a million
3 dollars for it.

4 Q I don't blame you. I want to turn your attention
5 back to February 17th of this year when you all
6 were at the Big Lots parking lot and the General
7 Dollar Store?

8 A Yeah.

9 Q You remember that day?

10 A I do.

11 Q And how -- how did you get there?

12 A My wife drove me. I have not been able to drive
13 for four years because of a health condition. I
14 had to sell my car. And she chauffeurs me every
15 place I go.

16 Q And that day, where were y'all going?

17 A She was going to shop at that shopping center and
18 usually I stay in the car when she's in especially
19 a lady's shop I'll stay in car. And I stayed in
20 the car that day.

21 Q Okay. And that's not unusual for you to get out
22 of the house and go with her?

23 A Right.

24 Q And that day when y'all were -- were y'all parked
25 in the parking lot right there on Two Notch?

1 A Correct.

2 Q And she went into the store?

3 A Correct.

4 Q And tell the jury what happened after she went
5 into the store? You were in the parking lot
6 sitting in the car?

7 A I was sitting there just enjoying the sunshine.
8 My health doesn't permit me to do any extra -- I
9 mean, any exercises. And all of a sudden the
10 driver's door opened and I was sitting in the
11 passenger side of the front seat.

12 Q Yes, sir.

13 A And this person entered through the driver's side.

14 Q Okay. And what happened next?

15 A He had on a jacket that's a lot more fuller than
16 this one (indicating), and he came right up in
17 between my legs and he had it fixed some way. I
18 don't know yet whether it was a gun or whether it
19 was a fake.

20 Q So did he have ---

21 A He claimed it was a gun. And he asked me, he
22 said, give me your money, all of your money or
23 I'll kill you. And he hesitated just a short time
24 and he repeated, he said, give me your money or I
25 will kill you.

1 The first thing I thought of was that lady
2 that got killed two weeks before in the driveway
3 of the bank here in Columbia. It still comes into
4 my memory at 2:00 in the morning, I can't get it
5 out because I came that close to being that woman.

6 Q Okay. And when he had -- his hand was up under
7 his jacket, is that what you said?

8 A Yes.

9 Q And then you thought it was a gun?

10 A I was sure it was a gun.

11 Q And he actually pointed it at you?

12 A Pardon?

13 Q Did he point it at you?

14 A No, I never did see it. I could just see the
15 formation of it. It looked like a gun barrel
16 through his jacket.

17 Q And what did he say to you? What did he say?

18 A Give me all your money or I will kill you, and he
19 repeated it.

20 Q And so what did you do?

21 A I reached in my hip pocket and pulled out my purse
22 and handed it to him and begged him to take the
23 money but leave the papers and the pictures and
24 the credit cards in it but he didn't. He put it
25 in his pocket and he left.

1 He got out of the car and he started walking
2 up an incline slightly. And about 50 feet from
3 there was an old red car sitting there and there
4 was no vehicles around the area. And he went in
5 and sat down in the car and tried to crank it and
6 it wouldn't crank.

7 Then he got out and started walking. And
8 when he did, I got of my car, or my wife's car,
9 and started waving my arms and hollering, that man
10 just robbed me, that man just robbed me.

11 Q Okay. And did he go up toward Two Notch? Did you
12 see which direction he went?

13 A He went up towards Two Notch.

14 Q And once you got out the car, after you yelled
15 that he robbed you, where did you go?

16 A When I got out of the car I went into the store
17 where my wife was shopping to talk to her about it
18 and we came out together. And there was some
19 people congregated around her car and was talking
20 about it and they turned out to be friends of our
21 situation. We didn't know them personally but
22 they knew that he had robbed me, they had heard me
23 screaming.

24 Q They had heard you screaming so they came over to
25 help you?

1 A Yeah.

2 Q And when he took your wallet, you mentioned it had
3 some credit cards?

4 A Pardon?

5 Q Your wallet had credit cards in it?

6 A Yes, ma'am.

7 Q You still got your wallet, that's it?

8 A That's several in it.

9 Q Okay. And this is your wallet today and this is
10 the wallet he actually took that day?

11 A That's the same wallet.

12 Q And you mentioned you begged him to leave your
13 pictures and your credit cards and your papers?

14 A Pardon?

15 Q You begged him just to take the money and leave
16 your wallet?

17 A He didn't bother the wallet. He threw it out when
18 some of these friends ---

19 Q Okay. Let me stop you there though. When he took
20 your wallet though, he took your whole wallet?

21 A Yes.

22 Q And you asked him not to take the whole wallet?

23 A I asked him to just to take the money. And he
24 wouldn't do it.

25 Q And later that day did you go -- you mentioned --

1 did the police come?

2 A Yes.

3 Q And did you go down to the Sheriff's Department?

4 A I think it was the Sheriff's Department. My wife
5 did a lot more talking to them than I did because
6 I was so upset, I didn't know from a hole in the
7 ground.

8 Q Uh-huh. But later that day, that afternoon, did
9 you go meet with the investigator at the Sheriff's
10 Department, this man (indicating)?

11 A I think so.

12 Q And did you give him a statement? Let me show you
13 this. Do you remember giving him a statement?

14 A That's it.

15 Q And you told him just what happened like you're
16 telling ---

17 A Yep.

18 Q --- these people today?

19 A Right.

20 Q And while you were at the Sherriff's Department,
21 did he return your wallet to you? Did he give you
22 back your wallet?

23 A I think the friends -- let's see, there's some
24 friends that was chasing him in their car and they
25 saw him throw the wallet into some weeds and ---

1 Q They got it back for you?

2 A One of them got out and got the wallet and got
3 back in the car.

4 Q Could that have been a deputy?

5 A They came to our vehicle then and turned the purse
6 over to me.

7 Q Okay. And then they later photographed what was
8 in your purse, is that right?

9 A Yes.

10 Q I'm going to show you State's Exhibit 9, 10 and
11 11. Do you recognize these pictures?

12 A That's the money. And that's the credit cards.
13 And that's me.

14 Q That's your license?

15 A (Affirmative response.)

16 MS. CAMPBELL: Your Honor, at this time we
17 would offer State's 9, 10 and 11.

18 MR. SCHNEE: No objection.

19 THE COURT: 9 and 11?

20 MS. CAMPBELL: 9, 10 and 11.

21 THE COURT: What? Oh, 9, 10 and 11.

22 (Whereupon, State's Exhibit Number 9,
23 Photograph of Contents of Mr. Langford's
24 Wallet, was moved into evidence.)

25 (Whereupon, State's Exhibit Number 10,

1 Photograph of Contents (Money) of Mr.
2 Langford's Wallet, was moved into evidence.)
3 (Whereupon, State's Exhibit Number 11,
4 Photograph of Contents (Driver's License) of
5 Mr. Langford's Wallet, was moved into
6 evidence.)

7 Q Mr. Langford, I'm almost through. You remember
8 you said he went and got into a red vehicle?

9 A I'm sorry?

10 Q A red car, did he go try to start a red car?

11 A Yes.

12 Q I'm going to show you State's Exhibit 5 and 6.

13 A That looks like it.

14 Q That looks it.

15 MS. CAMPBELL: Your Honor, at this time we
16 would offer State's 5 and 6.

17 MR. SCHNEE: No objection.

18 (Whereupon, State's Exhibit Number 5,
19 Photograph of Red Car - Side View, was moved
20 into evidence.)

21 (Whereupon, State's Exhibit Number 6,
22 Photograph of Red Car - Back View, was moved
23 into evidence.)

24 Q And here's your wallet back, thank you.

25 A Thank you.

1 Q Mr. Langford, you remember this, what happened
2 that day pretty well, don't you?

3 A Yes.

4 Q Is there any doubt that you thought he had a gun?

5 A I'm sorry?

6 Q Did you think he had a gun?

7 A I was sure it was a gun but I did not see anything
8 except the bulge in his jacket and it was sharp
9 pointed. It could have been a finger and it could
10 have been a gun barrel, I don't know.

11 MS. CAMPBELL: Thank you.

12 THE COURT: Mr. Schnee.

13 MR. SCHNEE: May it please the Court.

14 CROSS-EXAMINATION

15 BY MR. SCHNEE:

16 Q Good morning, sir. I just have a few quick
17 questions for you. You said you're sure that he
18 had a gun, right?

19 A As I said, I do not know whether it was a real gun
20 or whether it was a finger.

21 Q Okay.

22 A He had on the big heavy jacket.

23 Q Okay. Was his hand in a pocket or was it under
24 the coat?

25 A It was underneath it.

1 Q Underneath it?

2 A And it was sticking out sharp like it was a gun
3 barrel.

4 Q Okay. And after this man got in the car sitting
5 next to you?

6 A I'm sorry?

7 Q After he got in the car sitting next to you, you
8 gave him your wallet?

9 A Yes.

10 Q Okay. And then he got out of the car?

11 A And he kept the wallet.

12 Q Okay. How long was he in the car?

13 A I'm sorry.

14 Q How long was he in the car?

15 A Oh, three or four minutes.

16 Q Three or four minutes?

17 A Yes.

18 Q Okay. I know you have some hearing problems, do
19 you have any ---

20 A You better believe it.

21 Q You do?

22 A I've got an echo in here for some reason.

23 Q I understand. Do you have any vision problems?

24 Any vision problems?

25 A My vision's good.

- 1 Q It's good?
- 2 A Yeah.
- 3 Q Okay. Did the police show you any photo lineups?
- 4 Did they show you pictures that look like this?
- 5 A I can see, yes.
- 6 Q Did the police show you ---
- 7 A That's looks like him.
- 8 Q Okay. Did you do one of these lineups that day?
- 9 A No.
- 10 Q Okay. Did they ask you to?
- 11 A I don't need it.
- 12 Q But did the police ask you that day?
- 13 A Pardon?
- 14 Q Did the police ask you back in February to pick
- 15 someone out of a photo lineup?
- 16 A I don't recall.
- 17 Q Okay. You mentioned you were terrified because of
- 18 the woman that was shot in Forest Acres at the
- 19 ATM?
- 20 A I'm sorry?
- 21 Q The woman in Forest Acres at the ATM, you said you
- 22 were terrified. That was the first thing that
- 23 came to your mind. Do you remember that?
- 24 THE COURT: Speak up, Mr. Schnee.
- 25 Q Do you remember the woman in Forest Acres back in

1 February?

2 A Which woman forest ---

3 Q The ATM robbery, you said you were scared because
4 of that, do you remember that?

5 A No, I don't.

6 Q Do you remember telling the police you were scared
7 because you thought you were going to die like the
8 woman?

9 A I'm sorry?

10 Q Do you remember telling the police that you
11 thought you were going to die because of the woman
12 ---

13 A I just knew I was going to die.

14 Q Okay. Did you say you were scared ---

15 A He made a believer out of me quick.

16 Q Okay. You don't remember mentioning the ATM
17 robbery, the woman that got murdered, you don't
18 remember that?

19 A Huh-uh.

20 Q Okay.

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

22 (Pause.)

23 MR. SCHNEE: May I approach the witness, Your
24 Honor?

25 THE COURT: Sure. I assume that is a copy of

1 his statement.

2 MR. SCHNEE: Yes, Your Honor.

3 THE COURT: All right.

4 Q Mr. Langford, do you remember giving this
5 statement to the police?

6 A That's my signature.

7 Q Okay. Can you read what's on here or is it too
8 small? You don't have to read out loud, just can
9 you read it?

10 A Do you want me to ---

11 Q No, you don't need to. You're able to read this
12 though, right?

13 A Yeah, I can read it, yeah.

14 Q If you could just look down over here (indicating)
15 ---

16 THE COURT: What page, Mr. Schnee?

17 MR. SCHNEE: The first page, the last
18 question.

19 THE COURT: All right.

20 Q Right over here it says, were you in fear of your
21 life when it happened, is that what it says?

22 A You better believe it.

23 Q Okay. Your answer was, yes, I thought he had a
24 gun. I kept thinking about that poor woman at the
25 Forest -- at the ATM in Forest Acres?

1 A Yeah.

2 Q You remember that?

3 A Yeah.

4 Q Okay. That's what was on your mind when that
5 person got in your car?

6 A (Affirmative response.)

7 Q Okay.

8 MR. SCHNEE: I have no further questions,
9 Your Honor.

10 THE COURT: All right. I'm going to mark
11 that statement as a Court Exhibit, okay, just for
12 purposes of the record.

13 (Whereupon, Court's Exhibit Number 5,
14 Statement of Walter Langford, was marked for
15 identification.)

16 THE COURT: Anything further, Mr. Schnee.

17 MR. JOPHLIN: No, Your Honor.

18 THE COURT: Anything on redirect?

19 MS. CAMPBELL: No, sir.

20 THE COURT: All right. Andrews (phonetic),
21 help Mr. Langford back to his seat, will you?

22 (The witness leaves the witness stand.)

23 (Pause.)

24 THE COURT: All right, you may call your next
25 witness.

1 MR. JOPHLIN: Thank you, Your Honor. The
2 State calls Jimmy Hampton.

3 (JIMMY L. HAMPTON, having first been duly
4 sworn, testified as follows:)

5 DIRECT EXAMINATION

6 BY MR. JOPHLIN:

7 A My name is Jimmy L. Hampton.

8 Q Thank you, Mr. Hampton. Where are you currently
9 employed, Mr. Hampton?

10 A I'm employed with the South Carolina Department of
11 Health and Human Services.

12 Q And do you live here in Richland County?

13 A Yes, I do.

14 Q And did you have an occasion to be at the Bi-Lo
15 Shopping Center on Two Notch back on February 17th
16 of this year?

17 A I was.

18 Q And what occasion did you have to be at that
19 Shopping Center on February 17th?

20 A Actually I stopped by to pay a student loan on my
21 son, who's going to school, at Citi Financial. We
22 pulled up toward the curb there and I asked him to
23 run in and drop the check off.

24 Q And you say you -- I'm sorry, you were with your
25 son. How old is your son?

- 1 A My son was -- he's 20.
- 2 Q And he's in school right now?
- 3 A He's at -- well he started -- he's going part time
- 4 to Midlands Tech and part time working..
- 5 Q And what kind of vehicle were you driving that
- 6 day?
- 7 A 1996 Toyota Corolla.
- 8 Q And do you recall the color of the vehicle?
- 9 A It is cashmere beige, I think that's the technical
- 10 term.
- 11 Q That's sort of a silvery -- in between like silver
- 12 and ---
- 13 A Actually it's kind of like brown like, tan like.
- 14 Q Okay. And you had pulled up to Citi Financial.
- 15 I'm going to show you what's been marked as
- 16 State's Exhibit Number 34. And does that look
- 17 like it's the Bi-Lo Shopping Center we're talking
- 18 about?
- 19 A Yes, it does.
- 20 Q And you're familiar, that would be the Bi-Lo down
- 21 there (indicating)?
- 22 A This would be the Bi-Lo and I think we were right
- 23 here (indicating). I think so.
- 24 Q Okay. And you pointed right there (indicating)?
- 25 A I'm thinking somewhere right in there (indicating)

1 against the curb.

2 Q Okay. And I want to show you what's been marked
3 as State's Exhibit Number 22 for identification.
4 Is that the Citi Financial you're speaking of you
5 stopped by with your son?

6 A That's correct.

7 Q Okay.

8 MR. JOPHLIN: Your Honor, at this time we'd
9 offer in State's Number 22.

10 MR. SCHNEE: No, objection.

11 THE COURT: And this is the picture of Citi
12 Fin -- front of it?

13 MR. JOPHLIN: Yes, sir.

14 (Whereupon, State's Exhibit Number 22,
15 Photograph of Citi Financial, was moved into
16 evidence.)

17 Q And can you show the jury, Mr. Hampton, where you
18 were parked in relation to that front door?

19 A I actually pulled up on the curb, almost on the
20 curb. My son was in the passenger side, right in
21 front almost to the door and I asked him to run in
22 and just drop the check off. Don't worry about a
23 receipt, just I was going to use my check as my
24 receipt. Just drop it off.

25 Q And so you sort of parked in between the two

1 bushes ---

2 A Right, uh-huh.

3 Q --- right there?

4 A Yes.

5 Q And you were driving, he was in the passenger
6 side?

7 A I was driving.

8 Q Now, let me show you what's been marked as State's
9 Exhibit Number 23. Is that another view of the
10 Citi Financial, more incorporates the Bi-Lo
11 nearby?

12 A Yes.

13 Q And the parking lot?

14 A Uh-huh, yes, it is.

15 Q And State's Exhibit Number 24, does that show the
16 front of the Bi-Lo and the exit on to Rabon Road?

17 A That's correct.

18 Q That would sort of be the view you had that day
19 out of your front windshield?

20 A Yes.

21 Q Okay. And do these pictures fairly and accurately
22 depict those areas?

23 A Yes, they do.

24 MR. JOPHLIN: Your Honor, at this time we
25 would offer State's Exhibit Numbers 23 and 24.

1 MR. SCHNEE: No objection.

2 THE COURT: All right.

3 (Whereupon, State's Exhibit Number 23,
4 Photograph of Shopping Plaza Further Out, was
5 moved into evidence.)

6 (Whereupon, State's Exhibit Number 24,
7 Photograph of Bi-Lo and Exit to Rabon Road,
8 was moved into evidence.)

9 Q And, Mr. Hampton, again we're looking at State's
10 Exhibit Number 23, you're parked in front of those
11 two little small bushes there (indicating)?

12 A Somewhere in here (indicating).

13 Q Right around ---

14 A Almost in front ---

15 Q Right in front of the mailbox?

16 A Yeah, almost in front of the front door.

17 Q Okay. And that's only just a couple of stores
18 down from the Bi-Lo?

19 A Right, that's correct.

20 Q And is your son -- as he went in to pay that bill
21 with the check, did he drop anything on the way
22 out or -- explain what happened when he walked --
23 got out of the car and was walking towards the
24 door.

25 A Well actually, he was -- he got out of the vehicle

1 and, you know, these kids have these little
2 sweater caps, it was February. And I think it was
3 Miami Hurricanes little sweater cap. He dropped
4 it and I reached over -- I didn't take my seatbelt
5 but I opened the door. It's a little Corolla so
6 I'm kind of tall, I could reach. And I reached
7 over to grab it off the ground. And by the time I
8 got it up and closed the door, the person was
9 approaching the back and he snatched the door
10 open.

11 Q Now, did you see -- as you were sitting in your
12 car, did you see anybody approaching your car
13 before this happened?

14 A Actually, before I opened the door to get the
15 actual cap, I could see in my review mirror a
16 gentleman who was behind me coming up. But he was
17 walking like in the roadway. So I didn't think
18 there was enough space for anybody to come on that
19 side because I was almost at the curb. And just
20 didn't expect that.

21 Q And did you see -- that person you saw in your
22 review mirror, did you see what that person was
23 wearing?

24 A Yes, he was wearing a -- looked like some type of
25 pea coat or something like that. It was wool

1 looking. It looked like one of those old sailor's
2 double-breasted buttons. Looked like a little
3 wool coat, jacket.

4 Q And did -- was -- were there a lot of people in
5 the parking lot that day? Were there a lot of
6 people milling around your car?

7 A No. There was a gentleman that was -- had on head
8 things and I think he was trimming the bushes
9 right there in front.

10 Q That's the only other person you recog -- you
11 noticed around ---

12 A That -- yeah. And I think that was the noise that
13 was -- was just hedging the bushes.

14 Q Now, you said you noticed a person coming from
15 behind with a navy pea coat on?

16 A Uh-huh.

17 Q Coming from behind your vehicle?

18 A Yeah.

19 Q You are reaching over -- you open the passenger
20 door, reaching over to get your son's cap?

21 A Right, I saw it drop and I picked it up.

22 Q And then you go to shut it?

23 A Uh-huh.

24 Q And you feel somebody grab you?

25 A I could see him coming. He rushed over to grab

1 and snatch the door open on the passenger side.

2 Q He grabbed it on the passenger side?

3 A He snatched the door open on the passenger side.

4 Q Snatched it open?

5 A Yeah, uh-huh, before I could actually hit the
6 lock.

7 Q And then what happened?

8 A He jumped in and he said, take off, bro. And the
9 second time he said it with more authority, take
10 off, bro! He had his hand wasn't visible, it
11 looked like it was in his jacket. It looked like
12 something -- had -- something was protruding out,
13 clearly there was some type of weapon. And I
14 thought he had some type of weapon.

15 Q Now was it in his -- his -- in his pocket or was
16 his coat buttoned and ---

17 A The coat was buttoned.

18 Q The coat was buttoned?

19 A The coat was buttoned.

20 Q And did he make -- did you see his hand like this
21 (indicating) or was it in like his pocket?

22 A I'm not sure how his hand was but it was
23 protruding out from his jacket as if he had some
24 type of weapon.

25 Q And when this -- or did you believe it was a

1 weapon?

2 A Yes, I did.

3 Q And what happened then, after he told you to take
4 off?

5 A I still had -- I still had my seatbelt on and the
6 car was still on and I wasn't going with him. So
7 I kind of did that and my initial instinct was to
8 kind of push and get out and I did get out. And
9 then I -- when I stepped out of the vehicle I
10 think I got really mad and that's when we began to
11 tussle to try to get him out of my vehicle.

12 Q And was he still in the passenger seat ---

13 A He was still in the passenger seat and he was
14 struggling trying to get to the other side. I
15 went back in and grabbed him by the jacket. And I
16 was trying to snatch him from my vehicle. And the
17 jacket popped, the buttons. I could feel them and
18 I kind of fell back into the roadway. The buttons
19 kind of hit me in the face. And I still had an
20 opportunity, he was not completely over the
21 console, to grab him again. But by the time I
22 grabbed him again, I think he was kind of like
23 middle-ways the console and middle-ways the
24 passenger and he hit the gear and started to drive
25 off.

1 He pulled me for about five or seven yards or
2 something like that. And then as the vehicle
3 began to speed up, I kind of let go.

4 Q And at this time you're basically just stepping by
5 the ---

6 A Kind of stranded, uh-huh.

7 Q And what did you see next?

8 A Just a few second later, Richland County, God
9 bless them, they were on it, almost -- jetting
10 through the parking lot. I think as soon as he
11 turned out of Bi-Lo, they jetted by, you know,
12 onto Rabon Road. They -- they were just hitting
13 the speed humps in there and they were coming
14 through. I think they came in from -- I couldn't
15 tell if it was from the Tripp's side where Tripp's
16 Cleaners was or if they came in by the bank. But
17 they were there pretty quick.

18 Q Okay. And then at that time, you saw them come in
19 behind your vehicle as it left?

20 A Yes, uh-huh.

21 Q And let's go back a little bit, while you were
22 fighting with this person who came in your car,
23 were you face to face with him?

24 A Yes, I was.

25 Q Were you relatively close?

- 1 A It's a Corolla. It's a very small vehicle. And,
2 yeah, I kind of looked at him. I thought he was
3 crazy at first. But I took a good look at him.
- 4 Q And you were able to see his face. His face ---
- 5 A I was able to see his face close-up and then I was
6 able to see his face as we kind of struggled from
7 me trying to get him out of my vehicle.
- 8 Q After -- so you're just standing -- then you're
9 standing by Bi-Lo for a little while?
- 10 A Yes.
- 11 Q Does anybody come back and notify you of what's
12 going on?
- 13 A Yes, I think one of the deputies came back and
14 notified me and told me that they had him up Rabon
15 Road and they were going to take me up to my
16 vehicle, my son and myself.
- 17 Q And did you and your son, did you get into a
18 deputies car and ---
- 19 A Yes, we did.
- 20 Q --- drove down Rabon Road?
- 21 A Yes, we did.
- 22 Q And did you have -- when you arrived where your
23 car was, were you able to identify the person that
24 you thought took it from you?
- 25 A Yes.

1 Q And you made an identification at that point?

2 A I made an identification immediately, uh-huh.

3 Q And you made an identification based on what you
4 saw at the Bi-Lo Shopping Center?

5 A Based on the individual that got in my vehicle,
6 the individual I had just struggled with.

7 Q And were you positive with your identification?

8 A Absolutely.

9 Q From that point did you immediately get your
10 vehicle and go back home or?

11 A No, no, no. I -- they had to -- I think they did
12 some testing. They went all through the vehicle.
13 They were doing some swabs, I think some DNA swabs
14 and things like that that they still had to do.

15 Q So they sort of processed your vehicle a little
16 bit?

17 A Right, right.

18 Q And then I think -- did you go to the Sheriff's
19 Department either that day or the next day?

20 A Well, I went that day.

21 Q That day?

22 A I went that day and -- to the Sheriff's
23 Department.

24 Q At that point you met with an investigator and
25 gave him a written statement?

1 A Yes, sir.

2 Q Detailing what had happened to you that day?

3 A That's correct.

4 Q And I believe they also may have shown you some --
5 a set of six photographs?

6 A Yes, they did.

7 Q I'm going to show you what's been marked as
8 State's Exhibit Number 2 for identification. They
9 showed you a series of six photographs. Did they
10 in any way tell you that the person who took your
11 car was in these photographs?

12 A No.

13 Q Did they suggest to you in any way whom to pick
14 out of these photographs?

15 A No, they did not.

16 Q Or even if the person that did this was in these
17 photographs?

18 A No, they did not.

19 Q But when they showed you what's been marked as
20 State's Exhibit 2, were you able to pick out one
21 of those photographs?

22 A As soon as the paper hit the table.

23 Q And that would be on the lower right hand corner?

24 A That's correct.

25 Q And did you signify which photograph it was in any

1 way?

2 A I did. I think I circled that.

3 Q And did you also sign your name?

4 A And I signed my name.

5 Q And they also -- what's been marked as State's
6 Exhibit Number 1, had you fill out an Affidavit?

7 A Yes, they did.

8 Q Saying that you picked out this particular
9 photograph?

10 A That's correct.

11 MR. JOPHLIN: Your Honor, we'd offer in
12 State's Exhibit Numbers 1 and 2 into evidence.

13 MR. SCHNEE: No objection.

14 THE COURT: All right, without objection, 1
15 and 2, is that correct?

16 MR. JOPHLIN: Yes, sir.

17 (Whereupon, State's Exhibit Number 1, Photo
18 Lineup Form by Mr. Hampton, was moved into
19 evidence.)

20 (Whereupon, State's Exhibit Number 2, Photo
21 Lineup Picked by Mr. Hampton, was moved into
22 evidence.)

23 Q And the photograph you picked out, you picked that
24 person out because that's the person that came in
25 and took your car?

1 A That's correct.

2 Q And that you struggled with?

3 A Yes.

4 Q And that you saw wearing that navy blue pea coat?

5 A That's correct.

6 Q Or the navy coat you were talking about, the
7 sailor's coat?

8 A Yes.

9 Q And that's the person you saw take your car and
10 drive away?

11 A Yes.

12 Q And also the person that had his hand in his coat
13 and you thought had a weapon?

14 A That's correct.

15 (Pause.)

16 Q Let me show you briefly what's been marked as
17 State's Exhibit Number 26.

18 A That's my vehicle.

19 Q That's your vehicle?

20 A Yes.

21 Q And who are -- you can see the deputy right there
22 in the orange vest?

23 A Yes.

24 Q Who are these two other individuals standing
25 closest by your vehicle?

1 A That is my vehicle and that is my wife. She came
2 over from the school, my son called her.

3 Q And that's your son?

4 A That's my son.

5 Q Okay. And does that fairly and accurately depict
6 your vehicle as it looked that day?

7 A Yes.

8 MR. JOPHLIN: Your Honor, at this time I
9 would move Number 26 into evidence.

10 MR. SCHNEE: No objection.

11 THE COURT: Without objection.

12 MR. JOPHLIN: Your Honor, as housekeeping,
13 just be sure I also moved in 22, 23 and 24.

14 THE COURT: Previously, no objections. That
15 was Citi Financial's parking lot, the areas.

16 MR. JOPHLIN: Yes, sir, thank you.

17 (Whereupon, State's Exhibit Number 26, Photo
18 of Corolla Side View with Three Individuals,
19 was moved into evidence.)

20 Q And, Mr. Hampton, do you see the person that came
21 up behind your car, came into your car, had a
22 struggle with and you thought was armed with a gun
23 and who eventually drove off with your car without
24 permission?

25 A Yes, I do.

1 Q Do you see him in the courtroom today?

2 A Yes.

3 Q Can you point him out for the jury?

4 A Right here (indicating).

5 MR. JOPHLIN: Let the record reflect he's
6 pointing out the Defendant.

7 THE COURT: All right.

8 MR. JOPHLIN: Thank you, Your Honor. Nothing
9 further.

10 THE COURT: Mr. Schnee.

11 MR. SCHNEE: Please the Court.

12 CROSS-EXAMINATION

13 BY MR. SCHNEE:

14 Q Good afternoon.

15 A Good afternoon.

16 Q I just have a few questions for you.

17 A Yes, sir.

18 Q I'm showing you Exhibit Number 22. This is the
19 Citi Financial you say?

20 A Yes, sir.

21 Q Okay. This is a banking institution?

22 A Actually it's a ---

23 Q Financial services?

24 A Yes, uh-huh.

25 Q Okay. The front of this, what is that?

1 A What is what?

2 Q The actual front of the Citi Financial, what is it
3 made out of? Is it stone, is it glass?

4 A The building itself?

5 Q Not the building, the actual store front itself?

6 A Well, they've got brick columns.

7 Q Uh-huh. And in between the brick columns there's
8 glass, right?

9 A Well, yes, on the walls. Yes, uh-huh.

10 Q Okay. And you can see the counter inside through
11 the glass, can you not, from looking outside in
12 that picture?

13 A I can't tell if that's the counter or not. I go
14 in there all the time but I ---

15 Q Okay. The counter is right inside the ---

16 A The counter is right inside. The counter, I think,
17 is to the right. I think where you're pointing is
18 to the left.

19 Q Okay. And you said when Mr. Murray came up and
20 got in your car, he had a hand inside of the
21 jacket?

22 A Yes.

23 Q Left hand or right hand?

24 A I think it was right hand.

25 Q His right hand?

- 1 A Uh-huh.
- 2 Q So the furthest hand away from you?
- 3 A I think so.
- 4 Q Was it in the pocket or under the jacket?
- 5 A I don't recall. I just recall it was protruding
- 6 out.
- 7 Q Okay. He said to you, drive off, bro?
- 8 A He said, take off, bro.
- 9 Q Take off, bro. And you got out of the car?
- 10 A My first instinct was, I wasn't going anywhere.
- 11 He looked a little ---
- 12 Q Okay, but you got out of the car?
- 13 A Right.
- 14 Q And then afterwards, you reached in and grabbed
- 15 him?
- 16 A I got mad.
- 17 Q Okay, but you reached in and grabbed him?
- 18 A Yes, I did.
- 19 Q You pulled on his jacket?
- 20 A I tried to get him out of my vehicle.
- 21 Q Okay, through the closed car door?
- 22 A The car door was open.
- 23 Q It was open, okay.
- 24 A The car door was open. I was able to grab him
- 25 twice.

1 Q Okay. So you ---

2 A The first time the jacket, the buttons popped and
3 I went back in again.

4 Q Okay.

5 A Okay, and that's when he pulled off and took me
6 about five to seven yards.

7 Q Okay. This is the man you thought had a gun?

8 A Yes, I just lost it.

9 Q He said to you, drive off, bro? That's all he
10 said, he said that twice?

11 A Twice, the second time with more authority.

12 Q Did he say he had a gun?

13 A No, he did not.

14 Q Did he say, get out of the car or I'll shoot you?

15 A No, he did not.

16 Q He just had his hand in his pocket?

17 A He said take off, bro, with it protruding out like
18 he had a weapon.

19 Q But his only action is his hand in his pocket? He
20 didn't say he had a gun?

21 A No, he did not.

22 MR. SCHNEE: Okay, no further questions.

23 THE COURT: Finished, Mr. Schnee?

24 MR. SCHNEE: Yes, Your Honor.

25 THE COURT: All right. Anything on redirect?

1 MR. JOPHLIN: Briefly, Your Honor.

2 THE COURT: All right.

3 REDIRECT EXAMINATION

4 BY MR. JOPHLIN:

5 Q Mr. Hampton, your son, you said he went inside the
6 Citi Financial to pay a bill?

7 A That's correct.

8 Q And he was inside for the duration of this event?

9 A Uh-huh. Yes, that's correct.

10 MR. JOPHLIN: Nothing further.

11 THE COURT: Anything on recross?

12 MR. SCHNEE: Very briefly.

13 RECROSS-EXAMINATION

14 BY MR. SCHNEE:

15 Q This took place rather quickly, did it not? From
16 the time that Mr. Murray got in your car until the
17 time he took off?

18 A Just enough time for me, yeah, to struggle with
19 him but I think it happened pretty quickly.

20 Q Somewhere about 10 seconds maybe?

21 A I think it was more than 10 seconds. For me to
22 stumble back and to go in again, for me to get
23 out, to get the seatbelt off.

24 Q Okay.

25 A I think it was a little longer.

1 Q But it was relatively short.

2 A It was kind of a short period of time for the
3 struggle, I think it was.

4 MR. SCHNEE: Thank you, Your Honor.

5 THE COURT: Anything further?

6 MR. JOPHLIN: (Negative response.)

7 THE COURT: All right, you may step down, Mr.
8 Hampton.

9 (The witness leaves the witness stand.)

10 THE COURT: All right, call your next witness.

11 MS. CAMPBELL: The State calls Christopher
12 Duke.

13 (CHRISTOPHER DUKE, having first been duly
14 sworn, testified as follows:)

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

17 THE WITNESS: Christopher Duke.

18 DIRECT EXAMINATION

19 BY MS. CAMPBELL:

20 Q Mr. Duke, where are you employed?

21 A Richland County Sheriff's Department.

22 Q What do you do there, sir?

23 A I am a squad leader.

24 Q And as a squad leader, what do your duties
25 include?

1 A Some of my duties include to supervise anywhere
2 from seven to 10 deputies on the road and
3 responsible for what happens within the entire
4 area I work, Region 2, the northeast area.

5 Q I was getting ready to get to that. Region 2 is
6 the northeast area. What does that include?

7 A Two Notch Road, Rabon Road. Our boundaries are
8 pretty much from West Beltline to Sparkleberry
9 Lane to Farrow Road to I-77.

10 Q Back in February of -- or specifically February
11 17th of 2009, were you working that morning?

12 A I was.

13 Q And did you get a call over the radio about an
14 armed robbery?

15 A That is correct.

16 Q And where was that taking place as far as the
17 information that was relayed to you?

18 A We were getting information as it was being
19 relayed through Central Dispatch at 9221 Two Notch
20 Road, I believe the Big Lots. And while in route
21 we were getting updates that the suspect was on
22 foot headed toward Bi-Lo and 9003 Two Notch Road.

23 Q And how does that work? If a person say calls in
24 911 and is following someone, that information is
25 ultimately relayed to y'all on the road?

1 A It is.

2 Q And on that morning you were getting updates as
3 far as the location of the armed defendant?

4 A That's correct.

5 Q And ultimately -- where were you when you first
6 got called, do you recall?

7 A I was actually in the parking lot of our Region at
8 Columbia Mall.

9 Q And approximately how long did it take you to get
10 there that day?

11 A Four minutes.

12 Q And as you were approaching this area, you were
13 coming from Columbia Mall so you were going
14 outbound on Two Notch. Your information came that
15 something was happening in Bi-Lo parking lot?

16 A Actually that information didn't come until I was
17 in pursuit of the vehicle that had been reported
18 over dispatch.

19 Q Did you have an occasion to go into the Bi-Lo
20 parking lot that day?

21 A I did. I went directly there because that was the
22 last sighting of the suspect on foot.

23 Q And when you pulled into the parking lot, what did
24 you do?

25 A I was training a deputy. It was his first day out

1 of the Academy, Deputy Woodley. And we were
2 scouring the area. I had turned off my blue
3 lights and siren. As I was in there -- if he had
4 -- I know he had heard the sirens but seeing a car
5 with no emergency equipment on may be enough time
6 to get up on him.

7 Myself and Deputy Woodley both saw a vehicle
8 leaving the parking lot at a high rate of speed.
9 I turned on instinct basically to give chase to
10 the vehicle because I had other deputies in the
11 area to make contact with the victims and scour
12 for the suspect if this was an uninvolved vehicle.

13 Q Okay. So there were other people responding to
14 the area as well?

15 A That's correct.

16 Q And in fact, there were five or six cars that
17 ultimately responded?

18 A Actually, total count that morning was nine cars
19 total.

20 Q Nine cars that actually responded. Is that
21 unusual to have that many respond to an armed
22 robbery?

23 A No, it's not. It helps to contain a perimeter if
24 the suspect is at large with a possible
25 apprehension.

1 Q You mentioned that you had proceeded down Two
2 Notch originally with your blue lights on but you
3 turned them off as you went into the Bi-Lo parking
4 lot?

5 A I did.

6 Q Why was that, sir?

7 A So if someone were to see me, a suspect were to
8 see me, my blue lights aren't on, it may give me a
9 second because he doesn't think I'm looking for
10 him.

11 Q Okay. And that day when you were pulling in, as
12 you pulled straight in front of -- well slightly
13 to the right in the Bi-Lo parking, you noticed
14 something, you mentioned, exiting off onto Rabon
15 Road?

16 A That's correct. A sharp right turn on Rabon Road
17 leaving the parking lot at a high rate of speed.

18 Q And what kind of vehicle was it that you observed
19 that day?

20 A It was a tan colored sedan. I was able to gain on
21 the vehicle and determine the make and model of
22 the vehicle. It wasn't until I got right up on
23 the vehicle I could see the plate number.

24 Q And at that point you didn't even know about the
25 second armed robbery?

1 A That was correct. It wasn't until I was
2 approximately at Rabon and Fuller Road where I was
3 advised I was catching up to a vehicle where
4 dispatch had advised of a -- of a robbery of the
5 vehicle.

6 Q So your pursuit was based on the fact that you saw
7 this car pulling out of the parking lot?

8 A That's correct.

9 Q And there were other cars backing you up to -- to
10 be in the perimeter, is that correct?

11 A That's correct. Another deputy was behind me,
12 Deputy Lee Blatt. He had followed my lead going
13 after this vehicle and I already knew that there
14 was another patrol car in the parking lot of that
15 Bi-Lo Shopping Center.

16 Q So when you pursued this car, you actually went
17 out up onto Rabon Road and took a right and
18 pursued the car?

19 A That's correct.

20 Q So never actually made contact before hand with
21 Mr. Jimmy Hampton or Mr. Langford?

22 A No, I did not.

23 Q And as you started going down the road, did you
24 activate your blue light?

25 A I reactivated my blue lights whenever I saw the

1 vehicle leaving in order to safely accelerate
2 through the parking lot.

3 Q Okay. And so as you exited onto Rabon Road, your
4 blue lights were on?

5 A And my siren, yes.

6 Q And were you able to keep sight of the vehicle?

7 A I was.

8 Q And tell this jury in fact what happened as you
9 --after you activated your blue light and pulled
10 onto Rabon Road.

11 A I advised Central Dispatch I was trying to catch
12 up to a vehicle leaving at a high rate of speed.
13 Speeds quickly approached triple digits. I
14 observed something -- I announced I was in pursuit
15 after the call came out about the second robbery.
16 The vehicle description was what I was in fact
17 pursuing.

18 I noticed what I believed to be a wallet come
19 out of the driver's side window. Myself and Blatt
20 actually ran over the wallet. I notified another
21 deputy further in the line to stop and secure,
22 retrieve that wallet out of the roadway.

23 We were able to bring the chase to a
24 conclusion around the 600 block of Rabon Road
25 where traffic kind of bottlenecked from a

1 construction zone.

2 Q And as you pursued this vehicle, approximately how
3 long did the chase last, how far?

4 A If I -- I estimate two to three miles.

5 Q And as you go down Rabon Road, you ended up on the
6 600 block. Were there other vehicles that you
7 passed as you went along that pulled over to the
8 side as you should when you see blue lights?

9 A That's correct. I was not able to always stay up
10 on him. I maintained, you know, some visual of
11 the suspect vehicle. But I have to operate with
12 due care and slow down accordingly for people
13 getting out of my way as well.

14 Q And everyone else that you came upon between you
15 and the vehicle as y'all were approaching triple
16 digits, got out of the way and was able to exit
17 the roadway or pull over as they should?

18 A That's correct.

19 Q And finally, did you fall in right behind the tan
20 vehicle?

21 A I did.

22 Q And at some point did the tan vehicle actually
23 pull over to the side of the road?

24 A That's correct. As soon as we were hitting the
25 construction zone, there were several dump trucks

1 coming onto the roadway and oncoming traffic
2 across the railroad tracks and the vehicle made an
3 abrupt stop and pulled over at the 600 block.

4 Q So basically there was a bottleneck up ahead?

5 A Yes.

6 Q And that was apparent to you and would have been
7 apparent to the vehicle in front of you?

8 A That's correct.

9 Q And at that point is when he pulled over?

10 A That's correct.

11 Q What happened once the car pulled over and you
12 pulled up behind him? Was there another car
13 behind you?

14 A There was, Deputy Lee Blatt.

15 Q And I believe within seconds another vehicle
16 pulled up beside and ---

17 A That's correct.

18 Q --- in front?

19 A That's correct.

20 Q And is that all police protocol?

21 A It is.

22 Q And once the car stopped and you were able to stop
23 behind it, what did do you?

24 A Well, I anticipated that the occupant of the
25 vehicle was going to bail out of the vehicle and

1 take off on foot. I'm bringing my vehicle to a
2 stop and started to exit my vehicle and draw my
3 weapon.

4 Q Did Deputy Woodley also draw his weapon?

5 A Deputy Woodley took cover behind the passenger
6 side door of my vehicle and drew his weapon.

7 Q And were other deputies there that also drew their
8 weapons?

9 A Yes.

10 Q And at that point what's your goal?

11 A My goal is to safely apprehend the suspect and
12 maintain officer safety.

13 Q And at that point, what's the information as far
14 as whether or not the Defendant was armed?

15 A Just as an armed robbery. It wouldn't be
16 classified as an armed robbery if there wasn't a
17 belief that that the suspect was armed in some
18 form or fashion.

19 Q So the information you had received at that point
20 was he was armed?

21 A That's correct.

22 Q And based on that, were y'all able to take the
23 Defendant into custody?

24 A That's correct. Once I could see hands, I
25 holstered my weapon and approached while I had

1 backup officers with coverage of their weapon.

2 Q And then what happened?

3 A I went to go place the Defendant in handcuffs,
4 controlling -- he had presented his hands in a
5 manner that was giving up but based on my
6 experience, persons accused of committing violent
7 crimes don't often give up as easily as they
8 pretend to.

9 Q And at that point did you take measures to make
10 sure he wasn't able to get to a weapon?

11 A I did. He was turned around facing the vehicle
12 toward a wood line. I went to grab him. There is
13 a point where he tensed and it was subtle. It was
14 enough for me to drop my handcuffs. So from there
15 I took him from a more advantage position to a
16 less advantage position where I had him bent over
17 the trunk of the vehicle and then was able to
18 regain control and handcuff him.

19 Q Okay. And once he was handcuffed, did you or
20 other officers actually pat him down for weapons?

21 A That is correct, we did. I -- I got the
22 handcuffing done and then I stepped away from the
23 moment, also to control my deputies on scene.
24 Other deputies did perform the pat down for
25 weapons.

1 Q And was any weapon recovered?

2 A No, there was not.

3 Q Okay. You also mentioned that you saw what
4 appeared to be a wallet thrown out down on the
5 road during the chase, is that correct?

6 A That is correct.

7 Q Was that recovered?

8 A It was recovered.

9 Q Prior to that point when you came up behind him,
10 could you tell whether or not he had thrown
11 anything else from the vehicle before you were
12 able to get close enough behind him?

13 A I could not because there was a curve where I
14 momentarily lost sight while trying to gain
15 control. It's a very sharp curve.

16 Q Once the Defendant was in custody, did other
17 officers respond to the scene where the car was
18 recovered?

19 A Yes. We also had officers that canvassed the rest
20 of Rabon Road to look for any possible weapon.

21 Q And at your direction did other officers such as
22 Deputy Robinson go make contact with the victims?

23 A That's correct. He was in training with Master
24 Deputy Whitaker.

25 Q And ultimately an investigator, I believe Kevin

1 Isenhoward was called ---

2 A Sergeant Isenhoward and Investigator McRae.

3 Q And the Defendant was taken into custody?

4 A That is correct.

5 Q And ultimately, as far as what he was charged with
6 ultimately would be up to Sergeant Isenhoward to
7 draw up those warrants?

8 A As far as that, I had charges of my own for
9 failure to stop for blue lights and siren.

10 Q Okay. Was there a video of the actual chase that
11 day?

12 A That is correct. My in car camera caught the
13 pursuit as well as Deputy Blatt's in car camera.

14 Q And at my request, have you had an opportunity to
15 review the video?

16 A That is correct.

17 Q Does it fairly and accurately depict what happened
18 that day?

19 A It does.

20 MS: CAMPBELL: Your Honor, at this time we
21 would offer the video that's in the machine, just mark
22 it later.

23 THE COURT: Beg your pardon?

24 MS. CAMPBELL: It's in the machine. Can I
25 mark it later?

1 THE COURT: Sure. Any objection, Mr. Schnee?

2 MR. SCHNEE: No, Your Honor.

3 THE COURT: Can I see y'all for a minute while
4 y'all are setting that up?

5 (WHEREUPON, a bench conference was held
6 off the record, in the presence of the jury,
7 but out of the hearing of the jury.)

8 MS. CAMPBELL: Your Honor, may the witness
9 step down?

10 (The witness leaves the witness stand.)

11 THE COURT: Yes. What is it, like five
12 minutes?

13 MR. JOPHLIN: A few minutes.

14 MS. CAMPBELL: Just a few minutes.

15 THE COURT: It would be number one if we
16 actually marked it?

17 MS. CAMPBELL: Number 35.

18 THE COURT: Number 35, okay. We'll mark it
19 later.

20 (Whereupon, State's Exhibit Number 35, DVD
21 Taken from In Car Camera, was moved into
22 evidence.)

23 THE COURT: I guess I need to watch it too.
24 Y'all don't mind if I stand close to y'all,
25 do?

1 MS. CAMPBELL: Will you play it, please?
2 (Whereupon, the video was played for the
3 jury.)

4 DIRECT EXAMINATION CONTINUES

5 BY MS. CAMPBELL:

6 Q Where is this?

7 A Two Notch Road at the intersection of Rabon Road.

8 Q Where are you pulling in now?

9 A Bi-Lo parking lot. The indicator at the top of my
10 camera screen indicates where I just turned off my
11 blue lights and siren.

12 (Video continued.)

13 A See here I've activated lights and siren.

14 Q And this is actually Rabon Road?

15 A Yes. The tan vehicle is right here. He's got a
16 significant lead on me.

17 (Video continued.)

18 A Here's where I was notified of the second armed
19 robbery.

20 (Video continued.)

21 A I was advised, moved to another Region, Region 3
22 that picks up at Farrow Road and the chase
23 continued.

24 (Video continued.)

25 A Just prior to this, the wallet was seen coming out

1 of the vehicle.

2 (Video continued.)

3 Q At this point he's pulling over?

4 A Yes. You notice the dump trucks on both sides.

5 (Video continued.)

6 Q Explain what just happened there?

7 A We had been told he was armed. Put him in a less
8 advantageous position to control him and see if he
9 had a weapon on his person. Typically a person
10 putting their hands up indicates surrender.

11 However, it's not always a surrender. It lures us
12 into a false sense of security.

13 Q They're patting him down there for weapons?

14 A They are.

15 Q Is there a second video?

16 A Yes, Deputy Lee Blatt who was right behind me.
17 You can see here where I was turning off my blue
18 lights. You should be able to hear the audio a
19 little bit better.

20 Q Is the audio on this one better?

21 A Yes.

22 (Video continued.)

23 A This is where we're advised of the second robbery,
24 again.

25 (Video continued.)

1 A There's the wallet (indicating).

2 (Video continued.)

3 A I was anticipating he may run. I'm opening my
4 door, you can slightly see it. I'm drawing my gun
5 because we believed he was armed. I go in and
6 make -- effect the arrest but I'm covered by my
7 deputies who still have their weapons out.

8 (Video continued.)

9 A Right here is where we weren't aware that a
10 witness was coming. We didn't know how he was
11 involved and we were trying to keep him away from
12 the scene. They were able to make contact and
13 talk with him and determine that he had seen the
14 incident that took place at the Big Lots.

15 (Video continued.)

16 Q So that's when Mr. Woods got there?

17 A Yes, we had him on the audio.

18 (Video continued.)

19 (Video ended.)

20 MS. CAMPBELL: Thank you, sir.

21 (The witness returned to the witness stand.)

22 Q Deputy, you mentioned at one point he kind of
23 tensed up and that's when you tran -- when you
24 pushed him down onto the ---

25 A That's correct. There was a series of it. When

1 we first got out of the vehicle, he's still got
2 his hands up like he's trying to comply. However,
3 being handcuffed is not very comfortable and most
4 people aren't willing to comply whether
5 involuntarily or voluntarily to have it done.

6 Q Did you also take some photographs while you were
7 out there that day?

8 A I did, the vehicle, the intersections, the
9 backseat. I didn't know fully what all was
10 involved in the robbery. But of where we stopped
11 the vehicle, pictures were taken.

12 Q I'm going to show you what's been marked as
13 State's Exhibit Numbers 25 through 31. Are these
14 the photographs you actually took out there that
15 day?

16 (Pause.)

17 A These are.

18 MS. CAMPBELL: Your Honor, at this time we
19 would offer them into evidence.

20 MR. SCHNEE: No objection.

21 THE COURT: And they are photos taken after
22 the arrest at the scene?

23 MR. SCHNEE: I do object to item 31, Your
24 Honor. That's what we discussed pretrial.

25 (Pause.)

1 MS. CAMPBELL: State's Exhibits 25 through 30
2 then, Your Honor ---

3 THE COURT: All right.

4 MS CAMPBELL: --- and 31 for ID.

5 (Whereupon, State's Exhibit Number 25,
6 Photograph of Corolla Back View, was moved into
7 evidence.)

8 (Whereupon, State's Exhibit Number 26 was
9 previously moved into evidence.)

10 (Whereupon, State's Exhibit Number 27,
11 Photograph of Corolla Front View, was moved
12 into evidence.)

13 (Whereupon, State's Exhibit Number 28,
14 Photograph of Bags and Items, was moved into
15 evidence.)

16 (Whereupon, State's Exhibit Number 29,
17 Photograph of Police with Police Cars at 600
18 Block of Rabon Road, was moved into evidence.)

19 (Whereupon, State's Exhibit Number 30,
20 Photograph of Stop Sign and Street Signs,
21 Zachs Playhouse, was moved into evidence.)

22 (Whereupon, State's Exhibit Number 31,
23 Photograph of Defendant Arrested, was
24 previously marked for identification.)

25 Q Let me show you State's Exhibit Number 25. Is

1 that the actual vehicle tags which you chased that
2 day?

3 A It is.

4 Q State's Exhibit Number 26, is that the side view
5 of the vehicle?

6 A It is.

7 Q And 27 is the front view?

8 A It is.

9 Q I notice that there are two people other than the
10 deputy in the yellow jacket there. Who are they,
11 do you know?

12 A One of the victim's wife and son.

13 Q Okay. Would that be Mr. Hampton's wife and son?

14 A That's correct.

15 Q They actually responded out there that day, later
16 after the Defendant was taken into custody?

17 A That's correct. I believe Mr. Hampton had called
18 his wife to inform her of what had just occurred.

19 Q And you mentioned that this happened approximately
20 in the 600 block of -- in State's Exhibit 29?

21 A On Rabon Road, 600 block at the corner of ---

22 Q You also took a picture of this sign ---

23 A That's the next closest intersection, Zachs
24 Playhouse at Rabon Road.

25 Q And that was just to memorialize the area for

1 later reference?

2 A That's correct.

3 Q And I believe you didn't actually go back and
4 contact the victims yourself?

5 A No, I did not.

6 Q Actually I believe Deputy Robinson and maybe
7 Corporal Whitaker?

8 A That's correct. Master Deputy Whitaker and
9 Robinson went back up there.

10 (Pause.)

11 Q Were you able to run -- excuse me, did you become
12 aware that there was a burgundy colored vehicle
13 back in the parking lot of Big Lots?

14 A I was. Master Deputy Whitaker and Robinson were
15 both relaying information to me as they got it.
16 And as it was relayed to me, the vehicle was back
17 there and I did go back there at such time as my
18 paperwork was taken care of and the suspect was
19 handed over to C I D.

20 Q And were you able to run the information on the
21 burgundy vehicle to see who it was registered to?

22 A I was and it ---

23 Q And I'm showing you what -- who was the burgundy
24 vehicle in the Big Lots ---

25 MR. SCHNEE: I would object, Your Honor. It's

1 hearsay.

2 THE COURT: Beg your pardon?

3 MS. SCHNEE: I would object under hearsay.

4 MS. CAMPBELL: It's public record.

5 THE COURT: Y'all approach. I'm sorry, I
6 was ...

7 (WHEREUPON, a bench conference was held
8 off the record, in the presence of the jury,
9 but out of the hearing of the jury.)

10 THE COURT: You may answer that question, sir.

11 A Yes, our mobile data terminals, the computers in
12 our car, will run the information from V I N,
13 vehicle identification numbers, or license plates.
14 And the vehicle is registered to a Claudine
15 Florence.

16 Q Claudine Florence?

17 A That's correct.

18 Q As part of your department -- you do the initial
19 investigation? You're the person that responds to
20 the 911 call?

21 A That's correct.

22 Q And as part of your initial -- you do an incident
23 report?

24 A That's correct.

25 Q But as far as any follow-up, such as taking

1 statements from victims and everything else, that
2 would be done by Sergeant Isenhoward or someone
3 else?

4 A That's correct.

5 Q In this case, however, were you able to identify
6 the person that you apprehended in the car that
7 day?

8 A I was. Clearly ---

9 Q And who did you apprehend?

10 A Nathaniel Murray. He was identified also with the
11 use of my mobile data terminal from his name and
12 date of birth.

13 Q Okay. And I show you -- this isn't in evidence
14 but just for reference, State's Exhibit Number 31.
15 Does this show whether or not the Defendant, when
16 you apprehended him that day, was wearing a coat?

17 A That's correct. He was wearing a dark in color
18 wool style jacket.

19 Q And if that had been collected or anything, that
20 would have been done by investigators as well?

21 A That's correct.

22 Q Were you able to determine who the car that you
23 were chasing belonged to?

24 A I was.

25 Q And who did the Toyota Corolla belong to?

1 A Mr. Hampton. After we were able to secure the
2 vehicle and the suspect, I was able to run that
3 vehicle information on my mobile data terminal.
4 Plus we also had him standing by as a complainant
5 for the second robbery.

6 Q The person who was driving the car that you
7 apprehended back on February 17th, do you see him
8 here in the Courtroom?

9 A I do, yes, ma'am.

10 Q Can you identify him for the jury?

11 A That would be the Defendant, Nathaniel Murray,
12 with the white shirt and blue tie.

13 MS. CAMPBELL: Your Honor, may the record
14 reflect he's identified the Defendant?

15 THE COURT: All right, okay.

16 MS. CAMPBELL: Thank you, Your Honor. No
17 further questions.

18 MR. SCHNEE: Please the Court.

19 THE COURT: Mr. Schnee.

20 CROSS-EXAMINATION

21 BY MR. SCHNEE:

22 Q Officer Duke, when you first went in to the Bi-Lo
23 parking lot, you turned your blue lights and your
24 sirens off?

25 A That's correct.

1 Q Okay. And at that point you see a car leaving the
2 parking lot?

3 A I do.

4 Q And it's on the opposite end of the parking lot?

5 A Opposite in the middle, it was to my left, yes.

6 Q Okay. And if you take a look at, I think it's
7 State's 34. Is this the parking lot here?

8 A That is.

9 Q Okay. You come in right over here?

10 A No. I come in here (indicating), the second
11 entrance from Rabon Road.

12 Q You came in on Rabon Road?

13 A I turned off of Two Notch Road onto Rabon Road
14 because another one of my deputies was coming in
15 from the far end.

16 Q Okay. So you come in over here on Rabon Road?

17 A That's correct.

18 Q Okay. And then you drive around most of the
19 parking lot?

20 A No, I drive around to the middle part here
21 (indicating).

22 Q Okay. And then where do you go from there?

23 A I see a vehicle leaving out of this driveway
24 coming from here, at a high rate of speed. I
25 reactivate my blue lights and siren and begin to

1 give chase.

2 Q Okay. Where are you in terms of the parking lot
3 when you see the car turning right onto Rabon
4 Road?

5 A Right about here.

6 Q Okay. And that's when the car is already turning
7 onto Rabon Road ---

8 A It's coming to here to go around to here.

9 Q Okay, thank you. Now, the video from your car, it
10 starts when you're driving down Two Notch Road?

11 A It actually activates as soon as I turn on blue
12 lights and siren.

13 Q Okay. The video that was submitted, it's a couple
14 of blocks before you turn into the parking lot,
15 right?

16 A That's correct.

17 Q Okay. And the video camera is pointed directly
18 towards the front of your car?

19 A That's correct.

20 Q And you said that you -- when you got off the
21 parking lot, the silver car or tan car, it was
22 quite a bit ahead of you?

23 A It -- it looks like it's further than it is on the
24 camera. They are not auto-adjusting. But he had
25 about a two or three block lead on me at first.

1 Q A substantial lead?

2 A I wouldn't call it substantial but it was enough
3 that it took a little bit of catching up.

4 Q Okay. And that lead is maintained for at least a
5 little while?

6 A It is. As long as I can keep him in sight, it's
7 still a valid pursuit. That way we can determine
8 what's going on. Again, from the view from my
9 camera, it looks like it's further but I was able
10 to keep him in sight.

11 And, yes, there was some -- some distance.

12 Q Okay. And there was a couple of times, as the car
13 went around curves, you lost sight temporarily?

14 A Temporarily, yes, sir.

15 Q Okay. Now, you said something like, the car
16 stopped. That was near, you said, a construction
17 area?

18 A That is correct.

19 Q Came to an abrupt stop?

20 A Yes.

21 Q Okay. And Mr. Murray, he got out of the car?

22 A He was starting to get out of the car as we were
23 commanding also to see his hands.

24 Q Okay. He got out of the car and as he was getting
25 out of the car, he immediately put his hands up,

1 right?

2 A Yes,

3 Q Okay. He put his hands up as he's getting out and
4 turns around, is that correct?

5 A Under my command, yes, sir.

6 Q He's complying with your commands?

7 A He is complying with my commands so far, yes, sir.

8 Q Okay. And you and I believe at least one other
9 officer essentially run up to him, grab him and
10 push him on the trunk, is that correct?

11 A I am the only one that did that.

12 Q Okay.

13 A I had lethal coverage from two other backup
14 deputies in case he was in fact armed and tried to
15 go for it.

16 Q Okay. But you immediately grab him and push him
17 on the trunk?

18 A That is correct. He was tensing. It's not
19 noticeable, like I said, because you can't
20 articulate a feeling on a video.

21 Q Okay.

22 A Or a sense of touch.

23 Q Was he tensing before or after you pushed him on
24 the trunk?

25 A He was tensing before which led to me putting him

1 in a less advantageous position.

2 Q How long was he tensing before you pushed him onto
3 the trunk?

4 A It was microseconds, as according to the video.

5 Q So essentially as soon as you grabbed him, he
6 tensed and then you pushed him on the trunk?

7 A Yes.

8 Q Okay. He -- that wasn't just a natural reaction,
9 a reflex to being grabbed, was it?

10 A Well, I couldn't say. However, with the nature of
11 the crime that we were dispatched to, tensions
12 were high probably on his behalf as well as ours.

13 Q So your tension was high as well?

14 A Well, it's high, it's a stress situation whenever
15 you pursue a vehicle with an armed suspect.

16 Q Okay. And your belief was that he was armed
17 because of the -- what was being dispatched?

18 A That's correct.

19 Q You never found a gun on him?

20 A No, I did not.

21 Q No gun in the car?

22 A No, no weapon in the vehicle, no.

23 Q Okay. You had other officers search the area and
24 see if there were any guns around?

25 A That's correct.

1 Q Okay. And no gun was found?

2 A That's correct.

3 MR. SCHNEE: No further questions, Your Honor.

4 Thank you.

5 THE COURT: All right. Anything on redirect?

6 MS. CAMPBELL: No, sir.

7 THE COURT: All right, you may step down, sir.

8 THE WITNESS: Thank you, Your Honor.

9 (The witness leaves the witness stand.)

10 THE COURT: All right, Ms. Campbell, you may
11 call your next witness -- after lunch, Mr. Foreman and
12 members of the jury. I thought I'd play with you a
13 little bit there.

14 We're going to go to lunch now, okay, relax.
15 Hope you have a pleasant lunch. Be back at 2:30. Of
16 course, come back, go to the jury room and we'll see
17 you back then, okay. Thank you.

18 (The jury retires from the courtroom at
19 approximately 12:45 P.M.)

20 THE COURT: Anything further we need to take
21 up before we go to lunch?

22 MR. SCHNEE: No, Your Honor.

23 THE COURT: All right, we'll see you all at
24 2:30.

25 MS. CAMPBELL: Thank you.

1 (The Court was in recess.)

2 THE COURT: All right, we're all ready. Bring
3 the jury in.

4 (The jury returned to the courtroom at
5 approximately 2:40 P.M.)

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

7 THE COURT: All Right, thank you, sir.

8 Welcome back, Mr. Foreman and members of the jury.

9 Coincidentally I told the jury I thought more than
10 likely we would go to maybe 5 or 5:30. It depends on
11 how we felt and how things went. And that it was a
12 possibility the State could finish the case today.
13 If they didn't, it didn't make that much of a
14 difference.

15 That's essentially what I said except for I
16 picked on somebody who went to Booker T. Washington and
17 A.C. Flora and guessed that they were 53 and they were
18 52.

19 That covers everything, Mr. Foreman?

20 MR. FOREMAN: A.C. Flora ---

21 (Laughter.)

22 THE COURT: So, Ms. Campbell, you may call the
23 next witness on behalf of the State.

24 MS. CAMPBELL: Thank you, Your Honor. The
25 State calls Jennifer Blair.

1 (JENNIFER BLAIR, having first been duly sworn,
2 testified as follows:)

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

5 THE WITNESS: Jennifer Blair.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Ms. Blair, where are you employed?

9 A I am employed by the City of Columbia 911
10 Communications Center.

11 Q And what is your job there?

12 A I am the Administrative Physical Officer there.
13 Some of my responsibilities are procurement,
14 budget, keeper of 911 records and many
15 administrative tasks.

16 Q In that same vein, as the keeper of the 911
17 records, you keep certain recordings in your
18 course of business?

19 A Yes.

20 Q And that includes the 911 calls that are all
21 recorded when they come in?

22 A Yes, they are, uh-huh.

23 Q Okay. At our request did you produce or did your
24 people produce a 911 -- the 911 calls from back on
25 February 17th of 2009?

1 A Yes.

2 Q And those are specifically having to do with this
3 case, is that correct?

4 A That's correct.

5 Q And at my request, I believe you reviewed those
6 and they are all in the same manner as which they
7 were recorded?

8 A Yes.

9 MS. CAMPBELL: Your Honor, at this time we
10 would offer State's Exhibit Number 40 into evidence
11 which is the 911 call.

12 MR. SCHNEE: Your Honor, I would renew my
13 pretrial objection to the first recording on there,
14 Crawford v. Washington.

15 THE COURT: All right. Same ruling applies.

16 MR. SCHNEE: Thank you, Your Honor.

17 (Whereupon, State's Exhibit Number 40, CD
18 Recordings of 911, was moved into
19 evidence.)

20 Q In this tape, the first call, you hear just one
21 person's voice and they identify themselves. And
22 then in the second call, periodically, because the
23 call goes on for a while, you hear it get
24 interrupted with kind of a recording about the
25 time.

1 Can you explain that to the jury?

2 A The recording of the time is automatic time that
3 stamps the actual time that transmissions are
4 being given. So it's just a prerecording of the
5 actual time.

6 Q But in this case when Mr. Woods called, where he
7 called 911, it doesn't mean that he called back
8 and forth. This is all one ---

9 A No.

10 Q --- continuous call. It's just interrupted with
11 time dates?

12 A Exactly.

13 MS. CAMPBELL: Okay. Your Honor, permission
14 at this time to play this tape?

15 THE COURT: All right, you may do so. The
16 objection is once again noted.

17 MR. SCHNEE: (Nodded head.)

18 (Whereupon, the audiotape was played for the
19 jury.)

20 MS. CAMPBELL: That's all I have for this
21 witness, Your Honor.

22 THE COURT: All right, Mr. Schnee.

23 MR. SCHNEE: Very briefly.

24 CROSS-EXAMINATION

25 BY MR. SCHNEE:

1 Q Ms. Blair, you didn't take any of these calls, did
2 you?

3 A No.

4 Q Okay. You just downloaded them off of your
5 system?

6 A Yes.

7 Q Okay. And the second call in particular, it's
8 about seven and a half minutes long?

9 A Yes.

10 Q Okay. There aren't in gaps in the time marker,
11 it's a seven and half minute call ---

12 A It's a seven and half minute call, yes.

13 Q Okay. So all the time stamps that you would get
14 when viewing it on a computer, every second -- in
15 every second in real time?

16 A In real time, yes.

17 MR. SCHNEE: No further questions?

18 THE COURT: Anything further of this witness?

19 MS. CAMPBELL: No, Your Honor.

20 THE COURT: All right, you may step down, Ms.
21 Blair.

22 (The witness leaves the witness stand.)

23 MS. CAMPBELL: Your Honor, may she be excused?

24 MR. SCHNEE: No objection.

25 THE COURT: Without objection, she's excused.

1 Thank you, ma'am. Next witness.

2 (Pause.)

3 THE COURT: You may call your next witness.

4 MR. JOPHLIN: Thank you, Your Honor. The
5 State calls Deputy Josh Woodley.

6 (JOSH WOODLEY, having first been duly sworn,
7 testified as follows:)

8 THE CLERK: Please have seat and state your
9 full name for the record.

10 THE WITNESS: Deputy Josh Woodley, Richland
11 County Sheriff's Department.

12 DIRECT EXAMINATION

13 BY MR. JOPHLIN:

14 Q Deputy Woodley, how long have you been with the
15 Sheriff's Department?

16 A Approximately three years now.

17 Q And on the day this we're here for today, February
18 17th, 2009, how long had you been on what they
19 call -- the term road deputy ---

20 A I had just graduated the Academy. This was my
21 second day on the road when this event happened.

22 Q And do you recall getting this dispatch?

23 A Yes, sir.

24 Q And when you heard it over the radio, it was
25 dispatched out over on the radio, what kind of

1 call was it sent out as?

2 A It was give to us as an armed robbery.

3 Q And were you given any details over the radio as
4 to what to look for, a description of the subject,
5 what he may be armed with?

6 A They gave us the description of a black male, gray
7 hair, wearing a dark colored jacket, dark pants,
8 armed with a gun.

9 Q And were you driving in your own car or were you
10 riding with someone else?

11 A No, sir, I was riding with Corporal Duke at the
12 time.

13 Q And describe when you arrived at the Bi-Lo
14 Shopping Center how y'all proceeded once y'all go
15 there. It was on the video y'all showed at the
16 shopping center?

17 A Yes, sir.

18 Q And describe what happened from there on out.

19 A Okay. As we pulled into the Bi-Lo Shopping
20 Center, myself and Corporal Duke at the same time,
21 a car, light colored four door car, went out at a
22 very high rate of speed across the parking lot and
23 took a right on Rabon. That's where Corporal
24 Duke, as he said in his testimony, we reactivated
25 lights and sirens and proceeded after him.

1 Q And do you know approximately how long a pursuit
2 that was?

3 A I would say, if any, just under two miles, at
4 least a couple of miles down Rabon Road towards
5 Farrow.

6 Q Right around a couple of miles?

7 A Yes, sir.

8 Q And during the couple mile pursuit, were Corporal
9 Duke's or y'all's vehicle lights and sirens on the
10 entire time?

11 A Yes, sir.

12 Q And did you have eye contact with that vehicle the
13 entire time or sometime?

14 A We had it generally the whole time. There was a
15 couple of curves that we might have lost sight of
16 it for a split second and we were able to regain
17 visual.

18 Q And eventually that vehicle stopped?

19 A Yes, sir, about the 600 block of Rabon.

20 Q Around the 600 block?

21 A Yes, sir.

22 Q And we saw on the video, you and Corporal Duke
23 came out of your vehicle?

24 A Yes, sir.

25 Q And how did y'all proceed once you came out of

1 your vehicle?

2 A Due to the nature of the call we were given as a
3 armed robbery with a weapon present, we both come
4 out at gunpoint. I covered as Corporal Duke went
5 up and tried to maintain control of the subject.

6 Q Now, just having graduated the Academy, you had
7 just learned methods for dealing with individuals
8 who might be armed?

9 A Yes, sir.

10 Q And especially when making an arrest?

11 A Yes, sir.

12 Q And was there any advantage of taking a person
13 from on the hood of a car down to a position on
14 the trunk of the car?

15 A Absolutely. At the point where Corporal Duke
16 first made contact with him, he was standing in a
17 straight upward position which gives him all of
18 his body strength. Taking him down to the lower
19 of the car, putting him over the trunk of the car,
20 is taking his center of balance off which gives
21 Corporal Duke the advantage of handcuffing him.

22 Q As it also gives Corporal Duke an advantage but it
23 also gives him an advantage to safely apprehend
24 the suspect?

25 A Yes, sir.

1 Q And that's for his sake as well as all the other
2 deputies who arrived ---

3 A Yes, sir.

4 Q And did you assist in patting the suspect down for
5 any weapons he may have on him?

6 A Yes, I did.

7 Q And did y'all find any weapons?

8 A No, sir, we did not.

9 Q And during that couple mile chase you were
10 describing, did you notice anything being thrown
11 out of the suspect's vehicle ---

12 A Yes, sir.

13 Q --- while he was driving?

14 A Yes, sir. We observed a -- it was a dark tan
15 colored wallet that landed directly in the middle
16 of our lane as we were passing by.

17 Q And were you sent or was -- were you sent or was
18 another deputy sent back to pick up that wallet?

19 A Another deputy was sent to retrieve the wallet.

20 Q And did you have any other -- further activity in
21 this case?

22 A No, sir, after the apprehension of the subject.

23 MR. JOPHLIN: Nothing further. Thank you,
24 Deputy.

25 THE COURT: All right, Mr. Schnee.

1 MR. SCHNEE: Please the Court.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION

4 BY MR. SCHNEE:

5 Q You were a passenger in Corporal Duke's car?

6 A Yes, sir.

7 Q He was driving?

8 A Yes, sir.

9 Q He was the one on the radio?

10 A Yes, sir.

11 Q Okay. So your job essentially was to sit there
12 and watch what was going on in front of you?

13 A For the most part, yes, sir, maintain.

14 Q You had an opportunity to do that?

15 A Yes, sir.

16 Q You had nothing else to do at the time?

17 A At the time, no, sir. I was maintaining.

18 Q And you said you saw the car almost the entire
19 time but a couple of curves ---

20 A Yes, sir.

21 Q --- might have dipped out for a second?

22 A Yes, sir.

23 Q You personally saw my client throw the wallet out
24 of the car?

25 A Yes, sir, we saw it come out the window.

1 Q Okay. Did you see him throw a gun?
2 A No, sir.
3 Q And you patted him down?
4 A Yes, sir.
5 Q No gun found?
6 A No, sir.
7 Q You checked the car that he was driving?
8 A Yes, sir.
9 Q Was there a gun in there?
10 A No, sir, there was not.
11 MR. SCHNEE: No further questions.
12 THE COURT: Anything on redirect?
13 MR. JOPHLIN: Nothing further, Your Honor.
14 THE COURT: You may step down, Officer
15 Woodley.
16 (The witness leaves the witness stand.)
17 THE COURT: Call your next witness.
18 MS. CAMPBELL: The State calls Antoine
19 Robinson.
20 (ANTOINE ROBINSON, having first been duly
21 sworn, testified as follows:)
22 THE CLERK: Please have a seat and state your
23 full name for the record.
24 THE WITNESS: Antoine Robinson.
25 DIRECT EXAMINATION

1 BY MS. CAMPBELL:

2 Q Mr. Robinson, where are you employed?

3 A Richland County Sheriff's Office.

4 Q And what Region do you work, sir?

5 A Region Two.

6 Q Back on February 17th -- and I'll be brief.

7 You've been up all night?

8 A Yeah.

9 Q Okay, I'll be brief. Back on February 17th of
10 2009, did you -- were you one of the cars that
11 responded to an armed robbery call on Two Notch?

12 A Yes.

13 Q And did you actually -- were you actually there
14 when the Defendant was apprehended?

15 A Yes.

16 Q And without going into the video again, your car
17 is one of the cars that pulls up and surrounded
18 the Defendant's vehicle when he stops?

19 A Yes.

20 Q And did you actually participate in the chase or
21 did you pull up right after it?

22 A I pulled up right after.

23 Q Okay. And who were you riding with that day?

24 A Master Deputy Whitaker.

25 Q That's Kia Whitaker?

1 A Kia Whitaker, yes.

2 Q And I believe you can actually on the tape see you
3 and Kia Whitaker as well?

4 A Yes.

5 Q Corporal Whitaker. Were you there when the
6 Defendant was taken into custody?

7 A Yes.

8 Q Without incident?

9 A Yes, without incident.

10 Q And subsequent to that, did -- were you instructed
11 to go make contact with certain possible victims
12 in the case?

13 A Yes.

14 Q And did you make contact with a Mr. Jimmy Hampton
15 who had his car taken from him in an armed
16 robbery?

17 MR. SCHNEE: Objection, the form of the
18 question.

19 THE COURT: Beg your pardon?

20 MR. SCHNEE: Objection to the phrasing of the
21 question itself.

22 THE COURT: I didn't quite hear it all but
23 back up and dissect it.

24 MS. CAMPBELL: I'll back up and dissect it.

25 Q Did you make contact with one or two of the

1 victims that day?

2 A One of the victims.

3 Q And was that -- was that Mr. Langford actually
4 that you made contact with, is that correct?

5 A Yes.

6 Q And when you made contact with Mr. Langford, where
7 was that?

8 A That was at the store ---

9 Q Next to Big Lots?

10 A Yes, next to Big Lots?

11 Q The General Store too?

12 A Yes.

13 Q And when you made contact with him, were you
14 trying to get some basic information?

15 A Yes.

16 Q And you can't say what he told you but you can
17 say, what was his demeanor like when you made
18 contact with Mr. Langford that day?

19 A He was very shaken (phonetic) up and nervous and
20 very scared.

21 Q Once you were able to get that information from
22 Mr. Langford, did you then pass that along as you
23 should in the chain of command to the
24 investigators who were further following that
25 case?

1 A Yes.

2 Q And other than witnessing the take -- the
3 apprehension of the Defendant and making contact
4 with Mr. Langford, that was pretty much -- you
5 were backup that day, is that correct?

6 A Yes.

7 MS. CAMPBELL: That's all I have, Your Honor.

8 MR. SCHNEE: Please the Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. SCHNEE:

12 A Did you participate in the search of my client and
13 the car he was driving?

14 Q No.

15 MR. SCHNEE: No further questions.

16 THE COURT: All right. Anything further of
17 this witness?

18 MS. CAMPBELL: No, Your Honor. May he be
19 excused?

20 THE COURT: Sure. Go get some sleep.

21 (The witness leaves the witness stand.)

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MR. JOPHLIN: The State calls Deputy Brendon
25 Pennington.

1 (BRENDON PENNINGTON, having first been duly
2 sworn, testified as follows:)

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

5 THE WITNESS: Brendon Pennington.

6 DIRECT EXAMINATION

7 BY MR. JOPHLIN:

8 Q Deputy Pennington, where are you currently
9 employed?

10 A Richland County Sheriff's Department.

11 Q And how long have you been employed there?

12 A Two and a half years.

13 Q And were you -- did you have a chance to respond
14 to a call on February 17th, 2009, regarding an
15 incident that occurred on Two Notch Road at the
16 Bi-Lo Shopping Center?

17 A I did.

18 Q And did you -- were you able to -- saw that video
19 earlier. Were you one of the vehicles who
20 actually pulled in and responded to the parking
21 lot of Bi-Lo?

22 A No.

23 Q Please describe how you came to be involved in
24 this incident?

25 A After Corporal Duke said he was in a pursuit, I

1 responded that way. And that's when he told me
2 about the wallet being thrown out the vehicle.
3 So I patrolled the area of Rabon Road attempting
4 to find the wallet.
5 Q And did you actually go to where they had arrested
6 the suspect and then he told you to go look for
7 the wallet or did he just say on the radio, a
8 wallet was thrown out of the vehicle, Deputy
9 Pennington, you go look for it?
10 A Yeah, it was over the radio.
11 Q Over the radio?
12 A I never went to the scene.
13 Q And did they give you the whereabouts on Rabon
14 Road where it was?
15 A They did.
16 Q And I believe -- have you viewed the patrol videos
17 from Corporal Duke and Deputy Blatt's car?
18 A Yes, I have.
19 Q And we see on that video where a wallet -- what
20 appears to be a wallet was thrown out of the
21 window?
22 A Yes.
23 Q Did you in fact find a wallet in the area where on
24 the video shown had been thrown out?
25 A Yes, I did.

1 Q And was it laying in the center of the road or had
2 it sort of migrated its way over?

3 A It migrated its way to the right shoulder, still
4 on the pavement, but the right shoulder of the
5 road.

6 Q And what kind of call was this that dispatch sent
7 out that occurred at this Bi-Lo Shopping Center?

8 A Armed robbery.

9 Q And did they give a description of the individual
10 or what he may have been armed with at the time?

11 A They did.

12 Q And what was the description they gave out, if you
13 remember?

14 A As I recall, it was a black male in a dark jacket,
15 camouflage pants who had a weapon, a handgun.

16 Q A handgun?

17 A Yeah, a pistol.

18 MR. JOPHLIN: Nothing further, Your Honor.

19 Thank you, Deputy.

20 THE COURT: Mr. Schnee?

21 MR. SCHNEE: No questions.

22 THE COURT: All right. You may step down,
23 sir.

24 MR. JOPHLIN: The State calls Deputy Lee
25 Blatt.

1 (LEE BLATT, having first been duly sworn,
2 testified as follows:)

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

5 THE WITNESS: Lee Blatt.

6 DIRECT EXAMINATION

7 BY MR. JOPHLIN:

8 Q Deputy Blatt, where are you currently employed?

9 A MTec (phonetic), an IT staffing firm.

10 Q Excuse me?

11 A I work part time for the Sheriff's Department in a
12 reserve capacity.

13 Q Okay. And back in February of this year, were you
14 still employed with the Sheriff's Department?

15 A I was. I was full time at that time.

16 Q Okay. And did you have a chance to respond to a
17 call regarding an armed robbery call at the Bi-Lo
18 Shopping Center on Two Notch Road?

19 A I did. I caught up to Corporal Duke about half
20 way there and followed him in the entire
21 proceeding.

22 Q And you followed Corporal Duke into the Bi-Lo
23 parking lot?

24 A I did.

25 Q And did you observe a silver/beige colored four

1 door vehicle exit the parking lot?

2 A I didn't actually see the vehicle. I saw several
3 people in the parking lot jumping and point in
4 that direction. As I turned my patrol car to go
5 over that way, Corporal Duke's car pulled in front
6 of me and I followed him.

7 Q And did you follow in behind Corporal Duke on the
8 chase down Rabon Road?

9 A I did. I was behind him the whole time.

10 Q And do you recall approximately how long a chase
11 that was?

12 A It was a few miles.

13 Q And were your blue lights and siren activated
14 during that chase?

15 A They were.

16 Q And were they activated the entire time from when
17 you pulled out of Bi-Lo until the stop was made on
18 the 600 block of Rabon Road?

19 A They were.

20 Q I'm going to show you what's been marked State's
21 Exhibit Number 36.

22 THE COURT: 36?

23 MR. JOPHLIN: Yes, sir.

24 Q This is a map of that block. Do you see on this
25 map approximately where that stop was made? Here

1 are the railroad tracks ---

2 THE COURT: It would be a good idea to show
3 the jury.

4 MR. JOPHLIN: I was going to identify it
5 first.

6 A I assume it is over by that construction area.

7 Q Can you point that out for us?

8 A Over in the corner there (indicating). There was
9 a sandy area he pulled in to.

10 MR. JOPHLIN: Your Honor, at this time we
11 would offer State's Exhibit Number 36.

12 MR. SCHNEE: That's fine.

13 THE COURT: Is it in? It's not in. All
14 right, without objection.

15 (Whereupon, State's Exhibit Number 36, Blowup
16 of 600 Rabon Road, was moved into evidence.)

17 Q I believe this would be some railroad tracks
18 (indicating), right along Rabon Road?

19 A Yeah, just past the railroad tracks.

20 Q On this side of the railroad tracks?

21 A I believe so.

22 Q Okay. That's right around the Zachs Playhouse
23 Road?

24 A Yes, sir.

25 Q Right there (indicating)?

1 A Correct.

2 Q And when you arrived at the scene of arrest, were
3 you -- you were the second car, basically pulled
4 in?

5 A Yes, sir.

6 Q Behind Corporal Duke?

7 A Uh-huh.

8 Q And describe what occurred once y'all pulled over
9 the vehicle.

10 A We pulled over the vehicle, the suspect then
11 exited the vehicle. We -- all three of us took
12 cover behind our doors. He moved to put his hands
13 out and Corporal Duke and Deputy Woodley could
14 clearly see as I could that he didn't have a
15 weapon in his hand at that time. They both moved
16 in to take control of the suspect as I covered
17 them from Corporal Duke's vehicle.

18 Q And you said you took cover behind your doors once
19 you pulled over?

20 A Initially, yes, sir. We weren't sure what he was
21 going to step out with, if anything. But we were
22 getting the information that he had a gun.

23 Q Once the suspect was in custody, what was your
24 next involvement with the case?

25 A Once the suspect was taken into custody, they

1 questioned him, placed him in the back of one of
2 the vehicles. I checked the vehicle and processed
3 it for DNA samples and then went back to gather
4 one of the witnesses -- or victims.

5 Q And when you say processed it for DNA, what does
6 that entail?

7 A Most deputies are all trained on how to process a
8 vehicle for fingerprints or DNA. There's DNA
9 swabs and we wipe areas they likely touched to see
10 if there's a DNA match. We weren't able to get
11 any fingerprints off any of the -- any of the
12 surfaces inside the vehicle. They were all too
13 porous.

14 Q And now when you say wipe for swabs or anything, I
15 mean, do you just take a tissue and wipe it or ---

16 A It's ---

17 Q --- certain materials you use?

18 A It's kind of like a Q-Tip, a special Q-Tip and
19 distilled water.

20 Q And I'm going to show you State's Exhibit Number
21 26. Is that the vehicle?

22 A It is.

23 Q And the vehicle that you swabbed ---

24 A Yes, sir.

25 Q --- for DNA samples? And you say you then went

1 back to pick up one of the victims. Do you
2 remember the victim you went to pick up or make
3 contact with?

4 Q I do. I apologize, I can't remember his name. In
5 the blue shirt in the center over there.

6 Q Jimmy Hampton?

7 A Yes, sir, Hampton.

8 Q Okay.

9 A I apologize.

10 Q And you picked him up from the Bi-Lo Shopping
11 Center?

12 A I did. And he asked if we had caught the suspect.
13 And I said we had someone in custody, we recovered
14 the vehicle and we needed him to ID the vehicle as
15 his vehicle.

16 Q And did you then take him to the vehicle?

17 A I did and along the way I wasn't able to -- I
18 didn't see the suspect in the back of the vehicle
19 but he clearly saw him as we drove by and began to
20 tap on the glass and excitedly yelled that that
21 was the man that stole his vehicle.

22 Q As you were driving past the ---

23 A Past the line of patrol cars.

24 Q Okay. And he made the response that that's the
25 person that took my vehicle without any kind of

1 prompting from you?

2 A Yes, sir.

3 Q And did you try to influence him in any way that
4 this was the person that did ---

5 A No, sir...

6 Q Did it or suggest to him in any way ---

7 A I wasn't even ---

8 Q --- this was the person?

9 A I wasn't even sure if he was -- where the suspect
10 was at that time.

11 Q And I believe the suspect was seated inside the
12 vehicle?

13 A I believe he was, yes, sir. I didn't actually see
14 him as we passed by. He just pointed it out and
15 he was the only non-uniformed officer in that area
16 -- the only person in the area that wasn't a
17 uniformed officer.

18 MR. JOPHLIN: Nothing further, Your Honor.

19 Thank you.

20 MR. SCHNEE: Please the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. SCHNEE:

24 Q So you were driving the car following Corporal
25 Duke?

1 A I was.

2 Q So your best view was the back of Corporal Duke's
3 car?

4 A I was able to see down the road a good bit. I
5 didn't maintain sight of the suspect vehicle as
6 well as they did, but for the most part.

7 Q Okay. When you got there you said you processed
8 the car?

9 A I did.

10 Q Does that mean you searched it for weapons?

11 A I did.

12 Q Did you find any weapons?

13 A No, sir.

14 Q You said you tried to get fingerprints?

15 A There were no usable surfaces inside the vehicle.

16 Q Okay. But that involves going inside the vehicle
17 and ---

18 A Correct ---

19 Q --- looking all around.

20 A Yes, sir.

21 Q You processed it for DNA.

22 A Yes, sir.

23 Q And that also involves going all around the
24 vehicle?

25 A Yes, sir.

1 Q You get a thorough look at the vehicle?

2 A Yes, sir.

3 Q No gun inside?

4 A Correct.

5 MR. SCHNEE: No further questions.

6 THE COURT: Anything on redirect?

7 MR. JOPHLIN: No, sir.

8 THE COURT: You may step down, sir.

9 (The witness leaves the witness stand.)

10 THE COURT: Another short witness?

11 MR. JOPHLIN: Yes, sir.

12 THE COURT: Okay, call them.

13 MR. JOPHLIN: The State calls Investigator
14 Bouknight, Harold Bouknight.

15 (HAROLD BOUKNIGHT, having first been duly
16 sworn, testified as follows:)

17 THE CLERK: Please have seat and state your
18 full name for the record.

19 THE WITNESS: Harold Bouknight.

20 DIRECT EXAMINATION

21 BY MR. JOPHLIN:

22 Q Investigator Bouknight, where are you currently
23 employed?

24 A Richland County Sheriff's Department, Crime Scene
25 Unit.

1 Q And what are your job duties in the Crime Scene
2 Unit?

3 A I am a Senior Crime Scene Analyst which basically
4 I respond to crime scenes to document, identify,
5 preserve and collect evidence and process
6 evidence. That may be at the initial location or
7 processing vehicles at our compound or in our
8 garage. And assisting other crime scene officers
9 in processing their scenes.

10 Q And I believe you had a chance to execute a search
11 warrant and look at a vehicle that was involved in
12 the incident on February 17th, 2009 on Two Notch
13 Road?

14 A Yes, sir. On the 24th of February, 2009, I
15 received a search warrant from Sergeant Isenhoward
16 that I executed on the 25th of February at 8:20 in
17 the morning at our -- at our compound where we
18 store vehicles.

19 The vehicle I processed was a 1995 red in
20 color Buick SENTRY with the South Carolina tag of
21 BGW764.

22 Q I'm going to show you what's been marked as
23 State's Exhibit Numbers 5 and 6. Is this the
24 vehicle that you processed?

25 A Yes, sir, it is.

1 Q And I think -- did you in fact take these photos?

2 A Yes, sir, I did.

3 Q And when you say processed the vehicle, what
4 exactly -- what does that entail? At least what
5 did it entail with this vehicle?

6 A Generally what we do is process for fingerprints
7 and for DNA, like Mr. Blatt said. Using for
8 fingerprints, we use black powder which is just
9 what you see on TV. You know, you take a brush,
10 dip it in some black powder and then move it
11 across a suspected area that may be good for
12 fingerprints, where usually are smooth non-porous
13 surfaces such as glass, metal, plastic, things
14 like that.

15 Q We heard Deputy Blatt saying how in the Toyota
16 Corolla he processed, there didn't look like any
17 usable surfaces. So if it's a porous surface or
18 something grainy, it wouldn't always hold a
19 fingerprint?

20 A It's not the best surface for getting fingerprints
21 off of it. And like I said, smooth, non-porous
22 surfaces are better.

23 Q And you don't always -- even if someone puts their
24 hand on something, doesn't mean they're going to
25 leave a fingerprint, correct?

1 A Correct. Fingerprints are 98 percent water so
2 they're very fragile. They can easily be wiped
3 away, smudged, smeared or washed off.

4 Q And when you processed this vehicle, you didn't
5 find any usable fingerprints on it?

6 A Correct.

7 Q And you also processed the vehicle for any kind of
8 DNA evidence?

9 A Yes, sir. Using a sterile cotton swab and
10 distilled water, I swabbed the steering wheel, the
11 gearshift, a tire iron, a ratchet that was located
12 in the Buick. And then I collected the ratchet
13 from the driver's seat and a tire iron, black in
14 color tire iron from the passenger floorboard.

15 Q I'm going to show you what's been marked as
16 State's Exhibit Number 7 and 8 for identification.
17 Do you recognize those photos?

18 A Yes, sir.

19 Q Did you take those photos?

20 A Yes, sir.

21 Q And what do those photos depict?

22 A A black in color tire iron in the passenger
23 floorboard of the vehicle.

24 Q Do these photos fairly and accurately depict what
25 you saw that day?

1 A Yes, sir.

2 MR. JOPHLIN: Your Honor, at this time
3 we would ask to introduce Exhibits Number 7 and 8.

4 THE COURT: This is tire irons in floorboards
5 of Mr. Hampton's car?

6 MR. JOPHLIN: Correct -- no, of the car the
7 Defendant drove to Big Lots, the red car.

8 THE COURT: Oh, okay.

9 MR. SCHNEE: No objection, Your Honor.

10 THE COURT: All right.

11 (Whereupon, State's Exhibit Number 7,
12 Photograph of Defendant's Car Inside-Crowbar,
13 was moved into evidence.)

14 (Whereupon, State's Exhibit Number 8,
15 Photograph of Defendant's Car Close-up of
16 Inside-Crowbar, was moved into evidence.)

17 MR. JOPHLIN: Thank you, Your Honor.

18 Q And this you say you also -- the tire iron, you
19 labeled this?

20 A Yes.

21 Q And this you also labeled -- swabbed that for any
22 kind of DNA with those little Q-Tip swabs?

23 A Yes, with the sterile cotton swab.

24 Q And what do you do with those swabs once you're
25 finished with them?

1 A They're packaged and turned into evidence to be
2 forwarded for DNA analysis.

3 Q And do you meddle with them in any way, touch them
4 or...

5 A No, sir.

6 Q They're safely and securely placed in ---

7 A Separate and each swab has it's on separate swab
8 box that it's sealed in to where they don't touch
9 and they don't touch the pack -- the envelope and
10 we don't touch the swabs or anything like that.

11 MR. JOPHLIN: Nothing further, Your Honor.

12 Thank you.

13 MR. SCHNEE: No questions.

14 THE COURT: All right. You may step down,
15 sir.

16 (The witness leaves the witness stand.)

17 THE COURT: Y'all approach for a minute.

18 Yeah, he can leave, that's what you're asking me? You
19 don't care ---

20 MR. SCHNEE: No.

21 MR. JOPHLIN: Thank you.

22 (WHEREUPON, a bench conference was held
23 off the record, in the presence of the jury,
24 but out of the hearing of the jury.)

25 THE COURT: Members of the jury, I'm going to

1 give y'all a short break. We don't have much more to
2 go but my experience has been after five or six
3 witnesses in a row, you do need a little break
4 mentally. So I'm going to give you one, whether you
5 want one or not.

6 Just don't talk about the case, okay. Thank
7 you so very much.

8 (The jury retires from the courtroom at
9 approximately 3:23 P.M.)

10 THE COURT: Did we ever settle the record
11 about his parole ending date or anything?

12 MS. CAMPBELL: Your Honor, we have agreed not
13 to bring up any of his prior record.

14 THE COURT: Beg your pardon?

15 MS. CAMPBELL: We have agreed not to bring up
16 any of his prior record.

17 THE COURT: I don't blame you because you
18 don't need to.

19 All right, let's take a little break and give
20 everybody a chance to go relax. I think -- well, I
21 know that Ms. Campbell just has two more witnesses and
22 that should end their case. And you've got to sort of
23 think of what you want to do, Mr. Schnee. Have you
24 decided one way or the other?

25 MR. SCHNEE: As far as I know my client is

1 testifying.

2 THE COURT: Okay, that's good. That's good.
3 That's good, whatever.

4 All right, we'll be at ease.

5 MR. SCHNEE: Thank you, Your Honor.

6 MS. CAMPBELL: Thank you, Your Honor.

7 THE COURT: So we might be able to get all the
8 testimony in today, have a charge conference, come back
9 at 10 or something in the morning and argue and charge.

10 Okay, that's good. We'll be at ease.

11 (The Court was in recess.)

12 THE COURT: Are we ready?

13 MS. CAMPBELL: Yes, Your Honor.

14 MR. SCHNEE: Yes, Your Honor.

15 THE COURT: All right. Invite the jury back
16 in, please.

17 (The jury returned to the courtroom at
18 approximately 3:45 P.M.)

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

20 THE COURT: Thank you, sir. Welcome back, Mr.
21 Foreman, members of the jury.

22 Ms. Campbell, you may call your next witness.

23 MS. CAMPBELL: Thank you, Your Honor. The
24 State calls John Barron.

25 (JOHN BARRON, having first been duly sworn,

1 testified as follows:)

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

4 THE WITNESS: My name is John Barron, B-a-r-r-
5 o-n.

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Where are you employed?

9 A Richland County Sheriff's Department.

10 Q What do you do there, sir?

11 A I'm a DNA analyst.

12 Q Can you tell this jury a little bit about your
13 education and training in the field of DNA
14 analysis?

15 A Yes. I have a bachelor of science degree in
16 microbiology. I began training in DNA analysis at
17 SLED, South Carolina Law Enforcement Division in
18 1999. I was qualified -- after their training
19 program, was qualified as a DNA analyst. In 2004,
20 I transferred to Richland County Sheriff's
21 Department to help start their DNA laboratory and
22 have been doing DNA analysis there since that time
23 for another five and a half years.

24 Q And have you been qualified before as an expert in
25 DNA analysis?

1 A Yes, I have, over 30 times.

2 MS. CAMPBELL: Your Honor, at this time we
3 would offer him as an expert in DNA analysis.

4 MR. SCHNEE: No objection.

5 THE COURT: All right, without objection so
6 admitted.

7 Q I want to turn your attention to this case. Were
8 two swabs, specifically a swab from the steering
9 wheel and a swab from the gearshift of the Toyota
10 submitted for testing to you?

11 A Yes, they were.

12 Q And in addition to that, there were also two swabs
13 from a different car from a different -- from a
14 tire iron and ratchet which were never tested, is
15 that correct?

16 A That's correct.

17 Q And those were never requested to be tested by
18 investigators?

19 A That's correct.

20 Q As far as the swabs from the steering wheel -- and
21 where was the other place?

22 A A gearshift.

23 Q And the gearshift, what if any testing did you do
24 on those two swabs from the Toyota?

25 A Well, in the laboratory we receive evidences

1 brought in by our crime scene people. If it's
2 swabs, we cut up the swab, put it in a tube,
3 extract it for DNA, then we perform a test for
4 human DNA. If its positive, then we go forward
5 and see if we can develop a DNA profile. And if
6 we do develop a profile, then we need to get a
7 known sample to compare it to.

8 In the case where we don't find any DNA, human
9 DNA at all, then the analysis stops and we just
10 say no DNA was extracted.

11 Q Let me ask you this, specifically in cases that
12 aren't involving say a shooting where blood may be
13 left at a scene or a rape where, excuse me, semen
14 may be left at a scene. When you're talking about
15 more what we call touch DNA, if I'm driving a car
16 and may have my hands on the steering wheel, am I
17 necessarily going to leave DNA?

18 A Not necessarily but there's certainly a chance you
19 will.

20 Q There's a chance you will and there's a chance you
21 won't?

22 A Right, It's ---

23 Q It would not be unusual to find no DNA left even
24 if I had just been touching that steering wheel?

25 A It's not unusual. It's just we can't really see

1 the skin cells which has the DNA we're looking
2 for. It probably depends upon the individual.
3 Some people leave a lot of DNA behind, other
4 probably don't leave as much.

5 Q And a crime scene involving a stabbing and/or a
6 shooting where body fluids may be left behind, you
7 have a better likelihood that the DNA may be more
8 visible or easier to find, is that correct?

9 A Well, in those situations we have actual
10 serological tests that we can actually perform to
11 prove that there was blood there. And if there
12 was blood there, then 99 percent of the time we're
13 going to get DNA. If we don't, it's probably
14 because the blood is decayed or some -- eroded
15 that way.

16 Q And as you just testified and I didn't mean to cut
17 you off earlier. Some people may leave DNA more
18 readily than others and it's just kind of a -- you
19 can't predict it so much?

20 A That's correct. In the case of touch DNA, its --
21 its potential is there so the crime scene people
22 swab it to test it and if we get it, we get it, if
23 we don't, we don't.

24 Q In this case, the swab from the steering wheel of
25 the Toyota that you actually tested for the

1 presence of DNA, what were your results?

2 A No DNA was extracted from that particular swab.

3 Q And again, that just doesn't mean that no one's
4 been driving that car, just no DNA?

5 A That's correct.

6 Q And that wouldn't be the victim's DNA or the
7 Defendant's DNA or anyone's DNA was extracted?

8 A No human DNA was -- was extracted from the swab
9 that I received.

10 Q And in addition to that, I believe you also
11 received one swab from the gearshift of that car?

12 A I did.

13 Q And what were your results when you tested that?

14 A I did find a small amount of human DNA. Then I
15 went to the next process to try to develop a DNA
16 profile. There is a minimum amount of DNA that is
17 required to develop a profile. In this case, I
18 did not develop a profile. Sometimes our
19 quantitation (phonetic) methods may be a little bit
20 off and we may get a profile if we get a little
21 bit. So we go ahead and attempt it anyway. And
22 in this case, I got no profile.

23 Q So the amount of DNA that had been left on the
24 gearshift was so minimal that you weren't able to
25 develop a profile to compare to anyone, be it the

1 victim, Mr. Hampton, the Defendant or anyone else?

2 A That's correct.

3 Q But you did attempt to do that in this case?

4 A I did.

5 Q And that doesn't necessarily mean of course that
6 either the Defendant or the victim hadn't just
7 been driving the car?

8 A No, it does not.

9 MS. CAMPBELL: Thank you.

10 THE COURT: Mr. Schnee?

11 MR. SCHNEE: No questions.

12 THE COURT: All right, you may step down, sir.

13 (The witness leaves the witness stand.)

14 MS. CAMPBELL: Your Honor, may he be excused?

15 THE COURT: Beg your pardon?

16 MS. CAMPBELL: May he be excused?

17 THE COURT: Are you a Clemson man or a
18 Carolina man?

19 THE WITNESS: Clemson man.

20 THE COURT: No, he can't go.

21 (Laughter.)

22 THE COURT: You may be excused.

23 THE WITNESS: All right.

24 MS. CAMPBELL: Thank you, Your Honor.

25 THE COURT: Call your next witness.

1 MS. CAMPBELL: The state calls Sergeant
2 Isenhoward.

3 (KEVIN ISENHOWARD, having first been duly sworn,
4 testified as follows:)

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

7 THE WITNESS: My name is Kevin Isenhoward.

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q Sergeant Isenhoward, where are you employed?

11 A At the Richland County Sheriff's Department.

12 Q And what are your duties there, sir?

13 A I'm a Sergeant in the Major Crimes Unit.

14 Q And specifically as a Sergeant in the Major Crimes
15 Unit, what type of crime do you cover?

16 A Armed robbery and homicide.

17 Q Specifically I'm going to turn your attention back
18 to February 17th of 2009. Did you respond to the
19 600 block of Rabon Road?

20 A I did.

21 Q And by the time you got there -- what were the
22 conditions when you got there?

23 A When I arrived, the -- the Defendant was there with
24 the officers. There was no -- one of the victims on
25 the scene, Mr. Hampton, was there. I spoke with

1 Corporal Duke who explained what had happened. I
2 had simply responded to an armed robbery where they
3 had a suspect detained.

4 Q And as far as your role, you aren't -- there's a
5 difference between a line officer and investigator,
6 is that right?

7 A That's right.

8 Q And you're the one that actually does the follow-up
9 afterwards, takes the statements, request like
10 processing for DNA and things of that nature, is
11 that correct?

12 A Yes, we consider it a follow-up investigation.

13 Q And in this case, when you go there did you become
14 aware that there wasn't only -- it was not just one
15 armed robbery but two armed robberies that occurred
16 that day?

17 A Once I was able to speak with Corporal Duke, he
18 explained the situation to me as he had understood
19 it. And basically we found out that Mr. Langford
20 was the first ---

21 MR. SCHNEE: Objection, hearsay as to what
22 Corporal Duke said.

23 MS. CAMPBELL: I think he's allowed to testify
24 as to the course of his investigation, Your Honor. I'll
25 get the case.

1 MR. SCHNEE: Your Honor ---

2 THE COURT: Wait, just a relax ---

3 MR. SCHNEE: --- hearsay ---

4 THE COURT: Relax. Come up here for a moment,
5 please.

6 (WHEREUPON, a bench conference was held off
7 the record, in the presence of the jury, but out
8 of the hearing of the jury.)

9 THE COURT: Back up just a little bit.

10 MS. CAMPBELL: I'll back up.

11 Q You made contact with Corporal Duke that day?

12 A Yes.

13 Q And as result of the information he was able to give
14 you, did you become aware that there was more than
15 one victim in the case?

16 A Yes, I did.

17 Q And who were the victims that you were able to
18 identify as far as armed robbery victims?

19 A Mr. Walter Langford and Mr. Jimmy Hampton.

20 Q And I believe you mentioned that when you got out
21 there to the 600 Rabon Road, or approximately 600,
22 that Mr. Hampton was there at the scene because it
23 was his car that had actually been taken?

24 A Yes. He was there, I believe the deputies had
25 brought him there.

1 Q Did you also become aware during the course of your
2 investigation that there was a witness that had
3 actually followed the Defendant down the road from
4 one crime scene to the next crime scene before the
5 chase?

6 A Yes.

7 Q And what was that witness's name?

8 A His name was Mr. -- hold on a second here.

9 (Pause.)

10 A Mr. Lester Woods.

11 Q For the record too, there were two crime scenes. I
12 believe it was 9221 Two Notch Road and then 9003 Two
13 Notch Road. That would be the parking lot of the Big
14 Lots and the General Dollar Store. And then further
15 down at the Bi-Lo parking lot?

16 A That's right.

17 Q Are both those areas in Richland County?

18 A They are.

19 Q And so at that point you've got the information
20 about Mr. Langford, the information about Mr.

21 Hampton and also the information about Mr. Woods, is
22 that correct?

23 A Yes.

24 Q After going to the scene at 600 Rabon, did you then
25 proceed down the street and made contact with Mr.

1 Langford?

2 A I did. It was in front of the Dollar Store.

3 Q And what was his demeanor?

4 A He was extremely upset. He was shaking. His voice
5 was unsteady. At one point I even just ask him,
6 rather tell me what was going on, just to calm down
7 and to sit down and take a moment and I will get
8 back with him. I took that opportunity to speak
9 with some other officers who were there and just
10 take a brief look at a vehicle that was in the
11 parking lot.

12 Q And the vehicle that you're referring to in the
13 parking lot, was that the burgundy colored Buick?

14 A Yes.

15 Q Did you also make arrangements that day to have the
16 Buick transported down to your headquarters, as
17 shown in State's Exhibit Number 5, so it could be
18 processed if necessary at a later date?

19 A Yes, I did.

20 Q And at this point when you were trying to make sure
21 items were processed and everything was done, do you
22 know what or may not be probative before talking to
23 the witnesses themselves?

24 A No, I don't.

25 Q And was there any further testing done from and DNA

1 swabs in the burgundy Buick?

2 A No.

3 Q And why was that, sir?

4 A Because I didn't have any information that it was
5 important to the case.

6 Q Probative to anything?

7 A Probative, that's right.

8 Q Because whether or not this car was his or brought
9 to the scene didn't have to do with the crimes
10 themselves?

11 A Correct.

12 Q Did you also try to find out, other than Mr. Hampton
13 was the victim of one armed robbery and Mr. Langford
14 and Mr. Woods, if anyone else had seen anything?

15 A Yes. I spoke with the deputies in an attempt to
16 determine if there were any other witnesses. There
17 were none given to me. I actually went out and
18 spoke with some people at the Bi-Lo and -- some
19 employees there and we were unable to locate any
20 other witnesses.

21 Q And Ms. Langford who was actually with her husband
22 -- inside the store, did she witness anything?

23 A She did not.

24 Q And what about Mr. Hampton's son?

25 A He was inside the Citi Financial. I believe he did

1 not see anything.

2 Q And in fact, did you check with the Citi Financial
3 people to make sure -- to see if anyone had seen
4 anything that had happened outside?

5 A Yes.

6 Q And had they?

7 A No.

8 Q After making contact with the victims, did you make
9 arrangements for both of the victims to come down
10 and give a statement later that day?

11 A I did. Everybody involved in this was upset. Mr.
12 Woods, Mr. Langford obviously, and Mr. Hampton. So
13 I gave everybody an opportunity to go and, you know,
14 gather themselves and then meet me at the Sheriff's
15 Office.

16 We went there. Obviously I drove up there and I
17 actually backtracked along the path that I was
18 advised, that I learned the vehicle had taken just
19 to check for any additional evidence. And then I
20 went to the Sheriff's Office.

21 Q And for the record, there was never a gun recovered
22 in this case?

23 A No, there was not. And that's what I ---

24 Q Is that unusual in say a homicide or armed robbery
25 case?

1 A No.

2 MR. SCHNEE: Objection, relevance.

3 MS. CAMPBELL: Repeat the question. Is it ---

4 MS. CAMPBELL: I said, is that unusual in an
5 armed robbery or a homicide case where a gun is typically
6 used?

7 THE COURT: Overruled, that to the world in
8 general, not to this particular case, Mr. Schnee. You'll
9 have your opportunity to cross-examine.

10 You may continue.

11 Q Is that unusual?

12 A No, it's not.

13 Q And why is that?

14 A Frequently the evidence is disposed of or hidden or
15 we just simply can't find where it was put.

16 Q Did you make contact with Mr. Langford at
17 headquarters that afternoon?

18 a I did.

19 Q And did you attempt to show him a photo lineup
20 including the Defendant's photo?

21 A I did.

22 Q Was he able to identify anyone?

23 A No, he wasn't.

24 Q And in your experience -- how long have you been in
25 investigations, sir?

1 A 12 years,

2 Q Are some people, I guess, better at being able to
3 identify people than others?

4 A Yes, a lot of factors, I guess, go into it. And
5 over the time -- over my time in showing photo
6 lineups to people, you just -- you just learn that
7 some people are better at it than others. Some
8 people are able to remember faces better than
9 others. It doesn't mean that they didn't see what
10 happened or, you know, was involved in what
11 happened. They just simply aren't as good as other
12 people are.

13 Q And were you able to take an actual statement from
14 Mr. Langford that day?

15 A Yes, I was.

16 Q And was he in good enough shape that he didn't have
17 any problem relaying to you what had happened?

18 A No, he wasn't. He was upset and he was still upset
19 when we spoke at headquarters. You could -- he was
20 telling me how he was affected by this crime. He
21 was very adamant about how it upset him and how he
22 was scared and that he thought he was going to die.
23 He told me that several times.

24 He -- but he was able to remember and talk about
25 the entire incident. He was clear -- I understood

1 him clearly. He had no problems recalling things.
2 As a matter of fact, due to his age, I specifically
3 allowed -- engaged him in a conversation not related
4 to the case. In other words, we spoke about what he
5 did in his life, his career, his family. And he was
6 able to recall and talk to me like I would talk --
7 like I'm talking to you or I would talk to anybody
8 about what all he's done in his life.

9 I did that specifically to gauge how he was
10 recalling things and how he was able to communicate
11 and whether or not he was in good shape enough to
12 give me the statement. And he was. There was
13 absolutely nothing wrong with Mr. Langford's memory,
14 mind or vision.

15 Q And after getting a statement from Mr. Langford
16 which you then reduced to writing -- to a
17 typewritten form, excuse me, did you then make
18 arrangements for Mr. Hampton to also be interviewed
19 that day?

20 A I did.

21 Q And was he able to clearly recall the events and
22 relate them to I believe it was another
23 investigator?

24 A (No response.)

25 Q I skipped one thing. Mr. Langford -- while at the

1 crime scene over on Rabon Road, had a wallet been
2 turned over to you?

3 A Yes, yes.

4 Q And did you actually take that wallet with you back
5 to headquarters?

6 A I did. I brought the wallet back and photographed
7 it and showed it to Mr. Langford.

8 Q And I'll show you what's been marked as State's
9 Exhibits 9, 10 and 11. Are those the contents of
10 the wallet that was recovered by a deputy,
11 specifically I believe Deputy Pennington that day?

12 A Yes. Mr. Langford's driver's license, his personal
13 effects, pictures of his wife. And he specifically
14 spoke to me in our conversation about the pictures
15 of his wife. He said that when he asked the robber
16 to just leave him his -- his wallet, that that's
17 what he wanted. He wanted his pictures of his wife.
18 He didn't care about anything that was of any value.
19 He just wanted -- he wanted those pic -- those were
20 the most important things to him, the pictures of
21 his wife.

22 Q And I believe actually in here there's approximately
23 \$120 that was recovered?

24 A Yeah, that was actually taken out of the -- out of
25 the Defendant's pocket. It was in the same

1 denominations that Mr. Langford described in \$20
2 bills. We did seize that and turned it over to Mr.
3 Langford.

4 Q And that was actually no longer in the wallet but in
5 the Defendant's pocket?

6 A Correct.

7 Q Had the Defendant also been transported back to
8 headquarters?

9 A Yes.

10 Q And after having a conversation with Mr. Langford,
11 did he give you his description?

12 A Yes, he ---

13 Q As far as what the Defendant was wearing?

14 A Yeah. He told me specifically a navy pea coat which
15 I understood, and I believe he said green fatigue
16 type pants. And that in fact was what I saw when I
17 met with the Defendant.

18 Q And I show you what's been marked as State's Exhibit
19 Number 39. Is that the actual coat you recovered
20 from the Defendant when he was back at headquarters?

21 A Yes, ma'am. And I remember looking at the coat and
22 I was looking for some buttons, some problems with
23 the buttons. Yeah, that's it.

24 Q Okay. Let me put it in evidence and we'll talk
25 about that.

1 MS. CAMPBELL: Your Honor, at this time we'd
2 offer State's Exhibit Number 39.

3 MR. SCHNEE: No objection.

4 (Whereupon, State's Exhibit Number 39, Black
5 Pea Coat, was moved into evidence.)

6 Q Specifically, during the course of your
7 investigation, did you become aware of an assault
8 that had occurred between Mr. Hampton and the
9 Defendant and some information he was able to give
10 y'all?

11 A Yes. We learned that during the assault he felt
12 that the buttons had broken on the -- on the jacket.
13 And when you button that jacket up, you have to look
14 at the jacket, but the inside has buttons.

15 Q And all the buttons on this side are missing?

16 A That's right. That's right, they actually came off
17 which was -- which was consistent with the
18 statements.

19 Q As was the coat itself?

20 A Yes, ma'am.

21 Q Did you also make contact that afternoon with Mr.
22 Lester Woods?

23 A I did. I spoke with him a little bit later that
24 afternoon.

25 Q And was he able to give you a description of the

1 Defendant and what he was wearing just like the
2 other two victims had given you?

3 A Yes, yes he did.

4 Q And were you able to show him a lineup, that's
5 marked State's Exhibits 3 and 4?

6 A Yes, I showed these to Mr. Woods, this photographic
7 lineup.

8 Q And when you showed them to Mr. Woods, did you
9 suggest in any way that he had to pick someone?

10 A No.

11 Q Did you influence him in any way?

12 A No.

13 Q And what was his reaction when he looked at those
14 six pictures?

15 A He almost immediately identified the picture which I
16 labeled as number 6 which is a picture of the
17 Defendant. And said, that's the man I saw. And he
18 filled out this affidavit form.

19 Q And State's Exhibit 1 and 2, were you also aware
20 that a photo lineup was shown by, I believe,
21 Investigator McRae to Mr. Hampton?

22 A Yes and ---

23 Q Was he also able to identify the person that had
24 robbed him ---

25 A Yes, he was.

1 Q Without -- again, as with Mr. Langford, without
2 saying what he told you, were you able to get a
3 statement from Mr. Lester Woods?

4 A Yes.

5 Q And during -- after taking a statement from him, did
6 you also become aware that he had been on the phone
7 with 911 during his following of the Defendant after
8 the first robbery but before the second?

9 A Yes.

10 Q And did you request a copy of that tape?

11 A Yes, I did.

12 Q And in fact part of what was played here in the
13 Court was that?

14 A That's correct, the narrative almost.

15 Q One of the 911 tapes refers to a Jonathan White.

16 Are you aware or did you make -- well, did he
17 actually have any independent knowledge of anything?

18 A He did not. He was getting it second hand. He was
19 an employee, I believe.

20 Q In fact, if you listen to that 911 tape, in the
21 background who's voice do you actually hear?

22 A Mr. Langford. You can hear him providing the
23 information to Mr. White.

24 Q In this case, not that it makes a difference, but
25 the DNA swab from the steering wheel and the things

1 -- you had those tested just ---

2 A Abundance in caution. We just ---

3 Q --- collected ---

4 A --- wanted to be thorough.

5 Q But he was actually apprehended in the car as on the
6 video tape?

7 A Right.

8 Q During the course of your investigation, were you
9 able to determine, the burgundy car, who it belonged
10 to?

11 A Yes, ma'am, I was. Bear with me one second.

12 (Pause.)

13 A It belongs to a Claudine Florence.

14 Q And were you aware of what relationship she had to
15 the Defendant?

16 A She's romantically involved with the Defendant, I
17 should say. We did, during the course of the
18 investigation discover some paperwork where she
19 considers herself as spouse. I'm not sure if that's
20 a legal relationship but -- but they are involved
21 romantically.

22 Q That day, after the Defendant was placed -- and
23 ultimately what charges did you ultimately charge
24 the Defendant with?

25 A I charged him with two counts of armed robbery.

1 Q With armed robbery?

2 A Yes, ma'am.

3 Q And that was after you had done your investigation,
4 gotten the witness' statements and everything, is
5 that correct?

6 A Yes, yes.

7 Q I want to show you what's been marked as State's
8 Exhibit Number 32. Did you have a photograph taken
9 of the Defendant that day?

10 A Yes, we did.

11 Q And is that the photograph of the Defendant?

12 A It is.

13 MR. SCHNEE: Your Honor, I would object to that
14 photo briefly.

15 THE COURT: Basis of the objection?

16 MR. SCHNEE: May we approach.

17 THE COURT: Yeah sure.

18 (WHEREUPON, a bench conference was held off
19 the record, in the presence of the jury, but out
20 of the hearing of the jury.)

21 Q For the record, this is a photograph taken from that
22 day?

23 A Yes, the day -- that day.

24 MS. CAMPBELL: Your Honor, we'd offer that.

25 THE COURT: All right, over your objection.

1 (Whereupon, State's Exhibit Number 32, Booking
2 Photograph of the Defendant, was moved into
3 evidence.)

4 Q I'm going to show you two diagrams, State's Exhibits
5 Number 37 and 38. Do those show the general area
6 we're talking about out on Two Notch?

7 A Yes.

8 MS. CAMPBELL: Your Honor, at this time we'd
9 offer them into evidence.

10 THE COURT: What numbers are they?

11 MS. CAMPBELL: 37 and 38.

12 THE COURT: Any objection, Mr. Schnee?

13 MR. SCHNEE: No, Your Honor.

14 THE COURT: All right.

15 (Whereupon, State's Exhibit Number 37, Blowup
16 of Streets, was moved into evidence.)

17 (Whereupon, State's Exhibit Number 38, Blowup
18 of Streets View, was moved into evidence.)

19 MS. CAMPBELL: Your Honor, may the witness --
20 don't step down yet.

21 Q I'm going to show you a series of photographs,
22 State's Exhibits 12 through 21. Are they photographs of
23 the general areas that have been referred to in this
24 case?

25 (Pause.)

1 A Yes, they are.

2 MS. CAMPBELL: Your Honor, at this time we'd
3 offer them into evidence, 12 through 21.

4 MR. SCHNEE: No objection, Your Honor.

5 THE COURT: All right, without objection.
6 12 through, 21, what do they represent, Ms. Campbell?

7 MS. CAMPBELL: The general area in front of --
8 from the street to the Big Lot, Dollar General, down the
9 street, things that were referred to in the 911 tape.

10 THE COURT: Thank you.

11 MS. CAMPBELL: Thank you.

12 (Whereupon, State's Exhibit Number 12,
13 Photograph of Big Lots, was moved into
14 evidence.)

15 (Whereupon, State's Exhibit Number 13,
16 Photograph of Dollar General, was moved into
17 evidence.)

18 (Whereupon, State's Exhibit Number 14,
19 Photograph of Bank, was moved into evidence.)

20 (Whereupon, State's Exhibit Number 15,
21 Photograph of Bank's Sign, was moved into
22 evidence.)

23 (Whereupon, State's Exhibit Number 16,
24 Photograph of Side of Street and Businesses,
25 was moved into evidence.)

1 (Whereupon, State's Exhibit Number 17,
2 Photograph of Side of Street and Businesses
3 Further Down, was moved into evidence.)

4 (Whereupon, State's Exhibit Number 18,
5 Photograph of 2-45 Dry Cleaners Sign, was moved
6 into evidence.)

7 (Whereupon, State's Exhibit Number 19,
8 Photograph of Greengate Sign, was moved into
9 evidence.)

10 (Whereupon, State's Exhibit Number 20,
11 Photograph of Tripp's Fine Cleaners, was moved,
12 into evidence.)

13 (Whereupon, State's Exhibit Number 21,
14 Photograph of Shopping Plaza, was moved into
15 evidence.)

16 MS. CAMPBELL: Your Honor, may the witness step
17 down now?

18 THE COURT: Yes, you may do so, sir.

19 (The witness steps down from the witness stand.)

20 MS. CAMPBELL: If you could just come on this
21 side so the court reporter can hear you better.

22 (Complied.)

23 Q Basically, State's Exhibit Number 21 is a general
24 map and an old map of the general area we we've been
25 talking about?

1 A Yes, ma'am.

2 Q Does it show the relationship of Rabon Road, also
3 down to Two Notch up beyond to where the Big Lots
4 would be?

5 A Yes, ma'am.

6 Q And we've heard reference to the 600 Rabon Road area
7 and a railroad track. Can you show the jury where
8 that would be on this diagram?

9 A This line here would designate the railroad track.
10 The area we are at, 600, is right -- right near
11 there (indicating), somewhere in that general area.

12 Q Right in this general area right here?

13 A Yes, ma'am.

14 Q And there's another road that's not shown on here
15 but it is in some of those photographs, that comes
16 across here but because this is an old map it's not
17 shown?

18 A Yeah, it's a relatively new industrial park. I
19 can't remember the name of the road but it's a
20 fairly new road.

21 Q But as far as Zachs Playhouse, would that be that
22 loop right there (indicating)?

23 A Yes.

24 Q And this is -- occurred right past the Zachs
25 Playhouse second loop?

1 A That's correct.

2 Q And if you go further down Rabon Road and if you're
3 going this direction (indicating) you're going
4 towards Two Notch?

5 A Yes, you are.

6 Q And where is Two Notch on that diagram, sir? If you
7 can backup so they can see right back there.

8 A I'm sorry. This is Two Notch Road here
9 (indicating), it's labeled.

10 Q Okay.

11 A And this is the intersection with Rabon Road
12 (indicating) ---

13 Q So where would the Bi-Lo Shopping Center be?

14 A The Bi-Lo Shopping Center is in this general area
15 which is right at the intersection of Two Notch and
16 Rabon Road. And the Big Lots is just a little
17 further down, actually right here.

18 Q We've heard reference to a Greengate?

19 A Uh-huh.

20 Q That's actually Greengate ---

21 A Yes.

22 Q --- right there (indicating)?

23 A Right.

24 Q And then right here (indicating)?

25 A That's correct.

- 1 Q So those are relatively close together?
- 2 A Yes, within walking distance.
- 3 Q I want to show you State's Exhibit Number -- what
- 4 does it say over there?
- 5 A 38.
- 6 Q 38. Does this show the general area depicted in the
- 7 Bi-Lo and the Big Lots?
- 8 A Yes, this is an aerial photograph of that area.
- 9 Q Okay. And which one would be the Big Lots and which
- 10 one's the Bi-Lo?
- 11 A This would be the Big Lots and this would be the Bi-
- 12 Lo (indicating). Big Lots is further north.
- 13 Q And that's going out of town?
- 14 A Yes, going towards Kershaw County.
- 15 Q And is Rabon Road shown on this?
- 16 A It is. It's right here (indicating).
- 17 Q Okay. I showed you a series of photographs. Where
- 18 did they go? If you were to walk -- I'm going to
- 19 show you State's Exhibits Number -- is that 12?
- 20 A Yes.
- 21 Q 12 and 13, those depict -- think I had them side by
- 22 side -- the actual Big Lots and the General Store is
- 23 the blue store right next to it. Where was that on
- 24 the diagram?
- 25 A That's right here (indicating).

1 Q And there's been some reference in this case to
2 places that were passed as he's walking down the
3 road. Specifically, there was a Trust Credit Union
4 that was referenced in the 911 tape?

5 A Yes.

6 Q And I'll show you State's Exhibits 14 and -- 15's
7 actually a close-up of the sign.

8 A Uh-huh.

9 Q Where is that located in reference to the Big Lots
10 parking lot?

11 A This -- right here in the -- in this parking lot
12 (indicating), the same parking lot where the Big
13 Lots is, it's in the southern corner, I guess you
14 would say, of the parking lot.

15 Q So if someone were exiting out from this parking lot
16 towards Two Notch and cutting down into town, they
17 would walk right past the Credit Union?

18 A Right. And if I recall correctly, this is the
19 actual -- the actual border there is some difficult
20 terrain. In other words, it would be very difficult
21 just to run in that direction. So you almost have
22 to come out this way on to Two Notch.

23 Q And if you were to continue down Two Notch -- I'll
24 show you State's Exhibit Number 16, there was
25 reference to a Subway?

1 A Yes.

2 Q And is that shown and in which direction down Two
3 Notch would that be on this diagram?

4 A It's traveling south on ---

5 Q Here, you want this?

6 A That would be traveling south here along Two Notch
7 Road.

8 Q And again, State's Exhibit Number 17. Is that also
9 in that corridor in between the Big Lots and the Bi-
10 Lo?

11 A Yes, it is right here near the intersection of the
12 main gate and Two Notch Road. It's a dry cleaners,
13 2-45 Dry Cleaners.

14 Q And I'm going to show you what's -- State's Exhibit
15 Number 18. Does that depict that intersection?

16 A It does.

17 Q And in fact, is there a dry cleaner right there at
18 that corner?

19 A It is.

20 Q And it's called the 2-45 Dry Cleaner which is
21 referenced?

22 A Yes, ma'am.

23 Q And here's a better picture of the actual entrance
24 into the main gate which is Greengate, 19?

25 A Yes, ma'am.

1 Q If you cross over to this, what is the next big
2 shopping area?

3 A The next shopping area is the Bi-Lo Shopping Center
4 as it's referred to.

5 Q And there's a reference to a Tripp's Cleaner. Where
6 is that located on the L of the Bi-Lo Shopping
7 Center?

8 A It's actually -- if you're traveling south, it's in
9 this corner. So it's actually before you get to the
10 Bi-Lo, you would come to that. So it is -- the
11 Tripp's is right here in this area, the first corner
12 here.

13 Q So if you were coming from this direction coming
14 here, you would hit Tripp's before you actually hit
15 the Bi-Lo?

16 A Yes. Then beside Tripp's is a storage warehouse.

17 Q A storage warehouse?

18 A And Citi Financial is in this general area.

19 Q And those are all depicted in State's Exhibit Number
20 21, I believe?

21 A Yes, ma'am.

22 Q And then further down the other end of the parking
23 lot which is State's Exhibit Number 23?

24 A Yes, ma'am.

25 Q Which would be down here?

1 A Yes.

2 (The witness returns to the witness stand.)

3 Q As far you -- you didn't collect the pants the
4 Defendant was wearing that day?

5 A No, ma'am.

6 Q But I'm going to show you State's Exhibit -- if I
7 can find it, 31 for ID purposes. What kind of pants
8 was he wearing there?

9 A Green -- like olive green pants.

10 Q Okay. And was that consistent with what the victims
11 said he was wearing?

12 A Yes, yes.

13 Q The person that you placed under arrest for two
14 counts of armed robbery and was also placed under
15 arrest for failure to stop for a blue light, do you
16 see him here in the courtroom?

17 A Yes, ma'am.

18 Q Can you identify him?

19 A He's sitting just to my left here and he's got a
20 blue tie and a white shirt, gray hair.

21 MS. CAMPBELL: Your Honor, may the record
22 reflect?

23 THE COURT: Yes, ma'am.

24 MS. CAMPBELL: Thank you.

25 THE COURT: Mr. Schnee.

1 MR. SCHNEE: Please the Court.

2 CROSS-EXAMINATION

3 BY MR. SCHNEE:

4 Q Good afternoon, Sergeant.

5 A Hello.

6 Q You said one of the first things you did after
7 leaving the scene of my client's arrest was go talk
8 to Mr. Langford?

9 A Yes.

10 Q Okay. He was upset?

11 A Yes.

12 Q Told you he was scared?

13 A Yes.

14 Q You tried to calm him down?

15 A I did.

16 Q Had a little bit of trouble with that?

17 A Well, I just felt like, to be honest with you, at
18 his age I didn't need to aggravate it at that point
19 in time. He needed to calm down so I let him sit
20 down and did some other things.

21 Q Okay. You set up a time later that day for him to
22 come to your station and take a statement?

2 A Correct.

24 Q You chatted with him for quite awhile?

25 A Yes.

- 1 Q You tried to show him a photo lineup?
- 2 A Yes.
- 3 Q He was unable to pick out my client?
- 4 A Yes.
- 5 Q Now, while you were at the scene, you said you tried
- 6 to find additional witnesses by going around and
- 7 talking to people?
- 8 A Yes.
- 9 Q You were unable to find any other witnesses?
- 10 A No.
- 11 Q Okay. You even went to Citi Financial?
- 12 A Yes.
- 13 Q Okay. And you went inside Citi Financial?
- 14 A Yes.
- 15 Q How many people were working there that day?
- 16 A I didn't go that day. I went a day later, I
- 17 believe.
- 18 Q So you went the next day?
- 19 A Yes.
- 20 Q Did you talk to people that were working on the
- 21 17th?
- 22 A I asked them if anybody had seen anything happen
- 23 there -- out there in the parking lot.
- 24 Q Okay. But you didn't get anything ---
- 25 A No.

1 Q You were talking about how you felt it was not
2 unusual to not recover a gun in an armed robbery or
3 a murder or ---

4 A That's correct.

5 Q Okay. In this particular case, you have a statement
6 from Mr. Woods, including a 911 call, right?

7 A Yes.

8 Q And that details from at most a minute after my
9 client had interacted with Mr. Langford up until the
10 time the police took over in a car chase, is that
11 correct?

12 A Yes.

13 Q And to your knowledge, he never reported seeing my
14 client throw a gun?

15 A Did he report seeing it? No.

16 Q My client dumped a gun somewhere?

17 A No.

18 Q Okay.

19 A It would have been easy for me follow that back up
20 and find -- if it was there, I could go there.

21 That's why I went to -- when I returned back to the
22 Sheriff's Office, I took the entire route to search
23 the entire route.

24 Q And you didn't find a gun?

25 A No.

- 1 Q Okay. And you were in court when Corporal Duke and
2 Officer Woodley were testifying, right?
- 3 A Yes.
- 4 Q Okay. Both of them were in the lead car following
5 my client?
- 6 A Yes.
- 7 Q They were watching him the whole time?
- 8 A Yes.
- 9 Q Both of them reported seeing the wallet get thrown
10 out?
- 11 A Yes, I believe they did.
- 12 Q And that was recovered?
- 13 A Yes, it was.
- 14 Q And both of them also said that they did not see a
15 gun at all?
- 16 A That's what they said, yes.
- 17 Q And they patted him down?
- 18 A Yes.
- 19 Q And they searched him?
- 20 A Yes.
- 21 Q And they searched the car?
- 22 A Yes.
- 23 Q No gun?
- 24 A That's right.
- 25 Q So in this particular case, there was no gun and no

1 one had seen a gun at the same time my client was
2 essentially under constant visual surveillance,
3 isn't that correct?

4 A Well, the victims reported believing that he had the
5 gun.

6 Q Well, I understand that but ---

7 A Yes.

8 Q --- they were watching him the whole time, at least
9 the witness was?

10 A I don't know that you could say that somebody was
11 watching him the entire time. We have a fairly step
12 by step description obviously with the calls. But
13 at any given time within that scenario, the
14 possibility exists where someone could dispose of a
15 weapon ---

16 THE COURT: Officer, you've got to respond to
17 the question, yes or no. You have a chance to explain.

18 Ask the question again, Mr. Schnee.

19 Q Mr. Woods was relaying information via 911 step by
20 step. You have officers that followed him as soon
21 as Mr. Woods' phone call ended. That entire time,
22 the only information you have is that Mr. -- is that
23 Mr. Murray is being watched and no one reports
24 seeing a gun at all, isn't that correct?

25 A None of those people.

1 Q Okay. And no one else reported actually seeing a
2 gun?

3 A No.

4 MR. SCHNEE: All right. No further questions.

5 THE COURT: All right. Redirect?

6 MS. CAMPBELL: Nothing further.

7 THE COURT: All right. You may step down,
8 Sergeant Isenhoward.

9 THE WITNESS: Thank you.

10 (The witness leaves the witness stand.)

11 THE COURT: All right, anything further from the
12 State?

13 MS. CAMPBELL: The State rests.

14 THE COURT: All right.

15 Members of the jury, I'm informed that the State
16 will not offer any more evidence at this time. There's a
17 possibility they could later on.

18 I'm going to send you back into the jury room.
19 I have to hear some legal arguments. My decision at 4:30
20 is to decide whether or not we're going to have any more
21 testimony today. It's a close call. And if you do, I'll
22 try to figure out how long will it take and I'll let you
23 know. And let you, Mr. Foreman, since you're the leader
24 of this group, along with the input from others, decide
25 whether or not you want to finish up today. If we do, it

1 won't be much longer, I can promise you that. We will be
2 at least within that 5:30 range I mentioned to you, okay.

3 So go to your jury room. Just don't talk about
4 this case.

5 Thank you.

6 (The jury retires from the courtroom at
7 approximately 4:25 P.M.)

8 THE COURT: Is Mr. Murray going to testify or
9 no?

10 MR. SCHNEE: Yes, Your Honor.

11 THE COURT: Okay, that's good.

12 Now, Mr. Murray, first of all before we get to
13 that point, will sit you on the stand before they come
14 back in so they won't see you shackled, your legs. I hope
15 you are shackled, nothing personal, but you are, aren't
16 you?

17 THE DEFENDANT: Pretty much.

18 THE COURT: Okay. That's the way it should be,
19 that's just security. And let's see, how long is it
20 going to take? My guess is your direct's going to take
21 10 to 15 minutes?

22 MR. SCHNEE: Probably 15 or so, yes, Your Honor.

23 THE COURT: All right. Y'all want to finish
24 this afternoon? How do you feel? Okay, I think? I will
25 double check with the jury. I've told them within 5:30.

1 We might as well finish up this afternoon. I'm thinking
2 about starting about 10:30 tomorrow, something like that.
3 Give you plenty of time. Is that enough for everybody?

4 MR. SCHNEE: Yes, sir.

5 THE COURT: Do you want me to question your
6 client? I don't think I need to. There's nothing coming
7 in about the prior record. So, if you -- do you want me
8 to?

9 MR. SCHNEE: I don't think it's necessary since
10 he is taking the stand.

11 THE COURT: He knows he don't have to take the
12 stand. If he didn't, I would tell them they couldn't
13 hold -- you know all that don't you, Mr. Murray?

14 THE DEFENDANT: Pretty much.

15 THE COURT: Pretty much. Okay. We'll leave it
16 at that.

17 So there's no prior record coming in. It's way
18 beyond the time. Anything else we need to clear up? I'm
19 going to let you make your motions, Mr. Schnee, in just a
20 moment.

21 Anything else we need to clear up?

22 MS. CAMPBELL: No, Your Honor.

23 THE COURT: Okay. You may sit down, Mr. Murray.
24 Make your motions, Mr. Schnee.

25 MR. SCHNEE: First for the record I would renew

1 all prior motions and objections. Specifically I would
2 ask the Court to reconsider even if it's ---

3 THE COURT: It's too late ---

4 MR. SCHNEE: -- the first 911 tape, the caller
5 Mr. White, I believe his name was, Jonathan White did not
6 testify. I believe it's a violation of my sixth -- my
7 client's sixth amendment right to confront him. We
8 believe it violates Crawford v. Washington. It's clearly
9 testimonial evidence in that it is on the phone with
10 police. There are no hearsay objections that would trump
11 sixth amendment and I believe it was inadmissible.

12 I would ask for a mistrial based on that.

13 THE COURT: All right, request denied. I'm
14 going to deny but I'm going to let Ms. Campbell -- you
15 want to add any input?

16 MS. CAMPBELL: (Negative response.)

17 THE COURT: All right. It's denied. It's
18 within the -- 911 is an exception. It's not offered for
19 the truth of the matter asserted, all those grounds.

20 Go ahead.

21 MR. SCHNEE: Additionally, Your Honor, I would
22 move for a directed verdict. There has been absolutely
23 no mention that anyone actually seen the gun. It's a
24 question of reasonableness.

25 THE COURT: Since it is a question of

1 reasonableness, that's a factual issue that has to be
2 resolved by the members of this community, Mr. Schnee.
3 But you -- I hope you've covered -- I'm going to let you
4 cover your motion but ---

5 MR. SCHNEE: I believe there has to be at least
6 a strong showing that the victims in this case had a
7 reasonable basis ---

8 THE COURT: Well, all right, let me help you out
9 a little bit.

10 (Pause.)

11 THE COURT: Mr. Woods testified, it looked like
12 he had gun, didn't know if it was gun, somebody yelled, a
13 gun. He had every reason to believe reasonably that it
14 was a gun. Mr. Hampton, outside of Citi Financial,
15 really thought he had a gun at that point in time. Mr.
16 Langford in fact thought he had a gun, believe he saw a
17 gun. It looked like a gun, he really didn't see the gun,
18 but he thought it was a gun.

19 I think it's a question of fact. I can go on
20 and on but those are three witnesses, two of whom were
21 victims -- no, all three are victims that believe --
22 reasonably believe there was a gun under the
23 circumstances then and there existing.

24 Go ahead, Mr. Schnee.

25 MR. SCHNEE: Other than that, Your Honor, I

1 actually would like to address the issue of the shackles
2 on my client.

3 THE COURT: Well, I've already said we're going
4 to put him on the stand before the jury comes out so they
5 want be able to see them. But I'm not going to take them
6 loose. I'm not security. And I think that violates the
7 policies that have been in place here for a long long
8 time.

9 MR. SCHNEE: Well, Your Honor ---

10 THE COURT: The answer is no, Mr. Schnee. And
11 that's for the reason. I'm going to do everything I can
12 to get him in the witness stand. The jury won't be able
13 to see that he's shackled. But I am not going to take
14 those loose.

15 MR. SCHNEE: I understand that, Your Honor.

16 THE COURT: Okay.

17 MR. SCHNEE: But I would like to put on the
18 record my ---

19 THE COURT: I'm not going to stop you, go ahead.

20 MR. SCHNEE: Okay. My legal basis is primarily
21 Deck v. Missouri. It's 544 U S 622, U S Supreme Court
22 2005 -- between 2007 and 2009 there were a number of
23 cases. It -- the court established and reiterated that
24 any use of visible shackles ---

25 THE COURT: Visible shackles, that's the key.

1 They ain't going to see them. If they do, then you have
2 a right to move for a mistrial.

3 MR. SCHNEE: I understand that. I would just
4 like to put this on the record.

5 THE COURT: Go ahead, I'm not going to stop you.

6 MR. SCHNEE: Anything that changes the way the
7 jury sees the client in any way affects the fundamental
8 fairness. The only time that the court says that
9 shackles are permitted, if it is justified by an
10 essential state interest specific to this Defendant.

11 THE COURT: Uh-huh.

12 MR. SCHNEE: There's been no showing of that.
13 There are other ways to secure my client. I believe
14 primarily the problem is that by being up there when the
15 jury comes in and is leaving, is that he is being treated
16 differently than anyone else I believe violates the due
17 process rights and is a violation of his fundamental
18 right to a fair trial because he's being seen differently
19 and he should not be.

20 THE COURT: All right, I disagree.

21 Anything further?

22 MR. SCHNEE: No, Your Honor.

23 THE COURT: All right. Let me give you about
24 five minutes and then we'll come out and get started.
25 I'm going to double check with the jury, tell them we

1 only have maybe another 30 minutes or so. We'll
2 certainly leave here by 5:30, I do believe, and we'll
3 finish -- thank you.

4 MR. SCHNEE: Yes, Your Honor.

5 (The Court was in recess.)

6 THE COURT: Come on around, Mr. Murray. We're
7 going to swear you in and put you on the stand before the
8 jury comes in.

9 (Complied.)

10 THE COURT: Now, Mr. Murray, you understand I've
11 got to balance the security needs with -- you understand,
12 I know you do.

13 (NATHANIEL MURRAY, having first been duly sworn,
14 testified as follows:)

15 THE CLERK: You may be seated.

16 THE COURT: Now, Mr. Schnee, if you want to, we
17 can make it even more comfy for you, Mr. Murray. You can
18 stand there as the jury comes in. Why don't you just
19 stand there.

20 MR. SCHNEE: Stand over there?

21 THE COURT: Yeah, yeah, just stand there like
22 you were just chitchatting with him.

23 Bring the jury in.

24 (The jury returned to the courtroom at
25 approximately 4:42 P.M.)

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

2 THE COURT: All right. Welcome back, Mr.

3 Foreman and members of the jury. Mr. Schnee, you may
4 proceed with your direct examination of Mr. Murray, sir.

5 MR. SCHNEE: Thank you, Your Honor. Please the
6 Court.

7 DIRECT EXAMINATION

8 BY MR. SCHNEE:

9 Q Mr. Murray, please introduce yourself to the jury
10 and tell them where you grew up.

11 A My name is Nathaniel Murray. I grew up in Chicago,
12 Illinois.

13 MR. SCHNEE: Can you hear him okay?

14 THE COURT: Move the microphone. Scoot up a
15 little bit, Mr. Murray.

16 (Complied.)

17 THE COURT: Yeah, that's better. And tell them
18 again, you grew in Chicago, Illinois.

19 A Yeah, my name is Nathaniel Murray. I grew up in
20 Chicago, Illinois.

21 Q How long have you been in South Carolina?

22 A Presently about four years.

23 Q Four years?

24 A Yes.

25 Q Okay. You married?

1 A No, divorced.

2 Q You have any kids?

3 A Yes.

4 Q How old?

5 A I have a 28 -- a 24 year old -- 28 year old son,
6 military. 28 -- 23 year old daughter. And I have
7 two sons, one five and one seven.

8 Q Okay. I would like to skip ahead to why we're here.
9 Everyone knows why we're here, February 17th, 2009.
10 We all know that was you on the video. Why don't
11 you tell the jury what happened that day from the
12 start.

13 A Well, on that day, yeah, I stopped at the Dollar
14 General Store to purchase some oil. And as I came
15 out the store, I seen the gentleman in the car.

16 Q Mr. Langford?

17 A Yes, Mr. Langford was sitting in the car.

18 Q Okay. What did you do?

19 A I walked back and put the oil inside the back seat
20 of the Buick, the car I was -- had came there in.
21 And seen an opportunity, I thought it was an
22 opportunity, to get some money for my drug
23 addiction, you know. I been -- I been a heroin user
24 for 30 some years, close to 40 years. And I was
25 getting -- getting sick and I seen the gentleman and

1 I just thought, you know -- didn't think, I acted
2 out.

3 Q Did you -- did you have a gun with you?

4 A No, no gun at all.

5 Q Okay. What did you -- what exactly did you do when
6 you got in the car?

7 A When I got in Mr. Langford's car, I asked Mr.
8 Langford -- the first thing I said out of my mouth
9 was, give me the money, give me the money. Mr.
10 Langford at first didn't understand, he started to
11 give me his watch. And I said, no, I don't want the
12 watch, just give me the money, you know. That's
13 when he reached into his pocket and gave me his
14 wallet.

15 Q What did you do after that?

16 A I got up out the car when Mr. Langford yelled back,
17 well, give me my wallet back. And I was attempting
18 to turn around and give him the wallet back but
19 someone was coming out the store and I didn't want
20 to be seen, you know, right there by the car. So I
21 turned around and walked away.

22 Q How long were you in the car with Mr. Langford?

23 A This didn't take no more than about -- not even a
24 good minute or two, you know.

25 Q Did you ever tell him you were going to shoot him?

1 A No, no.

2 Q After you got out of the car, where did you go from
3 there?

4 A I went -- I seen Lester Woods pulling into the lot.

5 Q Okay.

6 A So I asked -- it was a lady out there also. I asked
7 her, you know, could she give me a jump on the
8 Buick. And she told me no. So when Mr. Woods
9 pulled into the lot, I went over to his vehicle. I
10 was asking him, you know, for a jump, you know.
11 Then he just told me to get away from him.

12 Q Did you actually have a chance to ask him anything?

13 A Just for the jump, that was it.

14 Q Okay.

15 A You know, and he told me to get away from him.

16 Q All right. And then I took off walking, you know,
17 towards the Credit Union, towards Two Notch.

18 Q Okay, the South Carolina State Credit Union?

19 A Yes.

20 Q Okay. Where did you go from there?

21 A I went up and down Two Notch, you know, heading back
22 toward the Bi-Lo area.

23 Q Okay.

24 A And as I was walking down Two Notch, I'm trying to
25 thumb a ride, you know, flag a ride down and stuff.

1 But no one would stop, you know. So I just kept
2 walking down.

3 And at this time I came down to by the cleaners.
4 That's the Big -- Bi-Lo parking lot. So as I went
5 down that way, I'm walking, you know, steady trying
6 to get a ride but wouldn't anyone give me a ride.
7 You know, I just wanted to get out the area. And
8 that's when I seen Mr. Hampton, you know, his
9 vehicle was running, the car door open, you know, so
10 ---

11 Q Okay.

12 A --- I jumped right into the car with Mr. Hampton.

13 Q Let me just stop you right there. Did you see Mr.
14 Woods following you?

15 A Yes, yes.

16 Q Okay.

17 A Yes, he was following me all the time. Lester Woods
18 was following me.

19 Q Okay.

20 A Yes, because I kept looking back. He was behind me.

21 Q All right. You said you were trying to get a ride.
22 What was your plan? You had Mr. Langford's wallet.
23 What was your plan at that point?

24 A Just to get out the area.

25 Q Okay.

1 A Yeah, just to get out the area, that was it.

2 Q Okay. Now you said you were in the Bi-Lo parking
3 lot and you see the Toyota or Mr. Hampton?

4 A Right.

5 Q Okay. You see the car doors -- describe that for
6 us.

7 A The car doors was open, you know, the passenger side
8 door was open. Mr. Hampton, I believe his son was
9 outside the car door. It was a hat on the ground
10 and stuff. So the car door was open. I ran -- I
11 jumped right in the car. Mr. Langford (sic) was on
12 the outside of the car.

13 So as I reached across, I put my leg across,
14 that's when Mr. Langford (sic) reached in and
15 grabbed me.

16 Q Langford or Hampton?

17 A Mr. Hampton, Mr. Hampton grabbed me. You know, he
18 was pulling on me trying to pull me out the car. But
19 at that time I pulled the gearshift down and the car
20 started rolling.

21 Q Okay.

22 A You know, and he pulled -- and he was coming along
23 with the car. That's when the buttons popped on the
24 -- on the coat ---

25 Q Okay.

1 A So I just pulled the car over, put it in the park,
2 opened the car door and just came out with my hands
3 up (indicating).

4 Q Okay. Did you try to resist the police in any way
5 at the point?

6 A No, no.

7 Q Did you try to fight with them?

8 A No.

9 Q Okay. Going back to the Bi-Lo parking lot, you --
10 was Mr. Hampton in the car when you jumped in?

11 A No, I don't believe Mr. Hampton was.

12 Q Did you say anything to him at all?

13 A No.

14 Q You just got in the car and drove off?

15 A Yes.

16 Q Okay. You mentioned Mr. Hampton reached in and
17 grabbed you and the jacket ripped?

18 A Yes.

19 Q Okay. I know this is probably a tough question to
20 answer but if you had a gun, what would you have
21 done?

22 A With Mr. Hampton?

23 Q Yes, sir.

24 A I don't think I would have done anything if I had a
25 gun.

1 A --- you know. And at that time I exited the parking
2 lot, you know, with Lester Woods, still following
3 behind me.

4 Q Okay..

5 A Yeah.

6 Q And you still saw Lester Woods following you at that
7 point?

8 A Yes,, yes, yes.

9 Q Okay. After that you were in the car and you left
10 the parking lot?

11 A Yes.

12 Q Where did you go from there?

13 A I turned right on Rabon Road and I could hear the
14 sirens from a distance. So I just continued on down
15 Rabon Road, you know, trying to get out the area.
16 My main concern was just getting out the area.

17 Q Okay. At some point you stopped driving?

18 A Yeah, at some point I stopped. But before I
19 stopped, yes, I did, you know, throwed Mr.
20 Langford's wallet out the -- out the vehicle.

21 Q Okay.

22 A Yes. And maybe I went down maybe another mile, if
23 it was a mile, and then it just came to me that
24 there was no way I was going to get away.

25 Q Okay.

1 Q Okay.

2 A You know, it was just -- it was just a foolish, a
3 senseless act.

4 Q What about Mr. Woods?

5 A No.

6 Q You wouldn't have done anything if you had a gun?

7 A No.

8 Q Mr. Langford?

9 A Never shot anyone.

10 Q Okay.

11 A Been in the military and everything but I never hurt
12 anyone.

13 Q Okay. You never had a gun on you that day?

14 A No, sir.

15 MR. SCHNEE: Okay. No further questions, Your
16 Honor.

17 THE COURT: All right, cross-examine.

18 CROSS-EXAMINATION

19 BY MR. CAMPBELL:

20 Q The car that you went there with that day, you were
21 going to -- your testimony is you were going there
22 to buy stuff at the Dollar General?

23 A Yes, ma'am.

24 Q Were you working at the time?

25 A No, ma'am.

1 Q And who was the car registered to?

2 A Claudine Florence.

3 Q And who is Claudine Florence?

4 A She's someone that I'm involved with.

5 Q That you're involved with?

6 A Yes, ma'am.

7 Q Is she here in the courtroom?

8 A No, she's not.

9 Q You weren't working and I believe you said the
10 reason you needed money that day was because you had
11 a drug addiction?

12 A Yes, ma'am.

13 Q And tell the jury what it's like on a drug addiction
14 such as heroin?

15 A Convulsions when you -- you don't have it. You have
16 withdrawal symptoms. You go through convulsions,
17 diarrhea, runny nose, runny eyes.

18 Q And what's the only cure when you're going through
19 withdrawals?

20 A (No response.)

21 Q More heroin?

22 A Methadone.

23 Q Or more heroin?

24 A Or more heroin.

25 Q And that day prior to you going to the Dollar

1 General where you were just going to purchase
2 things, had you been using drugs?

3 A I hadn't used any since maybe about 3:00 that
4 morning.

5 Q Since about 3:00 that morning?

6 A Yes, ma'am.

7 Q So it had been six, seven, eight hours since you'd
8 had your last hit of heroin?

9 A Yes, ma'am.

10 Q And when you are deprived of hits of heroin, the
11 more heroin that you use, the more you need, is that
12 correct?

13 A Pretty much.

14 Q And at that point, since it had been 3:00, 4:00,
15 5:00, 6:00, 7:00, 8:00, 9:00, 10:00, you were going
16 on 11:00 and you haven't had a hit of heroin, how
17 bad do you need it?

18 A It was getting so that I needed, you know, a fix.

19 Q And in fact, you'll do pretty much anything so you
20 can get the money so you can get your heroin?

21 A I wouldn't say anything.

22 Q Well let me ask you this. You said that you hadn't
23 had a hit of heroin in some eight or nine hours.
24 That you have been addicted to heroin 30 to 40 years
25 by your own testimony. On that morning that you had

1 gone to the Family Dollar (sic) just to buy
2 something. And that at that point when you came out
3 you just saw the gentleman sitting in the car so you
4 thought you would go and ask him for money?

5 A Yes, ma'am.

6 Q And why did you think that Mr. Langford was going to
7 want to give you money?

8 A I -- I admit that, you know, I wasn't just going to
9 ask him for money. I was trying to intimidate out
10 of him some money.

11 Q Okay. Because in order to rob someone, you need to
12 intimidate. They aren't going to voluntarily
13 necessarily give you money?

14 A Right.

15 Q And you weren't going to beg for it?

16 A No.

17 Q No. But you would rob somebody. And how were you
18 planning on intimidating 88 year old Walter Langford
19 that day?

20 A By my voice.

21 Q By your voice?

22 A Yes.

23 Q And you've testified that you didn't get into the
24 front seat of the car, you got into the back seat,
25 did I get that correctly?

- 1 A No, ma'am.
- 2 Q You got into the front seat?
- 3 A Yes, ma'am.
- 4 Q And at that point, tell this jury exactly what voice
5 you used to intimidate him.
- 6 A When I got into the car, the first thing I said was,
7 give me your money.
- 8 Q Give me your money?
- 9 A Yes.
- 10 Q In an intimidating voice just like you did there?
- 11 A Pretty much.
- 12 Q And at that point, your testimony is he tried to
13 give you his watch?
- 14 A Yes.
- 15 Q And you said, no, I don't want your watch?
- 16 A Yes.
- 17 Q You wanted his money?
- 18 A Yes, ma'am.
- 19 Q And then what did you say happened?
- 20 A What happened then?
- 21 Q What did Mr. Langford say when you said in an
22 intimidating voice, give me your money?
- 23 A He gave me -- he gave me his money.
- 24 A Okay. And at that point, what was your plan?
- 25 You've just robbed this man, right, using your

1 intimidating voice and gotten his wallet?

2 A Yes, ma'am.

3 Q And what was your plan at that point?

4 A To get out the area. But Mr. Langford asked me to
5 give him his wallet back. And I was getting ready
6 to give his wallet back when someone came out the
7 store and I didn't want to be seen, you know, by the
8 -- by the car.

9 Q But if you had given Mr. Langford his wallet back,
10 then that would make him happy, wouldn't it?

11 A Would have also took up a few more seconds of being
12 identified in the area.

13 Q A few more seconds of being identified in the area.
14 But when you're going to do a robbery, you don't
15 want to be identified. You want to get your money
16 and get out quick, right?

17 A Pretty much.

18 Q And that's why you were trying to get out of the
19 area so much, like you testified?

20 A Yes.

21 Q Because it's important when you're doing a robbery,
22 to do it quick and get out. Did you try to go back
23 to the car you came in?

24 A Yes, I did go back to the car I came in.

25 Q And would it crank?

1 A No, ma'am.

2 Q And at that point what did do you?

3 A That's when I asked another lady in the parking lot
4 to give me a jump.

5 Q So you don't just take off and run when your car
6 wouldn't crank, you go and approach another woman
7 even though you're in a real hurry to get out of the
8 parking lot because you just committed a robbery?
9 Your testimony is at that point you asked some young
10 lady in the parking lot for a jump?

11 A Yes, I didn't want to leave the ---

12 Q And at this point Mr. Langford hadn't gotten out of
13 the car and screaming, he just robbed me?

14 A He did at that time. Mr. Langford was out the car.

15 Q And you -- even though you needed to get out of the
16 area and you're stopping to ask somebody to give you
17 a jump?

18 A Before he got out the car, I had asked someone.

19 Q And in addition to that, I believe you testified
20 that you just went up to Mr. Woods when he came up
21 in his car and asked him for a jump?

22 A Mr. Woods came up later when I was asking the lady
23 for a jump.

24 Q Well, how much time had passed from the time you
25 committed the robbery on Mr. Langford to the point

1 where you're asking Mr. Woods or anybody else you're
2 saying you asked in the parking lot for a jump?

3 A Maybe about two minutes?

4 Q Two minutes?

5 A Yes, ma'am.

6 Q And at this point you've committed a robbery which
7 you know is against the law because you know you
8 need to get out of the area quickly, right, because
9 that's what you do when you do a robbery? But you
10 stay around and ask for a jump?

11 A I wasn't thinking.

12 Q Well, you were thinking because then you continued
13 to try to get out of the area, right?

14 A Panic, ma'am, I ---

15 Q And all you asked Mr. Woods was would he give you a
16 jump?

17 A That's it.

18 Q And he -- did he push you at that point?

19 A I don't remember him putting his hands on me,
20 period.

21 Q Well, let me ask you this. As a heroin addict, is
22 it difficult sometimes to remember what actions you
23 may or may not have done?

24 A I guess for some, yes.

25 Q But this day you have a very lucid memory of what

- 1 all you did?
- 2 A Pretty much, yes, ma'am.
- 3 Q And at this point you've got your wallet, you've got
- 4 the money you need. Your car won't crank. You're
- 5 asking several different people for a jump. And
- 6 that's all you wanted from Mr. Woods?
- 7 A That was it.
- 8 Q You don't remember whether or not he pushed you?
- 9 A No, ma'am. I -- as I remembered the gentleman
- 10 didn't put his hands on.
- 11 Q As you remember?
- 12 A Yes, ma'am.
- 13 Q And at that point then, did you ask somebody else
- 14 for a jump there in the parking lot?
- 15 A No, ma'am.
- 16 Q Why?
- 17 A I was getting out the area. I left the area.
- 18 Q You were getting -- so now it's important to leave
- 19 the area again, right?
- 20 A (No response.)
- 21 Q I'm sorry. Was it important to leave the area?
- 22 A Yes, ma'am. I was -- I left ---
- 23 Q And why was that?
- 24 A I left the area.
- 25 Q Why was it important to leave the area?

- 1 A I was getting away.
- 2 Q From whom?
- 3 A From -- from the crime scene.
- 4 Q From the crime scene?
- 5 A Yes, ma'am.
- 6 Q And why do you need to get away from the crime
7 scene?
- 8 A That just -- that's the way I was going, just
9 getting away from the crime scene because I was
10 afraid of, you know, getting arrested.
- 11 Q You were afraid of getting arrested?
- 12 A Yes, ma'am.
- 13 Q So at that point you wander down the road and you're
14 trying to flag down some cars for a ride?
- 15 A Hitchhike.
- 16 Q How did you actually do that, were you doing your
17 thumb?
- 18 A Yes, ma'am (indicating), I ---
- 19 Q You didn't go up and actually grab the handles of
20 any cars or anything like that?
- 21 A I don't recall doing that, ma'am.
- 22 Q You don't recall doing that?
- 23 A No, ma'am.
- 24 Q But anyway, all you wanted was a friendly ride down
25 the road after you committed your robbery, right?

- 1 A Yes, ma'am.
- 2 Q And you know you were thumbing down the road? And
- 3 you admit Mr. Woods -- he's here in the courtroom
- 4 (indicating).
- 5 A That's him.
- 6 Q He watched you the entire time, he would have seen
- 7 your thumb?
- 8 A Yeah, he said that I was waving and trying to get a
- 9 ride and stop vehicles, yes.
- 10 Q That you were trying to get a ride. Do you remember
- 11 going up to doors and trying to get them open?
- 12 A I don't remember that. I went up to a couple of
- 13 cars but I didn't try to force my way in or
- 14 anything.
- 15 Q No, because that would be bad, right?
- 16 A Yes.
- 17 Q But when you got to the Bi-Lo parking lot, you still
- 18 don't have a ride. You haven't been able to flag
- 19 down anyone when you're hitchhiking down Two Notch
- 20 Road. So when you get to the Bi-Lo parking lot, you
- 21 happen to see Mr. Hampton. And your testimony is,
- 22 Mr. Hampton was standing outside his car, that his
- 23 son was on the other side of the car and that the
- 24 door was open?
- 25 A Yes, ma'am.

1 Q So at that point you thought, well, I'm sure Mr.
2 Hampton wouldn't mind if I just borrow his car to
3 get out of the area so I won't get arrested for my
4 robbery, is that what you thought?

5 A That's what I thought. That's what I did.

6 Q That's what you did. But Mr. Hampton, according to
7 you, was standing outside his car?

8 A Yes, ma'am.

9 Q So it was a vacant car so it was convenient for you
10 to take?

11 A Yes, ma'am, the car was running.

12 Q That's your testimony here today?

13 A Yes, ma'am.

14 Q And you never got inside the car?

15 A Yes, I said I got in the car.

16 Q While Mr. Hampton was in it?

17 A No.

18 Q And your testimony is actually Mr. Hampton is the
19 one that attacked you, is that what you testified
20 to?

21 A I never put my hands on Mr. Hampton.

22 Q That's right because he attacked you.

23 A Yes.

24 Q Once you got in his car.

25 A Yes, from the outside of the car, he attacked me.

1 Q So he's the one actually attacking you in this case?

2 A (No response.)

3 Q And again your plan is just to get out of the area?

4 A Yes, ma'am.

5 Q So at this point you've done a robbery of sorts by
6 intimidating someone with your voice. Your car won't
7 start, you've asked two different people to give you
8 a jump and they won't. Were you running or walking
9 down the road?

10 A Walking fast.

11 Q Walking fast. You're walking fast down the road.
12 You end up down in another parking lot. You're able
13 to approach another person. And you do all this
14 with your voice?

15 A Yes.

16 Q So Mr. Woods never attempted to catch you or come
17 near and it wasn't because you had a gun that he
18 didn't want to approach you about, he was just
19 intimidated by your voice when you asked him to jump
20 you?

21 A I never had a gun. I don't know if I intimidated
22 Mr. Woods or not, you know. But I only asked Mr.
23 Woods one question, to give me a jump. And then
24 after he told me to get away from him, I left the
25 area.

1 Q And he followed you?

2 A Yes, ma'am.

3 Q And that worried you because you were trying to get
4 away from the police because you just committed this
5 robbery, right?

6 A Yes, ma'am.

7 Q And he was still following you. And at that point,
8 after you approached Mr. Hampton, your testimony is
9 that Mr. Hampton is wrong, he was outside of his car
10 not inside as he specifically remembered, right?

11 A Mr. Hampton was standing on the outside.

12 Q Where was the son standing?

13 A On the passenger -- by the passenger side door.

14 Q So did his son actually see you take the car?

15 A I came -- I walked around his son and jumped right
16 into the car. His son was bending down to pick up
17 the hat.

18 Q And that's your story here today?

19 A That's my story here today, now.

20 Q And at no point did you ever intimidate anyone by
21 anything but your voice?

22 A That was it, ma'am.

23 Q And you never had your hand in your pocket?

24 A No, ma'am.

25 Q Under your coat?

- 1 A No, ma'am.
- 2 Q So everyone's wrong?
- 3 A I did not have my hand -- I didn't -- in my pocket
- 4 or under my coat or anything.
- 5 Q And then, as you're starting down Rabon Road, Mr.
- 6 Woods is still behind you, you're speeding. How
- 7 fast were you going?
- 8 A I don't have any idea how fast I was going.
- 9 Q Well, would you agree you were speeding?
- 10 A Probably so.
- 11 Q Close to 100?
- 12 A No, we wasn't going that fast. If you know Rabon
- 13 Road, there's a lot of twist and turns in there.
- 14 Q That's what makes it so dangerous to go that fast?
- 15 A Yes.
- 16 Q Okay. But it took the police almost two miles to
- 17 catch up with you, is that correct?
- 18 A (No response.)
- 19 Q And during that time period, you thought it was
- 20 important to throw out the wallet and why was that?
- 21 A I didn't want to get caught, I guess, with the
- 22 wallet on me.
- 23 Q But you kept ---
- 24 A I wasn't thinking.
- 25 Q --- the money?

1 A I wasn't thinking, ma'am.

2 Q You weren't thinking?

3 A No, ma'am, I wasn't thinking.

4 Q Where was the money from the wallet?

5 A Where was the -- the money was in my pocket. Yes, I
6 did have the money, ma'am.

7 Q Why did you stop?

8 A I seen that I couldn't get away, there was no way
9 out.

10 Q So your testimony is that Mr. Langford gave you his
11 wallet because you intimidated with his (sic) voice
12 and that you never represented that you had a gun to
13 him, that Mr. Woods never saw your hand underneath
14 your jacket, right?

15 A Yes, ma'am.

16 Q You're specific about that?

17 A Yes, ma'am, I am.

18 Q And that Mr. Hampton wasn't even sitting in his car
19 nor did you stick your hand under your jacket with
20 him either and that his son was standing right there
21 when all this occurred?

22 A Yes, ma'am.

23 Q And do you know why all of these people would try to
24 frame you?

25 A I'm not saying they trying to frame me, ma'am. I'm

1 just saying what I did.

2 Q Had you ever had any contact with any of these
3 people before?

4 A No, ma'am.

5 Q And in fact, these people were in essence, other
6 than Mr. Woods, your victims?

7 A (Shrugged shoulders.)

8 Q You stole their stuff, didn't you?

9 A Yes, ma'am.

10 Q You can't get around that?

11 A I took -- I took their stuff, ma'am.

12 Q So all people are just mistaken about how you had
13 your hand under your coat and that you really was
14 just as soft-spoken as you are here today?

15 A Might have been a little deeper but I didn't have my
16 hand -- I never came up to any one of those people
17 with a representation of anything, ma'am.

18 Q And you remember this all vividly, despite your
19 addiction and the fact that you were basically
20 desperate for another fix?

21 A I was getting sick but not desperate yet.

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

23 (Pause.)

24 Q One further question. When you said you went into
25 the Dollar General to buy some items, did you

1 purchase some items?

2 A Yes, ma'am.

3 Q And at that point it had been seven or eight, eight
4 or nine hours since you had your last hit of heroin.
5 So you had money to go purchase items at the General
6 Store, that's why you were there?

7 A Yes, ma'am.

8 Q You weren't just casing the parking lot for a likely
9 victim?

10 A I went there to purchase some oil for the car,
11 ma'am.

12 Q And it was just a sideline that you decided to rob
13 somebody?

14 A However it was, I went there to purchase ---

15 Q How did you have money to buy oil?

16 A I had money when the police detective --
17 Investigator Isenhoward, he can tell you he gave me
18 some of the money back. You know, it was actually
19 \$128 that they took from me.

20 Q If you had money, why did you need to rob
21 Mr. Langford?

22 A If I had money why did -- I didn't have enough
23 money, ma'am.

24 Q Heroin cost more than \$128 then for a hit?

25 A No, ma'am, that's not how it was.

1 MS. CAMPBELL: Thank you. I don't have anything
2 further.

3 MR. SCHNEE: Please the Court.

4 THE COURT: Yes, sir.

5 REDIRECT EXAMINATION

6 BY MR. SCHNEE:

7 Q I'm going to start off with that money. The \$128
8 you had on you, how much of that did you have on you
9 before you took Mr. Langford's money?

10 A Probably maybe \$48.

11 Q Okay. So somewhere around 80 or 100 was Mr.
12 Langford's?

13 A Yes.

14 Q You went to Dollar General and you said you bought
15 motor oil?

16 A Yes, sir

17 Q Do you know how much that cost?

18 A It was a couple of dollars and some change.

19 Q Okay.

20 A Maybe \$3.00 and some change.

21 Q Was -- did you plan out this entire day's events of
22 robbery?

23 A No, I did not.

24 Q You'd describe it as a spur of the moment thing?

25 A Yes, pretty much, yes, sir.

1 Q And you were looking for another hit of heroin?

2 A Yes, sir.

3 Q And you weren't thinking very clearly?

4 A I couldn't have been, I committed an act.

5 Q When you threw the wallet out of the car, were you
6 still trying to get away?

7 A Yeah -- yes.

8 Q Did you think that you could get away at that point?

9 A As I drove down maybe another quarter of a mile, it
10 came to me I couldn't get away.

11 Q Okay. And at that point you then pulled over and
12 stopped?

13 A Yes.

14 MR. SCHNEE: No further questions.

15 THE COURT: Anything on recross?

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

17 Nothing further, Your Honor.

18 THE COURT: All right, members of the jury, Mr.
19 Foreman, you've heard all the testimony you shall receive
20 in this case today. I came in maybe 12 minutes under
21 what I thought.

22 It's more important now than ever before -- it
23 was a short trial but it's very important to both sides.
24 Please don't talk about this case. When you go home,
25 don't mention it to your wives or husbands, that sort of

1 thing. And like I told you in the jury room, I'm going
2 to ask you to come back at 10:30 in the morning, okay.
3 So sleep a little late and I'll try to order you lunch
4 like I said and everything else. And I want to thank you
5 on behalf of everybody involved at this point for your
6 patience and attention.

7 I trust and hope you have a pleasant and restful
8 evening. Be back in the jury room tomorrow morning at
9 10:30, ladies and gentlemen.

10 Thank you all so very much.

11 (The jury retires from the courtroom at
12 approximately 5:12 P.M.)

13 THE COURT: I note for the record, the jury has
14 left the room. You may step down, Mr. Murray.

15 (The witness leaves the witness stand.)

16 THE COURT: While he's doing that, you want to
17 make your post-trial motions, Mr. Schnee?

18 MR. SCHNEE: Your Honor ---

19 THE COURT: Renew all motions?

20 MR. SCHNEE: I would renew all motions,
21 objections including my motion for a directed verdict.

22 THE COURT: The same ruling applies to all your
23 motions. I'm assuming you're saying the exact same thing
24 basically. If you were going to add something different,
25 respond. But all motions previously made, let the record

1 reflect that you've renewed them, and let the record also
2 reflect the same rulings still apply.

3 MR. SCHNEE: Thank you, Your Honor.

4 THE COURT: Anything further?

5 MR. SCHNEE: Not in terms of that.

6 THE COURT: Y'all want to go ahead and have --
7 let's do it this afternoon for a little while, see how we
8 feel. We've got time. I think -- it's got to be fairly
9 simple and straightforward.

10 But y'all come on, let's go back downstairs. I
11 keep forgetting I'm up here on the third floor. Let's go
12 downstairs to chambers. It won't take long and bring the
13 book. And we'll send y'all home in due course.

14 I will probably be -- I told the jury 10:30
15 obviously but I'll probably be here no later than 9:30.
16 If anything -- Mr. Schnee, wait a minute, will you?

17 MR. SCHNEE: I apologize.

18 THE COURT: I'll give you chance to talk to Mr.
19 Murray.

20 What I was about to say, if anything occurs to
21 anybody overnight, I mean, let me know in the morning and
22 we'll take it up.

23 For right now, thank you all so very much. See
24 you all -- I'll be here at 9:30 in case anything crops up
2 out the blue.

1 Let's go down, do short charge conference.
2 (Whereupon, Court's Exhibit Number 4,
3 Defendant's Requested Jury Poll, was marked for
4 identification.)
5 (The Court was in recess.)

6 WEDNESDAY, OCTOBER 14, 2009:

7 MR. SCHNEE: Just in terms of the arguments, I
8 think State v. Simmons is -- while it does only deal with
9 a strong arm robbery -- for the record it's 360 S C 33.
10 A copy of my Request to Charge have been made a part of
11 the record.

12 THE COURT: Okay.

13 MR. SCHNEE: I believe that the issue in that as
14 dealing with -- in terms of intimidation, strong arm
15 robbery, the fact that the new armed robbery statute
16 specifically deals with reasonableness, I think the -- I
17 included in my Request to Charge is a reasonable
18 definition for the jury as to how you determine what is
19 reasonable.

20 THE COURT: Okay.

21 MR. SCHNEE: I would certainly ask that it be
22 included. The second sentence that I asked from State v.
23 Rosemond, 356 S C 426, while it is certainly under the
24 old law, it is a very clear set of facts in this case
25 that is purely a representation of deadly weapon, there

1 is absolutely nothing introduced that the deadly weapon
2 ever existed.

3 THE COURT: Well the testimony of Mr. Langford,
4 what he believed -- go ahead.

5 MR. SCHNEE: And I think it's -- but the
6 language -- I think what in terms of what is reasonable,
7 it is -- the Court found that it is what an ordinary
8 reasonable person would believe if they were in the
9 victim's position.

10 THE COURT: Okay.

11 MR. SCHNEE: And I think that's particularly
12 important for Mr. Langford because based on various
13 avenues of testimony, I think he had a heightened sense
14 of fear.

15 THE COURT: But, Mr. Schnee, you can argue that
16 to the jury if you like but I'm not going to charge that.
17 So you're protected for the record but that request is
18 denied..

19 MR. SCHNEE: And on the third one, for the words
20 alone are not sufficient ---

21 THE COURT: Okay.

22 MR. SCHNEE: --- I would still request that it
23 is, are not, instead of, may not. I think the court is
24 very specific in terms of dissecting the statute where it
25 says, it was simply words, there would not have to be any

1 sort of manifestation. And the fact that the Supreme
2 Court of South Carolina found that there was a
3 separation, that words must be accompanied by a
4 manifestation. And their own language is, words are not
5 sufficient.

6 THE COURT: Well, but in the facts of this case,
7 if I say, are not, I think that's an impermissible
8 comment on the facts because we have two factual -- we
9 have two versions. May is more appropriate and that's
10 why I denied that request. That's why I changed it from
11 not to may, to be fair to both sides.

12 Yes, ma'am, Ms. Campbell.

13 MS. CAMPBELL: I don't have anything.

14 THE COURT: All right. Now, having done all
15 that, we're all on the same page, is that correct?

16 MR. SCHNEE: Yes, sir.

17 THE COURT: I'm going to give you about another
18 10 minutes to get ready.

19 MS. CAMPBELL: Thank you.

20 THE COURT: Now, I'm going to tell the jury
21 that. I know how it is, I've been through this before.
22 Y'all relax and get everything ready. We'll come back
23 and get started.

24 I always said -- this morning I said I thought
25 at 11:00 we'll be ready to go. We've still got about 12

1 minutes.

2 MS. CAMPBELL: Okay.

3 THE COURT: Relax, we'll start right at 11. Is
4 that okay?

5 MR. SCHNEE: Yes, sir.

6 THE COURT: Were the Langfords going to be here
7 today?

8 MS. CAMPBELL: They were planning on being here.
9 I don't know if the weather hampered them in any way.

10 THE COURT: Do we know? Well, I'll give them
11 until 11:00 anyway regardless.

12 MS. CAMPBELL: Thank you.

13 THE COURT: I'll wait at least until 11 and I'll
14 just tell the jury we're waiting on somebody to get here
15 because of the inclement weather. We'll start right at
16 11:00.

17 Is that good enough?

18 MR. SCHNEE: (Affirmative response.)

19 THE COURT: Well, that's what I'm going to do
20 anyway. So we'll wait a few minutes. And if you find
21 out they're on their way, Ms. Campbell, I'll be happy to
22 wait until they get here. If somebody can make a phone
23 call or something.

24 (Pause.)

25 THE COURT: And unfortunately, under our

1 constitution they have a right to be here, so you want to
2 make a quick phone call? I'll wait.

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: Let me do this. I'm going say
5 because of the weather, everybody's not quite here yet.
6 I'm still waiting. I'll let it go at that.

7 MS. CAMPBELL: Thank you.

8 THE COURT: And my law clerk asked, do y'all
9 want strong arm robbery or common law robbery? It's
10 about the same but does it matter?

11 MS. CAMPBELL: No, sir, it doesn't matter to me.

12 THE COURT: Okay, either one. So just relax
13 folks. I'm going to say we're waiting on some -- we're
14 missing somebody else too besides...

15 THE CLERK: Mr. Schnee just stepped out.

16 THE COURT: Okay. So it's only the Langfords
17 we're waiting on, right? And until I get some word
18 about, are they in transit or whatever, I'll wait.

19 MS. CAMPBELL: Thank you.

20 THE COURT: All right.

21 (The Court was in recess.)

22 THE COURT: They will not make it today?

23 MS. CAMPBELL: Yeah, I know he was to have a
24 blood transfusion. Well, apparently he's ill today and
25 can't get out of bed and he will not be here and his wife

1 had to stay home with him too. And I would just ask that
2 you instruct the jury ---

3 THE COURT: I'll just say he was unable to make
4 it today. I don't want to say anything about sick, that
5 implies -- I have a concern about that. I will -- y'all
6 come up here.

7 MS. CAMPBELL: That he wanted to be here but was
8 unable to make it.

9 THE COURT: I'll say, he wishes he could have
10 been here but was unable to make it today.

11 MS. CAMPBELL: That is fine.

12 MR. SCHNEE: That's fine with me.

13 THE COURT: But if I say he's sick, then we get
14 into that -- he wanted to be here but was unable to make
15 it today.

16 MS. CAMPBELL: That's perfect.

17 THE COURT: All right.

18 (Pause.)

19 THE COURT: The only other thing we haven't
20 considered, Megan just came up with a definition for
21 larceny. I will be happy to share it with you. I assume
22 since it's on the verdict form, I've got to give it.

23 MS. CAMPBELL: Yes, you've got ---

24 THE COURT: Just double check and make sure it's
25 the new law rather than the old law. I think the law on

1 larceny has changed. But y'all both take a look at it.

2 (Pause.)

3 MS. CAMPBELL: The first definition right there
4 is sufficient.

5 MR. SCHNEE: I would ---

6 MS. CAMPBELL: With the four prongs.

7 MR. SCHNEE: It seems fine to me, Your Honor.

8 THE COURT: What, the whole thing or what?

9 MS. CAMPBELL: I think just the -- unless you
10 want to expand on it, the four prongs are sufficient.

11 MR. SCHNEE: Any aspect of it, Your Honor, is
12 sufficient. If you want to read the whole thing, that's
13 fine ---

14 THE COURT: Or just the first paragraph?

15 MS. CAMPBELL: (Affirmative response.)

16 THE COURT: Okay, that's good.

17 MS. CAMPBELL: Unless you want to -- I mean ---

18 MR. SCHNEE: I don't ---

19 THE COURT: And that would be as to
20 chronologically, four elements must be present, those
21 four elements, that's it.

22 MR. SCHNEE: (Affirmative response.)

23 MS. CAMPBELL: (Affirmative response.)

24 (Pause.)

25 THE COURT: All right. I'm going to show you

1 the verdict form before I do anything so we'll all be
2 really together, so.

3 And how long do y'all propose to argue? Ms.
4 Campbell, I assume you're going to go about 40 minutes.

5 MS. CAMPBELL: Yes, sir. I mean, with the
6 Court's permission I would like to open on the law and
7 close on the facts after his.

8 THE COURT: That's fine.

9 MR. SCHNEE: I'll probably go for 20 to 25
10 minutes.

11 THE COURT: Okay, Mr. Schnee, I will take your
12 word for it. All right.

13 (Pause.)

14 THE COURT: Y'all come up here. I might need to
15 add the specific victims on each count. That's all
16 right, I can write them in or something like that, as to
17 Mr. Langford and as to Mr. Hampton. They're just
18 generic.

19 MS. CAMPBELL: Are you sending the indictments
20 back?

21 THE COURT: No, no, no, just the verdict forms.

22 MS. CAMPBELL: Then I think you need to.

23 THE COURT: Yeah.

24 MR. SCHNEE: Your Honor, may we approach for a
25 second?

1 THE COURT: Sure.

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

4 THE COURT: We'll match the indictment numbers
5 with the victims' names, Langford for 1532 -- should be
6 Hampton, Hanson. It was in the indictment, Hampton. No,
7 no, don't do it again. That's all right. And Hampton
8 for 1533, that covers everything.

9 So are we all ready now? Mr. Dial (phonetic),
10 you may bring the jury in.

11 THE BAILIFF: Yes, sir, Your Honor.

12 THE COURT: And I think the State moved to amend
13 the indictment to reflect Hampton rather than Hanson and
14 there was no objection. Is that correct, Mr. Schnee?

15 MR. SCHNEE: Yes, Your Honor.

16 MS. CAMPBELL: Your Honor, if you'll instruct
17 them about Mr. Langford?

18 THE COURT: Yes -- yes, ma'am.

19 THE COURT: Thank you.

20 (The jury returned to the courtroom at
21 approximately 11:15 A.M.)

22 THE BAILIFF: The jury's seated, Your Honor.

23 THE COURT: Good morning once again and welcome
24 back, Mr. Foreman, members of the jury. We've now come
25 to a point in this trial where we'll hear the final

1 arguments on behalf of the State by Ms. Campbell, on
2 behalf of Mr. Murray by Mr. Schnee -- Schnee, right?

3 MR. SCHNEE: Yes, sir.

4 THE COURT: Members of the jury, Mr. Langford,
5 Walter Langford, the 89 year old gentleman, was unable to
6 be here today. I'm happy to report he's okay, it was
7 just that he was unable to be here today. And I wanted
8 you to know that. If you look out and don't see him,
9 that's the reason why.

10 Further, the State has the burden of proof and
11 I'll talk about that in detail momentarily. And under
12 our rules, Ms. Campbell will argue on the law first.
13 She's allowed as the prosecutor to tell you what the law
14 is. It probably will reflect pretty much what I'm going
15 to tell you later on.

16 And after she finishes her presentation on the
17 law, Mr. Schnee will then argue on behalf of Mr. Murray.
18 And then Ms. Campbell will have an opportunity to come
19 back and present her arguments on the facts and try to
20 persuade you to agree with her version of the facts, as
21 Mr. Schnee will.

22 I've already instructed you to have an open
23 mind. I think you know how important that is. Keep your
24 minds open until you hear me charge you on the law.

25 Now, this has been a relatively short case but

1 it's very important to the State as well as to Mr.
2 Murray. So I invite your keen and close attention to the
3 final arguments, first of Ms. Campbell followed by Mr.
4 Schnee, then Ms. Campbell will have opportunity to argue
5 once more.

6 Ms. Campbell, you may proceed.

7 MS. CAMPBELL: May it please the Court.

8 THE COURT: Yes, ma'am.

9 CLOSING ARGUMENT ON BEHALF OF THE STATE

10 BY MS. CAMPBELL:

11 Good morning. The first thing I want to do on
12 behalf of the State of South Carolina, the citizens of
13 Richland County, is thank you for your service in this
14 case. The Judge just told you it has not been an
15 especially long case as far as the testimony, however I
16 think you have come to realize over the last day or two
17 that it is an important case. It's important to Mr.
18 Murray and it's important to Mr. Langford, to Mr.
19 Hampton, to Mr. Woods and to the citizens of this county.

20 I know when you walked in here on Monday
21 morning, you didn't know what kind or if you would
22 actually serve on a jury. And as I observed you over the
23 last day or two, I noticed you've been very attentive.
24 In this case, the testimony or the evidence that is
25 before you is pretty much either it happened the way Mr.

1 Murray said it happened or it happened the way the
2 victims and Mr. Woods said it happened. That's not
3 always the case.

4 Now, as the Judge just told you, I'm going to
5 stand up here and talk a little bit about the law in this
6 case because it's very important. And then you will hear
7 from Mr. Schnee and then I will have an opportunity to
8 address you one last time about the facts.

9 If I misquote any testimony that you heard, it's
10 not intentional. If I misquote any of the law, you take
11 the law as the Judge gives it. But if either side
12 mischaracterizes what the testimony was, the sworn
13 testimony by the witnesses, the 911 tape, you are the
14 sole judges of the facts. The roles in this courtroom
15 are defined so that the system works.

16 The role of the prosecutor is to bring forth all
17 relevant evidence as to what happened back on February
18 17th, all the admissible evidence. The role of the
19 defense is to defend his client to the best of his
20 ability. The Judge's role is to determine what is
21 actually admissible, what comes before you as credible
22 evidence. And to instruct you on what the law is and the
23 law in this state as you then have to apply it to what
24 you find the facts are.

25 But by far the most important role in this

1 courtroom, ladies and gentlemen, no one will dispute this
2 is your role. Because each of you individually, and then
3 once you're instructed on the law, collectively, will
4 have to go back and determine what happened or what the
5 credible evidence shows happened back on February the
6 17th. Your verdict, as the Judge will tell you, must be
7 unanimous. And you each will have to go back there and
8 determine what happened.

9 Now, you have heard all the testimony and you
10 will receive the physical evidence back in the jury room
11 with you that you must base your verdict on. It's not on
12 questions by the lawyers, fishing expeditions, innuendos,
13 speculation or just plain wishful thinking. It's on the
14 credible believable evidence that has come before you.

15 Now I want to take this opportunity to apologize
16 on behalf of Mr. Langford and Mr. Hampton if we have done
17 anything over the last couple of days to offend you.
18 Sometimes in my hurry to get evidence out before you, my
19 questions at times has been unartful or sloppy, or if
20 there have been times when you've had to go back in the
21 jury room and wait for a longer period of time than you
22 should have, please don't hold that against the State of
23 South Carolina or Mr. Langford or Mr. Hampton. It was
24 unintentional on our part.

25 Now, criminal cases are somewhat unique because

1 in criminal cases the State has the duty to bring forth
2 each and every witness. You haven't heard anything about
3 any depositions. You have heard about statements and
4 other things that were taken in the case. But in
5 criminal cases the Defendant, and it's his absolute
6 right, to confront each and every witness against him.
7 That's why there hasn't been any depositions. That's why
8 even in some of the expert testimony such as the DNA, we
9 have to bring forth a witness. They can't just submit a
10 report. And that's the reason for that because the
11 Defendant has the right to confront each and every
12 witness. And so that you have the opportunity to judge
13 their credibility. So that's why you've heard references
14 to reports.

15 And in that same vein, you've also heard
16 references to say other people were there perhaps when
17 the Defendant was arrested. You see actually on the
18 videotape other deputies that weren't called. That's
19 called cumulative evidence. We can't call people to say
20 the same thing over and over and over. Like you heard
21 the 911 tape with Mr. White. He didn't have anything
22 more to add than what was already in the tape. So that's
23 why you may have heard reference to other people but they
24 haven't actually appeared before you. The people that
25 came before you each had a role in what happened but we

1 can't bring forth people just to say the same thing over
2 and over.

3 Now, as the Judge just told you, it's very
4 important -- and let me tell you this, the State has the
5 burden of proof to prove Nathaniel Murray guilty beyond a
6 reasonable doubt, as it should. It is the highest level
7 of proof, as it should be in criminal cases, and that is
8 our burden. And I submit, ladies and gentlemen, in this
9 case, perhaps more than any other, the evidence is
10 overwhelming as to what happened back on February the
11 17th. The State welcomes that burden as it should but
12 especially in this case.

13 Now what is proof beyond a reasonable doubt?
14 And the Judge will instruct you. And perhaps the easiest
15 definition is proof beyond a reasonable doubt, a
16 reasonable doubt is the kind of doubt that would make an
17 ordinary person hesitate to act.

18 But our courts have gone a little farther than
19 that in defining what is proof beyond a reasonable doubt
20 for your sake and for the Judge's sake, he will instruct
21 you this. He will tell that in civil cases either side
22 only has to prove that it's more likely than not that it
23 happened that way. And proof beyond a reasonable doubt
24 is higher than that.

25 What is proof beyond a reasonable doubt? Proof

1 that leaves you firmly convinced of the Defendant's
2 guilt. And I think perhaps that sums it up best. If you
3 are firmly convinced of the Defendant's guilt, that is
4 proof beyond a reasonable doubt because it goes on.
5 There are very few things in this world that we know with
6 absolute certainty. And in criminal cases such as this,
7 the law does not require proof that overcomes every
8 possible doubt. If based on your consideration of the
9 evidence you are firmly convinced that the Defendant is
10 guilty of the crime charged, you may -- you must find him
11 guilty.

12 If on the other hand, you think that there is a
13 real possibility that the Defendant is not guilty, you
14 must give him the benefit of the doubt and find him not
15 guilty.

16 So very simply, ladies and gentlemen, it's proof
17 that leaves you firmly convinced. Even in the law they
18 recognize that you can second guess yourself or have a
19 speculative doubt about anything. That's not the level
20 of proof we have. It's merely proof that leaves you
21 firmly convinced.

22 So that's proof beyond a reasonable doubt.

23 Now, in this case you will have three
24 indictments and y'all must determine the Defendant's
25 guilt or innocence on each indictment separately. The

1 Judge will instruct you on that.

2 Two of the indictments are for the same charge
3 and that is armed robbery. And very simply, ladies and
4 gentlemen, the third indictment is failure to stop for a
5 blue light. And I want to address that one first.

6 The definition of failure to stop for a blue
7 light in our Code of Laws, it is unlawful for any motor
8 vehicle driver, while driving on any road, street or
9 highway of the state, to fail to stop when signaled by
10 any law enforcement vehicle by means of a siren or
11 flashing light. What you may notice is it doesn't say
12 that they have to travel a hundred feet, two hundred feet
13 and not stop or anything. In this case, I submit, and I
14 may be speculating, but the Defense is not going to get
15 up here and dispute it's a failure to stop for a blue
16 light because by the Defendant's own testimony, he
17 admitted that he was trying to get away, he knew they
18 were behind him and only stopped when he realized that it
19 would do him no good. That was his testimony.

20 In addition to that, you also have Corporal
21 Duke's testimony who said basically, yeah, he was flying
22 down the road and they were going close to a hundred
23 miles per hour. And you saw it took him a little while
24 to catch up so that meant that guy was going that fast
25 too. And then finally he caught up with him where there

1 was a bottleneck up ahead. He had no alternative. By
2 his own admission, he had no other recourse.

3 Now the second -- the second and third
4 indictments are for armed robbery. And very simply,
5 ladies and gentlemen, in certain cases when there's
6 testimony say disputing the facts, then it is automatic
7 that the Judge will charge you on the lesser included
8 offenses. And very simply I want to talk to you first
9 about what is our statute's definition of armed robbery.
10 And the Judge will instruct you on this.

11 A person who commits a robbery while armed with
12 a pistol, dirk, slingshot, metal knuckle, razors or other
13 deadly weapons, and in some cases a fist can be
14 considered a deadly weapon. Or, and this is the
15 important part because we don't have to prove -- of
16 course if you had all these -- we don't even have to
17 prove he had a weapon because the law -- Legislature
18 recognized that whenever anyone purports or alleges in
19 any manner to have a deadly weapon, bad things can
20 happen, it raises the stakes to another level because at
21 that force even the victim has the right to act in self-
22 defense. Therefore, could even meet armed with armed or
23 the perception of armed. And that's why you don't even
24 have to have it because the Legislature even understands
25 that when people act like they have a deadly weapon or

1 try to intimidate people by alleging they have a deadly
2 weapon in any manner, then it rises to the level of armed
3 robbery because bad things happen.

4 Because all we have to prove is that while
5 alleging either by action or words -- and words alone may
6 not be enough. In this case we have the representation
7 plus some words with Mr. Langford. And then we have the
8 representation with Mr. Hampton, that he was armed by
9 using a representation of a deadly weapon or any object
10 which a person present during the commission of a robbery
11 reasonably believed to be a deadly weapon is guilty. It
12 can be a toy gun. It can be the end of a screwdriver, it
13 can be a hand under a coat.

14 The only issue is whether or not these victims
15 were reasonable in their belief that he was armed. And
16 you heard from every one of them. You heard from Mr.
17 Langford. You heard from Mr. Woods. And you heard from
18 Mr. Hampton. Each of them told you, he came up, that
19 they noticed that he had his hand under his jacket as if
20 he had a weapon. Those were three independent witnesses
21 that didn't know each other and just happened to see the
22 same thing done by this Defendant and perceived the same
23 thing.

24 It's not like they all got together and have
25 some reason to want to make this man guilty of armed

1 robbery. They didn't get up there and said, oh, I saw
2 the gun. They told the police back on February 17th, as
3 they told you this week, exactly what they perceived.

4 Was it reasonable? That's the only issue. Any
5 object which a person present during the commission of a
6 robbery reasonably believed to be a deadly weapon is
7 guilty. They didn't give up their wallet, their car,
8 Mr. Woods didn't run around to the back of his car
9 because they were intimidated by his size.

10 So that's the definition of armed robbery.

11 Now, in every case the Judge will tell you there
12 are lesser included. And the easiest way for me to start
13 with them is basically the Judge will also say -- on
14 those two verdict forms you will also have an option of
15 finding him guilty of lesser included offenses. If you
16 don't think that he represented in any way by words or
17 actions that he had a weapon, then you could consider the
18 lesser included offenses.

19 What is larceny? Larceny is the unlawful taking
20 of the goods of another with the intent to steal, is the
21 easiest way to put it. And the Judge will give you a
22 much more lengthier definition of that.

23 Basically if -- an example would be if I put my
24 books in my locker at school and I leave and someone
25 comes up and opens up my locker and takes my books, then

1 that is a larceny. The easiest definition of it is
2 stealing. What elevates it to a robbery or the Judge may
3 call it common law robbery or strong arm robbery, is when
4 you do it from the person or the presence of another
5 person, using either -- any kind of intimidation, force,
6 anything of that nature.

7 Well if you have a stealing but it's from the
8 person or presence and there's no use or representation
9 of a gun or weapon, then it would be strong arm robbery.
10 And I submit, ladies and gentlemen, the defense will get
11 up here and tell you he's only guilty of that. And maybe
12 even he'll say he's only guilty of larceny.

13 What elevates it to armed robbery is either the
14 use of a deadly weapon -- you don't have to shoot him.
15 It doesn't say that anywhere in the armed robbery
16 statute. Or the representation either by words or
17 actions that the person is armed.

18 And I submit, ladies and gentlemen, all the
19 credible evidence in this case shows that the Defendant
20 is guilty as charged.

21 Those are some of the definitions and listen
22 carefully when the Judge instructs you because first you
23 must consider armed robbery. If you think the State has
24 failed to meet your burden there, then you would consider
25 lesser included offenses.

1 I submit the defense will get up here and ask
2 you or tell you that he is only guilty -- and I don't
3 know if they'll say larceny or robbery or some
4 combination. Ladies and gentlemen, all we ask you is to
5 hold him responsible for his actions that caused the
6 terror in our northeastern community back on February
7 17th.

8 Now the Judge will also instruct you that in
9 considering you can consider there are two kinds of
10 evidence. It doesn't mean one is better than the other,
11 the Judge will tell you that. It's direct versus
12 circumstantial evidence.

13 The direct evidence in this case is the
14 eyewitness testimony. Direct evidence is the evidence
15 that's perceived through the senses, what you see, hear,
16 smell, touch. That's direct evidence. The testimony of
17 a person who asserts or claims to have actual knowledge
18 of a fact such as an eyewitness.

19 Circumstantial evidence is proof of a chain of
20 facts and circumstances indicating the existence of a
21 fact. There is no distinction between the two. In this
22 case, you have both direct -- mostly direct and some
23 circumstantial evidence. The fact that the wallet was
24 thrown out of the car belonged -- had Mr. Langford's
25 belongings in it that he later identified. That is

1 circumstantial evidence that this Defendant robbed Mr.
2 Langford.

3 The direct evidence is Mr. Langford's testimony
4 and Mr. Hampton's testimony about what happened that day.
5 The Judge will tell you, neither one gets greater weight
6 than the other. You just consider it, as you should all
7 the evidence in this case, in conjunction with each
8 other.

9 Now in this case too you also heard from an
10 expert witness, the crime scene person, the DNA person.
11 In this case it's not that much. But certain people
12 because of some training can come in and actually give
13 you an opinion. And that's why the Judge will instruct
14 you on expert testimony.

15 Finally, ladies and gentlemen, the most
16 important thing the Judge will instruct you on is
17 credibility or believability. Credibility, you are the
18 sole Judges of the credibility of each and every witness
19 that has come before you.

20 Now the Judge will instruct you that you can
21 consider many things. You can consider -- believe part
22 of the witness's testimony, none of the witness's
23 testimony, part of a witness's testimony. It's up to
24 you. You can believe one against many, many against one.
25 You shouldn't count the number on either side. That's not

1 right.

2 But what you can also consider is whether or not
3 the person who gets up there and testifies has a bias or
4 a prejudice, whether or not they have a reason for their
5 testimony to be such as it is. What their demeanor was
6 like on the stand. Were they forthright or hesitant?
7 And most importantly, was their testimony corroborated by
8 the facts, corroborated by the other testimony or not?

9 Ladies and gentlemen, in this case too, you've
10 also heard, and it's very important, about how each of
11 these witnesses, Mr. Woods, Mr. Hampton, Mr. Langford,
12 went down that day and gave statements. And the reason
13 for that is for the defense to have an opportunity --
14 they get those so if anybody changes their story in any
15 way that's significant, they can be impeached with that.
16 Everyone has been consistent.

17 Most importantly, you have the 911 tape where
18 you hear -- in the first 911 tape, with Mr. White, you
19 could hear Mr. Langford in the background giving his
20 information. And in that, if you listen carefully, you
21 can even hear him say, I just didn't want him to shoot me
22 or something to that effect. Don't -- I'm not sure
23 that's the exact quote. I just didn't want to get shot.

24 You hear Mr. Woods talk about how, yeah, he said
25 he had a gun, he said he had a gun. Remember Mr. Woods

1 testified that he didn't remember all Mr. Langford said.
2 But on the 911 tape he knew exactly what Mr. Langford
3 told him even though now he just knows -- he knows he
4 said he was robbed. That's credible, that's real life.

5 You heard him say, he said he had a gun, he said
6 he had a gun. And then at one point in the 911 tape you
7 even hear Mr. Woods talk about, he's got his hand in his
8 pocket like it's a gun, or something to that effect.

9 Every witness in this case independently came
10 forth and told you, as they told the police back when it
11 happened, exactly that. He's going to get up here and
12 say you can't believe 89 year old Mr. Langford because he
13 was scared because there had been a robbery in his
14 neighborhood. Well, if he was so scared and was just
15 assuming things, wouldn't he just say, he had a gun?

16 No, he told you the reason he thought he had a
17 gun. Yeah, he thought he had a gun because the Defendant
18 acted like he did.

19 Credibility. And I beg you, judge their
20 credibility, judge Lester Woods, judge Jimmy Hampton,
21 judge Mr. Langford. Because they got up here and they
22 swore an oath to tell the truth and that's what they did.
23 These three people were just trying to lead their
24 ordinary lives where they were working or contributing
25 members of our community. Judge them.

1 Because in order to find this man (indicating)
2 guilty of any lesser or not guilty, then you must say
3 that these people (indicating) were not believable. That
4 they just chose to take time out of their lives to be
5 whatever they're going say, victims of larceny or robbery
6 or whatever, so that they could come up here eight months
7 later and spend two or three days up here. For what
8 reason, to frame this poor man (indicating)? Is that
9 reasonable?

10 I submit, ladies and gentlemen, in this case
11 with these facts and those witnesses, the only verdict
12 that's supported by the law as the Judge is going to tell
13 you is to find him guilty of two counts of armed robbery
14 and the failure to stop for a blue light.

15 Thank you.

16 THE COURT: All right, Mr. Schnee.

17 MR. SCHNEE: Thank you Your Honor. May it
18 please the Court.

19 THE COURT: Yes, sir.

20 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

21 BY MR. SCHNEE:

22 Morning. As I told you yesterday morning, there
23 are certain pieces of evidence that are going to be much
24 more important to you than others, at least in my
25 opinion. And I told you yesterday morning I thought one

1 of the most important pieces of evidence is going to be
2 the 911 calls, specifically the second call you heard by
3 Lester Woods.

4 It's a seven and a half minute call. You heard
5 Jennifer Blair testify that despite there are a couple of
6 automated time stamps on the recording, it was one
7 continuous phone call in real time.

8 Now, you're going to have this 911 CD back in
9 there with you. And I ask that you play very close
10 attention to it and I ask you to put it in the computer
11 and look at it. There are two very important times on
12 there and it's dealing with Mr. Hampton's car. At
13 exactly 5 minutes and 40 seconds into that report, Lester
14 Woods begins talking about Nathaniel Murray getting in
15 the car. I don't remember the exact wording. I think he
16 said, oh, my God, he just got -- jumped in someone's car.
17 Don't remember the exact words. The wording isn't
18 important but the content and the time of it is, 5
19 minutes, 50 seconds into the call.

20 At 6 minutes and 1 second into the call, he
21 began saying, now he's driving away, they're fighting
22 over the car, 11 seconds. Now it's important for Mr.
23 Hampton because in his testimony he's describing getting
24 out of the car, taking the seatbelt off, reaching back
25 in, as he's trying to close the door, fighting over

1 opening the door. That doesn't quite make sense.

2 What doesn't make sense about his testimony is
3 that when he says he's sitting in the car, in the
4 driver's seat, his son is outside of the car in the Citi
5 Financial, drops a hat. He says he reaches over the seat
6 onto the ground and tries to pick up the hat.

7 You saw him walk up here. He is a somewhat
8 taller gentleman, certainly taller than I am. But
9 everyone's in cars. You've got two seats, you've got
10 center console, you've got the ground a certain distance
11 below. I don't think it's possible, and that's a
12 decision you have to make, for someone to reach over and
13 actually reach on the ground, while in a seatbelt in the
14 driver's side, reaching through the passenger side.
15 Could he reach the door? Probably. Could he reach the
16 ground outside of the door? I don't think so. It's more
17 likely that he's -- he's not quite remembering everything
18 perfectly.

19 Now, I'm not saying he's intentionally lying.
20 I'm certainly not going to claim that. The problem is,
21 people's memory of events, they get muddled, they get
22 unclear. You start reflecting, you start thinking, you
23 start putting your own life experiences into it from the
24 past, things you've seen, things you've heard. And it
25 all blends into what now becomes the truth, your

1 thoughts, your perceptions.

2 The most important aspect is the 911 call
3 because that's simply a relay of information from one
4 person that's recorded at the exact moment it happens.
5 There's no time to reflect, there's no time to think.

6 Now, the Solicitor brought up a whole argument
7 about the law and saying well, the only question is do
8 you believe these witnesses or do you believe my client.
9 That's not true. You can believe part of what they say,
10 part of what my client says. You don't have to take
11 everybody word for word and look at it in two -- two
12 different sections. Realistically, there are always
13 multiple stories from an event and the truth is going to
14 lie somewhere in between. Everyone knows that from their
15 own life experiences dealing with people.

16 Now, my client did not have to take the stand.
17 The law is very clear. He has an absolute right to
18 remain silent. It can't be held against him if he
19 chooses not to testify or if he chooses not to put up any
20 evidence at all. He didn't do that. He got up on the
21 stand. He told you what he did. He didn't tell you, oh,
22 it wasn't me. He didn't tell you, oh, they're all
23 mistaken, they're all lying. No, he told you what he
24 did. He robbed an 88 year old man of his wallet. He
25 told you that. He told you he jumped in someone else's

1 car and tried to drive away as the person was reaching
2 in, fighting over it with him. He didn't lie about that.

3 He told you he didn't have a gun. The police
4 never found a gun. You heard from seven different police
5 officers who were on the scene that day. You heard a
6 list much earlier on Monday of all the possible
7 witnesses. There were a number -- more police officers
8 they did not call. That was seven people who were all on
9 the scene that day. Many of them were involved either in
10 the chase or talking with witnesses. No one found a gun.
11 No one saw a gun. You had two people in a car following
12 my client, two police officers, one driving, one a
13 passenger. He is doing nothing but watching the car.
14 They see a wallet fly out of the window. There's no
15 dispute about that. They don't see a gun. There never
16 was a gun.

17 And the real question about representation of a
18 gun, it's not whether my client made any actions that Mr.
19 Langford thought there was a gun. The question that you
20 need to decide is was Mr. Langford's belief a reasonable
21 belief. Are there any other things that would weigh into
22 Mr. Langford thinking that there was a gun that an
23 ordinary person would not?

24 In his case, only a few weeks earlier, there was
25 an ATM murder in Forest Acres. Everybody has heard about

1 that on the news. It was on the news for weeks. He said
2 to the police that day, he was terrified of that. That
3 was the first thing he thought of when Mr. Murray got in
4 the car. Nathaniel Murray didn't have a gun. Mr.
5 Langford was terrified. He thought -- he thought he
6 might have a gun. It's up to you if that's going to be a
7 reasonable belief. Based on Mr. Langford's perceptions,
8 my argument is that it's not a reasonable belief. There
9 was nothing that Nathaniel Murray did other than say,
10 give me your money. Mr. Langford was simply more scared
11 than a normal ordinary person because of other events
12 that had nothing to do with Nathaniel Murray.

13 Now, Lester Woods, what does he do? He sees my
14 client. My client comes up to him. He hears Mr.
15 Langford yelling about, I've just been robbed, he has a
16 gun, whatever it is he said. So he pushes my client off.

17 What does he do then? He gets in his car, calls
18 the police, very reasonable and very responsible. Then
19 he starts following my client. Do you really think it's
20 reasonable for a person to start following someone who
21 they think has a gun? If you really thought Nathaniel
22 Murray had a gun, he should not have been following him
23 half a mile down the road, go from one parking lot all
24 the way down the road into the next parking lot and keep
25 following him. It would be more reasonable that he would

1 simply relay the information that he immediately had and
2 then go away. That's what a normal person would do if
3 they were scared.

4 Likewise, Jimmy Hampton. His testimony was that
5 he was scared because he thought my client had a gun and
6 yet he reached in to the car and tried to fight with my
7 client and grabbed the jacket, the jacket he presumed --
8 he thought the gun was. Not only did he reach in and
9 grab once, the buttons broke, he fell back. He reached
10 in a second time. Reached in and tried to fight with a
11 man he thought had a gun? It just doesn't make any
12 sense. He was angry. He admitted he was angry. He
13 really didn't believe there was gun. He simply thought
14 my client was stealing his car. And that's true. My
15 client did steal his car. But Nathaniel Murray didn't
16 say, I'm going to shoot you. He didn't say that. There
17 was nothing to indicate to Mr. Hampton that there was a
18 gun.

19 Now, obviously all the commotion with everybody
20 else coming up. You've got police officers, you've got
21 various witnesses saying things. I don't know why he
22 thought there was a gun but it's not a reasonable belief.
23 Nathaniel Murray made absolutely no representation to
24 Jimmy Hampton. He jumped in the car and tried to drive
25 away. That is a crime. That is a theft. Strong arm

1 robbery, it is not an armed robbery. Because the basis
2 for Jimmy Hampton to think there was a gun is not
3 reasonable.

4 Now, you saw the videotape from the police cars.
5 You watched my client driving. There's -- there's a
6 substantial gap between the two cars for quite awhile.
7 At some point the police cars get relatively close. The
8 police say at that point there's a construction zone
9 ahead, there's a block. For whatever reason, my client
10 immediately stops.

11 Now, what does he do when he stops the car? He
12 gets out, opens the door, puts both of his hands up and
13 stands up. Now, you heard Corporal Duke testify that he
14 went up there, gun drawn, he was scared. He was
15 concerned because the allegations were very reasonable.
16 You heard him say he grabbed my client and my client
17 tensed before he pushed him down on the trunk. You're
18 going to have that video.

19 That simply isn't how it happened. Corporal
20 Duke grabbed my client, threw him immediately on the
21 trunk. Was that reasonable? Maybe. But I want you to
22 consider the fact that my client had given up. He
23 realized he was caught. He wasn't trying to fight, he
24 wasn't a threat to Corporal Duke. Corporal Duke didn't
25 know he wasn't a threat and he didn't have a gun. But my

1 client was not fighting him. He had given up, that's why
2 he pulled over.

3 He got up there and he told you, when he through
4 the wallet out, he thought he still had a chance to get
5 away. He was trying to get away. It's a criminal act,
6 trying to evade the police. He wanted to get away. He
7 wasn't trying to hurt anyone. He didn't have a gun.

8 If he wanted to hurt someone, he would have
9 planned it out. That's an easy thing to do. He even
10 told you himself why, when I asked him, why did you even
11 do this. First of all, his drug addiction but secondly,
12 we all know, this was a crime of opportunity. He saw an
13 88 year old man sitting in a car and thought, that's easy
14 money. He didn't have a gun on him, didn't threaten him
15 with a gun.

16 Now, one of the other things I want you to
17 consider is what was not done in this case by the police.
18 And I think what's most important with regards to Jimmy
19 Hampton is probably some of the best evidence that could
20 have been obtained.

21 Mr. Hampton says he was parked in front of the
22 City Financial. That is a banking institution. That is
23 where people go to pay bills and get money if they are --
24 if they have accounts with Citi Financial, glass
25 storefronts. You're talking about two gigantic parking

1 lots, Bi-Lo, Dollar General, Big Lots, all of those
2 stores you've got my client walking in front of. A State
3 Credit Union down the street, another banking
4 institution. Where are the videos from those banks?
5 Where are the police testifying that they went and tried
6 to view the videos? You've got a theft of a car no more
7 than 15 feet away from the front, a glass front of a bank
8 and there's not a single video camera that they've looked
9 at or presented or even tried to obtain.

10 Now, they said they walked around and tried to
11 talk to witnesses, people, find out if there was any
12 information. Did they try to find out if there were any
13 parking lot cameras to see exactly what happened?
14 Because the question is, was the belief that that gun
15 existed reasonable? The best of proof of that would be
16 video footage showing how my client was standing, where
17 were his hands, what did it look like? We don't have
18 that.

19 What you have are scared people and reasonably
20 they are scared. I'm not saying that's not reasonable
21 but they were scared of my client but they weren't scared
22 of a gun. They were scared of the idea because that was
23 in their minds. That wasn't because my client said
24 anything or did anything. The police could have easily
25 obtained video footage and showed you how he was acting.

1 They didn't. They look at this case, they've got their
2 -- their witnesses, open and shut for them. It's not
3 open and shut. And it's very important to Mr. Murray
4 that you don't assume it's open and shut just because
5 they're watching him the whole time.

6 There's no question that Nathaniel Murray
7 committed these thefts, these robberies. But it is not
8 armed robbery.

9 And I'm going to ask you to go back there and
10 review all the evidence and return a verdict of strong
11 arm robbery and not armed robbery.

12 THE COURT: All right, Ms. Campbell.

13 MS. CAMPBELL: May it please the Court.

14 THE COURT: Yes, ma'am.

15 FINAL CLOSING ARGUMENT ON BEHALF OF THE STATE

16 BY MS. CAMPBELL:

17 In every case you're getting ready for trial,
18 you try to anticipate what the defense may be. And
19 typically in a case of an armed robbery, it's ID, got the
20 wrong guy, it was just a drug deal gone bad, not really
21 an armed robbery, things of that nature. And I didn't
22 realize until I listened to opening statement yesterday
23 kind of where this is going. But today it's taken a new
24 high because the defense has just gotten up here and
25 said, you cannot convict because his client was not

1 caught on video tape while he was robbing people in these
2 various parking lots where there is no video tape ---

3 MR. SCHNEE: Objection to that, Your Honor.
4 That's not evidence, there are no video tapes.

5 THE COURT: I don't know whether there is or
6 not..

7 MS. CAMPBELL: Thank you.

8 The Defendant didn't walk into a bank or walk up
9 to an ATM where there is video. He intentionally picked
10 people out in the open, people with easy access, people
11 that wouldn't be recorded. And the defense is that you
12 aren't supposed to believe Mr. Woods or Mr. Hampton or
13 Mr. Langford, and in the same vein that you aren't
14 supposed to believe his client either. It's just all a
15 wash, so give him the benefit? That's the defense?

16 And listen to the 911 tape because 5 minutes and
17 50 seconds into it is when his Defendant is robbing his
18 second victim of the day -- actually his third, Mr. Woods
19 he couldn't get in the car. And we won't even count the
20 doors he was opening on Two Notch. And it only took
21 between 10 and 15 seconds? And the real one is that you
22 can't believe Jimmy Hampton, an upstanding member of this
23 community who has no reason to lie. It's not like he got
24 up here and said he had a gun. He represented he had a
25 gun. That reeks of truth. But you aren't supposed to be

1 able to believe him because even though he's a very tall
2 man, this is a very small car. Perhaps his arm wouldn't
3 be long enough to reach across the other seat to where
4 the cap had fallen on the ground. That makes him not
5 believable?

6 Ladies and gentlemen, I submit that's what makes
7 him believable, what makes each and every one of these
8 witnesses believable. I beg you to judge their
9 credibility. Because either it happened the way that
10 each and every witness says it did -- and he is right.
11 The 911 tape is very important. And in the 911 tape you
12 will hear references to where they talk about Mr.
13 Langford in the background, I didn't want to get shot.
14 When you hear Mr. Woods on the tape, he's going to
15 people's cars, he's trying to jack people, not hitch a
16 ride. He's got his hands in his pocket, this is Mr.
17 Woods saying this, like he's got a gun. Because first he
18 says, you know, Mr. -- they said he's got a gun, they
19 said he's got a gun. He goes, he's got his hand in his
20 pocket. Just the way ironically that all three people
21 testify to. And that 911 tape is important because it is
22 a blow by blow of what he did.

23 And, oh, the other reason you can't believe Mr.
24 Hampton or Mr. Woods is because they stood up to him.
25 Ladies and gentlemen, to me that makes them heroes, not

1 lying witnesses (indicating). Mr. Woods did above and
2 beyond. He's what makes this community a good place to
3 live. Because when he saw someone in trouble, he took
4 the time to make sure this person, this dangerous person
5 who either had a gun or was perceived to have a gun, was
6 apprehended. He went above and beyond but you aren't
7 supposed to believe him? What did he get out of this
8 other than court -- to come to court and be called a
9 liar. He's a hero.

10 Mr. Hampton, he didn't get out of his car
11 because Mr. Murray was using his stern voice. And
12 according to Mr. Murray, he wasn't in the car anyway.
13 And I'll get back to Mr. Murray's testimony. He got out
14 of the car and he said he lost it. He wasn't going to be
15 terrorized in the parking lot of the Bi-Lo. So he tried.
16 And that's why you're not supposed to believe him?

17 I submit, ladies and gentlemen, those two men
18 are what makes our country great. But you aren't
19 supposed to believe them.

20 Now, I want to talk a little bit about what the
21 evidence does show in this case. And whether or not the
22 defense likes it or not, it either happened the way Mr.
23 Langford, Mr. Woods and Mr. Hampton said it happened or
24 it happened the way that Nathaniel Murray said it
25 happened. And I want to talk a little bit about how the

1 two stories cross. You know, it's interesting. It's one
2 of the oldest defenses in the book. It's called the art
3 of confessing error. If the evidence is overwhelming, if
4 you're caught dead to right, confess to a lesser to try
5 to avoid conviction of the greater offense. It's
6 classic.

7 And as you heard Mr. Murray up here yesterday
8 afternoon, the only places he would change his testimony
9 is when it made him guilty of armed robbery. And can you
10 blame him? There's a 911 tape. There are three
11 witnesses whose credibility is hard to attack even for
12 them and there's the victim.

13 So what is the difference between who said what
14 happened? And this just summarizes all of it. And again,
15 if I mischaracterize any of the testimony as you heard
16 it, you remember it.

17 Mr. Langford said the Defendant got in the
18 driver's seat, his hand was under his coat. Thought he
19 had a gun, gave him a wallet. Remember what he said,
20 give me your money or I'll kill you. It wasn't in the
21 voice as Mr. Murray said, the stern voice up here. I
22 submit Mr. Langford wouldn't have been able to hear that
23 voice. Give me your money. That he begged him just to
24 take the money, to leave his wallet. And notice how he
25 incorporated some of that into it. Because remember what

1 Nathaniel Murray said? He got in the driver's seat. He
2 used a stern voice, give me your money. Mr. Langford
3 tried to give him his watch and he said, no, no, no, no,
4 don't want your watch, I just want your money. Gave him
5 his wallet. He was going to give the wallet back but
6 someone came out of the store and he didn't want to be
7 seen. Remember he kept saying that, I needed to get out
8 of there, I needed to get out of there. The reason he
9 couldn't give back the wallet was because he might be
10 seen by the lady that came out of the store.

11 And then he said that even though he needed to
12 get out of there, that he went up to some other nice lady
13 and asked her for a jumpstart but that didn't work.

14 And then let's get to what he says about what
15 happened when he approached Mr. Woods. Asked him for a
16 jumpstart, again in a nice manner. He doesn't remember
17 whether or not Mr. Woods shoved him away. He can't
18 remember that part. And remember, he's remembering all
19 this and he has had his last hit of heroin, and he's an
20 admitted heroin addict, some eight or nine hours earlier.
21 And you do the math, you're better than me.

22 Was followed down the street and tried to hitch
23 a ride. Not opening any car doors or anything like that,
24 he was hitchhiking down the street. He wasn't going up
25 to cars and trying to undo the things. Hampton and his

1 son were outside of the car but he jumped in and drove
2 off. And that Hampton assaulted him. And this is what I
3 like the best, because according to Nathaniel Murray,
4 he's the actually victim (indicating) of Mr. Hampton
5 (indicating). He attacked him. That's what you must
6 believe in order to find him guilty of the lesser
7 included. The story goes on.

8 Hampton and his son were outside the car, both
9 doors were open, got in the driver's door, Hampton
10 attacked him, he drove off. What supports his version of
11 events? Not any of the State's witnesses. And why --
12 Mr. Hampton's not an expert on armed robbery. Mr.
13 Langford is not an expert on armed robbery. If they were
14 going to try to frame poor Nathaniel Murray, who
15 admittedly is out there robbing people, wouldn't they
16 just say he had a gun? Wouldn't they say, he stuck it in
17 my face and said shoot me?

18 Mr. Hampton got up here and said he didn't say a
19 word other than, drive on, bro. He said he did like this
20 (indicating). And his immediate and fast reaction we
21 know, because of the 911 tape, within seconds, was to
22 jump out and abandon his own car.

23 I submit, Jimmy Hampton (indicating) -- they've
24 been trying to say Mr. Langford perceived there was a
25 weapon because of some murder that happened earlier in

1 Columbia. That therefore his beliefs were unreasonable.
2 He picked Mr. Langford because he was an easy mark.
3 Most 88 year old people are. He preyed on Mr. Langford
4 because he thought he could get away with it. Who's
5 going to believe some old guy anyway?

6 But then things went wrong when his car wouldn't
7 start. And then he had to improvise. And he went up to
8 Mr. Woods. And Mr. Woods saw his hand in his pocket and
9 that's why he ran around the back of the thing. Mr.
10 Woods clearly is capable of taking down Nathaniel Murray
11 but for the fact he had a gun or perceived he had a gun.
12 He then does the right thing and follows him, although
13 they then say that that's unreasonable. He didn't get
14 out and tackle him, did he? He followed him down and
15 hear him on the 911 tape. Y'all need to get here now,
16 get -- something bad's going to happen. Oh, my God, if
17 he goes in a store there's no telling what he's going to
18 do. He's got his hand in his pocket. They say he has a
19 gun.

20 Ladies and gentlemen, I submit that's
21 overwhelming. You judge Mr. Woods. You judge Mr.
22 Hampton and you judge Mr. Langford. And that's the
23 evidence.

24 We can go through the failure to stop and all
25 that but, I mean, it's clear. They admit, he didn't

1 stop. He finally gave up when he knew he couldn't get
2 away.

3 That's the case. Either Mr. Langford, Mr. Woods
4 or Mr. Hampton independently perceived the same thing --
5 not one of them got up here and said, oh, yeah, he had a
6 gun. They told you what they saw. And that reeks of the
7 truth.

8 Mr. Murray got up here and testified, and the
9 only things he would switch around were the things that
10 make him guilty of the crime he committed. Nathaniel
11 Murray back on February 17th, he counted on the fact that
12 if he just went in there and acted like he had a gun with
13 that poor old Mr. Langford, that he'd get away before
14 anybody would ever find him. Because he knew there were
15 no videos out there. And that once he got away, it
16 would just be poor old Mr. Langford's word about what
17 happened. And he counted on the fact that if it was just
18 poor old Mr. Langford, that the police wouldn't take him
19 seriously. And that even if he ultimately got charged
20 based on poor old Mr. Langford, that no jury's going to
21 find him credible. He's just some old guy.

22 And that even after his car wouldn't start and
23 he went up and he tried to get into -- and remember this.
24 And Mr. Woods' car, he's going for another round. I
25 don't think his stern voice is going to intimidate Mr.

1 Woods. Then he came around, had his hand in his pocket,
2 again.

3 Mr. Langford's back there yelling, he's got a
4 gun. Was it a reasonable perception? Yes. Was it a
5 perception he promoted? Yes. Because at that point he
6 did have to get away. And he did everything within his
7 power to get away. He ran down the street, Mr. Woods
8 following him. And his only option was to try to jack
9 another person. In this state it's called armed robbery.
10 He went in there, looked at Mr. Hampton, had his hand up
11 just like he did.

12 The evidence is overwhelming. Nathaniel Murray
13 counted on that it would only be Mr. Langford. And I
14 submit, ladies and gentlemen, that's enough in this case
15 but there's much much more. Let him know that in this
16 state we hold people responsible, no matter who they pick
17 as their victim, no matter who they try to prey upon.
18 Just hold him guilt -- responsible for what he did and
19 find him guilty as charged, ladies and gentlemen. That's
20 all we ask.

21 Thank you.

22 THE COURT: Now, Mr. Foreman and members of the
23 jury, before I start my charge, does anybody need a short
24 break? If you do, it's okay. It's probably going to
25 take me about 20 minutes to tell you what the law is. Do

1 y'all need a break, anybody?

2 JURORS: (Negative response.)

3 THE COURT: Y'all are fine?

4 JURORS: (Affirmative response.)

5 THE COURT: Very well.

6 CHARGE BY THE COURT:

7 Now, Mr. Foreman and members of the jury, the State
8 of South Carolina charges the Defendant Nathaniel Murray
9 with the offenses of armed robbery and failure to stop
10 for a blue light.

11 Now, the indictments have been read to you, I
12 read them to you before we got this case started. And
13 you will have verdict forms in the jury room. I'll
14 explain that momentarily.

15 Now, to these indictments the Defendant
16 Nathaniel Murray has entered a plea of not guilty which
17 places upon the State the burden of proving the Defendant
18 guilty.

19 A person charged with committing a criminal
20 offense in South Carolina is never required to prove
21 himself innocent. I charge you that is a vital important
22 rule of the law of evidence, that the Defendant in a
23 criminal trial, no matter how great or serious may be the
24 offenses with which he is charged, must always be
25 presumed innocent until his guilt has been proven beyond

1 a reasonable doubt.

2 This presumption of innocence remains with the
3 Defendant at all times, from the moment of his appearance
4 in this court, throughout the trial and until the jury
5 has, upon the testimony and evidence presented, reached a
6 verdict of guilty beyond a reasonable doubt. For it the
7 solemn duty of the jury, if not clearly convinced of his
8 guilt beyond a reasonable doubt to the contrary, to
9 acquit the Defendant.

10 So the burden of proof is upon the State to
11 establish by evidence to your satisfaction the guilt
12 beyond a reasonable doubt of Nathaniel Murray here on
13 trial for the crimes of armed robbery, two counts of
14 course, and failure to stop for a blue light.

15 And members of the jury, what is a reasonable
16 doubt? A reasonable doubt is the kind of doubt that
17 would cause a reasonable person to hesitate to act. If
18 you have such a doubt as to the guilt of the Defendant,
19 then he would be entitled to a verdict of not guilty.

20 Reasonable doubt may arise from evidence which
21 is in the case or from the absence or lack of evidence in
22 the case. You alone must make the determination of
23 whether or not reasonable doubt exists as to the guilt or
24 innocence of Nathaniel Murray.

25 Now, members of the jury, the State has the

1 burden of proving the Defendant guilty beyond a
2 reasonable doubt. Some of you may have served as jurors
3 in civil cases where you were told that it is only
4 necessary to prove that a fact is more likely true than
5 not true. In criminal cases, the State must prove -- the
6 State's proof must be more powerful than that, it must be
7 beyond a reasonable doubt.

8 Now, members of the jury, proof beyond a
9 reasonable doubt is proof that leaves you firmly
10 convinced of the Defendant's guilt. There are very few
11 things in this world that we know with absolute
12 certainty. And in criminal cases the law does not
13 require proof that overcomes every possible doubt. If
14 based on your consideration of the evidence, you are
15 firmly convinced that the Defendant Nathaniel Murray is
16 guilty of the crimes charged, you must find him guilty.

17 If on the other hand you think there is a real
18 possibility that he is not guilty, you must find him not
19 guilty. A criminal defendant is presumed to be innocent
20 until his guilt is proved beyond a reasonable doubt.

21 Now, members of the jury, a verdict of guilty
22 can be based upon circumstantial evidence as safely as
23 upon direct evidence, provided the circumstantial
24 evidence relied upon to prove guilt measures up to these
25 requirements of the law that I've just stated to you.

1 There are two types of evidence which are
2 generally presented during a trial, direct evidence and
3 circumstantial evidence.

4 Direct evidence is the testimony of a person who
5 asserts and claims to have actual knowledge of a fact
6 such as an eyewitness. Circumstantial evidence is proof
7 of a chain of facts and circumstances indicating the
8 existence of a fact. The law makes absolutely no
9 distinction between the weight or value to be given to
10 either direct or circumstantial evidence. Nor is a
11 greater degree of certainty required of circumstantial
12 evidence than of direct evidence.

13 You should weigh all the evidence in the case.
14 After weighing all the evidence in the case, if you are
15 not convinced of the guilt of the Defendant beyond a
16 reasonable doubt, you must find the Defendant not guilty.

17 Now, Mr. Foreman and members of the jury, under
18 the constitution and laws of South Carolina, you are the
19 finders of the facts in this case. I do not have the
20 right to pass upon the facts or even to express any
21 opinion I might have as to them. Nor may I intimate in
22 any way what I may think about the guilt or innocence of
23 the Defendant Nathaniel Murray.

24 You are also the judges -- excuse me. You are
25 also the judges, the sole judges, of the credibility, the

1 believability of the witnesses who have testified in this
2 case. In passing upon their credibility you may take
3 into consideration many things such as, number one, the
4 demeanor or manner of testifying. Whether the witness
5 had a reason to be biased or prejudiced. Whether a
6 witness's testimony was contradicted on the one hand or
7 supported and corroborated on the other hand.

8 You certainly do not determine this credibility
9 -- excuse me. You certainly do not determine this
10 credibility by counting the number of witnesses for
11 either side. You may believe a small portion of a
12 witness's testimony and disregard the larger or vice
13 versa. You may believe one witness against many or many
14 against one

15 Now, this is as to -- what I'm going to tell you
16 next is as to John Barron who was the DNA expert. You
17 have heard the testimony of a witness who has special
18 knowledge, skill, experience, training or education in a
19 particular profession or occupation, who has given his
20 opinion as an expert as to matters in which he is
21 skilled.

22 In determining the weight to be given such
23 opinion, you should consider the qualifications and
24 credibility of the expert and the reasons given for his
25 opinion. You are not bound by such opinion. Give it the

1 weight, if any, to which you deem it is entitled.

2 All these things you will consider, bearing in
3 mind that you should give the Defendant the benefit of
4 the reasonable doubt -- of a reasonable doubt.

5 Now, members of the jury, the same constitution
6 and law which make you the finders of the facts and the
7 evidence as I've just discussed with you, I am as the
8 Judge made the sole and only instructor of the law. You
9 must accept as correct the law as I charge you and apply
10 it to the evidence as you find it and reach your verdict.
11 And finally I charge you in this regard, that you, or for
12 that matter I, should not be concerned about what the law
13 ought to be but rather what I charge you the law to be.

14 Now, armed robbery, what is armed robbery,
15 ladies and gentlemen? It's found in South Carolina Code
16 Section 16-11-330. A person who commits robbery while
17 armed with a pistol, dirk, slingshot, metal knuckles,
18 razor or other deadly weapon. Or while alleging either
19 by action or by words he was armed while using a
20 representation of a deadly weapon or any object which a
21 person present during the commission of the robbery
22 reasonably believed to be a deadly weapon is guilty of
23 armed robbery.

24 I further charge you, Mr. Foreman and members of
25 the jury, words alone may not be sufficient to support a

1 conviction for armed robbery.

2 Now, there's armed robbery. Then you've heard
3 the lawyers talk about strong arm robbery which is common
4 law robbery. They're the same thing, different words for
5 the same thing. Different way of calling robbery that
6 I'm going to explain to you, strong arm robbery or common
7 law robbery. I think on the verdict form it will be
8 common law robbery rather than strong arm robbery. I
9 think both Ms. Campbell and Mr. Schnee argued strong arm
10 robbery but it's the exact same thing.

11 Robbery is the felonious taking away of the
12 goods of another against the owner's will and without his
13 consent by force, intimidation or violence. This is
14 essentially larceny by force.

15 Now, what is larceny? Because as the lawyers
16 argued -- there's going to be, and I'll tell you right
17 now, armed robbery, strong arm robbery or larceny, okay,
18 the possible verdicts or not guilty.

19 As to the crime of larceny, four elements must
20 be present and established beyond a reasonable doubt.
21 They are first, that there was a taking. Second, that
22 the taking was of the personal property of another.
23 Third, that after being taken, the property was carried
24 away. And fourth, that the taking or carrying away of
25 the property was done without the consent or against the

1 will of the owner and was done with the intent to steal.
2 That's all commonsense but I've got to tell you that in
3 legal terms.

4 Now, I think you might have heard Ms. Campbell
5 or Mr. Schnee, or both, argue about lesser included
6 offenses. You've got armed robbery, strong arm or common
7 law robbery and larceny. And I need to tell you about
8 the differences in the degrees or kinds by saying the
9 following to you.

10 Under South Carolina law we have a principle
11 known as lesser included offenses. Some crimes that are
12 of a lesser degree are included in crimes which are of a
13 greater degree. For instance, if Crime A has just one
14 element the State has to prove and the State proves that
15 element, then the person can be guilty of Crime A.

16 Now, Crime B has the identical element as Crime
17 A. However, Crime B has a second element the State must
18 prove. If the State charges a Defendant with Crime B but
19 doesn't prove both elements of the crime, although it
20 does prove the element of Crime A, a jury could find the
21 Defendant guilty of Crime A even though the Defendant was
22 charged with Crime B because Crime A is a lesser included
23 offense in the charge of Crime B.

24 Strong arm robbery is a lesser included offense
25 of armed robbery. That makes sense to you, does it not?

1 JURORS: (Affirmative response.)

2 THE COURT: Now, if you as jurors have a
3 reasonable doubt as to whether the State has met its
4 burden of proof and shown all the elements of Crime B,
5 you would then consider -- let me back up a minute.

6 If you as jurors have a reasonable doubt as to
7 whether the State has met its burden of proof and shown
8 all the elements of Crime A, let's say. You would then
9 consider the lesser included offense of Crime B, robbery
10 -- common law robbery.

11 Then if you have a reasonable doubt as to
12 whether or not the State has shown all the elements of
13 the lesser included offense, common law robbery, you
14 would find the Defendant not guilty. Does that make
15 sense? Armed robbery, common law robbery or not guilty.

16 Now, additionally we need to take it one step
17 further. It's a three step process. We've got armed
18 robbery, common law robbery and the lesser included
19 offense of common law robbery is larceny. Does that make
20 sense? Armed robbery, common law robbery or larceny.

21 If you have a doubt as to whether or not it's
22 common law robbery rather than armed robbery, you've got
23 to resolve that doubt in favor of common law robbery. If
24 you have a doubt as to whether or not it's common law
25 robbery as opposed to larceny as I defined it to you,

1 because larceny is a lesser included offense than common
2 law robbery or strong arm robbery, you must convince
3 (sic) him of larceny. That makes sense to each and
4 everyone. I see you nodding your heads.

5 It's a long way to tell you a simple principle
6 that we all understand.

7 Now, the State also charged Mr. Murray with
8 failure to stop for a blue light. And it's found in Code
9 Section 56-5-750. In the absence of mitigating
10 circumstances, it is unlawful for any motor vehicle
11 driver while driving on any road, street or highway of
12 the state to fail to stop when signaled by any law
13 enforcement vehicle by means of a siren or flashing
14 light. Failure to see the flashing light or hear the
15 siren does not excuse a failure to stop when the distance
16 between the vehicles and other road conditions are such
17 that it would be reasonable for a driver to hear or see
18 the signals from the law enforcement vehicle. And
19 commonly y'all understand what failure to stop for a blue
20 light is. That's sort of the definition I have to tell
21 you.

22 Now, I have three verdict forms. And I will
23 tell you parenthetically, Mr. Foreman, members of the
24 jury, and y'all understand. We all know this. Whatever
25 your verdict is, it must be unanimous. That means all 12

1 of you must agree.

2 So the first verdict form I hold in my hand, Mr.
3 Foreperson, is regarding Mr. Langford. The State of
4 South Carolina versus Nathaniel Murray. Verdict form and
5 it has the indictment number on it. And there's possible
6 verdicts regarding the incident occurring specifically to
7 Walter Langford.

8 And I had to list them, I couldn't list them all
9 at the same time, in a certain order. And this is just
10 the order I've listed them in. It has no importance
11 which I listed first, second or third.

12 But it reads, this verdict form: We, the jury,
13 unanimously find Nathaniel Murray, number one, guilty of
14 armed robbery; or, number two, guilty of strong arm
15 robbery or common law robbery; or, number three, guilty
16 of larceny; or, number four, not guilty. That makes
17 sense?

18 Now, as to Jimmy Hampton, same verdict form,
19 same type, same way. It says: We, the jury, unanimously
20 find Nathaniel Murray, guilty of armed robbery, guilty of
21 strong arm robbery, guilty of larceny or not guilty.

22 And finally, the third verdict form as to
23 failure to stop for a blue light. It says: We, the
24 jury, unanimously find Nathaniel Murray guilty of failure
25 to stop for a blue light or not guilty.

1 Now, on each of these verdict forms, Mr.
2 Foreperson, there's a line that says Foreperson. You
3 just sign your name above that line, date it along the
4 line that says date, and that should complete your
5 services on this particular case -- excuse me.

6 Once again, your verdict must be unanimous. I
7 need to tell you at the end that whatever verdict you
8 reach in this case, it cannot be -- it cannot be based on
9 sympathy, passion or emotion or some evidence not found
10 in the record. You know, you've got to be confined to
11 what you've heard here in court today and not anything
12 you thought or might have heard some place else. Y'all
13 understand that.

14 Now, I've got to ask that you go back into the
15 jury room but don't begin your deliberations. The time
16 to begin your deliberations will be when the Bailiff,
17 he'll gather all the evidence that has been submitted in
18 this case. He'll knock on the door, he'll hand it to
19 you. That will be your signal to begin your
20 deliberations.

21 Until then, there's a matter of law I need to
22 talk to Ms. Campbell and Mr. Jophlin as well as Mr.
23 Schnee about. Once again, the only way I can do that is
24 in your absence.

25 So at this point in time I thank you for your

1 service, as everyone else does.

2 Go to the jury room. Your signal to begin your
3 deliberations will be when the Bailiff hands you all
4 these exhibits along with these three verdict forms,
5 okay.

6 Thank you all so very much. We'll try to get
7 this to you very shortly.

8 (The jury retires from the courtroom at
9 approximately 12:28 P.M.)

10 THE COURT: Thank you, Mr. Dial. Any exceptions
11 or additions from the State?

12 MS. CAMPBELL: No, sir.

13 THE COURT: From the Defendant?

14 MR. SCHNEE: Yes, Your Honor. I would renew my

15 ---

16 THE COURT: Yes, sir.

17 MR. SCHNEE: --- request to charges. I think
18 particularly the language Ms. Campbell used in her
19 presentation of the law in this case and how she related
20 the facts. I think even more importantly that the
21 statement, are not sufficient, instead of, may not be
22 sufficient, I think that distinction is very important in
23 this case and I would simply reiterate that.

24 THE COURT: All right, sir.

25 MR. SCHNEE: Based on the law.

1 THE COURT: All right. Anything further?

2 MR. SCHNEE: Not in terms of charges, no.

3 THE COURT: All right. I disagree, once again
4 -- not once again but I disagree. But I think you're --
5 what I like to do is let you preserve your exception for
6 the record and I've done that.

7 MR. SCHNEE: Thank you, Your Honor.

8 THE COURT: Let me invite you all to double
9 check the exhibits, take a final look at the verdict
10 forms. And then if everybody agrees that what's -- I
11 think that there might have been one thing submitted for
12 ID and not placed into evidence?

13 MS. CAMPBELL: There's one other one that we
14 have too, number 28 that I find that we never put into
15 evidence.

16 THE COURT: All right. Y'all go through and
17 sort it all out.

18 MR. SCHNEE: The only other thing that's -- I
19 would ask that the laptop and the TV be available to them

20 ---

21 THE COURT: Well, it's available but unless they
22 ask for it, I ain't going to send it back there. And I
23 would be happy to stick my head in the door, say if you
24 want -- and they would know this. There's a laptop
25 available if you want to listen to any tapes or see any

1 videos. Just let me know, I'll be happy to bring them in
2 for you. I don't know. I'm not going to just sent them
3 back there.

4 Anything else?

5 MR. SCHNEE: That's it.

6 MS. CAMPBELL: No, sir.

7 THE COURT: Let's assume for the record, all
8 your exceptions, all your previous objections, motions
9 have been heard again for the record and denied.

10 All right.

11 MR. SCHNEE: Thank you, Your Honor.

12 THE COURT: All right. So -- of course Mr. Dial
13 knows to bring Mr. Kenneth R. Casciere -- not right now,
14 not right now. Just get all the -- when you take it back
15 there, bring him out. He's one of our two people on the
16 panel that especially have reason to celebrate October
17 the 12th.

18 (Pause.)

19 THE COURT: All right, we'll be at ease.

20 (The Exhibits and Verdict Forms were delivered
21 to the jury to begin deliberations at approximately
22 12:35 P.M.)

23 (The alternate juror was excused.)

24 (The Court was in recess awaiting a verdict.)

25 THE COURT: Mr. Murray, while you were

1 downstairs, the jury came back with two notes. And your
2 lawyer, Mr. Schnee, is correct, wanted to make sure they
3 were shared with you at about the same time as everybody
4 else.

5 The first note says: Do we -- do we got a
6 computer to hear and see the CD's and is there a
7 transcript of the 911 call?

8 There's not a transcript but we do have a CD of
9 it. You can play it in the computer, a CD so they can
10 listen to whatever it is they need to listen to. The
11 failure to stop tape and the 911 tape, is that correct?

12 MR. SCHNEE: Yes, sir.

13 THE COURT: Okay.

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: So just have a seat. I'm going to
16 tell the jury we have all the equipment available, do
17 they want me to bring it in to them right now or not.
18 And I'll find out in a minute.

19 They're eating. Otherwise I could bring them
20 out. If y'all trust me, that's what I'll ask them based
21 on this and see what they say.

22 (The Court was in recess.)

23 THE COURT: They said they want it in there.
24 They know how to operate it. So get everything in there.
25 I told them to stop deliberating until we get it all in

1 there.

2 Mr. Schnee, you hear that? They want the
3 equipment ---

4 MR. SCHNEE: Yes, sir.

5 THE COURT: They're not deliberating until we
6 get it all in there and then I'm going to tell them to
7 resume, all right?

8 MR. SCHNEE: Okay.

9 (The TV and laptop were delivered to the jury at
10 approximately 12:57 P.M. and deliberations resumed
11 at approximately 1:00 P.M.)

12 (The Court was in recess awaiting a verdict.)

13 THE COURT: Can we get the written transcript
14 testimony of Jimmy Hampton? I'm going to bring them out
15 here. She's located it on -- I'm going to say look, I
16 can't give you the written thing. I can play it back for
17 you, if you want. I guess if we play one we've got to --
18 my suggestion, if they want to -- they might want to hear
19 direct, I don't know. The idea would be to play all of
20 it, we'll just see. We'll take it by -- we'll all get a
21 chance to look at them as a group and see how they might
22 be feeling.

23 You ready, Mr. Dial? Tell them to come on out
24 here.

25 (Pause.)

1 THE COURT: And while they're coming out, I'll
2 share this other note that came before that one. We need
3 the password for the computer. The lady from the office
4 gave it to the Bailiff who gave it to them, in fact wrote
5 it on the back here. We can discuss that later but
6 that's one I didn't even mention to y'all. It was sort
7 of a ministerial thing I just took care of.

8 (The jury returned to the courtroom at
9 approximately 2:00 P.M.)

10 THE COURT: Welcome back, Mr. Foreman and
11 members of the jury. Let me explain something first of
12 all. I got your latest note. And we try cases not
13 because their easy, because they're hard and it's hard to
14 a juror. I've been a juror myself before so I
15 understand.

16 And the note reads: Can we get the written
17 transcript paren -- parenthetical testimony of Jimmy
18 Hampton. No, we don't have a written transcript but I
19 can play the testimony back for you if you'd like. You
20 have direct testimony, cross examination. There could
21 have been some redirect and some recross.

22 Now, is that what y'all want to do, y'all want
23 to hear it all?

24 JURORS: (Affirmative response.)

25 THE COURT: Okay, relax a minute. Do you have

1 it ready now?

2 COURT REPORTER: Yes, sir.

3 THE COURT: All right. I mentioned it briefly
4 to the lawyers involved. So we all agree that we should
5 play all the testimony back for them, is that correct?

6 MS. CAMPBELL: Whatever they want.

7 THE COURT: Okay, you ready to go? Do we need
8 to put the microphone next to your -- okay, you have all
9 that ready?

10 COURT REPORTER: Yes, sir.

11 THE COURT: All right, y'all ready for it?

12 JURORS: (Affirmative response.)

13 THE COURT: Okay.

14 (Whereupon, tape played in open court of Jimmy
15 Hampton's testimony.)

16 THE COURT: Is that everything?

17 COURT REPORTER: Yes, sir.

18 THE COURT: Is that everything, that's what
19 y'all wanted to hear?

20 MR. FOREMAN: (Affirmative response.)

21 THE COURT: Now, I'm going to ask you to go back
22 in the jury room but don't resume your deliberations
23 until the Bailiff tells you to do so, okay.

24 Thank you all.

25 (The jury retires from the courtroom at

1 approximately 2:20 P.M.)

2 THE COURT: Anything the State wants to add to
3 what just occurred?

4 MS. CAMPBELL: No, sir.

5 THE COURT: Mr. Schnee, anything?

6 MR. SCHNEE: No, Your Honor.

7 THE COURT: Are you sure? All right, Mr. Dial,
8 you can tell them they can resume their deliberations
9 now, sir.

10 (The jury resumed deliberations at approximately
11 2:22 P.M.)

12 (Whereupon, Court's Exhibit Number 6, Jury Note,
13 was marked for identification.)

14 (Whereupon, Court's Exhibit Number 7, Jury Note,
15 was marked for identification.)

16 (Whereupon, Court's Exhibit Number 8, Jury Note,
17 was marked for identification.)

18 (Whereupon, Court's Exhibit Number 9, Jury Note,
19 was marked for identification.)

20 THE COURT: Folks, this is my observation. You
21 have 12 honest people trying to do the right thing.
22 They've been very meticulous taking their time. And
23 that's the way the system should work.

24 Let's all be at ease and relax.

25 Thank you.

1 (The Court was at ease awaiting a verdict.)

2 THE COURT: Is everybody ready? We got
3 everybody here, Jackie? Bring the jury in, Mr. Dial.

4 (The jury returned to the courtroom at
5 approximately 2:30 P.M.)

6 THE BAILIFF: The jury's seated, Your Honor.

7 THE COURT: All right. Now, Ms. Pendergrass.

8 THE CLERK: Mr. Foreman, have you reached a
9 verdict?

10 MR. FOREMAN: Yes, we have.

11 THE CLERK: Will you hand it to me?

12 THE COURT: You may publish it.

13 VERDICT OF THE JURY:

14 THE CLERK: Indictment number 2009-GS-40-1531,
15 The State of South Carolina versus Nathaniel Murray.

16 We, the jury, unanimously find the Defendant
17 Nathaniel Murray guilty of failure to stop for blue
18 light.

19 This is signed Foreperson James Stevens, October
20 14th, 2009.

21 Indictment number 2009-GS-40-1532, The State of
22 South Carolina versus Nathaniel Murray. This is for
23 Walter Langford.

24 We, the jury, unanimously find the Defendant
25 Nathaniel Murray guilty of armed robbery.

1 This is signed Foreperson James Stevens, October
2 14th, 2009.

3 Indictment number 2009-GS-40-1533, The State of
4 South Carolina versus Nathaniel Murray. This is in
5 regard to Jimmy Hampton.

6 We, the jury, unanimously find the Defendant
7 Nathaniel Murray guilty of armed robbery.

8 This is signed Foreperson James Stevens, October
9 14th, 2009.

10 Mr. Foreman, are these your verdicts and the
11 verdicts of the entire jury?

12 MR. FOREMAN: Yes, they are.

13 THE COURT: Anything further for this jury on
14 behalf of the State?

15 MS. CAMPBELL: No, sir.

16 THE COURT: All right. Mr. Schnee?

17 MR. SCHNEE: Poll the jury, Your Honor.

18 THE COURT: Yes, be happy to.

19 THE CLERK: Ladies and gentlemen of the jury,
20 I'm going to ask you two questions regarding your
21 verdict.

22 James Stevens, were these your verdicts?

23 JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 JUROR: Yes.

1 THE CLERK: Anne Brittain, were these your
2 verdicts?

3 JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 JUROR: Yes.

6 THE CLERK: Mary Goodwin, were these your
7 verdicts?

8 JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 JUROR: Yes.

11 THE CLERK: Eleanor Cuaresma, were these your
12 verdicts?

13 JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 JUROR: Yes.

16 THE CLERK: Nicole Berry, were these your
17 verdicts?

18 JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 JUROR: Yes.

21 THE CLERK: Robert Riley, were these your
22 verdicts?

23 JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 JUROR: Yes.

1 THE CLERK: Susan Cutler, were these your
2 verdicts?

3 JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 JUROR: Yes.

6 THE CLERK: Patricia Martin, were these your
7 verdicts?

8 JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 JUROR: Yes.

11 THE CLERK: Anne Hodaly, were these your
12 verdicts?

13 JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 JUROR: Yes.

16 THE CLERK: David Sykes, were these your
17 verdicts?

18 JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 JUROR: Yes.

21 THE CLERK: Walter Washington, were these your
22 verdicts?

23 JUROR: Yes.

24 THE CLERK: Are they still your verdicts?

25 JUROR: Yes.

1 THE CLERK: Bradley Budde, were these your
2 verdicts?

3 JUROR: Yes.

4 THE CLERK: Are they still your verdicts?

5 JUROR: Yes.

6 THE CLERK: The jury's been polled, Your Honor.

7 THE COURT: Anything further, Mr. Schnee?

8 MR. SCHNEE: Nothing other than the two
9 questions I had ---

10 THE COURT: We'll discuss that.

11 All right, Mr. Foreman and members of the jury,
12 I want to thank you all for your patriotic service on
13 this particular case. I can look at your faces and tell
14 that you weren't prepared for this sort of rigorous
15 deliberating you had to go through. It's not an easy
16 job. And I was fortunate enough to have served about 20
17 years ago on a jury. And you can read about it in the
18 paper, you can see it on TV. You never know how it is
19 until you're back there. The old spiritual, it's not my
20 mother, not my father, it's me oh Lord. And when you're
21 there yourself, you see how difficult it is to sit in
22 judgment of your fellow citizens. But you listened
23 carefully. You were very attentive and you did the right
24 thing as far as I'm concerned.

25 It was your verdict, your judgment. But I

1 mean, you know, you be as honest as you can, you try as
2 hard as you can, you can't worry about the results. I
3 will tell you from my experience that y'all did the right
4 thing and I commend you for your patriotic service.

5 Now, I've got good news and I've got bad news.
6 Which would you like to hear first?

7 JUROR: Bad news.

8 THE COURT: There's no bad news. The good news
9 is that this completes your service for this week here,
10 this trial. Isn't that correct, Ms. Pendergrass?

11 THE CLERK: Yes, Your Honor.

12 THE COURT: And I need for you to go back to the
13 jury room before you depart because she has some
14 information that she will provide to you just in case
15 some of you have spouses that may wonder where you were
16 for the past couple of days. And you can take it home
17 with you and your wives or husbands will know that you
18 were actually here sitting on a jury.

19 I've enjoyed getting to know y'all from this
20 distance. I wish we could have met under more pleasant
21 circumstances. But there's just no way to do these
22 things without the participation of patriotic citizens
23 like you from Richland County.

24 So I wish y'all calm nights and sunshiny days.
25 I hope you always have a smile on your face and gladness

1 in your hearts and I hope I see you somewhere again along
2 the way.

3 Thank you all so very much, Mr. Foreman and
4 members of the jury.

5 (The jury retires from the courtroom at
6 approximately 2:35 P.M.)

7 THE COURT: We're back on the record once again.
8 This is the Defendant's Request Jury Poll. Mr. Schnee has
9 submitted two questions.

10 Did you find it unusual that Nathaniel Murray
11 was in the witness stand when you entered the courtroom
12 and remained in the witness stand until you left the
13 courtroom?

14 I declined to submit that question.

15 Additionally, if yes, did you infer that
16 Nathaniel Murray was in police custody?

17 I marked that for the record, Mr. Schnee. I
18 respectfully declined to poll the jury of those two
19 questions. And I think I've made your record for you.
20 You can make any exceptions right now but it preserves
21 whatever rights Mr. Murray has on appeal. I'm satisfied
22 that it does, aren't you?

23 MR. SCHNEE: Just ---

24 THE COURT: Go ahead, add whatever you'd like.

25 MR. SCHNEE: I think this goes along with my

1 argument under Deck versus Missouri in terms of shackles.

2 I think ---

3 THE COURT: First of all, you've got to see the
4 shackles. They did not see them. But go ahead.

5 MR. SCHNEE: Your Honor, I think there is a
6 differentiation between my client and every single other
7 witness that testified. I think it goes to the due
8 process of my client's -- my client's due process rights
9 on fundamental fairness. And I would ---

10 THE COURT: Okay. How was -- how was your
11 client's due process rights affected by the fact that
12 they walked in and he was in the chair?

13 MR. SCHNEE: Because no other witness was in the
14 witness stand when they came in.

15 THE COURT: How -- what does that have to do
16 with anything in terms of fundamental fairness, I don't
17 understand?

18 MR. SCHNEE: It differentiates how my client
19 testified ---

20 THE COURT: That's your understanding?

21 MR. SCHNEE: That's right and that's my argument
22 that it differentiates my client and ---

23 THE COURT: You made that argument before and my
24 decision is still the same. I respectfully disagree with
25 you.

1 Anything further, Mr. Schnee?

2 MR. SCHNEE: No, not on that respect, Your
3 Honor.

4 THE COURT: All right. Okay, Mr. Schnee, let me
5 thank you. You agreed to take this case on short notice,
6 about two months ago I think it was. You did a wonderful
7 job. I think you did the best you could for your client.
8 And the State also did a good job. This is the way these
9 things should unfold. They do the best they can, you do
10 the best you can and we leave it in the hands of a jury.
11 They've answered all our questions. They've resolved
12 this matter for us. Unfortunately, it goes against Mr.
13 Murray. And it's my unpleasant task to have to impose a
14 very harsh and severe sentence upon him. But I'm
15 required to do so by law.

16 You may bring him around now. Have y'all
17 finished with the paperwork?

18 MS. CAMPBELL: I have, Your Honor.

19 MR. SCHNEE: I need to sign it, Your Honor.

20 THE COURT: Take your time.

21 (Pause.)

22 THE COURT: I'll let you put it on the record
23 but I ain't got no choice. Where's the sentencing sheet?

24 (Pause.)

25 THE COURT: Come around, Mr. Murray. All right.

1 Ms. Campbell. You want to lay the record straight for us
2 in terms of his prior record and strikes and everything?

3 MS. CAMPBELL: May it please the Court, Your
4 Honor. I have handed up the document, which he does have
5 three prior convictions for armed robbery from the State
6 of Illinois. Any one of those would be sufficient under
7 our case law.

8 In addition to that, Your Honor, he does have
9 numerous -- and I want go into every one of them. He's
10 got a long drug record as well as various other
11 aggravated assaults, robberies and thefts.

12 THE COURT: Did you mark these for the record?

13 MS. CAMPBELL: We can make that a Court's
14 Exhibit.

15 THE COURT: Go ahead, we'll do that, Court's
16 exhibits. And the notice, let's go ahead and mark that
17 too. They gave you notice, Mr. Murray, back on August
18 27th, 2009. Is that correct?

19 MS. CAMPBELL: That's correct.

20 THE COURT: Let's mark that too.

21 (Whereupon, Court's Exhibit Number 10, Illinois
22 Report, was marked for identification.)

23 (Whereupon, Court's Exhibit Number 11, Illinois
24 Report, was marked for identification.)

25 (Whereupon, Court's Exhibit Number 12, Illinois

1 Report, was marked for identification.)

2 (Whereupon, Court's Exhibit Number 13, Illinois
3 Report, was marked for identification.)

4 (Whereupon, Court's Exhibit Number 14, Notice
5 of Intention to Seek Life Without Parole, was
6 marked for identification.)

7 MS. CAMPBELL: Your Honor, I have talked to the
8 victims in the case that are still present in the
9 courtroom. I don't think they wish to address the Court
10 at this time. They understand the sentencing.

11 THE COURT: Okay. Mr. Schnee, I'll be happy to
12 hear from you, sir.

13 MR. SCHNEE: Thank you, Your Honor. May it
14 please the Court.

15 First I -- I would like to make a very brief
16 argument about the life without parole statute.

17 THE COURT: I agree with you, Mr. Schnee, I'm
18 not going to stop you. And I'll let you submit any
19 written argumentation that you'd like in this case, okay.

20 Go ahead, sir.

21 MR. SCHNEE: I would essentially argue that
22 these are convictions from Illinois. They occurred long
23 before South Carolina even had a life without parole. I
24 think it's a -- be a violation of jurisdictional
25 restrictions imposed that convictions that were prior to

1 the LWOP statute existing, especially from another state,
2 would now qualify for South Carolina law. I would just
3 make that argument.

4 THE COURT: All right. You want to cite
5 anything specific for me. Like I said, I'll leave the
6 record open for you if you want to augment it with any
7 written argument.

8 MR. SCHNEE: Thank you, Your Honor. Other than
9 that, Your Honor, obviously your hands are tied in these
10 armed robberies. My client's record is obviously mostly
11 drug offenses and of course, the prior armed robberies
12 from the early '90's, I believe it's '91.

13 You heard my client take the stand. He told you
14 exactly what he did. And the reason for it is the drug
15 addiction he's never gotten treatment for. I think it's
16 unfortunate that it occurs often frequently in our
17 society. But we're here ---

18 THE COURT: You know, I noticed that Mr. Murray
19 is about my age. I think he's 59, I'm 58. So I can
20 sympathize with his plight and position. I mean, a lot
21 of people from my generation, particularly who served in
22 Vietnam during that era, developed these sort of
23 unfortunate habits.

24 MR. SCHNEE: Yes, sir.

25 THE COURT: And it's nothing personal against

1 Mr. Murray. He has my sympathies and my best wishes.

2 MR. SCHNEE: I would ask very briefly for
3 concurrent sentences.

4 THE COURT: Well, that's what I'm going to do.

5 And I messed up on what I wrote, the life on the
6 failure to stop. I'll do that later. I can just suspend
7 that or something.

8 SENTENCE OF THE COURT:

9 On indictments 2009-5232 (sic), 5233 (sic), the
10 sentence is life.

11 Good luck to you, Mr. Murray. This matter's
12 concluded. Thank you all so very much.

13 MS. CAMPBELL: Thank you.

14 ----- END OF TRANSCRIPT OF RECORD -----

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, Crystal Holmes, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and Complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 12th, 13th and 14th days of October, 2009.

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

April 14, 2010


Crystal Holmes, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF RichlandNATHANIEL MURRAY 313891
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish answers to particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Beard River Corr. Inst.
2. Name and location of Court which imposed sentence Richland County Court General Session
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09 GS-40-01531 - ARMED ROBBERY 16-11-0330(A)
 - (b) 09 GS-40-01532 - ARMED ROBBERY 16-11-0330(A)
 - (c) 09 GS-40-01533 - 56-5-750
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) OCTOBER 14, 2009, LIFE SENTENCE ALL CHARGES RUN
 - (b) CONCURRENT

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. ~~MAY 2012~~ BETWEEN APR OR MAY 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) DONT MEET THE CRITERIA FOR LIFE SENTENCE.
 (b) TRIAL ATTORNEY FAILED TO DO ANY INVESTIGATION
 (c) TRIAL ATTORNEY FAILED TO OBJECT TO MY BEING SWORN IN OUTSIDE OF THE JURY.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) JUDGE MANNING ONLY WHEN BACK TENS YEARS ON MY RECORD.
 (b) TRIAL COUNSEL ONLY CAME TO SEE ONCE BEFORE TRIAL
 (c) I SHOULD HAVE BEEN SWORN IN IN FRONT OF JURY

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. DIRECT APPEAL
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. S.C. COURT OF APPEALS
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. DENIED
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

✓ i. APR 2012 - @ May 2012

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

✓ i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) DIRECT APPEAL IS FOR COURT ERRORS

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

- i. MARK SAWYER 1701 MAIN ST. Columbia S.C. 29201
- ii. MARK SCHNEE 1720 MAIN ST. Suite 202 SC 29201
- iii. Dayne Phillips, P.O. Box 11589, Columbia, S.C. 29211-1589

- (b) the proceedings at which each such attorney represented you:

- i. ARRAIGNMENT MARK SAWYER
- ii. TRIAL MARK SCHNEE
- iii. DIRECT Appeal Dayne Phillips

19. State clearly the relief you seek in filing this application:

NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of RICHLAND)

VERIFICATION

I, MM, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Nathan Murray

SWORN to and subscribed before me this 18th
day of November, 2014

Susan H. Dye (L.S.)
Notary Public

My Commission Expires

My Commission Expires
March 5, 2018

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, W, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) ☒ I am the applicant in this action and I believe I am entitled to redress.
- (2) ☒ Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
18th day of November, 2014.


Notary Public.

My Commission Expires March 5, 2018

RICHLAND COUNTY
FILED
2014 DEC -4 PM 1:34
JEANETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Nathaniel Murray, #313891,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-7482

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed December 4, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April 2009 term of the Court of General Sessions for Richland County for Failure to Stop for Blue Lights (2009-GS-40-1531) and two counts of Armed Robbery (2009-GS-40-1532; -1533). At arraignment, Applicant was represented by Mark Sawyer, Esq. At trial, Applicant was represented by Mark E. Schnee, Esq. Applicant preceded to trial on October 12-14, 2009. He was convicted as indicted. The Honorable L. Casey Manning sentenced Applicant to concurrent terms of three (3) years' imprisonment for Failure to Stop for Blue lights and to life without parole for the charges of Armed Robbery.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Dayne Phillips, Esq. The South Carolina Court of Appeals dismissed the appeal. State v. Murray, No. 2012-UP-228 (filed April 12, 2012). The Remittitur was issued on July 16, 2014.

2010-CP-40-0392

Applicant first filed for Post-conviction Relief on January 20, 2010 alleging "Insufficient Counseling of Witness and of Victim Identification." Due to the Applicant's existing direct appeal during the previous application, the Honorable Alison Renee Lee issued an Order of Dismissal without prejudice dated February 11, 2011.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the transcript from Applicant's trial hearing, Applicant's records for the Department of Corrections, and Applicant's appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Don't meet the criteria for life sentence," in that;
 - a. "Judge Manning only when back tens [sic] years on my record."
2. "Trial Counsel failed to do my investigation," in that;
 - a. "Trial Counsel only came to see [me] once before trial."
3. "Trial [Counsel] failed to object to me being sworn in outside of the jury."

III.

Respondent interprets Applicant's claims as allegations of ineffective assistance of trial counsel. Respondent contends that Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VII.

Each and every allegation contained within the application not either expressly admitted, qualified or explained is hereby denied.

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of counsel.

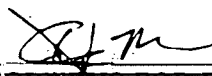
(signatures on following page)

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

June 5th, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2014-CP-40-07482
NATHANIEL MURRAY, #313891	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia SC 29201

DATED this 5^h day of June, 2015.


 Sara B. Moore, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF RICHLAND

CIRCUIT COURT
2014-CP-40-07482

3
4 NATHANIEL MURRAY,
Applicant,

5 -vs-

TRANSCRIPT OF RECORD

6
7 STATE OF SOUTH CAROLINA,
Respondent.

8
9 Post-Conviction Relief Hearing

10 Heard on Thursday, August 27, 2015

11 Columbia, South Carolina

12
13 BEFORE:

14 THE HONORABLE TANYA A. GEE

15
16
17 APPEARANCES:

18 Counsel on Behalf of the Applicant:
Jonathan D. Waller, Esq.

19
20 Counsel on Behalf of the Respondent, State of SC:
J. Clayton Mitchell, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
Aiken, SC 29803-5232
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EXHIBIT INDEX

(NO EXHIBITS IDENTIFIED/INTRODUCED.)

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1 ON THURSDAY, AUGUST 27, 2015 AT 1:47 P.M.:

2 MR. MITCHELL: Nathaniel Murray.

3 THE COURT: I'm ready when you are.

4 MR. MITCHELL: May it please the Court.

5 This is Nathaniel Murray versus the State of
6 South Carolina, 2014-CP-40-7482.

7 Mr. Murray was indicted in April of 2009
8 for failure to stop for blue light, and two
9 counts of armed robbery. He was represented on
10 this charges by Mark Schnee, proceeded to trial
11 October 12th through October 14th of 2009. He
12 was convicted as indicted. This was before Judge
13 Manning. He was sentenced to three years on the
14 failure to stop for blue light and life without
15 the possibility of parole on the armed robbery
16 charges.

17 A notice of appeal was filed. The Court of
18 Appeals dismissed that appeal. A remittitur was
19 issued in July of 2014. This application was
20 filed December 4th, 2014, where Mr. Murray's
21 alleged a few aspects of ineffective assistance
22 of counsel.

23 He's present here today represented by
24 Mr. Jonathan Waller. At this time I'd turn it
25 over to him.

1 THE COURT: All right. Mr. Waller.

2 MR. WALLER: Thank you, Your Honor. I
3 would call Nathaniel Murray.

4 THE COURT: Just to make sure that I'm
5 clear. Do we have an amended application or just
6 the original application in this case?

7 MR. WALLER: The original application, Your
8 Honor. I've spoken with Mr. Mitchell. There are
9 a couple of things that took place during the
10 trial, some objections and things like that and
11 some arguments that I don't think were placed on
12 the record that I'm also going to bring forth
13 today. I don't know if those are specifically --

14 THE COURT: Okay. Well, and if --
15 Mr. Murray you can go ahead and take a seat in
16 the witness stand. And we'll swear him in.
17 Before we start questioning him if you'll just
18 list to me all the allegations including the ones
19 listed in the actual application and the ones you
20 intend to bring up during the hearing, I would
21 appreciate that.

22 MR. WALLER: Absolutely, Your Honor.

23 THE COURT: Thank you.

24 NATHANIEL MURRAY, having been duly sworn,
25 was examined and testified as follows:

1 THE BAILIFF: Have a seat. Spell your
2 first and last name, please.

3 THE APPLICANT: My name's Nathaniel Murray.
4 N-A-T-H-A-N-I-E-L M-U-R-R-A-Y.

5 MR. WALLER: Your Honor, the allegations
6 that are present in the application are that
7 Mr. Murray did not meet the criteria, and that's
8 the criteria for life without parole, as
9 statutorily life without parole was not proven by
10 the State and he was not eligible for that.

11 Additionally during the trial, Your Honor,
12 there is an issue with the identification made by
13 Jimmy Hampton, one of the witnesses in this case.

14 THE COURT: Can you tell me the first one
15 again? I'm sorry.

16 MR. WALLER: Yes, ma'am.

17 THE COURT: The first issue.

18 MR. WALLER: That the criteria was not
19 met --

20 THE COURT: For LWOP.

21 MR. WALLER: Yes, ma'am.

22 THE COURT: Okay.

23 MR. WALLER: Issue with the identification
24 by Jimmy Hampton.

25 THE COURT: Okay.

NATHANIEL MURRAY - DIRECT BY WALLER

1 MR. WALLER: I apologize, Your Honor.

2 There was no objection to Josh Woodley, one
3 of the witnesses being sequestered -- not being
4 sequestered when a pretrial motion for being
5 sequestered was granted.

6 There is -- and the overall trial strategy
7 Your Honor, and the decision of the Defendant to
8 testify.

9 THE COURT: Okay. Thank you.

10 MR. WALLER: Thank you, Your Honor.

11 THE COURT: Question your witness.

12 MR. WALLER: Thank you.

13 DIRECT EXAMINATION

14 BY MR. WALLER:

15 Q. Good afternoon, Mr. Murray. How are you today?

16 A. All right, sir.

17 Q. Mr. Murray, how old are you?

18 A. 62, sir.

19 Q. Okay. And where are you from?

20 A. Chicago, Illinois.

21 Q. Okay. How long have you been in South Carolina?

22 A. Since 2006.

23 Q. What brought you down to South Carolina?

24 A. It was a sick person living in Illinois and she
25 needed to be down here closer to her mother. At the time

NATHANIEL MURRAY - DIRECT BY WALLER

1 she didn't know if she was going to live or die, you
2 know. She had high, high, how do you say it, thyroid.
3 She had a thyroid condition. She lost a lot of weight.
4 She wanted to be close to her family.

5 Q. If I could, I want to take you back to February
6 17th of 2009. Do you recall that day?

7 A. Yes, sir.

8 Q. You were arrested that day; is that right?

9 A. Yes, sir.

10 Q. When you were arrested you were charged with two
11 counts of armed robbery and one count of failure to stop
12 for a blue light; is that right?

13 A. Yes, sir.

14 Q. And were you able to make bond after you were
15 arrested?

16 A. No, sir.

17 Q. How soon after you were arrested did you receive a
18 lawyer?

19 A. It had to be, probably close to two weeks, a week,
20 two weeks. Something like that.

21 Q. And who was the lawyer that you first --

22 A. Mark Sawyer.

23 Q. And at some point Mr. Sawyer wasn't your lawyer any
24 more; is that right?

25 A. Right.

NATHANIEL MURRAY - DIRECT BY WALLER

1 Q. Do you recall why he wasn't your lawyer?

2 A. Yes. Me and Mark, we had our differences. He
3 wasn't there -- I didn't feel he was there for me. And I
4 wasn't satisfied with some of the decisions that, you
5 know, he was trying to make towards, towards the trial,
6 you know, coming up, you know. He wasn't doing anything
7 I asked him to do.

8 Q. Okay. And at some point Mark Schnee become your
9 attorney; is that right?

10 A. Two weeks before the trial.

11 Q. Okay. How many times did you meet with
12 Mr. Schnee?

13 A. About twice.

14 Q. Okay. You said he was -- was he appointed to
15 represent you or did you hire him?

16 A. Appointed.

17 Q. You said he was appointed about two weeks before
18 the trial. Did you and Mr. Schnee ever talk about asking
19 for the trial to be continued?

20 A. Continued it one time. As far as an investigation,
21 he didn't want to use the same investigator that
22 Ms. Campbell, the solicitor, was using.

23 Q. Okay. Did y'all talk about getting an
24 investigator?

25 A. Well, he said he was.

NATHANIEL MURRAY - DIRECT BY WALLER

1 Q. Okay. Did you provide him with any information
2 that might have helped the investigator?

3 A. No. All the information came from him. He wanted
4 to -- right at the bank, he wanted to get the outside
5 video as far as, you know, what I was being charged with.

6 Q. Okay. To the best of your knowledge, do you know
7 if he ever got that video?

8 A. No. He never told me or showed my anything about
9 it.

10 Q. Do you know if he tried and it just wasn't
11 available?

12 A. I can't say. Honestly, I can't say. He never --

13 Q. Okay.

14 A. He never told me.

15 Q. Okay. You testified that y'all met two times?

16 A. Yes, sir.

17 Q. During the first meeting, what did y'all talk
18 about?

19 A. He talked, he presented his self as he was going to
20 be my attorney, appointed. And he talked about, you
21 know, maybe -- we talked about me, you know, where I was
22 from, stuff like that. But never anything pertaining to
23 the case itself.

24 Q. Okay. Did he explain the two different -- you had
25 three charges but two of them were the same charge. Did

NATHANIEL MURRAY - DIRECT BY WALLER

1 he explain the two different charges you had?

2 A. No. He never explained them but he talked, we
3 talked about armed robbery, you know. He had said that's
4 what I'm being charged with. That's what the trial, you
5 know, is going to be. We talked about, I wanted to -- he
6 asked me what kind of trial did I want. I explained that
7 I wanted a bench trial. He went to the solicitor and
8 tried but came back and said that would never happen.
9 Never said anything about how we was going to proceed in
10 the trial.

11 Q. Okay. Did y'all -- did you talk about what the
12 State would have to prove to prove you guilty of armed
13 robbery?

14 A. He might have mentioned that.

15 Q. Okay. Now, there was never really any allegation
16 that you actually had a gun; is that right?

17 A. Yes, sir.

18 Q. The witnesses testified that they thought you had a
19 gun but they never saw a gun?

20 A. Each one of them testified they never seen a gun,
21 never saw it. I had a couple of -- Mr. Jimmy Hampton,
22 the second victim. He grabbed me. Grabbed me twice, as
23 a matter of fact, you know, pulled my coat, everything.
24 But if he would have grabbed me he would have felt or
25 seen that I had -- you know, he would have known, but he

NATHANIEL MURRAY - DIRECT BY WALLER

1 never seen no gun. I never had it.

2 Q. Okay. Did you and Mr. Schnee discuss what the
3 State would have to show to have you found guilty knowing
4 that it wasn't a gun?

5 A. No.

6 Q. Okay. Did -- what did y'all talk about during your
7 second meeting?

8 A. Second meeting. Clothing, getting me clothes to
9 wear for the trial, you know. Clothes size. He was
10 going to do the best he could to defend me. But that was
11 basically it, you know. We never worked out a strategy
12 or anything like that.

13 Q. Okay. You ended up testifying?

14 A. On his behalf.

15 Q. Yes, sir. Did y'all talk about your testimony
16 before the trial started?

17 A. No, sir.

18 Q. Okay. Did y'all talk about your right to remain
19 silent?

20 A. I believe he might have -- we did, but he convinced
21 me it was best for me to testify.

22 Q. Okay. What did he say to you to convince you of
23 that?

24 A. That it goes on record. It's best to have it on
25 record that, you know, that I'm saying that I didn't have

NATHANIEL MURRAY - DIRECT BY WALLER

1 a gun or anything.

2 Q. Okay. Did he inform you that if you did not
3 testify that the jury can't hold that against you?

4 A. No, he never informed me of that.

5 Q. Okay. You have a prior criminal record; is that
6 right?

7 A. Yes.

8 Q. From Illinois?

9 A. Yes.

10 Q. Nothing in South Carolina; is that right?

11 A. I have a drug charge in South Carolina.

12 Q. Okay. But you had some prior stuff in the early
13 '90s in Illinois; is that right?

14 A. Yes.

15 Q. Okay. The State served you with a notice, or said
16 they served you with a notice to seek life without parole
17 based on your prior record. Is that your understanding
18 of what they were trying to do?

19 A. Yes. They never showed -- they never served me
20 with that, you know. At that time that would have fell
21 up under Mark Sawyer. He was the attorney at that time,
22 not Mr. Schnee. And if they gave Mark paperwork or
23 anything to give me, he never done that.

24 Q. Okay. Which Mark are you talking about?

25 A. Mark Sawyer.

NATHANIEL MURRAY - DIRECT BY WALLER

1 Q. Okay. Did you have any conversations with Mark
2 Sawyer after the State said they served you in August?

3 A. No.

4 Q. Okay.

5 A. No.

6 Q. He was still your lawyer at that time, though,
7 right?

8 A. At that time, all the way up to, I think, maybe a
9 week or so later, yes.

10 Q. Okay.

11 A. Because we went back in front of Judge Manning and
12 Judge Manning dismissed him.

13 Q. Okay. Did he give you any paperwork or anything
14 when he wasn't your lawyer anymore?

15 A. No.

16 Q. Do you know whether or not he turned over his file
17 to Mark Schnee who had been appointed?

18 A. He turned over the files to Mark Schnee. And after
19 I was found guilty and I started doing the research as
20 far as doing the PCR, I requested that information from
21 Mark Schnee, you know. I sent him a letter stating why I
22 needed the information, you know. And he had a couple
23 paperworks from Mark Sawyer in there, in the paperwork
24 that he gave me. And it was no 10-day notice in that
25 file.

NATHANIEL MURRAY - DIRECT BY WALLER

1 Q. Okay. Now there were three people that were non
2 law enforcement people that testified against you; is
3 that right? Two were considered victims and there was a
4 third gentleman that identified you also; is that right?

5 A. Richard Woods.

6 Q. Yes, sir?

7 A. Mr. Langford and Mr. Hampton.

8 Q. Yes, sir. Mr. Woods and Mr. Hampton picked you out
9 of a lineup; is that your understanding?

10 A. They never told me that. Who picked me out the
11 lineup? All they showed me was just a circle picture.

12 Q. Okay. Did you have a chance to review those
13 lineups, though?

14 A. I seen -- just that one, one thing that they showed
15 me.

16 Q. Did you and Mr. Schnee talk about the lineups?

17 A. No.

18 Q. Were you aware leading up to the trial that
19 Mr. Langford was unable to pick you out of the lineup?

20 A. Yes. I believe I was. It was in the transcript
21 where it says that, you know, he couldn't identify me,
22 Mr. Langford.

23 Q. Did you know that before you proceeded to trial,
24 though?

25 A. Yes.

NATHANIEL MURRAY - DIRECT BY WALLER

1 Q. Mr. Hampton. You were arrested following, leaving
2 in Mr. Hampton's car. Mr. Hampton was brought to the
3 scene of your arrest. Were you -- did you and Mr. Schnee
4 talk about that, that he was brought to the scene?

5 A. I probably mentioned that to him because being, I
6 asked -- I had -- I'm leaving the bank area, going down
7 Two Notch Road. When I seen Mr. Hampton, you know, at
8 the credit union, I asked him for a ride. And I got in
9 the car. Mr. Hampton stopped. Pulling me, you know,
10 struggle. It looked like it was a struggle, but that's
11 the guy that, you know, pulled me twice, you know, pulled
12 me across the thing. So, the car, it was a console,
13 dropped it in drive and start pulling itself away.

14 Q. And did you and Mr. Schnee discuss him viewing you
15 at the scene and what that might do to affect the lineup
16 that he picked you out of?

17 A. No.

18 Q. You never denied taking money from Mr. Langford?

19 A. No, never.

20 Q. Okay. Your biggest points of contention was that
21 you did not have a gun; is that correct?

22 A. Yes, sir.

23 Q. What did you and Mr. Schnee talk about when y'all
24 were getting ready to go to trial and what the jury will
25 be able to see and what they wouldn't be able to see?

NATHANIEL MURRAY - DIRECT BY WALLER

1 A. We talked about the conditioning of the courtroom.
2 They had me sworn in before the jury came in. And also
3 he made it seem like, you know -- it was, I guess, a
4 violation against my rights and stuff, you know. He made
5 it seem that it was indifferent. They were treating me
6 guilty, treated me guilty because I was never allowed to
7 walk in front of them or, you know, they seen me sworn in
8 in the witness stand.

9 Q. Okay. So you were already seated when the jury
10 came in?

11 A. Yes.

12 Q. And you had already been sworn in at that point,
13 too?

14 A. Yes.

15 Q. Okay. How do you think that separated you from
16 other witnesses?

17 A. It made me seem like I was a violent person, you
18 know, that they have to do that to ...

19 Q. What was the reason behind that? Why you were
20 already seated?

21 A. That was the Judge discretion. Ms. Luck Campbell,
22 the solicitor, the prosecutor.

23 Q. Were you in restraints?

24 A. Yes.

25 Q. Okay. Just ankle chains?

NATHANIEL MURRAY - DIRECT BY WALLER

1 A. I was in ankle -- I believe, both.

2 Q. Your hands as well?

3 A. Yes. He could tell you better than I could.

4 Q. Did you and Mr. Schnee discuss the State seeking a
5 life without parole and what they would have to show in
6 order for the judge to have to sentence you to that?

7 A. No, we never discussed that, but I had read up on
8 it and stuff about prior convictions. But then at that
9 time Judge Manning had said he wasn't going 10 years back
10 and he asked, the Court, the solicitor office have they,
11 you know, checked my prior records, you know, to find out
12 if I had any. And they never proved that because she
13 never checked Illinois or anything.

14 Q. Okay.

15 A. Yeah. I have it written where the Court had said.

16 Q. And the judge, the judge wasn't going to let the
17 State ask you about your prior record; is that right?

18 A. Right.

19 Q. Okay. Did you and Mr. Schnee in discussing the
20 life without parole, did y'all discuss that the judge --
21 if the State proved everything they had to prove that the
22 judge wouldn't have any discretion, would have to
23 sentence you to life without parole?

24 A. No, no. We never discussed that.

25 Q. Okay. This was a three-day trial?

NATHANIEL MURRAY - DIRECT BY WALLER

1 A. Yes.

2 Q. Two days?

3 A. Two days.

4 Q. And then the jury got it on the third day? During
5 the course of the trial as it was going on, were you and
6 Mr. Schnee able to communicate?

7 A. We sat at the bench but very seldom did we say a
8 word to each other.

9 Q. Okay. Did you have a notepad and a pen or anything
10 like that to take notes?

11 A. I believe at one point the second day I got one,
12 yes.

13 Q. Okay. And at breaks and stuff, were you able to
14 communicate? Did y'all communicate?

15 A. No, no way.

16 Q. Now before you testified the judge, Judge Manning,
17 begins to ask you a few questions about your decision to
18 testify. And then it kind of stops. Did you understand
19 what was happening?

20 A. Yeah. He asked me was I willing to testify. And
21 that was basically all I perceived out of that. And then
22 I had told him yes on account of, you know, my attorney
23 advised me to.

24 Q. Okay. I believe you testified earlier that your
25 attorney had not advised you that you had a right to

NATHANIEL MURRAY - DIRECT BY WALLER

1 remain silent but he said it would be in your best
2 interest to testify, right?

3 A. Right.

4 Q. Okay. I believe you also testified that he did not
5 tell you that if you didn't testify that the jury could
6 not hold that against you. Did I hear you right?

7 A. Say that one more time.

8 Q. If you did not testify, the judge would instruct
9 the jury they cannot hold that against you.

10 A. Yeah. He never said that, sir.

11 Q. Okay. So when Judge Manning asked if you knew the
12 consequences of testifying and you agreed with him, did
13 you really know all the consequences?

14 A. No, sir.

15 Q. Mr. Murray, what do you think the State failed to
16 show regarding your prior convictions?

17 A. They failed to show -- prior convictions was never
18 proven because there was only a discussion about the
19 record between the Court and the State. There was no
20 effort on the part of the State to prove my prior
21 convictions.

22 Q. Mr. Murray, I've asked you all the questions that I
23 have for you. Is there anything that you think I've left
24 out that the judge needs to be made aware of about
25 Mr. Schnee's representation of you?

NATHANIEL MURRAY - CROSS BY MITCHELL

1 A. I think as far as Mr. Schnee, he could have asked,
2 you know, he could have polled the jury about
3 questioning, polled the jury about the lesser or the
4 more, the greater of the bribery and stuff, you know.
5 Without them finding a weapon or even proving that I --
6 that it was a weapon or anything involved because
7 everyone testified that it wasn't a weapon. He could
8 have polled the jury on the lesser or more.

9 Q. Okay.

10 A. You know.

11 Q. Okay. And one final thing, I just want to
12 clarify. You and Mr. Schnee did not discuss what the
13 State would have to prove for you to be found guilty of
14 armed robbery if there wasn't a weapon; is that correct?

15 A. Right.

16 MR. WALLER: No further questions. Please
17 answer anything Mr. Mitchell has.

18 THE COURT: Mr. Mitchell?

19 CROSS-EXAMINATION

20 BY MR. MITCHELL:

21 Q. All right. Mr. Murray, good afternoon.

22 A. Hey, sir.

23 Q. Mr. Schnee was appointed, what, about two months
24 before the trial?

25 A. No, sir.

NATHANIEL MURRAY - CROSS BY MITCHELL

1 Q. Not two months?

2 A. No, sir.

3 Q. You say it was less than that?

4 A. Two weeks.

5 Q. Okay. So it was two weeks before the trial he was
6 appointed on this case?

7 A. Yes, sir.

8 Q. So y'all talked about what you were charged with in
9 the armed robbery, right?

10 A. We talked about it.

11 Q. So, I mean, you knew you were charged with armed
12 robbery, two counts, right?

13 A. Right.

14 Q. You were not charged with carjacking, right?

15 A. No, no, not carjacking.

16 Q. And your defense was that -- you told Mr. Schnee
17 you did not have a gun, right?

18 A. Yes, sir.

19 Q. So if they said you did not -- if they said you had
20 a gun, but if you proved you did not have a gun, then you
21 were likely going to be acquitted, right?

22 A. No, I never said that.

23 Q. No. I'm saying if the jury thought -- if the jury
24 agreed with you and thought that you did not have a gun
25 you would have been found not guilty, right?

NATHANIEL MURRAY - CROSS BY MITCHELL

1 A. I didn't say that because I admit that I have
2 taken, you know, money from Mr. Langford. So I knew that
3 I was going to be charged with something, you know. They
4 wasn't just going to let me out the court.

5 Q. So you were hoping to show you didn't have a gun
6 and that you weren't pointing your finger as if you had a
7 gun, right?

8 A. Not hoping or never pointed my finger.

9 Q. All right.

10 A. Yes.

11 Q. But just that you did not -- shown -- I withdraw
12 that. No problem.

13 Moving to your prior record, you had three armed
14 robbery convictions in Illinois?

15 A. Yes.

16 Q. Is that right? They weren't too recent, were they?

17 A. They was over 20 years. The late '80s and stuff.

18 Q. I understand.

19 A. Yes.

20 Q. So that's what they were basing the underlying
21 charges on, the life without parole, right? That's what
22 the State was saying; is that right?

23 A. No. If he wasn't going to use the records, he said
24 he wasn't going back 10 years.

25 Q. Okay. And that was in reference to allowing them

NATHANIEL MURRAY - CROSS BY MITCHELL

1 to impeach you with it, to ask you questions about that
2 when you're testifying, right?

3 A. No, they never asked me anything about that.

4 Q. Right.

5 A. -- when I testified.

6 Q. The judge wouldn't let them ask about the other
7 armed robberies, right?

8 A. Right.

9 Q. Now you were arrested in, was it, Mr. Hampton's
10 car, right, after a bit of a chase?

11 A. Yes.

12 Q. So it was Mr. Woods who had kind of seen what
13 happened. And then his testimony was that he was kind of
14 following you and then calling the authorities and
15 telling them what was going on, right?

16 A. That's what it was.

17 Q. So you didn't really have a problem with admitting
18 that you had robbed and taken Mr. Hampton's car, right?

19 A. I never admitted robbing Mr. Hampton, period.

20 Q. Okay.

21 A. I took from Mr. Langford, not Mr. Hampton.

22 Q. You took Mr. Hampton's car, though, right?

23 A. The car, like I said, he was struggling. You know,
24 I didn't force him to take his car. I just asked for a
25 ride.

NATHANIEL MURRAY - CROSS BY MITCHELL

1 Q. Now you testified that Mr. Schnee did not talk
2 about your decision to not advise you on whether you
3 should testify. Did he tell you the risks involved with
4 that?

5 A. No, no, he didn't.

6 Q. So didn't you have any discussions about --

7 A. No, sir.

8 Q. -- what would happen if you did testify?

9 A. No, sir.

10 Q. Okay. And the judge talked to you a little bit
11 about that; is that right --

12 A. He may have.

13 Q. -- before you testified? Do you remember what --
14 he had a little back and forth with you?

15 A. No. Mark Schnee informed the judge that he only
16 asked, will he be testifying. And Mark Schnee told
17 Mr. Manning that, yes, my client will be testifying.

18 Q. Okay. And you decided to testify after talking
19 with Mr. Schnee; is that right?

20 A. Mark Schnee told me it was in my best interests to
21 testify.

22 Q. So that was his advice?

23 A. That was his advice.

24 MR. MITCHELL: All right. No further
25 questions. Thank you.

MARK SCHNEE - DIRECT BY WALLER

1 THE COURT: Yes, sir. Any redirect?

2 MR. WALLER: Just one, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. WALLER:

5 Q. Mr. Murray, your testimony today and also at the
6 trial was that you never made any representation of
7 having a gun; is that right?

8 A. Yes.

9 Q. And you didn't have a gun and you never acted like
10 you had a gun?

11 A. Yes.

12 MR. WALLER: No further questions.

13 THE COURT: All right. Thank you. You may
14 step down.

15 MR. WALLER: Applicant would call Mark
16 Schnee.

17 MARK SCHNEE, having been duly sworn, was
18 examined and testified as follows:

19 THE WITNESS: Mark Schnee, S-C-H-N-E-E.

20 MR. WALLER: Your Honor, do you have a copy
21 of the transcript as well?

22 THE COURT: I do.

23 DIRECT EXAMINATION

24 BY MR. WALLER:

25 Q. Good afternoon, Mr. Schnee. How are you today?

MARK SCHNEE - DIRECT BY WALLER

1 A. Good.

2 Q. When were you appointed -- you were appointed to
3 represent Mr. Murray; is that right?

4 A. I was.

5 Q. When, do you recall, in relation to the trial were
6 you appointed?

7 A. Yeah. It was the very, very end of August of 2009.
8 Mr. Murray and Mr. Sawyer were in Judge Manning's
9 courtroom. It was a motion to relieve the public
10 defenders office. I don't know exactly what the issues
11 were at the time.

12 Judge Manning, as a matter of habit, especially
13 back then, if someone didn't want the public defenders
14 office he was very open to just relieving the whole
15 office and appointing someone. I happened to be sitting
16 in the courtroom. He looked at me and said, will you
17 take this case, can you be ready for trial, it's already
18 scheduled.

19 And I had just started private practice after three
20 years as a public defender, didn't have a lot of cases.
21 So I said, yeah, I can get ready in what was about 30
22 days, or what was supposed to be about 30 days.

23 Q. Okay. You said the end of August. The State at
24 the very, very end of the trial in the sentencing phase
25 put on the record that the LWOP notice had been served

MARK SCHNEE - DIRECT BY WALLER

1 August 27, 2009. Was that before or after you were --

2 A. That was before.

3 Q. Okay. Were you made aware of the notice being
4 served?

5 A. Yes. I was told that it was served. I'm sure they
6 gave me a copy of what they served. At the time it would
7 have been with Mr. Sawyer.

8 Q. Okay.

9 A. But that was about the extent of it.

10 Q. Did you have any concerns that Mr. Murray had not
11 been served with that notice?

12 A. In terms of actual service, no, I never questioned
13 that.

14 Q. When you and -- how many times did you meet with
15 Mr. Murray?

16 A. According to my time sheet, I met with him four
17 times before the trial. I know one of them was just two
18 days after I was appointed. And then I think then a
19 couple days later. So I had two meetings very early on.
20 And then it looks like in my notes two meetings right
21 before trial or right before it was supposed to be tried.

22 Q. The first two meetings, particularly the very first
23 meeting, did you have discovery at that point?

24 A. I did. When I was appointed from the bench one of
25 my concerns that I addressed with Judge Manning at the

MARK SCHNEE - DIRECT BY WALLER

1 time was when would I get discovery and all the
2 information. As soon as I was appointed I walked with
3 Ms. Campbell to her office and she just handed me her
4 trial notebook.

5 Q. Okay. So you ended up having about six or eight
6 weeks; is that right?

7 A. It ended up being about six weeks. There was a
8 problem with the first private investigator I hired. He
9 claimed he had done a lot of work that I asked him to
10 do. He claimed he met with my client in jail which I
11 found out didn't happen. And that's why I requested it
12 be continued. And I got a different private investigator
13 and I was given about two weeks to get it done.

14 Q. And Mr. Murray testified, I believe, you argued
15 during your closing argument about some surveillance
16 video, possible surveillance videos from some of the
17 locations from the incident. Was your investigator ever
18 able to obtain any of that?

19 A. As it turns out there were no videos, at least
20 certainly not at the time. I can't remember if there
21 were one or two of the stores -- this happened in two
22 separate parking lots on Two Notch Road. If there was
23 any video by the time I was trying to get a copy of it it
24 was already erased. But there were very various cameras
25 actually pointed into the parking lot, most of them were

MARK SCHNEE - DIRECT BY WALLER

1 just interior security cameras. There was no global, you
2 know, parking lot security.

3 Q. Okay. When you and Mr. Murray met did y'all
4 discuss the charges he had against him and the elements
5 of those charges?

6 A. You know, I can't remember if we went through every
7 element of the offenses. I did certainly tell him that
8 the failure to stop for blue light obviously wasn't
9 anything to worry about, maximum of three years, you
10 know, considering he was looking at mandatory life.
11 Based on our discussions about the facts, obviously we
12 were trying for strong arm, the three-year failure to
13 stop wouldn't be an issue.

14 Q. And there was never, there was never any question,
15 was there, that Mr. Murray took money from Mr. Langford
16 and took Mr. Hampton's car?

17 A. No, no. He admitted that very openly.

18 Q. Okay. But he denied ever having a gun or
19 representing that he had a gun; is that correct?

20 A. That's correct.

21 Q. There was some identifications made by the two
22 victims and another witness; is that right?

23 A. I believe so.

24 Q. And there was some lineups done; is that your
25 recollection?

MARK SCHNEE - DIRECT BY WALLER

1 A. Yes.

2 Q. Okay. Did you have an opportunity to review those
3 lineups with Mr. Murray?

4 A. I know I went over the discovery with him and what
5 the State would be alleging. I'm certain I didn't go
6 through every single piece of paper. And I might not
7 have talked too much about the lineups because identity
8 wasn't an issue. He was caught in the car within minutes
9 of leaving the area. Or, at most there was about a
10 30-second gap between Mr. Woods on the 9-1-1 call and the
11 police actually following his car down what at the time,
12 I guess, was Raven Road.

13 So identity just was never an issue that we were
14 going to discuss in front of a jury.

15 Q. Okay. If I can, just a couple more questions about
16 the identification. I know you've testified it wasn't an
17 issue. Mr. Hampton was actually brought to the scene
18 where Mr. Murray was arrested; is that right?

19 A. Correct.

20 Q. Okay. Did you have any concerns about it being
21 kind of a show-up identification?

22 A. I did. And I know I addressed that a little bit in
23 the trial, in the transcript. But I didn't make a big
24 deal of it because I knew identity wasn't going to be an
25 issue in front of the jury.

MARK SCHNEE - DIRECT BY WALLER

1 Q. Okay.

2 A. And that, certainly at the time I also knew
3 Mr. Murray would be testifying.

4 Q. Okay. We're going to get to his testimony in just
5 a minute. If I could get you to turn to page 96 in the
6 transcript.

7 A. Okay.

8 Q. It's a pretrial motion about the identification of
9 Mr. Hampton. And if I could just ask you, once again,
10 what was the trial strategy behind not objecting to the
11 show-up nature of the identification?

12 A. You mean in terms of in front of the jury?

13 Q. In front of Judge Manning at that point. I guess
14 it probably starts on page 95, the Court's ruling, I
15 guess, the very bottom.

16 A. Oh. You know, I think the only issue I really had
17 was that, you know, and it's going by quite a number of
18 years at this point.

19 Q. Sure.

20 A. You know, I just wasn't concerned with identity.
21 That just wasn't an issue for the jury. We were
22 admitting what happened, just no weapon and no
23 representation of a weapon.

24 Q. Okay. One more quick question on that issue. When
25 Mr. Hampton was actually testifying on page 169 and page

MARK SCHNEE - DIRECT BY WALLER

1 172 of the transcript, the lineup and then he
2 subsequently makes an in-court identification, what was
3 the trial strategy behind not objecting to either of
4 those?

5 A. It's just that identity wasn't an issue.

6 Q. Okay. Mr. Langford was not able to identify
7 Mr. Murray; is that correct?

8 A. Yes.

9 Q. Did you -- he was shown some lineups, though?

10 A. I believe he was, yes.

11 Q. Were those provided to you in discovery, the
12 lineups that he wasn't able to pick somebody out of?

13 A. I don't think they -- they didn't have him sign
14 anything. And the other lineups are identical.

15 Q. Okay.

16 A. So if they had given me a lineup, it would have
17 been a blank piece of paper or just a blank lineup
18 without anything filled out on it.

19 Q. Okay. Did you have any concerns about that?

20 A. Certainly not after Mr. Langford testified. He was
21 a very elderly gentleman, you know, a lot of trouble
22 hearing and probably some vision problems as well. He
23 pretty much admitted that.

24 Q. Okay. Pretrial you made a motion to sequester the
25 witnesses, the non-victims and non lead investigator?

MARK SCHNEE - DIRECT BY WALLER

1 A. I did.

2 Q. Josh Woodley was an officer that was training, I
3 believe it was his first day on the job actually, and was
4 riding with Corporal Christopher Duke in the main car
5 that was chasing Mr. Murray.

6 A. Yes.

7 Q. When Mr. Woodley testified, or, excuse me, Deputy
8 Woodley testified, he made mention of, as Corporal Duke
9 just testify -- or as you just heard Corporal Duke
10 testify to, were you aware that he wasn't sequestered as
11 Judge Manning had ruled already?

12 A. My understanding, it was just the lay witnesses
13 were excluded under sequestration.

14 Q. Okay.

15 A. Which is pretty typical for Judge Manning and most
16 judges.

17 Q. The State introduced several pictures from the car
18 that Mr. Murray was driving prior -- that was -- wasn't
19 able to start?

20 A. Yes.

21 Q. They tried to get some DNA and other things from
22 that car and were unable to do so, introduced several
23 pictures, one of which being the tire iron. Do you
24 recall having any issue with the tire iron being
25 introduced or the picture of the tire iron?

MARK SCHNEE - DIRECT BY WALLER

1 A. I don't recall having any issues with that.

2 Q. Okay.

3 A. I know I objected to photos of whether, when
4 Mr. Murray was arrested -- or, I know I objected to
5 certain photos. I just don't remember if a tire iron was
6 an issue.

7 Q. Okay. Did you -- what was your understanding of
8 the relevance of the tire iron, a picture of a tire iron
9 in the trunk of what he wasn't driving?

10 A. As far as I was concerned it had none.

11 Q. Okay. And so you did not have any sort of trial
12 strategy behind not objecting to it?

13 A. The fact that there was a tire iron in a car? I
14 mean, every car has one. It just didn't cross my mind to
15 bother with it.

16 Q. Okay. What did you and Mr. Murray discuss leading
17 up to him actually testifying?

18 A. Well, as Mr. Murray testified, in the very first
19 times I met him, we did discuss his past. And he was
20 very clear and open about his heroin problem which is why
21 he did all of this. You know, and I think he was very
22 genuine. And I think when he testified he was very
23 genuine. And I think he came across as believable.

24 And we talked about the fact that he didn't have a
25 problem. Went through at least somewhat of a discovery

MARK SCHNEE - DIRECT BY WALLER

1 of what the witnesses would say, that is, just a
2 representation. And the only way for him to get the
3 version out that he didn't have a weapon or didn't even
4 present one or attempt to present the appearance of one
5 is for him to testify.

6 Q. Did you go over his constitutional rights prior to
7 him making a decision to testify?

8 A. Probably not. Not specifically.

9 Q. Okay. Did you tell him that if he chose not to
10 testify that the judge would instruct the jury that they
11 can't hold that against him?

12 A. I don't know that I did. I know I discussed with
13 him, and this was before the trial started, that our only
14 chance at trial to get a strong armed robbery was for
15 there to be testimony that he did not have a weapon and
16 he didn't present the appearance of a weapon. And the
17 only person that could do that was him.

18 Q. Okay. But he has to make the decision to testify
19 or not to testify; is that correct?

20 A. Correct. I told him it was his decision, but I
21 don't know if I actually told him that they wouldn't be
22 able to use his lack of testimony. I did tell him that
23 there would be no evidence other than the victim's and
24 the jury would be left with, well, he acted like he had a
25 weapon. So a conviction under those circumstances was

MARK SCHNEE - DIRECT BY WALLER

1 much higher.

2 Q. Okay. Typically in a criminal trial when a
3 defendant decides to testify the judge questions the
4 defendant on the record to make sure that they understand
5 what they're giving up essentially by testifying.

6 A. Right.

7 Q. Judge Manning began to do so on page 282 and then
8 stopped.

9 A. He just stopped.

10 Q. And asked if you want him to continue to question
11 him and you testified that you don't think it's
12 necessary. What, what was the strategy behind not asking
13 Judge Manning to continue questioning him on the record?

14 A. Well, at that point the decision was made for him
15 to testify. Mr. Murray and I discussed it. And I talked
16 about it, even in my opening statement, that the jury
17 would hear from him.

18 As to why Judge Manning didn't go forward with
19 that, I have no idea.

20 Q. Okay. Mr. Murray was ultimately found guilty and
21 the State introduced some record of his prior convictions
22 from Illinois from the early '90s or late '80s?

23 A. Correct.

24 Q. And you took issue with those?

25 A. I did. They were listed as robberies, and I looked

MARK SCHNEE - DIRECT BY WALLER

1 up the statutes and it was -- I had no way of knowing if
2 it was an actual armed robbery or something lesser under
3 our law that would not qualify as a most-serious offense
4 sufficient to trigger LWOP.

5 Q. Okay. How many -- if you recall, how many prior
6 convictions did they try to introduce?

7 A. At that point I think they introduced two. I
8 recall there being something about four. I'm not
9 positive.

10 Q. Okay. What did you see as far as, I mean, what did
11 they actually introduce? What did you see?

12 A. I think it was, it was a certified conviction from
13 up there which I took issue with. And it essentially
14 would have been the equivalent of our sentencing sheet or
15 something like that. And that was about it.

16 Q. The South Carolina LWOP statute came into effect
17 after he had been convicted of these Illinois charges; is
18 that correct?

19 A. Right. That's correct. Years and years after.
20 The LWOP statute is from 1996 in South Carolina.

21 Q. Okay.

22 Beg the Court's indulgence one second.

23 A. Now I do want to add. I did file an entire brief
24 on that issue along with multiple requests dealing with,
25 with the LWOP. And Judge Manning did consider it. I

MARK SCHNEE - CROSS BY MITCHELL

1 know that much.

2 MR. WALLER: Okay. No further questions.

3 THE COURT: All right. Mr. Mitchell?

4 CROSS-EXAMINATION

5 BY MR. MITCHELL:

6 Q. Good afternoon, Mr. Schnee.

7 A. Good afternoon.

8 Q. Thanks for being here today. So you were appointed
9 by Judge Manning. You just so happened to be in the
10 courtroom when he had Mr. Sawyer relieved; is that
11 correct?

12 A. Correct.

13 Q. So you had about two months to prepare, correct?

14 A. It was -- originally it was right at one month or
15 about maybe five weeks, and then it was continued so it
16 ended up being seven.

17 Q. So you got that continuance because of the
18 investigator issue?

19 A. Because of my first investigator that I first
20 hired, yeah.

21 Q. The facts in the case weren't like, weren't
22 extremely complicated, they were fairly straight forward?

23 A. In terms of witnesses and really no need for
24 experts, I would call it a very straight forward trial in
25 that respect.

MARK SCHNEE - CROSS BY MITCHELL

1 Q. Not a lot of specialized testimony, just
2 eyewitness, what they saw, the allegations. Fairly
3 straight forward, right?

4 A. Correct.

5 Q. And the investigation was pretty limited to just
6 the witnesses the State had on its witness list, and the
7 eyewitnesses that did testify at trial?

8 A. In terms of the State's evidence, that's correct.

9 Q. Okay. So, you tried to get these videos at the --
10 well, was it the credit union or --

11 A. It was City Financial. They had a camera but it
12 didn't face anywhere that was useful. There were a
13 couple other places that had cameras but they were all
14 inside their stores. Most of the places they just didn't
15 have cameras and there were no cameras in the parking
16 lot.

17 Q. And that's something you argued, that there were no
18 videos. Where is the videos, where is the surveillance.

19 A. Right. One of the things I was trying to show and
20 I think that's what I argued to the jury is based on
21 Mr. Murray's appearance and how he was walking, you know,
22 the victims and/or witnesses testified he had his hand in
23 his pocket as if it was a gun in there also. And,
24 obviously if there's any video showing something
25 different that would have been useful.

MARK SCHNEE - CROSS BY MITCHELL

1 Q. That turned out not to exist; is that right?

2 A. At the time I was getting them, yes. There may
3 have been one that was obtainable early on, but it had
4 been erased by that point.

5 Q. So the strategy in the case was kind of shooting
6 for the strong arm robbery conviction at that point; is
7 that --

8 A. That was the ultimate goal, yes. There were -- he
9 had already been served with LWOP. I talked to Luck
10 Campbell. There were absolutely no offers, that she
11 wasn't going to withdraw it. At that point there's no
12 option, it's a trial.

13 Q. So the defense was that they found no gun and that
14 he made no representations that he had a gun?

15 A. Correct.

16 Q. And that's very consistent throughout your cross-
17 examination arguments?

18 A. Yes.

19 Q. Now you talked a good bit about ID on direct but ID
20 wasn't an issue at all because Mr. Woods was following
21 him around about everywhere, and then he was arrested in
22 Mr. Hampton's car. So there was no -- it would have been
23 fruitless to argue that he was not the one, at least the
24 crimes relating to Mr. Langford and Hampton, right?

25 A. In terms of in front of the jury, yeah. I wasn't

MARK SCHNEE - CROSS BY MITCHELL

1 going to argue anything about identity.

2 Q. Okay. And you did challenge in the Bigger's
3 hearing the IDs that weren't, right?

4 A. Yes.

5 Q. On the witness that Mr. Waller spoke of that was
6 not sequestered, you testified that was a lay witness. I
7 mean, that was an officer?

8 A. Yeah, it was a police officer. Yes.

9 Q. They're usually allowed to stay in throughout the
10 trial; is that right?

11 A. Most judges allow police officers to stay in
12 there. Not all, but most.

13 Q. In your experience is that Judge Manning's normal
14 rule for sequestering witnesses?

15 A. Yeah. He normally just sequesters lay witnesses
16 unless there's some incredibly urgent reason to exclude
17 other people.

18 Q. Was there any discussion about having a bench
19 trial?

20 A. There were, actually. I do remember Mr. Murray
21 asking about that. I did talk to Judge Manning very
22 briefly and he refused.

23 I don't know if he meant that he was just going
24 to -- that he thought, just based on the fact that he had
25 done a few motions and heard the facts that I would be

MARK SCHNEE - CROSS BY MITCHELL

1 better off in front of a jury. I know Ms. Campbell was
2 objecting to it and the State has as much right to a jury
3 trial. So it became a non-issue.

4 Q. Mr. Murray was not charged with carjacking?

5 A. No.

6 Q. Now his right to testify, he knew he had a right to
7 testify, right?

8 A. He certainly knew he had a right to testify, yeah.

9 Q. I mean, that's what you would normally advise a
10 client who chose not to testify, you advise them that
11 they do have a right to testify?

12 A. Well, normally the judge would go through the
13 rights that he has whether they testify or not.

14 Q. And that revolves around the right to remain
15 silent, right, self-incrimination, and everything that
16 goes along with that?

17 A. Sure, yes.

18 Q. There's testimony about how, for Mr. Murray, that
19 he was positioned in the witness stand when the jury came
20 in as the other witnesses had walked down and then
21 they're sworn. That's something you raised to Judge
22 Manning as well, right?

23 A. I did. I raised it before, before Mr. Murray
24 testified. I raised it post-trial. I still have a
25 problem with that ruling.

MARK SCHNEE - CROSS BY MITCHELL

1 Q. And your argument was that it's different so it's
2 prejudicial and that he was in shackles at the time,
3 right?

4 A. Correct.

5 Q. You even asked to poll the jurors afterwards to see
6 if they thought that affected their verdict?

7 A. I did. And Judge Manning refused to.

8 Q. Did you see any problems with the underlying
9 convictions that the State was going to support the LWOP
10 with?

11 A. You mean the charges from Chicago?

12 Q. Right. The Illinois charges. I mean, I know you
13 took issue with it, but did you have any -- I guess, you
14 did object to those pretty vehemently; is that correct?

15 A. I did. They never provided me with proof that it
16 would have qualified as an armed robbery under our laws
17 which is the standard. And I don't understand why they
18 didn't have to present that because the statute he was
19 charged under, I can't remember what it's called, but
20 there were sections A, B, C, whatever it was, and one of
21 them would have qualified for armed robbery and the
22 others did not.

23 And they didn't prove whether by the indictment or
24 anything else what the actual allegations were that he
25 was found guilty of. And the sentence at the time he

MARK SCHNEE - CROSS BY MITCHELL

1 received, there's no way that it would -- we would know
2 what kind of -- what kinds of crime he was actually
3 convicted of there.

4 Q. And that's all stuff you brought up to Judge
5 Manning, correct?

6 A. It is.

7 Q. And you also challenged that it wasn't right for
8 him to be qualified for this LWOP when these charges were
9 pre-LWOP statute as well, right?

10 A. I did argue that, yes.

11 Q. Was Mr. Murray aware of the sentence he was facing
12 at that time? If he was convicted, did you advise him
13 that he only had -- the judge had no discretion, that he
14 had to sentence him to life without the possibility of
15 parole?

16 A. For convictions for armed robbery, I believe he
17 understood that. I don't, I don't specifically remember
18 the conversation, but I can't imagine we didn't discuss
19 it which probably led to much more of a strategy of the
20 strong arm as our best defense.

21 Q. You've had other clients charged or the State has
22 sought life without the possibility of parole in other
23 cases that you handled; is that correct?

24 A. One or two. It's not very common. At least not
25 usually the cases I've handled. Many of them have been

MARK SCHNEE - CROSS BY MITCHELL

1 getting life, but that's not because of a mandatory life
2 without parole.

3 Q. And you would have reviewed that, that's the
4 sentence and the judge has no discretion in your normal
5 practice; is that right?

6 A. Yes.

7 Q. So you advised him to testify because you wanted to
8 get his side of the story out because that's about the
9 only way -- you thought that was the best chance of
10 getting a strong arm robbery conviction instead of the
11 armed robbery; is that right?

12 A. Yes. I also thought his testimony was believable.
13 I think he was genuine and honest about his addiction and
14 his problems. I think the victims were relatively honest
15 as well. I mean, they didn't act like they saw things
16 that they didn't see. They just had different
17 perceptions and some of their actions weren't consistent
18 with the thought that he had a weapon which is what I
19 argued.

20 Q. Mr. Hampton was trying to fight him out of his
21 car. Who's going to fight a guy that has a gun, right?

22 A. Right. And then Mr. Woods followed him thinking he
23 had a gun.

24 Q. And Mr. Langford, he was the elderly gentleman who
25 had some of his own physical problems, I guess?

1 A. Yes.

2 Q. I guess he didn't hear well, didn't see well. So
3 those were things you were able to bring out in cross-
4 examination?

5 A. Correct.

6 MR. MITCHELL: No further questions. Thank
7 you, Mr. Schnee.

8 THE COURT: Any redirect?

9 MR. WALLER: Nothing further, Your Honor.

10 THE COURT: Thank you. You may step down.

11 THE WITNESS: Thank you.

12 THE COURT: All right. Anything further?

13 MR. WALLER: Nothing further from the
14 Applicant.

15 THE COURT: Anything from the State?

16 MR. MITCHELL: Nothing from the State, Your
17 Honor.

18 THE COURT: Okay. Any summations?

19 MR. WALLER: Briefly, Your Honor.

20 Your Honor, with respect to ineffective
21 assistance of counsel, Mr. Schnee testified that
22 Mr. Murray was not informed of his rights to not
23 incriminate himself. He testified that was the
24 theory of their entire case was that he was going
25 to testify and get his point across which is fine

1 but he has to understand what he's giving up when
2 he does testify.

3 Your Honor I know has read the transcript
4 and looking at that transcript, the cross-
5 examination of Mr. Murray by Luck Campbell did
6 not exactly go well for him. I don't think that
7 Mr. Murray was aware of what he was giving up or
8 what he would be subjected to by that testimony.

9 Your Honor, in fact, it was testified to
10 here today that he was encouraged to testify.

11 Your Honor, with regards to the life
12 without parole. Mr. Schnee testified that he
13 didn't think it was proven. He briefed the
14 issue. That issue was not raised in the appeal
15 and I believe it should have been raised. It was
16 not raised.

17 THE COURT: So are you adding an allegation
18 of ineffective assistance of appellate counsel?

19 MR. WALLER: Your Honor, I guess I am based
20 on the testimony. I believe that's in the
21 Court's discretion. I would make that motion to
22 amend his application to include that.

23 THE COURT: Okay.

24 MR. WALLER: And nothing further.

25 THE COURT: All right. Mr. Mitchell?

1 MR. MITCHELL: Your Honor, I think as far
2 as knowing the right to testify, I think he was
3 definitely aware of his right to testify because
4 he revoked that and waived his right to silence
5 but that -- told his side of the story. I think
6 he understood that he could, under some
7 circumstances, be impeached with his prior
8 record. That was dealt with. None of that was
9 coming in. Judge Manning talks about rights when
10 he's going through that little short advisement
11 of rights there on 282 and 282, I believe.

12 So, as far as that, I think, you know, if
13 there was any deficiency there the evidence in
14 the case is overwhelming that the Applicant has
15 failed to show any prejudice from any of these
16 alleged deficiencies.

17 As far as the LWOP goes, I think that's not
18 something -- looking at the ineffective
19 assistance of appellate counsel, I do not -- not
20 totally sure what the issue was on appeal off the
21 top of my head.

22 THE COURT: It was the shackle issue.

23 MR. MITCHELL: That's right. That issue.

24 THE COURT: And not being sworn in while
25 the jurors were present. There were two issues.

1 MR. MITCHELL: Which was something
2 Mr. Schnee argued pretty effectively, I thought.

3 But, I don't think that issue is stronger
4 than the theft issue. I think this is something
5 that Mr. Schnee put a lot of thought into and
6 made a very good record to preserve that issue
7 for appeal. He even went so far as to ask to
8 poll the jurors. I do not think this issue that
9 Mr. Waller, about the LWOP conviction, is
10 stronger than the issue that was raised on
11 appeal. So I think --

12 THE COURT: Well, but there's no rule that
13 you only can raise one or two issues on appeal.
14 Why not also raise an issue that was briefed to
15 the judge? And Judge Manning seemed to be
16 somewhat reluctant when he sentenced Mr. Murray.

17 MR. MITCHELL: Well, I don't think there's
18 any question. He had the requisite prior
19 convictions. Mr. Schnee was talking about four
20 convictions today. They were talking about three
21 in the transcript. I think they actually went
22 forward on two. I just don't think it was in
23 dispute.

24 And they did produce what Judge Manning
25 ruled as certified copies of the convictions.

1 Mr. Schnee testified he was, according to our
2 sentencing sheet, I mean, I think that's what you
3 would submit most of the time to show that it's
4 been convictions albeit from maybe the '80s. So,
5 maybe the system may not be the same as it is
6 today, especially in Illinois.

7 But I think you always presume
8 effectiveness. And on the ineffective assistance
9 of appellate counsel, you have to show the issue
10 not raised was stronger than the issue raised.
11 And then that's just a deficiency prong. So the
12 prejudice prong you have to show if the issue had
13 been raised that it would have been meritorious
14 and the condition would have been reversed.

15 I don't think he's met that burden here. I
16 don't think he could show that kind of
17 prejudice. This was a mandatory issue if it had
18 been raised. I was not completely prepared for
19 that.

20 THE COURT: Understood.

21 MR. MITCHELL: If you have any other
22 questions we could maybe have something written
23 up on it, but I'll rest the record on the other
24 issues.

25 THE COURT: Okay.

1 I have reviewed this transcript as well as
2 the application and the return. I've listened
3 carefully today to the arguments and the
4 testimony.

5 And I am prepared to rule on all issues
6 with the exception of the ineffective assistance
7 of appellate counsel with not raising the issue
8 about life without parole. There appeared to be
9 issues raised as to whether the Illinois
10 convictions from 20 years before this conviction
11 would qualify under the LWOP statute, and
12 especially when the LWOP statute from South
13 Carolina didn't even come into existence until
14 1996. Frankly, I'm just not prepared to make a
15 decision on whether or not that should have been
16 raised on appeal or not. And I am going to take
17 that issue under advisement.

18 However, I do believe that I will never be
19 more prepared than now to make my comments on all
20 the other issues and so I will rule on all the
21 other issues.

22 The failure to inform Murray of his Fifth
23 Amendment rights and consequences of exercising
24 or waiving those rights does fall below the
25 objective standard of reasonable representation

1 pursuant to a case called Brown versus State.
2 That's a 2000 case. However, that deficiency is
3 only the first prong to consider in a PCR
4 application.

5 The Applicant also has the burden of
6 showing that that deficiency prejudiced him which
7 just means that but for Mr. Murray's testimony
8 would the result of this trial be different.

9 Having read through this transcript, I find
10 that there is no prejudice. Mr. Murray's prior
11 record did not -- it was never revealed to the
12 jury when he testified. It was the only way for
13 defense counsel to refute the testimony that the
14 victims believed that the defendant had a gun.

15 And so I do not find that there was any
16 prejudice.

17 The identification issue, I find that that
18 was trial strategy. It was not deficient.
19 Identity was never an issue in this case.

20 With regard to Mr., or Officer Woodley not
21 being sequestered when there was a pretrial
22 motion that witnesses be sequestered. I found
23 the testimony from Mr. Schnee credible when he
24 said that the agreement was that lay witnesses
25 would be sequestered. So there was no deficiency

1 not to object when Officer Woodley was allowed to
2 stay in the courtroom. And, in any event, there
3 was to prejudice shown.

4 I think the -- I think there was some
5 arguments about the overall trial strategy.
6 Mr. Schnee testified that the overall trial
7 strategy was to get a strong arm robbery
8 conviction rather than armed robbery.
9 Mr. Murray's testimony today made that strategy
10 seem extremely reasonable. He was forthright
11 about his participation in these crimes and,
12 again, denied that he ever had a gun. And so
13 that Mr. Schnee's strategy was, to have a lesser-
14 included offense was not deficient.

15 I believe I have addressed all of the
16 issues raised but I invite you to bring anything
17 to my attention that I did not address.

18 MR. WALLER: I believe you've touched on
19 them all, Your Honor.

20 THE COURT: All right. Well because I am
21 taking this one under advisement with regard to
22 the appellate counsel issue, I will endeavor to
23 write the order myself unless either of you hear
24 from me otherwise. I will obviously contact both
25 of you to let you know if I would ask one of you

1 to write an order for me. But I'll up take this
2 one on me.

3 Thank you very much. I'll try to get that
4 resolved as soon as I can.

5 MR. WALLER: Thank you, Your Honor.

6 MR. MITCHELL: Thank you.

7 END OF PROCEEDINGS: 3:11 P.M.

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CERTIFICATE OF REPORTER

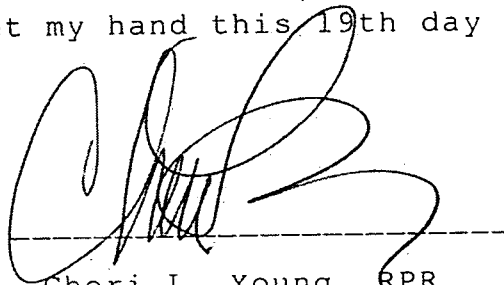
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, Cheri L. Young, Registered Professional Reporter and Official Court Reporter for the State of South Carolina, Second Circuit-At Large, do hereby certify that the foregoing proceedings were written stenographically by me using computer-aided translation; further, that the foregoing is a true, accurate and complete record, to the best of my skill and ability, of all the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Richland County, on the 27th day of August, 2015.

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

I have hereunder set my hand this 19th day of July, 2016.



Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Nathaniel Murray, #313891,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2014-CP-40-07482

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2016 JAN 21 AM 10:03
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed December 4, 2014. Respondent made its Return on June 9, 2015, requesting an evidentiary hearing be convened. Jonathan D. Waller was appointed by the Richland County Clerk to represent Applicant in this action. An evidentiary hearing was held on August 27, 2015, at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. J. Clayton Mitchell, Esquire, of the South Carolina Attorney General's Office represented Respondent.

At the PCR hearing, Applicant testified on his own behalf. Also testifying was Applicant's counsel, Mark E. Schnee, Esquire. This Court had before it the Richland County Clerk of Court records, Applicant's South Carolina Department of Corrections records, the appellate records, the PCR application, the Return, and the transcript.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. Applicant was indicted at the April 2009 term of the Court of General Sessions for Richland County for Failure to Stop for a Blue Light (2009-GS-40-1531) and two counts of Armed Robbery (2009-GS-40-1532; -1533).

At arraignment, Applicant was represented by Mark Sawyer, Esq. At trial, Applicant was represented by Mark E. Schnee, Esq. Applicant preceded to trial on October 12-14, 2009. He was convicted as indicted. The Honorable L. Casey Manning sentenced Applicant to concurrent terms of three (3) years' imprisonment for Failure to Stop for Blue lights and to life without parole for the charges of Armed Robbery.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Dayne Phillips, Esq. The South Carolina Court of Appeals dismissed the appeal. State v. Murray, No. 2012-UP-228 (filed April 12, 2012). The Remittitur was issued on July 16, 2014.

In this action, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of trial counsel in
 - a. Failing to properly challenge the identification made by witness Jimmy Hampton;
 - b. Failing to properly advise Applicant of his 5th amendment rights and the consequences of waiving those right;
 - c. Failing to move to have Deputy Josh Woodley sequestered; and
 - d. Failing to properly prepare a defense strategy.
- II. Ineffective assistance of appellate counsel in failing to raise the issue of whether Applicant was eligible for life without parole under S.C. Code § 17-25-45 (1976).

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, appellate records, records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Trial Counsel

Failing to properly challenge the identification made by witness Jimmy Hampton



First, Applicant alleges Counsel Schnee was ineffective in failing to challenge the identification made by witness Jimmy Hampton. Applicant argues that Counsel Schnee should have objected to the show-up identification. Counsel Schnee testified that identification was never an issue for the jury. He further testified that Applicant would be testifying in his defense. This Court finds Applicant failed to meet his burden of proof. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Counsel Schnee's testimony is credible and persuasive on the issue. This Court finds Counsel Schnee made the strategic decision not to challenge Hampton's identification because identification was never in question. The evidence shows that Applicant pushed Hampton out of his car and stole his car. Applicant was apprehended in Hampton's car after a two to three mile chase. (Trial Tr. p. 120-28). Applicant testified at trial that he did steal Hampton's car but claimed he did not have a gun and did not make representations that he had a gun. This is consistent with the overall strategy that the State could not prove Applicant was armed or that he represented that he was armed. This allegation is denied and dismissed with prejudice.

Failing to properly advise Applicant of his 5th amendment rights and the consequences of waiving those rights

Next, Applicant alleges Counsel Schnee was ineffective in failing to properly advise Applicant of his 5th amendment rights and the consequences of waiving those rights. He also argues that he was not advised that the jury would be instructed not to take into account whether he testifies or not. Applicant testified that Counsel Schnee advised him to testify to get his version of events before the jury. Counsel Schnee testified he did not believe he advised Applicant of his right to remain silent. This Court finds Applicant has met his burden in proving

Counsel Schnee was ineffective in failing to properly inform Applicant of his Fifth amendment rights and the consequences of exercising those rights. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) ("A defendant's decision to testify or not must be made with knowledge of the consequences of either choice"). However, this Court finds Applicant failed to demonstrate that he was prejudiced by Counsel Schnee's ineffectiveness. The result of the proceeding would not likely have been different had Applicant been properly advised. The only way for Applicant to refute the State's case was to testify that he did not have a weapon and did not represent that he had a weapon. Notably, Applicant's prior record was not revealed during his testimony. Also, Applicant failed to prove that, but for Applicant's testimony, there was a reasonable probability that the result of the trial would have been different. This allegation is denied and dismissed with prejudice.

Failing to move to have Deputy Josh Woodley sequestered

Applicant alleges Counsel Schnee was ineffective for failing to have Josh Woodley of the Richland County Sheriff's Department sequestered during the trial. Applicant testified that multiple witnesses were not sequestered during the trial. Counsel Schnee testified that only the lay witnesses were to be sequestered. He noted sequestering of witness^{es} is typically handled in this manner.

This Court finds Counsel Schnee's testimony credible on the issue. Applicant has failed to show Counsel was ineffective. The record reflects that the lay witnesses were sequestered and that law enforcement was allowed to be present during the testimony. Further, Applicant cannot show that the result of the trial would have been different had Deputy Woodley been sequestered. This allegation is denied and dismissed with prejudice.

Failing to properly prepare a defense strategy

Applicant also alleges Counsel Schnee was ineffective in failing to properly prepare an effective defense strategy. Applicant testified that he did not communicate very much with Counsel Schnee. He alleges Counsel Schnee did not present a reasonable strategy in his defense. Counsel Schnee testified he hoped to get an acquittal on the armed robbery charge and was “shooting for” a strong armed robbery conviction. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998). This Court finds Counsel Schnee crafted a reasonable and effective trial strategy in attacking the State’s theory that Applicant was either armed with a weapon or represented that he had a weapon. Counsel Schnee’s testimony on the issue is credible. This Court finds Applicant has failed to prove prejudice. Applicant has not presented this Court with any alternative defenses or strategies that would have been stronger and more effective. The evidence against Applicant was strong. He was arrested in Hampton’s car just minutes after robbing him. This allegation is denied and dismissed.

Ineffective Assistance of Appellate Counsel

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-

conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

"Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is 'difficult to demonstrate that counsel was incompetent.'" United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

"To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

Here, appellate counsel argued the trial judge erred in having Applicant remain in shackles while he testified. Appellate Counsel relied on Deck v. Missouri, 544 U.S. 622 (2005) in his argument that forcing him to remain shackled during his testimony prejudiced him in front of the jury. As an initial matter, this Court notes that appellate counsel did not testify at the PCR hearing. This Court finds that a presumption of effectiveness applies and that it is Applicant's burden to prove that appellate counsel was ineffective in failing to raise stronger issues that would have resulted in a reversal of Applicant's conviction. This Court cannot speculate as to whether appellate counsel considered raising these issues or believed they would have any merit. See Bannister v. State, 333 S.C. at 303, 509 S.E.2d at 809. Applicant alleges appellate counsel was ineffective in failing to raise the issue of Applicant's eligibility for an LWOP sentence. This issue is not clearly stronger than the issue raised. This Court finds Applicant was a proper candidate for a sentence of life without parole pursuant to South Carolina Code § 17-25-45. Applicant failed to present compelling or credible evidence proving otherwise. Applicant also cannot show that his conviction would have been reversed by the appellate courts had the issue been raised. The issue is therefore without merit.

All Other Allegations

As to any and all allegations that were raised in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

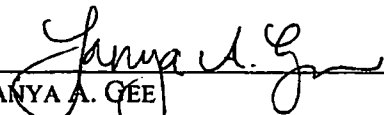
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 19th day of January, 2015.


 TANYA A. GEE
 Presiding Judge

Columbia, South Carolina

WITNESSES

(S) DEPUTY C. DUKE, RCSD

ARREST WARRANT NUMBER

42906EQ

ACTION OF GRAND JURY

TRUE BILL

Hein Rand
Foreperson of Grand Jury
Date:

APR 17 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-

1531

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

42
52

APRIL TERM 2009

**THE STATE
vs.**

NATHANIEL MURRAY

Indictment for

**TRAFFIC/FAIL TO STOP FOR BLUE
LIGHT**

SC Code: 56-5-760(B)(1)
CDR Code: 0065
Class MIS-A

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Hein Rand
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on APRIL 15, 2009, the Grand Jurors of Richland County present upon their oath:

TRAFFIC/FAIL TO STOP FOR BLUE LIGHT

That NATHANIEL MURRAY did in Richland County on or about February 17, 2009, unlawfully fail to stop while driving a motor vehicle on a road, street or highway of the state for a law enforcement vehicle after being signaled so to do by a duly constituted and acting law enforcement officer, with a blue light and/or siren. All in violation of §56-5-750, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR

WITNESSES

✓(S) Kevin Isenhoward, RCSD

ARREST WARRANT NUMBER

J564317

ACTION OF GRAND JURY

TRUE BILL

Adam Ramm

Foreperson of Grand Jury
Date:

MAR 11 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-1532

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

42
52

MARCH TERM 2009

THE STATE
vs.

NATHANIEL MURRAY

Indictment for

ARMED ROBBERY
SC Code: 16-11-330(A)
CDR Code: 0139
Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jessie M. Gude
C.C.C. PLS.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 11, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That NATHANIEL MURRAY did in Richland County on or about February 17, 2009, commit robbery by feloniously taking from the person or presence of Walter Langford by means of force or intimidation goods or monies of Walter Langford, such goods or monies described as wallet and its contents with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section 16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

W. B. Giese

WARREN B. GIESE, SOLICITOR

WITNESSES

✓(S) Kevin Isenhoward, RCSD

ARREST WARRANT NUMBER

J564318

ACTION OF GRAND JURY

TRUE BILL

Hammond

Foreperson of Grand Jury
Date: MAR 11 2009

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-40-1533

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

42
MARCH TERM 2009

THE STATE
vs.

NATHANIEL MURRAY

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

After being fully advised as to my

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Heather W. M. Gude
C.C.C.P.&G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on March 11, 2009, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That NATHANIEL MURRAY did in Richland County on or about February 17, 2009, commit robbery by feloniously taking from the person or presence of Jimmy Hanson by means of force or intimidation goods or monies of Jimmy Hanson, such goods or monies described as 1996 Toyota Corolla with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of Section 16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



WARREN B. GIESE, SOLICITOR