

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN 28 2016

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

SC SUPREME COURT

The Honorable Clyde N. Davis, Circuit Court Judge

Case No. 2003-CP-32-0759

Marcus Timmons

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX- VOLUME ONE OF FOUR

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF LEXINGTON)

3 STATE)

4 VERSUS)

5)
6 MARCUS D. TIMMONS)
7)
8)

COURT OF GENERAL SESSIONS

(94-GS-32-0362), (0364), (0367)
(00-GS-32-3326), (3327), (3328)

TRANSCRIPT OF RECORD

August 28, 29, 30, 31, 2000
Lexington, S. C.

9 B E F O R E :

10 HONORABLE H. DEAN HALL, Judge; AND A JURY.

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

12 C. DAYTON RIDDLE, III, ESQ.
13 ASSISTANT SOLICITOR FOR LEXINGTON COUNTY

14 TAV SWARAT, ESQ.
15 ASSISTANT SOLICITOR FOR LEXINGTON COUNTY
ATTORNEYS FOR STATE

16 CAREY AYER, ESQ.
17 LISA LEE SMITH, ESQ.
ATTORNEYS FOR DEFENDANT

18
19
20
21
22 DIXIE COX EUBANK
23 CIRCUIT COURT REPORTER
24 FIFTEENTH JUDICIAL CIRCUIT

25 VOLUME 1 OF 3

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I N D E X

JURY SELECTION (NOT TRANSCRIBED - JURY SELECTION FORM ATTACHED)

(NO BATSON MOTION WAS MADE.)

JURY OUT/MOTIONS

7

WITNESSES

DIRECT

CROSS

RD

RC

QUINCY TIMMONS

MR. RIDDLE

19

MR. AYER

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END DAY (SEPTEMBER 28, 2000)

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MR. RIDDLE

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MR. AYER

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JERRY A. JONES

MR. SWARAT

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MR. AYER

(NONE)

SUZANNE SURRETT ROGERS

MR. SWARAT

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MR. AYER

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DORIS ROSA KIRBY

MR. RIDDLE

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MR. AYER

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WITNESSES

DIRECT

CROSS

RD

RC

TERRY DON SNEAD

MR. SWARAT

171

MR. AYER

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JAMES L. HICKMAN

MR. RIDDLE

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MR. AYER

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DAVID R. MANLEY

MR. RIDDLE

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MR. AYER

228

GEORGE EVERETT CULLIFER

MR. SWARAT

230

MR. AYER

(NONE)

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D. I. BLACKWELL

MR. SWARAT

243

MR. AYER

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PEGGY WILLIAMS

MR. SWARAT

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MR. AYER

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JURY OUT/ON RECORD

PEGGY WILLIAMS

MR. AYER

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RD

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MR. AYER

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VELLO PAAVEL

MR. RIDDLE

527

MR. AYER

(NONE)

KITT McMASTER, M.D.

MR. SWARAT

548

MR. AYER

(NONE)

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MARCUS D. TIMMONS

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1 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 28, 2000,
2 OUTSIDE THE PRESENCE OF THE JURY VENIRE.)

3 THE COURT: All right. Let the record show then that
4 all members of the petit jury panel have been removed from the
5 courtroom, the doors are closed, and there are no jurors
6 within sight or hearing distance of the courtroom.

7 All right. You want to bring in the -- let me ask the
8 Clerk just a second.

9 All right. Solicitor, you may call your case.

10 MR. RIDDLE: Do you want me to call it now, Your Honor,
11 or in the presence of the jury?

12 THE COURT: Just call it now, so I can go ahead and get
13 that, and then once we bring the panel in we are going to --
14 we will let you repeat it.

15 MR. RIDDLE: Yes sir.

16 Your Honor, the State is going to call for trial (94-GS-
17 32-0362). That's the indictment for murder, armed robbery, an
18 criminal conspiracy.

19 (94-0364), Your Honor, an indictment for conspiracy.

20 (94-0367), Your Honor. That's an indictment for armed
21 robbery, pointing a firearm, two counts, assault and battery
22 of a high and aggravated nature, a third count of pointing a
23 firearm, and a possession of a firearm during the commission
24 of a violent crime. That's a total of six counts on that
25 indictment, Your Honor.

1 THE COURT: So there are three separate indictments?

2 MR. RIDDLE: No sir. There's -- I'm not finished yet.

3 THE COURT: Okay.

4 MR. RIDDLE: (94-2738), Your Honor, is an indictment
5 for attempted armed robbery, and pointing a firearm.

6 And Your Honor, indictment (00-3326). That is for
7 pointing a firearm.

8 (00-3327), pointing a firearm, and

9 (00-3328). That is a count of attempted armed robbery,
10 Your Honor.

11 THE COURT: And what is the name of the Defendant as it
12 appears on these indictments?

13 MR. RIDDLE: I'm sorry, Your Honor. Your Honor, the
14 name of Marcus D. Timmons, T.i.m.m.o.n.s. First name is
15 spelled M.a.r.c.u.s.

16 THE COURT: Okay. And do you need those originals, or
17 can I borrow those for a few minutes, those indictments? Do
18 you have copies?

19 MR. RIDDLE: Not right ---

20 THE COURT: All right. When we bring in and you call
21 out the case, you can pass them up then. I thought maybe you
22 had copies of them. I always like to have the originals.

23 CLERK OF COURT: Would you like me to go back copies,
24 Judge?

25 THE COURT: No. That's okay. We can do that during

1 lunch, or before tomorrow.

2 All right, now, are there any other matters we need to
3 take up before we bring in the jury?

4 MR. RIDDLE: The only other thing that I can think of,
5 Your Honor, when you questioned and qualified this jury in
6 reference to Grand Jury service, I think you questioned them
7 about had they served in the last three years.

8 THE COURT: Uh huh (indicating positive)

9 MR. RIDDLE: As you know, some of these indictments are
10 fairly old. I don't know if you think we need to ask them
11 about Grand Jury service which may date back to '94 or not.

12 THE COURT: Okay. Well, I can just ask them if they've
13 served within -- how old are the -- is the oldest indictment?

14 MR. RIDDLE: '94, Your Honor.

15 THE COURT: '94, so that's six years, seven years. I
16 can just ask if anybody has served in the last seven years.

17 MR. AYER: That's fine, Your Honor.

18 THE COURT: Okay. Any other matters?

19 MR. AYER: None from the Defendant.

20 THE COURT: All right.

21 Let me ask the Bailiffs then if they would bring all the
22 jurors back in.

23 (THE FOLLOWING TAKES PLACE ON SEPTEMBER 28, 2000, AFTER
24 THE CALL OF THE CASE INVOLVING INDICTMENTS LISTED ABOVE, AFTER
25 QUALIFICATION OF THE JURY VENIRE, AND AFTER SELECTION OF A

1 JURY PANEL, AND OUTSIDE THE PRESENCE OF THE JURY.)

2 (A JURY SELECTION FORM WAS PREPARED AND IS ATTACHED
3 HERETO.)

4 THE COURT: Are there any motions concerning jury
5 selection, including any Batson motions by the State?

6 MR. RIDDLE: None at this time, Your Honor.

7 THE COURT: By the Defendant?

8 MR. AYER: None from the Defendant, Your Honor.

9 THE COURT: Any objection or -- by the means used to
10 employ the Petit Jury panel for this term of Court by the
11 State?

12 MR. RIDDLE: No sir.

13 THE COURT: By the Defendant?

14 MR. AYER: None, Your Honor.

15 THE COURT: All right.

16 Let me see counsel just a minute.

17 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

18 (AT THIS TIME THE JURY WAS ADMONISHED BY THE COURT
19 CONCERNING DISCUSSION AND/OR PUBLICITY OF THIS CASE. THE JURY
20 WAS DISMISSED FOR THE DAY.)

21 (THE FOLLOWING TAKES PLACE ON THE SAME DAY, AND OUTSIDE
22 THE PRESENCE OF THE JURY.)

23 THE COURT: All right. Let the record reflect that
24 the Defendant, Marcus D. Timmons, is present in the courtroom.

25 Is the State ready to proceed?

1 MR. RIDDLE: Yes sir.

2 THE COURT: Is the Defendant ready?

3 MR. AYER: Yes sir, Your Honor.

4 THE COURT: Okay. What's the first matter y'all want
5 to take up?

6 MR. RIDDLE: Your Honor, the first matter the State
7 would like to take up is a motion to have Your Honor call Mr.
8 Quincy Timmons as a Court's witness in this particular case.

9 THE COURT: Okay. All right. Now I believe under the
10 -- that would be Rule 614, and under the Rule I would have to
11 have a hearing outside the presence of the jury. If y'all are
12 ready to proceed with that hearing we can ---

13 MR. RIDDLE: Yes sir, Your Honor. If I could just put
14 some background information into the record for Your Honor.

15 We are proceeding under Rule 614, as well as the cases
16 of State versus Anderson, Your Honor, which is 406 S.E. 2d 152
17 -- that is a 1991 case -- that case is cited in the notes to
18 Rule 614 -- as well as the death penalty case, Riddle versus
19 State, out of Gaffney, South Carolina, I believe. Your Honor,
20 the cite on that case is 443 S.E. 2d 557. That is a 1994
21 Supreme Court case.

22 Your Honor, factually this case is very similar to both
23 Riddle and to Anderson. In this particular case, Your Honor,
24 the evidence that the State intends to produce at trial is
25 this. Sometime after two P.M. -- or excuse me -- 2 A.M. on

1 February the 27th of 1993, the State alleges that Quincy
2 Timmons, and Marcus Timmons, went to the Conoco station, which
3 is located on Charleston Highway, or Highway 321, in the West
4 Columbia area of Lexington County. Your Honor, at that time
5 there was an attempted armed robbery of the Conoco station by
6 the two Timmons.

7 Your Honor, for the record, Quincy Timmons is Marcus
8 Timmons' first cousin.

9 Approximately fifteen minutes later, Your Honor, and
10 approximately one mile from the Conoco station, there is an
11 armed robbery at the E-Z Coin Laundry. That is located at the
12 -- basically at the intersection of Dunbar and Frink Street.
13 That is actually right across the city limits of Cayce -- or
14 of West Columbia, and into the city limits of Cayce. As I
15 indicated, that's approximately one mile from the Conoco
16 station, approximately fifteen minutes later time wise. That
17 happened roughly two-thirty in the morning, maybe two thirty-
18 five, something along those lines.

19 From there, Your Honor -- and that was, in fact, a
20 completed armed robbery -- the State would allege that the two
21 Timmons left -- left the E-Z Coin and proceeded back to
22 Charleston Highway, and out of the Cayce city limits, and into
23 an unincorporated part of Lexington County.

24 Your Honor, at approximately 3:15 A.M., some thirty to
25 forty-five minutes later, some citizens found Mr. Thomas Wise

1 mortally wounded, lying on the side of the road. At that
2 time, Your Honor, he was still alive. E.M.T.s were called,
3 the police were called, and they responded to that scene.

4 Your Honor, at approximately 3:30 in the morning, at the
5 Pantry at State Street and Frink Street, which is -- Frink
6 Street is the same Frink Street where the E-Z Coin Laundry is
7 located -- basically on the corner of Frink and Dunbar, there
8 was another armed robbery at the Pantry, which is -- that
9 armed robbery -- as they were in the progress of that armed
10 robbery, an officer with the Cayce Department of Public Safety
11 pulled into the parking lot. They saw him. It interrupted
12 that armed robbery. They fled from the scene, threw away the
13 weapons, and ultimately escaped that night.

14 Prior to starting this spree of armed robberies, Your
15 Honor, the two Timmons were in Columbia, South Carolina, where
16 they stole a car from Hampton -- or excuse me -- from Hancock
17 Buick, just shortly prior to all this string of armed
18 robberies taking place. They stole the car and then went into
19 Cayce and started the armed robberies.

20 Your Honor, that factual recitation which I have just
21 given to the Court essentially comes from the testimony of
22 Quincy Timmons at the prior trial in this case.

23 Your Honor, the case was reversed by the South Carolina
24 Supreme Court, State versus Timmons, 488 S.E. 2d 323. It was
25 reversed on a Lyle issue, Your Honor, involving a second

1 string of armed robberies which happened on April the 9th of
2 that same year, 1993.

3 Subsequent to the trial of this particular case, Your
4 Honor, he was tried for the February 27, incidents. He was
5 convicted of the February 27, incidents. During that trial
6 Mr. Timmons, Quincy Timmons, pled guilty to all of the
7 charges, from both the 27th, and also from April 9th, and
8 testified for the State. At that time he received a sentence
9 on all of the charges, all to run concurrently, so he received
10 essentially a life sentence on the murder, and sentences for
11 all the armed robberies, and pointing and presentings, and
12 assaults, which ran concurrently with that.

13 Subsequent to this case being tried the first time, the
14 April -- or excuse me, the February 27, charges, Marcus
15 Timmons came back to court and pled guilty to the April 9th
16 charges. Those charges were not reversed by the Supreme
17 Court, and Mr. Timmons, Marcus Timmons, is still under
18 sentence for those charges at this time.

19 As I indicated, Your Honor, the factual recitation which
20 I just gave to the Court is essentially the testimony given by
21 Mr. Quincy Timmons in the first trial in this matter.

22 Your Honor, on August the 9th of this year, some two to
23 three weeks ago, Mr. Quincy Timmons was brought from the South
24 Carolina Department of Corrections to our office, where he was
25 interviewed by Tav Swarat, co-counsel in this case, and also

1 Mr. Howard Jernigan, with correctional officers present. At
2 that time, Your Honor, Mr. Timmons indicated that it was his
3 intention to either take the Fifth, or just to flat refuse to
4 testify should we call this case for trial again.

5 Your Honor, on August the 23rd, last week, we again
6 brought Mr. Timmons back, and asked him those same questions,
7 and at that time, Your Honor, he indicated that he was not
8 going to testify in this particular case.

9 Your Honor, it would be the State's position that Mr.
10 Timmons -- Quincy Timmons' posture, and his position, as of
11 today's date, is exactly the same posture and position as the
12 witnesses were in State versus Anderson, and Riddle versus
13 State. As Your Honor knows, in Anderson, which was the case
14 where the Supreme Court adopted the law from the Maryland case
15 and made the five factors the law in South Carolina, in that
16 case the proposed witness was the brother of the Defendant on
17 trial. He was serving a life sentence in the same factual
18 scenario for what the defendant was on trial for, and he had
19 previously provided sworn testimony regarding his involvement,
20 as well as his brother's involvement in the offense. In that
21 particular case, the State was not willing to vouch for the
22 brother's credibility in view of his actual and perceived bias
23 and hostility, and I would represent to the Court that that
24 is, in fact, the posture that the Solicitor's Office, in this
25 case, finds itself in. I am not willing, nor is Mr. Swarat

1 willing, to vouch for the credibility or the believability of

2 ---

3 THE COURT: You don't have to any more. They've
4 changed the rule.

5 MR. RIDDLE: Yes sir. Yes sir, I understand that,
6 since the rules have changed. And Your Honor, I -- the note
7 to the rule says that Anderson has been modified by the
8 adoption of the rule, but then it doesn't ever tell you,
9 frankly, what the modification is, and I could only guess that
10 it's on the vouching issue, but I have not been able to locate
11 a case which specifically says what the modification was.

12 THE COURT: Well, it's -- it would be a real -- would
13 be a relatively simple matter had we adopted the exact
14 language out of the Federal Rule 614, but we didn't do that.
15 In the State's version of Rule 614 we have the phrase, "in
16 extraordinary circumstances", that the Federal Rule doesn't
17 have, which, to me, changes the Rule all the way around, and
18 of course, 607, Rule 607 says you don't need a -- party
19 vouchers for any of witnesses they call, and you can impeach
20 them -- you can now impeach your own witness.

21 And the other complicated factor is that Anderson
22 hearing was decided -- or the ruling in the State Supreme
23 Court, decided May the 9th of 1994 -- and we didn't adopt the
24 new rules till September of '95, so it's quite a maze to go
25 through to try to figure out where the Supreme Court will land

1 today, since Anderson is pre-adoption of the rules, and since
2 we didn't adopt the Federal Rule 614 word for word, so ---

3 MR. RIDDLE: Right. The only thing I can point out for
4 Your Honor is that the note to 614 specifically indicates that
5 the circumstances, as found in the Anderson case, would be the
6 type of extraordinary circumstances that would justify the
7 Court calling the witness in this case.

8 THE COURT: Well, I think, also reading between the
9 lines a little bit -- of course now the new rule applies, that
10 the Court have a hearing. I don't know how anybody can decide
11 what a witness is going to say until he's put on the stand.

12 MR. RIDDLE: Yes sir.

13 THE COURT: And he can do a lot of different things.
14 He can refuse to testify; he can plead the Fifth Amendment; he
15 can testify and say something totally different than he said
16 before, so I think until you actually put him on the stand, I
17 don't know which way he may go.

18 MR. RIDDLE: Yes sir, I -- at this point I was just
19 trying to lay the background and cover the other factors, and
20 I, like you, have no idea what Mr. Timmons is going to say. I
21 can only tell you what he has previously said.

22 THE COURT: Does he have an attorney?

23 MR. RIDDLE: No sir, he does not.

24 THE COURT: He does not have an attorney?

25 MR. RIDDLE: No sir. He has no current charges pending

1 against him at this time.

2 THE COURT: Okay. Well, I think one of the things that
3 I would definitely have to do, when he does take the stand is,
4 of course, advise him of his rights under the Fifth Amendment,
5 since he has indicated to personnel in your office that he
6 wants to invoke his Fifth Amendment Right, so I think I would
7 probably have to go through that first with him.

8 In the -- one of cases, of course, the -- because a
9 witness was -- after he was called by the Court approximately
10 wouldn't testify, and was threatened with contempt charges,
11 and still wouldn't testify, the -- of course the Court
12 declared him unavailable and allowed them to use testimony
13 from a prior hearing. That's -- there again, is one of those
14 things where you just have to actually put the person on the
15 stand and go through the ---

16 MR. RIDDLE: I believe Your Honor is talking about
17 Riddle, and if I read Riddle correctly, I thought they kind of
18 did the two-step process in that, that the State had asked
19 that he be declared a Court's witness first.

20 THE COURT: Uh huh (indicating positive) I think you
21 would have to do that, but I think if he has already indic --
22 he doesn't have an attorney, and if he has already indicated
23 to personnel in your office that he wishes to invoke his
24 rights under the Fifth Amendment, I'm going to have to put him
25 under oath, advise him of his Fifth Amendment Rights, and see

1 which way he wants to go.

2 MR. RIDDLE: We are ready to proceed with that at this
3 time ---

4 THE COURT: Okay.

5 MR. RIDDLE: ---If Your Honor is ready.

6 THE COURT: All right.

7 MR. RIDDLE: Your Honor, he's in this jury room right
8 over here. He'll be in ---

9 THE COURT: Okay.

10 QUINCY TIMMONS, first duly sworn,
11 testified as follows:

12 DIRECT-EXAMINATION BY MR. RIDDLE:

13 THE COURT: You may proceed.

14 MR. RIDDLE: Yes sir.

15 Q. Mr. Timmons, you know who I am, do you not?

16 A. Plead the Fifth.

17 MR. AYER: Can y'all hear him?

18 MR. AYER: Yes sir, Your Honor.

19 THE COURT: Okay. Because we've got a mi -- do we have
20 a microphone over there?

21 COURT REPORTER: We have a microphone, but we don't
22 have a P.A. system it appears.

23 THE COURT: Oh. Okay.

24 Well, just me just ask the witness if he would speak up
25 so everyone in the courtroom can hear him.

1 If y'all have any problem hearing the witness, let me --
2 let me know.

3 A. I said, I plead the Fifth.

4 Q. Do you know why you are here today?

5 Did you hear me, Mr. Timmons?

6 MR. RIDDLE: Your Honor, at this time I would ask that
7 the Court direct Mr. Timmons to answer the question.

8 THE COURT: All right.

9 Let me just ask the witness if he would state his name
10 again, for the record.

11 A. Quincy Timmons.

12 THE COURT: And Mr. Timmons, would you state your age,
13 please?

14 A. Twenty-six.

15 THE COURT: Twenty-six. Okay. Mr. Timmons, tell me
16 about your education. How far did you go in school?

17 A. I have a G.E.D.

18 THE COURT: Okay. Are you taking any kind of
19 medication?

20 A. No.

21 THE COURT: Huh? Are you in good health?

22 A. I suppose.

23 THE COURT: Okay. Have you had any kind of substances
24 in the last forty-eight hours that would alter the way you
25 think, had any medication, drugs, alcoholic beverages,

1 anything like that in the last forty-eight hours?

2 A. No.

3 THE COURT: And Mr. Timmons, you have indicated, really
4 before anybody asked you anything, that -- you said you take
5 the Fifth. Is that what you were saying?

6 A. Yes sir.

7 THE COURT: Do you know what the -- what you mean when
8 you say that?

9 A. Yes sir.

10 THE COURT: Okay. I want to ask you to listen
11 carefully now. I want to advise you of your rights under the
12 Fifth Amendment to the Constitution of the United States, and
13 a similar counterpart provision of the Constitution of the
14 State of South Carolina. You may be called as a witness to
15 testify in this case, and the Fifth Amendment to the
16 Constitution of the United States provides, in part, that no
17 person shall be compelled, in any criminal case, to be a
18 witness against himself. This provision of Constitutional law
19 means that you cannot be compelled, or required to be a
20 witness against yourself. This provision of Constitutional
21 Law means that you have a right to invoke the protection given
22 to you by the Fifth Amendment to the Constitution to any
23 question asked which you consider gives you reasonable cause
24 to believe that the answers given might tend to subject you to
25 criminal responsibility. This privilege which you have is a

1 personal right which can only be claimed by you. Therefore,
2 Mr. Timmons, you have the right to refuse to answer any
3 question asked of you which you consider gives you reasonable
4 cause to be that the answer to the question, if given, might
5 tend to incriminate you. If you wish to exercise this right
6 when a question is asked, you will state to this Court that
7 you refuse to answer the question because the answer may tend
8 to incriminate me.

9 I also advise you, Mr. Timmons, that you are not the
10 final decision maker on the issue of whether an answer to a
11 question will violate the protection afforded you by the Fifth
12 Amendment. It is for this Court to determine, upon an issue
13 being made, if silence on your part is justified.

14 Now, Mr. Timmons, do you understand what I just
15 explained to you?

16 A. Uh huh (indicating positive)

17 THE COURT: What was your answer?

18 A. Yes sir.

19 THE COURT: All right. And do you have any questions
20 about what I've just explained to you?

21 A. No.

22 THE COURT: All right, sir.

23 Now, at this time I'm going to allow the attorneys to
24 ask questions, and as I advised you, you think you have
25 reasonable cause to believe that your answer to the question,

1 if given, might tend to incriminate you, and you want to
2 exercise your right under the Fifth Amendment, then you would
3 have to say that you refuse to answer the question because the
4 answer may tend to incriminate me. I will have to be the
5 person to decide whether or not the answer, if given, would
6 violate the protection afforded you by the Fifth Amendment,
7 and I would also have to decide if silence on your part is
8 justified.

9 So, Mr. Riddle, if you want to continue with your
10 questions.

11 DIRECT BY RIDDLE CONTINUED:

12 MR. RIDDLE: Permission to use leading questions, Your
13 Honor.

14 THE COURT: Huh?

15 MR. RIDDLE: Permission to use leading questions.

16 THE COURT: Okay. Yes, you can -- since we are out of
17 the presence of the jury.

18 Q. Mr. Timmons, you did not want to be here today, did
19 you?

20 A. You know that.

21 Q. Yes sir, but I need for you to answer the question.
22 You didn't want to be here today, did you?

23 A. No, I did not.

24 Q. And you had a conversation with myself, and other
25 members of my office, and our investigator, about this case,

1 on two previous occasions, did you not?

2 A. Uh huh (indicating positive)

3 Q. And during those times, isn't it true that you told us
4 you were going to take the Fifth Amendment?

5 A. Yes.

6 Q. Okay. Now, you were here previously, back in 1994,
7 right near Christmas, were you not?

8 A. It's been so long ago I can't really remember.

9 Q. You remember when Marcus Timmons was first tried, don't
10 you?

11 A. Uh huh (indicating positive)

12 Q. And you were a witness in that case, weren't you?

13 A. Uh huh (indicating positive)

14 Q. And you testified in that case, didn't you, from that
15 very chair you are sitting in now; isn't that right?

16 A. Uh huh (indicating positive)

17 Q. And did you, prior to testifying in that case, stand
18 right here in front of this bar and plead guilty to a number
19 of charges, and those charges included murder; is that
20 correct, for the murder of Thomas Wise?

21 A. Uh huh (indicating positive)

22 COURT REPORTER: Excuse me, please.

23 Judge, would you instruct him to answer yes or no,
24 please.

25 THE COURT: Okay. Let me ask the witness to please

1 speak up, so the Court Reporter can hear you, and please
2 answer yes or no to each question, then of course, you may
3 explain your answer.

4 Q. You pled guilty to the murder of Thomas Wise; is that
5 correct?

6 A. Yes.

7 Q. And you pled guilty to armed robbery on Thomas Wise?

8 A. Yes.

9 Q. And you pled guilty to an attempted armed robbery at
10 the Conoco station, correct?

11 A. Yes.

12 Q. And you pled guilty to armed robbery at the E-Z Coin
13 Laundry, correct?

14 A. Yes.

15 Q. And you pled guilty to an armed robbery, or an
16 attempted armed robbery, at the Pantry on State Street,
17 correct?

18 A. Yes.

19 Q. Now there was also some other charges that happened in
20 April of 1993. Do you recall those?

21 A. No.

22 Q. Do you recall pleading guilty to some charges from the
23 Waffle House in Richland County?

24 A. I'm not sure.

25 Q. How about the Pantry Express on Piney Grove Road, right

1 off the Interstate on April the 9th?

2 A. I'm not sure.

3 Q. You don't remember that. Now, there were other charges
4 as well, in connection with these armed robberies that you
5 pled to, right, like pointing a firearm, aggravated assault,
6 those kinds of things.

7 A. Yes.

8 Q. You pled guilty to all of those?

9 A. Yes.

10 Q. And admitted to the Court that you had done those
11 crimes?

12 A. Yes.

13 Q. Pled guilty to criminal conspiracy at that time, did
14 you not?

15 A. I think so.

16 Q. Is that correct?

17 A. I think so.

18 Q. Okay. And you pled guilty to conspiring with Marcus
19 Timmons to do all those crimes, didn't you?

20 A. (NO ANSWER BY THE DEFENDANT.)

21 Q. Do you recall being asked, during your guilty plea,
22 about those crimes, by the Solicitor McMann?

23 A. No.

24 Q. Do you recall being asked whether or not you had
25 committed the armed robbery and murder of Thomas Wise?

1 COURT REPORTER: Excuse me.

2 Q. Is that a yes?

3 A. Yes.

4 Q. And in fact, you admitted to the Judge that was holding
5 Court, that you had been involved in the armed robbery and
6 murder of Thomas Wise, correct?

7 A. Yes.

8 Q. And you indicated to the Judge at that time that it was
9 you and Marcus Timmons, did you not?

10 A. I won't answer that. Plead the Fifth.

11 THE COURT: Would you repeat the question.

12 Q. Did you indicate to the Judge at that time that it was
13 you and Marcus Timmons that committed the murder and the armed
14 robbery of Thomas Wise?

15 A. I plead the Fifth.

16 THE COURT: All right. Mr. Timmons, I'm going to
17 instruct you to answer the question. I'm going to also advise
18 you that, if you do not answer the question the Court could
19 hold you in contempt of court, and sentence you -- the
20 sentence could be structured by the Court so that it would be
21 consecutive to any sentence that you are now serving.

22 Do you understand what I just told you?

23 A. Yes sir.

24 THE COURT: All right.

25 I'm going to let you repeat the question again, and I'm

1 going to instruct the witness to answer. I find that his
2 answer to this particular question would not tend to
3 incriminate him, since he has already pled guilty to the -- to
4 the specific crimes.

5 Q. Did you admit to the Court, when Mr. McMann was
6 questioning you, when you pled guilty, that it was you and
7 Marcus Timmons that had robbed and killed Mr. Wise?

8 A. I plead the Fifth.

9 THE COURT: All right. Mr. Timmons, once again, the
10 Court is going to find that the answer to the question posed
11 to you would not tend to incriminate you, and I'm going to
12 instruct you to answer the question.

13 A. I plead the Fifth.

14 THE COURT: Do you have any other questions you want to
15 ask him?

16 MR. RIDDLE: Yes sir. There's a number of other
17 questions that relate to ---

18 THE COURT: Do you want to go ahead and go through
19 those. As to this particular question I find that silence on
20 his part is not justified. Any contempt matters on this will
21 be taken up at a later time.

22 But you can go ahead and -- if you have other questions,
23 and put them on the record, and pose them to him, and see what
24 kind of response you get.

25 Q. Mr. Timmons, when you pled guilty to all those charges

1 you stood before that rail and talked to the Judge, did you
2 not?

3 A. I plead the Fifth.

4 THE COURT: All right. Mr. Timmons, I'm going to
5 instruct that you answer that question. I would find that
6 that would not tend to incriminate you, and silence on your
7 part is not justified.

8 Please repeat the question one more time.

9 Q. Mr. Timmons, when you pled guilty you stood in front of
10 this bar, and you answered a number of questions asked by Mr.
11 McMann and Mr. -- and by the Judge, did you not?

12 A. Yes sir.

13 Q. And you admitted to committing a lot of crimes, did you
14 not?

15 A. Yes.

16 Q. A lot of those crimes took place on February the 27th
17 of 1993, right?

18 A. Yes.

19 Q. And you weren't by yourself when you committed those
20 crimes?

21 A. Plead the Fifth.

22 THE COURT: All right. The Court would find that the
23 answer to that question would not tend to incriminate the
24 witness. He has already pled guilty to the specific crimes.

25 Solicitor, I'm presuming that there are no other charges

1 left floating around out there against this Defendant; they've
2 all been taken to the end; they are finished?

3 MR. RIDDLE: Mr. Timmons had a lot of charges as a
4 result of the ---

5 THE COURT: But he's beyond prosecution on those?

6 MR. RIDDLE: Yes sir. He -- from both incidents, both
7 the 27th and April 9th, and he pled to each and every one of
8 those charges, and there are no more charges coming as a
9 result of this.

10 THE COURT: All right. You may ask your next
11 question.

12 Q. Marcus Timmons was with you on the morning -- the early
13 morning hours of February the 27th?

14 A. Plead the Fifth.

15 Q. You and Marcus are first cousins, are you not?

16 A. Yes.

17 THE COURT: All right. As to the previous question
18 about whether or not Marcus Timmons was with him on the
19 morning of -- what was that date?

20 MR. RIDDLE: February the 27th of 1994, Your Honor.

21 THE COURT: I would find that that would not tend to
22 incriminate this witness, and I find that silence on his part
23 is not justified.

24 You may continue your questions.

25 Q. Now, before you came to Cayce on February the 27th, you

1 stole a Buick Regal, did you not?

2 A. Yes.

3 Q. And you stole that car from over on Laurel Street,
4 right, in Columbia?

5 A. I'm not sure.

6 Q. Took it from Hancock Buick?

7 A. I'm not sure.

8 Q. But it was a Buick Regal, was it not?

9 A. I'm not sure.

10 Q. Marcus was with you when you stole that car, correct?

11 A. Plead the Fifth.

12 Q. Mr. Timmons, did you previously testify to the Court,
13 when you plead guilty, that Marcus Timmons was with you when
14 you stole that car?

15 A. Plead the Fifth.

16 THE COURT: All right. The Court would find as to
17 this last two questions that the answers would not tend to
18 incriminate this witness, silence on his part is not
19 justified.

20 Q. When you pled guilty you were asked who all came to
21 Cayce from Columbia with you, and you indicated you and
22 Marcus, correct?

23 A. Plead the Fifth.

24 THE COURT: All right. The Court instructs the
25 witness to answer the question.

1 What is your answer, Mr. Timmons?

2 A. Plead the Fifth.

3 **THE COURT:** All right. The Court find that the answer
4 to this question would not tend to incriminate this witness,
5 find that his silence is not justified.

6 Q. Did you previously tell the Court that, after you and
7 Marcus Timmons came to Cayce that night, the first place y'all
8 went to rob was the Conoco station?

9 A. Plead the Fifth.

10 **THE COURT:** All right. What I'm going to do is just
11 let you run on through these questions, and I'll rule on the
12 remainder of the questions at one time.

13 I'm going to instruct the witness at this point to
14 continue answering the questions, and then I'll have to make a
15 finding.

16 Q. When you left from Columbia with Marcus Timmons, did
17 you and Marcus have guns with you?

18 A. Plead the Fifth.

19 Q. Did you have ski masks with you?

20 A. Plead the Fifth.

21 Q. Did you have bandannas with you?

22 A. Plead the Fifth.

23 Q. Now the first place y'all went to rob was a gas
24 station, correct ---

25 A. Plead the Fifth.

1 Q. ---And that was located on Charleston Highway ---

2 A. Plead the Fifth.

3 Q. ---And when y'all got there, you and Marcus, the doors
4 were locked, were they not ---

5 A. Plead the Fifth.

6 Q. ---And there was a white female inside working?

7 A. Plead the Fifth.

8 Q. Were y'all able to get inside that business, Mr.
9 Timmons?

10 A. Plead the Fifth.

11 Q. Did you and Marcus both have guns, or did you just have
12 one?

13 A. Plead the Fifth.

14 Q. After y'all could not get inside the Conoco station,
15 Mr. Timmons, the laundromat is the next place you went ---

16 A. Plead the Fifth.

17 Q. ---And there were three or four folks there in the
18 laundromat, correct?

19 A. Plead the Fifth.

20 Q. Two women, and at least one child, correct?

21 A. Plead the Fifth.

22 Q. You and Marcus went into the laundromat, correct?

23 A. Plead the Fifth.

24 Q. At that time, were you wearing a disguise, Mr.
25 Timmons ---

- 1 A. Plead the Fifth.
- 2 Q. ---And Marcus was wearing a disguise?
- 3 A. Plead the Fifth.
- 4 Q. As a matter of fact, you had on a black ski mask,
- 5 didn't you ---
- 6 A. Plead the Fifth.
- 7 Q. ---And Marcus had some kind of bandanna or something
- 8 covering a portion of his face ---
- 9 A. Plead the Fifth.
- 10 Q. ---Correct?
- 11 A. Plead the Fifth.
- 12 Q. Mr. Timmons, you had a 410 sawed-off shotgun with you,
- 13 didn't you ---
- 14 A. Plead the Fifth.
- 15 Q. ---And Marcus had a twenty gauge, and a twenty-two?
- 16 A. Plead the Fifth.
- 17 Q. Isn't it true, Mr. Timmons, that y'all took these
- 18 ladies' purses from there?
- 19 A. Plead the Fifth.
- 20 Q. And subsequently a fingerprint of yours was taken off
- 21 the contents ---
- 22 A. Plead the Fifth.
- 23 Q. Y'all also took the keys to her car, didn't you?
- 24 A. Plead the Fifth.
- 25 Q. And when y'all were leaving that business on the 27th,

1 didn't Marcus fire that twenty gauge shotgun right outside the
2 business?

3 A. Plead the Fifth.

4 Q. After y'all left there y'all started down toward
5 Swansea, didn't you?

6 A. Plead the Fifth.

7 Q. And then y'all saw Thomas Wise out on the side of the
8 road, correct?

9 A. Plead the Fifth.

10 Q. Isn't it true that y'all drove past him, and then
11 turned around, came ---

12 A. Plead the Fifth.

13 Q. ---Back where he was. Y'all turned around to rob him,
14 correct?

15 A. Plead the Fifth.

16 Q. And that was you and Marcus Timmons at that time,
17 correct?

18 A. Plead the Fifth.

19 Q. And at that time you approached Mr. Wise, didn't you?

20 A. Plead the Fifth.

21 Q. And you and Mr. Wise got into some kind of argument or
22 fight, correct?

23 A. Plead the Fifth.

24 Q. And Marcus grabbed that twenty gauge, and he hollered
25 at you to get out of the way, correct?

1 A. Plead the Fifth.

2 Q. And when you did he shot Mr. Wise, correct?

3 A. Plead the Fifth.

4 Q. And he shot him with that twenty gauge shotgun,
5 correct?

6 A. Plead the Fifth.

7 Q. After y'all shot Mr. Wise there on the side of highway
8 321, you then got back into that Regal and went up to the
9 Pantry on State Street, didn't you?

10 A. Plead the Fifth.

11 Q. And at that time you robbed the clerk, and one of the
12 ladies that was inside that store, correct?

13 A. Plead the Fifth.

14 Q. When you were in that store, Rusty Manley, with the
15 Cayce Department of Public Safety, pulled out in the parking
16 outside, didn't he?

17 A. Plead the Fifth.

18 Q. And at that point Marcus hollers five-0 at you,
19 correct?

20 A. Plead the Fifth.

21 Q. And when y'all were in the Pantry, you had that little
22 sawed-off shotgun again, didn't you?

23 A. Plead the Fifth.

24 Q. And Marcus still had that twenty gauge, correct?

25 A. Plead the Fifth.

1 Q. And Mr. Cullifer, the clerk there, he couldn't quite
2 get that cash register open, could he ---

3 A. Plead the Fifth.

4 Q. ---So you hit him?

5 A. Plead the Fifth.

6 Q. And then when the cops came y'all ran.

7 A. Plead the Fifth.

8 Q. You ran out the door, and around the building, and over
9 the fence, isn't that right?

10 A. Plead the Fifth.

11 Q. And you and Marcus left those guns right back there
12 behind the pantry, didn't you?

13 A. Plead the Fifth.

14 Q. And you subsequently stole another car to get back to
15 Columbia, right?

16 A. Plead the Fifth.

17 Q. Now during all this time, you are the one that had the
18 four ten saw-off shotgun, right?

19 A. Plead the Fifth.

20 Q. Marcus had that twenty gauge?

21 A. Plead the Fifth.

22 Q. Marcus is the one shot Mr. Wise with that twenty gauge?

23 A. Plead the Fifth.

24 Q. Marcus is the one that shot that twenty gauge outside
25 of the E-Z Coin Laundry.

1 A. Plead the Fifth.

2 Q. Now, on April the 9th, you and Marcus and Stacey Wright
3 committed some other armed robberies, didn't you?

4 A. Plead the Fifth.

5 THE COURT: What date was this?

6 MR. RIDDLE: April the 9th.

7 THE COURT: Has he already ---

8 MR. RIDDLE: He has pled to those as well, Your Honor.

9 THE COURT: And there are no outstanding charges
10 remaining from these incidents?

11 MR. RIDDLE: No outstanding from either incident, Your
12 Honor.

13 THE COURT: Okay.

14 All right. I instruct the witness to answer.

15 A. Plead the Fifth.

16 Q. And y'all got stopped by the police that night?

17 A. Plead the Fifth.

18 Q. And when the police stopped the van that y'all were in,
19 you ran?

20 A. Plead the Fifth.

21 Q. And your cousin, Marcus, got arrested?

22 A. Plead the Fifth.

23 Q. And inside that van was some of the stuff that y'all
24 had been wearing back in February, when you committed the
25 armed robbery at the Pantry and the E-Z Coin Laundry, and at

1 the Conoco station, and during the armed robbery and murder of
2 Mr. Wise; isn't that correct?

3 A. Plead the Fifth.

4 Q. Now, Mr. Timmons, you pled guilty to all the charges
5 against you involving the Conoco, isn't that correct?

6 A. Plead the Fifth.

7 Q. And you pled guilty to all the charges against you
8 involving the E-Z Coin; isn't that correct?

9 A. Plead the Fifth.

10 Q. And you pled guilty to all the charges against you from
11 Mr. Wise's robbery and murder, correct?

12 A. Plead the Fifth.

13 Q. And you have pled guilty to all the charges against you
14 from the Pantry armed robbery on State Street, correct?

15 A. Plead the Fifth.

16 Q. And there were some charges from April 9th, the armed
17 robbery at the Waffle House over in Richland County, and you
18 pled guilty to all the armed robbery charges from that night,
19 did you not ---

20 A. Plead the Fifth.

21 Q. ---And to all the armed robbery charges from the Pantry
22 Express on Piney Grove Road, correct?

23 A. Plead the Fifth.

24 Q. And during the time that you pled guilty to all of
25 those charges, isn't it a fact, Mr. Timmons, that you told the

1 Court, during that guilty plea, that it was you and Marcus
2 Timmons, on February the 27th, and you and Marcus Timmons and
3 Stacey Wright on April the 9th, correct?

4 A. Plead the Fifth.

5 Q. Now, after your guilty plea, Mr. Timmons, did you
6 subsequently testify, during the jury trial of Marcus Timmons,
7 for the February 27th incidents?

8 A. Plead the Fifth.

9 Q. And in fact, you told the jury what had happened as it
10 relates to the Conoco, and you told the jury what had happened
11 as it relates to the E-Z Coin, and you told the jury what had
12 happened as it relates to the robbery and murder of Mr. Wise,
13 and about the Pantry on State Street, all of that happening on
14 February the 27th; isn't that correct?

15 A. Plead the Fifth.

16 Q. And you told the jury that, as it relates to the
17 incidents on February the 27th, that it was you and Marcus
18 Timmons that committed all of those crimes on that night;
19 isn't that correct, Mr. Timmons?

20 A. Plead the Fifth.

21 Q. And you told the jury that it was you that had the four
22 ten double-barrel sawed-off shotgun during those incidents;
23 isn't that correct?

24 A. Plead the Fifth.

25 Q. And you told the jury that it was Marcus Timmons that

1 had the twenty gauge shotgun during those incidents; isn't
2 that correct?

3 A. Plead the Fifth.

4 Q. And that it was Marcus Timmons that shot that shotgun
5 outside the E-Z Coin?

6 A. Plead the Fifth.

7 Q. And you also told the jury that it was Marcus Timmons
8 that actually shot Thomas Wise on the wide of Highway 321;
9 isn't that correct?

10 A. Plead the Fifth.

11 MR. RIDDLE: Beg the Court's indulgence for a moment.
12 Your Honor, if it please the Court ---

13 THE COURT: Yes.

14 MR. RIDDLE: ---I would just like to point out for the
15 record at this time, that I have a partial transcript from Mr.
16 Timmons', Quincy Timmons' guilty plea. That was on December
17 the 12th of 1994. I would move to offer a copy of this in as
18 a Court's Exhibit.

19 Also, Your Honor, I would like the Court to take notice
20 that Mr. Quincy Timmons testified during the trial of Mr.
21 Marcus Timmons. And I apologize, Your Honor, I don't have the
22 Table of Contents for that right in front of me, but I believe
23 it was either the 13th or the 14th of December of 1994, when
24 he testified, and that's reflected on the transcript of the
25 proceedings on the State versus Marcus Timmons, which is

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1 reported at the cite previously given to the Court, and the
2 testimony I am referring to commences on page three hundred
3 eighty-one of the transcript, and ends, as I see it, on page
4 five hundred and ten of the transcript, and I would just like
5 the record to reflect those portions.

6 THE COURT: Mr. Ayer, any objection to making these
7 transcripts part of the record in this hearing?

8 MR. AYER: Your Honor, let me understand. This is Mr.
9 Quincy Timmons' guilty plea; is that correct?

10 MR. RIDDLE: It's Mr. Timmons' guilty plea, as well as
11 his trial testimony in the first trial.

12 MR. AYER: All right. And this -- this testimony is
13 being introduced for purposes of this particular hearing; is
14 that correct; as a Court's Exhibit; is that correct?

15 MR. RIDDLE: At this time I'm just trying to make that a
16 part of the record for Your Honor's rulings at this point.

17 THE COURT: That's what I said, did he have any
18 objection to making those transcripts part of the record for
19 purposes of this hearing?

20 MR. AYER: No.

21 THE COURT: They would be Court's Exhibits, not State
22 or Defendant's exhibits.

23 MR. AYER: No sir, Your Honor.

24 THE COURT: All right. Hearing no objection then,
25 those transcripts would become part of the record of this

1 case, specifically for the purpose of this hearing.

2 (TRANSCRIPT OF GUILTY PLEA MARKED COURT'S EXHIBIT NUMBER
3 1, TRANSCRIPT OF TRIAL MARKED COURT'S EXHIBIT NUMBER 2.)

4 THE COURT: Any questions of this witness by Mr. Ayer,
5 the Defendant?

6 MR. AYER: Yes sir. May it please the Court, Your
7 Honor.

8 THE COURT: Okay.

9 CROSS-EXAMINATION BY MR. AYER:

10 Q. How are you doing, Mr. Timmons?

11 A. Fine.

12 Q. I'm Carey Ayer, and I represent Marcus in this trial
13 that's going on currently.

14 Solicitor Riddle mentioned that he had met with you, he
15 and Mr. Swarat, on two occasions; is that correct?

16 A. Yes. They threatened me on two occasions too.

17 Q. Okay. And along those lines, did they threaten you
18 with perjury if you testified anything different in this trial
19 from the trial in 1994?

20 A. Yes sir.

21 Q. Okay. Do you remember being with me also on two
22 occasions, Mr. Timmons?

23 A. Yes sir.

24 Q. And you and I had discussions about this case; is that
25 right?

1 A. Yes sir.

2 Q. All right. Do you recall my asking you if Marcus was
3 present on February 27th of 1993?

4 A. No.

5 Q. Okay. What's your answer?

6 A. No.

7 Q. Okay. You don't recall my asking you that.

8 A. (NODS HEAD NEGATIVE)

9 Q. Okay. Do you recall responding in any way to whatever
10 question I may have asked you that Marcus was not present on
11 February 27th of 1993?

12 A. That's a possibility.

13 Q. Okay. It's a possibility?

14 A. Yes.

15 MR. AYER: Thank you, Mr. Timmons.

16 THE COURT: Anything else of this witness at this time?

17 MR. RIDDLE: Beg the Court's indulgence one second.

18 No sir, Your Honor. Nothing further at this time.

19 THE COURT: All right. I am going to excuse the
20 witness for this afternoon, but I would like him to be back
21 tomorrow, and whenever he would -- whatever order he would
22 fall into your list of witnesses you can call him at that
23 time.

24 Mr. Quincy Timmons, I'm going to excuse you this
25 afternoon. I want you to think about this. I have found that

1 those questions that were asked you by the State, that your
2 answers would not tend to incriminate you, and that silence on
3 your part to each of those questions was not justified. I'm
4 going to let you think about this overnight, and tomorrow,
5 whatever sequence he would have been called as a witness, he
6 will be brought back and placed on the stand. If, at that
7 time, these same questions are asked, and you still refuse to
8 answer, invoking the Fifth Amendment, I just want you to be
9 aware that you could be held in criminal contempt of Court,
10 and you could be sentenced up to six months consecutive to the
11 sentence you are now serving, without a trial. If the
12 sentence is going to be more than six months you would have to
13 have a trial on the matter.

14 At this time, if y'all want to take him back, just have
15 him back in the morning. Would he normally be ---

16 MR. RIDDLE: Your Honor, my best guess is that it would
17 be tomorrow afternoon, if we could get him brought back, say -
18 --

19 THE COURT: Can y'all have him back by two P.M.
20 tomorrow?

21 (COURT HAS COLLOQUY AMONG ATTORNEYS AND PRISON GUARDS
22 CONCERNING TRANSPORTATION OF THE WITNESS, QUINCY TIMMONS.)

23 THE COURT: Is there any other testimony, or any other
24 evidence to be offered?

25 MR. RIDDLE: Not on that issue, Your Honor.

1 **THE COURT:** All right. Any argument by counsel?

2 **MR. RIDDLE:** Your Honor, I'll just reiterate. I think
3 we find ourselves classically in the position of **Anderson** and
4 **Riddle**, as far as whether or not he should be declared a
5 Court's witness. Clearly, Your Honor, there is some hostility
6 on the part of Mr. Quincy Timmons toward the State, which is
7 one of the criteria developed in **Riddle** and **Anderson**. Your
8 Honor, I would also indicate that a material would -- material
9 injustice would result if Mr Timmons' testimony is not
10 presented to the Court, or to the jury during the trial of
11 this case.

12 But for our purposes to begin with, it would be our
13 position that he should be called as a Court's witness, and
14 that the State should be allowed to cross-examine him, and
15 then we will go from -- depending on what he does when we call
16 him in front of the jury tomorrow, we will go from there in
17 terms of what else we do.

18 **THE COURT:** All right. -- Mr. Ayer, any comments from
19 you?

20 **MR. AYER:** May it please the Court. Your Honor, to
21 begin with, like Your Honor said, you don't know precisely
22 what Mr. Timmons is going to say tomorrow. It would be m you
23 position that the State should call Mr. Timmons, and if he
24 gives the same answers that he gave today, and if the Court
25 concludes that the answers constitute extraordinary

1 circumstances -- and I'm like the Court, I don't know exactly
2 what extraordinary circumstances mean -- there's not a lot of
3 guidelines as far as definition, but in that circumstance
4 perhaps, perhaps not, but I think the State should be
5 expected, or at least call -- on to call Mr. Timmons as a
6 witness, and then the Court can make that determination.
7 Again, you don't know that he's going to repeat his answers
8 today. Assuming that he repeats his answers, in the **Anderson**
9 case, Your Honor, a couple of the elements that I think are
10 distinguishable, it mentions a close relationship between the
11 accused and the potential witness. I know that -- I think in
12 this case the -- or either in the **Riddle** case, they were
13 brothers. In this case they are cousins. I don't know
14 exactly where the line is drawn, but I would point that out.

15 Another thing, also, Your Honor, under number three
16 there, it indicates that a sworn statement concerning
17 pertinent facts in the statement has been contradicted, or it
18 is probable that it will be contradicted. As I see that, that
19 is a situation in which the State calls a witness and, for
20 instance, this example, Mr. Timmons would testify to something
21 that contradicts his former statement -- today I think he pled
22 the Fifth -- it would be my position that that is not a
23 contradiction of his former statement. Pleading the Fifth is
24 not necessarily a contradiction. It may not be that it's not
25 a contradiction, but I don't think it is a contradiction. And

1 as I see it, the State should be required to call Mr. Timmons,
2 and if he pleads the Fifth, it seems to me that it's more of
3 an issue of availability or unavailability, but as far as the
4 Court making him a Court's witness, again, I don't know
5 precisely what extraordinary circumstances are, but I don't
6 know that this case necessarily constitutes extraordinary
7 circumstances. This man is, I submit, crucial to the State's
8 case, and the State wants to distance themselves from Mr.
9 Timmons by having the Court call him. And again, as Your
10 Honor said, you don't know what he's going to say, and it
11 seems to me that you would have to see what he said tomorrow,
12 and then make the determination as to whether or not he was to
13 be called as a Court's witness, and even assuming he says the
14 same thing, I mean, I don't think that what he said today
15 necessarily contradicts his former statement. It's simply a
16 no answer, and I don't know that that was necessary addressed
17 in the Anderson case, and I understand that Anderson is just
18 referred to -- the rule seems to imply, at least, that
19 Anderson may differ somewhat from the rules, so Your Honor may
20 be like us to try and speculate as to what the extraordinary
21 circumstances amounts to. That would be the Defense's
22 position.

23 THE COURT: Okay. The -- apparently the -- we get from
24 Riddle, 443 S.E. 2d 557, the idea that the Court first has to
25 rule on Rule of Evidence 614 about the -- whether or not the

1 Court will call a person as a Court's witness, and then as
2 they did in Riddle, when he refused to testify, declare him
3 unavailable and allow the previous sworn testimony to be read
4 to the jury. At this point I'm going to have to think about
5 this, because I'm not so sure that Rule 614 necessarily has to
6 be decided before you can get in this situation where, under
7 the other Rule, as it appears here, this witness is invoking
8 the Fifth Amendment, and the Court could declare him
9 unavailable and allow the other testimony to be read. I'm not
10 sure that we have to go through the Rule 614. I know that
11 Riddle case did that.

12 Do y'all have any case -- and other cases on -- that
13 might touch on that? I've looked and can't find any, but that
14 ---

15 MR. RIDDLE: Your Honor, I can't find any other case
16 that's more recent than Riddle. Frankly the procedure that
17 I'm following I'm following because of the Riddle case,
18 because that was a proceeding that had been followed by Judge
19 Stephen, and had been approved by the Court.

20 THE COURT: Well, I can understand why they did it,
21 because it would kind of make sense in one respect, that we
22 can't decide -- we don't know what he's going to say until
23 he's put back on the stand, and he may change his mind
24 tomorrow, so therefore I would have to decide tomorrow, before
25 he's called, whether to call him as a Court's witness under

1 614, and once he took the stand, if he takes the same position
2 he did today, then I could rule on whether or not he -- by his
3 invoking the Fifth Amendment that makes him unavailable,
4 therefore the State could read his previous testimony to the
5 jury, so I'll just have to think about those things, and I can
6 let y'all know first thing in the morning before we get
7 started.

8 MR. RIDDLE: So Your Honor is going to rule in the
9 morning about whether or not the Court would call him as a
10 witness.

11 THE COURT: I'm going to take this afternoon and think
12 about it, and before we get started in the morning I'll just
13 let you know my ruling on it.

14 Okay.

15 That -- I don't think that will be too late to change
16 your strategy. I'll let you know before you make your opening
17 statements, but I don't think there's anything you can say in
18 your opening statement on this that wouldn't cause a mistrial,
19 but I -- for purposes of your planning, I'll let you know in
20 the morning before we get started.

21 MR. RIDDLE: Yes sir. Obviously we would plan to
22 defer, certainly to some facts about Quincy Timmons, either
23 testimony or pleadings testimony, during our opening
24 statement.

25 THE COURT: Okay. Well, we'll -- we'll -- I'll give

1 you the ruling here from the bench, on the record, in the
2 morning before we get started.

3 MR. RIDDLE: Would Your Honor, at that time, also rule
4 as to whether or not Mr. Timmons is unavailable?

5 THE COURT: I don't think I can do that till we put him
6 back on the stand tomorrow afternoon out of the presence of
7 the jury, and if he's going to continue to invoke the Fifth
8 Amendment, then I would rule at that time, and if I rule that
9 he is unavailable, of course, then the State would be allowed
10 to read the testimony in front of the jury.

11 Okay.

12 MR. RIDDLE: Your Honor, just for the record, in Quincy
13 Timmons' prior testimony, obviously a number of things were
14 brought out about the April 9th incident. I know that Your
15 Honor has read State versus Timmons, and frankly we don't
16 intent to go into all of the April the 9th incidences.

17 THE COURT: Well, you might better get some staff to
18 burn some midnight oil and edit that out.

19 MR. RIDDLE: I fully intend to edit it out, and I would
20 give Mr. Ayer a copy of the portions tomorrow that we would
21 intend to use, if we get to that point.

22 THE COURT: Okay.

23 MR. RIDDLE: And I would like for -- look at his and
24 see what he wants edited out there.

25 THE COURT: What is -- do y'all have anything else this

1 afternoon on this case, because I can cut you loose and you
2 can have the rest of the afternoon to edit your transcript, if
3 you want to do that, and y'all can provide Mr. Ayer with a
4 copy this afternoon, and give him a chance to see if you've
5 missed something.

6 MR. AYER: Your Honor, the only other thing that I
7 would have dove-tailing with Solicitor Riddle's comments about
8 April the 9th, I was going to make a motion to exclude,
9 suppress, any testimony, any evidence that deals whatsoever
10 with the April 9th robberies. I think Solicitor indicates
11 Your Honor had read the State versus Timmons, and it was
12 reversed basically on the grounds it was too prejudicial, and
13 I would move to exclude any evidence that refers, by
14 inference, implication whatsoever to the April 9th robberies.

15 THE COURT: I think the Solicitor is well aware of
16 that, and I'm sure he's -- either has, or will give his
17 witnesses abundant precaution about that.

18 Any other matters?

19 MR. RIDDLE: No sir. I would just tell the Court, some
20 of the physical evidence in this case -- because after the
21 April 9th robberies they were arrested, immediately
22 thereafter.

23 THE COURT: Uh huh (indicating positive)

24 MR. RIDDLE: Some of the evidence that was seized at
25 that time ties back to February the 27th. I intend to have a

1 witness testify that he came in contact with Marcus Timmons on
2 April 9th, and at that time he had certain items with him, and
3 that those items were seized, but I do not intend to go into
4 the fact that there had been a robbery at the Pantry Express,
5 or a robbery at the Waffle House earlier that evening, only
6 that he came in contact with him, pursuant to a traffic stop,
7 and that at that time Marcus Timmons had some items with him.

8 THE COURT: Okay. Well, if you have any objections at
9 the time any of this evidence or testimony is presented, of
10 course you will have to object on behalf of the Defendant. I
11 don't think they want to try this case again, so I feel like
12 the State will be extra careful in their presentation.

13 Any other matters?

14 Okay. Y'all are excused, and I'll see you at nine
15 o'clock in the morning.

16 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, SEPTEMBER
17 29, 2000, OUTSIDE THE PRESENCE OF THE JURY.)

18 THE COURT: Is the State ready?

19 MR. RIDDLE: Yes sir.

20 THE COURT: Is the Defendant ready?

21 MR. AYER: Yes sir, Your Honor. The only thing I would
22 have is, I would move to have the State's witnesses
23 sequestered, Your Honor.

24 THE COURT: All right. Are they -- do you have a room
25 close by that we could put them in?

1 If I'm going to sequester the State's witnesses I would
2 sequester the defense too, so ---

3 MR. AYER: Well, currently the only person who is here,
4 other than the Defendant, who might testify, is the
5 Defendant's mother, and I would ask that she be allowed to sit
6 just behind him during the trial.

7 MR. RIDDLE: She testified as to an alibi in the first
8 trial, Your Honor. I don't think she would be entitled to
9 stay in the courtroom.

10 MR. AYER: Your Honor, not that you are bound by the
11 first trial, but my understanding is, in the first trial she
12 was allowed to sit in the courtroom.

13 THE COURT: Well, if I -- my policy has always been, if
14 I'm going to sequester the witnesses I sequester both sides,
15 so I would have to sequester all the witnesses. The State
16 would be allowed to keep one witness in as your chief
17 prosecuting officer, if you want to name that person.

18 MR. RIDDLE: Yes sir. It would be Mr. Manley, Your
19 Honor.

20 THE COURT: All right. So he would be allowed to stay
21 in. And then on the defense side, I'm going to deny the
22 defense's request to allow the mother to stay in. If she is a
23 witness to a material fact or a defense, such as alibi, she
24 would have to be sequestered also.

25 MR. RIDDLE: Your Honor, they wouldn't need to be

1 sequestered until after the opening statements, when we start
2 taking testimony; is that correct?

3 THE COURT: That's correct, but I'm going to leave it
4 up to counsel to make sure they get sequestered ---

5 MR. RIDDLE: Yes sir.

6 THE COURT: ---Because I don't recognize your
7 witnesses. I don't know who they are, so ---

8 MR. AYER: Your Honor, I respect your decision, but
9 does the Defendant not have a right to have one person with
10 him, especially if that person is his mother?

11 THE COURT: Well, if she were not a witness in the
12 case, and if she is, in fact, a witness as to the alibi, I
13 think that could be a -- could be very critical to his
14 defense, and the idea of sequestration is so that none of the
15 witnesses hear what the other witnesses have testified to, and
16 I will allow them to stay in during the opening statements,
17 but after that we will have to ask them all to leave,
18 including the Defendant's mother.

19 I note your objection on the record.

20 MR. AYER: Thank you, Your Honor.

21 THE COURT: Okay.

22 Is -- Solicitor, did y'all make contact with Ms.
23 Fullwood and Quincy Timmons?

24 MR. RIDDLE: Your Honor, what I have done in that
25 regard, I've given Ms. Fullwood a copy of Mr. Timmons'

1 transcript from the first trial. I have also hooked her up
2 with one of the lawyers from the office. They have gone over
3 there to speak with my investigator who arranges transport
4 right now, and they are going to try to get him here as soon
5 as possible.

6 THE COURT: Okay. All right.

7 All right. Yesterday we had the incamera hearing
8 concerning one of the witnesses in the trial of the case, or a
9 potential witness, Quincy Timmons. At this time the Court is
10 going to decline the State's request to call Quincy Timmons as
11 a Court's witness, under Rule -- I believe it's 614.

12 All right. Any other matters?

13 MR. SWARAT: None from the State, Your Honor, other
14 than, we have premarked thirty-one exhibits, and we have
15 stipulated that they are in evidence, without objection.

16 THE COURT: Okay.

17 MR. SWARAT: Do you agree with that?

18 THE COURT: Mr. Ayer, is that correct?

19 MR. AYER: I'm sorry, Your Honor. I didn't know you
20 were ---

21 THE COURT: The State said they've premarked thirty-one
22 exhibits, and that they were in without objection; is that
23 correct, or ---

24 MR. AYER: Excuse me. May I confer with the Solicitor?

25 THE COURT: Yes sir.

1 You can take time and look through them if you ---

2 MR. AYER: I had to come back to your office while I
3 was coming down -- so I just want to make sure I did get a
4 chance to look at all of them.

5 THE COURT: Yes. Well, take your time and look at
6 those.

7 (COUNSEL AND COURT REPORTER REVIEWED EXHIBITS.)

8 MR. SWARAT: Your Honor, at this time, the Court
9 Reporter asked me to go ahead and read into the record what
10 these exhibits are ---

11 THE COURT: All right, if you would.

12 MR. SWARAT: ---By their corresponding number.

13 State's Exhibit Number 1 is a diagram of the Conoco
14 station. State's Exhibit 2 is a rifle. State's Exhibit
15 Number 3 is a sawed-off shotgun. State's Exhibit Number 4 is
16 a ski mask. State's 5 is a bandanna. State's 6 is a diagram
17 of the E-Z Coin Laundry. State's Number 7 is the contents of
18 Doris Kirby's purse. State's Number 8 is a Property Release
19 to Doris Kirby. State's Number 9 is an overall diagram of the
20 crime spree. State's Number 10 is shotgun wadding found at
21 the E-Z Coin Laundry. State's Number 11 is the dispatch
22 sheet. State's Number 12 is the call card. State's Number 13
23 is a photo of the roadway where the body was found. State's
24 Number 14 is a close-up of that same area. State's Number 15
25 is a photograph of the Pantry gas station. State's Number 16

1 is a photo outside the Pantry, behind it, where the shotguns
2 were recovered. State's Exhibit's 17 is a photograph of the
3 shotgun. State's Number 18 is a photograph of the pathway
4 where the shotgun was found. State's 19 is a disassembled
5 shotgun shell, triple-ought buckshot. State's Number 20 is a
6 disassembled shell, is a double-0. State's 21, a shotgun
7 wadding. State's Number 22 is also shotgun wadding. State's
8 23 are pellets from the autopsy. State's 24 is the dispatch
9 log. State's 25 is a photograph of Harbister Glover's
10 vehicle. State's 26 is a smaller photograph of the same car.
11 State's 27 is a photograph of the shotgun wadding as it was
12 collected at the homicide scene. State's 28 is a photograph
13 of some more shotgun wadding that was found at the homicide
14 scene. State's 29 is an Oakland A's baseball cap. State's 30
15 is a half ski mask. State's 31 is a picture of an automobile.

16 MR. AYER: Your Honor, I have no objection to these,
17 Your Honor.

18 THE COURT: Okay. All of these exhibits come in
19 without objection.

20 (AT THIS TIME STATE'S EXHIBIT NUMBERS 1 THROUGH 31 WERE
21 ADMITTED. SEE INDEX FOR DESCRIPTION.)

22 MR. SWARAT: Thank you, Your Honor.

23 THE COURT: Any other matters before we bring in the
24 jury?

25 MR. SWARAT: None from the State, Your Honor.

1 MR. AYER: One moment, Your Honor.

2 THE COURT: Okay.

3 MR. AYER: We are ready, Your Honor.

4 THE COURT: Okay. All right. You may bring in the
5 jury.

6 (AT THIS TIME THE JURY WAS BROUGHT INTO THE COURTROOM
7 AND SWORN BY THE CLERK OF COURT.)

8 (THE FOLLOWING TAKES PLACE AFTER A FOREMAN WAS APPOINTED
9 BY THE COURT, AFTER OPENING COMMENTS BY THE COURT TO THE JURY,
10 AND WITHIN THE PRESENCE OF THE JURY.)

11 THE COURT: At this time, Solicitor, if you are ready,
12 you may proceed.

13 MR. SWARAT: May it please the Court.

14 Mr. Foreman, ladies and gentlemen, good morning.

15 On behalf of the people of Lexington County, which we
16 represent, myself, Deputy Solicitor Riddle, who you met
17 yesterday, we want to thank you for the service you give us
18 this week. Certainly you are a part of Lexington County just
19 as much as we are. We know it's a hardship for you to be
20 here. We know it's not easy. Certainly there are many things
21 in your life that have been interrupted because of your
22 service this week, taking time away from your jobs, taking
23 time away from your family responsibilities, just being away
24 from that daily routine that you have. But, ladies and
25 gentlemen, without you, victims of crime cannot have justice,

1 the victims of crimes such as this, murder, armed robbery,
2 conspiracy. There are so many charges I lost count. I
3 believe there are fifteen indictments. The victims of those
4 crimes, they sit out here in the courtroom. They are asking
5 you for justice in this case. We also thank you for the
6 justice that you will give to the people that commit these
7 type crimes, the people that are responsible. They deserve
8 justice too, just a different sort of justice.

9 Murder, armed robbery, conspiracy, horrible crimes,
10 brutal crimes, and senseless crimes, certainly in this case
11 they were. It started out as a crime spree, on February 27th
12 of 1993, two cousins, Quincy Timmons, Markus Timmons, first
13 cousins. Quincy's mother, and Markus's father are brother and
14 sister. They started out that night with a plan, a plan to
15 commit armed robberies. That's conspiracy, agreeing with
16 somebody to do something illegal, and then doing it. It's
17 conspiracy. They had a plan. They had disguises, ski masks,
18 half a ski mask, bandanna, baseball hat, and they had the ways
19 to commit that type of armed robbery. Quincy Timmons, with
20 this sawed-off four ten shotgun, Quincy Timmons with a sawed-
21 off shotgun. Markus Timmons with this twenty gauge over and
22 under shotgun, loaded with buckshot.

23 There's more of that plan. They went and stole a car,
24 stole a car so if someone saw that license tag it wouldn't
25 come back to them. They stole a man's car named Harbister

1 Glover, a man that worked at Hancock Buick. He had put his
2 car there for the night. Later on that night he got a phone
3 call that his car was gone, and involved in this crime spree.
4 The car was stolen from off of Laurel Street, where Hancock
5 Buick used to be. Got in that stolen car, with their
6 disguises, with their firearms, and they came over to your
7 County, West Columbia, Cayce area, and they started out on
8 Highway 321. They tried to rob a Conoco station there at the
9 corner of 321 and Glenn. It's near the big Trinity Baptist
10 Church that's out there on 321. They weren't successful
11 there, because the lady who was the clerk in that store kept
12 them from robbing that store. You'll hear about that.

13 Then they went on. They weren't satisfied with being
14 unsuccessful, like armed robbery could ever be successful.
15 They went down to a coin laundry that's down near Dunbar and
16 Frink Street, went in there, early in the morning. After two
17 o'clock in the morning is when this crime spree was going on.
18 And two ladies, and one of their children were washing their
19 clothes, taking care of the things they needed to take care of
20 in life. Went in there and robbed those two ladies, and put
21 those guns on those ladies and that child, and robbed them,
22 robbed a lady named Doris Kirby, took her purse, and all the
23 contents of her purse.

24 When they left that business, after robbing them and
25 putting those guns in their faces, Markus Timmons fired off

1 this shotgun outside that business. Unfortunately, for
2 justice, and for the family of Thomas Wise, the man that was
3 killed that night, it wasn't the last time that gun was going
4 to be heard. It wasn't the last time that gun was fired.

5 They headed out back 321 going toward Swansea, and they
6 spotted Mr. Wise walking down the side of the road, late at
7 night, alone. They turned around and tried to rob him. He
8 wasn't very cooperative. They got in a fight with him.
9 Quincy, to be exact, fought with him, and then Markus got him
10 to move out of the way, and he blasted him in the back with
11 that shotgun, with buckshot, took his life. He lived for some
12 time out there on the side of that road, but he eventually
13 died from his injuries. They did rob him.

14 Believe it or not, they weren't finished yet. And
15 luckily for justice, as you will see, they weren't finished
16 yet, because, because they kept on, because they pushed it
17 even further, they got caught eventually, not that night, but
18 eventually.

19 They went down to the Pantry on State Street, went in
20 and tried to rob that business. Two people working in -- one
21 person working in that store, one customer. George Cullifer,
22 who you will hear from as the clerk in that store, tried to
23 rob him, tried to get the money out of the cash drawer in that
24 business. Peggy Williams, who was a customer that night,
25 Markus Timmons held that long gun right there on her chest,

1 face to face, for roughly five minutes during that robbery.
2 You will hear from Peggy Williams. She is one of the most
3 important witnesses in this case.

4 As they were robbing that business, law enforcement was
5 getting involved in these cases, call out to the armed robbery
6 at the Conoco, call out to the armed robbery at the E-Z Coin,
7 call out to the body out on 321. Police swarming the area,
8 blood hounds, all kinds of law enforcement. These are bold
9 criminals. At the Pantry, Captain Rusty Manley, then just a
10 line officer, rolled up on the scene, rolled up to that
11 business, going to check, twenty-four hour business, possible
12 target of these armed robbers. Everything is consistent with
13 one crime spree, two people involved in it.

14 When he rolls up they are still inside the business,
15 guns on those individuals, guns on those citizens, and they
16 take off. When they take off they lose those guns in the
17 back. They also lose that get-away car, and they lose that
18 purse that they had taken from Doris Kirby.

19 From items in that purse came Quincy Timmons'
20 fingerprints. They didn't get caught that night. They didn't
21 get caught the next night. It was some six weeks later, until
22 they actually were caught, and they were caught together,
23 found together that night. Quincy Timmons ran. Marcus
24 Timmons was caught, some six weeks later.

25 Ladies and gentlemen, there are a lot of witnesses in

66

1 this case. Everything is important, but I will ask you to
2 focus your attention on three. I submit to you that the most
3 important witnesses in this case, Peggy Williams, the lady
4 inside that Pantry that had that gun on her, that gun on her
5 by Markus Timmons, focus on her testimony.

6 You will hear the sworn testimony of Quincy Timmons, the
7 first cousin, the co-arm robbery, the co-murderer, the co-
8 conspirator. You will hear from -- sworn testimony from him.

9 And then one other man, Willie Williams. Remember his
10 name when he's called to the witness stand. He's very
11 important. And if you focus your attention on their
12 believability and their credibility, you will know the truth
13 in this case.

14 Now you may think, I don't know what I'm suppose to do;
15 I've never done this before; how can I serve in this capacity;
16 it's a serious crime, serious issues. Ladies and gentlemen, I
17 submit to you that you have been working your entire lives to
18 sit where you are right now. You have been building what it
19 takes to be a good jury your entire lives, through the work
20 that you have done, your relationships with people. The
21 history of your life you have had to evaluate the
22 believability and the credibility of people and of things.
23 Those are the skills that you will need during this trial in
24 this courtroom, to bring us justice, to bring those victims
25 justice.

1 Now, what exactly is it that we have to prove? People
2 don't understand murder all the time. People that deal with
3 it everyday, we know the law, we understand it. People out
4 there on the street have different conceptions about what it
5 is. We don't have to prove Marcus Timmons pulled the trigger.
6 If he was there, he was involved in this crime spree.
7 Somebody died, he's guilty of murder, whether he pulled the
8 trigger, drove the car, loaded the money, whatever he did,
9 he's guilty of murder. He's guilty of all these crimes if
10 he's involved. That's what we have to prove. If you believe
11 he was there and involved, he's guilty of everything. That
12 concept is called "the hand of one ...", accompis liability,
13 and His Honor will explain it to you a lot better than I can,
14 in more detail, at the end of the trial. Let me give you an
15 example. If two people are going in to rob a business, I'm
16 the get-away drive; I stay in the car; I don't have a gun; I
17 don't even -- I don't go in, don't get out of the car. My
18 partner goes in; he has the gun and tries to rob that
19 business. I'm responsible for everything he does, whether I
20 agree with it, whether I was involved in it, whether I thought
21 it was going to happen. If he pulls that trigger and kills
22 that clerk, I'm guilty of murder; I'm the murderer just as
23 much as he is, under our law. His Honor will explain it to
24 you.

25 Of course we have to prove him guilty beyond a

1 reasonable doubt, reasonable doubt. That implies the use of
2 your good common sense. What's reasonable? We don't have to
3 prove him guilty beyond all doubt, shadow of a doubt, even a
4 substantial doubt. We have to satisfy your good common sense
5 that he was one of the men behind that mask, that he was one
6 of the men that held that gun, and I submit to you we will do
7 that during the course of this trial.

8 Thank you for your attention, not only to us, but to
9 both sides, in giving everybody a fair trial, and at the end
10 we will just ask you to speak the truth about what they did
11 that night, and give us justice.

12 THE COURT: Mr. Ayer.

13 MR. AYER: May it please the Court.

14 Mr. Foreman, ladies and gentlemen of the jury, my name
15 is Carey Ayer. Lisa Smith is seated at the defense table
16 there. I practice law across the street here in Lexington at
17 the Nicholson Law Firm. We represent the Defendant in this
18 case, Marcus Timmons, who is seated at the defense table.

19 Behind Mr. Timmons is his grandfather, his mother and
20 his god-mother. Now, some of the witnesses will be
21 sequestered, so if at any point in time you don't see his
22 mother here, it's not because she isn't here, it's because she
23 is not seated behind him; she would be in the courthouse
24 somewhere.

25 Ladies and gentlemen, I don't disagree with very much

1 that Solicitor Swarat just told you. These crimes that he
2 conveyed to you were, indeed, committed. They were committed,
3 but I submit to you that Marcus Timmons did not commit them,
4 however, Marcus Timmons is clearly accused of committing them.
5 He is clearly suspected of committing them.

6 And along those lines I want to share with you just a
7 little short story to serve as an illustration. Once upon a
8 time there was a man whose axe was missing, and he suspected
9 his neighbor's son. The neighbor's son walked like a thief,
10 talked like a thief, and looked like a thief. And one day the
11 man discovered, while being in the valley next to his house,
12 the axe, and he remembered leaving it there himself. The
13 neighbor's son no longer walked like a thief, talked like a
14 thief, or looked like a thief, but he seemed like any other
15 ordinary boy. The neighbor's son, just like Marcus Timmons,
16 is suspected of a crime, and what bothers me, concerns me the
17 most about this case, more so than ever, what concerns me is
18 how easy it is, how easy it is to project onto Marcus Timmons
19 feelings of guilt, rather than feelings of innocence, for you
20 see, we basically all came here yesterday. You were all here,
21 and everyone in this courtroom primarily was here yesterday,
22 and you come in and you hear the Solicitor, Solicitor Riddle,
23 formally read the charges, read the indictment, murder, armed
24 robbery, pointing a firearm, and they all have this aura of
25 guilt about it. And then you come in today and His Honor

1 reads the indictments to you again, and again, it all has this
2 aura of guilt about it. Then Solicitor Swarat gets up and
3 testifies to the heinousness of the crimes -- and I don't
4 disagree with him. I don't disagree with him at all. But
5 Marcus Timmons did not commit these crimes.

6 For example, in this case we are in right now, right
7 now, clearly, Marcus Timmons would be found not guilty,
8 because no evidence has been introduced beyond a reasonable
9 doubt that he's guilty, but still, if it were in right now, I
10 think there would be this sense of this projected guilt on
11 him, and that's what concerns me more than anything, because
12 as His Honor has told you ladies and gentlemen, you have a
13 duty to project only to Mr. Timmons a sense of innocence.
14 Regardless of how many times you have heard the charges, you
15 have a duty to project only to him a sense of innocence. And
16 I submit to you that the evidence alone, the evidence alone,
17 in this case, will not convince you, beyond a reasonable
18 doubt, that Mr. Timmons is guilty.

19 Now, speaking of the evidence, you will basically hear
20 two types of evidence in this case. That will be physical,
21 tangible evidence that will come in, pictures, photographs,
22 that type of thing. And then you will hear testimony from
23 witnesses, and I urge you to take all the evidence, and weigh
24 that evidence, probe it, delve it, and look into it. Also,
25 special where the testimony is concerned, weigh that evidence

1 and judge it for the credibility, the reliability, the
2 believability of the testimony. I think there will be very
3 little, if any, physical evidence that ties Marcus Timmons to
4 these crimes. There will be testimony that ties Marcus
5 Timmons to these crimes, but judge that testimony, the
6 credibility, the reliability, and believability.

7 In my mind's eyes -- this may be elementary -- but in my
8 mind's eye, I like -- I see this trial as I would a big hour
9 glass, and the sand in the hour glass is the evidence and the
10 law. It may be elementary, but just like in an hour glass,
11 the only thing that's wrong in that is the same in a trial.
12 The only thing that really belongs in that glass is the
13 evidence, not projection of guilt, not even what I saw or what
14 the Solicitor says, or even the reading of the charges. The
15 only thing that belongs in that glass is the evidence. And
16 imagine in your mind there is a line on that glass which is
17 labeled reasonable doubt, and that evidence, and that evidence
18 alone, has got to rise, not to the level, but beyond the level
19 of reasonable doubt, not that evidence accompanied with
20 projections or presumptions of guilt, but that evidence alone,
21 so I urge you to look at that evidence alone, and then to
22 judge his credibility, his believability and reliability, and
23 I think, if you do that, if you keep nothing in that hour
24 glass but sand, i.e., the evidence, you will conclude that
25 Marcus Timmons did not commit these crimes.

1 I want you to -- I will speak to you again at the close
2 of the case, and after all the evidence is in, but I will just
3 leave you with this. That neighbor's son walked like a thief,
4 and talked like a thief, and looked like a thief, because he
5 was suspected of being a thief.

6 Thank you.

7 THE COURT: You may call your witness, Mr. Solicitor.

8 MR. RIDDLE: Your Honor, the State would call Tim James
9 to the stand, and the rest of our witnesses will be pursuant
10 to the sequestration.

11 THE COURT: All right. So all other witnesses that
12 are going to be called in the trial of the case will remove
13 themselves from the courtroom.

14 (AT THIS TIME ALL WITNESSES WERE SEQUESTERED.)

15 TIMOTHY MARK JAMES, first duly
16 sworn, testified as follows:

17 DIRECT-EXAMINATION BY MR. RIDDLE:

18 Q. Mr. James, where are you employed?

19 A. I'm employed at the Lexington County Sheriff's
20 Department.

21 Q. What do you do with the Sheriff's Department?

22 A. I am serving as the Assistant Sheriff, Chief Deputy of
23 the Department.

24 Q. You are the number two man?

25 A. Yes sir.

1 Q. Right under Sheriff Metz?

2 A. That's correct.

3 Q. You took that position when?

4 A. I took that position a year ago this month, as a matter
5 of fact, upon the retirement of Chief Deputy Lewis McCarty.

6 Q. All right. Chief McCarty retired and you came on
7 board to take his spot?

8 A. That's correct.

9 Q. Prior to working at the Sheriff's Department, Mr.
10 James, where were you employed?

11 A. I was employed with the Cayce Department of Public
12 Safety.

13 Q. And what did you do with the Cayce Department of Public
14 Safety?

15 A. I began my career there in Cayce as an explorer,
16 actually, at the age of twelve, in the cadet program. When I
17 turned eighteen I was put on as a dispatcher and a jailer.
18 Turning the age of twenty-one, which is the legal age to carry
19 a firearm in the State of South Carolina, I attended the
20 Criminal Justice Academy, and began that career as a patrol
21 officer, working myself through the ranks to where, last year,
22 when I left the Department, I was the Director of Public
23 Safety, in charge of both the police and fire divisions.

24 Q. So you were the Chief at Cayce?

25 A. That's correct, yes sir.

1 Q. And now you are the Chief Deputy at the Sheriff's
2 Department?

3 A. That's right. Sheriff Metz called upon me as Chief
4 McCarty had retired.

5 Q. All right. How old are you, Chief?

6 A. I'm thirty-six years old.

7 Q. Okay. So you have been in law enforcement now roughly
8 twenty-four years?

9 A. Yes sir.

10 Q. All right. Back in 1993 you were with the Cayce
11 Department of Public Safety?

12 A. That's correct. At that time I was a Lieutenant over
13 the Investigative Division, Criminal Investigations and
14 Narcotics.

15 Q. And how many people were you supervising at that time,
16 roughly?

17 A. Six or seven people at that time.

18 Q. Back in February of 1993, were you working in that
19 capacity, specifically on the 27th of February, 1993?

20 A. Specifically, on February the 27th of 1993, in the
21 early morning hours, I was on duty, yes sir.

22 Q. Okay. And you were the Lieutenant in charge of the
23 Investigative Division at that time?

24 A. That's correct, yes.

25 Q. All right. Early morning hours of February the 27th

1 of 1993, pretty busy time for y'all?

2 A. It was an extremely busy evening, yes.

3 Q. I would like to run through some of that with you if I
4 could.

5 Q. Now, to lay a little bit of background, tell the jury a
6 little bit about the relationship between the Cayce Department
7 of Public Safety and the West Columbia Police Department.
8 What all do y'all share, and what do y'all do together and in
9 common with those two municipalities?

10 A. As many of you are aware, the City of Cayce and the
11 City of West Columbia are only divided by one road, and that's
12 Knox Abbott Drive, so many of what -- much of what takes place
13 can go on one side of Knox Abbot Drive or the other, from time
14 to time, so with that being known, what we did was, we shared
15 a radio frequency. Anything that would take place in West
16 Columbia Police Department's jurisdiction, we would know about
17 it in Cayce, and therefore vice-versa, and on this particular
18 night it certainly showed it's efforts and helpfulness for us.

19 Q. So basically, if you are working and they send a West
20 Columbia officer somewhere you will hear that?

21 A. That is correct.

22 Q. And likewise, if they send a Cayce officer somewhere,
23 all the West Columbia units would hear that as well?

24 A. And many times they would back one another up.

25 Q. All right. And you would actually respond to some

1 cases in West Columbia; is that correct?

2 A. That's correct, yes sir.

3 Q. All right. Detective James, as part of that process
4 and that procedure, is a radio log kept by the dispatchers?

5 A. Yes, it is. A radio log is begun at the beginning of
6 each shift, and that particular dispatcher would kick the
7 shift off, actually, with the time and the officers that are
8 working on that shift, and then keep activity on that log
9 sheet throughout the entire shift.

10 Q. Let me show you what's been marked State's Exhibit
11 Number 24, and ask if you can identify it.

12 A. Yes. This is the general form that was utilized, and
13 probably still is utilized, at Cayce Public Safety, as a radio
14 log sheet, and this was filled in by Detective Peggy Dubee,
15 who has since retired by Cayce Public Safety.

16 Q. All right. And tell the jury what type of information
17 that sheet has on it.

18 A. This sheet, what it does is, it gives all the officers
19 who were working during the particular shift. It will give a
20 dispatch time. It will also give to whom the call is
21 dispatched to, from whom the call came from, the time that the
22 officer arrived at the scene, and how long the officer stayed
23 at the scene, and it also depicts the nature of the call.

24 Q. Now, you were on duty that night; is that correct?

25 A. Yes sir, that's correct.

1 Q. Were there several armed robberies in Cayce and the
2 surrounding area on that evening, or the early morning hours
3 of February the 27th?

4 A. Yes sir, there were.

5 Q. All right. let me show you this diagram, if I could,
6 State's Exhibit Number 9. Do you recognize that?

7 A. Yes, I do.

8 Q. All right. If you would, step down from the witness
9 stand.

10 What is that, Chief James?

11 A. This is actually an overview and a map of the
12 Cayce/West Columbia area. It shows Highway 321. It shows the
13 Cayce area, the boundaries of West Columbia, and then this
14 area where several armed robberies and other calls had
15 occurred during the early morning hours of February 27th.

16 Q. What is this road right here, the red road running up
17 and down there?

18 A. The's I-26. That, of course, comes across 378 Highway,
19 where the hospital is, then it comes across Highway Number 1,
20 through West Columbia, and then it will come across Highway
21 321 at the Gaston exit, and continues on toward Charleston.

22 Q. All right. And what is this road here?

23 A. That's Highway 178 that -- of course and -- which is
24 now 77 that comes in.

25 Q. That's the Extension of Interstate 77, the beltway?

1 A. The beltway that circles the Columbia area.

2 Q. All right. This area here in yellow, what does that
3 represent?

4 A. That would be the City limits of Cayce.

5 Q. All right. And then the West Columbia City limits
6 would be up a little bit higher?

7 A. That's correct.

8 Q. All right. Now, on the evening -- or excuse me --
9 during the early morning hours of February 27th, did you have
10 an opportunity to respond to a location on highway 321?

11 A. Yes, we did. That was actually a call that had been
12 dispatched out by the West Columbia Police Department.

13 Q. All right. Now, let me ask you this, Highway 321, is
14 that this road running down here?

15 A. It is Highway 321. It's actually an extension from
16 what we would commonly refer to as Knox Abbot Drive. It comes
17 down through K-Mart, Maurice Bessinger's Barbecue, and
18 continues on through West Columbia, through Cayce, and on up
19 to I-26.

20 Q. And where does 321 go down this way? What area does
21 that go to?

22 A. To Swansea and Gaston areas.

23 Q. All right. Is there a split on Highway 321, where 321
24 and 21, 176 split off?

25 A. There is.

1 Q. And where is that?

2 A. It's approximately two miles after you go under I-26,
3 as you are heading out 321. 21, 321, and 176 splits there.

4 Q. All right. Now, Detective James -- or Chief James,
5 rather, the call that came out from West Columbia, where was
6 that call originating from?

7 A. The call was dispatched, of course, again, by the West
8 Columbia Police Department, and it came across, as I
9 explained, the radio system that Cayce and West Columbia
10 shared, and it came as an armed robbery that was attempting to
11 take place at the Conoco station at the corner of Glen and
12 Highway 321, which would actually be about a block and a half
13 up from K-Mart, Maurice Bessinger's, as you are heading out
14 toward Swansea and Gaston.

15 Q. Okay. Is it near the big Trinity Baptist Church there?

16 A. It is about a block before you get to Trinity Baptist
17 Church.

18 Q. All right. And is that area represented on that map
19 there?

20 A. It is represented, Uh huh (indicating positive).

21 Q. Okay. And is that the notation marked "CS"?

22 A. It's right here, "CS", with a (1) beside it, Conoco
23 station.

24 Q. Okay. Conoco station, and one being the first call
25 that you responded to in connection with this case?

1 A. Yes sir, that's correct.

2 Q. All right. Now, on State's Exhibit -- I believe it's
3 26, and I'm going to have to look at the number.

4 A. That's correct.

5 Q. On State's Exhibit 24, does that call show on this
6 exhibit?

7 A. Yes sir, it does.

8 Q. Okay. And what time was that call dispatched out?

9 A. That call was dispatched out to all units in reference
10 to the 1074, which it depicts on here as an armed robbery at
11 the Conoco, 321 and Glen Street, at 02:20 hours in the
12 morning.

13 Q. All right. Would you take this magic marker, please,
14 and just right over on the left-hand side, where there is
15 nothing just write Conoco and 2:20 A.M. for me, please sir.

16 You responded to that scene?

17 A. I did. Yes sir, I did respond with the West Columbia
18 units to that scene.

19 Q. And the victim in that case that was working at the
20 Conoco station, can you tell the jury what her name was?

21 A. I do not recall exactly what her name was, and I don't
22 know that my notes refer at the Conoco station.

23 Q. Let me just show you one thing in your notes.

24 A. Notes going back to, of course, 1993, says upon arrival
25 of the officer to complainant, Ms. Susan Rogers. Ms. Susan

1 Rogers was the clerk that was on duty at that time.

2 Q. She was working at the Conoco station?

3 A. She was.

4 Q. All right. And when y'all arrived there, Detective
5 James, was she able to tell you how many people were involved
6 in that attempted armed robbery?

7 A. Certainly. She was able to tell us there were two
8 people.

9 Q. And was she able to tell you whether they were male or
10 female?

11 MR. AYER: Your Honor, I'm going to object to anything
12 Ms. Rogers might have said.

13 THE COURT: I beg your pardon.

14 MR. AYER: I'm going to object as hearsay anything Ms.
15 Rogers might have said.

16 MR. RIDDLE: I think it's a present sense impression or
17 an excited utterance, Your Honor.

18 THE COURT: All right. I'm going to overrule the
19 objection and allow the witness to answer the Quincy Timmons.

20 A. Two male subjects.

21 Q. And did she indicate to you whether they were black or
22 white?

23 A. Black.

24 Q. All right. And did she indicate to you whether or not
25 they were armed?

1 A. Yes. They were definitely armed.

2 Q. All right. And was she able to give you a description
3 of the weapons that were involved?

4 A. Most definitely. Yes sir, she did.

5 Q. What were the types of weapons that were involved?

6 A. She described both of them as being shotgun, rifle-type
7 weapons, one of them being much longer, one of them being much
8 shorter.

9 Q. Okay. Did she, in fact, describe one as being sawed-
10 off?

11 A. Yes.

12 Q. Okay. And did she indicate whether or not any of the
13 two individuals were wearing masks or disguises?

14 A. She ---

15 MR. AYER: Your Honor, object to leading the witness.

16 THE COURT: All right. I'm going to sustain the
17 objection. Don't suggest the answer to the witness.

18 Q. Did she indicate whether or not ---

19 A. She did indicate ---

20 Q. What, if anything, did they have on their faces?

21 A. She indicated that both of them had masks over their
22 faces.

23 Q. All right. Now, this incident took place at
24 approximately what time?

25 A. At 2:20 A.M., in the morning.

1 Q. Now, that's not the only armed robbery that you
2 responded to that night, is it?

3 A. No sir. Actually we were there on that scene when
4 another armed robbery was called into headquarters, called
5 into Cayce headquarters this time.

6 Q. All right. So this next armed robbery, the second
7 one, would have been across the line from West Columbia and
8 into Cayce?

9 A. That's correct, yes sir.

10 Q. And approximately what distance from the Conoco station
11 was the location where this second armed robbery occurred?

12 A. Of course there are many different ways to get there.
13 If you travel the main highway, Highway 321 down, and come
14 back up Highway Number 2, which is Frink Street, it would take
15 a little bit longer, but the people normally travel a back
16 road, which is Dunbar Road, and you can -- you can travel that
17 approximately three-quarters of a mile.

18 Q. Okay. Three-quarters away?

19 A. Yes sir.

20 Q. All right. Now, is the area where this second armed
21 robbery occurred, is that depicted on the map?

22 A. Yes sir. It's also depicted on the map.

23 Q. And point out to the jury where that is.

24 A. It's shown here right under this "CS", as "E-Z", with
25 the number (2) beside it, "E-Z" standing for the E-Z Coin

1 Laundromat, is what it was.

2 Q. Okay. "E-Z" means E-Z Coin?

3 A. E-Z Coin.

4 Q. All right. Now, the area on the map right here, which
5 is depicted as Highway Number 2, what is that commonly known
6 as?

7 A. Highway Number 2 is most commonly known as Frink
8 Street. It runs from Highway 321 and dead-ends down at State
9 Street where Martin Marietta is in Cayce.

10 Q. All right. Approximately how far up from the
11 Intersection of 321 and Frink Street is the E-Z Coin?

12 A. Again, about three-quarters of a mile.

13 Q. All right. Now, is the call to the E-Z Coin Laundry
14 reflected on State's Exhibit Number 24?

15 A. Yes sir, it is.

16 Q. And what time were you dispatched to go to the E-Z Coin
17 Laundry?

18 A. 02:38. 02:38. The call came from Headquarters and it
19 was dispatched out again to all the units because it was
20 dispatched out as a 1074, which is the ten code for an armed
21 robbery, at the E-Z Coin Laundromat.

22 Q. All right. If you would, on the map there, take the
23 pen and just write "E-Z". Chief James, you responded to E-Z
24 Coin Laundry as well?

25 A. Yes sir, I did.

1 Q. And upon arrival at the E-Z Coin, did you make contact
2 with any individuals?

3 A. We certainly did. We made contact there with the
4 victims of the crime. One was a Ms. Doris Kirby, her child,
5 Ricky Trader, juvenile son was with her, and the second victim
6 was a Noreen Brazel.

7 Q. Okay. Now, Chief James, when you went to the E-Z Coin
8 Laundry, did you attempt to get a description, a number,
9 suspects, that type of information?

10 A. We did. We immediately attempted to get the
11 description.

12 Q. All right. And approximately how long did it take you
13 to get from the Conoco station to the E-Z Coin Laundry?

14 A. A minute, minute and a half at the most. Again, it's
15 just three-quarters of a mile, around -- around a corner.

16 Q. All right. And when you arrived there, were you able
17 to determine how many individuals were involved in this armed
18 robbery?

19 A. We interviewed Ms. Kirby, as well as Ms. Brazel, and
20 they advised us that it was two subjects that were involved?

21 A. Male or female?

22 A. Male subjects.

23 Q. Black or white?

24 A. Black.

25 Q. All right. Did they indicate to you whether or not

1 those two individuals were armed?

2 A. Most certainly. Yes. Again, in this description, one
3 was noted as having a longer barrel type shotgun, and the
4 other as having a shorter type shotgun, sawed-off.

5 Q. All right. At that point in time, was it your
6 thinking that these may be related?

7 A. Absolutely. There was every reason to believe, at that
8 point, that they were related.

9 Q. Were they able to give you an description? Did Kirby,
10 Ms. Brazel, as to any type of things they were wearing on
11 their heads?

12 A. Yes. They were able to let us know that both of them
13 had things over their face. Would you like me to go into
14 that?

15 Q. Not the specifics of it, no sir. Were they able to
16 give you any information about what was stolen at that time?

17 A. Yes. Ms. Doris Kirby, she had been demanded by these
18 subjects to turn over her pocketbook, and the keys to her
19 vehicle. As I say, Ms. Kirby and Ms. Brazel were there
20 washing the laundry. As I can recall they were there because
21 it was the slowest time to be able to get in and out of the
22 laundromat, and when these two subjects entered they
23 approached knowing that she would have a pocketbook, and saw
24 the pocketbook, and pointed the firearm at her, at which time
25 demanded that she give us her pocketbook, and the keys to her

1 vehicle.

2 Q. And did she, in fact, do that?

3 A. She did. She certainly did.

4 Q. Was she able to indicate to you whether or not anything
5 took place after the two suspects fled the laundromat?

6 A. Both those subjects, after gaining possession of her
7 pocketbook, and her car keys, when they ran out of the
8 business, they turned the corner right where -- it's mostly
9 glass on the front of most laundromats and you can see out.
10 They turned the corner of the door as if they were going to
11 the right-hand side, and after going outside the door they
12 fired off the shotgun.

13 Q. And they were able to hear that shotgun go off?

14 A. It scared them to death.

15 Q. And let me show you this, Chief James, what is marked
16 State's Exhibit Number 6. Do you recognize this?

17 A. That's a drawing that depicts the E-Z Coin Laundromat,
18 yes sir.

19 Q. All right. What area on State's Exhibit Number 6 --
20 where would this area be shown on State's Exhibit Number 9?

21 A. This smaller map here shows Dunbar Road as it comes --
22 Glen Road, off 321, runs into Dunbar, and Dunbar circles back
23 around and coming out to Frink, and it would be positioned
24 right at Dunbar and Frink.

25 Q. All right. State's Exhibit Number 6. Orient the jury

1 to the information contained in this diagram here.

2 A. Again, this is Dunbar Road here. This is a smaller
3 version of the map, actually, but Dunbar Road comes around and
4 it comes back into Highway Number 2 and Frink Street. Right
5 before it gets out to Frink Street there are some businesses
6 lined up here. The E-Z Coin Laundry is one of the two in this
7 one large building.

8 Again, it's got a glass front on the front of the
9 building here, where it goes out on Dunbar Road. When the
10 subjects ran out the front door -- they ran out the front door
11 and, as you look at the building they would have ran to the
12 right, but as they were running they would run around to their
13 left, and when they exited the building, as they got to the
14 corner of the area, they fired the shotgun, and this is a
15 parking lot area back here, over on this side, and this is a
16 brush area with a broken down type of fence there.

17 Q. All right. And is there anything -- and this area of
18 the diagram here is a blow-up of this area right here; is that
19 correct?

20 A. That is right.

21 Q. Now, on this smaller portion of the diagram, what does
22 this represent here?

23 A. There is a small dirt road that goes actually from
24 Dunbar, on the back side of the E-Z Coin Laundry, and again
25 comes back out to Frink Street, Highway Number 2. It's a dirt

1 road, gravel, not traveled too often. There is a gentleman,
2 Mr. Shumpert, that lived back here for years and years, and I
3 think only one home is actually on that roadway.

4 Q. All right. Now, you indicated that you learned that
5 the shotgun had been fired; is that correct?

6 A. As they existed the E-Z Coin Laundry they fired the
7 shotgun.

8 Q. Now, did you take any further action in reference to
9 the shotgun being fired at that particular time?

10 A. Not at that particular time, we did not.

11 Q. Now, at that particular time, did you receive another
12 radio communication?

13 A. Yes, we did.

14 Q. And was that radio communication, or that
15 communication, received from West Columbia, or was that
16 received from the Lexington County Sheriff's Department?

17 A. This information, at this time, came across another
18 radio frequency, which would have been Lexington County
19 Sheriff's Department, and they did not share a frequency at
20 that time with us, but they could switch over to our frequency
21 if they needed to.

22 Sergeant Howard Baker, who now is retired as well, from
23 the Lexington County Sheriff's Department, he was the shift
24 supervisor on duty that night, and he came across the radio to
25 advise us of a call that may or may not relate.

1 Q. All right. And in response to receiving that
2 communication, did you respond to a location outside the city
3 limits of West Columbia and Cayce?

4 A. Yes, we did, out into the County.

5 Q. All right. Now let me go back to State's Exhibit
6 Number 9. You were at the E-Z Coin Laundry there on Frink
7 Street at Dunbar; is that correct?

8 A. Yes sir.

9 Q. And is that the location you were in when you received
10 that communication from ---

11 A. Yes sir, I was.

12 Q. ---Sergeant Baker?

13 A. Yes sir. We were there working with the S.L.E.D.
14 bloodhounds at that time, attempting to catch a trail of the
15 two black subjects that had robbed the individuals at the E-Z
16 Coin Laundromat, when this call came in from Sergeant Howard
17 Baker.

18 Q. And can you give us an idea of roughly how long you had
19 been at the E-Z Coin?

20 A. I know that the call came in at 3:15. Radio logs show
21 that the call came in from Howard Baker at approximately 3:15,
22 so thirty, forty minutes or so.

23 Q. All right. Now, the location that you responded to,
24 is that shown on State's Exhibit Number 9?

25 A. Yes, it is.

1 Q. And where did you respond to, Chief James?

2 A. We went out Highway 321, past the 126 intersection. We
3 continued out, again, past the split, and if you stay on
4 Highway 321 it continues up toward Gaston, as you are starting
5 to go up the hill. Before you go up that hill, back then
6 there was a Southland Truck Stop. As you may remember, if you
7 are heading out toward Gaston, it was on the left-hand side of
8 the road. This was right across the street from the truck
9 stop.

10 Q. On the side of Highway 321?

11 A. On the side of Highway 321.

12 Q. And when you arrived at that scene, what did you find
13 there?

14 A. There was a white male subject that Sergeant Howard
15 Baker had advised us that had been shot, by what appeared to
16 be a shotgun, at that time, and that the paramedics were there
17 working on the subject, but that, at this point it did not
18 look good at all.

19 Q. Okay. And did you later learn that that individual's
20 name was Thomas Wise?

21 A. We later learned that it was Thomas Wise and that he
22 had passed away.

23 Q. All right. Now, that took place at 3:15?

24 A. We received the call from the County at 3:15.

25 Q. If you would, right under E-Z Coin, write body, and

1 3:15 A.M.

2 All right. And of course, Conoco corresponds with
3 "CS"; is that correct?

4 A. Conoco station.

5 Q. And then E-Z Coin corresponds to "E-Z" here?

6 A. That's correct.

7 Q. And then body corresponds to "B" here?

8 A. That's correct.

9 Q. And that's the third location you went to that night?

10 A. That's correct.

11 Q. All right. Now, approximately how long did it take
12 you to travel from the E-Z Coin to where Mr. Wise was located
13 on Highway 321?

14 A. Four to five minutes, maybe.

15 Q. At approximately what speed were you going in response
16 to that call?

17 A. We were responding out, at that point, as a back-up, so
18 we were exceeding the speed limit I'm sure, but we were not
19 code three in any ---

20 Q. Were not running blue lights and siren?

21 A. No sir. No sir.

22 Q. This was 3:15 in the morning?

23 A. Yes sir.

24 Q. Was there much traffic out at that time?

25 A. I can't recall much at all on 321 at that time of the

1 morning, no sir, not going that far out.

2 Q. All right. Now, how long, approximately, did you stay
3 at the scene of Mr. Wise's body?

4 A. It was not long at all. As I recall, I was able to
5 exit the vehicle, and at that time I was with Chief Dantzler,
6 who has since retired as well, from Cayce Police Department,
7 and Chief Dantzler and I had just arrived and were probably
8 talking with Sergeant Howard Baker, just for minutes, to be
9 able to find out exactly what had taken place, and had walked
10 over and saw the scene, when another call came out.

11 Q. All right. So you got another call while you were at
12 the scene on Highway 321 where Mr. Wise was?

13 A. That's correct, certainly did.

14 Q. And what time did that call come in?

15 A. That call came in at 03:32.

16 Q. All right. And what kind of call was that?

17 A. That call was given by one of our line officers, then
18 Patrolman Rusty Manley, now who later made as Captain Rusty
19 Manley. Rusty Manley was patrolling the area of State Street,
20 where it comes into Frink Street, down by Martin Marietta.
21 There is a Pantry, twenty-four hour food store, and as he rode
22 by -- again, this is a glass front building too -- he saw what
23 he appeared -- what -- what he believed to be these two
24 subjects, as the descriptions met, and they had weapons held
25 against people in there.

- 1 Q. All right. This is Captain Manley here?
- 2 A. That is Captain Manley.
- 3 Q. All right. And he's going to testify later?
- 4 A. Yes sir.
- 5 Q. All right. At approximately what time did that call
- 6 get dispatched of the armed robbery in progress?
- 7 A. Again, in going back to State's Exhibit 24, it was
- 8 03:32 that it was called in by Captain Manley to our
- 9 headquarters.
- 10 Q. That's 3:32 A.M.?
- 11 A. 3:32 A.M.
- 12 Q. If you would, please sir, step down and write on that
- 13 diagram, Pantry, and 03:32 A.M.
- 14 Q. Now, Chief, the area of State Street and Frink Street,
- 15 is that represented on State's Exhibit Number 9?
- 16 A. Again, this is Frink Street, which is noted by the
- 17 number (2) there, that comes off of 321, and as dead-ends
- 18 right here into this road, this is State Street, so Frink
- 19 Street and State Street is noted on here at this intersection
- 20 right here beside where the railroad tracks are.
- 21 Q. And where is the Pantry in relation to that?
- 22 A. If you are traveling down Frink Street and you dead-end
- 23 into State Street, you take a left, go over the railroad
- 24 tracks, and it's about half a block there on your right-hand
- 25 side.

1 Q. All right. And, in fact, where it says "P", and the
2 number (4) ---

3 A. "P" is noted for Pantry, and the number (4) is the
4 fourth location that we responded to that night, yes sir.

5 Q. All right. Now, when you responded from the location
6 of Mr. Wise's body, to the Pantry, can you tell us roughly how
7 far that is, and how long that took you to respond at that
8 time of morning?

9 A. Roughly, I would say six miles, give or take, and it
10 did not take us long, because at this time we were a code
11 three, which is blue lights and sirens enroute back to this
12 location, because we knew that there was an armed robbery that
13 was taking place at this particular time, that we had every
14 reason to believe that was connected with the other armed
15 robberies.

16 Q. And when you arrived there at the Pantry on State
17 Street, were you able to talk with anyone in the Pantry?

18 A. Yes. Actually we were able to speak with two people
19 that were in the Pantry.

20 Q. And can you tell us what their relationship was, how
21 they were -- came to be at the Pantry that night?

22 A. One was a customer, and her name was Peggy Williams.

23 Q. And the other one was whom?

24 A. Mr. Cullifer, who was the clerk. He was the clerk that
25 was working the midnight shift there.

- 1 Q. So you had one clerk in the store and one customer?
- 2 A. That's correct.
- 3 Q. All right. And did you speak with them when you
- 4 arrived at the Pantry?
- 5 A. Yes, we did.
- 6 Q. All right. And when you arrived at the Pantry, were
- 7 they able to give you some indication of who had robbed the
- 8 place?
- 9 A. Yes, they did, and again, the descriptions were all
- 10 that that were matching from previous robberies that took
- 11 place in the night.
- 12 Q. Are you referring to the Conoco and to the E-Z Coin?
- 13 A. That's correct.
- 14 Q. How many people did they tell you were there?
- 15 A. It was two subjects, two black male subjects.
- 16 Q. All right. Did they give you any indication of the
- 17 type of weapons that were used?
- 18 A. Again, it's going back to the other robberies that were
- 19 -- that were dispatched to us in the evening hours, and one
- 20 was described as a shorter, sawed-off type shotgun, one was a
- 21 longer barrel type shotgun or rifle.
- 22 Q. Were you able to determine, at that time, Chief James,
- 23 the approximate path that these individuals took?
- 24 A. Actually there was no doubt as Officer Manley had built
- 25 -- was in a position where he was able to see which way they

1 ran. When they came out of the store they ran to their right,
2 to the corner of the store, and then back around the back.

3 Q. Behind the store?

4 A. That's correct.

5 Q. And did y'all go back behind the store that night?

6 A. We did. We did.

7 Q. And it was you and some other officers there?

8 A. That's correct, as well as some S.I.E.D. agents that
9 were with us at the time.

10 Q. One of the Officers was D.I. Blackwell; is that
11 correct?

12 A. That's correct.

13 Q. Was he the evidence custodian at Cayce at that point in
14 time?

15 A. That's correct. D.I. was the evidence custodian.

16 Q. Now, when y'all went back there, did y'all locate any
17 firearms?

18 A. Well, I described to you, as they exited the Pantry/
19 Store they went to their right, and then again, back behind
20 the building. There's a small dirt road, then there's a lot
21 of houses that are back behind the Pantry. Where we found
22 that they had went was over a fence and behind that first
23 house. After they went over that fence, that's where we found
24 some items.

25 Q. All right. And is State's Exhibit Number 3 one of the

1 items that was found out there?

2 A. Certainly is.

3 Q. State's Exhibit Number 2, is that one of the items that
4 was found out there?

5 A. That was the second weapon that was found behind the
6 house.

7 Q. Those were taken into custody at that point?

8 A. That's correct.

9 Q. Was there also a shotgun shell found at that point?

10 A. There was a shotgun shell that was not actually in
11 either of the guns that was found.

12 Q. All right. State's Exhibit Number 2. Do you recall
13 the condition of this weapon, as far as it being loaded or
14 unloaded when it was found?

15 A. That weapon was loaded.

16 Q. And State's Exhibit Number 3, do you recall?

17 A. I do not recall.

18 Q. All right.

19 A. I recall that the over and under was loaded. I do not
20 recall about the sawed-off shotgun. I can't recall if it was
21 loaded or not, no sir.

22 Q. Detective Blackwell took those weapons into custody?

23 A. Yes sir.

24 Q. He would be able to tell us whether they were loaded or
25 not?

1 A. Absolutely.

2 Q. All right. After y'all found these weapons, were you
3 able to find the suspects that night?

4 A. Not that night, no sir. We were not able to ---

5 Q. The S.L.E.D. dogs were not able to track them?

6 A. No sir. We had given that everything we possibly
7 could. We were there just about throughout the remainder of
8 the next day, actually.

9 Q. All right. Did you respond to another location in
10 that area approximately six o'clock the next morning?

11 A. Yes. It was right beside the Pantry that we responded.

12 Q. All right. And for what reason did you respond there?

13 A. We had received a phone call from Mr. Leo Redmond. Mr.
14 Redmond did, and still does own Redmond Signs, and it's right
15 beside the Pantry, divided by one two-lane road. As you come
16 out of the store, it's to your left-hand side, over a two-lane
17 roadway.

18 Q. Basically across the street?

19 A. Across the street.

20 Q. But not across State Street?

21 A. But not across the main road, right.

22 Q. Okay. And when you responded to -- did you respond to
23 Redmond Signs there?

24 A. Yes, we did.

25 Q. All right. Well, when you responded to Redmond Signs,

1 what, in fact, did you find?

2 A. Mr. Redmond, on the side of his building he has an area
3 for parking, and he's got some of his company vehicles that
4 are parked out there, as well as some older vehicles that he
5 no longer utilizes are parked out there. But when he came in
6 that morning, he noticed that there was a maroon in color
7 Buick that was backed in, and this vehicle was sitting there
8 still running, and at that time he called us because he felt
9 it to be certainly out of place, and not suppose to be on his
10 property.

11 Q. Let me show you State's Exhibit Number 26 and ask you
12 if you recognize that.

13 A. This is the Buick Regal that Mr. Redmond had called us
14 about. It's maroon in color, two-door, and it's backed in
15 actually there at Redmond's.

16 Q. Okay. And that's the condition it was in when y'all
17 found it?

18 A. Sitting like that, and running. The ignition of the
19 vehicle had been broken down as if the vehicle had been
20 stolen. It did not have a key in it. Actually it was broken,
21 the ignition switches.

22 Q. But the car was running?

23 A. That's correct.

24 Q. Sitting there idling?

25 A. Sitting there idling.

1 Q. All right. Now, State's Exhibit Number 26 is
2 obviously a black and white photograph of that car. Look at
3 State's Exhibit Number 31. Is that a picture of the same
4 vehicle?

5 A. It is. This vehicle -- this is the exact same vehicle.
6 It was after it was towed on a flatbed type truck, to secure
7 it for fingerprints, and it was towed to S.L.E.D., and this is
8 a picture that was taken by S.L.E.D. in the S.L.E.D.
9 laboratories there.

10 Q. Okay. So this picture accurately depicts the color of
11 that vehicle?

12 A. Yes sir.

13 Q. State's Exhibit Number 25, is that a blow-up of State's
14 Exhibit Number 31?

15 A. It's just a bigger picture of it, yes sir.

16 Q. Bigger picture of it. Now, you indicated just now,
17 Chief James, that that vehicle was towed to S.L.E.D.. Were
18 there any items readily visible in that vehicle when y'all
19 observed it there at Redmond Signs?

20 A. It certainly was. In the passenger floorboard there
21 was a pocketbook, and by just shining the lights down into the
22 vehicle floorboard, you could see that there was
23 prescriptions, and there was a compact that ladies use for
24 blush. There was a -- actually a traffic citation that was in
25 the pocketbook that had been -- looked like, you know, just

1 dumped out, trying to find something and -- throughout the
2 pocketbook, but it was dumped out onto the floorboard of the
3 car.

4 Q. And on those items that were on the floorboard, did you
5 see anyone's name on those items?

6 A. We certainly did. On the medication it was prescribed
7 to Ms. Doris Kirby, who was the victim at the E-Z Coin
8 Laundromat.

9 Q. Okay. So at that point in time, did you have an idea
10 whether or not that car was connected with the E-Z Coin
11 Laundry?

12 A. Yes sir. I was very confident that it was.

13 Q. And so you had that car towed to S.L.E.D. at that time?

14 A. That's correct.

15 Q. All right. Were you able to determine who owned that
16 vehicle?

17 A. We had ran the tag on the vehicle, because we felt sure
18 that it would come back as being stolen, but it did not come
19 back and stolen. It came back, as my notes reflecting to it,
20 to a Glover Harvester, I believe, over in Columbia, and when
21 we spoke with him, he said that his vehicle was suppose to be
22 at Hancock Buick, Hancock Buick, to have repairs done to it,
23 and that's where he had last left it at.

24 Q. That's Mr. Harvester Glover?

25 A. Harvester Glover.

1 Q. Okay. I believe you left the comma out of your notes.

2 A. Thanks. Thank you.

3 Q. Now, after that vehicle was taken to S.L.E.D. and
4 secured -- I take it the weapons had already been secured; is
5 that correct?

6 A. That is correct.

7 Q. Okay. And were they also -- they were secured by
8 Detective Blackwell?

9 A. Yes, as the I.D. scene technician for the night, right.

10 Q. Okay. Did there come an occasion, that next morning,
11 about 8:30 A.M., when you responded to the Tremont Inn?

12 A. We did. We had received a call from an overnight guest
13 at the Tremont Inn. He was in town and stayed there at the
14 motel, and when he went out to get his vehicle, which was also
15 a Buick, his vehicle was no longer there. It had been stolen
16 sometime over the nighttime hours.

17 Q. Now, Detective James, if you would, tell us what time
18 the vehicle at Redmond Signs was discovered.

19 A. It was discovered at 9:47 A.M.

20 Q. All right. Would you just write on there, Redmond
21 Signs, and 5:47 A.M., please sir?

22 R.e.d.m.o.n.d.

23 All right. And don't sit down yet.

24 You responded to the Tremont Inn in reference to the
25 stolen vehicle at what time?

1 A. At 8:30 A.M.

2 Q. All right. If you would write Tremont Inn, and 8:30
3 A.M.

4 Now, Detective James, I want to go back, if I could,
5 just a minute, to the shotgun blast from the E-Z Coin Laundry.
6 You indicated that you didn't take any further action on it at
7 that time because you responded out to the body of Mr. Wise;
8 is that correct?

9 A. That's correct.

10 Q. Did you have an occasion to go back to the E-Z Coin?

11 A. We did. As is normal procedure, especially in a
12 situation like this, where we are going from one call to the
13 next. The next morning, or as soon thereafter as you possibly
14 can, you go back and you look back over the scene again. You
15 normally re-interview the victims again, and just go back
16 through it with a fine tooth comb.

17 Q. All right. And y'all were in the process of doing
18 that in relation to all of these incidents; is that correct?

19 A. That's correct, yes.

20 Q. Did you respond out to the E-Z Coin on March the 1st in
21 reference to that shotgun blast?

22 A. During the daylight hours, yes, we did.

23 Q. Now, when you responded out there to the E-Z Coin, in
24 reference to the shotgun blast, did you search any areas out
25 there?

1 A. We searched the exterior of the business, because of
2 the shotgun blast that the victims had heard.

3 Q. And what were y'all looking for?

4 A. We were looking for a wadding from a shotgun shell.

5 Q. Okay. Now tell the jury briefly what a wadding is.

6 A. Wadding is almost like a piece of paper that goes into
7 the shotgun shell, and it actually is discharged as well when
8 the shotgun goes off. It's the padding at the back of the
9 shotgun shell.

10 Q. Okay. And do those travel a long distance when they
11 are ---

12 A. No, they don't. They are not the projectile, actually,
13 of the shotgun shell. The projectiles, of course, and the
14 ammunition, travels much further, but the shotgun wadding can
15 go sometimes just a matter of feet.

16 Q. All right. Now, referring to State's Exhibit Number
17 6, you were, in fact, at the E-Z Coin on March the 1st; is
18 that correct?

19 A. Yes sir, March the 1st, during the daylight hours.

20 Q. Show the jury what areas y'all were searching.

21 A. I was referring to this earlier. When you come out --
22 as the subjects had come out they ran to their right. When
23 they came back around here -- this is a parking area, if you
24 will, gravel, and it's gravel out here where Dunbar Road is.
25 We began a search from the door, going back around, and

1 actually we were going to -- and we did, go back up through
2 the woods to see if we had any trails, anything at all that
3 someone could have left behind, and as we were walking this
4 area right here -- you see the word wadding -- out in the
5 parking lot of the business, adjacent to what used to be like
6 a drive through window here, on the ground was the wadding
7 that myself and Detective Braughn, at that time, had
8 recovered.

9 Q. Let me show you what's been marked State's Exhibit
10 Number 10 and ask you if you recognize it.

11 A. This is just a small piece of wadding that, someone who
12 is looking for it, and someone who knows that it would be a
13 shotgun wadding, we did find on the ground, and I know that is
14 being placed back in this envelope, the evidence envelope,
15 that Detective J. R. Brown -- Braughn, excuse me, had put in
16 here, the contents of one piece of wadding from a shotgun
17 shell.

18 Q. And that's the wadding you found out there on the scene
19 at the E-Z Coin?

20 A. That is correct.

21 Q. And where it says wadding there, is that approximately
22 where it was found?

23 A. That's correct.

24 Q. Show the jury, if you would, Detective James, show them
25 what you just had in your hand.

1 A. It's just a small piece of paper. As you can see it's
2 circular, like a dime would be, or something, and it goes just
3 to the back of the shotgun shell.

4 Q. This piece of wadding was secured by you and Detective
5 Braughn at that time?

6 A. That's correct.

7 Q. And was this wadding subsequently sent out to S.L.E.D.,
8 along with these two shotguns?

9 A. All of the evidence from this particular night, because
10 there was such a large crime spree, if you will, that had
11 occurred -- we sent all the evidence from every scene to
12 S.L.E.D., so that they could compile the information, and
13 that, as well, did go a day later, yes sir.

14 Q. And that is who affixed that S.L.E.D. evidence tape?

15 A. It is. That's a S.L.E.D. evidence sticker that goes on
16 it once it's received in their forensic lab.

17 Q. And they put some additional writing on the envelope?

18 A. Yes sir, they do.

19 Q. A lab number, the '93 number?

20 A. Right. 93 dash 3248 would have been their lab number,
21 which is not the same as what our case number would have been.

22 Q. All right. And are you familiar with this being
23 analyzed from S.L.E.D.?

24 A. Vello Paavel, which was one of the ballistics experts
25 out at S.L.E.D., he did analyze that.

1 Q. All right. And that would -- that's the "VP" on the
2 envelope?

3 A. That's correct.

4 Q. Now, none of these individuals were caught back in
5 February of 1993; is that correct?

6 A. They were not apprehended on the evening, or even the
7 days immediately following February the 27th.

8 Q. All right. Did you become aware of a fingerprint
9 match involved in this case?

10 A. Certainly did.

11 Q. Okay.

12 A. Certainly did.

13 Q. And you became aware of that in June of 1993; is that
14 correct?

15 A. That's correct.

16 Q. And was that -- what item was the fingerprint found on
17 that you were able to match up with this case?

18 A. I had briefly stated earlier that the pocketbook that
19 was turned upside down, in the vehicle, the contents onto the
20 floorboard of the passenger side, in that was a blush type
21 female makeup, with the mirror on one side and the blush on
22 the other side, and on that, as I understand, is where the
23 actual fingerprint had came back from.

24 Q. All right. And whose fingerprint did that match?

25 A. Marcus Timmons.

1 Q. Was it Marcus Timmons or Quincy Timmons?

2 A. I'm sorry. It was Quincy Timmons is who that actual
3 fingerprint marked up to -- matched up to, Quincy Timmons,
4 which is the cousin, first cousin.

5 Q. Marcus Timmons' first cousin?

6 A. That's correct.

7 Q. All right. Beg the Court's indulgence for just one
8 moment.

9 MR. RIDDLE: Detective James, thank you. Please answer
10 anything the defense may have.

11 MR. AYER: May it please the Court.

12 Detective James, how are you?

13 A. Good, sir. How are you, Mr. Ayer?

14 MR. AYER: Good.

15 CROSS-EXAMINATION BY MR. AYER:

16 Q. I think you indicated that, in relation to all of the
17 evidence, that you went over it, or your Department went over
18 it with a fine tooth comb; is that correct?

19 A. Yes sir.

20 Q. All right. And you indicated that the fingerprints
21 were traced back to Quincy Timmons; is that correct?

22 A. It was that of Quincy Timmons, yes sir, Quincy Timmons.

23 Q. Not Marcus Timmons, the person who is on trial today;
24 is that correct?

25 A. That is absolutely correct.

1 Q. Okay. In all of the evidence that was analyzed, did
2 you ever find a fingerprint that was traced back to Marcus
3 Timmons?

4 A. Not that I am aware of, no sir.

5 Q. Did you ever find a footprint that was traced back to
6 Medicare?

7 A. Not that I'm aware of, no sir.

8 Q. You mentioned wadding and the shotgun found at the E-Z
9 Coin Laundromat, I think. Did you know whether or not that
10 shotgun was actually fired at anyone, or was it just fired in
11 the air; do you know?

12 A. And I'm sure that you have read over our notes, but we
13 were not able to determine whether it was fired at or intended
14 to fire at anyone whatsoever. The victims just heard the
15 shotgun go off outside. We were unable to determine if
16 anybody was out there or not.

17 Q. All right. You indicated, I think, that the car was
18 found next to the Pantry, at five something in the morning,
19 and was running; is that correct?

20 A. At 5:47 A.M., it was running, and it was backed in, yes
21 sir.

22 Q. Do you have any idea how much gas was in the car? Is
23 that -- would that have been noted anywhere?

24 A. I'm positive that it would have been noted, yes sir,
25 but I can't answer that question -- I do not know -- to be

1 able to give you a factual answer on that.

2 Q. All right. And move along. I think you said you
3 spoke to Ms. Rogers at the Conoco; is that right?

4 A. Yes. She was the clerk at the Conoco, which, of
5 course, was the first scene of the rash throughout the
6 evening.

7 Q. And you spoke with Ms. Kirby at the E-Z Coin
8 Laundromat?

9 A. Ms. Doris Kirby at the E-Z Coin Laundromat, and Ms.
10 Brazel.

11 Q. And Ms. Patricia Williams -- I'm sorry -- Peggy
12 Williams, at the Pantry?

13 A. At the Pantry on State Street.

14 Q. And also George Cullifer?

15 A. George Cullifer, which was the clerk at the Pantry.

16 Q. And you indicated that the descriptions matched. When
17 you say a description, basically saying that everyone
18 indicated there were two black males, two guns, and masks; is
19 that correct?

20 A. Yes. In going back to the notes you can find that
21 several of them had stated there was green clothing
22 underneath. Some of them -- two of them had said that there
23 was -- two separate incidents, actually, that one of them had
24 a long, dark colored coat on.

25 Q. Did anyone ever talk about the color of a hat on either

1 one of the gentlemen, to your knowledge?

2 A. No sir, not that I can recall.

3 Q. Anything about the color of the masks?

4 A. Dark.

5 Q. Dark masks?

6 A. Dark masks.

7 MR. AYER: Thank you, Detective James.

8 A. Thank you.

9 MR. RIDDLE: Nothing further, Your Honor.

10 THE COURT: All right. This witness may step down.

11 Any objection to him being excused?

12 MR. RIDDLE: None from the State, Your Honor.

13 MR. AYER: None, Your Honor.

14 THE COURT: All right. The witness is excused.

15 We will take a short break at this time, about fifteen
16 minutes.

17 While you are in the jury room, do not discuss the case.

18 You may, of course, have conversation about other matters.

19 Please follow the bailiff.

20 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
21 THE PRESENCE OF THE JURY.)

22 MR. SWARAT: Your Honor, one question we had. Chief
23 James wanted to see if he could stay in now that he's
24 testified. Is there any objection to that? Chief James, now
25 that he's testified ---

1 THE COURT: He's excused as a witness. He can stay if
2 he wants to.

3 MR. SWARAT: Thank you, Your Honor.

4 THE COURT: Yes. Once I excuse them, they are free
5 from the sequestration.

6 MR. SWARAT: Thank you, Your Honor.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: You may call your witness.

10 MR. SWARAT: State calls Jerry Jones.

11 MR. SWARAT: Your Honor, may we approach the bench a
12 minute?

13 THE COURT: Sure.

14 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

15 JERRY A. JONES, first duly sworn,
16 testified as follows:

17 DIRECT-EXAMINATION BY MR. SWARAT:

18 Q. Mr. Jones, good morning.

19 A. Good morning, sir.

20 Q. Mr. Jones, are you currently employed?

21 A. No, I'm retired. I'm a retired police officer.

22 Q. And how long were you in law enforcement?

23 A. Twenty-seven years.

24 Q. Where did you finish up your law enforcement ---

25 A. Columbia Police Department.

1 Q. In that capacity, were you working on February 27th,
2 1993?

3 A. Yes, I was.

4 Q. What shift were you working that night?

5 A. Midnight shift.

6 Q. And what time does the midnight shift start?

7 A. At that time we were starting at eleven to seven.

8 Q. So you would have come off your shift at seven A.M.?

9 A. That's correct.

10 Q. Sometime before seven A.M., were you called to do a
11 stolen vehicle report?

12 A. At approximately 6:20 that morning.

13 Q. So you were about ready to come off your shift?

14 A. Yes sir.

15 Q. Where was that vehicle stolen from, Mr. Jones?

16 A. Hancock Buick on Laurel Street.

17 Q. Do you know the physical address of Laurel Street?

18 A. I don't recall it offhand. I've got the information.
19 1750 Laurel Street.

20 Q. And Mr. Jones, who was the victim of that crime, that
21 stolen car?

22 A. Harvester Glover.

23 Q. And in your report, does it include a description of
24 Mr. Glover?

25 A. He was a black male, sixty-three years of age at that

1 time, five eight, a hundred and eighty pounds.

2 Q. And did you actually speak with Mr. Glover himself
3 about this?

4 A. Yes, I did.

5 Q. Now, 1750 Laurel Street, is there a business located at
6 that location?

7 A. At that time Hancock Buick was there.

8 Q. Do you know of any connection that Mr. Glover had with
9 Hancock?

10 A. I think he was employed there at that time.

11 Q. When did Mr. Glover indicate was the last time he had
12 seen his car?

13 A. At five o'clock the previous afternoon.

14 Q. So that would have been five P.M. on the 26th; is that
15 correct?

16 A. That's correct.

17 Q. And you were called out to the scene on February the
18 27th. That would have been the early morning hours of the
19 27th?

20 A. That's correct.

21 Q. When did he note that his car had been stolen, or the
22 last time he had heard about his car?

23 A. He did not realize the car had been stolen, what he
24 told me, until somebody had contacted him, evidently the Cayce
25 Police, or either the Sheriff's Department. I'm not

1 really familiar with that end of it, but somebody had
2 contacted him and advised him that his car had been involved
3 in some criminal activity.

4 Q. And that it had been recovered over in the Cayce area?

5 A. That's correct.

6 Q. And as a result of that, he contacted the City of
7 Columbia to make a report?

8 A. Yes sir.

9 Q. Can you describe that vehicle for us?

10 A. I didn't see the vehicle, but the information that he
11 gave me was a 1984 Buick Regal, maroon in color.

12 Q. I'm showing you what had been marked as State's Exhibit
13 Number 25 in evidence. Would that be consistent with the
14 description that Mr. Glover gave to you?

15 A. It would.

16 Q. And you say a 1984 Buick Regal, burgundy in color?

17 A. Yes sir.

18 Q. Now that 1750 Laurel Street, where Hancock Buick is
19 located, in that general area, are you familiar with an area
20 of Columbia called Saxon Homes?

21 A. Yes sir.

22 Q. And how does that relate to the Laurel Street area, to
23 where Hancock Buick would be?

24 A. Well, if you go straight down Laurel Street, it comes
25 out almost at Saxon Homes. The next street over is Calhoun,

1 and if you go down Calhoun it comes out looking right straight
2 at Saxon Homes, probably a mile ---

3 Q. And Saxon Homes sits on what major roadway in Columbia?

4 A. Harden Street, between Harden Street and Two-Notch
5 Road.

6 Q. So it would be above Gervais Street from Five Points?

7 A. Correct, and back this way.

8 Q. Mr. Jones, was that your only involvement in this
9 particular case?

10 A. That was my total involvement.

11 MR. SWARAT: Thank you. That's all I have.

12 MR. AYER: Defense has no questions for Mr. Jones.

13 THE COURT: Anyone object to this witness being
14 excused?

15 MR. AYER: No, Your Honor.

16 THE COURT: The witness is excused.

17 MR. SWARAT: Thank you, Mr. Jones.

18 State calls Susan Rogers.

19 SUZANNE SURRETTE ROGERS, first duly
20 sworn, testified as follows:

21 DIRECT-EXAMINATION BY MR. SWARAT:

22 MR. SWARAT: Good morning, Ms. Rogers.

23 A. Good morning.

24 Q. Are you a little nervous?

25 A. Yes sir.

1 Q. Ms. Rogers, by whom are you employed?

2 A. At the moment I'm in -- I'm going to school for
3 commercial truck driving.

4 Q. You are going to school to be a truck driver?

5 A. Yes sir.

6 Q. When does that school take place? When are you
7 scheduled to be in school?

8 A. I'm in school now. It started last week. It's a
9 three-week school, so from now until the 8th.

10 Q. Where are you attending that course, Ms. Rogers?

11 A. In Forsythe, Georgia.

12 Q. So you are here from Forsythe, Georgia to testify in
13 this case?

14 A. Yes sir.

15 Q. Now, where do you currently reside, and where is your
16 home?

17 A. In Savannah, Georgia.

18 Q. Have you always lived in Savannah, Georgia?

19 A. No sir.

20 Q. At some point did you live in the Columbia area?

21 A. Yes sir.

22 Q. And specifically, back in February, 1993, did you live
23 in the Columbia area?

24 A. Yes sir.

25 Q. Where were you employed at that time?

1 A. I was employed at the Conoco station on Highway 321 in
2 Cayce/West Columbia.

3 Q. And that's the Conoco station that was involved in this
4 first incident?

5 A. Yes sir.

6 Q. Now, you say it's at the intersection of 321. Can you
7 give us any landmarks that are in that general area?

8 A. I think I-20 runs by there. It's been a while -- it's
9 been quite a while.

10 Q. Was that located in the city limits of West Columbia at
11 that time?

12 A. I'm not sure. Yes, I think so.

13 Q. Okay. It was in Lexington County?

14 A. Yes sir.

15 Q. What shift were you working the night of February the
16 27th, 1993?

17 A. I was working the third shift, from eleven at night
18 till seven in the morning.

19 Q. So you would start your shift closer to midnight of the
20 26th ---

21 A. Uh huh (indicating positive)

22 Q. ---And then end your shift at seven o'clock in the
23 morning on the 27th?

24 A. Yes sir.

25 Q. Ms. Rogers, who was working with you that night, if

1 anybody?

2 A. No one. I was by myself.

3 Q. Now, when you were working by yourself in that Conoco
4 station, did you have any security measures to keep yourself
5 safe while you were working there?

6 A. Yes. There is a bullet resistant glass, and the
7 cashier is behind that.

8 Q. So, from where you are sitting at the cash drawer, you
9 are behind the bullet proof -- I can't -- can't talk this
10 morning for some reason -- a bullet proof glass; is that
11 right?

12 A. Right, bullet resistant, yes.

13 Q. Are there any other security measures to keep you safe
14 there?

15 A. Yes. When -- when you go out into the front of the
16 store to sweep and clean up, from -- when you are behind the
17 glass there is an electric -- a little switch that you switch,
18 and it locks the front doors, so that when you are out in the
19 front cleaning up, no one can get in.

20 Q. And when you say out in the front, you are talking
21 about out in the front, inside the store?

22 A. Inside the store.

23 Q. Okay. So you hit that switch and the front doors are
24 locked?

25 A. Right.

1 Q. No customers can come in?

2 A. Correct.

3 Q. During that night, did you have an occasion to come out
4 from behind the bullet proof glass and go do some of your
5 duties out in the middle of the store?

6 A. Yes sir, I did.

7 Q. And what were you -- what duties were you performing?
8 What did you normally do at the Conoco station?

9 A. You clean up the concession area, and then you sweep
10 and mop the floor.

11 Q. And what were you doing that particular evening?

12 A. I was sweeping the floor.

13 Q. Now, Ms. Rogers, I'm going to show you what's been
14 marked State's Exhibit Number 1 into evidence, and I ask if
15 you recognize this?

16 A. Yes sir.

17 Q. And what is that, Ms. Rogers?

18 A. That's a diagram of the store and the parking lot, and
19 the highway in front of it.

20 Q. And that would -- would that aid you in your testimony?

21 A. Sure.

22 Q. And Ms. Rogers, if you can stand down -- you are going
23 to need to speak up so the Court Reporter can get everything.

24 Can you show us on this diagram, Ms. Rogers, where 321
25 would be?

- 1 A. Highway 321 is up here.
- 2 Q. And if you are coming in this direction, what town
- 3 would you be going toward?
- 4 A. West Columbia, Cayce.
- 5 Q. Would that be back in that direction, or in this
- 6 direction?
- 7 A. Back that way.
- 8 Q. Okay. One part of 321 out in front of the Conoco goes
- 9 toward Swansea ---
- 10 A. Right.
- 11 Q. ---Is that correct? The other part goes toward West
- 12 Columbia, or generally toward downtown Columbia?
- 13 A. Right.
- 14 Q. What is this area right out in here?
- 15 A. That's where the gas pumps are, and it's under --
- 16 there's a big awning that you are underneath, so that you
- 17 don't get rained on when you are getting your gas.
- 18 Q. Is it well lit out there?
- 19 A. It's bright as daylight.
- 20 Q. Now, this area here, what would that be?
- 21 A. That's where -- that's where the cashier stays, for --
- 22 to do the business.
- 23 Q. So this is where you would stand during the normal
- 24 working hours of the business?
- 25 A. Right.

1 Q. How about this blue area here; what would that be?

2 A. That's the bullet resistant glass that you work behind.

3 Q. So back here you can't be shot?

4 A. They say, yes.

5 Q. Right. This door here, right through here ---

6 A. Yes.

7 Q. ---Can you watch these doors when you are behind that
8 bullet proof glass?

9 A. Yes. The manager's office is back here, and just a
10 storage area.

11 Q. So this area right here is not used by customers?

12 A. Correct.

13 Q. How about this area right here in the middle?

14 A. That's where the food things are, and the Cokes are
15 here, and ice cream and beer, colas and everything are in that
16 part of the store.

17 Q. Can you point to where you were that night sweeping the
18 floor?

19 A. I was right here by the ice cream cooler, in front of
20 the door, the front door.

21 Q. And would these represent the front doors right here?

22 A. Yes sir.

23 Q. And those are the doors that, if you hit that switch,
24 they will lock?

25 A. Correct.

1 Q. And while you were out there sweeping in the middle of
2 the store, did you lock those doors?

3 A. Yes, I did.

4 Q. Okay. So nobody can get in?

5 A. Right.

6 Q. And the only way you can reopen those doors is to go
7 back and change the switch?

8 A. Correct.

9 Q. You can retake the stand.

10 Ms. Rogers, at the time that you were sweeping that
11 floor, did anything unusual happen?

12 A. Yes. Yes sir, I heard a loud noise, a whawhomb, like
13 that, and I looked up, and from that point on it was -- just
14 everything was in slow motion.

15 Q. After you heard that noise -- well, first let me ask
16 you, where was that noise coming from, from what direction?

17 A. Right in front of me, about three feet away.

18 Q. Would that be toward the front doors?

19 A. Yes.

20 Q. Okay. When you looked up, what, if anything, did you
21 see?

22 A. I saw two men dressed in trench coats, with ski masks
23 and shotguns.

24 Q. Okay. Now those two men, could you tell what race they
25 were?

1 A. Yes sir.

2 Q. And what race were they?

3 A. They were black.

4 Q. Both of them were black?

5 A. Yes sir.

6 Q. Okay. Now, the -- their clothing -- you say parts of
7 their faces were covered?

8 A. Correct.

9 Q. And they had shotguns?

10 A. Yes sir.

11 Q. Can you distinguish between the two individuals? Were
12 they both exactly alike? Was one heavier than the other one?

13 A. No sir. The one on my right-hand -- I was facing them.
14 The one on my right was not as tall, and he was broader. He
15 was more stocky. The one ---

16 Q. So one was shorter than the other one ---

17 A. Correct.

18 Q. ---And heavier in build. Can you describe the shotgun
19 that he was carrying?

20 A. He had the double-barrel.

21 Q. Now, I'm showing you what's been marked as State's
22 Exhibit Number 3 in evidence. Is that consistent with the gun
23 he had?

24 A. Yes sir.

25 Q. Is that the gun he had?

1 A. I believe it is.

2 Q. And that was in the hands of the person that was
3 shorter and stockier?

4 A. Yes sir.

5 Q. What type of covering did he have over his face?

6 A. A ski -- ski mask, or bandanna or something. It's been
7 -- it's been a while.

8 Q. Now you say a ski mask?

9 A. Yes sir.

10 Q. Just one second, let me show you something. I'm
11 showing you what has been put into evidence as State's Exhibit
12 Number 4. Would that be consistent with what that man had
13 over his face?

14 A. Yes sir.

15 Q. So a ski mask, short barrel gun, and he was stocky and
16 a little shorter than the other one?

17 A. Yes sir.

18 Q. Can you describe the gun that the other man had?

19 A. It was longer. Most of my attention was on the one
20 that had the double-barrel.

21 Q. Why was your attention on him, Ms. Rogers?

22 A. Because he was yelling at me to open the door, and when
23 I told him I couldn't he pointed the shotgun at me.

24 Q. So this gun was pointed at you?

25 A. Yes sir.

1 Q. How far were you away from the individual that was
2 pointing that shotgun at you?

3 A. About three or four feet.

4 Q. So approximately this distance?

5 A. Yes.

6 Q. And you were separated by that glass door. Do you know
7 if that glass door is bullet proof?

8 A. It's not.

9 Q. And he was pointing that shotgun at you?

10 A. He yelled at me to open the door. He said, open the
11 door, and when I said I can't, he -- he -- that's when he
12 pointed it at me, and he yelled at me again, open the door,
13 and -- and I just put my hands up and I -- I said, I can't; I
14 have to go behind the glass, and I was scooting over toward
15 the door, where I could get out of -- get back into the other
16 part of the store, but ---

17 Q. So you were trying to back up, back toward where that
18 bullet proof glass is; is that right?

19 A. Toward the door that -- where I could get back there,
20 yes.

21 Q. Back to that storage area?

22 A. Correct.

23 Q. The man that had the longer gun, what, if anything, was
24 he doing at that time?

25 A. He was standing and holding it in front of him, and I -

1 - all I could do -- I asked the Good Lord what to do, and he
2 said, don't take your eyes off his, and I didn't, and then
3 when he took his eyes off me, they obviously decided that they
4 couldn't get in and they ran away.

5 Q. Let me go back to the other man, the man with the long-
6 barrelled gun.

7 A. Right.

8 Q. How did he compare physically to the person with the
9 short-barrelled gun?

10 A. He was a little -- he was a little bit taller, and much
11 thinner.

12 Q. So he was a slim built individual ---

13 A. Yes.

14 Q. ---And taller than the man with the short gun?

15 A. Yes.

16 Q. I'm showing you what has been marked State's Exhibit
17 Number 2 in evidence. Is that the gun that the taller man
18 had?

19 A. I think -- I believe so.

20 Q. And he was thinner than the other man, thinner than the
21 man with the long -- with the short-barrelled gun?

22 A. Much, yes.

23 Q. Was his face covered to some degree?

24 A. Yes. I could mostly -- I could see their eyes, which
25 you don't forget their eyes.

1 Q. So you could see around -- the area around their eyes,
2 but the rest was covered?

3 A. Right.

4 Q. You said they had trench coats on?

5 A. Yes.

6 Q. What colors were some of their clothing? Was it dark
7 or light colors?

8 A. They were all black and green, like Army colors, like
9 Army boots and black -- black coat and just every-- they were
10 pretty scary looking.

11 Q. Now you say that they didn't get inside the store?

12 A. No, they didn't.

13 Q. And you didn't let them inside the store?

14 A. No sir.

15 Q. After you refused to open that door, what did they do?

16 A. They looked at each other, and they ran away. They ran
17 around the side of the building.

18 Q. Did you do anything to check which direction they had
19 run?

20 A. I could see them because the glass is open, and I saw -
21 - I saw -- they ran past where the cashier's place was, around
22 to the -- around that side, and then I immediately went --
23 went and called -- called 911.

24 Q. So as we are looking at the front doors of the
25 business, they would have run in this direction ---

- 1 A. That's correct.
- 2 Q. ---Back toward the cashier area ---
- 3 A. Yes sir.
- 4 Q. ---And around the building?
- 5 A. The best I could tell, around the building. There was
- 6 no cars or anything on the front.
- 7 Q. You didn't see a vehicle at that time. After they
- 8 left, after they ran, did they ever come back?
- 9 A. No sir.
- 10 Q. What did you do after they fled, after they left?
- 11 A. I went into my manager's office, and called 911 ---
- 12 COURT REPORTER: I'm sorry, called 911 and what?
- 13 A. ---And I dropped the broom in the corner and called
- 14 911. I still had the broom in my hand.
- 15 Q. And did the police arrive after you called 911?
- 16 A. Yes sir, right away.
- 17 Q. Please retake the stand.
- 18 And when the police arrived on the scene, did you tell
- 19 them everything that had happened?
- 20 A. Everything that I could remember, yes sir.
- 21 Q. Were you still pretty shaken up at that time?
- 22 A. Very.
- 23 Q. Sometime that same morning, after the daylight hours,
- 24 did you go down to the Cayce Police Department?
- 25 A. Yes sir, I sure did.

1 Q. Do you recall seeing those guns the next morning?

2 A. Yes sir.

3 Q. And did you identify those guns as the guns that were
4 held on you that night?

5 A. Yes sir.

6 Q. Ms. Rogers, you have had the opportunity to be in the
7 presence of Quincy Timmons since the night of that robbery.

8 A. Yes sir.

9 Q. How does Quincy Timmons compare to the man who had the
10 ski mask on, and this short-barrelled shotgun?

11 A. It was the same man. His eyes -- you just don't forget
12 -- you just don't forget the eyes.

13 Q. Same height?

14 A. Yes, same build, same age, approximate age.

15 Q. Nothing inconsistent with that being Quincy Timmons?

16 A. Uh uh (NODS NEGATIVE)

17 Q. You have had the opportunity to be in the presence of
18 Marcus Timmons, how does he compare to the individual who had
19 the long-barrelled gun that night?

20 A. It was the same, same man.

21 Q. Same build?

22 A. Yes, color, thinner.

23 Q. Same height, same build?

24 A. Yes.

25 Q. Nothing inconsistent with Marcus Timmons?

1 A. No sir.

2 MR. SWARAT: Ms. Rogers, thank you so much. Thank you
3 for coming up here.

4 Please answer any questions that the defense may have
5 for you.

6 A. Thank you.

7 CROSS-EXAMINATION BY MR. AYER:

8 MR. AYER: May it please the Court.

9 Q. Ms. Rogers, you indicated -- you described the
10 clothing, a mask that you saw that night, on the men. Did you
11 ever see anything red on the faces of the men?

12 A. It's been so long ago. You know, I just remember
13 seeing their eyes, and it was a lot of black and green, and
14 there may have been some red.

15 Q. Did you recall ever seeing a hat on either of the men?

16 A. They both had -- they -- they had something over -- I
17 mean they were -- they were kind of covered up. It was ---

18 Q. Do you recall seeing like a baseball hat on either one
19 of them?

20 A. They had hats on. I don't recall them.

21 Q. You don't recall what color the hats were?

22 A. No. I was pretty upset.

23 Q. Ms. Rogers -- and I understand your being upset. You
24 have never I.D.'d Marcus Timmons before as being one of the
25 men at the Conoco, have you?

1 A. Yes.

2 Q. You have?

3 A. Identified him?

4 Q. Right.

5 A. No, just from what the -- I identified the guns, the
6 weapons.

7 Q. You identified the guns ---

8 A. Uh huh (indicating positive)

9 Q. ---And you have identified the clothing ---

10 A. Uh huh (indicating positive)

11 Q. ---And you said that one of the men was short, ---

12 A. Uh huh (indicating positive)

13 Q. ---Stockier, one of the men was taller and leaner,
14 correct?

15 A. Correct.

16 Q. Okay. And I want to make sure I understand. Your
17 testimony is that, having been in the presence of Marcus
18 Timmons, he fits the size of the man that you saw, correct?

19 A. Yes.

20 Q. But you have never identified the man as being Marcus
21 Timmons, have you?

22 A. I don't know. I don't understand.

23 Q. Okay. Well, I'm just trying to get at, the Solicitor
24 asked you if you had been in the presence of Marcus Timmons;
25 did Marcus Timmons' size fit the size ---

1 A. I recognize him.

2 Q. You recognize Marcus Timmons?

3 A. I recognize him, yes.

4 Q. Okay. So you are saying that Marcus Timmons, seated
5 here today, is that the man that was at the Conoco station?

6 A. Yes.

7 Q. That was him?

8 A. Yes.

9 Q. Have you ever given that testimony before, before
10 today?

11 A. No. I don't know.

12 Q. So the first time in seven years that you have said
13 that that man at the Conoco station was this man, Marcus
14 Timmons; is that correct?

15 A. I -- the last time I saw him I said that that was him,
16 yes.

17 Q. You said that that was him, or you said that he was the
18 same build?

19 A. No, that that was him.

20 Q. Okay. And you testified, I think, that most of your
21 attention was focused on the shorter, stockier person; is that
22 correct?

23 A. Correct.

24 Q. Okay. Do you -- are you saying today that Marcus
25 Timmons was the taller person?

1 A. Yes.

2 Q. All right. And you -- you say -- what did he have on?

3 A. The same thing. They were both dressed in trench
4 coats, and they had coverings over their face.

5 Q. State's Exhibit 4. Did Marcus Timmons have on a mask
6 that looked like this?

7 A. It -- it's possible. They both had on masks. They
8 both had something over their face.

9 Q. So you are saying it's possible Marcus Timmons had on
10 this mask?

11 A. Could have been.

12 Q. And you are telling me that you -- you indicated before
13 that Marcus Timmons, not was the same build, but was the same
14 person?

15 A. Correct.

16 Q. You've indicated that before?

17 A. Right.

18 Q. Okay. And you are telling -- you are telling me here
19 today that Marcus Timmons possibly had on this mask; is that
20 right?

21 A. Possibly. They both had coverings over their face. I
22 could see their eyes.

23 Q. All right.

24 MR. AYER: Your Honor, I have a matter I would like to
25 take up with the Court.

1 **THE COURT:** All right. Mr. Foreman, ladies and
2 gentlemen of the jury, let me ask that you go to the jury room
3 at this time. Do not discuss the case.

4 **THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
5 **JURY.)**

6 **THE COURT:** All right. Mr. Ayer, I'll be glad to hear
7 from you.

8 **MR. AYER:** Yes sir, Your Honor. Your Honor, if I could
9 ask the Court's indulgence for a moment. I want to look
10 through Ms. Rogers' testimony in the previous trial. I don't
11 think Ms. Rogers had ever indicated before today, or ever
12 I.D.'d Marcus Timmons, and I wanted to look at this. Also I
13 wanted to do this outside the presence of the jury, for the
14 Court to perhaps instruct Ms. Rogers on how to address what
15 the forum was whenever she gave this prior testimony, and
16 quite frankly, how I should address it.

17 Normally in civil court there would be an original
18 deposition or something, and I don't think we have that
19 situation here, so I'm not quite sure how the Court wants me
20 to go about asking Ms. Rogers about her testimony prior to
21 this.

22 **THE COURT:** Well, the only way you can go about it is
23 just ask her has she testified before, and if you have a
24 transcript there, you can refer to that, but that is a
25 certified transcript from the previous trial. I wouldn't want

1 you to say anything in front of the jury about a previous
2 trial, or at the trial before, or something like that, but you
3 can say that, have you testified under oath about this before,
4 and then you can just take it from there.

5 MR. AYER: Okay.

6 THE COURT: I'll give you time to look at the
7 transcript, if that's what you have.

8 MR. AYER: All right. All right. And it may be that
9 I would like Ms. Rogers to look at the transcript also.

10 Can I ask Ms. Rogers a question right now?

11 THE COURT: Sure. We are incamera.

12 MR. AYER: All right.

13 BY MR. Ayer CONTINUED:

14 Q. Ms. Rogers, tell me when, if you recall, when you
15 I.D.'d Marcus Timmons as being the man that was there that
16 night. Was it in your prior testimony in this prior trial?

17 A. I believe.

18 MR. SWARAT: Your Honor, I think she needs to have a
19 copy of that testimony.

20 THE COURT: Yes. Do y'all have an extra copy?

21 A. I remember him from the last trial, and it's the same
22 person that's there today, so I don't know what else to tell
23 you.

24 MR. AYER: Okay. Can I follow up on that?

25 THE COURT: Uh huh (indicating positive)

1 BY MR. Ayer CONTINUED:

2 Q. Ms. Rogers, you remember Marcus Timmons from the last
3 trial?

4 A. (NODS HEAD AFFIRMATIVE)

5 Q. Okay. Is that correct?

6 A. Yes.

7 Q. Okay. When you testified today that you -- that Marcus
8 Timmons was the man who was at the Conoco, I'm trying to get
9 in my mind, do you remember him from the last trial, or do you
10 remember him from being the man at the Conoco?

11 A. I remember him from the -- being the man at the
12 Conoco ---

13 Q. Okay.

14 A. ---Because I remember him, yes.

15 Q. Okay.

16 A. Yeah.

17 MR. AYER: Your Honor, I what I would like -- and my
18 question now is, you indicated that you have previously
19 indicated that you remembered Marcus Timmons being the man at
20 the Conoco.

21 A. Correct.

22 Q. And then I asked you if you have ever informed anyone
23 of that, and I think you said it was at the prior trial; is
24 that correct?

25 A. I didn't -- did I say that today?

1 Q. I thought you just did a while ago. If you didn't, I'm
2 not trying to put words in your mouth.

3 A. I did.

4 THE COURT: All right. Just let her relax a minute,
5 then you can repeat your question.

6 A. I remember him from the Conoco station, and I remember
7 him from the last trial.

8 Q. Okay. And my question, again, Ms. Rogers, is, you
9 said that you had previously given testimony that you
10 remembered Mr. Timmons from the Conoco; is that correct?

11 A. Yes, and that was ---

12 Q. And then I asked you, was that previous testimony in
13 the prior trial, and I thought you said yes.

14 THE COURT: No. I don't believe she responded to that
15 question.

16 MR. AYER: Okay. Any maybe she didn't.

17 THE COURT: If you want to -- how long is this
18 transcript?

19 MR. AYER: I think it's about fifteen pages. If she
20 want ---

21 MR. SWARAT: Your Honor, I think I can clear up some of
22 this. She did not testify to it in the previous trial, and
23 also I want to note for the trial, I didn't ask her to
24 identify Marcus Timmons. I said, how does the man that you
25 saw compare with this man, height, weight, build. That's it.

1 THE COURT: Uh huh (indicating positive)

2 MR. SWARAT: I didn't go there. He went there.

3 MR. AYER: No. Your Honor, I hear what the Solicitor
4 is saying. She said -- as a response to that question, she
5 said something about his eyes, and that was Marcus Timmons,
6 and I was a little confused on that too, and that's why I
7 asked her to clear it up. If she said on direct -- we can
8 play it back -- but she said it was Marcus Timmons. I mean, I
9 have a right to ask her that question ---

10 THE COURT: Yes, sure you do.

11 MR. AYER: ---Whether she -- because it was very
12 ambiguous in my mind, as to whether she meant it was him, or
13 it was the same build.

14 THE COURT: If you want to we can stop for lunch at
15 this time -- it's about 12:30, and you can play back -- have
16 the Court Reporter play back the testimony, or ---

17 MR. AYER: I don't think we need to play it back
18 necessarily.

19 THE COURT: ---Or you can look -- let this witness look
20 at the transcript from the previous trial, before you continue
21 your cross-examination in front of the jury.

22 MR. AYER: Okay. Yes, I would like for her to look at
23 the -- have all the time she wants to look at the transcript
24 from the previous trial.

25 THE COURT: We can do that over lunch, if you want to

1 do that, then we can put her back on the stand this afternoon.

2 MR. AYER: That's fine with me.

3 MR. SWARAT: Your Honor, and I know the answer to the
4 question, if that's what we are searching for. Nobody asked
5 her in the previous trial to identify Marcus Timmons.

6 MR. AYER: But ---

7 MR. SWARAT: She was never asked the question.

8 MR. AYER: Okay. So my question, again, to Ms. Rogers
9 is, if you have ever indicated, prior to today, that Marcus
10 Timmons was the man at that Conoco. She said she had, and I
11 have a right to know when she said that, and if she didn't,
12 that ends this line of questioning. If today is the first day
13 she's ever said that, then that ends this line of questioning.
14 I'm trying to determine when was it that she said that. And I
15 thought she said, when I asked her in camera, was it at the
16 prior trial, maybe she didn't give a complete answer. I
17 wasn't sure whether she said yes, or I remember him from the
18 prior trial.

19 THE COURT: If you want to repeat your question again,
20 I'll instruct the witness to answer, and make -- try to make
21 your question as simple on that point as you can, so she can
22 understand the question.

23 BY MR. Ayer CONTINUED:

24 Q. Ms. Rogers, you have heard the exchange between the
25 Court, the Solicitor and myself. Let me just ask you this

1 question. Prior to today, have you ever informed anybody, be
2 it in the prior trial, or to the detectives when they were
3 asking you questions, have you ever informed anybody that the
4 man that you saw at the Conoco station was Marcus Timmons?

5 A. Yes, but not on the record. I mean, ---

6 Q. When did you tell someone that it was Marcus Timmons?

7 A. I don't recall, I mean I know, during the last trial,
8 that -- that he was, in fact, the same person that I
9 remembered from that night at the Conoco station.

10 Q. But you weren't asked in the last trial ---

11 A. Correct.

12 Q. ---If -- you weren't asked that in the last trial,
13 right?

14 A. Correct.

15 Q. So it couldn't have been in the last trial, correct?

16 A. Right. It was probably in that same time frame. It
17 was during the trial, but not on the stand.

18 Q. Okay. Well, who -- who would you have indicated that
19 it was Marcus Timmons?

20 A. The attorneys, the prosecutor. I don't know. In my
21 own mind ---

22 Q. You remember the attorneys asking you if Marcus Timmons
23 was the man at the Conoco?

24 A. It's been seven years ago.

25 Q. I understand, Ms. Rogers.

1 A. If I wasn't asked the question, it's not in my
2 transcript -- what is your question?

3 Q. My question is, have you ever before indicated, prior
4 to today, that you have indicated to the police, or to the
5 Court, in any trial, that Marcus Timmons was ---

6 A. I believe -- was -- Howard Druckerson was here. I
7 don't know. Just to whoever was -- I mean, yeah.

8 Q. Okay. To who, and when was it?

9 A. I guess during the last trial.

10 Q. Okay. Were you asked that during the last trial?

11 A. No.

12 Q. Okay. So who did you tell it to?

13 A. The Solicitor. I don't know. To the policemen at
14 the -- I don't know.

15 Q. Okay. So you don't know when you told someone, but you
16 are saying today that you did tell someone?

17 A. We -- I talked about it with someone, I guess.

18 Q. Who? And if you don't know, you don't know.

19 A. I don't know.

20 Q. Okay.

21 MR. SWARAT: Your Honor, I have a few, if Mr. Ayer is
22 finished.

23 THE COURT: I beg your pardon.

24 MR. SWARAT: I have a few questions if Mr. Ayer is
25 finished ---

1 MR. SWARAT: ---On -- on this point.

2 THE COURT: He's on cross-examination.

3 MR. SWARAT: No. I just didn't know if he was finished
4 or not.

5 THE COURT: Well, I mean, he's on cross-examination in
6 front of the jury. I just excused them to let him ask these
7 questions about previous trial and so forth.

8 MR. SWARAT: That's fine, Your Honor. The only thing -
9 - the only thing I'm concerned about, Mr. Ayer raised the
10 issue of bringing out the first trial. I need to rehabilitate
11 her once he has cross-examined her. I don't want to get into
12 the position where she says anything about the first trial, if
13 we don't have to ---

14 MR. AYER: And I agree with that.

15 MR. SWARAT: ---So I wouldn't mind just asking her a
16 few sim ---

17 THE COURT: Well, I can instruct the witness that, when
18 we talk about any previous time, prior to today, we are
19 talking about, and including, the last trial, without
20 mentioning.

21 MR. SWARAT: Yes sir. What I was going to go over with
22 her is that, that she was in his presence back in December of
23 '94, that based on seeing him then, she believe that to be the
24 same man that was at the Conoco station.

25 THE COURT: Well, she never testified to this on

1 direct-examination.

2 MR. SWARAT: I know. I know that. She actually
3 testified to it on cross, and she has never worked with me on
4 this case, that I wasn't the prosecutor on the original case.
5 I mean I just want to -- I want to clarify that.

6 THE COURT: Well, when Mr. Ayer finishes his cross-
7 examination you can redirect and ---

8 MR. SWARAT: Thank you, Your Honor. That's all I'm
9 asking.

10 THE COURT: Mr. Ayer, do you want to continue with your
11 cross-examination now, or do you think we need to break for
12 lunch and let the witness read the transcript or ---

13 MR. AYER: Can I just ask Ms. Rogers one -- a few more
14 questions?

15 BY MR. AYER CONTINUED:

16 Q. Ms. Rogers, am I to take you to say -- take the
17 understanding that your testimony, when I bring the jury back
18 out, if I ask you who you made the identification of Marcus
19 Timmons to, you are going to say, as you said a while ago, you
20 don't know; is that correct?

21 A. Can I say -- I believe it was the other Solicitor,
22 Howard -- or who -- I don't remember the people's names, but I
23 believe it was the other Solicitor, I mean, I don't know, I
24 guess.

25 Q. It's true that you don't know; is that correct?

1 A. Yes.

2 Q. Yes. But you are saying that you have previously
3 identified Marcus Timmons?

4 A. I'm saying, at the last trial I saw him and I
5 remembered him as being the same person, I mean, I remember
6 him. I don't know ---

7 Q. Did you ever tell anybody that?

8 A. Not on the stand.

9 Q. Okay. You have never told anybody that under oath,
10 correct?

11 A. Nobody asked me.

12 Q. And you have never told the police that, have you?

13 A. I can't say for sure that I haven't, because ---

14 Q. But you can't say for sure that you have, can you?

15 A. I know I told somebody, I just don't know who.

16 MR. AYER: Your Honor, it suits me to break for lunch.

17 THE COURT: Well, you -- do you want to cross-examine
18 the witness after lunch?

19 MR. AYER: Well, I thought that's what the Court wanted
20 to do.

21 THE COURT: No. I was going to break for lunch so she
22 could read the transcript. If we don't need to do that we can
23 finish ---

24 MR. AYER: Well, if she -- if she -- the State will
25 stipulate that she -- I mean, she doesn't need to read through

1 the transcript -- if she agrees that she did not testify and
2 I.D. Marcus Timmons in the prior trial, she doesn't need to
3 read through it, and I think the Solicitor stipulated that she
4 didn't I.D. him in the prior trial.

5 MR. SWARAT: Judge, I'm not going to stipulate to
6 anything. I mean, if he wants to bring it out, then I'll
7 rehabilitate it, but I'm not going to stipulate to anything
8 that he just -- that he wants to put together and place down
9 as the facts, not on this.

10 MR. AYER: Judge, I'm trying not to bring out the prior
11 trial, and I think Ms. Rogers just testified that, in the
12 prior trial she did not I.D. Marcus Timmons, so I'm trying not
13 to have to ask the question.

14 THE COURT: Uh huh (indicating positive)

15 MR. AYER: My understanding is, if I ask her if she has
16 ever told anybody that Marcus Timmons was the person, that her
17 testimony is going to be, no, she hasn't.

18 THE COURT: I'll agree with that.

19 MR. AYER: Is that correct? Is that a yes?

20 A. Yes.

21 THE COURT: You need to respond.

22 A. Yes sir.

23 THE COURT: Okay. Well, are you ready to finish with
24 this witness now?

25 MR. AYER: Yes sir. Yes sir.

1 THE COURT: All right. We can bring in the jury.

2 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
3 JURY.)

4 THE COURT: All right. You may continue, Mr. Ayer.

5 MR. AYER: May it please the Court.

6 CROSS-EXAMINATION BY MR. AYER CONTINUED:

7 Q. Ms. Rogers, isn't it true now that, until today,
8 between February 27, 1993, and today, you have never told
9 anybody that Marcus Timmons, the gentleman seated at this
10 table, is the person -- one of the people that was at that
11 Conoco station; isn't that true?

12 A. If I did, I don't recall who.

13 MR. AYER: Okay. Thank you, Ma'am.

14 REDIRECT-EXAMINATION BY MR. SWARAT:

15 Q. Ms. Rogers, following up on what Mr. Ayer asked you, in
16 December of 1994, did you have the occasion to testify, under
17 oath, at a prior proceeding, involving this incident? Did you
18 testify under oath at a prior proceeding involving Mr.
19 Timmons' case, back in December of '94; is that correct?

20 A. Correct.

21 Q. Okay. And back then you had the opportunity to be in
22 the person and presence of Marcus Timmons during that time; is
23 that correct?

24 A. Yes.

25 Q. And you didn't testify under oath about him being the

1 man at the Conoco?

2 A. Correct.

3 Q. Wasn't asked on the record?

4 A. Right.

5 Q. Did you have the occasion to spend time with members of
6 law enforcement and the Solicitor's office back at that time?

7 A. Yes.

8 Q. Did you tell them that Marcus Timmons was the man at
9 the Conoco station with the long gun?

10 A. I told him I was sure, yes.

11 Q. Are you sure about it now?

12 A. Yes.

13 Q. Marcus Timmons is the man that had this long-barrelled
14 shotgun, and was standing outside the doors at the Conoco
15 station, within ---

16 COURT REPORTER: Excuse me ---

17 MR. AYER: Your Honor, I object to the leading.

18 THE COURT: Let me instruct the witness, first of all,
19 you cannot nod your head. This Court Reporter has to record
20 something that's audible, and secondly, I'm going to ask the
21 Solicitor not to phrase your question so that it suggests the
22 answer to the witness.

23 MR. SWARAT: Yes, Your Honor.

24 Q. Was Marcus Timmons the man that was standing outside
25 the front doors of the Conoco station ---

150PH

1 A. Yes.

2 Q. ---About three to four feet from you?

3 A. Yes.

4 Q. Long-barrelled gun?

5 A. Yes.

6 Q. Do you have any doubts about it?

7 A. No, none.

8 Q. But you just weren't asked that question, under oath --

9 -

10 MR. AYER: Object to leading, Your Honor.

11 Q. ---At prior proceeding?

12 THE COURT: Beg your pardon.

13 MR. AYER: Object to leading the witness.

14 THE COURT: Okay. Please -- once again, please do not
15 suggest the answer to the witness.

16 Q. Ms. Rogers, you were not asked that question, under
17 oath, on the record?

18 A. Correct.

19 Q. That question was not asked of you?

20 A. That's correct.

21 Q. Did you make those facts known though, at that time, to
22 members of law enforcement or the Solicitor's office?

23 A. Yes, I did.

24 MR. SWARAT: Thank you. That's all I have.

25 MR. AYER: May it please the Court.

RECROSS-EXAMINATION BY MR. AYER:

Q. Ms. Rogers, I just asked you, five minutes ago, if you -- if you had made that statement to anyone and you said -- I think your testimony was, if I did I don't remember who I said it to; isn't that correct?

A. I don't know their names.

Q. You don't know their names. Is that what you meant by, if I did, I don't know who?

A. Yes.

Q. Okay. Why did you say, if I did, when I asked you that question? Why didn't you say, yes, I did, but I don't know their names?

A. I remember talking about it, but I don't know with whom exactly.

Q. You remember talking about it?

A. I remember that I remember, other than that, I don't know what to tell you. You know, I -- I can't tell you exactly who the conversation was with.

Q. But you say it was with the Solicitor's office?

A. With the people that work -- yes, I guess so.

MR. AYER: Okay. Your Honor, I have another matter I would like to take up with the Court.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, let me ask that you go to the jury room. Do not discuss the case.

1 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right.

4 MR. AYER: Your Honor, I may be seeking assistance from
5 the Court here. When we conducted incamera hearing, and I
6 asked Ms. Rogers a question, and then when the jury comes back
7 out, and she answers it differently than the incamera hearing,
8 it is my understanding that I have a right to cross-examine
9 her, and use that as a prior inconsistent statement, and what
10 I would like to ask the Court to do is play back the statement
11 incamera, if I might, where when I ---

12 THE COURT: We can -- I told you earlier, if you want
13 to break for lunch, we can stop as long as you want to, and
14 you can play back and listen to all of this. That's fine.

15 MR. AYER: My question though is, can I play back
16 before the jury Ms. Rogers' statement to me that she ---

17 THE COURT: Well, we can have the Court Reporter go
18 back and repeat a question -- identify who asked the question,
19 repeat the question, and give the answer that the witness gave
20 at that time.

21 MR. AYER: All right. I would like to do that then.

22 THE COURT: Okay. So you want to break for lunch, and
23 then try to find what it -- whatever it is you want to find?

24 MR. AYER: Yes sir.

25 THE COURT: Okay.

1 **MR. SWARAT:** Your Honor, the only problem I'm going to
2 have with that is, she should have the opportunity to explain
3 her answer, which she did. I think there was one question Mr.
4 Ayer asked, that she got confused said either yes or no, and
5 meant yes, or meant no, and then later it was clarified. I
6 don't think you can have one little snippet of it and not have
7 all of it. That's all I'm asking for is, if we are going to
8 play the incamera testimony, other than, of course, us talking
9 about the other trial, then I would like to have all of it,
10 not just one little piece of it.

11 **THE COURT:** Well, he can -- he can ask her a question,
12 in front of the jury, and then ask the Court Reporter, or
13 mention that she has testified differently, and we can have
14 the Court Reporter state the question that was asked before,
15 and then repeat the answer that was given before.

16 **MR. SWARAT:** And Your Honor, what I would be asking for
17 is under Rule 106, under the remainder of the writing --
18 remainder of the statement clause in the Rules, that, in
19 fairness, the whole thing would have to be played.

20 **THE COURT:** The Court Reporter will replay the question
21 and the complete answer that she gave, just like if she had
22 given it in a deposition. If you want to publish some of it
23 you can get up and do the same thing in front of the jury when
24 it comes your time.

25 **MR. SWARAT:** Thank you, Your Honor.

1 MR. AYER: Thank you, Your Honor.

2 THE COURT: All right. How long do y'all anticipate
3 this may take, thirty minutes or ---

4 MR. AYER: I think at the most -- you mean to retrace
5 the question that I asked?

6 THE COURT: Uh huh (indicating positive)

7 MR. AYER: I would say thirty minutes, at the most.

8 THE COURT: Okay. If I have the jury come back at 2:15
9 will y'all be ready? That will give you an hour and a half.

10 MR. RIDDLE: The State will be ready.

11 MR. AYER: The defense should be ready.

12 THE COURT: Bring in the jury, please.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY.)

15 THE COURT: Mr. Foreman, ladies and gentlemen of the
16 jury, we will recess for lunch at this time. While you are
17 away at lunch, do not discuss the case among yourselves, or
18 with anyone else. Should there be a report in the media, that
19 is, a newspaper or similar publication, radio or television,
20 even the internet, do not read, listen to or view those
21 reports. You are to base your verdict in the case solely on
22 the evidence and the law that you receive in the courtroom.

23 When you return from lunch, please report direct to your
24 jury room. Please do not hang around in the hallways, but
25 take the most direct route, come in the building and go direct

1 to the jury room.

2 I'm going to ask that each of you be back in the jury
3 room no later than 2:15 P.M.

4 Everyone else please remain in your seats. The jury is
5 excused for lunch until 2:15 P.M.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JURY.)

8 THE COURT: All right. Ms. Rogers, you are still a
9 witness in the trial of the case. I'm going to let you get
10 down off the witness stand for lunch. I am going to instruct
11 you that, during the time you are off of the witness stand,
12 that you are not to discuss your testimony with anyone, family
13 member, friend, police officer, Solicitor, defense attorney,
14 anyone, so from this point on, do not have any discussion
15 about your testimony today, your testimony at any other time,
16 or any statement you gave at any other time to anyone.

17 Now, do you understand my instructions?

18 A. Yes sir.

19 THE COURT: All right.

20 A. May I -- if I have a question, who should I ask?

21 THE COURT: At this point you don't ask anybody
22 anything.

23 A. Okay.

24 THE COURT: You just follow my instructions. You are
25 on a lunch break till 2:15. You are not to discuss your

1 testimony, whether you make a statement or ask a question, you
2 are not to have any discussion with anyone about your
3 testimony in this case. Okay.

4 A. Yes sir.

5 THE COURT: All right. You may step down.

6 All right. We will be in recess until 2:15. If y'all
7 want to get with the Court Reporter and let her go back ---

8 MR. RIDDLE: I just have maybe two housekeeping
9 matters.

10 THE COURT: Uh huh (indicating positive)

11 MR. RIDDLE: The first one is, this morning when I was
12 coming over here, a juror was coming upstairs, and was
13 indicating that she was having difficulty getting up the
14 stairs. I just wanted to put the Court on notice, since you
15 are the only one that looks out that way, that one of the
16 jurors may end up using the elevator after lunch.

17 THE COURT: That's fine. All I want them to do is take
18 the most direct route to the Court -- to their jury room.

19 MR. RIDDLE: Yes sir. I just want -- sometimes we get
20 in here doing something, and I didn't want to mess anything up
21 by us talking in front of a juror, but we won't -- we might
22 not see them coming through ---

23 THE COURT: All right.

24 MR. RIDDLE: ---And I didn't know how often you had
25 been here in Lexington and the courthouse ---

1 **THE COURT:** Uh huh (indicating positive) Well, just
2 be very careful with your conversations, and from this point
3 on I'm going to ask the Bailiffs, till they finish going over
4 this testimony, don't let any jurors back in the courtroom.

5 **BAILIFF:** Yes sir.

6 **THE COURT:** Okay.

7 **MR. RIDDLE:** Thank you, Your Honor.

8 **THE COURT:** All right.

9 All right. We will be in recess until 2:15.

10 (DURING THE BREAK THE COURT REPORTER AND COUNSEL FOR THE
11 STATE AND COUNSEL FOR THE DEFENDANT REVIEWED TESTIMONY OF THE
12 WITNESS, SUZANNE SURRETT ROGERS.)

13 (THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK, AND
14 OUTSIDE THE PRESENCE OF THE JURY.)

15 **MR. AYER:** Your Honor, we -- we have decided to move on
16 from Ms. Rogers. We don't have any further questions for her,
17 unless the State has ---

18 **THE COURT:** So y'all are ready? Y'all don't want her
19 back on the stand?

20 **MR. AYER:** No sir.

21 **MR. RIDDLE:** We don't have any further questions, but I
22 think she was on the stand.

23 **THE COURT:** Yes.

24 **MR. RIDDLE:** I think we need to excuse her on ---

25 **THE COURT:** Why don't we do this. What don't we just

1 put her on the stand and I can say, Mr. Ayer, any more
2 questions of this witness. None. And if you want to move --
3 if she is excused ---

4 MR. RIDDLE: And we are not going to have any
5 objection. We would like for her to be able to go back to
6 school, Your Honor.

7 THE COURT: Okay. All right.

8 All right. Ms. Rogers, you are still a witness in the
9 trial of the case. You are still under oath.

10 All right. Is the State ready?

11 Is the State ready?

12 MR. RIDDLE: Yes sir.

13 MR. SWARAT: State is ready, Your Honor.

14 MR. AYER: One second, Your Honor.

15 THE COURT: All right. Defense ready?

16 MR. AYER: Defense is ready, Your Honor.

17 THE COURT: All right. You may bring in the jury.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: Any additional questions of this witness,
21 Mr. Ayer?

22 MR. AYER: No further questions, Your Honor.

23 THE COURT: Any redirect by the State?

24 MR. SWARAT: No, Your Honor. We would ask that Ms.
25 Rogers be excused.

1 THE COURT: Any objection?

2 MR. AYER: No objection.

3 THE COURT: All right. The witness is excused. You
4 may step down.

5 You may call your next witness.

6 MR. RIDDLE: Doris Kirby.

7 DORIS ROSA KIRBY, first duly sworn,
8 testified as follows:

9 DIRECT-EXAMINATION BY MR. RIDDLE:

10 Q. Ms. Kirby, where do you live?

11 A. Now?

12 Q. Yes Ma'am.

13 A. I live at 302 Naomi Drive, Gaston.

14 Q. Okay. In the Gaston area of Lexington?

15 A. Yes sir.

16 Q. Okay. How long have you been around Lexington County?

17 A. Just about all my life.

18 Q. - I'll just get straight to the point, Ms. Kirby. You
19 were living here back in 1993?

20 A. Yes, I was.

21 Q. What part of the County were you living in then?

22 A. West Columbia.

23 Q. All right. And did you have an occasion to be at the
24 E-Z Coin Laundry, down on Dunbar and Frink Street, in the City
25 of Cayce, on February the 27th?

1 A. Yes sir, I did.

2 Q. Tell the jury what you were doing, and how you came to
3 be there at that particular time.

4 A. I had went to go do several loads of laundry that
5 evening, and we were in there doing laundry. I was at the
6 table folding up the clothes, getting ready to go out to my
7 vehicle, when two black males pushed their ways through the
8 door.

9 My son and my girlfriend and I were all going out the
10 door.

11 Q. Okay. Let me stop you just a second.

12 A. Okay.

13 Q. You went there to do laundry?

14 A. Yes sir.

15 Q. All right. About what time of the day or night was
16 it?

17 A. That I was leaving, or I got there?

18 Q. That you got there, yes Ma'am.

19 A. Around twelve-thirty.

20 Q. Okay. And that's in the morning?

21 A. Yes sir.

22 Q. How much laundry did you have to do that night?

23 A. Approximately around fifteen loads.

24 Q. You had let it pile up for a little bit?

25 A. Well, yes, moving and stuff. Yes.

- 1 Q. Okay. And were you by yourself, or did you have some
2 other folks with you?
- 3 A. I had my son and a -- my ex-husband's cousin with me.
- 4 Q. Okay. The cousin is Noreen Brazel?
- 5 A. That's correct.
- 6 Q. And your son is named Ricky?
- 7 A. Yes, Richard Trey.
- 8 Q. Okay. You call him Ricky?
- 9 A. Right.
- 10 Q. How old was Ricky at the time?
- 11 A. He was twelve at the time of the incident.
- 12 Q. Okay. Back in '93 he was twelve years old?
- 13 A. Right.
- 14 Q. Okay. Now, y'all were there, and you are doing
15 laundry; is that correct?
- 16 A. Yes sir.
- 17 Q. How had you gotten to the E-Z Coin?
- 18 A. I drove there.
- 19 Q. Your car?
- 20 A. Yes sir.
- 21 Q. And during this time of the night, was there anybody
22 else in there?
- 23 A. Nobody but my son and Noreen.
- 24 Q. Okay. Just the three of y'all were there?
- 25 A. Yes sir.

1 Q. All right. Now, about two-thirty in the morning, did
2 something take place at the E-Z Coin?

3 A. Yes sir.

4 Q. Okay. What happened while you were in there? What
5 were y'all doing at about 2:30 in the morning?

6 A. I was -- well, we were standing at the tables folding
7 up the laundry, and taking the -- getting ready to take it out
8 to the vehicle and load it up to go home.

9 Q. Were y'all almost finished?

10 A. Yes sir. We were -- we were done. We just had to
11 carry the laundry out to the car, in fact, we were in the
12 process of taking our last load out to the car.

13 Q. When this happened?

14 A. Yes sir.

15 Q. So five minutes later you would have been gone; is that
16 correct?

17 A. If that.

18 Q. Okay. Now, the E-Z Coin, I asked you, is it the corner
19 of Frink and Dunbar?

20 A. Yes sir.

21 Q. Now, you've seen this diagram before, have you not?

22 A. Yes sir.

23 Q. State's Exhibit Number 6.

24 Ms. Kirby, tell the jury where you were on that diagram,
25 and what happened.

1 A. May I stand?

2 Q. Yes Ma'am. Now keep your voice up, because the Court
3 Reporter needs to hear.

4 COURT REPORTER: Can she stand on the other side and
5 look back this way?

6 MR. RIDDLE: Okay. Do this for me. Stand over here
7 and talk loud and this way, but kind of stand back where all
8 the jurors can see you, all right.

9 A. Okay.

10 Okay. I was over in here folding clothes, and getting
11 ready to go on out these doors right here, which were the same
12 doors I entered through.

13 Q. And where was your car parked?

14 A. My car was right in here.

15 Q. Okay.

16 A. Okay. This is where the parking is, right in this
17 glass window here.

18 We started out this door to go put the last load of
19 laundry in the vehicle. When we did, two black males pushed
20 their way through the door -- my son and Noreen were standing
21 right there off the side -- and when they did it was a
22 forceful push. They went back and fell.

23 Q. About where were -- did they fall?

24 A. Right over in here. Right over in here.

25 Q. Okay. And both Noreen and Ricky fell?

- 1 A. Yes. Well, Noreen went into Ricky and ---
- 2 Q. Okay.
- 3 A. Okay. And I was told to get back inside the
- 4 laundromat, so I went back over in this area, and the man that
- 5 held the short-barrelled shotgun, with the bandanna, was in
- 6 front of me, and held the gun, directly between my eyes, and
- 7 told me to hand him -- should I state it exactly the way it
- 8 was said?
- 9 Q. Tell the jury what was said to you, yes Ma'am.
- 10 A. Okay. He told me to hand him my mother-fucking
- 11 pocketbook and my god-damned keys. And that's what I done.
- 12 Q. What did you do when he said that?
- 13 A. I directly handed them to him.
- 14 Q. Okay. Where was your pocketbook when he said that to
- 15 you?
- 16 A. Well, I had them in my hand, because like I said, we
- 17 were getting ready to go on out to the car, because I had my
- 18 last load of laundry going out.
- 19 Q. All right.
- 20 A. Okay. And ---
- 21 Q. Did you give him that?
- 22 A. Yes, I did.
- 23 Q. Okay. Did you argue with him at all?
- 24 A. No sir.
- 25 Q. All right. Now you indicated there was two men; is

1 that correct?

2 A. Yes sir.

3 Q. And how many of the men had guns?

4 A. Both of the men had guns. The other man held the gun
5 on Noreen and my son, while they were down on the floor.
6 Then, as they got ready to leave they told us all to, you
7 know, stay on the floor, and not to move. As they left the
8 building they shot -- a gun was fired. The -- it sounded like
9 it came from over here on the side of the building.

10 Q. Did you see them fire the gun?

11 A. No sir. I was on the floor.

12 Q. You were on the floor?

13 A. Yes.

14 Q. You just heard it?

15 A. Yes. I heard the shot go off, and I scooted on around,
16 and my son and Noreen had scooted up under a little table back
17 over in here, you know. While they -- when they got -- were
18 down on the floor they scooted up under the table. I scooted
19 around there, seeing if they were okay. They thought it had
20 been me, you know, that I -- maybe I had gotten shot. They
21 told me, they said, don't go nowhere, just stay right here, so
22 I waited a couple of minutes. There was a pay phone directly
23 outside the building, over in here. I went out there and I
24 called 911, and Cayce Police came.

25 Q. About how long did it take the Cayce Police to come?

- 1 A. Not long at all.
- 2 Q. Not long at all?
- 3 A. I would say within five minutes, or less.
- 4 Q. Now, let me ask you this. This whole incident, from
- 5 the time they pushed into the door, till the time that you
- 6 went out and called 911, about how long was that?
- 7 A. Again I would say, to the best of my ability, about
- 8 five minutes or less.
- 9 Q. Okay. You can have a seat.
- 10 Now, Ms. Kirby, you indicated that one of them had a
- 11 short gun?
- 12 A. And one, I said, had a longer -- the longer gun.
- 13 Q. Okay. Let me show you what's been marked as State's
- 14 Exhibit Number 3. Do you recognize this?
- 15 A. Yes sir. That's the gun that was pointed directly
- 16 between my eyes.
- 17 Q. This is the short gun?
- 18 A. Yes sir.
- 19 Q. Let me show you what's been marked State's Exhibit
- 20 Number 2. Do you recognize that?
- 21 A. Yes sir. That's the gun that the other man held on my
- 22 son and Noreen.
- 23 Q. Now, these individuals, could you see their faces?
- 24 A. No sir.
- 25 Q. Why not?

1 A. Well, the one that held the gun on me had a bandanna
2 around -- around in here, covering his face. He had a hat on.
3 It was dark in color. I -- you know ---

4 Q. Okay.

5 A. ---Dark colored. The other one had on a ski mask.

6 Q. All right.

7 A. I call it a ski mask. Some people call it a snow mask.
8 I call it a ski mask.

9 Q. All right. The ski mask. Let me start with that.
10 Was that light colored, dark colored or what?

11 A. Dark colored.

12 Q. Okay. Let me show you this and ask you if this looks
13 familiar, State's Exhibit Number 4.

14 A. Yes sir. It was a mask like that, yes sir.

15 Q. Okay. A mask like this that was worn?

16 A. Yes sir.

17 Q. Do you remember the color of the bandanna?

18 A. Yes sir. It was red, white and black.

19 Q. All right. Let me show you State's Exhibit Number 5,
20 and ask you if you recognize this.

21 A. Yes sir.

22 Q. Does that appear to be the bandanna that one was
23 wearing?

24 A. Yes sir.

25 Q. All right. And he was also wearing a hat?

1 A. Yes sir.

2 Q. Okay. Dark in color?

3 A. Yes sir.

4 Q. All right. Now let me ask you this. You gave them
5 the purse; is that correct?

6 A. Yes, I did.

7 Q. Tell the jury some of the things that were in your
8 purse.

9 A. Okay. I had some cosmetics, a make-up brush -- blush
10 brush, cosmetic brush, some receipts from different places, my
11 car inspection where I had my car inspected, different
12 receipts from like Wal-Mart and Brunos, my driver's license,
13 Social Security cards. That's pretty much what I had in my
14 pocketbook. I had -- and I -- well, of course my wallet was
15 in there. I had Sixty Dollars in there, which I had left over
16 afterwards, and one gold ring, which Noreen had given me to
17 put in my pocketbook while we were doing laundry, which wasn't
18 mine. It belonged to her.

19 Q. Did you have any medication, or prescription drugs in
20 there?

21 A. No, I did not.

22 Q. Now, let me show you these items and ask you if you
23 recognize what these are. Just take your time and look
24 through those.

25 A. Do you recognize those?

1 A. Yes. This is what I had done at the State Fair, me and
2 my husband.

3 Q. And that's you ---

4 A. Right.

5 Q. ---And your husband?

6 A. Yes.

7 Q. You had that in your purse?

8 A. Yes. We had a calendar made out of it, and they give
9 you the copy when they get done, and this is a receipt. This
10 one here -- I don't know where this one is from.

11 Q. But those are receipts and the other papers that were
12 in your purse?

13 A. Right, and Winston Cup schedule.

14 Q. Okay. Those items were returned to you?

15 A. Yes sir.

16 Q. Okay. They were returned to you by the Cayce
17 Department of Public Safety?

18 A. Yes sir.

19 Q. Okay.

20 MR. RIDDLE: Now all of these items, Your Honor, for
21 the record, have previously been marked as State's Exhibit
22 Number 7, as a group. They were in an envelope.

23 THE COURT: Okay. Those were entered without
24 objection?

25 MR. RIDDLE: Yes sir. They came in without objection,

1 previously marked.

2 COURT REPORTER: What number did you say?

3 MR. RIDDLE: That was State's Number 7.

4 MR. AYER: Your Honor, just for the record, I don't
5 have any objection. It's my understanding that I was agreeing
6 that it would be marked. It was my understanding they still
7 had to be admitted into evidence, but I was not objecting to
8 them earlier.

9 MR. RIDDLE: Your Honor, can we approach?

10 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

11 Q. These items were returned to you; is that correct?

12 A. Yes sir.

13 Q. And at the time those items were returned to you, you
14 signed a Property Receipt for those items with the Cayce
15 Police Department?

16 A. Yes sir, I did.

17 Q. Referring to State's Exhibit Number 8, is that the
18 Property Receipt that you signed with the Cayce Police
19 Department?

20 A. Yes sir.

21 Q. Okay. Also contained in that Property Receipt is where
22 you got the make-up bag?

23 A. Correct.

24 Q. I take it you have used that since then?

25 A. No. I threw it away.

1 Q. Okay.

2 MR. RIDDLE: Beg the Court's indulgence for one moment.

3 Q. I might have just missed this. Did you mention about a
4 ring being in the purse?

5 A. Yes, I did.

6 Q. And that ring belonged to who?

7 A. Noreen. She ---

8 Q. Okay. While you were in the store, the short gun was
9 pointed at you; is that correct?

10 A. Yes sir.

11 Q. Were any guns pointed at Noreen and Ricky?

12 A. Yes sir.

13 Q. Which gun was that?

14 A. The longer gun, the long-barrelled gun.

15 Q. And after they got your purse they left the store; is
16 that correct?

17 A. Yes sir.

18 Q. And how many shots did you hear after that?

19 A. I just heard one shot.

20 Q. One shot?

21 A. Yes sir.

22 MR. RIDDLE: Okay. Thank you. That's all I have.

23 MR. AYER: May it please the Court.

24 CROSS-EXAMINATION BY MR. AYER:

25 Q. Ms. Kirby, you indicated that the man with the short

- 1 gun had the gun on you; is that correct?
- 2 A. Yes sir.
- 3 Q. Okay. And he had a mask on?
- 4 A. No.
- 5 Q. He had the bandanna on?
- 6 A. He had the bandanna on.
- 7 Q. Okay. Did he have a hat on?
- 8 A. Yes sir. I said it was dark in color.
- 9 Q. Okay. How about the other man; did he have a hat on?
- 10 A. Yes sir, he did.
- 11 Q. What color was it?
- 12 A. I stated that I believed it was green, but it was --
- 13 you know, I wasn't really sure.
- 14 Q. Okay. But it was dark in color?
- 15 A. Yes, I did.
- 16 MR. AYER: Thank you, Ma'am.
- 17 MR. RIDDLE: No further questions.
- 18 THE COURT: Anyone object to the witness being excused?
- 19 MR. RIDDLE: No sir.
- 20 THE COURT: Defense? Any objection to the witness
- 21 being excused?
- 22 MR. AYER: None, Your Honor.
- 23 THE COURT: All right. The witness is excused.
- 24 A. Thank you.
- 25 MR. SWARAT: State calls Terry Snead.

1 TERRY DON SNEAD, first duly sworn,
2 testified as follows:

3 DIRECT-EXAMINATION BY MR. SWARAT:

4 Q. So by whom are you employed?

5 A. Lexington County Sheriff's Department.

6 Q. And how long have you been with the Lexington County
7 Sheriff's Department?

8 A. Eight years now.

9 Q. Were you working in that capacity back on February the
10 27th, 1993?

11 A. Yes sir, I was.

12 Q. And do you remember what shift you were working?

13 A. It was night shift.

14 Q. Okay. Can you explain to the jury what the night shift
15 would be, what the hours would be?

16 A. Night shift is, we come in at six P.M. on -- say it was
17 on 6:00 P.M. that afternoon, we don't get off until 6:00 A.M>
18 the following morning.

19 Q. So you are working on past midnight, until the early
20 morning hours, right about daylight?

21 A. Yes sir.

22 Q. Now, what area of the County, Deputy Snead, were you
23 patrolling that particular night?

24 A. That particular night I was patrolling what we call the
25 southern end of the County, or the lower end of the County.

1 Q. And what sections of Lexington County would that
2 entail? What would that cover?

3 A. That covers from Pelion to Aiken County, to Swansea, to
4 Gaston, back up to 321, Old Dunbar, right at the City Limits
5 of Cayce.

6 Q. And during the time you are patrolling, what are your
7 duties? What do you do when you are out there?

8 A. At that particular time I was a normal road officer,
9 answering normal complaints from citizens within the County,
10 checking property, just basically maintaining a police
11 presence in the jurisdiction where I was at.

12 Q. Now that south end part of the County, would that
13 include a stretch of Highway 321?

14 A. Yes sir, from Old Dunbar all the way to the Orangeburg
15 County line, yes sir.

16 Q. Okay. And that would be a stretch of 321 going toward
17 Gaston?

18 A. Yes sir.

19 Q. Now, during that particular night, did you happen to
20 encounter a pedestrian walking down Highway 321?

21 A. Yes sir, I did.

22 Q. And Deputy Snead, was that individual a male or a
23 female?

24 A. It was a male.

25 Q. And what race was that individual, was that male?

1 A. He was a white male, a caucasian.

2 Q. And did you have an occasion to stop him at any time
3 while you were passing that pedestrian?

4 A. Yes, I did.

5 Q. And what was your purpose for stopping him, or making
6 contact with him?

7 A. Due to being in the open countryside, not a residential
8 side, unincorporated parts of the County, a person walking, at
9 that point of time, near a business, may have been a suspect
10 in a break-in of some sort, or something there, or he may have
11 been lost, or just trying to get from one place to another.

12 Q. You just wanted to see what he was up to, checking on
13 his welfare and what-not?

14 A. Yes sir.

15 Q. Approximately what time of the night was that that you
16 stopped this individual?

17 A. A little after one o'clock in the morning.

18 Q. Now, when you stopped him, were you in a marked unit?

19 A. Fully marked, Lexington County Patrol car.

20 Q. And which direction was he walking down 321, if you
21 recall?

22 A. He was walking northbound, as I was traveling
23 southbound.

24 Q. So you would have been going southbound toward Gaston -

25 --

- 1 A. Yes sir.
- 2 Q. ---Is that correct. And he would have been coming
3 northbound toward West Columbia?
- 4 A. Yes sir.
- 5 Q. Now, when you stopped him, did he have an
6 identification on him?
- 7 A. Yes, he did. He had a South Carolina I.D. card.
- 8 Q. So he had an I.D. card?
- 9 A. Yes sir, he did.
- 10 Q. And who was that individual that you stopped?
- 11 A. Thomas H. Wise.
- 12 Q. And that was on his I.D. card?
- 13 A. Yes sir.
- 14 Q. Deputy Wise -- excuse me -- Deputy Snead, do you recall
15 how he was dressed that particular night?
- 16 A. What I can recall is, he was wearing bluejeans and a
17 white sweatshirt with a Micky Mouse logo on the front part of
18 the t-shirt, or the sweatshirt.
- 19 Q. He had a sweatshirt with Micky Mouse, and bluejeans?
- 20 A. Yes sir.
- 21 Q. Now, was he alone, or was he with any other people?
- 22 A. He was the only person I observed.
- 23 Q. Just by himself?
- 24 A. Yes sir.
- 25 Q. Did you have any conversation with him, other than stop

1 him and check him for his I.D.?

2 A. Just conversation. I asked him where he was going. He
3 said he was walking up to a friend's house, which was just
4 right up the road. I offered to give him a ride, call
5 somebody to come pick him up. I even offered to call a cab
6 company to come pick him up, to get him off the street.

7 Q. Okay. What did you observe about his person? Was he
8 intoxicated in any way?

9 A. To me he didn't appear to be intoxicated. I did ask
10 him if he had anything to drink and he stated to me he did
11 have two beers.

12 Q. Is -- in that general area of Highway 321, is there a
13 club called Sam's Place?

14 A. Where I stopped him at?

15 Q. Well, just in that general area of 321.

16 A. From where I talked with Mr. Wise, it's about three and
17 a half miles from there.

18 Q. Okay. But is there a club called Sam's Place on 321,
19 on that stretch of 321, going back toward West Columbia?

20 A. Yes sir, there is.

21 Q. And he indicated that he had had something to drink?

22 A. Yes sir, he did.

23 Q. But was he able to answer your questions?

24 A. He answered all my questions fully. He knew where he
25 was at. He knew what time it was. He knew where he was

1 going, where he came from, so in my opinion he wasn't -- he
2 wasn't intoxicated.

3 Q. Did he ever take you up on your offer of giving him a
4 ride to his friend's house?

5 A. No sir, he didn't.

6 Q. Did he let you call him a cab?

7 A. No sir, he didn't.

8 Q. Now, when you had this conversation with him about the
9 cab, what, if anything, did he show you during that part of
10 the conversation?

11 A. I had asked him if I did call him a cab if he had the
12 sufficient funds or money to pay for the cab and he told me
13 that Seventy-Five Dollars, at which time he reached in his
14 pocket and pulled out three Twenty Dollar bills, and that's
15 all I saw was the three Twenty Dollar bills.

16 Q. So he pulled out some cash and you saw that there were
17 at least three Twenties?

18 A. Yes sir.

19 Q. Deputy Snead, I'm showing you what has been marked as
20 State's Exhibit Number 14 in evidence, and ask you if you
21 recognize that document.

22 A. It appears to be a copy of our radio log sheet.

23 Q. Can you explain to the jury what a radio log sheet is?

24 A. It's a sheet which is maintained at our headquarters,
25 which is drawn up by our dispatchers at the office. Anytime

1 we sign out with anything, or any activity that we call to
2 them back on the radio, they document everything down on a
3 piece of pa -- on this particular -- on the form just like
4 this one here.

5 Q. So if you stopped and talked to an individual like Mr.
6 Wise, would you call into headquarters and let them know about
7 it?

8 A. Yes sir.

9 Q. Is your stop with Mr. Wise that night reflected on that
10 radio log?

11 A. Yes sir, it is.

12 Q. And what time did you stop and speak with Mr. Wise?

13 A. Here on the log they've got it down at 1:45 A.M., on
14 the 26th of February, 1993.

15 Q. So quarter to two in the morning?

16 A. Yes sir.

17 Q. Does it reflect who you did interview? Does it reflect
18 Mr. Wise's name?

19 A. Yes sir, it does.

20 Q. And what does it indicate about him?

21 A. Says that I signed out with last name Wise, first name
22 Thomas, middle initial "H", at AmSouth, which is a body
23 salvage establishment, which is there on 321 also.

24 Q. Does it also indicate his date of birth on there?

25 A. I don't see it on here.

1 Q. Does it indicate what time you left M. Wise?

2 A. Yes sir, it does.

3 Q. And what time was that?

4 A. That was 02:04, two-O-four that same morning.

5 Q. So during the time you were having this conversation
6 with him about giving him a ride, and maybe calling him a cab,
7 it was about nineteen minutes, based on your radio log there?

8 A. Yes sir.

9 Q. After you had this conversation with Mr. Wise, and he
10 refused the help of a cab or a ride from you, did you have the
11 occasion to leave him?

12 A. Yes sir, I did.

13 Q. Now, I want to jump forward a little bit, later on that
14 evening -- were you still patrolling later on that night?

15 A. Yes sir, I was.

16 Q. Did you have the occasion to be called back out to
17 Highway 321?

18 A. Later that morning, yes sir, I did.

19 Q. I'm showing you what has been marked as State's Exhibit
20 Number 15 in evidence, and ask if you recognize that.

21 A. Yes sir, I do.

22 Q. And what time does it indicate you went back out to
23 321?

24 A. It shows on here that they gave me the call over the r
25 radio at 3:17 A.M. on the 26th of February, 1993 also.

1 Q. Okay. Now, I want to clarify something. You would
2 have started your shift on the 26th; is that correct?

3 A. Yes sir.

4 Q. Okay. So this would have been the early morning hours
5 of the 27th?

6 A. Yes sir.

7 Q. Does it indicate where you were responding to, where
8 you were called out to?

9 A. Between the Southland Truck Stop and the On-Mark
10 station on 321.

11 Q. Showing you what has been marked as State's Exhibit
12 Number 13 in evidence, and ask you if you can see that On-Mark
13 station reflected in that photograph?

14 A. Yes sir. It's up here in the upper left-hand corner of
15 the photograph where the roadway splits.

16 Q. Right up in here; would that be accurate?

17 A. Yes sir.

18 Q. And this roadway that's depicted on here, is that
19 highway 321?

20 A. Yes sir.

21 Q. And where my fingers are would be the split where the
22 On-Mark station would be?

23 A. Yes sir. That's where 321 splits out.

24 Q. Now, Deputy Snead, when you arrived on that location
25 who, if anyone, did you find at that location?

1 A. At that location right there?

2 Q. Yes sir.

3 A. I observed a male laying in the roadway, two other
4 civilians around the gentleman laying on the ground, with a
5 jacket like type laying over the person on the ground.

6 Q. First let me talk to you about that person that was
7 laying on the ground, who did you recognize that to be when
8 you arrived?

9 A. Once I got out and actually looked to see who was on
10 the ground, I recognized it to be Mr. Wise that I had spoke
11 with earlier.

12 Q. Still dressed the same, in the Micky Mouse sweatshirt -
13 --

14 A. Yes sir.

15 Q. ---Bluejeans. Same individual?

16 A. Same individual.

17 Q. The people that were around him, were they rendering
18 him aid?

19 A. Yes sir.

20 Q. Can you see in this area where Mr. Wise was laying?

21 A. Yes sir, you can.

22 Q. Could you point to that on here?

23 A. It's right here to the right side of the road, about
24 where the stains are right here in the road, and also just to
25 the right of there. This is a -- looks like a blue packaging

1 material.

2 Q. Right above my fingers there?

3 A. Yes sir.

4 Q. The stains that you see in this photograph, what do you
5 know them to be, from being at that location that night?

6 A. They were blood stains.

7 Q. And that's where you responded to Mr. Wise, to where
8 his body was?

9 A. Yes sir.

10 Q. Let's talk about that a little bit. What was his
11 condition at the time you arrived?

12 A. He was lying on the ground. Two other people were
13 administering first aid to him. He wasn't speaking, kind of
14 mumbling.

15 Q. So he -- he was -- he was still alive?

16 A. Yes sir, he was.

17 Q. Now, where is that in relation -- the area where you
18 found Mr. Wise's body, where is that in relation to the old
19 Southland Truck Stop and Sam's Place? Are they close by?

20 A. Yes sir. Sam's Place is probably three-tenths of a
21 mile back toward Cayce. Southland Truck Stop is almost
22 directly straight across. If you are looking straight across
23 the road, it's just -- just to the left of where he would have
24 been lying out.

25 Q. When you say three-tenths of a mile, you are talking

1 about a third of a mile, so walking distance?

2 A. Yes sir.

3 Q. Now, as Mr. Wise was laying there, were individuals --
4 those individuals that were rendering him aid, were they
5 asking him any questions?

6 A. They were.

7 Q. And what questions were they asking him?

8 A. They asked him if he had been robbed, and to that
9 question -- Mr. Wise was not speaking, but you could still see
10 his eyes was open, still had a pulse -- he nodded his head in
11 an affirmative yes type -- that he had been robbed.

12 Q. He indicated with a nod of the head that he had been
13 robbed?

14 A. Yes sir.

15 Q. What other question was asked of Mr. Wise in your
16 presence?

17 A. He was also asked if he had been shot. Once again, Mr.
18 Wise couldn't -- wasn't speaking, eyes open, still alive, on
19 the side of the road -- he nodded his head again, once again,
20 in an affirmative, yes, he had been shot.

21 Q. So yes, he had been robbed, and yes, he had been shot?

22 A. Yes sir.

23 Q. Were you present when E.M.S. arrived on the scene?

24 A. Yes sir.

25 Q. Did you observe their treatment of Mr. Wise?

1 A. I did.

2 Q. In that treatment did you see his pockets checked for
3 valuables?

4 A. I did.

5 Q. What, if anything, did you see taken from Mr. Wise's
6 pockets?

7 A. I didn't observe anything being removed out of his
8 pockets, but lying on the ground next to Mr. Wise there was a
9 small plastic baggie with a green leafy plant-like substance
10 in the bag.

11 Q. Did -- that green leafy plant-like substance, what did
12 that resemble to you?

13 A. In my experience it resembled to be marijuana.

14 Q. But at the time that he's laying there on the side of
15 the road, he doesn't have any money left?

16 A. No sir. I never ---

17 Q. The Sixty Dollars that you had seen him with before was
18 gone?

19 A. I never did see it when I was there on the scene, no
20 sir.

21 Q. While they were treating him, Deputy Snead, could you
22 see his injuries? Did you actually get a chance to look at
23 where he was injured?

24 A. When the E.M.T.s started their first initial check on
25 him they rolled him up on his side, and raised his shirt up,

1 which I observed, back on the lower left-hand side of Mr.
2 Wise, down around the kidney area ---

3 Q. If you would, Deputy Snead, if you would step down.

4 Come on around over here with me. If you can just
5 indicate on me where he was shot.

6 A. Back here in the lower back part of the area, about
7 where your kidney is, about from the center line here, about
8 right in here (indicating).

9 Q. So kind of like back and to the side?

10 A. Yes sir.

11 Q. And what, if anything, could you tell about the wound
12 itself?

13 A. From experience, it appeared to be a shotgun blast, or
14 a shotgun wound, shotgun type wound.

15 Q. Thank you. Now, after his pockets had been check, and
16 didn't have any money, and you saw where he had been injured,
17 did you further assist E.M.S., or law enforcement at the
18 scene?

19 A. I stayed there on the scene to secure the scene for the
20 E.M.S. while they loaded him up in the E.M.S. and then trucked
21 him out.

22 Q. Other than that, Deputy Snead, did you assist in this
23 investigation?

24 A. Just there on the scene, and waited for other agencies
25 or the I.D. section to come in to photograph the area.

1 Q. And would you have prepared a report in connection with
2 your contact with Mr. Wise that night, and the activities that
3 you took care of, both in having contact with him and at the
4 scene?

5 A. Yes sir, I did.

6 MR. SWARAT: Deputy Snead, that's all I have. Please
7 answer any questions the defense may have for you.

8 MR. AYER: May it please the Court.

9 CROSS-EXAMINATION BY MR. AYER:

10 Q. Deputy Snead, you indicated that when you encountered
11 Mr. Wise, that -- I think your testimony was, in effect, that
12 he was going north in the southbound lane of 321; is that
13 correct?

14 A. Actually he was -- I was headed south, in the
15 southbound lane; he was headed north on the southbound lane,
16 coming back toward Cayce.

17 Q. Right. So in other words, he -- you were going south
18 in the southbound lane, he was walking against the traffic, if
19 you will ---

20 A. Yes sir, he was.

21 Q. ---On ---

22 A. On the southbound -- southbound lane side.

23 Q. ---On the southbound side. So when you encountered
24 him, he was basically on the same side of the road as when you
25 encountered him when he had been shot; is that correct?

1 A. Yes sir. He was on the right -- right shoulder, the
2 same side of the road that I encountered him previously,
3 before.

4 Q. All right. And he was about three miles from where
5 you encountered him to where he had been shot, about three
6 miles; is that approximately correct?

7 A. As the crow flies, yes sir.

8 MR. AYER: Okay. That's all I have. Thank you.

9 MR. SWARAT: Nothing further, Your Honor.

10 THE COURT: Does anyone object to the witness being
11 excused?

12 MR. SWARAT: No, Your Honor.

13 MR. AYER: No objection, Your Honor.

14 THE COURT: All right. The witness is excused.

15 MR. RIDDLE: State calls Jim Hickman, Your Honor.

16 JAMES L. HICKMAN, first duly sworn,
17 testified as follows:

18 DIRECT-EXAMINATION BY MR. RIDDLE:

19 Q. You are employed by the Sheriff's Department?

20 A. Yes sir, I am.

21 Q. In what capacity?

22 A. I'm an identification officer or a crime scene
23 investigation.

24 Q. Explain to the jury exactly what that is, and what your
25 job duties are, sir.

1 A. My job duties are to -- basically I go to a crime scene
2 after the crime has occurred, and I investigate the scene. I
3 take photographs, videos. I discover the evidence, or the
4 items that may be used in court later on. I photograph those,
5 log those, chart them, do anything the investigator basically
6 wants me to do at the scene, and when I'm through with the
7 scene I make a written report, file the report, and then at
8 any time I come testify in -- in court proceedings to the
9 facts that I found at that particular scene.

10 Q. And how long have you been doing crime scene, Detective
11 Hickman?

12 A. Twenty-six years.

13 Q. As part of your duties at the Sheriff's Department, you
14 have also worked as a line officer, I presume?

15 A. Yes sir.

16 Q. And as an investigator?

17 A. Yes sir.

18 Q. Okay. You have been with our Sheriff's Department for
19 twenty-six years?

20 A. No sir. I've been here fifteen years, and I was with
21 Orangeburg thirteen years. That's twenty-eight years.

22 Q. Yes sir.

23 A. That's more.

24 Q. I wasn't going the point that out.

25 Detective Hickman, you were working in the crime scene

1 area back in February of 1993?

2 A. Yes sir, I was.

3 Q. And did you get called to the crime scene out on the
4 side of Highway 321 on that evening?

5 A. Yes sir.

6 Q. And was this crime scene between the 321/21 split, and
7 where 321 splits and goes around the En-Mark, or the On-Mark?

8 A. Yes sir, it was.

9 Q. All right. Now let me just ask you this, Detective
10 Hickman, before we get going too good. You are familiar with
11 the crime spree that was going on that night, correct?

12 A. Yes sir.

13 Q. And you are familiar with the Conoco station located on
14 Highway 321 in West Columbia?

15 A. Yes sir.

16 Q. And familiar with the E-Z Coin Laundry, located at
17 Frink and Dunbar?

18 A. Yes sir.

19 Q. Okay. Are you familiar with the Pantry as well ---

20 A. Yes sir.

21 Q. ---On State Street?

22 A. Yes sir.

23 Q. And of course you are familiar with the scene of Mr.
24 Wise's homicide down on 321?

25 A. Yes sir.

1 Q. All of these locations, are they within Lexington
2 County?

3 A. Yes sir, they are.

4 Q. Some are within different municipalities, but all
5 within the confines of Lexington County?

6 A. Yes sir.

7 Q. Now, going back to the 321 crime scene, if we can, tell
8 the jury what you did when you responded out there.

9 A. When I responded I arrived just after the ambulance and
10 E.M.S. arrived. There was two officers on the scene, and
11 three or four people around, and E.M.S. units working. They
12 transported him. I gave a quick look at the crime scene,
13 determined what it was, and it's basically just a shoulder of
14 road, and that was it.

15 After they transported the victim on to the hospital, I
16 could see an area where he had been laying, was some blood,
17 and there was a blood trail leading back off the road a short
18 ways to the shoulder of the road, and some more spots of blood
19 there.

20 There was also tracks, not only the tracks that we had
21 left around the victim when they were working on him, and the
22 E.M.S., but there was also what I -- appeared to me to be --
23 as drag marks, or where somebody had crawled across the
24 ground, and coming up to the roadway itself.

25 Q. Now, State's Exhibit Number 13 -- step down here if you

1 would, please sir.

2 State's Exhibit Number 13, you took that photograph?

3 A. Yes sir, I did.

4 Q. All right. This photograph depicts part of Highway
5 321?

6 A. Yes sir.

7 Q. Okay. Is that the southbound lane of 321, or the
8 northbound lane?

9 A. That's the southbound lane.

10 Q. All right. And up here in the corner, you can kind of
11 see where the roadway splits. Is that where the On-Mark
12 station is?

13 A. Yes sir.

14 Q. Now, what is the blue thing in this picture here?

15 A. You will notice right here. It's on the side of the
16 road. It's a blue -- it's basically the blanket that E.M.S.
17 uses whenever they go to a scene, and I think it's made out of
18 paper, or some kind of fiber, but it's an E.M.S. blanket that
19 they put over people.

20 Q. Okay. So that's actually some E.M.S. supplies, or
21 E.M.T. supplies that they left out there?

22 A. Yes sir.

23 Q. And is that same blanket depicted in State's Exhibit
24 Number 14?

25 A. Yes, it is.

1 Q. All right. And does that just show a more close-up
2 view of this particular area right here?

3 A. Yes sir. You will see this area here, and you can see
4 what appears to be the blood and the blanket. This is just a
5 blow-up of it. You can see the blood alongside the road here,
6 and you can see the area where it's tromped down. You can see
7 the drag mark ---

8 Q. Step up and show the jury the drag marks that you are
9 referring to.

10 (WITNESS SPEAKS TO JURY.)

11 A. You will see here -- this is the side of the roadway
12 here. You will see the blood, and this is where the victim
13 was laying when we arrived. You can see along here the drag
14 marks. This is the blanket that we were referring to here,
15 and of course this is back in the green area where it drops
16 off and ---

17 You will see along here -- the bottom is the roadway,
18 with the white line running along the edge of the road. You
19 will see the red, which is the blood. This is where the
20 victim was laying here, in this position. You can see the
21 drag marks across here. This is the blanket we were referring
22 to. This goes back down a ways.

23 And again, the roadway along the bottom. Here in the
24 middle, this is the bloody area, or the red area is some blood
25 from the victim. The victim was laying here in this area.

1 See the drag marks back across here, and here being the
2 blanket that we were referring to.

3 Q. Now, -- excuse me -- when you were out there, was it
4 daylight or darkness?

5 A. No sir, it was dark.

6 Q. What did you do in connection with processing this
7 crime scene at that time?

8 A. Nothing at that particular time. It was too dark and
9 we couldn't see anything, so I waited till the following
10 morning, which was only a couple of hours later, till the sun
11 come up, and went back to the scene.

12 Q. Okay. And that's when you took these photographs?

13 A. Yes sir.

14 Q. All right. Now, in connection with taking these
15 photographs, back away from the edge of the road you can see
16 some green grass, and also some brown grass there; is that
17 correct?

18 A. Yes sir.

19 (WITNESS SPEAKS TO THE JURY.)

20 A. He's referring to back up in here, and I think I
21 mentioned, just a minute ago, you will see the green grass
22 along in here, and then the brown grass here.

23 Q. All right. And did you look back in that area where
24 the green grass and the brown grass is back in here?

25 A. Yes sir, we did.

1 Q. And when you were processing this crime scene back in
2 that area, did you find anything of evidentiary value back
3 there?

4 A. Yes sir. We found two pieces of wadding from a shotgun
5 shell.

6 Q. All right. And did you photograph it and record that
7 wadding as it lay there on the scene?

8 A. Yes, I did.

9 Q. Referring to State's Exhibit Number 27, tell the jury
10 what that is.

11 A. State's Exhibit Number 27, if you will look down at the
12 scale, you will see the green grass; you see the brown grass
13 that we just previously described. If you will look real
14 close you will see a little piece of wadding. My finger is on
15 it. It's down by the scale.

16 Q. And an approximate -- what approximate area of State's
17 Exhibit Number 14 was that found?

18 A. It would be somewhere in this area right in here.

19 Q. All right. Now let me show you State's Exhibit Number
20 28 as well. Would that represent the other piece of wadding
21 that was found?

22 A. Yes, it is.

23 (WITNESS SPEAKS TO JURY.)

24 If you will look you will see that this is brown grass
25 around -- if you will look right at the end of my finger. You

1 have to look a little closer on this one, but you can see a --
2 see another piece of wadding.

3 MR. RIDDLE: You can have a seat.

4 Q. The wadding that you photographed as it lay, did you
5 collect that?

6 A. Yes sir, I did.

7 Q. Let me show you State's 21 and 22, and ask you if you
8 recognize what those are.

9 A. Yes sir.

10 Q. What are those?

11 A. These are the two pieces of wadding that I found that
12 morning.

13 Q. All right. And you collected those?

14 A. Yes sir, I did.

15 Q. Placed them in these bottles?

16 A. Yes sir.

17 Q. Did you transport these back to the Lexington Sheriff's
18 Department?

19 A. Yes sir.

20 Q. All right. The writing that's on these bottles,
21 that's your writing?

22 A. Yes sir. That's my handwriting.

23 Q. All right. After you transported these items back to
24 the Sheriff's Department, did you subsequently send them out
25 to S.L.E.D. for analysis?

1 A. Yes sir, I did.

2 Q. And they were examined by the Firearms Department out
3 at S.L.E.D.?

4 A. Yes sir.

5 Q. Was that examination done by Agent Vello Paavel?

6 A. Yes sir.

7 Q. All right. Now, Detective Hickman, as a part of your
8 duties regarding crime scene investigator, do you also go to
9 autopsies?

10 A. Yes sir, I do.

11 Q. And do you do the same functions at autopsies as you do
12 at crime scene, that is, to collect evidence, and to
13 photograph and record what you see?

14 A. Yes sir, I do.

15 Q. And did you go to the autopsy in this particular case?

16 A. Yes sir.

17 Q. And did you take some photographs in this particular
18 case?

19 A. Yes sir. Photographs were taken at the autopsy.

20 Q. And were x-rays likewise taken at the autopsy?

21 A. Yes sir.

22 Q. X-rays of Mr. Wise?

23 A. Yes sir.

24 MR. AYER: Your Honor, if the photographs of the
25 autopsy are intended to be introduced, I have a matter to take

1 up with the Court. Those have not been previously agreed to
2 be admitted.

3 THE COURT: These -- are these some different
4 photographs?

5 MR. RIDDLE: These have not been pre-marked, Your
6 Honor.

7 THE COURT: Okay. All right.

8 Mr. Foreman, ladies and gentlemen of the jury, let me
9 ask that you go to the jury room. Do not discuss the case.

10 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
11 JURY.)

12 THE COURT: The jury is gone, and have y'all shown
13 these pictures that you are going to try to offer into
14 evidence to the Defendant?

15 MR. RIDDLE: Yes sir.

16 MR. AYER: Yes sir, they have, Your Honor, and that's
17 why I object. The photographs Solicitor Riddle had in his
18 hand -- I don't know if he has them in his hand now, but the
19 photographs that he ---

20 THE COURT: This -- you are going to have to go through
21 the witness thing incamera.

22 MR. RIDDLE: You want me to lay the foundation for
23 them?

24 THE COURT: Yes.

25 MR. RIDDLE: Okay.

1 MR. AYER: Your Honor, I might abbreviate this process.
2 The photographs that he had in his hand when he was
3 approaching Detective Hickman were different from the
4 photographs he has now. It may be that I don't object to
5 these photographs.

6 THE COURT: Yes. You know, I'm going to love the day
7 when we get like Federal Court and you have to disclose
8 everything before you even draw a jury. I don't know why you
9 waste the time.

10 MR. RIDDLE: No. He's seen all these, Your Honor.

11 MR. AYER: I have seen ---

12 THE COURT: Okay.

13 MR. AYER: I have seen them, and I'm going to object to
14 them.

15 THE COURT: All right. Let's go. Go through the
16 procedure.

17 BY MR. RIDDLE CONTINUED:

18 Q. Detective Hickman, at this autopsy, certain x-rays were
19 taken, were they not?

20 A. Yes sir.

21 Q. Okay. Let me show you these two, and ask you if you
22 can identify those.

23 A. Yes sir, I can.

24 Q. Those are x-rays taken from the autopsy of Thomas Wise?

25 A. Yes sir.

1 THE COURT: All right. What are the markings on
2 those, the numbers?

3 MR. RIDDLE: There are no numbers on these at this
4 time.

5 THE COURT: Oh, you haven't even marked them for I.D.
6 yet?

7 MR. RIDDLE: No sir. These have not been marked for
8 I.D. at this time.

9 THE COURT: All right.

10 COURT REPORTER: Judge, I'm marking all these as --
11 yesterday's date.

12 MR. RIDDLE: Your Honor, for the record, the two x-rays
13 have now been marked State's Number 32 and 33 for I.D.
14 purposes.

15 THE COURT: Okay.

16 (PHOTOGRAPHS MARKED STATE'S EXHIBIT NUMBER 32 AND 33 FOR
17 IDENTIFICATION ONLY.)

18 Q. Detective Hickman, referring to State's Exhibit Number
19 32, that's an x-ray of a -- I guess a front to back view of
20 Mr. Wise's body ---

21 A. Yes sir.

22 Q. ---And it shows the backbone and the pelvis?

23 A. Yes sir, back bone, pelvis here, and the legs.

24 Q. Yes sir, and the hip joints?

25 A. Yes sir.

Q. And it also shows the bright white spots, being the location of the pellets in -- the shotgun pellets, or the shotgun -- the buckshot pellets is what I'm trying to say.

A. Yes sir. That's where the pellets are located in the body.

Q. In the body of Thomas Wise. And then, in order to determine death, and things like that, also a lateral view, or a side to side view of Mr. Wise was taken by the x-ray; is that correct?

A. Yes sir.

Q. All right. And referring to State's Exhibit Number 33, does that show another view of Mr. Wise, and the pellets they contain -- excuse me?

A. Yes sir.

Q. All right.

MR. RIDDLE: Your Honor, I would offer these at this time.

MR. AYER: Your Honor, I actually have no objection to these particular documents.

THE COURT: All right. Number 32 and Number 33 come in without objection.

(X-RAYS MARKED STATE'S EXHIBIT NUMBER 32 AND 33 ADMITTED INTO EVIDENCE.)

Q. Now, Detective Hickman, what has been marked State's 34 for identification, what those that depict?

1 A. This shows the side of the victim, and this is before
2 we cleaned him up. You can see the entrance wounds to the
3 pellets. You can also see the pattern where they clustered
4 together. There's a scale in it, and it can be used later on
5 to determine the distance from -- the subject was standing,
6 but those would be the entrance wound. This would be the left
7 side, right about waste, and a little around to the back.

8 Q. All right. And that would be the top of his
9 buttocks ---

10 A. Yes sir.

11 Q. ---Here in the photograph?

12 A. Yes sir.

13 Q. Would it be fair to say that he is shot, according to
14 this photograph, to the rear of the side?

15 A. Yes sir.

16 Q. More in the back than in the front; is that right?

17 A. More from the rear, yes sir.

18 Q. Yes sir. And it generally depicts this area of Mr.
19 Wise?

20 A. Yes sir.

21 MR. RIDDLE: Your Honor, I would offer State's Number
22 34 at this time.

23 MR. AYER: Your Honor, I would object to the
24 introduction of this piece of evidence. Your Honor, I don't
25 think the State needs this piece of evidence to prove

1 anything. It has very little, if any, probative value. I
2 think Officer Snead testified on direct, using Mr. Swarat as a
3 model, as to where the buckshot went in. I have not objected
4 to the x-rays that indicate where the buckshot went in, and I
5 just submit to the Court, this photograph -- it may not be
6 intended to inflame the jury, but the result of the photograph
7 is to inflame the jury, and the prejudicial effect, or the
8 introduction of this photograph is far superior, far greater
9 than that of the probative value, because this photograph --
10 essentially what the photograph is trying to prove has already
11 been proven.

12 THE COURT: What is the probative value?

13 MR. RIDDLE: Your Honor, two things. It is
14 corroborative, not only the testimony of Mr. Snead, it is
15 going to be corroborative of the testimony of Quincy Timmons
16 regarding how the shooting took place. It is corroborative
17 and explanatory in the testimony of the Doctor. It is
18 corroborative of Mr. Hickman's testimony.

19 Additionally, Your Honor, the State is required to prove
20 malice as a necessary element of murder, and you can prove
21 malice through the use of firearms, obviously, but
22 maliciousness is a state of mind, and I think it is clearly
23 circumstantial evidence of a state of mind if someone gets
24 shot in the back, and it clearly goes toward the element of
25 malice that we are required to prove.

1 Your Honor, the photograph which I handed you is a blow-
2 up of the photograph that was admitted in the first trial. I
3 understand Your Honor is not bound by that, but this has been
4 up to the Supreme Court, and the photograph was previously
5 admitted, and has not been found objectionable by the Supreme
6 Court.

7 **THE COURT:** All right. I have not heard the testimony
8 of the witness, Quincy Timmons. You say this is corroborative
9 of the way he describes ---

10 **MR. RIDDLE:** Yes sir.

11 **THE COURT:** ---The -- the gunshot?

12 **MR. RIDDLE:** Yes sir.

13 **THE COURT:** And what was your other reasoning?

14 **MR. RIDDLE:** The other reason is, it is corroborative
15 of Dr. McMaster's testimony. Dr. McMaster is the pathologist.
16 He is ---

17 **THE COURT:** Is he going to testify?

18 **MR. RIDDLE:** Yes sir. He is going to call -- I don't
19 know whether we will reach him today or tomorrow, but we are
20 going to -- he is going to be called, Your Honor. I would
21 represent that to the Court, that he is going to be called.

22 It is also corroborative of the testimony of Mr. Snead,
23 and what he saw, and Detective Hickman and what he observed.

24 Additionally, Your Honor, it goes specifically toward
25 the element of malice, which the State is required to prove.

1 THE COURT: All right. I'm going to withhold my
2 ruling at this time, until I hear the other testimony of the
3 pathologist, and Quincy Timmons.

4 MR. AYER: Your Honor, is it my understanding you are
5 not going to admit this exhibit through Mr. Hick -- Detective
6 Hickman.

7 THE COURT: No. It's marked for identification through
8 him. I believe he said he took the photographs.

9 (PHOTOGRAPHS MARKED STATE'S EXHIBIT NUMBERS 34 AND 35,
10 FOR IDENTIFICATION ONLY.)

11 MR. RIDDLE: I don't know that I actually asked him
12 that, but I won't publish it to the jury, but I will lay the
13 foundation for it.

14 MR. AYER: Well, is it even going to be handed to Mr.
15 Hickman, Detective Hickman, and he handles it where the jury
16 can see it.

17 MR. RIDDLE: They won't see it.

18 THE COURT: Well, we can -- you know, we could use the
19 smaller version.

20 MR. AYER: All right.

21 MR. RIDDLE: Your Honor, I don't mind using the smaller
22 version.

23 THE COURT: Well, the jury is so close here it's going
24 to be very difficult to pass it up without them seeing
25 something.

1 MR. RIDDLE: Well, I mean I can hand it to him like
2 this and just ask him ---

3 THE COURT: Well, you could put it in an envelope and
4 let him slide it out so only he sees it, if you want to do it
5 that way. I've seen it done that way before. If you have one
6 of those brown envelopes, or a file folder, you can slip it
7 in.

8 MR. AYER: Your Honor, just for the record, I would
9 like to say, these exhibits were not pre-marked.

10 THE COURT: Uh huh (indicating positive)

11 MR. AYER: They were not pre-marked. I didn't want the
12 Court to be irritated with the defense. I would have -- if
13 these exhibits had intended to be pre-marked I had intended to
14 object to their admission all along.

15 THE COURT: Well, I understand that. I understand
16 that. The only exhibits that I understood were agreed to were
17 the ones that were called out this morning, and I admitted
18 them without objection, and he can use that manilla folder to
19 hand that up ---

20 MR. AYER: Can he hand up the smaller photograph in the
21 manilla folder? I don't see why he can't.

22 MR. RIDDLE: I think it might confuse the jury if it
23 comes in if I've handed him a little one to identify, and then
24 this is the one that we admit.

25 THE COURT: Well, you know, whatever you want to do.

1 Do you want to use the big one or the small one; it doesn't
2 matter, I mean, just so the jury doesn't see it, however you
3 are going to do it, and I'll instruct the witness to try to
4 examine it without publishing it to the jury.

5 MR. RIDDLE: Yes sir.

6 THE COURT: Okay.

7 All right. Are we ready?

8 MR. AYER: Yes sir, Your Honor.

9 THE COURT: All right. What other matters would this
10 witness -- are you going to ask to present that might cause us
11 to have to send the jury out again?

12 MR. RIDDLE: I just have this one other piece of
13 evidence -- I don't believe we will have any other matters
14 that we would need to send the jury out on.

15 THE COURT: All right. You may bring in the jury.

16 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
17 JURY.)

18 THE COURT: All right. You may continue.

19 DIRECT-EXAMINATION BY MR. RIDDLE CONTINUED:

20 Q. Detective Hickman, you attended the autopsy in this
21 particular case?

22 A. Yes sir, I did.

23 Q. And you were present when the autopsy on Mr. Wise was
24 done?

25 A. Yes sir.

1 Q. All right. And that autopsy, was it performed by Dr.
2 McMaster at Lexington Medical Center?

3 A. Yes sir.

4 Q. All right. And as part of the autopsy procedure, when
5 you are dealing with a shotgun wound, are x-rays taken?

6 A. Yes sir.

7 Q. And were x-rays taken in this particular case?

8 A. Yes sir, they were.

9 Q. And when they were put up on the view screens there at
10 the hospital, did you photograph those x-rays?

11 A. Yes sir.

12 Q. And do those x-rays fairly and accurately depict the
13 location of the various buckshot pellets within the body of
14 Mr. Wise?

15 A. Yes sir, they do.

16 Q. Let me show you State's Exhibit Number 33, and State's
17 Exhibit Number 32. Do you recognize these?

18 A. Yes sir, I do.

19 Q. And are those the photographs which you took of the x-
20 rays of Mr. Wise?

21 A. Yes sir, they are.

22 Q. All right. Step down, if you would, please.

23 Now, starting with State's Exhibit Number 32, tell the
24 jury what this depicts, Detective Hickman.

25 A. You will see -- this is the x-ray photograph, and you

1 can see the backbone running here, with the hips, hip bone
2 sockets, and the legs running here. You will see the big
3 white spots all over. That's buckshot located in this -- in
4 the body.

5 Q. Come down here and do that one more time, please sir.

6 A. If you will look here you will see the backbone running
7 down through the photograph. You will see the hips come out,
8 the hipbone, the hip sockets, and the legs running down. The
9 white marks all around here are the buckshot, the shot shells.

10 Q. Okay. Now this x-ray is an x-ray that's shot front to
11 back, or back to front?

12 A. Yes sir.

13 Q. Okay. And that would show, basically, where on the
14 person, side to side and up and down, the pellets are?

15 A. Yes sir.

16 Q. Do you also shoot an x-ray from the side, so you can
17 kind of tell how deep in the pellets are?

18 A. ---Yes sir.

19 Q. Okay. State's Exhibit Number 33, does that have a
20 portion of that side to side x-ray on it?

21 A. Yes sir. You will see the backbone again here, and
22 also you can see little white marks here where the pellets
23 are.

24 Q. Okay. And these were done at the time of the autopsy?

25 A. Yes sir.

1 (WITNESS SPEAKING TO THE JURY.)

2 A. See the backbone, the pellets here.

3 Q. You can't see all the pellets in the ---

4 A. No sir.

5 Q. ---Lateral shot?

6 A. No sir.

7 Q. Okay. Detective Hickman, as part of the autopsy
8 proceeding -- you may have a seat. I'm sorry.

9 As part of the autopsy proceeding, do you also take
10 photographs?

11 A. Yes sir, I do.

12 Q. Okay. And you actually would take photographs of the
13 individual being autopsied?

14 A. Yes sir.

15 Q. Let me show you this item, and ask you if you can
16 identify it.

17 A. Yes sir, I can.

18 Q. Okay. Is that a photograph which you took at the time?

19 A. Yes sir, it is.

20 Q. Does that fairly and accurately depict Mr. Wise at the
21 time of the autopsy?

22 A. Yes sir, it does.

23 MR. RIDDLE: And just for the record, Your Honor,
24 that's State's 34 for identification.

25 THE COURT: All right. Marked for I.D. only.

1 Q. Detective Hickman, 35 for identification. Is that also
2 a photograph which was taken at the autopsy?

3 A. Yes sir, it is.

4 Q. All right. And likewise, does that fairly and
5 accurately depict Mr. Wise's condition at the time?

6 A. Yes sir, it does.

7 Q. Now, after the x-rays and the photographs were taken,
8 Detective Hickman, the pellets that you observed, were they
9 recovered?

10 A. Yes sir, they were.

11 Q. And they were recovered by Dr. McMaster?

12 A. Yes sir.

13 Q. And that was, of course, in your presence?

14 A. Yes sir.

15 Q. Did you take possession of those pellets as Dr.
16 McMaster recovered them?

17 A. Yes sir, I did.

18 Q. Let me show you what's been marked State's 23, ask you
19 if you recognize that.

20 A. Yes sir, I can.

21 Q. That's your handwriting there?

22 A. This is my handwriting on the bottle, and these are the
23 pellets that we recovered from Mr. Wise.

24 Q. All right. These were taken at the autopsy?

25 A. Yes sir, they were.

1 Q. Were those pellets, as well as State's 21 and 22, the
2 shotgun waddings, were they all taken out to S.L.E.D. ---

3 A. Yes sir.

4 Q. ---To be examined by Agent Paavel?

5 A. Yes sir.

6 Q. All right. Now, Detective Hickman, at the time that
7 you first went out to the crime scene, and the time of the
8 autopsy, were you able to determine what type of clothing Mr.
9 Wise was wearing?

10 A. Yes sir.

11 Q. Specifically, Detective Hickman, what about his shirt,
12 or his sweatshirt?

13 A. He was wearing a white t-shirt, a pair of white socks,
14 tan shoes, had bluejeans on, had on white jockey shorts, a
15 blue t-shirt, and a white Micky Mouse sweatshirt.

16 Q. Sweatshirt with Micky Mouse on it?

17 A. Yes sir.

18 Q. Okay.

19 MR. RIDDLE: Thank you, Detective, and that's all I
20 have.

21 CROSS-EXAMINATION BY MR. AYER:

22 Q. Detective Hickman, State's Exhibit 21 and 22, were two
23 shotgun waddings; is that correct?

24 A. Yes. The shotgun waddings, yes sir. I'm not sure
25 about the numbers.

1 Q. 21 and 22.

2 A. Yes sir.

3 Q. These are two shotgun waddings?

4 A. Yes sir.

5 Q. These were both found at the scene ---

6 A. Yes sir.

7 Q. ---Where Mr. Wise was laying. Am I correct that two
8 shotgun waddings would indicate two shotgun blasts, Detective
9 Hickman?

10 A. No sir.

11 Q. Okay. Explain that for me then.

12 A. It's my understanding that there is -- in the shotgun
13 shell itself, there is a wadding in the front, and a wadding
14 in the back, behind -- betw -- sandwiching the pellets in
15 between, so there would be a wadding come out first, the
16 pellet, and then another wadding.

17 Q. So a shotgun shell would have two waddings in it?

18 A. Yes sir.

19 Q. All right.

20 MR. AYER: Thank you very much.

21 MR. RIDDLE: Nothing further.

22 THE COURT: Does anyone object to this witness being
23 excused?

24 MR. RIDDLE: No sir.

25 THE COURT: All right. The witness is excused.

1 A. Thank you, sir.

2 MR. RIDDLE: Your Honor, the State calls Rusty Manley
3 to the stand.

4 DAVID R. MANLEY, first duly sworn,
5 testified as follows:

6 DIRECT-EXAMINATION BY MR. RIDDLE:

7 Q. You are employed by the Cayce Department of Public
8 Safety?

9 A. Yes sir, I am.

10 Q. And currently you are in what position?

11 A. Currently I am Captain, or the Assistant Chief at the
12 Department.

13 Q. Okay. You are in charge of the Investigative Division?

14 A. I'm Captain with the Uniform Division. I'm just below
15 the Chiefs.

16 Q. Okay. So essentially you are the number two man at
17 Cayce?

18 A. Essentially, yes sir.

19 Q. All right. Back in 1993, Detective, what was your job
20 with the Cayce Department of Public Safety then?

21 A. In 1993 I was assigned to the Uniform Patrol Division,
22 as a patrolman.

23 Q. So you would have been the guy riding around in the
24 marked patrol car?

25 A. The guy doing all the work, yes sir.

1 Q. Okay. Mr. Manley, were you working the night of
2 February the 26th, and on into the early morning hours of
3 February the 27th?

4 A. Yes sir.

5 Q. And you were obviously working with the City of Cayce.
6 Do you have the City split up into patrol areas, or do you
7 patrol the whole City?

8 A. Depending upon personnel. We have -- at that time we
9 had three separate properties, and if we had enough personnel
10 to man those properties we each worked a property.

11 Q. Okay. And were you working a particular one that
12 night, or do you recall?

13 A. At the beginning of the night, I was working on
14 property three. We had some events transpire, and we got a
15 little short of manpower as far as actually working on the
16 road, so I was actually covering the property two, property
17 one at the City, toward the City of Columbia.

18 MR. RIDDLE: You talk real quiet, and I need for you to
19 speak up a little bit if you would. I'm having some trouble
20 hearing you.

21 A. Yes sir. I apologize.

22 MR. RIDDLE: That's all right.

23 Q. The events that transpired that you were talking about,
24 you are talking about like the armed robbery at the Conoco ---

25 A. That's it.

1 Q. ---And the armed robbery at the E-Z Coin?

2 A. Yes sir.

3 Q. Now you were working Patrol Division at that time; is
4 that correct?

5 A. Yes sir, that is correct.

6 Q. After they had those two armed robberies, what, if
7 anything, were you doing that night?

8 A. At the time of the armed robbery at the E-Z Coin
9 Laundry, we had numerous personnel out. The Chief was out,
10 Lieutenant Tim James at the time, over the Investigative
11 Division, all the investigators were out. We had S.L.E.D. on
12 the scene, and everyone was checking the property around the
13 E-Z Coin Laundry.

14 I checked with my Sergeant, and advised him that I felt
15 that, since there were so many people on this end of the City,
16 and due to the fact that we had already had an attempted at
17 the Conoco, which actually in West Columbia, due to the fact
18 we had the attempted armed robbery at the Conoco, and we had
19 the completed one at the E-Z Coin Laundry, with similar
20 descriptions in both, I felt that someone, namely myself,
21 should go to the other side of the City, and ride some of
22 those twenty-four hour stores over there, and just in case
23 anything were to happen over there, and to catch any other
24 calls that came up, or take care of any problems that
25 transpired.

1 Q. And did you, in fact, do that?

2 A. Yes sir, I did.

3 Q. And were you patrolling in the State Street/Frink
4 Street area as part of that decision?

5 A. Yes sir. There are several stores located on Knox
6 Abbot and State Street. They are twenty-four hour convenience
7 stores. One of those is the Pantry convenience store, located
8 at 2015 State Street in the City of Cayce.

9 Q. And did you ride by the Pantry at approximately 3:30
10 that morning?

11 A. I did. During the course of my rounds I was coming
12 back down State Street, headed toward Frink ---

13 A. Coming from Knox Abbott?

14 A. ---From Knox Abbott, yes sir ---

15 Q. Okay.

16 A. ---And when I was pulling up to where I could see the
17 parking lot of the Pantry, I noticed there were no vehicles in
18 the parking lot, which was not unusual.

19 George Cullifer was the Clerk there. I was familiar
20 with George. He had been working there for a while. I also
21 knew that George did not drive a vehicle, that he either rode
22 the City bus, or got somebody to give him a ride into work, so
23 that was not unusual for there not to be any cars in the
24 parking lot.

25 As I was driving down State Street I pulled in --

1 there's basically two entrances off Frink -- off State
2 Street -- excuse me -- off State Street into the Pantry
3 parking lot. I pulled into the first entrance, and pulled
4 around into the parking lot. My patrol vehicle was actually
5 on top of the yellow lines, where they mark -- where you can
6 park in perpendicular to the store. I was actually on the
7 yellow lines, with my driver's side to the door, the front
8 door of the store.

9 Q. All right. Now, you are coming down State Street,
10 away from Knox Abbott, correct?

11 A. Yes sir.

12 Q. Pantry on your left or your right?

13 A. It is on the left-hand side.

14 Q. All right. And you pull into the Pantry, and pull up
15 near the front doors?

16 A. Yes sir.

17 Q. All right. When you get up to the front doors, what
18 do you observe?

19 A. As I'm pulling in -- at that time the Pantry had a lot
20 of advertisements. They, you know, advertised cigarettes and
21 milk specials, and all that stuff, all over the front windows,
22 where everybody could see it, so you couldn't see inside the
23 store until you actually got up to the front doors. That was
24 the only way you could actually see inside where the clerk's
25 counter was.

1 I pulled up, I looked over, I observed a female inside
2 the store. Later determined it was Peggy Williams. She was
3 inside the store at one end of the counter. There was a black
4 male with a long-barrelled shotgun type weapon up underneath
5 her chin. I saw George, who was the clerk, standing on the
6 cash register side of the counter, with his left hand up in
7 the aid. He was punching the keys with his right hand, in an
8 attempt to try and open up the register door, and there was
9 another black male with a sawed-off shotgun standing over
10 George, in a manner such as this, pointing the gun at George.

11 Q. All right. Now, let me show you what's been marked
12 State's Exhibit Number 15. Is that the Pantry we have been
13 referring to?

14 A. Yes sir.

15 Q. Okay. That's the one located on State Street?

16 A. Yes sir.

17 Q. Step down here if you would, please sir.

18 Now, when you pulled in, did you pull in from this side,
19 or from this side?

20 A. As I said, there's two entrances off of -- this is
21 State Street runs here -- two entrances from State into the
22 Pantry parking lot was being -- one entrance, this being --
23 well, I'm sorry, the second entrance, first after the Lyle
24 Street, another entrance back here. I pulled up -- if you see
25 where the Moore's Potato Chip truck is -- I actually came from

1 that direction, down the front the store.

2 Q. And the doors would have been -- the doors to the store
3 would have been on your left?

4 A. Yes sir.

5 Q. Right outside the driver's side?

6 A. They were on the driver's side of my vehicle, yes sir.

7 Q. All right. And when you looked in, that's when you
8 saw what you just described?

9 A. Yes sir.

10 Q. Now, the long gun that you just described -- let me
11 show you State's Exhibit Number 2. Does that appear to be the
12 weapon that you observed?

13 A. Yes sir.

14 Q. And was this weapon the weapon pointed at Ms. Williams,
15 or the weapon pointed at Mr. Cullifer?

16 A. That was the weapon that was being held up underneath
17 Ms. Williams' chin.

18 Q. State's Number 3. Do you recognize that?

19 A. Yes sir.

20 Q. Which weapon was this?

21 A. That was the one that the -- was being pointed at
22 George, the clerk.

23 Q. George Cullifer?

24 A. Yes sir.

25 Q. All right.

1 MR. RIDDLE: You can have a seat, Detective Manley.

2 Q. When you observed this going on in the store, what did
3 you do, and what had your training taught you to do in that --
4 what are you suppose to do?

5 A. As I looked into the store, and realized what was going
6 on -- the suspect with the long shotgun made eye contact with
7 me, and as I ---

8 Q. The one with Ms. Williams?

9 A. Yes sir.

10 Q. Okay.

11 A. I was in my marked patrol car, in my police uniform.
12 It was obvious that he knew who I was.

13 Q. Blue lights on top?

14 A. Yes sir, blue lights on top. It was obvious that he
15 knew who I was, and I, of course, realized what he was doing.
16 At that time there were several concerns. One, I had actually
17 put myself in a bad position. I hadn't been doing it very
18 long at the time. I came into the store the wrong way. I
19 should have come in the other way.

20 Q. And why is that?

21 A. Because my -- I had no protection from me to him. I
22 was probably no more than six, maybe eight feet from the one
23 who had the double-barrelled shotgun on George. Very easily
24 could have turned around and shot me.

25 Q. Okay. You should have pulled in from the other

1 direction, so your car would be between you; is that what you
2 are saying?

3 A. Yes sir. Yes sir.

4 Q. All right. What was another concern that you had?

5 A. The other concern was for the safety of George, and at
6 the time I didn't know Peggy Williams.

7 Q. The customer?

8 A. Yes sir. There are several things that go through your
9 mind, and of course protection and safety of others is a
10 primary concern. If someone gets trapped inside of a
11 building, and they have no alternative, they may take
12 hostages, or they may actually escalate the situation to the
13 point it's above and beyond what it is at that time.

14 Q. What action did you take, if any, when you saw out of
15 your driver's side window what was going on inside?

16 A. At that time I decided it was better for me to pull off
17 from the front of the store, alert -- I knew we had multiple
18 units out at the E-Z Coin Laundry still. I knew I had a lot
19 of help in the area. I just had to get them to me, so I
20 pulled off from the front of the store, and called for
21 additional units on the radio, advised them I had an armed
22 robbery in progress at the Pantry.

23 Q. Now, speaking of the E-Z Coin and units there,
24 approximately how far is the E-Z Coin from the location you
25 were on State Street?

1 A. Maybe a mile at the most. It's not very far at all.

2 Q. Straight down Front Street.

3 Q. Yes sir. Yes sir. Just take a right on Frink and it's
4 straight down there on the right.

5 Q. Okay. Where you pulled out you pulled -- well, where
6 did you go when you pulled on through the parking lot? Tell
7 the jury what you did exactly.

8 A. As I was sitting there with my driver's side of the
9 door, looked over, realized what was going on, I pulled
10 straight ahead, which put me on the corner on Lyle Street,
11 which the Pantry is found -- the Pantry sits on the corner
12 of -- Lyle Street runs here, State Street runs here. Came out
13 on Lyle Street, came around, back onto State, and back into
14 the parking lot at the corner of the store -- at the corner of
15 the parking lot -- excuse me -- not the corner of the store,
16 but the corner of the parking lot.

17 Q. And as you made that turn there, what, if anything, did
18 you observe back in the direction of the store?

19 A. As I was bringing the front end of my car back around
20 into the parking lot, I observed the two individuals with the
21 guns, that had been inside the store, were now coming out of
22 the store, and running back toward that same Moore's Chip
23 truck, or back to the right-hand side of the store as you come
24 out.

25 Q. Where the chip truck is in the picture?

1 A. Where the chip truck is in the picture, yes sir.

2 Q. Was the chip truck there that night?

3 A. No sir, it was not.

4 Q. This photograph was taken later, after daylight?

5 A. Right.

6 Q. Okay. Now, when you saw them run out of that location,
7 what did you do at that point?

8 A. I exited my vehicle, and I knew there were two of them
9 and one of me, so what I did is, I set up where I could
10 surveil, or watch them, State Street, to see if they came up
11 that side, and to watch down Lyle Street, to see if they came
12 up that side, to see if I could track their progress from the
13 store.

14 Q. And did you ever see them down State Street or down
15 Lyle Street?

16 A. No sir. They did not come out either one of the two
17 streets that I could watch down.

18 Q. All right. Approximately how long before backup
19 arrived for you?

20 A. It seemed like a long time, but it was probably less
21 than two minutes.

22 Q. Okay. Now, after the backup arrived, did you go in the
23 store at that time?

24 A. I did. I made contact with George Cullifer and Peggy
25 Williams.

1 Q. Determined how they were doing?

2 A. Yes sir.

3 Q. Okay. Did you subsequently go around and behind the
4 store?

5 A. Yes sir. Once we had enough units on the scene to take
6 care of George and Peggy, I stepped around the side of the
7 store for two reasons, one to show S.L.E.D., as well as my
8 other units, which direction the suspects had taken, and also
9 to secure that scene, so to speak.

10 Q. All right. Now, The two individuals that you saw, one
11 had a long gun. Do you remember if he had anything on his
12 face or his head?

13 A. I don't recall if he had anything on his face. I
14 recall him wearing a dark -- dark green, like a three-quarter
15 length mid-thigh jacket, one of the heavy starter type
16 jackets. He also had on a black ball cap with either silver
17 or white writing on it. I don't recall what it said.

18 The second individual, I recall him having a stocking
19 type mask, pulled down, but it wasn't pulled down all the way.
20 It was like it was rolled up to his chin.

21 Q. Do you recall the color of that stocking mask?

22 A. I want to say a dark bluish grey.

23 Q. Okay. Was it a stocking mask like State's Exhibit
24 Number 4?

25 A. If it was -- it may have been pulled down -- but it was

1 rolled up. It wasn't pulled, like I say, all the way down the
2 neck.

3 Q. All the way down?

4 A. It was -- it stopped right about here, about the chin.

5 Q. Okay. After they run out of the store, you go around
6 back, after you have secured Ms. Williams and Mr. Cullifer.

7 Do y'all find anything out there?

8 A. We do. The first thing we noticed was the short sawed-
9 off shotgun, laying on the ground.

10 Q. State's Exhibit Number 3?

11 A. Yes sir.

12 Q. Okay. What else do you find out there?

13 A. There was a shotgun shell found, and I wasn't there
14 when it was found, but I understand that, directly on the side
15 of a fence, which there's a large sixteen foot wooden fence
16 running behind the Pantry, that separates the Pantry from a
17 residential section, that the long-barreled shotgun was found.

18 Q. State's Exhibit Number 2?

19 A. Yes.

20 Q. All right. Detective D.I. Blackwell, he's also
21 employed at Cayce; is that correct?

22 A. Yes sir, he is.

23 Q. And he does crime scene for the City of Cayce, does he
24 not?

25 A. Yes sir.

1 Q. And did he respond to the Pantry at that time?

2 A. Yes sir, he did.

3 Q. He, in fact, made some photographs of these weapons
4 where they lay?

5 A. Yes sir.

6 Q. Okay. And he collected these weapons ---

7 A. Yes sir.

8 Q. ---And ammunition that was found?

9 A. Yes sir. He collected all the evidence there on the
10 scene.

11 Q. Detective Manley, when you observed Mr. Cullifer doing
12 like this, pecking at the cash register, approximately how far
13 away was the man holding the short shotgun from him?

14 A. From George?

15 Q. Yes sir.

16 A. Immediately on the other side of the counter. I mean,
17 it was two, two and a half feet.

18 Q. Okay. And show the jury how he was holding this
19 shotgun.

20 A. (DEMONSTRATING) He had the shotgun like this. If you
21 were George ---

22 Q. Uh huh (indicating positive)

23 A. He had the shotgun like this, and George had his left
24 hand up in the air, and he was pecking on the keys with his
25 right hand.

1 Q. About this distance?

2 A. Yes sir.

3 Q. Stay right there. The long-barrelled gun, was this the
4 gun on the custo -- on the female?

5 A. Yes sir, on Peggy Williams.

6 Q. Okay. And you observed Ms. Williams and the second
7 individual in there with this gun?

8 A. Yes sir.

9 Q. Approximately how close was the second individual to
10 Ms. Williams?

11 A. When I looked in the window, I could see him at -- he
12 wasn't like down on his knees, but he was bent down, with the
13 shotgun here, so I mean he was what, a foot, foot and a half,
14 maybe ---

15 Q. Okay.

16 A. ---From Ms. Williams.

17 Q. And the barrel -- the muzzle of that shotgun, the
18 business end, was up under her chin?

19 A. Yes sir.

20 Q. Now, let me just ask you this. After the guns and all
21 were recovered, after y'all had dealt with Ms. Williams and
22 Mr. Cullifer, do you all secure from that area from the
23 Pantry?

24 A. We eventually left that area. We spent a great deal of
25 time in that area ---

1 Q. Uh huh (indicating positive)

2 A. ---Trying to set up a perimeter, trying to track with
3 the S.L.E.D. bloodhounds, gathering all the evidence and
4 getting all the statements and everything that we could, and
5 we did leave that area after a couple of hours.

6 Q. Did you have an opportunity to go back down there at
7 just a little before six o'clock in the morning, to the
8 business next-door, Redmond Signs?

9 A. Yes sir. We -- actually we -- I say we -- my
10 dispatcher had received a phone call from the business owner,
11 which was Leo Redmond, advising that there was a strange
12 automobile in his parking lot that was running, and he did not
13 know who it belonged to.

14 Q. And did you go down there and observe that automobile?

15 A. Yes sir.

16 Q. Okay. And the steering column in that automobile, was
17 it intact, or was it broken?

18 A. It was broken, sir.

19 Q. And was the car running at the time?

20 A. It was running when we arrived, and the steering column
21 was broken, and there were no keys in the ignition of the
22 vehicle.

23 Q. State's Exhibit Number 26, is that the vehicle that
24 y'all found there?

25 A. Yes sir.

1 Q. State's 27, same vehicle, after it had been towed out
2 to S.L.E.D.?

3 A. Yes sir, just a colorized version of it.

4 Q. Yes sir. This is black and white?

5 A. Yes sir.

6 Q. Okay. This is the condition -- 26 is how it was when
7 he found it ---

8 A. Right.

9 Q. ---Twenty-seven is as it was as it had been towed to
10 S.L.E.D.?

11 A. That's correct.

12 Q. All right.

13 MR. RIDDLE: Thank you, Detective Manley. That's all
14 the questions I have.

15 CROSS-EXAMINATION BY MR. AYER:

16 Q. Detective Manley, how are you?

17 A. Yes sir.

18 Q. You indicated that the man that had the long gun on Ms.
19 Williams, that he had on a dark hat; is that correct?

20 A. Yes sir.

21 MR. AYER: Thank you, Detective.

22 THE COURT: All right. Any other questions?

23 MR. RIDDLE: No sir.

24 THE COURT: All right. The witness may step down.

25 We will take a break at this time.

1 Mr. Foreman, ladies and gentlemen of the jury, while you
2 are in the jury room, do not discuss the case. We'll take
3 about fifteen minutes. Please follow the bailiff.

4 THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE
5 PRESENCE OF THE JURY.)

6 THE COURT: They sent out a question about taking
7 notes. I'm going to cover that first, and then we will call
8 you -- the witness.

9 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
10 JURY.)

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury, we received a note from the jury. I will read it at
13 this time. "Can we take notes during the testimony?" In this
14 case I had not allowed the jury to take notes. I anticipate
15 that we will be through with the testimony maybe by lunch time
16 tomorrow. In some cases that run three or four, five days or
17 longer we do allow the jury to take notes, but in this case
18 I'll just ask that you listen and observe carefully. If,
19 during your deliberations you need testimony replayed, we can
20 do it by audio tape. With that in mind though, let me just
21 remind you once again to please listen and observe carefully
22 as evidence is presented to you.

23 All right. You may call your witness.

24 MR. SWARAT: State calls George Cullifer.

25 GEORGE EVERETT CULLIFER, first duly

1 sworn, testified as follows:

2 DIRECT-EXAMINATION BY MR. SWARAT:

3
4 Q. Mr. Cullifer, good afternoon.

5 A. Good afternoon.

6 Q. Mr. Cullifer, where do you live?

7 A. 630 Wall Street, West Columbia, South Carolina.

8 Q. And how old are you, sir?

9 A. Thirty-seven.

10 Q. George, are you married?

11 A. No sir.

12 Q. Are you currently employed?

13 A. Yes sir.

14 Q. Where do you work, George?

15 A. I work at Wal-Mart Super Center on Number 1.

16 Q. Now, George, back in 1993, where did you work?

17 A. In '93 I was working at State Street Pantry, and Pantry
18 on 378 at Twelfth Street.

19 Q. Did you also, at some times, work at Columbia Farms, at
20 the chicken place?

21 A. Yes sir. That was in '94.

22 Q. Now, when we talk about that State Street Pantry -- I
23 show you State's Exhibit Number 15. Is that the State Street
24 Pantry right there?

25 A. Yes sir.

1 Q. Now, specifically, George, on February 27th of 1993,
2 were you working at the State Street Pantry?

3 A. Yes sir.

4 Q. Do you recall what hours you were working that
5 particular night?

6 A. Eleven P.M. to 7 A.M. in the morning.

7 Q. So eleven P.M. would have been on the 26th of February,
8 then on into the 27th, the next morning; is that -- is that
9 right?

10 A. Yes sir.

11 Q. Now, the State Street Pantry, is that somewhere close
12 to Frink Street?

13 A. Yes sir. Just as you cross over the first railroad
14 track would be Frink Street.

15 Q. And that's in Cayce?

16 A. Yes sir.

17 Q. Now, George, what were your duties at the Pantry on the
18 night of the 27th? What was your job there?

19 A. My duties were run the cash register, stocking,
20 cleaning up.

21 Q. Okay. So you would stock the business?

22 A. Yes sir.

23 Q. You were running the cash register?

24 A. Yes sir.

25 Q. And also you would clean up the business when customers

1 weren't in the store?

2 A. Yes sir.

3 Q. Now, was it a busy night that night, George, or was it
4 a slow night?

5 A. It was relatively slow -- slow night.

6 Q. Was anybody working with you that night, George, or
7 were you working alone?

8 A. I was working alone.

9 Q. Now that night, did something unusual happen?

10 A. Yes sir.

11 Q. What exactly happened? What came to your attention
12 that night?

13 A. That night it was brought to my attention to black
14 males forcing a lady into the store.

15 Q. Two black male individuals forced a lady into the
16 Pantry?

17 A. Yes sir.

18 Q. Now, George, before that night, did you know the lady
19 that was forced into the Pantry?

20 A. No sir.

21 Q. You had never seen her before that night?

22 A. No sir.

23 Q. When they forced her into the Pantry, what -- how were
24 they dressed?

25 A. It was brought to my attention they -- they was wearing

1 -- one of them was wearing a black ski mask, and the other one
2 was wearing a red bandanna over his lower part of his face.

3 Q. So one of them had a ski mask on his face ---

4 A. Yes sir.

5 Q. ---And the other one had a red bandanna covering the
6 lower part of his face?

7 A. Yes sir.

8 Q. George, I'm showing you what's been marked as State's
9 Exhibit Number 4 in evidence. Does that appear to be the ski
10 mask that you saw that night?

11 A. It appears to be one like the one he was wearing that
12 night.

13 Q. So that one, or one just like it?

14 A. Yes sir.

15 Q. How about this item, Mr. Cullifer, State's Exhibit
16 Number 5. Does that appear to be the red bandanna that you
17 are speaking of?

18 A. Yes sir.

19 Q. Okay. And one man had on the ski mask ---

20 A. Yes sir.

21 Q. ---And one had on the bandanna?

22 A. Yes sir.

23 Q. Now, Mr. Cullifer, did these men -- were they armed in
24 any way? Did they have any type o guns?

25 A. Yes sir.

- 1 Q. What -- let me stop there for a second. When they came
- 2 into the store, did either one of the men come toward you?
- 3 A. Yes sir.
- 4 Q. Which man came toward you, the man with the ski mask,
- 5 or the man with the bandanna?
- 6 A. The man with the ski mask.
- 7 Q. And I'm showing you what's been marked as State's
- 8 Exhibit Number 3, and Number 2 in evidence. Which gun did the
- 9 man with the ski mask have, Mr. Cullifer?
- 10 A. The short one.
- 11 Q. This one right here?
- 12 A. Yes sir.
- 13 Q. And that individual came toward you?
- 14 A. Yes sir.
- 15 Q. What, if anything, did he do when he came toward you?
- 16 A. Came to the counter, holding the gun approximately
- 17 about an arm, half an arm length away from me.
- 18 Q. Half an arm length away, so ---
- 19 A. Yes sir.
- 20 Q. ---Would this be about right, as far as the distance?
- 21 A. Yes sir.
- 22 Q. Okay. And what was he doing with that gun?
- 23 A. Pointing dead center of my chest.
- 24 Q. He was pointing it toward your chest?
- 25 A. Yes sir.

- 1 Q. What, if anything, did he ask you to do?
- 2 A. He asked me to open the register that night.
- 3 Q. Now, was he polite about it, or was he rude when he
- 4 asked you to open that register?
- 5 A. He was -- he was rude about it.
- 6 Q. Did he curse at you in any way ---
- 7 A. Yes sir.
- 8 Q. ---When he asked you to open that register?
- 9 A. Yes sir.
- 10 Q. Now, Mr. Cullifer, were you able to open the cash
- 11 register?
- 12 A. No sir.
- 13 Q. And why couldn't you open the cash register, Mr.
- 14 Cullifer?
- 15 A. I was -- I was too scared.
- 16 Q. Did that please him that you couldn't open the
- 17 register?
- 18 A. No sir. He started -- he started hollering at me.
- 19 Q. He started yelling at you?
- 20 A. Yes.
- 21 Q. And were you able to ever open the cash drawer?
- 22 A. No sir.
- 23 Q. In addition to hollering at you, did he do anything
- 24 else? Did he do anything with that gun?
- 25 A. When I couldn't open the register he came around to the

1 back of the counter. By that time I was -- I was backing up,
2 telling him I couldn't open the register, and when he came
3 around he came at a -- sideways, and hit me in the chest with
4 the butt of the gun.

5 Q. So he hit you in the chest with the butt of this
6 shotgun?

7 A. Yes.

8 Q. And that's after you couldn't open the register?

9 A. Yes sir.

10 Q. All right. Did he knock over anything inside the
11 store when he came back there with you, behind the cash
12 register?

13 A. Yes. When he was starting to come around he knocked
14 over a cigarette display, knocked it onto the floor.

15 Q. Did he strike you hard, Mr. Cullifer?

16 A. Yes sir.

17 Q. Now that same man that had the ski mask and the short
18 shotgun, how did he compare size wise to the man with the
19 bandanna?

20 A. The one with the bandanna was a little bit taller than
21 him, and a little bit slimmer than him.

22 Q. So the man that hit you with the shotgun, he was
23 shorter and stockier than the man with the bandanna?

24 A. Yes sir.

25 Q. This one was taller and thinner?

1 A. Yes sir.

2 Q. The man with the bandanna, what did he do? Where was
3 he during the time that this man was trying to get you to open
4 the cash drawer?

5 A. He was -- he was about the distance that you are
6 standing. He was holding the lady hostage while all this was
7 going on.

8 Q. Later on, after the robber -- did you learn her name?
9 Were you introduced to her?

10 A. Yes sir.

11 Q. What do you know her name to be?

12 A. Peggy Williams.

13 Q. He was on Peggy Williams. The man with the bandanna
14 was on Peggy Williams?

15 A. Yes sir.

16 Q. And this gun here, State's Exhibit Number 2, is this
17 the gun that the man with the bandanna on Peggy Williams had?

18 A. Yes sir.

19 Q. What was he doing with that gun, George? Could you see
20 what he was doing with that gun?

21 A. It was pointing at -- dead center of her chest.

22 Q. George, if you could show me, how close was Peggy to
23 the man that was holding the gun on her?

24 A. How close Peggy was to him?

25 Q. Yes sir.

1 A. About -- about like the Bible, right -- right in
2 between you and the Bible.

3 Q. Almost touching her?

4 A. Yes.

5 Q. So -- so real close together?

6 A. Yes.

7 Q. And he had that long gun on her?

8 A. Yes, had it on her chest.

9 Q. And that was the man with the bandanna that was taller
10 and slimmer?

11 A. Yes.

12 COURT REPORTER: Excuse me. Your answer please, aloud.
13 What was your answer?

14 A. My answer -- please repeat the question.

15 Q. Yes sir. The man with the bandanna, with the long gun,
16 he was almost touching Peggy?

17 A. Yes sir.

18 Q. Now, Mr. Cullifer, at the time the robbery was going
19 on, some point in that time, did you see a Cayce police
20 officer pull up into the parking lot of the Pantry?

21 A. Yes sir.

22 Q. And do you know that Officer to be Captain Manley now?
23 Have you met him since then?

24 A. Yes sir.

25 Q. Do you recall him from that night?

1 A. Yes sir.

2 Q. And he pulled up into the parking lot here in State's
3 Exhibit Number 15, right in front of the Pantry?

4 A. Yes sir.

5 Q. Yes sir.

6 Q. The two men, Mr. Cullifer, the one on you at the cash
7 drawer, and the one on Peggy, when Captain Manley pulled up,
8 what did they do?

9 A. They -- they had looked out -- outside. Approximately
10 thirty -- thirty to forty-five second after he had pulled up,
11 they had looked outside and when they seen him, both of them
12 took off for the door, and went to the right.

13 Q. So as they left the front of the Pantry -- showing you
14 State's Exhibit Number 15, they would have left out these
15 doors and gone to your right?

16 A. Gone -- gone toward -- toward the right where that
17 Moore's truck was.

18 Q. So they would have run in the direction of this truck
19 that's in the photograph?

20 A. (NODS HEAD AFFIRMATIVE)

21 Q. Mr. Cullifer, after they ran out the door, did you see
22 them again that night?

23 A. No sir.

24 Q. Did they take their ski mask with them?

25 A. Yes sir.

1 Q. How about the bandanna?

2 A. Yes sir.

3 Q. How about this short-barrelled shotgun, State's Exhibit
4 Number 3, did they take that with them?

5 A. Yes sir.

6 Q. And also the long gun that was on Peggy?

7 A. Yes sir.

8 Q. Mr. Cullifer, you had been hit by that shotgun that
9 night. Were you injured?

10 A. Yes sir.

11 Q. Did you have to go to the hospital?

12 A. Yes sir.

13 Q. Were you transported by E.M.S. to the hospital?

14 A. Yes sir, I was.

15 MR. SWARAT: Mr. Cullifer, thank you for your time.
16 Please answer any questions the defense may have for you.

17 MR. AYER: May it please the Court. Your Honor, the
18 defense has no questions for Mr. Cullifer?

19 THE COURT: Any objection to this witness being
20 excused?

21 MR. SWARAT: No, Your Honor.

22 MR. AYER: None, Your Honor.

23 THE COURT: All right. The witness is excused.

24 MR. SWARAT: Your Honor, may we approach?

25 THE COURT: Uh huh (indicating positive)

1 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

2 THE COURT: Mr. Foreman, ladies and gentlemen of the
3 jury, it appears the next witness may be rather lengthy, and
4 rather than keep you here beyond five o'clock, we will -- as
5 far as you are concerned we are going to stop for the day.

6 Once again, while you are away, do not discuss your
7 testimony among yourselves or with anyone else. Should there
8 be a report in the media, that is, a newspaper or similar
9 publication, radio or television, or even the internet, do not
10 read, listen to, or view these reports. You are to base your
11 verdict in the case solely on the evidence, and the law that
12 you received in the courtroom.

13 When you return tomorrow morning, please allow yourself
14 enough time to park your automobile and be in the jury room no
15 later than 9 A.M.

16 At this time everyone else please remain in your seats.
17 The jury is excused until 9 A.M. tomorrow morning.

18 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right.. The jury has been excused for
21 the day. Do you want to take up this matter incamera with the
22 witness on the identification?

23 MR. AYER: Your Honor, could I have five minutes to
24 look over and ---

25 THE COURT: Sure.

1 MR. AYER: ---Prepare somewhat for my argument? I
2 haven't looked at this in a day or two.

3 THE COURT: Okay. We'll take five minutes.

4 MR. AYER: Thank you, sir.

5 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
6 THE PRESENCE OF THE JURY, THE JURY HAVING BEEN DISMISSED FOR
7 THE DAY.)

8 (NOTE FROM THE JURY CONCERNING TAKING OF NOTES MARKED
9 COURT'S EXHIBIT NUMBER 3.)

10 (DEFENDANT'S REQUESTS FOR VOIR DIRE MARKED COURT'S
11 EXHIBIT NUMBER 4.)

12 THE COURT: All right. We are incamera. This is --
13 has to do with an identification question. Y'all ready?

14 MR. SWARAT: State's ready, Your Honor.

15 THE COURT: Okay.

16 MR. SWARAT: State calls D.I. Blackwell.

17 MR. AYER: Your Honor, may we approach the bench? THE

18 COURT: Well ---

19 MR. AYER: We don't need to approach the bench now.

20 THE COURT: Unless you want to.

21 MR. AYER: My motions had to do with Ms. Williams, and
22 I'm confused, I'll admit, as to why D.I. Blackwell is being
23 called.

24 MR. SWARAT: That's who showed her to photo line-up.

25 MR. AYER: That's who showed her the photo line-up?

1 Okay. I'm sorry. Thank you.

2 MR. SWARAT: Your Honor, do we want Ms. Williams out of
3 the courtroom during Mr. Blackwell's testimony?

4 THE COURT: Well, since they asked that all the
5 witnesses be sequestered, I suppose we ought to keep her out
6 while Mr. Blackwell testifies, then we can bring her in when
7 we need her.

8 D. I. BLACKWELL, first duly sworn,
9 testified as follows:

10 DIRECT-EXAMINATION BY MR. SWARAT:

11 Q. Detective Blackwell, by whom are you employed?

12 A. Cayce Public Safety.

13 Q. And were you employed with Cayce Public Safety back in
14 February of 1993?

15 A. Yes sir, I was.

16 Q. And were you involved in the investigation of these
17 crimes?

18 A. Yes sir, I was.

19 Q. Among your many duties -- I know you went to the crime
20 scene and processed the evidence, and collected evidence, did
21 you also show photo line-ups to some of the potential
22 witnesses in this case?

23 A. Yes, I did.

24 Q. Would one of those witnesses be Peggy Williams?

25 A. Yes.

1 Q. And she was the lady that was held up inside the Pantry
2 store on State Street?

3 A. Yes sir.

4 Q. Do you recall when you had contact with Ms. Williams?

5 A. I would have to look at the sheet. Would be the 28th
6 of May, 1993.

7 Q. On May the 28th of 1993, where did you meet with Ms.
8 Williams?

9 A. At Cayce Public Safety.

10 Q. And this robbery was on February the 27th of '93?

11 A. That's correct.

12 Q. So approximately three months later?

13 A. Yes.

14 Q. Detective Blackwell, where did you get -- you showed
15 her some photographs?

16 A. Yes.

17 Q. Where did you get the photographs that you showed to
18 Ms. Williams?

19 A. Detective Braughn gave them to me.

20 Q. And where did he get them from, sir, if you know?

21 A. The Lexington County Sheriff's Department, I believe.

22 Q. So Lexington County Sheriff's Department?

23 A. Yes sir.

24 Q. So the Cayce Police Department didn't generate those
25 photographs?

1 A. No sir.

2 Q. I'm showing you a stack of pictures. Ask you to take a
3 look at those. Do those appear to be copies of the line-ups
4 that you showed Ms. Williams on May the 28th, 1993?

5 A. Yes sir.

6 Q. And how many line-ups are there?

7 A. There's a total of three line-ups.

8 Q. And how many pictures in each line-up?

9 A. Six.

10 Q. So that would be a total of eighteen separate
11 photographs?

12 A. That's correct.

13 Q. Now, Detective Blackwell, are all the individuals in
14 those photographs of the same race?

15 A. They are the same race. Each one of them would be
16 similar age, weight, same general characteristics.

17 Q. Okay. So you can't put one white male with five black
18 males if you are trying to identify one white male?

19 A. No.

20 Q. You can't mix things up?

21 A. No.

22 Q. You are shooting for the same -- same race, same age,
23 roughly the same characteristics?

24 A. That's correct.

25 Q. Detective Blackwell, on May the 28th, 1993, did you

1 show Ms. Williams those photographs?

2 A. Yes sir, I did.

3 Q. Did you suggest to her, in any way, that she should
4 pick out anything?

5 A. No.

6 Q. Did you lean her in one direction or another on any of
7 those photographs?

8 A. Standard instructions are, I'm going to show you some
9 photograph; the subject may or may not be in there; if you can
10 pick him out, that is fine; do not feel that you have to pick
11 anybody out; if you cannot, that's fine; if you do see the
12 individual that's correct.

13 Q. And did she agree to view those photographs?

14 A. Yes sir, she did.

15 Q. And did she view all eighteen of them?

16 A. Yes sir.

17 Q. Did she pick any one of them?

18 A. Yes, she did.

19 Q. And who did she pick out, Detective Blackwell?

20 A. It would be Marcus Timmons, and he's a black male, five
21 foot eleven, a hundred and thirty-five pounds.

22 Q. Now, the photograph that she picked out, and all the
23 photographs that she looked at, was it just the facial area?

24 A. Basically, yes sir.

25 Q. Did she show any hesitation whatsoever in picking out

1 Marcus Timmons?

2 A. None.

3 Q. After she had picked him out, was she even told who she
4 picked out?

5 A. She was given a number that was on the original booking
6 sheet where the picture was generated from.

7 Q. Now where did that number come from, Detective
8 Blackwell?

9 A. This is on the -- it's the I.D. number for the
10 Lexington County Sheriff's Department Booking Sheet.

11 Q. And what was that number, Detective Blackwell, that
12 corresponded with Marcus Timmons' photograph?

13 A. The sheet reads, I picked out picture number 928098.
14 The Lexington County Sheriff's Department I.D. photo is
15 928098.

16 Q. And Marcus Timmons, and only Marcus Timmons has that
17 number?

18 A. That's correct.

19 Q. And she was never told, you picked out the right man?

20 A. That's correct, because at that time I did not know
21 myself.

22 Q. Did she show any hesitation whatsoever in her choice?

23 A. None.

24 Q. What were her words, if you remember, Detective
25 Blackwell?