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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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 TWO OF FOUR

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1 A. That's him, the best I recall.

2 Q. No doubt about it?

3 A. None.

4 MR. SWARAT: That's all I have of this witness, Your
5 Honor.

6 MR. AYER: May it please the Court.

7 THE COURT: Yes sir.

8 CROSS-EXAMINATION BY MR. AYER:

9 Q. Detective Blackwell, can I take a look at the
10 photographs?

11 Okay. Going through this with me, if you will. Are
12 these the exact documents that were handed to Ms. Williams, or
13 were they photographs?

14 A. Those are copies of the originals.

15 Q. Okay. These are photocopies of the original
16 photographs; is that right?

17 A. That's correct.

18 Q. Okay. Would she have been handed six photographs,
19 stapled or glued on a sheet of paper, or she would have just
20 been handed them one at a time?

21 A. She would have been -- all of them would have been
22 stapled or glued onto a piece of paper.

23 Q. Okay. Would it have been six on one piece of paper?

24 A. Just as they appear right there.

25 Q. All right. But the only difference, these are

1 photocopies. Do I understand your testimony that you would
2 have a sheet of paper, and their photographs would be glued to
3 the piece of paper?

4 A. There would be one photograph on the piece of paper.
5 All six photographs will be on that one photograph, on that
6 one sheet of paper.

7 Q. I'm a little slow. Say that one more time.

8 A. Those are generated -- that all -- is just one sheet of
9 paper, and all six pictures are on it.

10 Q. Okay. So she would be -- for instance, you would say,
11 Ms. Williams, here is a sheet of paper with six photographs on
12 it; is that correct?

13 A. I would show her the photographs. I wouldn't give that
14 exact words.

15 Q. Okay. But when you handed her the sheet of paper, it
16 would have six original pictures on it?

17 A. Yes sir.

18 Q. Okay. Were they in the order that they are depicted on
19 this document?

20 A. They cannot be changed.

21 Q. What do you mean, they can't be changed? Because this
22 is a copy?

23 A. No. When I state there are six individual photographs,
24 they are laid down in order, and printed all on one sheet of
25 paper. There are not six individual pictures on there.

1 Q. I'm sorry. I'm sorry. Can you tell me that one more
2 time?

3 A. This is one sheet of paper.

4 Q. Right.

5 A. Each one of these pictures is a part of that one piece
6 of paper. There are not six individual pieces of paper ---

7 Q. Right.

8 A. ---Photographs there.

9 Q. It's just one piece of paper with six pictures on it?

10 A. Right.

11 Q. Okay. And she -- and my question then would be, when
12 she is handed the sheet of paper with six pictures on it, were
13 they in the same order that they are here?

14 A. Yes sir.

15 Q. Okay. How is it that you go about making a copy of the
16 pictures that were handed to her?

17 A. It's put on a xerox copier.

18 Q. Okay. Is this reduced right here?

19 A. That -- to my recollection, that is the same size,
20 should be the same size.

21 Q. Okay. So this has not been reduced at all?

22 A. No.

23 Q. All right. Explain to me what you told Solicitor
24 Swarat about the numbering system. I don't see those numbers
25 on here that Solicitor Swarat mentioned.

Date: 8-28-00County: LexingtonVOIR DIRE94-CS-32-362/364/367)Judge: Dean Hall(00-CS-32-2738/3326/3327/3328)State/PX's. Atty: C. Dayton Riddle III, A.Sol.TAV Swarat, A.Sol.Marcus D. SimmonsDefense Atty: Carey AyerLisa Lee SmithReporter: Dinnie Eubank

No.	Name	Sex	Race	Court	Strikes		
					Plaintiff	Defense	Accept
					~~State~~		
	Victor S. Andriano	M	C			X ^①	
7	Joshua M. Goudelock	M	C				✓ ^①
8	Marianne D. Mellon	F	C			X ^②	
2	Margaret Coker	F	C			X ^③	
5	Douglas Bryant	M	C				✓ ^②
2	Carel McDonald	F	C				✓ ^③
14	Kimberly Richitelli	F	C				✓ ^④
13	Nell Hillper	F	C			X ^④	
9	Allison Ingram	F	C				✓ ^⑤
6	Oren Epting, II	M	C				✓ ^⑥
3	Donna Kerr	M	C				
10	Meyer Moore	M	C		X ^⑤		
8	Kyle McCree	F	C				✓ ^⑦
15	Arthur Peary	M	C			X ^⑥	
51	Susan Cockrell	F	C		X ^⑥		
52	Rick Isom	M	C			X ^⑦	
15	Linnie Edenfield	F	C			X ^⑦	
42	Paulette Whaley	F	AA				✓ ^⑧

In the court column, please indicate who made the motion to strike the jurors "for cause"
 a "C" for Court, "P" for Plaintiff or "D" for Defense. 254

1 A. You will not see it on -- no line-ups are shown any
2 more with numbers on them. The photograph is generated from
3 Lexington County Sheriff's Department, also we have a Booking
4 Sheet that will correspond with the picture, that has the I.D.
5 number on it.

6 Q. Okay. But now you -- I thought you told me -- and
7 again, I know I'm a little slow on this. I thought you told
8 Solicitor Swarat that there was a number next to the picture,
9 and she picked out -- she choose the number that corresponded
10 with the picture; is that right?

11 A. No.

12 Q. Okay.

13 A. I did not say a number was next to the picture.

14 Q. Okay. What -- what -- tell me about the number then?

15 A. The number -- the only number is on this booking sheet.

16 Q. Okay. So did she just say -- did she say it's number
17 four?

18 A. She says, that's him. I take and -- take the Booking
19 Sheet, and coordinate them up with the picture that's on
20 there.

21 Q. And then that's where the number comes in?

22 A. That's where the number comes from.

23 Q. Okay. When you say, that's him, what did she say, and
24 how did she go about pointing -- she pointed to Marcus
25 Timmons. Okay. Did ---

1 A. As best I -- is best I can recall at this time.

2 Q. Okay. What do you mean now by, as best you can recall?

3 A. It's been seven years, six years.

4 Q. Okay. Well, and I understand, but -- and that's not
5 your fault, but that's not Ms. Will -- that's not my fault.
6 As best you can recall, what did Ms. Williams do when you --
7 whenever she picked out Marcus Timmons?

8 A. As best I recall, she pointed at him, that's him.

9 Q. Okay. And she put her finger on the Marcus Timmons'
10 photograph?

11 A. Right.

12 Q. Okay. Were the numbers, one, two, three, four, five,
13 six, underneath the photographs?

14 A. Yes.

15 Q. Okay. And these are the three sheets that were handed
16 to Ms. Williams?

17 A. Those are copies of the three sheets that were handed
18 to Ms. Williams.

19 Q. Copies of the three sheets?

20 A. Right.

21 Q. Okay. The only difference is, they had photographs on
22 them rather than copies of the photographs?

23 A. That's correct.

24 Q. But the photograph is black and white?

25 A. The best I recall they are color.

1 Q. All right. All right. Are the photographs the mug
2 shots that are taken in the Defendants? Are they commonly
3 referred to as mug shots?

4 A. Yes.

5 Q. All right. Tell me -- you said to Mr. Swarat that,
6 when you handed -- excuse me. You said to Mr. Swarat, when
7 you handed Ms. Williams these photographs, you told her, I
8 think you said, he may be in there; he may not be in there; is
9 that correct?

10 A. Yes sir. I said, may or may not be in there.

11 Q. Okay.

12 A. That's a standard warning.

13 Q. All right. Tell me a little bit about the
14 circumstances surrounding why Ms. Williams was called up in
15 the Sheriff's Department to begin with.

16 A. Well, she came to Cayce Public Safety.

17 I was asked by Detective Braughn to -- that he was going
18 to be out, and not going to be available to show the line-up,
19 asked me to -- that he had made arrangements for her to come
20 up and view them, and he asked me to show them.

21 Q. Okay. So Detective Braughn is the Detective that asked
22 you to show them to Ms. Williams?

23 A. Right.

24 Q. Okay. Did you call Ms. Williams, or contact her?

25 A. Detective Braughn had made the arrangements.

1 Q. Okay. So you just met Ms. Williams up there?

2 A. That's correct.

3 Q. All right. Take me through what happens then when Ms.
4 Williams meets you up at Cayce Police Department.

5 A. As I previously stated, she -- advised we had some
6 pictures for her to view; the suspect may or may not be in
7 there; if she does not see the suspect, or she does not
8 identify anybody, there is no problem; if she is not certain,
9 don't pick him out, and if she does, advise me which one.

10 Q. Okay. Do you tell her anything -- do you tell her
11 anything along the lines of, if you have some idea that he
12 might be in there, let us know; if you think there's a fifty
13 percent chance he might be in there, let us know, or do you
14 say, Ms. Williams, unless you know he's in there, don't point
15 to him? Do you tell her anything along those lines?

16 A. No, I do not. I give her the standard, which I --
17 every time I show a line-up, that's what I tell them.

18 Q. Okay. And you don't know what Detective Braughn talked
19 to her about?

20 A. No, I don't.

21 Q. Okay. And I know you don't know what Ms. Williams
22 thinks in her head, but would you agree with me that, when you
23 call somebody up to look at a line-up, that it's common sense
24 that you think perhaps the person is in there?

25 A. No sir.

1 Q. Okay. You disagree with that?

2 A. I totally disagree.

3 Q. Well, I don't mean to be flippant, but do y'all ever
4 just say, hey, let's call somebody up here to come see if
5 somebody is in these line-ups?

6 A. It is quite often names of individuals come up in
7 investigations and the physical may fit, may -- and, you know,
8 certain things may fit, and we will put a photo line-up
9 together, and ask them to look.

10 Q. Okay. So you hand this -- do you hand her these three
11 sheets all at one time, or you hand them to her one at a time?

12 A. Normally I would hand them one at a time.

13 Q. Do you recall which one you did, back in ---

14 A. No, I do not.

15 Q. ---May 28th?

16 A. No, I do not.

17 Q. Okay. And again, how long do you think you met with
18 Ms. Williams before you handed her the photographs, as you
19 recall?

20 A. Well, five or ten minutes, or something like that.

21 Q. Just to go through the standard process -- procedure?

22 A. Yes sir.

23 Q. And then how long do you recall that she looked at the
24 photographs?

25 A. At this period of time, I couldn't tell you.

1 Q. So you don't know if it was five minutes or thirty
2 minutes?

3 A. It wasn't no thirty minutes. I can advise you of that.

4 Q. Okay. And I'm not ---

5 A. And it was a short per -- it was not a long period of
6 time.

7 Q. Okay. And I don't mean to pen you down, but I would
8 like to know what you think is not a long period of time. Was
9 it ten seconds, or was it five minutes?

10 A. If they look at them for five minutes, I consider that
11 a long period of time.

12 Q. Do you recall how long she looked at them?

13 A. No, I do not.

14 Q. Okay. In your mind you just don't recall it being very
15 long?

16 A. I just do not recall it being very long.

17 Q. Do you recall her voicing, or verbalizing any
18 consideration for anybody else in these photographs?

19 A. No, I do not.

20 Q. So Marcus Timmons was the only person that she gave any
21 indication of in viewing those photographs?

22 A. That is correct.

23 Q. Okay. And tell me what she said again when she picked
24 him out.

25 A. The best of my recollection, that's him.

1 Q. Okay. Did she say, that's him? Were those her exact
2 words?

3 A. The best of my recollection.

4 Q. Do y'all ever put -- this might be a stupid question,
5 but do y'all ever put people in a photo line-up that have
6 never been arrested?

7 A. Yes sir.

8 Q. You do. Where do you get those pictures from?

9 A. It depends. There are various pictures on file, of
10 various people. Driver's license could be one of them.

11 Q. Is it safe to say that everybody in this line-up was
12 more than likely arrested?

13 A. You are asking me a question I can't answer.

14 Q. Okay. And that's probably not a fair question.

15 And you say this photo line-up took place on May the
16 28th of '93?

17 A. Right.

18 MR. AYER: Ask the Court's indulgence one minute.

19 Q. Detective Blackwell, just one or two more questions.

20 Did Ms. Williams say anything to you at the time about
21 what -- any particular characteristics or features of Mr.
22 Timmons caused her to be able to identify him? Did she
23 comment on that?

24 A. Not that I recall.

25 MR. AYER: Thank you, sir.

1 THE COURT: Anything else of this witness?

2 MR. RIDDLE: No, Your Honor.

3 THE COURT: All right. You may step down.

4 All right. Let's -- these sheets that we had were not
5 marked for identification. We are going to need that, so
6 where did they end up?

7 MR. SWARAT: Your Honor, I will do that with the next
8 witness, or we can go ahead and agree to it now, go ahead and
9 have them marked.

10 THE COURT: Well, usually before you even show
11 something to a witness you would mark it, so you can say on
12 the record, I'm handing the witness exhibit so and so.

13 MR. SWARAT: Yes sir. I apologize.

14 THE COURT: Okay. So if you will let her mark them,
15 fine, identification, and then when you hand something to the
16 witness, refer to the number of the exhibit.

17 (THREE SHEETS, (A), (B), AND (C) MARKED STATE'S EXHIBIT
18 NUMBER 36, FOR IDENTIFICATION ONLY.)

19 COURT REPORTER: State's 36 for identification, three
20 sheets.

21 THE COURT: Okay. Did you mark both of them the same
22 number, or are you giving them different numbers?

23 MR. SWARAT: Your Honor, I was going to use these as a
24 group, as one exhibit.

25 THE COURT: Staple them together so you've got two

1 sheets of paper as one exhibit?

2 MR. SWARAT: Three, Your Honor.

3 THE COURT: Three?

4 MR. SWARAT: Yes sir.

5 THE COURT: Okay. Let's -- so the record is straight,
6 let's -- if we are going to have one exhibit number, let's
7 have an (A), (B), and a (C) then, and then they can refer to
8 (A), (B), or (C).

9 COURT REPORTER: 36, State's 36 for identification,
10 (A), (B) and (C).

11 THE COURT: Okay.

12 COURT REPORTER: Photocopies of the line-up. State's
13 37 is one sheet, captioned Cayce Department of Public Safety,
14 for identification.

15 (CAYCE DEPARTMENT OF PUBLIC SAFETY DOCUMENT MARKED
16 STATE'S EXHIBIT NUMBER 37, FOR IDENTIFICATION ONLY.)

17 COURT REPORTER: State's 38, for identification,
18 Lexington County Sheriff's Office Booking Report.

19 (BOOKING REPORT MARKED STATE'S EXHIBIT NUMBER 38, FOR
20 IDENTIFICATION ONLY.)

21 MR. SWARAT: State calls Peggy Williams.

22 MR. AYER: Your Honor, before Ms. Williams comes in, is
23 the State planning to call Deputy Braughn on this issue?

24 MR. SWARAT: I don't intend to, Your Honor.

25 THE COURT: Call who?

1 MR. AYER: Deputy Braughn. He's the one that had the
2 case, and he's the one that called Ms. Williams to come down
3 there, and if he's available, I would like to question him as
4 to what he told Ms. Williams whenever he asked her to come
5 down there.

6 MR. SWARAT: Send him a subpoena.

7 THE COURT: Well, we can have him here first thing in
8 the morning.

9 MR. AYER: Can we do that?

10 THE COURT: You can serve a subpoena on him, and have
11 him here first thing in the morning.

12 MR. AYER: Is he around?

13 MR. SWARAT: I don't know where he is.

14 MR. AYER: I know you don't know where he is, but did
15 he move to New York City or did -- is he three miles from the
16 courthouse?

17 THE COURT: I mean, who does he work for?

18 MR. SWARAT: Your Honor, I don't believe he's in law
19 enforcement any more. I really don't know where he is.

20 THE COURT: Somebody will know where he is.

21 MR. AYER: Do you have his full name?

22 MR. SWARAT: Not on me.

23 THE COURT: What agency did he work?

24 MR. SWARAT: He didn't testify in the first trial?

25 THE COURT: What agency did he work for?

1 MR. AYER: I don't know, Your Honor.

2 THE COURT: He worked for some agency.

3 MR. SWARAT: Yes sir.

4 THE COURT: Which one?

5 MR. SWARAT: Your Honor, he worked for the Cayce Police
6 Department.

7 THE COURT: All right. Well, call down there and tell
8 them I want to know where he is, and you are going to serve a
9 subpoena on him, just that simple.

10 All right. Let's go.

11 PEGGY WILLIAMS, first duly sworn,
12 testified as follows:

13 DIRECT-EXAMINATION BY MR. SWARAT:

14 Q. Ms. Williams, good afternoon.

15 Ms. Williams, on February the 27th of 1993, were you
16 inside the Pantry store that night?

17 A. Yes, I was.

18 Q. Prior to these two armed men coming into the store,
19 where were you?

20 A. Outside, on the telephone.

21 Q. At some time did you go inside the store, or start to
22 go inside the store from the pay phone?

23 A. Yes, I did.

24 Q. And when you started to go in the doors of the Pantry
25 store, what happened?

1 A. Two men came in directly behind me.

2 Q. Now, I'm showing you what's been marked as State's
3 Exhibit Number 2 in evidence. Is this the gun that was on you

4 ---

5 A. Yes, it was.

6 Q. ---During that robbery?

7 A. Uh huh (indicating positive)

8 Q. Let's talk a little bit about the man who had that gun
9 on you. Was he with you during the entire encounter, the man
10 with the long gun?

11 A. Yes, he was.

12 Q. Can you tell us a little bit about the lighting inside
13 that Pantry store? Was it well lit inside the store?

14 A. Well lit, very bright.

15 Q. Could you see him well?

16 A. Yes.

17 Q. Ms. Williams, if you could stand down. If you could
18 show me how close he was to you throughout that encounter.

19 A. (DEMONSTRATING)

20 Q. So actually physically touching during the encounter?

21 A. Yes.

22 Q. Okay. And if you would stay right here with me.
23 During the time when he was on you, what part of his body did
24 you focus on?

25 A. His eyes.

1 Q. You focused your attention on his eyes?

2 A. Yes.

3 Q. Was part of the lower part of his face covered with
4 anything?

5 A. Yes, it was.

6 Q. Other than the lower part of his face, could you see
7 from his nose, up through his eyes, a little bit of his
8 forehead?

9 A. Yes.

10 Q. Okay. And you were shoulder to shoulder with him,
11 almost touching, throughout that encounter?

12 A. Yes.

13 Q. Focusing on what part of him?

14 A. His eyes.

15 Q. Did you ever taken your attention off of his eyes?

16 A. No.

17 Q. Why did you focus your attention on his eyes?

18 A. I was trying to get his attention.

19 Q. Why were you trying to get his attention?

20 A. So he would look at me, and see my eyes and -- because
21 I was scared.

22 Q. What did you want him to do? What were you trying to
23 get him to do by looking at his eyes?

24 A. Just give up and leave, just ---

25 Q. During that entire encounter, did you have the

1 opportunity to study his face ---

2 A. Yes.

3 Q. ---And to preserve it in your memory?

4 A. Yes.

5 MR. SWARAT: If you will retake the witness stand.

6 Q. Ms. Williams, approximately how much time, shoulder to

7 shoulder, did you observe his face?

8 A. Five minutes or more.

9 Q. Less than ten minutes, more than ten minutes?

10 A. Less than ten minutes.

11 Q. So somewhere in between five minutes and ten minutes?

12 A. Yes.

13 Q. Looking directly at his face, shoulder to shoulder?

14 A. Yes.

15 Q. And you say, Ms. Williams, you focused on his eyes?

16 A. Yes sir.

17 Q. What, if anything, did you find to be unusual or

18 striking about his eyes?

19 A. They were just different; they were unique, almost doe

20 shape.

21 Q. You describe them as doe shaped?

22 A. Uh huh (indicating positive) Yes.

23 Q. That feature was unique in your opinion ---

24 A. Yes.

25 Q. ---Based on your observation that night?

1 A. Yes.

2 Q. Little more than five minutes in a well lit room; is
3 that accurate?

4 A. Yes.

5 Q. Shoulder to shoulder?

6 A. Yes.

7 Q. Now, Ms. Williams, later on, as this investigation
8 unfolded, did you give a statement to law enforcement ---

9 A. Yes, I did.

10 Q. ---Telling them a brief narrative of what happened that
11 night?

12 A. Yes.

13 Q. And sometime later, do you recall meeting with a
14 Detective Blackwell, down at the Cayce Police Department?

15 A. Yes.

16 Q. Would May the 28th of '93 be accurate?

17 A. Yes.

18 Q. Sometime after the robbery?

19 A. Sometime after the robbery.

20 Q. And did he ask you to look at some photographs?

21 A. Yes.

22 Q. Let's talk a little bit about the photographs. Do you
23 recall approximately how many photographs you looked at total?

24 A. It was in sequences, a series of them. I would say
25 fifteen to twenty.

1 Q. Somewhere between fifteen and twenty photographs, in
2 sequences?

3 A. Uh huh (indicating positive)

4 Q. So in groups of -- in smaller groups than fifteen to
5 twenty?

6 A. Yes.

7 MR. AYER: Your Honor, I object to leading.

8 THE COURT: Yes. Try not to suggest the answer. Let
9 her provide the answer.

10 Q. But they were in groups?

11 A. They were in groups.

12 Q. Total, in between fifteen and twenty?

13 A. Yes.

14 Q. And Ms. Williams, were all these photographs, were they
15 all members of the same race?

16 A. Yes.

17 Q. And what race was that?

18 A. Black.

19 Q. And roughly what age range were the pictures of these
20 individuals?

21 A. Eighteen to twenty-five.

22 Q. All relatively young black males?

23 A. Yes.

24 Q. Roughly the same physical characteristics, generally?

25 A. Yes.

1 Q. Ms. Williams, I'm showing you what's been marked as
2 State's Exhibit Number 36, for identification. This is
3 State's Exhibit Number 36(A), group of six pictures, the
4 second one is 36 (B), six more pictures, and 36 (C), six more,
5 total of eighteen photographs. I would like you to look at
6 those and see if those appear to be the photographs that you
7 were asked to see, asked to view, on May the 28th of '93.

8 A. They appear to be.

9 Q. In those photographs, do you see the individual who you
10 were standing shoulder to shoulder with in the Pantry store
11 for more than five minutes, looking in his eyes?

12 A. Yes, I do.

13 Q. And which individual is that?

14 A. This one.

15 Q. And you are pointing to the one on the far left bottom?

16 A. Yes.

17 Q. Okay.

18 MR. SWARAT: Your Honor, let the record reflect she has
19 identified Mr. Timmons' photograph.

20 Q. Ms. Williams, did Detective Blackwell suggest to you
21 that you should pick out anybody in these pictures?

22 A. No.

23 Q. Did you -- had you ever heard of a Marcus Timmons prior
24 to picking out that photograph?

25 A. No.

- 1 Q. Were you told that you had picked the right one ---
- 2 A. No.
- 3 Q. ---Or anything in relation to that photograph?
- 4 A. No.
- 5 Q. Ms. Williams, I'm showing you State's Exhibit Number 37
- 6 for identification. Do you recognize that form?
- 7 A. Yes, I do.
- 8 Q. And that's the form where you indicate that you picked
- 9 out a picture number?
- 10 A. Yes.
- 11 Q. On this date Investigation D.I. Blackwell showed me,
- 12 Peggy Williams -- that's you -- pictures at 1800 Twelfth
- 13 Street -- that's the Cayce Police Department. I picked out a
- 14 picture, 928098. Do you know what that number corresponds to?
- 15 A. No.
- 16 Q. Do you have any idea what that number means?
- 17 A. No.
- 18 Q. ...Which is the person, male, black, who committed the
- 19 crime of robbery at the Pantry, State Street. I hereby swear
- 20 and certify the above is the truth.
- 21 That's the form you signed?
- 22 A. Yes, it is.
- 23 Q. And is that your signature there?
- 24 A. Yes, it is.
- 25 Q. And Detective Blackwell showed you those photographs?

1 A. Yes, he did.

2 Q. Ms. Williams, in December of 1994, you had the
3 opportunity to be in the presence of Marcus Timmons during the
4 first trial. Of course we can't go into that in front of the
5 jury. I'm going to call it a hearing in front of the jury.
6 Did you have the opportunity to observe Mr. Timmons, get a
7 look at him, his face, his demeanor?

8 A. Yes.

9 Q. Is that the person at the robbery of the Pantry on
10 February 27th, '93?

11 A. Yes.

12 Q. Do you have any doubt about that whatsoever?

13 A. Not at all.

14 Q. One hundred percent certain?

15 A. One hundred percent certain.

16 MR. SWARAT: Your Honor, that's all I have.

17 CROSS-EXAMINATION BY MR. AYER:

18 Q. ~~Ms. Williams~~, the hearing, which was actually the
19 trial, and you just testified to, at that hearing -- at that
20 hearing you didn't testify that Marcus Timmons was the man who
21 put a gun to you that day at the Pantry, did you?

22 A. Say it again.

23 Q. At the hearing that Mr. Swarat just spoke of, which was
24 really the trial, the first trial, that the jury is not
25 suppose to know about, in that trial you testified, correct?

1 A. Yes, I did.

2 Q. Okay. In that trial it's true, you did not identify
3 Marcus Timmons as being the man who put the gun up to you at
4 the Pantry, did you?

5 A. I did identify him.

6 Q. You did identify him in that trial?

7 A. Yes.

8 Q. Okay. That's your testimony?

9 A. Yes.

10 Q. Okay. You remember identifying him under oath on that
11 witness stand?

12 A. Yes.

13 MR. AYER: Your Honor, we are going to have to approach
14 the bench.

15 Do you want me to go through the record of the first
16 trial now, or do you want to do that later?

17 THE COURT: I have -- I don't have the privilege of the
18 transcript of the first trial. I have no idea what she
19 testified to, so I'm at a loss.

20 Do you have the transcript you can ---

21 MR. SWARAT: Your Honor, I'm -- there is really no
22 reason to go through it. She was not asked this line of
23 questioning during the first trial. I have spoken to
24 Solicitor McMann, who tried the case previously. It was a
25 tactical decision on his part. He didn't put the photo line-

1 up, so it wasn't testified to in the first trial.

2 THE COURT: Well, you -- are you referring to a photo
3 line-up in the first trial, or you referring to an in court
4 identification?

5 MR. AYER: I don't think -- Solicitor, correct me if
6 I'm wrong, but I don't think in the first trial she I.D.d Mr.
7 Timmons through a photo line-up, and I don't think she I.D.d
8 him in trial, as being the person at the Pantry; is that
9 correct?

10 MR. SWARAT: I don't recall that in the transcript,
11 Your Honor, no sir.

12 THE COURT: All right.

13 MR. SWARAT: I don't understand what the issue is.

14 MR. AYER: Well, it just goes to the reliability issue,
15 to suppress her testimony as to the identification.

16 THE COURT: Okay. Well, you can question her about it,
17 and if you have some specific page or pages in the transcript
18 of the first trial that you want to show her to ---

19 MR. AYER: Well, I -- the thing is, I don't think it's
20 in there. I think what we have to do -- and Solicitor,
21 correct me if I'm wrong -- not trying to put words in Ms.
22 Williams' mouth, but I think what we would have to do is get
23 her to read the whole transcript.

24 THE COURT: Well, y'all want to mark the transcript and
25 let her read it over night, and you can ask her in the

1 morning.

2 MR. AYER: That would be fine.

3 MR. SWARAT: Your Honor, she ---

4 THE COURT: How long was her testimony?

5 MR. SWARAT: She does have a copy of it. If I recall,
6 it's probably twenty pages maximum. It might not even be that
7 long.

8 THE COURT: She has a copy of it?

9 MR. SWARAT: She does.

10 THE COURT: Can you show her -- does she have it here
11 today, or is it at home or ---

12 A. It's at home.

13 MR. AYER: If she wants to read it over night, I'll ask
14 her about that in the morning.

15 THE COURT: Okay. Well, can you give her the page
16 numbers so she can read it tonight, and then bring -- let me
17 just ask the witness if she would bring her copy in the
18 morning when you return.

19 A. Sure.

20 THE COURT: Okay.

21 MR. SWARAT: She has her entire testimony from the
22 previous trial.

23 THE COURT: That's what I'm saying. If she would bring
24 it with her in the morning she can use it on the witness
25 stand, if Mr. Ayer wants to ask her some additional questions.

1 MR. SWARAT: Okay.

2 BY MR. AYER CONTINUED:

3 Q. Ms. Williams, getting back to the Pantry, you
4 indicated, I think, to counsel, that Marcus Timmons had a --
5 was it a mask or the bandanna over his mouth?

6 A. It was a mouth covering.

7 Q. Did he have on a hat?

8 A. I can't remember.

9 Q. Okay. Could he have had on a hat?

10 A. He could have. I can't remember. I don't think so.

11 Q. Okay. And I think your testimony was that you remember
12 his eyes; is that right?

13 A. Yes.

14 Q. Okay. And you -- you wear glasses, as you have them on
15 right now, correct?

16 A. Yes.

17 Q. You didn't have your glasses on; is that right?

18 A. No, I didn't.

19 Q. Let me show you this statement, and you take all the
20 time you want to read it over. Is this a statement that you
21 gave on March the 1st of 1993?

22 A. Yes, it is.

23 Q. Okay. You want -- you want to take the time to read it
24 before I ask you about it?

25 MS. SMITH: Your Honor, may I have a moment with Mr.

1 Ayer while she reads over that statement?

2 (COUNSEL FOR THE DEFENSE CONFERS.)

3 MS. SMITH: Thank you, Your Honor.

4 MR. AYER: Thank you, Your Honor.

5 Q. Have you had a chance to read the statement, Ms.
6 Williams?

7 A. Yes sir.

8 Q. Is this your statement?

9 A. Yes, it is.

10 Q. When you gave this, I think Detective Braughn was a
11 witness, back on March the 1st of '93, so this was
12 approximately two days after the incident?

13 A. Yes.

14 Q. In looking at the statement, don't you indicate in this
15 statement that the person that had the gun to you had a ski
16 mask eye opening?

17 A. Yes.

18 Q. Okay. When you are referring to a ski mask, you mean a
19 ski mask that fits all over your head?

20 A. That's the word I used when I wrote this down, but I
21 mean, it was some type of facial covering, and I say ski mask.

22 Q. Okay. And when you say eye opening, what did you mean
23 by that?

24 A. Concentrating on the eyes, just remembering the eyes,
25 the eye openings.

1 Q. Okay. Do you think of a -- when you say ski mask, do
2 you mean this State's Exhibit Number 4 right here?

3 A. That's a ski mask.

4 Q. Okay. Is that what the man that had the gun to you had
5 on?

6 A. Not that I can remember now. It was something smaller.

7 Q. Okay. State's Exhibit 5, is this considered a ski
8 mask?

9 A. No. No. That's a bandanna, and I would have
10 remembered that, because that's red.

11 Q. Okay. Was this what the man that had the gun on your
12 had on?

13 A. No.

14 Q. Okay. So neither one -- the man that had the gun on
15 you did not have on State's Exhibit 4 or 5 ---

16 A. No.

17 Q. Is that correct?

18 A. That's correct.

19 MR. AYER: Ask the Court's indulgence for a moment.

20 I may have covered this, but you indicated, in your
21 March 1st statement -- you used the word ski mask; is that
22 correct?

23 A. That's correct.

24 Q. And did you take State's Exhibit 4 to be a ski mask?

25 A. Yes.

1 Q. Okay. But are you saying today that -- I don't mean
2 this particular ski mask, but are you saying today that the
3 man that had the gun on you didn't have on a ski mask at all,
4 or just didn't have this one on?

5 A. He had some type of facial covering, like a dark facial
6 covering.

7 Q. All right. Did it cover his nose?

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

9 Q. Okay. You used the word eye openings in your March 1st
10 statement, which was like two or three days after the
11 incident. Do you recall what you meant by eye opening?

12 A. When I said eye openings I remembered seeing his eyes -
13 --

14 Q. Okay.

15 A. ---Being able to see them.

16 Q. All right. Do you consider the eye openings in this
17 ski mask to be representative of the eye opening that you are
18 referring to in your March 1st statement?

19 A. No. It was a little bit more visible ---

20 Q. Okay.

21 A. ---The eyes were.

22 MR. AYER: Your Honor, I think that's all I have of Ms.
23 Williams. Thank you.

24 THE COURT: All right. Did you want to preserve her
25 for in the morning, as far as the transcript is concerned?

1 MR. AYER: Yes sir, if you don't mind.

2 THE COURT: Okay. All right.

3 MR. SWARAT: Your Honor, I think I have a few follow-up
4 questions.

5 THE COURT: Well, do you want to wait till he finishes
6 in the morning?

7 MR. SWARAT: Well, I can. That's fine.

8 THE COURT: Whatever you want to do.

9 MR. SWARAT: There are just one or two points.

10 REDIRECT-EXAMINATION BY MR. SWARAT:

11 Q. Ms. Williams, he talked to you about your eyeglasses.
12 Are you near-sighted or far-sighted?

13 A. I can't see far away.

14 Q. Okay. So you are near-sighted?

15 A. Near-sighted, just the opposite.

16 Q. As close as you were to this individual, would you have
17 needed glasses to view him, to see him clearly?

18 A. No.

19 Q. And it was well lit inside the store?

20 A. Yes.

21 Q. Ms. Williams, the person you picked out three months
22 after the robbery, and the person you see in the courtroom
23 today, same person?

24 A. Yes, it is.

25 Q. Is that the same person that you were face to face with

1 at the Conoco station on February 27th of '93?

2 A. Yes, it is.

3 Q. Do you have any doubt whatsoever about that?

4 A. Not at all.

5 Q. Can you describe the person you are speaking about in
6 the courtroom, as far as how he's dressed today?

7 A. He's dressed very nice today.

8 Q. Can you describe the clothes he's wearing?

9 A. A suit and a tie.

10 Q. Seated in the middle at the defense table?

11 A. Yes.

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

13 MR. AYER: Just one follow-up.

14 RECROSS-EXAMINATION BY MR. AYER:

15 Q. Ms. Williams, how did you get to the Pantry?

16 A. How did I get to the Pantry?

17 Q. Yes Ma'am.

18 A. Drove.

19 Q. You drove your car?

20 A. No. Friends of mine brought me there.

21 Q. Dropped you off?

22 A. Uh huh (indicating positive)

23 Q. How were you going to be in the Pantry?

24 A. I was making the phone call to my roommate to come pick
25 me up.

1 MR. AYER: Okay. Thank you, Ma'am.

2 THE COURT: Anything else of this witness today?

3 MR. SWARAT: No, Your Honor. As far as the photo line-
4 up, I don't know what the issue is on the transcript, because
5 it wasn't brought out in the first trial, wasn't testified to
6 in the first trial. This would be all the testimony about her
7 identification issues.

8 THE COURT: Okay.

9 MR. AYER: Excuse me, Your Honor.

10 THE COURT: He said the photo line-up was not brought
11 out in the first trial. I don't know, because I never have
12 read the transcript. Do you still want this witness to go
13 home, read the transcript, come back tomorrow, and we will do
14 this -- continue this incamera?

15 MR. AYER: Is the photo line-up going to be introduced
16 into evidence?

17 MR. SWARAT: Absolutely.

18 MR. AYER: Okay. Yes sir.

19 THE COURT: All right. And she says she has the
20 transcript at home.

21 A. Yes.

22 THE COURT: All right. If you would review that
23 tonight, and bring it with you tomorrow.

24 Ms. Williams, you are a witness in the trial of the
25 case. From this point on I'm going to instruct you not to

1 discuss your testimony with anyone, family member, friend,
2 someone that walks up to you on the street, any of the
3 attorneys, police officers. Do you understand my
4 instructions?

5 A. Yes.

6 THE COURT: Okay. All right. You are excused till 9
7 A.M. tomorrow morning.

8 What about this other witness? Have y'all had any luck
9 tracking him down?

10 MR. AYER: Yes sir, Your Honor. Ms. Smith spoke to
11 him, and I think he indicated to Ms. Smith that he did not
12 recall anything. He recalls the incident, but he just does
13 not recall the specifics, and I don't think -- I don't want to
14 take the Court's time to call him.

15 THE COURT: You do understand you can subpoena him if
16 you want him here in the morning?

17 MR. AYER: Yes sir.

18 THE COURT: Okay. That's up to you, if you want to
19 subpoena him, but you will have to make that decision.

20 MR. AYER: All right. All right. Thank you.

21 THE COURT: Anything else before we recess?

22 MR. SWARAT: Nothing from the State, Your Honor.
23 Nine o'clock in the morning?

24 THE COURT: Nine o'clock.

25 MR. AYER: Thank you, Your Honor.

1 THE COURT: Okay.

2 MR. SWARAT: Thank you, Your Honor.

3 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, AUGUST 30,
4 2000, OUTSIDE THE PRESENCE OF THE JURY.)

5 THE COURT: Is the State ready?

6 MR. RIDDLE: State's ready, Your Honor.

7 MR. SWARAT: State's ready.

8 THE COURT: The Defendant ready?

9 MR. AYER: Defendant is ready, Your Honor.

10 THE COURT: We had Ms. Williams on the stand. Is she
11 back?

12 MR. RIDDLE: Yes sir, she's here.

13 THE COURT: Okay.

14 MR. RIDDLE: Just one housekeeping matter. I don't,
15 obviously know how this is going to shake out yet, but
16 anticipating that Quincy Timmons may be unavailable, Your
17 Honor, I have gone back and taken a copy of his testimony from
18 the prior trial, and redacted it. I've got that for the
19 Court. I have already given a copy to defense counsel, but I
20 wanted to go ahead and give the Court one, since we are
21 obviously going to have to settle -- I guess settle -- almost
22 like settling a record before we ---

23 THE COURT: Well, it should be relatively easy to do,
24 because obvious from the Supreme Court's decision, you don't
25 want to tread on any of the ground that caused the problem

1 before.

2 MR. RIDDLE: Yes sir, and that's what I've done, is
3 redacted out any reference to the April 9th incident.

4 THE COURT: Okay. All right.

5 Do you want to bring Ms. Williams back in, and we will
6 finish with her, and then ---

7 MR. RIDDLE: I'll get her right now.

8 THE COURT: All right.

9 Yes, Ms. Williams, you are still a witness, and -- well,
10 let's -- let's place her under oath again since it's a new
11 day.

12 PEGGY WILLIAMS, first duly sworn,
13 testified as follows:

14 THE COURT: All right. We had recessed yesterday with
15 Ms. Williams on the stand, and we had provided her with a copy
16 of some, what twenty pages, I believe, and asked her to review
17 that, and did you bring your copies with you?

18 A. Yes, I did. They are in the other room though.

19 THE COURT: Huh?

20 A. They are in the other room.

21 THE COURT: Okay. Which room are they in? Can one of
22 the bailiffs go get it for you?

23 MR. RIDDLE: They have been in the Grand Jury room,
24 Your Honor.

25 THE COURT: All right.

1 Mr. Ayer, I believe you wanted to question her about
2 that ---

3 MR. AYER: Yes sir, Your Honor, that's correct. Do you
4 want me to wait till she gets the ---

5 THE COURT: Yes. We'll let her -- you have a copy, I
6 presume, and ---

7 MR. AYER: Yes sir.

8 THE COURT: ---Solicitor.

9 All right. You may proceed.

10 MR. AYER: Good morning, Ms. Williams.

11 **CROSS-EXAMINATION BY MR. AYER CONTINUED:**

12 A. Good morning.

13 Q. When we broke yesterday, you were given an opportunity
14 to read over your prior testimony. Have you read over that
15 prior testimony?

16 A. Yes.

17 Q. Okay. Do you agree with me, Ms. Williams, that nowhere
18 in that testimony did you ever identify Marcus Timmons as
19 being the person in the Panty that night?

20 A. I agree. I misunderstood the question, but as far as
21 identifying at the -- I didn't.

22 Q. Okay.

23 MR. AYER: Thank you, Ma'am.

24 Q. Let me ask you this. Going back to March, April and
25 May of '93, during the period of time between this incident,

1 February 27th, '93, and the time of the photo I.D. -- I think
2 you said that was May the 28th, '93; is that correct?

3 A. Yes.

4 Q. Okay. During that period of time, did you ever see any
5 type of composite drawing of Mr. Timmons, or whoever the
6 person was that held you in the Pantry?

7 A. No.

8 Q. Okay. Were you ever asked to sit down with an artist
9 and give descriptions of whoever the person was in the Pantry?

10 A. Not that I can remember, no.

11 Q. Okay. Fine. Did you ever see any -- anything that
12 resembled a photograph or a drawing of the person who perhaps
13 was the person that held you in the Pantry?

14 A. No.

15 Q. Okay. So is it fair to say, between February the 27th
16 and May the 28th, you never saw any pictures that were suppose
17 to resemble the person in the Pantry; is that correct?

18 A. That's correct.

19 MR. AYER: Okay. Ask the Court's indulgence one
20 moment.

21 That's all I have. Thank you, Ms. Williams.

22 THE COURT: Any other ---

23 MR. SWARAT: I don't have anything further, Your Honor.

24 THE COURT: All right. You may step down. Do you
25 want to return to the witness room.

1 Let me just ask you to keep up with your transcript
2 because we may need it later, okay.

3 Any other witnesses or evidence to be presented in the
4 issue of identification?

5 MR. SWARAT: Not on this issue, Your Honor, no.

6 THE COURT: And Mr. Ayer, any witnesses you wish to
7 call on this issue, or any evidence you wish to present?

8 MR. AYER: No sir, Your Honor.

9 THE COURT: Okay.

10 MR. AYER: Your Honor, I have some case law I would
11 like to submit in my -- in support of my motion to exclude --
12 suppress Ms. Williams' identification of Mr. Timmons.

13 THE COURT: All right. I'll be glad to hear from you.

14 MR. AYER: Your Honor, the defense would move to
15 suppress or exclude Ms. Williams' identification of Mr.
16 Timmons back in May of 1993, and I'm going to cite for the
17 Court the case of State v. Brandon, which I think -- it's a 19
18 -- it's actually a 2000 case I'm looking at in the advance
19 sheets, so I don't have the number off the top of my head.

20 COURT REPORTER: Would you spell that, please -- excuse
21 me.

22 MR. AYER: B.r.a.n.d.o.n... The West Law number is
23 2000-79-7462. Your Honor, I think this case outlines the
24 factors that are to be considered in determining the
25 admissibility of testimony regarding pretrial identification.

1 Going through those factors, number one, the opportunity of
2 the witness to view the criminal at the time of the crime. In
3 my questions to Ms. Williams she indicated that she had -- did
4 not have her glasses on. She also indicated that she could
5 not see the gentleman at the counter very well. In her -- I
6 think on the stand yesterday, and in her testimony in prior
7 hearing, she indicated again that she didn't have her glasses
8 on; he was about five to seven feet, and she could not see him
9 very well. I would submit to the Court, based on the
10 cumulative evidence, she did not have a lot of time in the
11 Pantry. I think the evidence indicated that she was rushed
12 into the Pantry; Mr. Cullifer was asked to open up the
13 register; he couldn't open up the register, and then Mr.
14 Manley arrived, and the suspects fled out the back door. I
15 don't think a lot of time elapsed for -- during the time that
16 the individual that held Ms. Williams was there.

17 The second factor, Your Honor, is the degree of the
18 witness's attention to the events. I do think she indicated
19 in her responses that her attention was on the man who held
20 her, but she also indicated that a great deal of her attention
21 was on Mr. Cullifer, and on the gentleman that was telling Mr.
22 Cullifer to open up the cash register. I think Ms. Williams
23 even indicated that she verbalized to Mr. Cullifer, open up
24 the cash register and give them the money.

25 The third factor, Your Honor, is the accuracy of the

3

1 witness's prior description of the criminal. Your Honor, I
2 think this factor is pretty key. She testified yesterday that
3 on 3-1, March the 1st, which is two days after this incident
4 occurred, she gave testimony to the, I think it was the Cayce
5 Police Department, that the individual that was holding her
6 had on a ski mask with eye openings and mouth opening. That
7 was her testimony. At the trial, she testified -- and I think
8 she testified yesterday -- that the individual that was
9 holding her had something covering his mouth. She indicated
10 that his mouth was muffled, so she's got very inconsistent
11 testimony. Two days following the incident she says that he
12 had on the ski mask with eye openings and a mouth opening. At
13 trial later on she testifies that he had something covering
14 his mouth, and that his mouth was muffled.

15 Factor number four, Your Honor, is the level of
16 certainty demonstrated by the witness at the time
17 identification was made. I think that Blackwell indicated
18 that he didn't remember how long it took her to pick out Mr.
19 Timmons. I think there may be some testimony that -- from Ms.
20 Williams, that perhaps it didn't take her that long. I think
21 his testimony was that he didn't recall.

22 Testimony number five, Your Honor, is the time elapsed
23 between the crime and the identification. Your Honor, in this
24 case, three months went by, a day over three months went by
25 before Ms. Williams picked out Mr. Timmons as being the

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1 individual that held her. I would cite for the Court the case
2 of State versus Patterson, 522 S.E. 2d 845, 337 215. In that
3 case you have a lot of the similar factors here, except that
4 Ms. Williams, in this case, took three months. In this case I
5 believe the Defendant was picked out within two weeks, and the
6 Court says, citing the Patterson case, that the identification
7 took place only two weeks after the burglary. Our Supreme
8 Court has, on at least two occasions, on two occasions, found
9 reliable out-of-court identification made after similar lapses
10 of time, and then cites the case of State v. Stuart, 275 S.C.
11 447, 272 S.E. 2d 628, and State versus Gambrell, 274 S.C. 587,
12 266 S.E. 2d 78. I take from that language in the Patterson
13 case, if they say, on two occasions, the Court has found
14 reliable out-of-court identification made after similar lapses
15 of time, similar lapses of time being two weeks, I don't think
16 there are any cases, at least I haven't seen any -- the
17 Supreme Court indicates to me that, by not saying we have
18 cited a case where it was thirty days or sixty days or ninety
19 days, the Court is saying here, two weeks is okay. I would
20 submit to the Court that three months is not okay.

21 In the case -- State versus Brandon, that I mentioned
22 earlier, that outlines the factors, during this photographic
23 line-up the victim picked out the defendant the next day, the
24 following day, and that was allowed.

25 Again, I would like for Your Honor to review the Brandon

1 case, the State v. Patterson case, and I submit to the Court
2 that a thirty day -- a three month -- I'm sorry -- a three
3 month lapse in time, accompanied with the misidentification,
4 or the different identifications that Ms. Williams has
5 testified to, as far as what Mr. Timmons had on on one
6 occasion, and then testified he had something completely
7 different on another occasion, I would argue to the Court that
8 these factors compel her testimony regarding the photo I.D. to
9 be excluded.

10 Your Honor, lastly, in the case of State versus Tate,
11 341 S.E. 2d 380, 288 S.C. 101, this was a photographic array
12 much like yesterday was introduced, and the Supreme Court
13 reversed the lower court in this case because the photographic
14 I.D. itself implied that the Defendant had a criminal record,
15 and the Court says it improperly placed his character into
16 evidence. The criteria in that case indicates that the Court
17 has held that the introduction of a mug shot is reversible
18 error, unless it is shown that, number one, the State had a
19 demonstrable need to introduce the photograph, and number two,
20 the photographs themselves, if shown to the jury, must not
21 imply that the defendant had a prior criminal record, and
22 three, the photograph must not be introduced in such a manner
23 to draw attention to the source or indications, and again, the
24 Court reversed, indicating that just the existence in the
25 photograph had a prejudicial effect, and outweighed the

1 probative value.

2 Now, in that case it is distinguished from -- the facts
3 are slightly distinguishable to some degree, because I think
4 the defendant in the mug shot had the date on which he was
5 arrested wrapped around him somehow, and it became apparent as
6 to when he was arrested, and in our -- while our Defendant,
7 Mr. Timmons, did not have anything wrapped around him in the
8 shot, the result is the very same. Ms. Williams testified
9 that she identified Mr. Timmons on May the 28th of 1993. At
10 that time Mr. Timmons had not been arrested for the charges
11 that he is facing here today, so the implication is clear
12 that, at that time, Mr. Timmons had a prior record, and the
13 Court, in the Tate case, reversed the lower court on that very
14 ground, because it was clearly prejudicial, and clearly
15 introduced cha -- the defendant's character into evidence
16 improperly, so again, Your Honor, going through the factors --
17 I think the key factors are that Ms. Williams testified two
18 days later that he had on a ski mask with eye openings and a
19 mouth opening, later testified that he had something over his
20 mouth, muffled his mouth. She testified she didn't have her
21 glasses on, she could not see the other gentleman very well,
22 and could not see the clerk very well, and last -- well, next
23 to the last, the three-month lapse in time, Your Honor, I
24 think is crucial. Again, the case law that I've seen is one
25 day, and two weeks, and the Supreme Court indicates again, in

1 the Patterson case, that -- my inference is that two weeks is
2 kind of the outside of what they consider to be reasonable
3 time, and thirdly, under the Tate case, just the introduction
4 of the mug shot itself clearly tells the jury that Mr. Timmons
5 has a prior record, and that clearly introduces his character
6 into evidence improperly, and therefore I move that her
7 identification of Mr. Timmons be excluded, Your Honor.

8 THE COURT: All right.

9 MR. SWARAT: Your Honor, I would like to kind of take
10 these in reverse order.

11 First, the case that he handed up about the mug shot,
12 State versus Tate, it doesn't apply to our factual situation,
13 or the line-ups that were shown to Ms. Williams. In State
14 versus Tate, each of the photographs had Spartanburg County
15 Sheriff's Department around their neck, with the date.
16 Certainly ---

17 THE COURT: I'm aware of that case. I note the
18 distinction on that.

19 MR. SWARAT: Your Honor ---

20 THE COURT: That was pretty bad. The Tate -- the Tate
21 case was the case where the mug shots -- I mean, they were
22 your typical mug shots where you have the straight up standing
23 facial view, and the side view, and they had the little black
24 thing that they hold, or hang around their neck, with the date
25 and Spartanburg County Sheriff's Department on it. I mean,

1 it's obvious that those were mug shots, so I -- I don't think
2 there's any argument that the Tate case is distinguishable
3 from the factual situation we have here.

4 MR. SWARAT: Your Honor, the photographs we have here
5 are not marked in any way, as to where they came from. There
6 are no names identified with any of these individuals.

7 Your Honor, the key issues in photographic line-ups, as
8 Your Honor well knows, is whether the identification procedure
9 was so impermissibly suggestive as to give rise to a very
10 substantial likelihood of irreparable misidentification, and
11 that's quoting from State versus Patterson, which the defense
12 handed up.

13 Your Honor, Ms. Williams testified that she was face to
14 face, nose to nose with this individual in the Pantry store, in
15 good lighting, very well lit, I believe as she testified, that
16 she focused on his face for more than five minutes, face to
17 face, nose to nose.

18 Your Honor, he has brought out a lot about he -- she
19 couldn't see the clerk very well; she couldn't see the other
20 man very well. We are not talking about the other man. We
21 are talking about the man that was on her. She has testified
22 she doesn't need her glasses to be able to see that type of
23 distance; she's near-sighted. She testified that she focused
24 on his eyes because she was trying to plead to him to leave,
25 or to let her go, that she focused all her attention on that.

1 area of his face, and that his mouth was covered with
2 something, but she could see the top of his nose, his eye
3 area, and part of the rest of his face, focusing on that, nose
4 to nose, for more than five minutes.

5 Your Honor, the first opportunity that she has to view
6 Mr. Timmons is on May the 28th of '93. It's about a month
7 after he's arrested. He's arrested on April 9th of '93. When
8 she has the opportunity to view Mr. Timmons' photograph, she
9 is not shown just Mr. Timmons. It's not a one on one with a
10 picture; it's not a one on one show up identification; it's
11 not a physical line-up with one person. She is shown eighteen
12 photographs, three separate selections of six photographs, and
13 asked, do you see the person in these photographs that robbed
14 you, that was the robber at the Pantry store. She picks him,
15 she only picks him. And you heard her on the witness stand
16 about what she believes about her identification, one hundred
17 percent absolutely certain. She was absolutely certain then;
18 she's absolutely certain now.

19 Detective Blackwell testified that she pointed to his
20 photograph and said, that's him, that she didn't point to any
21 other individuals; he didn't suggest who she should pick out,
22 or that the robber would even been in those photographs.

23 Your Honor, I also want to note -- and it's kind of a
24 collateral issue -- that the Timmons cousins don't become
25 suspects until four days later. What law enforcement was

1 doing at that time is, they were showing line-ups of the
2 possible armed robbers in the area, people that had been
3 committing armed robberies in that general area of town.

4 Quincy Timmons' fingerprint doesn't come back until June
5 the 2nd of '93, that Quincy Timmons was the other robber, was
6 the man that was at the cash drawer with Mr. Cullifer. It's
7 ironic, I guess, or coincidental, I guess, the defense is
8 saying that Marcus Timmons is the other man she picks out.

9 Quincy Timmons will also be testifying, either from his
10 prior testimony in the record, or live and in color, that
11 Marcus Timmons was the man that did the robberies with him.

12 Your Honor, I don't know of a case that says that there
13 is any specific length of time from the time that the robbery
14 happens to the time he's identified. I believe the case of
15 State versus Thompson -- it's found at 281 S.E. 2d 216.

16 There was a two year lapse when the clerk testified in the
17 trial, and she said she was almost positive the defendant was
18 the robber. They said there was a likelihood of
19 misidentification because she had failed to pick him out of a
20 photo line-up on two separate occasions, that there was a
21 possibility of misidentification because she had failed to
22 pick him out on two separate occasions, so that the in court
23 identification two years later would have been improper. Ms.
24 Williams picks him out less than three months after the
25 robbery, the first time she has the opportunity to pick him

1 out, and out of eighteen possible choices. She says she is
2 absolutely one hundred percent positive.

3 Your Honor, I think -- obviously it's probably one of
4 the best identification procedures I've seen. Normally what
5 we run into, as the Court well knows, is six photographs, one
6 is picked, and that's all that are viewed. She viewed
7 eighteen at the same time, picks him, and only him. Your
8 Honor, I believe it's admissible.

9 THE COURT: All right.

10 MR. SWARAT: I believe all the other factors that Mr.
11 Ayer noted about her description of his clothing, that goes to
12 the weight, and not the admissibility.

13 THE COURT: Any reply, Mr. Ayer?

14 MR. AYER: Your Honor, I would just add, I said, when I
15 was making my motion, the Tate case was distinguishable, and
16 the facts do not exactly line up identical, and I admit that
17 Mr Timmons, in his photograph, did not have the date around
18 his neck, but nevertheless, the mug shot itself indicates to
19 the jury that he has a prior record.

20 Detective D.I. Blackwell said he took that photograph
21 and corresponded, matched it up with what he had from the
22 Lexington Sheriff's Department, which clearly indicates to the
23 jury that Mr. Timmons has a prior record, and as in the Tate
24 case, I don't know that the Court, in the Tate case, is saying
25 we were only going to take this position under these facts,

1 but they said that, once the jury understands that the
2 defendant has a prior record, that his character has been
3 improperly introduced into the trial, and whether or not they
4 understand it because he's got a date around his neck, to me
5 the point is, if they understand that he has a prior record,
6 which I think they will, based on Ms. Williams' testimony, and
7 clearly based on D.I. Blackwell's testimony, and then that
8 means that his character has been improperly introduced.

9 Thank you.

10 THE COURT: All right. The -- all of the cases go
11 back to the guidelines set out in the U.S. Supreme Court case,
12 Neil versus Biggers. In that -- the big concern with this is
13 the relationship between suggestiveness and misidentification,
14 and the test came from that case, and we are concerned with
15 several things. One is a -- under the totality of the
16 circumstances, not just one factor, but the -- excuse me --
17 the totality of the circumstances with the identification, and
18 then whether, under the totality of the circumstances the
19 procedure used was so suggestive as to give rise to a very
20 substantial likelihood of misidentification. So I think all
21 of the Courts, since Neil versus Biggers, have been concerned
22 with this relationship between suggestiveness and
23 misidentification. And then in the Neil case we get the five
24 factors that have been adopted by our Supreme Court in South
25 Carolina. Those factors are set out in the cases in -- that

1 have been passed up and argued this morning, and also one of
2 the South Carolina cases is State versus Thompson. It repeats
3 them, and many others, including the Brandon decision that was
4 passed up. That's a Court of Appeals case that just came out
5 in June of this year, and it repeats those five factors that
6 are to be considered.

7 Considering the test that has been adopted by our
8 Supreme Court, based on the U.S. Supreme Court decision, this
9 Court would find that, under the totality of the
10 circumstances, that this procedure used, in this particular
11 case, was not so suggestive as to give rise to a very
12 substantial likelihood of misidentification, therefore the
13 Court would rule that the identification testimony and
14 evidence is admissible.

15 MR. SWARAT: Thank you, Your Honor.

16 THE COURT: All right. Any other matters before we
17 bring in the jury?

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

19 THE COURT: Okay. Let's take about five minutes.

20 And tell the jury that, when they come in to be prepared
21 to sit about an hour to an hour and fifteen minutes.

22 We are going to be at ease about five minutes to give
23 everybody a chance for a restroom break, and then we will be
24 in here for about an hour to an hour and fifteen minutes.

25 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE

1 THE PRESENCE OF THE JURY.)

2 MR. AYER: Your Honor, we need the Defendant to be
3 brought in.

4 THE COURT: Okay. Yes. Bring the Defendant before the
5 jury. We will just hold the jury a minute.

6 While we are doing that, on the -- I will have a charge
7 conference and go over the charge. I think y'all -- it's
8 going to be fairly obvious what I'm going to charge, but if
9 you have something you want me to consider, if y'all could
10 pass that up, have it ready after lunch, but I -- the charges
11 I use on the different crimes involved, I'm sure are very
12 similar to what y'all are used to with your local judges, and
13 it looks like, in this case, we have a circumstantial charge,
14 that there is evidence of alibi.

15 Did the Defendant give state -- is there going to be any
16 voluntary statement issue?

17 MR. AYER: He gave a statement.

18 MR. RIDDLE: He gave a statement. He gave a
19 statement. We are not intending to offer it.

20 THE COURT: Okay.

21 MR. RIDDLE: But if he testifies we may try to bring it
22 out as an impeachment, but we are not offering it in the
23 State's case. Excuse me.

24 THE COURT: Well, if you have anything other than what
25 I normally cover, if you want to pass it up after lunch we can

1 take a look at it, but we will have a charge conference before
2 we have closing arguments, and I'll kind of run through what I
3 propose to charge, and I'll be glad to consider anything y'all
4 want to pass up.

5 Okay. Is the State ready?

6 MR. SWARAT: State's ready.

7 MR. AYER: Your Honor, just one moment. May I be heard
8 -- put something on the record regarding my motion to suppress
9 Ms. Williams' testimony?

10 THE COURT: Sure.

11 MR. AYER: Okay. I want to just put this on the
12 record, Your Honor. In Your Honor's ruling you mentioned
13 suggestibility being one of the keys, and Your Honor, I would
14 submit that -- suggestibility -- first of all, in my opinion,
15 suggestibility -- at least I haven't proven that it was --
16 that anything was suggested to Ms. Williams, but I would
17 submit that Your Honor can still suppress and exclude the
18 State -- and even if suggestibility isn't present, I think the
19 five factors that I mentioned, under the **Brandon** case, are
20 independent from suggestibility, and I would submit to the
21 Court that those five factors apply, and Your Honor could
22 suppress and exclude the statement under the five factors,
23 regardless of whether or not the photo line-up was sugges --
24 met the standard for whatever suggestibility is.

25 THE COURT: Yes. When I -- that was sort of a prelude

1 to my ruling. The -- really the issue before the Court is
2 whether, under the totality of the circumstances, the
3 procedure was so suggestive as to give rise to a very
4 substantial likelihood of misidentification, and that's --
5 when I said that -- that remark about it, in Neil versus
6 Biggers, which was a 1972 U.S. Supreme Court case, they were
7 discussing that before they got to the factors, and they just
8 said that the -- the guidelines that they listed, those five
9 that we have adopted in this State, emerged from cases as to
10 any relationship between suggestiveness and misidentification,
11 being -- the argument being that suggestiveness would then, or
12 could -- could possibly lead to misidentification, and that
13 was just the -- kind of the preamble to their coming up with
14 the five factors that's -- that they set out in Neil versus
15 Biggers, that we have now adopted in this State. So my ruling
16 was based on those five factors and -- that are necessary to
17 consider, but no one of those factors really outweighs the
18 other. It's -- you still have to go back to the totality of
19 the circumstances, all the circumstances, and -- but I think
20 what you are trying to avoid is suggestiveness, and Neil
21 versus Biggers said, of course, that could lead to
22 misidentification.

23 MR. AYER: But, Your Honor, that's really not what I'm
24 trying to avoid, and that's -- that's the point I'm trying to
25 make, and maybe not making it very well. I would submit to

1 the Court that the five factors go more toward to reliability
2 of the testimony than it does to the suggestibility, and it
3 would be my position that it could not be suggestible -- which
4 I don't really think that I've proven that it's suggestible --
5 but if she falls under the five factors, it could still be
6 excluded because it's not reliable. In other words, I think
7 it can be non-suggestive, but still be unreliable, under those
8 five factors.

9 THE COURT: I agree with you. I agree with you. I
10 think you are right on that. I think that the -- it's just a
11 matter of semantics, but I think that the -- the whole idea,
12 or the -- when the issue came up in that Neil versus Biggers
13 case, they were saying that, when we go back and look at all
14 the cases concerning identification, then when you analyze
15 those cases, some general guidelines emerge from those
16 pretrial identification cases. I guess this would be like an
17 ivory tower thing, as to the relationship between
18 suggestiveness and the possibility of misidentification.

19 MR. AYER: All right, sir.

20 THE COURT: And I just said that because it's -- of
21 course the ultimate question is whether, under the totality of
22 the circumstances, which would be everything, the procedure
23 was so suggestive as to give rise to a very substantial
24 likelihood of misidentification, and some of those -- or the
25 five factors to be considered, of course, were set out and, as

1 I said, have been adopted, but yes, there could be some -- the
2 five factors could all be favorable to the State, or to the
3 identification, and it still could be some flaw in the
4 procedure or in the process.

5 MR. AYER: All right, sir.

6 Your Honor, I know -- my dad told me in Little League,
7 when the judge calls you out to go set in the dugout. Can I
8 stay on the field just one more second?

9 THE COURT: Uh huh (indicating positive)

10 MR. AYER: I don't think I necessarily made this
11 motion, but I'm going to move that the line-up itself, that
12 the three sheets with the eighteen pictures on them, be
13 excluded. I don't necessarily think that they have to be
14 introduced into evidence and shown to the jury in order for Ms.
15 Williams to testify that she identified Mr. Timmons, and I
16 submit to the Court that, through the cases that I cited, that
17 the line-ups themselves are clearly more prejudicial than they
18 are probative. They don't really prove that she picked him
19 out. She can testify she picked him out. The line-ups
20 themselves are clearly prejudicial to Mr. Timmons. Again, I
21 think they indicate that he has a prior criminal record, which
22 brings his character into trial.

23 Aside from that though, I just think the prejudice of
24 the line-ups themselves -- and I don't mean to be flippant or
25 anything, Judge, but I think Your Honor has seen the line-up,

1 and that -- and Who's Who in America is not in those line-ups.
2 My picture is not in there, and Your Honor's picture isn't in
3 there, and my client's is in there with a number of folks,
4 again, that clearly indicate he is being accompanied with a
5 host of criminals, and again, it indicates that he's got a
6 criminal record. The think the line-up themselves should be
7 excluded, because it doesn't prove a whole lot ---

8 THE COURT: Uh huh (indicating positive)

9 MR. AYER: ---And it's very, very prejudice. I don't
10 think they need the line-up to prove that she identified Mr.
11 Timmons on May the 28th of '93, and I -- and thirdly, and then
12 I will sit down. I clearly think that Detective Blackwell's
13 report -- that he took the photograph of Mr. Timmons, and then
14 matched it with the photo that the Lexington County Sheriff's
15 Department had, that testimony should certainly be excluded as
16 indicating a criminal record, and prejudicial to Mr. Timmons.

17 THE COURT: All right. What say the State?

18 MR. SWARAT: Your Honor, there are a lot of things that
19 he went through. I think the line-ups themselves, if I want
20 to address that first. The three photo line-ups, the jury
21 needs to see that to determine her credibility, and also the
22 reliability of her identification. Some of the factors I'm
23 going to go into with her is that she was shown photographs of
24 all black males, all black males approximately the same age,
25 all black males with basically the same facial features. The

1 jury needs to have the opportunity to look at the photographs
2 she saw, to determine the reliability of her identification
3 based on those factors. I don't know of any case law that
4 says they are not admissible.

5 THE COURT: Okay. All right, I'm going to deny the
6 motion to -- of the Defendant to not admit the three sheets.

7 Any comment on the argument about the testimony of
8 witness, Blackwell?

9 MR. SWARAT: Your Honor, let me -- and I don't know if
10 Your Honor remembers from yesterday -- let me show you what's
11 been marked as State's Exhibit Number 38 -- excuse me -- 37
12 for identification. This is a copy of the photo line-up sheet
13 where Ms. Williams signed that she picked out a picture. It
14 has a six-digit number on top of that. 928098. That number
15 corresponds with the number on the booking report of Marcus
16 Timmons, and that is State's Exhibit Number 38 for
17 identification, and I will direct the Court's attention to
18 that I.D. number. You will see that the numbers match. It's
19 that six-digit number 928, I believe 098. Your Honor, I was
20 going to go in with Detective Blackwell that Mr. Timmons is
21 the only person that's assigned that number.

22 We are going to go into the fact that, on April the 9th
23 of 1993, that Officer Wright made a traffic stop, that in that
24 traffic stop Marcus Timmons was arrested. If you will note
25 the date of arrest on that Booking Report it's April 9th,

1 1993. I'm also going to go into, under Pennsylvania versus
2 Moonits, his height, his weight, and his build, that are
3 included in that Booking Report, 5'11", I believe, one thirty-
4 five or forty-five, and thin or slender built, because that
5 corroborates the witnesses that have testified under oath, and
6 the witnesses that will testify later in the trial about the
7 height and weight and build of the man behind the mask.

8 THE COURT: Mr. Ayer, what say you about this State's
9 Exhibit 37 for I.D., the photo line-up?

10 MR. AYER: If I could take a look at it.

11 THE COURT: And while you are up here you might as well
12 look at 38 for I.D., the Booking ---

13 (COUNSEL FOR THE DEFENSE CONFERS.)

14 MR. SWARAT: And Your Honor, I just want to make it
15 clear for the record also, the Booking Report itself, I was
16 not going to put in evidence. I was going to have Detective
17 Blackwell read that information that I just noted for the
18 Court, from the Booking Report, but I'm not putting it in
19 evidence.

20 THE COURT: Well, why do you need the photo line-up
21 sheet in evidence if the witness is going to be here to
22 testify?

23 MR. SWARAT: To show that, on May the 28th of '93, she
24 swore that that was true and accurate, and she signed her name
25 to that, picking out that number, and that that number is

1 assigned to Marcus Timmons, and only Marcus Timmons. I think
2 it goes to her credibility and her reliability.

3 THE COURT: Okay.

4 All right. Mr. Ayer, they say they are not going to
5 offer 38. They are just going to leave it marked for
6 identification, and that the witness, Blackwell, can testify
7 as to the number.

8 MR. AYER: Well, I'm going to object to Detective
9 Blackwell testifying, whether it be through that exhibit or
10 through testimony, that Mr. Timmons is on file at the
11 Lexington County Sheriff's Department, and Your Honor, to me
12 that's just clearly too prejudicial. It indicates to the jury
13 that he's got prior criminal record, and brings his character
14 into the trial.

15 THE COURT: Well, can they not testify that the number
16 was just assigned to this photo for -- and matched to the
17 name, without going into the fact that it's on file here,
18 there, everywhere?

19 MR. SWARAT: Your Honor, I wasn't going to go into
20 that. What Mr. Ayer is speaking of, I wasn't going to go into
21 anyway.

22 THE COURT: Okay. I think that would, or could be
23 prejudicial if you mentioned that his -- he has a photo on
24 file with S.L.E.D. or Lexington County, or any other law
25 enforcement agency, so I'll agree with the Defendant on that

1 and ---

2 MR. AYER: But Your Honor, again -- and I may still be
3 on the field, but the whole photo line-up, just like Your
4 Honor just said, they don't have my picture up there, Your
5 Honor, and they don't have your picture, Your Honor. The fact
6 that they have a photo line-up with my client's picture in it
7 indicates he has been arrested, he's got a prior record, and
8 that's my point where the entire line-up is concerned.

9 THE COURT: Well, I'm going to deny your motion on that
10 basis, but I will -- we will not admit 38 for I.D., which is
11 the Booking Report. I will allow 37 for I.D. to come in.
12 That's a sworn statement of Ms. Williams, and it does have the
13 photograph number on it, and I'm going to instruct the State
14 to instruct their witnesses not to make any mention of the
15 fact that these photos come from any police agency, that this
16 numbering system is a method of using a number as opposed to a
17 name when you -- when doing a line-up.

18 MR. SWARAT: Thank you, Your Honor. And I might need
19 to meet with my witness to make sure that he doesn't say that.

20 THE COURT: Well, just -- you can do that now.

21 MR. SWARAT: All right.

22 THE COURT: Okay.

23 MR. SWARAT: But he will not be my next witness. Ms.
24 Williams will be.

25 THE COURT: Okay.

1 MR. SWARAT: It will take me two minutes to talk to him
2 in between those two though.

3 All right. Solicitor Riddle is going to take care of
4 that for us.

5 THE COURT: All right. And then you will be examining
6 the witness -- the next witness?

7 MR. SWARAT: That's correct, Your Honor.

8 THE COURT: All right. Is the State ready to proceed?

9 MR. SWARAT: The State is ready.

10 THE COURT: Defendant?

11 MR. AYER: Yes sir, Your Honor.

12 THE COURT: All right. You may bring in the jury.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY.)

15 THE COURT: You may call your next witness.

16 MR. SWARAT: State calls Peggy Williams.

17 PEGGY WILLIAMS, first duly sworn,
18 testified as follows:

19 DIRECT-EXAMINATION BY MR. SWARAT:

20 MR. SWARAT: Ms. Williams, good morning.

21 A. Morning.

22 Q. Ms. Williams, are you employed?

23 A. Yes.

24 Q. Where are you employed?

25 A. I work for the Harold Beard Insurance Agency.

1 Q. How long have you been with the Harold Beard Insurance
2 Agency?

3 A. Almost eleven years.

4 Q. What is your position with that company?

5 A. Insurance agent.

6 Q. Back on February the 27th of '93, were you living here
7 in Columbia then?

8 A. Yes.

9 Q. And did you have the occasion, in the early morning
10 hours of that date, to be at the Pantry on State Street?

11 A. Yes.

12 Q. At the time you were at the Pantry, when you were
13 initially there, were you inside the building or outside the
14 building?

15 A. Outside the building.

16 Q. And what were you doing outside the Pantry on State
17 Street?

18 A. I was on the telephone.

19 Q. Now, if you could tell the jury, where is that
20 telephone located in relation to that business? Is it out in
21 the parking lot or is it up against the building?

22 A. Up against the building.

23 Q. And what was the reason you were using the telephone?

24 A. To call my roommate.

25 Q. Now, as you were there at the Pantry, did you have an

1 occasion to go inside that business, or prepare to go inside
2 the business?

3 A. Yes.

4 Q. And did anything unusual happen as you were preparing
5 to go inside the doors of that business?

6 A. As I had just walked in the doors two men came rushing
7 in.

8 Q. Now, Ms. Williams, as they came rushing in, were they
9 behind you or in front of you?

10 A. Behind me.

11 Q. As they rushed in did they push you into the business?

12 A. Yes, one did.

13 Q. Now, you say there were two men involved?

14 A. Yes.

15 Q. Could you tell the race of those individuals, the men?

16 A. Yes sir.

17 Q. And what race were they?

18 A. Black men.

19 Q. Now, as the two men went inside the business, did they
20 stay together, or did they separate in some manner?

21 A. They separated. One stayed with me and the other went
22 to the front of the store where the clerk was at.

23 Q. One stayed with you?

24 A. Yes sir.

25 Q. And the other one went toward the cash register, toward

1 the clerk?

2 A. Yes.

3 Q. Let's talk a little bit about the clerk, and the one
4 that was up there with him. What, if anything, did you hear
5 the man who went to the clerk say?

6 A. He told the clerk to give him the money.

7 Q. To give him the money. Did you have the opportunity to
8 observe, or hear the clerk give a response to that?

9 A. He said he couldn't.

10 Q. Could you tell why he couldn't?

11 A. I don't know why he couldn't. He seemed scared,
12 startled.

13 Q. The man that went up to the clerk, was he armed in any
14 way?

15 A. Yes.

16 Q. And what was he armed with, if you could tell?

17 A. A gun.

18 Q. Can you describe that gun for me?

19 A. I don't know what type of gun it is. It was a small
20 gun.

21 Q. I'm showing you what's been marked as State's Exhibit
22 Number 3 in evidence. Does that appear to be the type of gun
23 that that man had?

24 A. Appears to be.

25 Q. The one that was up by the clerk?

1 A. The one that was by the clerk.

2 Q. Now, Ms. Williams, the man that was with you, during
3 the robbery did he stay with you?

4 A. Yes.

5 Q. Throughout the entire robbery?

6 A. The whole time.

7 Q. Now, if I could have you come down off the witness
8 stand. And you may need to speak up a little bit so the Court
9 Reporter can hear you.

10 Can you position me, in front of the jury, how he was
11 positioned with you?

12 A. Well, if we are facing where the front of the --
13 counter of the store is, I was here; he was here, up against
14 him.

15 Q. He was physically touching you ---

16 A. Yes.

17 Q. ---Throughout the entire robbery?

18 A. Yes.

19 Q. Did you have the opportunity to observe the area of his
20 face?

21 A. Yes.

22 Q. Was some of his face covered?

23 A. As I recall it was. I can't remember what it was, but
24 it was a facial -- facial covering, because the voice was
25 muffled.

1 Q. Something was muffling his voice, covering his mouth
2 area?

3 A. Yes.

4 Q. Could you see the area around his nose, including his
5 eyes and the area around his forehead?

6 A. Yes.

7 Q. What -- what portion of his face did you focus your
8 attention on, if you focused your attention on his face?

9 A. His eyes.

10 Q. You looked at his eyes?

11 A. The whole time.

12 Q. The entire time of the robbery.

13 A. (NODS HEAD AFFIRMATIVE)

14 Q. Why were you focusing on his eye, Ms. Williams?

15 A. I was trying to get his attention.

16 Q. Why were you trying to get his attention?

17 A. So he would look at me and maybe give up, or -- I was
18 scared.

19 Q. But you kept your attention focused on his eyes?

20 A. Yes.

21 Q. And the top part of his face?

22 A. Yes.

23 Q. Did you ever -- did you ever take your attention away
24 from his face once he connected with you?

25 MR. AYER: Your Honor, I don't think she has testified

1 that he connected with her.

2 MR. SWARAT: Your Honor, I believe she testified they
3 were physically touching. That's what I was referring to.

4 MR. AYER: Okay.

5 THE COURT: All right. Rephrase your question and
6 make it clear to the witness.

7 Q. As he was standing there physically touching you, did
8 you ever divert your attention away from his face for any
9 appreciable length of time?

10 A. The only time that I took my eyes off of him is when he
11 hollered to the other man, five-O, and I knew something was
12 happening.

13 Q. But that was the only time you took your attention off
14 his face?

15 A. The only time.

16 Q. Approximately how long were you standing there side by
17 side, touching, looking into his eyes?

18 A. Five minutes or more, more than ---

19 Q. More than five minutes?

20 A. Right.

21 Q. Less than, say ten minutes?

22 A. Yes.

23 Q. Somewhere between five and ten minutes, standing side
24 by side, touching, focusing on his face and his eyes?

25 A. Yes.

1 MR. SWARAT: Thank you, Ms. Williams. You can come
2 back up here.

3 Q. The man that was on you, Ms. Williams, was he armed in
4 any way?

5 A. Yes.

6 Q. What type of gun did he have?

7 A. Type of a -- a shotgun, longer gun, big gun.

8 Q. It was a longer gun?

9 A. Uh huh (indicating positive)

10 Q. How did it compare with State's Exhibit Number 3? Was
11 it larger or smaller than this gun?

12 A. Larger, longer, larger -- longer.

13 Q. How would it compare with State's Exhibit Number 2 in
14 evidence?

15 A. Looks a lot like the one.

16 Q. Okay. Did you focus more on the gun, or more on the
17 man?

18 A. More on the man.

19 Q. Now Ms. Williams, you talked about this individual
20 speaking in your presence, that was connected to you,
21 something about five-O?

22 A. Yes.

23 Q. Let me take you back a little bit. After Mr. Cullifer,
24 the clerk at the Pantry, could not open the cash drawer, did
25 you say anything to him? Did you say anything to the clerk?

1 A. I told him to give them the money.

2 Q. As a result of your comment, did the man that was there
3 with you, side by side with you, did he say anything to you?

4 A. He did.

5 Q. And what were his words, Ms. Williams?

6 A. He told me to shut up.

7 Q. Did he tell you to shut up, or did he add something to
8 that?

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

10 THE COURT: Yes. Don't suggest the answer to the
11 witness. Let the witness provide the answer.

12 A. His exact words?

13 Q. What were his exact words, Ms. Williams?

14 A. Shut up, bitch.

15 Q. And that was directed toward you ---

16 A. Yes.

17 Q. ---While he was standing there with the gun on you?

18 A. Yes.

19 Q. Inside that Pantry store, Ms. Williams, was the
20 lighting good, or was it poor lighting?

21 A. It was good lighting.

22 Q. Did you have any -- any problem seeing the area around
23 his face?

24 A. No.

25 Q. Nothing obstructing your view from him ---

1 A. No.

2 Q. ---Other than that covering over his mouth?

3 A. Right.

4 Q. Now, you said something about five-O. Tell us about
5 that. Who said five-O?

6 A. The man that was next to me.

7 Q. Who did he direct that comment toward, Ms. Williams?

8 A. The man that was with the clerk.

9 Q. The other robber?

10 A. Yes.

11 Q. After the man said five-O, what, if anything, did the
12 two men do?

13 A. He seemed to loosen his grip on me and -- I don't know
14 which way they ran, but I went the opposite direction. I ran
15 to the back of the store, behind the ---

16 Q. You ran to safety?

17 A. Yes.

18 Q. And you don't know where they ran?

19 A. No.

20 Q. Ms. Williams, you told me that -- you told the jury
21 that you focused on the area around his eyes?

22 A. Yes.

23 Q. What, if anything, did you notice unusual about his
24 eyes?

25 A. They seemed small, unique, different.

- 1 Q. How would you describe those eyes to the jury?
- 2 A. I described them as doe-shaped.
- 3 Q. The man had doe-shaped eyes. That's your description?
- 4 A. Yes.
- 5 Q. They were unique to you?
- 6 A. (NODS HEAD AFFIRMATIVE)
- 7 Q. And you focused on him for more than five minutes?
- 8 A. Yes.
- 9 Q. Ms. Williams, after the robbery, approximately three
- 10 months later, did you have the occasion to go down to Cayce
- 11 Police Department?
- 12 A. Yes.
- 13 Q. Did you meet with a Detective Blackwell?
- 14 A. Yes.
- 15 Q. When you met with Detective Blackwell, did he ask you
- 16 to review some photographs?
- 17 A. Yes.
- 18 Q. And Ms. Williams, approximately how many photographs
- 19 did you review?
- 20 A. Fifteen to twenty photographs.
- 21 Q. In those fifteen to twenty photographs, were they all
- 22 members of the same race?
- 23 A. Yes.
- 24 Q. Were they all approximately the same age?
- 25 A. Yes.

1 Q. The same basic facial features?

2 A. Yes.

3 Q. Did Detective Blackwell suggest to you, in any manner,
4 that you should pick out anyone out of those photographs?

5 A. No.

6 Q. Did he direct your attention to any particular
7 photograph?

8 A. No.

9 Q. And Ms. Williams, out of those fifteen to twenty
10 photographs, did you pick a photograph?

11 A. Yes.

12 Q. And what did you pick that photograph based on?

13 A. The eyes.

14 Q. Based on your observations from the Pantry on the 27th
15 of February?

16 A. Yes.

17 Q. And Ms. Williams, I'm showing you what has been marked
18 as Exhibit Number 36 for identification. It's in three parts,
19 the first six pictures 36(A), the second six 36(B), and the
20 third six 36(C). Ms. Williams, do you see the individual that
21 you picked out ---

22 A. Yes.

23 Q. ---On May the 28th of '93? Which individual is that?

24 A. This one.

25 Q. And you are pointing to one that has number four

1 underneath the photograph?

2 A. Yes.

3 MR. AYER: Your Honor, will you note my objection for
4 the record?

5 THE COURT: Objection noted.

6 Q. Ms. Williams, who is that man that's in the photograph
7 above number four?

8 A. You want his name, or do you want ---

9 Q. Was he at the Pantry on February the 27th of '93?

10 A. Yes. He was the man next to me.

11 Q. That's the man that held that long gun on you?

12 A. Yes.

13 Q. Ms. Williams, do you have any doubt about that at all?

14 A. No, not at all.

15 Q. Hundred percent certain?

16 A. Yes.

17 Q. No doubt?

18 A. ---No doubt.

19 MR. SWARAT: Your Honor, I move this into evidence at
20 this time.

21 MR. AYER: Subject to my objection, Your Honor.

22 THE COURT: Over the Defendant's objection.

23 (STATE'S EXHIBIT NUMBER 36 ADMITTED INTO EVIDENCE.)

24 Q. Ms. Williams, referring to State's Exhibit Number 36,
25 when you were asked to view the photographs, did you look at

- 1 all the photographs?
- 2 A. Yes.
- 3 Q. All the ones that are included in this exhibit?
- 4 A. Yes.
- 5 Q. All eighteen?
- 6 A. Yes.
- 7 Q. You picked one individual ---
- 8 A. Just one.
- 9 Q. ---And one individual only.
- 10 Q. One individual only.
- 11 Q. If the person who was at the Pantry had not been in
- 12 those photographs, would you have picked anyone?
- 13 A. No, I wouldn't have picked anyone. I had to be sure.
- 14 Q. If you weren't sure you wouldn't have picked anyone?
- 15 A. I wouldn't have picked anyone.
- 16 Q. Are you sure -- were you sure back on May the 28th of
- 17 '93?
- 18 A. Yes.
- 19 Q. Are you sure now?
- 20 A. Yes.
- 21 Q. Ms. Williams, did Detective Blackwell ask you to swear
- 22 to that, and sign a form?
- 23 A. Yes.
- 24 Q. I'm showing you what's been marked as State's Exhibit
- 25 Number 37 for identification, Ms. Williams, and ask you if you

1 recognize that.

2 A. It looks like the form that I signed.

3 Q. Okay. Is your signature on that page?

4 A. Yes.

5 Q. Right here?

6 A. Yes.

7 Q. Peggy Williams, 1601 Granby Road, Cayce, South
8 Carolina. Was that your address back then?

9 A. That was my address then.

10 Q. "On this date Investigation D.I. Blackwell showed me,
11 Peggy Williams..." -- that's you?

12 A. Yes.

13 Q. ---"...Pictures at 1800 12th Street...---

14 MR. AYER: Your Honor, I object. It's not in evidence
15 yet.

16 MR. SWARAT: Your Honor, I move it into evidence.

17 MR. AYER: Note my objection.

18 THE COURT: All right. Over the defense's objection.

19 (STATE'S EXHIBIT NUMBER 37 ADMITTED INTO EVIDENCE.)

20 COURT REPORTER: State's 37.

21 Q. ---..."Showed me, Peggy Williams, pictures at 1800 12th
22 Street." Do you recall that as being the Cayce Police
23 Department?

24 A. Yes.

25 MR. AYER: Your Honor, again I object. He's leading

1 the witness. He can ask Ms. Williams to read from the
2 document.

3 THE COURT: Just ask the question of the witness.
4 Let's let the witness provide the answers.

5 Q. Ms. Williams, would you please read to us this form?

6 A. Yes.

7 Q. Thank you.

8 A. The whole thing?

9 Q. Just after -- underneath photo line-up, where it's in
10 bold on the top.

11 A. "On this date Investigation D.I. Blackwell showed me,
12 Peggy Williams, pictures at 1800 12th Street. I picked out a
13 picture, 928098, which is the person, male, black, who
14 committed the crime of robbery at Pantry on State Street. I
15 hereby swear and certify the above is the truth." And I
16 signed it, along with my address.

17 Q. And Ms. Williams, that six-digit number that's in the
18 middle there, do you know any significance to that number?

19 A. No.

20 Q. Have no idea what that's all about?

21 A. No.

22 Q. You just know you picked out the face of the man that
23 was robbing you?

24 A. Yes.

25 Q. On State's Exhibit Number 36 in evidence, can you

1 initial next to the person that you picked out of these
2 eighteen photographs?

3 (WITNESS INDICATES BY WRITING ON THE DOCUMENT.)

4 MR. SWARAT: Thank you, Ms. Williams.

5 Q. Ms. Williams, can you show the jury again how he held
6 you, and how he had that gun positioned on you?

7 A. Yes.

8 Q. If you could step off the stand with me, please.

9 (WITNESS DEMONSTRATES.)

10 Q. Like that?

11 A. Uh huh (indicating positive)

12 Q. The entire five minutes of the robbery?

13 A. Yes.

14 MR. SWARAT: Thank you, Ms. Williams.

15 Q. Ms. Williams, the man that held you up, that -- the
16 robbery at the Pantry, do you see him in the courtroom today?

17 A. Yes.

18 Q. And where is he in the courtroom, Ms. Williams?

19 A. He's over there. (WITNESS IS POINTING.)

20 Q. Where is he seated at the defense table?

21 A. In the middle.

22 Q. Wearing the yellow tie ---

23 A. Yes.

24 Q. ---Blue suit?

25 A. (NODS HEAD AFFIRMATIVE)

1 MR. SWARAT: Your Honor, let the record reflect she has
2 identified Marcus Timmons.

3 Q. That's the man that held the gun on you on February the
4 27th of '93?

5 A. (NODS HEAD AFFIRMATIVE)

6 Q. Ms. Williams, do you have any doubt about that at all?

7 A. (NODS HEAD NEGATIVE)

8 COURT REPORTER: If you would answer aloud, please.

9 A. No.

10 MR. SWARAT: Thank you, Ms. Williams. That's all I
11 have. Please answer any questions defense might have for you.

12 MR. AYER: May it please the Court.

13 CROSS-EXAMINATION BY MR. AYER:

14 Q. Ms. Williams, what happened to you on February the
15 27th, '93 was very traumatic, wasn't it?

16 A. Yes.

17 Q. Is that correct. Nevertheless, Ms. Williams, you
18 understand that you have today-finger-pointed Marcus Timmons
19 as being the man that held you; is that correct?

20 A. Yes.

21 Q. And you understand that I have to ask you questions
22 about that, correct ---

23 A. Yes.

24 Q. ---Because you know I represent Marcus Timmons?

25 A. Yes.

1 Q. You came in yesterday, Ms. Williams, and gave some
2 testimony, what we call incamera; is that correct? You
3 testified right there yesterday under oath; is that right?

4 A. Yes.

5 Q. All right. You had glasses on yesterday, didn't you?

6 A. Yes.

7 Q. Where are your glasses today?

8 A. They are at home. I have my contacts in.

9 Q. Okay. Going back to February of 1993, February 27th.
10 You say that you were on the telephone before you went into
11 the Pantry; is that right?

12 A. Yes.

13 Q. Okay. Tell me why you were talking on the telephone.

14 A. I was calling my roommate to come pick me up.

15 Q. Why were you asking her to come pick you up?

16 A. Because some people that I had been out with didn't
17 want to -- I didn't want to go with them, and they just
18 dropped me off, and said, call a ride.

19 Q. About what time of night was it?

20 A. It had to be about three o'clock. _____

21 Q. In the morning? _____

22 A. Yes.

23 Q. Do you remember what day it was?

24 A. It was -- well, Saturday.

25 Q. Saturday night?

- 1 A. Early morning hours of Saturday.
- 2 Q. It was Friday night, early Saturday morning?
- 3 A. Right.
- 4 Q. Did you work that day?
- 5 A. Yes.
- 6 Q. What had you done in the -- what had you done after you
- 7 got off work that day, if you recall?
- 8 A. Went home, made dinner, got a shower, met some friends.
- 9 Q. Where did you meet some friends?
- 10 A. Checkers.
- 11 Q. What is Checkers?
- 12 A. It's a night club.
- 13 Q. Do they sell alcohol at Checkers?
- 14 A. Yes.
- 15 Q. How long were you at Checkers?
- 16 A. We got there at, probably about eleven o'clock, and I
- 17 was there until two-thirty.
- 18 ~~Q. What did you do before you got to Checkers?~~
- 19 A. Stayed home.
- 20 Q. So you left your house and went to Checkers?
- 21 A. Yes.
- 22 Q. Did you go anywhere between your house and Checkers?
- 23 A. No.
- 24 Q. Did you ever leave Checkers and come back?
- 25 A. No.

1 Q. So it's your testimony you were at Checkers from about
2 eleven to two-thirty?

3 A. Yes.

4 Q. What all did you do while you were at Checkers?

5 A. Sat with friends, talked.

6 Q. How many friends were there with you?

7 A. Three.

8 Q. Who were the friends?

9 A. A girl that I have insured, her boyfriend, and her
10 brother.

11 Q. Were y'all drinking alcohol?

12 A. Yes.

13 Q. How much did you have to drink?

14 A. I had two glasses of wine.

15 Q. From eleven to two-thirty you had two glasses of wine?

16 A. Yes.

17 Q. Is that all?

18 A. That's all.

19 Q. Did you dance any?

20 A. No.

21 Q. You just sat there the whole time?

22 A. Yes.

23 Q. How did you get to Checkers?

24 A. They picked me up.

25 Q. From your house?

- 1 A. Yes.
- 2 Q. They being the three friends?
- 3 A. Right.
- 4 Q. Did they take you to the Pantry?
- 5 A. Yes.
- 6 Q. How far did you live from the Pantry?
- 7 A. Granby Road, maybe a mile, couple of miles.
- 8 Q. How far is Checkers from the Pantry?
- 9 A. Five to ten miles, not far.
- 10 Q. Where were you and your friends headed when y'all left
- 11 the Pantry ---
- 12 A. They ---
- 13 Q. ---Excuse me -- when you left Checkers?
- 14 A. They were headed somewhere to another club. I didn't
- 15 want to go. I wanted to go home.
- 16 Q. So your testimony is, you left Checkers in your
- 17 friends' car; is that correct?
- 18 A. Yes.
- 19 Q. They wanted to go to another club and you didn't?
- 20 A. Yes.
- 21 Q. Three o'clock in the morning?
- 22 A. Yes.
- 23 Q. You live a mile from the Pantry?
- 24 A. Yes.
- 25 Q. But your friends dropped you off at the Pantry?

1 A. Yes.

2 Q. Okay. Tell me again, and tell the jury why they
3 dropped you off at the Pantry.

4 A. They were angry because I didn't want to go with them.

5 Q. Did you insist that they take you home?

6 A. I begged them to take me home.

7 Q. They wouldn't take you home?

8 A. No.

9 Q. Why did they pick the Pantry?

10 A. I don't know. I didn't even know where I was at.

11 Q. You didn't know where you were at?

12 A. No. And I know -- I only -- I know that I only live a
13 mile from there, but I had never been on State Street before.

14 Q. How long had you lived on -- is it Granby Road? How
15 long had you lived in Granby Road?

16 A. A year.

17 Q. Where did you live prior to Granby Road?

18 A. Lexington.

19 Q. The City of Lexington?

20 A. Yes.

21 Q. How long had you lived in the Lexington area?

22 A. Like twenty -- twenty-three, twenty-four years.

23 Q. Okay. Is this the first time you had ever been to that
24 Pantry?

25 A. Yes.

1 Q. Had you ever ridden by it?

2 A. I don't think so.

3 Q. Did you have a driver's license?

4 A. Yes.

5 Q. Did you have a driver's license then?

6 A. No.

7 Q. You didn't have one then?

8 A. No.

9 Q. Why did you not have a driver's license?

10 MR. SWARAT: Objection, relevancy.

11 THE COURT: What was your objection?

12 MR. SWARAT: Relevancy.

13 THE COURT: Relevance.

14 MR. AYER: I'll move on, Your Honor.

15 THE COURT: All right.

16 Q. So your friends dropped you off at the Pantry, correct?

17 A. Yes.

18 Q. And you said earlier you didn't know where you were,
19 but what do you mean by you didn't know where you were?

20 A. I knew that we hadn't gone far, because of the time
21 frame, but it was dark. When I got out I looked around. It
22 looked pretty scary to me. I had no idea where I was at.

23 Q. Did you ---

24 A. I didn't ---

25 Q. Did you get into some kind of verbal argument, or any

1 kind of altercation with your friends?

2 MR. SWARAT: Objection, relevance.

3 A. No.

4 THE COURT: Excuse me. What -- what was the ---

5 MR. AYER: My question was, did she get into any kind
6 of verbal altercation with her friends.

7 THE COURT: All right. I'm going to overrule the
8 objection. I'm going to let her answer the question.

9 A. No.

10 Q. All right. You -- did you testify earlier that you
11 were upset with your friends for letting you out?

12 A. I was upset with them. I was more upset at where I was
13 let out at. It didn't look like a very safe part of the
14 neighborhood.

15 Q. Well tell me why they didn't take you home.

16 A. Because they were angry because I didn't want to go
17 with them to another club.

18 Q. So did they just pull off the side of the road and say,
19 Ms. Williams, or Peggy, we are going to let you out right
20 here?

21 A. No. They pulled into the parking lot.

22 Q. Of the Pantry?

23 A. Gave me a quarter and said, well, you know, call your
24 roommate.

25 Q. And what did you do?

1 A. I got out of the car, and I begged them not to leave,
2 just take me home, and they said, we've got to go.

3 Q. And who is your roommate?

4 A. My roommate that I called?

5 A. Billy Flaridy.

6 Q. Billy Flaridy. Is that -- was that your boyfriend?

7 A. No. No. That was my girlfriend's husband.

8 Q. Was your roommate?

9 A. Right.

10 Q. Did he live at Granby?

11 A. Yes.

12 Q. So you lived with your girlfriend and her husband?

13 A. Yes.

14 Q. Your friends just drove off?

15 A. Yes.

16 Q. Were you upset that they had let you out?

17 A. Yes.

18 Q. How upset?

19 A. Very upset, scared.

20 Q. Were you crying?

21 A. Yes.

22 Q. Before they drove off you were crying?

23 A. Yes.

24 Q. Did you have tears in your eyes?

25 A. Yes.

1 Q. How long did you stay outside the Pantry after your
2 friends left, before you made a telephone call?

3 A. Before they left. Couple of minutes, not long at all.

4 Q. Did any of them push you away from the car, or anything
5 like that?

6 A. No.

7 Q. Did they tell you to get out of the car?

8 A. Yes. They gave me a quarter and said, there's the
9 phone; just call your roommate.

10 Q. And you just got out of the car?

11 A. Yes.

12 Q. Did you resist getting out of the car?

13 A. No.

14 Q. You just got out, and they drove off?

15 A. I got out and then I asked -- I asked them, please
16 don't leave me here.

17 Q. And who said what to you?

18 A. They said, well, we've got to go; there's the phone;
19 make a phone call.

20 Q. And then how long was it before you made the phone
21 call?

22 A. Seconds. When they drove off I went straight to the
23 phone.

24 Q. And did you make the call?

25 A. Yes.

- 1 Q. To your roommate's husband?
- 2 A. Yes.
- 3 Q. Did you talk to him?
- 4 A. Yes.
- 5 Q. Did he say he was on the way?
- 6 A. No. Because I couldn't tell him where I was at. He
- 7 kept asking me, he said, well, look around; do you recognize
- 8 anything, and I didn't.
- 9 Q. You didn't tell him, I'm at the Pantry on State Street?
- 10 A. I told him it was a Pantry, but I didn't know it was
- 11 State Street.
- 12 Q. Your house was about a mile away?
- 13 A. Yes, their house.
- 14 Q. There at the place you stayed ---
- 15 A. Yes.
- 16 Q. ---Was about a mile away?
- 17 A. Yes.
- 18 Q. And you had stayed there about a year?
- 19 A. Yes.
- 20 Q. Do you ride down State Street to get to Granby?
- 21 A. I had never been on State Street before, until that
- 22 night.
- 23 Q. State Street in Cayce ---
- 24 A. Yes.
- 25 Q. ---You had never been on before in your life?

1 A. Yes.

2 Q. And you live a mile -- how far do you live from State
3 Street?

4 A. Then?

5 Q. Right, during -- February the 27th of '93, you said you
6 had lived on Granby a year. How far is Granby from State
7 Street?

8 A. Now I know it's probably maybe a mile or two miles, but
9 you have to understand, I didn't have a driver's license then,
10 so I rode with other people.

11 Q. Okay. And your testimony today is, you had never been
12 on State Street in Cayce, South Carolina?

13 A. Never.

14 Q. So did you ever tell your roommate's husband where you
15 were?

16 A. I told him I was at a Pantry. He said where; look
17 around and see if you recognize anything. I said I didn't.
18 He said go in -- hang up with me, go into the store, ask the
19 clerk where you are at, and call me right back; I'll come get
20 you.

21 Q. And did you start walking into the store?

22 A. Yes.

23 Q. Did you leave the receiver off the hook?

24 A. No.

25 Q. You hung up?

- 1 A. I hung up.
- 2 Q. Did you have another quarter?
- 3 A. No, now that I think about it, I didn't.
- 4 Q. And then you started going in the store?
- 5 A. Yes.
- 6 Q. And that's when the two men came up and grabbed you?
- 7 A. Yes.
- 8 Q. And one man was close to Mr. Cullifer, the clerk, by
- 9 the counter; is that correct?
- 10 A. Yes.
- 11 Q. All right. That man didn't have anything on his face,
- 12 or did he?
- 13 A. I couldn't tell, because I didn't have my glasses on.
- 14 He was further away, and I'm near-sighted.
- 15 Q. You previously testified, in a prior hearing, that he
- 16 was about five to seven feet from you; is that correct?
- 17 A. About five to seven feet.
- 18 Q. —And you couldn't see him because you didn't have your
- 19 glasses on?
- 20 A. I'm near-sighted.
- 21 Q. And the other man, you say, was right next to you; is
- 22 that right?
- 23 A. Yes.
- 24 Q. And I think you testified that you never took your eyes
- 25 off of this man that was next to you; is that right?

1 A. That's right.

2 Q. Okay. But then you went ahead -- you went on to
3 testify that you told Mr. Cullifer to open up the cash
4 register, right?

5 A. Right.

6 Q. Were you looking at him when you told him that?

7 A. No.

8 Q. You weren't looking at him?

9 A. No.

10 Q. Did you ever look at the other guy?

11 A. Only as they were coming in ---

12 Q. So ---

13 A. ---For just a second.

14 Q. So you are telling this jury that, for five or ten
15 minutes you just stared at the man that had you -- that held
16 you; is that right?

17 A. That's right.

18 Q. And you never once looked at Mr. Cullifer?

19 A. When he first said, give us your money, at the very
20 beginning of them coming in, I looked over, and after that I
21 kept my eyes on the man that was next to me.

22 Q. The man that was next to you, did he ever look at you?

23 A. Once.

24 Q. One time, for how long?

25 A. Ten seconds.

1 Q. Where was he looking the rest of the time?

2 A. Toward the clerk and the other man.

3 Q. And I think your testimony was today that he had on
4 some form of mask; is that right?

5 A. Like a mouth covering, a fac -- a type facial covering.

6 Q. But his mouth was covered?

7 A. (NODS HEAD AFFIRMATIVE)

8 Q. Was his nose covered?

9 A. I don't think so. I don't remember. I don't think so.

10 Q. Did he have on a hat?

11 A. I can't remember if he did or not.

12 Q. Now this happened on February the 27th of '93; is that
13 right?

14 A. Yes.

15 Q. And you gave a statement on March the 1st of 1993, some
16 two days later, regarding this incident, didn't you?

17 A. Yes.

18 Q. And you have read a copy of that statement yesterday
19 while you were on that stand, right?

20 A. Yes.

21 Q. And in that statement, two days after the accident, you
22 told the officer that the man that held you had on a ski mask,
23 with eye openings and a mouth opening, didn't you?

24 A. Yes.

25 Q. And now, today, you are saying that the man that held

*remembered
his eyes
with it*

hat?

1 you, his mouth was muffled; is that correct?

2 A. The voice was muffled, because he had something
3 covering the mouth.

4 Q. All right. But two days following this incident, you
5 said that he had a mouth opening; is that correct?

6 A. Yes. That's what I wrote down, but it was two days
7 after it happened.

8 Q. Okay. Well, today, you are testifying. Did Ms -- did
9 the man that held you, did he have a mouth opening, or was
10 something covering his mouth?

11 A. Today, I would say that he had some kind of facial
12 covering on. I can't remember if it was a ski mask, or if it
13 was a -- something covering the whole mouth, some kind of
14 facial covering.

15 Q. And you can't remember whether it was a ski mask,
16 correct?

17 A. Correct.

18 Q. You agree with me though, that two days after this
19 incident you said it was a ski mask, didn't you?

20 A. I said it was a ski mask.

21 Q. And you said it had eye openings and a mouth opening,
22 didn't you?

23 A. I said eye openings because I remember being able to
24 see the eyes.

25 Q. And you identified today, Marcus Timmons, who is the

1 Defendant, as being that man, correct?

2 A. Correct.

3 Q. And prior to today, you had the occasion to testify in
4 a prior hearing when Mr. Timmons was present, haven't you?

5 A. Say that again.

6 Q. Prior to today, you have had the occasion to testify in
7 a prior hearing, under oath, and Mr. Timmons was present,
8 correct?

9 A. Yes.

10 Q. Did you identify Mr. Timmons as being that man at that
11 time?

12 A. Actually to point and identify him?

13 Q. Right.

14 A. No.

15 Q. Did you identify him in any way, as being Marcus
16 Timmons?

17 A. Only when I went and looked at the photographs that the
18 Officer showed me.

19 Q. I asked you yesterday, under oath, whether you had ever
20 identified Mr. Timmons, under oath, at a prior hearing, and
21 you said yes, didn't you?

22 A. I did say yes. I didn't ---

23 Q. And did you ---

24 MR. SWARAT: Your Honor, I object. She can explain her
25 answer.

1 MR. AYER: Excuse me. Go ahead.

2 A. I didn't understand the question at first. I thought,
3 when you asked me that, that was the whole purpose of being
4 here last time, is to say that he was the one that was there,
5 but actually identifying him then, no.

6 Q. Today is the first day you have ever looked at Marcus
7 Timmons and said, that's the man, isn't it, under oath?

8 A. Today is the first day I've said that. It's not the
9 first time I've seen him.

10 Q. When you went down to the photo line-up, who called you
11 to come down there?

12 A. I believe it was Detective Blackwell. One of the
13 Officers.

14 Q. Called you to come to the Cayce Police Department?

15 A. Yes.

16 Q. Okay. And this was May 28th, I think you said?

17 A. I believe so.

18 Q. So that was three months and a day after his incident?

19 A. Yes.

20 Q. And you were shown these photographs that were
21 introduced earlier?

22 A. Yes.

23 Q. How long did you look at the photographs, Ms. Williams?

24 A. Three to five minutes. Long enough to know. It didn't
25 take very long, I mean, I knew.

1 Q. You knew -- did you testify you knew because of his
2 eyes?

3 A. Yes.

4 Q. So the eyes in that picture is what led you to believe
5 it was that person in that picture?

6 A. Yes.

7 Q. And you said it was doe-shaped eyes?

8 A. (NODS HEAD AFFIRMATIVE)

9 COURT REPORTER: Please answer yes or no.

10 A. Yes.

11 Q. And your testimony is that the individual in that
12 Pantry looked at you for approximately ten seconds?

13 A. Yes.

14 Q. It has been over seven years, correct, since this
15 incident?

16 A. Yes.

17 Q. And under oath, today, is the first day you have ever
18 identified Marcus Timmons; is that correct?

19 A. The first time, yes, that I have identified him,
20 besides the photographs.

21 Q. And two days after this incident, you told the police
22 that that individual had on a ski mask with eye openings and a
23 mouth opening; is that correct?

24 A. That's what I wrote, yes.

25 Q. And now you are saying, today, that the individual had

1 something covering his mouth; is that right?

2 A. Yes.

3 Q. And you don't know whether he had a hat on?

4 A. I can't remember if he did or not.

5 Q. And you didn't have your glasses on?

6 A. No, I didn't.

7 Q. You had tears in your eyes?

8 A. Not at that point.

9 Q. You had finished crying at that point?

10 A. I had -- yes, I had -- yes.

11 Q. And you were upset?

12 A. My first reaction was shock.

13 MR. AYER: Thank you, Ms. Williams.

14 REDIRECT-EXAMINATION BY MR. SWARAT:

15 Q. Ms. Williams, when was the first time you were face to
16 face with this man right here?

17 A. February 27th.

18 Q. During the robbery?

19 A. Yes.

20 Q. Any doubt about it whatsoever?

21 A. None.

22 Q. Ms. Williams, do you need glasses to see close up
23 distances?

24 A. No. I'm near-sighted, which is just the opposite, you
25 can't see at a distance.

1 Q. So if somebody -- something is right up next to you,
2 you don't have a ---

3 MR. AYER: Your Honor, I object to leading.

4 THE COURT: Yes. Don't suggest the answer to the
5 witness. Let her provide the answer. Just ask the question.

6 MR. SWARAT: I apologize, Your Honor. I didn't know
7 that that was suggestive.

8 Q. If something is close to you, do you have any trouble
9 seeing it?

10 A. No, not at all.

11 Q. Did those two glasses of wine that you testified about,
12 did they affect your vision for that close a distance?

13 A. No.

14 Q. Did they affect your mind? Were you impaired in any
15 manner?

16 A. No.

17 Q. Were you intoxicated in any way?

18 A. No. No.

19 Q. Now, Mr. Ayer talked to you about this prior hearing.
20 During that prior hearing, were you even asked to identify
21 anyone?

22 A. No.

23 Q. Nobody asked you that question?

24 A. No.

25 Q. Nobody from the State of South Carolina, nobody from

1 defense counsel; nobody asked you to identify anybody?

2 A. Neither. Neither.

3 Q. That was never a purpose in your testimony at that
4 hearing?

5 A. No.

6 MR. AYER: Your Honor, I object again. He's leading
7 the witness.

8 Q. Was that ever a purpose of your testimony at that
9 hearing?

10 MR. AYER: Your Honor, I don't know how the witness
11 would know that.

12 MR. SWARAT: Your Honor, either she didn't know ---

13 THE COURT: I'll let her answer the question.

14 A. I didn't think it was the purpose, because that was the
15 whole purpose we were here, is because ---

16 Q. All right. You said that the individual, Mr. Timmons,
17 had doe-shaped eyes;

18 A. Yes.

19 Q. ---That's what you focused on.

20 MR. SWARAT: Your Honor, at this time I would like for
21 the Defendant to stand in front of the jury box.

22 MR. AYER: Your Honor, I have a matter to take up with
23 the Court.

24 THE COURT: All right. I'm going to sustain the
25 objection.

1 MR. SWARAT: Your Honor, I'm offering that under State
2 versus O'Neil, State versus Taylor, State versus ---

3 THE COURT: All right. Just a minute.

4 Mr. Foreman, ladies and gentlemen of the jury, let me
5 ask that you go to the jury room. Do not discuss the case.

6 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JURY.)

8 THE COURT: You want to pass up your cases, and I'll
9 hear Mr. Ayer's objection.

10 MR. AYER: Well, Your Honor, my first objection is, if
11 Mr. Timmons is going to walk up in front of the jury, that the
12 chains be taken off his legs.

13 MR. SWARAT: I don't have any objection to that.

14 MR. AYER: Would be my first objection. And I would
15 like to know for what purpose Solicitor wants to have Mr.
16 Timmons walk up in front of the jury.

17 MR. SWARAT: Your Honor, my purpose is to show his
18 physical characteristics of his eyes, which this witness has
19 testified about, so the jury can take a look at that physical
20 characteristic of Mr. Timmons.

21 Your Honor, also cited in these cases, the State versus
22 O'Neil, Your Honor, I -- just going back to my own
23 experiences, I've done it many times with tatoos, gold teeth,
24 unique scars. I don't know of anything that precludes it from
25 happening. Your Honor, the balancing test that's done is

1 whether or not it's testimonial in nature, whether or not he's
2 giving up his right to remain silent by doing this. Your
3 Honor, the Court has found, over and over again, that this is
4 non-testimonial evidence. I'm just asking him to stand before
5 the jury so they can view his eyes.

6 MR. AYER: Your Honor, to be candid with the Court, I
7 have not researched this particular issue. Ms. Smith tells me
8 that the law requires the feature to be something that's
9 unique. Solicitor mentioned gold teeth, tatoos. Your Honor,
10 I don't know if doe-shaped eyes are unique or not. I would
11 submit to the Court that doe-shaped eyes are not all that
12 unique, and further, Your Honor, if the Court allows Mr.
13 Timmons to stand in front of the jury -- and I don't want to
14 put Mr. Timmons in an awkward position where he's just
15 standing there while the jury is looking at his doe-shaped
16 eyes. I mean, I'm not sure what my objection is. It just
17 sort of offends me.

18 MR. SWARAT: Your Honor, if I can respond to that.

19 THE COURT: Okay.

20 MR. SWARAT: Ms. Williams has testified that that was a
21 unique feature of the person that robbed her; the shape of his
22 eyes is what she focused on. She described those as doe-
23 shaped. I think that is a unique feature, even though I don't
24 think that's part of the standard.

25 Your Honor, whether or not it offends Mr. Timmons to

1 stand in front of the jury, I don't think is an issue at
2 trial. Of course I'm sure it offends him to sit in that seat,
3 but he's sitting there because of what he's done.

4 MR. AYER: Your Honor, I object, object, object to the
5 Solicitor's comment.

6 MR. SWARAT: Your Honor, her credibility ---

7 MR. AYER: His comment was that he's sitting there in
8 the seat because of what he's done, and the Solicitor knows
9 that this Defendant is presumed innocence, by everybody in
10 this courtroom.

11 MR. SWARAT: Your Honor, we are not in front of the
12 jury right now. I don't see where ---

13 THE COURT: Well, you don't need to make this accostic
14 kind of hearing. It's adversarial enough without adding fuel
15 to the fire by any kind of insinuating remarks. Just be an
16 attorney and argue the law. You don't have to make references
17 to counsel or the Defendant.

18 MR. SWARAT: Your Honor, I apologize if I've done that.
19 I was trying to address his argument about a defendant. That
20 was my purpose, and I apologize if I went overboard with that.

21 Your Honor, I think the case law provides for it. I
22 think it shows the unique feature that she focused on, that
23 was a part of her testimony, that she focused on her
24 identification. I think it goes to her credibility. It goes
25 to her reliability. He has challenged, in cross-examination,

1 her observation of this individual. I think it goes to the
2 strength of her observation of Mr. Timmons, and based on that
3 I think it's important for the jury to consider, and I think
4 it's admissible under the case law.

5 MR. AYER: Your Honor, I think there are photographs of
6 Mr. Timmons, and if the State wanted to introduce the
7 similarity between Ms. Williams' description of Mr. Timmons
8 and his physical features, they could have photograph made of
9 Mr. Timmons. I don't know anything that requires Mr. Timmons
10 to just awkwardly walk up in front of a jury and have them
11 look at his doe-shaped eyes. I mean, if he had a tatoo, or a
12 gold tooth, and he could just walk up and walk back, but they
13 should have just introduced a photograph of Mr. Timmons if
14 they wanted the jury to see his doe-shaped eyes. And a
15 photograph is in evidence, and the photograph is, by the way,
16 the photograph that Ms. Williams used to pick out his doe-
17 shaped eyes, so I -- the jury could look at the same
18 photograph to ascertain the doe-shaped eyes without having to
19 see Mr. Timmons.

20 THE COURT: All right. Has the State finished with
21 this redirect of this witness?

22 MR. SWARAT: Yes, Your Honor.

23 THE COURT: All right. All right. What I'm going to
24 do then, we'll let the witness step down, and if someone would
25 undo those shackles, or whatever mechanism is around his legs,

1 we'll bring the jury in and let him walk over, stand in front
2 of the jury briefly, turn around and walk back. Nothing is to
3 be said by the Defendant or counsel during this period of
4 time, and then I'll excuse the jury, and then we will take a
5 break.

6 MR. SWARAT: Thank you, Your Honor.

7 THE COURT: All right. If you can bring in the jury.

8 MR. SWARAT: Your Honor, can I get those cases back,
9 please?

10 THE COURT: Just -- huh?

11 MR. SWARAT: Could I get that case law back from you?

12 THE COURT: Yes. Just ---

13 MR. AYER: Your Honor, am I permitted to walk with Mr.
14 Timmons?

15 THE COURT: Yes, you can walk with him.

16 MR. SWARAT: Thank you, Your Honor.

17 THE COURT: Just hold it a minute till we get the
18 mechanism removed.

19 MR. AYER: May I walk with Mr. Timmons back here?

20 THE COURT: Sure you can. They can't do this right
21 here? I mean, it doesn't matter to me. They can do it in the
22 courtroom, or if they have to go somewhere else, that's fine.

23 MR. SWARAT: Probably be a lot easier to do it here and
24 then put them back on here, later.

25 THE COURT: Yes. Now you don't comment. You just be

1 an attorney. You let me handle this.

2 MR. SWARAT: Judge, I apologize.

3 THE COURT: Mr. Ayer, you are saying you want to walk
4 with the Defendant over to the jury?

5 MR. AYER: Yes sir.

6 And you are saying he is just to walk there and stand --

7 -

8 THE COURT: Momentarily ---

9 MR. AYER: ---And walk back.

10 THE COURT: Say nothing, you say nothing, no one say
11 anything, then walk back and have a seat.

12 MR. AYER: All right.

13 THE COURT: All right. You can bring in the jury.

14 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
15 JURY.)

16 THE COURT: Any additional questions of this witness by
17 the State?

18 MR. SWARAT: No, Your Honor. I would ask that she be
19 excused if Mr. Ayer has no other questions.

20 THE COURT: By the Defendant?

21 MR. AYER: None, Your Honor.

22 THE COURT: All right. Any objection to the witness
23 being excused?

24 MR. AYER: None, Your Honor.

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

1 A. For the day ---

2 THE COURT: Yes. You are excused ---

3 A. ---To go home?

4 THE COURT: ---From your subpoena. You may leave the
5 courthouse if you choose to.

6 THE COURT: All right. At this time I'm going to ask
7 that the Defendant, Marcus D. Timmons, and Mr. Ayer, if you
8 want to accompany him, if he would walk over and stand
9 centerways in front of the jury, and just look straight ahead
10 at the portrait.

11 (AT THIS TIME COUNSEL FOR THE DEFENDANT AND THE
12 DEFENDANT APPROACHED THE JURY BOX.)

13 THE COURT: All right. You may return to your seat.

14 All right. We will take about a fifteen minute break.
15 Once again, ladies and gentlemen of the jury, while you are in
16 the jury room, do not discuss the case.

17 My understanding is that refreshments are in the jury
18 room. Please follow the bailiff.

19 THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
20 PRESENCE OF THE JURY.)

21 THE COURT: All right. You may call your witness.

22 MR. SWARAT: State calls Detective Blackwell.

23 D. I. BLACKWELL, first duly sworn,
24 testified as follows:

25 DIRECT-EXAMINATION BY MR. SWARAT:

1 Q. Detective Blackwell, by whom are you employed?

2 A. Cayce Public Safety.

3 Q. And how long have you been employed with the Cayce
4 Public Safety?

5 A. In excess of eighteen years.

6 Q. And Detective Blackwell, could you tell the jury how
7 long you have been involved in law enforcement?

8 A. In excess of forty-two years.

9 Q. Detective Blackwell, in your position with the Cayce
10 Police Department, did you have the occasion to go to the
11 Pantry on State Street on February 27th, '93?

12 A. Yes, I did.

13 Q. And what was your purpose in responding to that crime
14 scene?

15 A. Was to process the scene, to secure and photograph
16 evidence at the scene.

17 Q. And did you photograph some evidence at the scene?

18 A. Yes, I did.

19 Q. Now, Detective Blackwell, when you go in and process a
20 crime scene, how do you go about working those photographs?
21 How do you start to collect that evidence?

22 A. I try to start from the point of least resistance,
23 usually the point of entry into a building or close to the
24 crime scene, and then I photograph everything to preserve it
25 before it's disturbed.

1 Q. Now I'm showing you what's been marked as State's
2 Exhibit Number 15 in evidence. Do you recognize that
3 photograph?

4 A. Yes, as a picture of the Pantry on State Street.

5 Q. And that -- that would be the front of the building of
6 the Pantry?

7 A. Yes sir, it would.

8 Q. And when you say you -- you want to start with the
9 entrance, that was the entrance you started with that
10 particular night?

11 A. Right.

12 Q. Now, Detective Blackwell, as you were processing that
13 crime scene, did you recover any firearms?

14 A. There were two firearms located to the -- as you are
15 looking at the Pantry, to the left side, and to the rear.

16 Q. Now as you say, as you are looking at the Pantry to the
17 left, would that be somewhere in relation to that Moore's
18 Potato Chip truck?

19 A. That's correct. It would be to the rear of the
20 building.

21 Q. Okay. So toward that Moore Potato Chip truck, and then
22 behind the building?

23 A. Yes.

24 Q. Those -- that's where those firearms were recovered?

25 A. Yes sir.

1 Q. I'm showing you what's been marked as State's Exhibit
2 Number 16, in evidence. Do you see one of the firearms that
3 was recovered behind the Pantry?

4 A. Yes sir.

5 Q. And can you describe that weapon?

6 A. That is a sawed-off 410 shotgun. Both the stock and
7 the barrels are cut off.

8 Q. And how does that correspond with State's Exhibit
9 Number 3 in evidence?

10 A. That is the weapon.

11 Q. And this is taken that night, prior to it's collection?

12 A. Yes sir.

13 Q. You would want to photograph that and show it how it
14 was actually found?

15 A. Yes sir, before it's disturbed.

16 Q. Now you say there was another weapon that was recovered
17 at that scene as well, Detective Blackwell?

18 A. Yes sir, and if you go through a gate there, it was
19 found in the back yard of that house, next-door to the Pantry.

20 Q. I'm showing you what's been marked as State's Exhibit
21 Number 18, in evidence. Do you see that firearm in that
22 photograph?

23 A. Yes sir. That is the firearm that was recovered in
24 that area.

25 Q. Could you point that out for me on the photograph?

360.

1 A. It's right here.

2 Q. I'm placing my fingers in that general area?

3 A. Yes sir.

4 Q. Is that it above my fingers?

5 A. Yes sir.

6 Q. Now, can you describe that firearm for us, Detective
7 Blackwell?

8 A. That's going to be a over under, what they call over
9 under weapon. It's a twenty gauge on the bottom, a twenty-two
10 rife, or a twenty-two caliber rifle type on top, regular
11 shotgun and rifle.

12 Q. Now, Detective Blackwell, when you recovered that
13 firearm -- and that would be State's Exhibit Number 2 in
14 evidence?

15 A. Yes sir, it is.

16 Q. What was the condition of this firearm as it goes to
17 ammunition? Was it loaded or unloaded?

18 A. It was loaded.

19 Q. And what type of ammunition was it loaded with,
20 Detective Blackwell?

21 A. Triple ought -- number three buckshot.

22 Q. I'm showing you what's been marked as State's Exhibit
23 Number 19 in evidence, and ask you if you recognize that.

24 A. That is the round that was in the shotgun.

25 Q. This shell was inside State's Exhibit Number 2, the

1 long twenty gauge shotgun?

2 A. Yes sir.

3 Q. And that was the condition that you found it in?

4 A. No sir. It was not cut. It was intact.

5 Q. The cutting, the opening of this shell would be done by
6 S.L.E.D.?

7 A. Yes sir.

8 Q. Was there also another piece of ammunition that was
9 found near that shotgun?

10 A. Yes sir. Between the four ten and that shotgun there
11 was a -- what we call dove load birdshot, twenty gauge in the
12 path -- in the general area.

13 Q. Showing you what's been marked as State's Exhibit
14 Number 20 in evidence, and ask if you can identify that.

15 A. That is the round.

16 Q. And you say that was a dove load?

17 A. Yes sir. What we call -- normally referred to as
18 birdshot.

19 Q. This would be used to shoot birds or small game?

20 A. Yes sir.

21 Q. How would that compare with State's Exhibit Number 19
22 in evidence, the one that was taken out of the gun itself?

23 A. That's used to kill birds, animals and stuff like this.
24 It's the -- the one was taken out of the shotgun is much more
25 powerful.

- 1 Q. That's referred to as buckshot?
- 2 A. Yes sir.
- 3 Q. So it would be used for deer hunting?
- 4 A. Deer hunting, large animals and stuff.
- 5 Q. Large game?
- 6 A. Yes.
- 7 Q. Now I'm showing you State's Exhibit Number 16 in
- 8 evidence. Can you point out where that dove load was
- 9 collected?
- 10 A. The dove load is right in the center, right there.
- 11 Q. Right near my -- my index finger?
- 12 A. Yes.
- 13 Q. And that's photographed prior to its collection?
- 14 A. That's correct.
- 15 Q. And that would correspond with State's Exhibit Number
- 16 20, the dove load that you mentioned?
- 17 A. Yes.
- 18 Q. Now, Detective Blackwell, I'm showing you what's been
- 19 marked as State's Exhibit Number 17 in evidence, and ask if
- 20 you can see the buckshot shell as it lays in the back of that
- 21 shotgun?
- 22 A. It is bare -- barely visible there. Right there.
- 23 Q. And that would be right above my index finger?
- 24 A. Yes sir.
- 25 Q. The gun is breached open and the shell is showing?

1 MR. AYER: Your Honor, was that a question?

2 THE COURT: Let me ask the Solicitor to just ask a
3 question, and don't suggest the answer to the witness.

4 Please rephrase your question.

5 Q. Can you describe how that shotgun shell is shown in the
6 back of that shotgun?

7 A. The shotgun is breached open, and the shell was
8 ejected, partially, not completely.

9 Q. And did you do that, Detective Blackwell, or was that
10 the condition that it was found in?

11 A. That is the condition it was found in.

12 Q. After you discovered these items and photograph them,
13 what then do you do with them, Detective Blackwell?

14 A. I secured them in a manner to preserve any possible
15 prints, or any other evidence on them. I took them -- because
16 of the conditions at the time, I took them directly to Cayce
17 Public Safety and secured them.

18 Q. Were there also other detectives, and other officers
19 that were in the area of these firearms?

20 A. Yes sir. There was quite a few people.

21 Q. Now, Detective Blackwell, in the area around the
22 Pantry, was there discovered an automobile?

23 A. Yes sir, it was.

24 Q. And what was unusual about that automobile, if
25 anything?

1 A. The automobile was found right in -- across the street
2 from the Pantry, backed into a business called Redmond Signs.

3 Q. Now Detective Blackwell, did you have the occasion to
4 examine that vehicle a little more closely?

5 A. Yes sir, I did. I found that the steering column had
6 been busted, and someone had by-passed the switch and started
7 it. There were also other items in the vehicle.

8 Q. There were no keys to that vehicle?

9 A. No keys.

10 Q. Was the steering column found intact, or had it been
11 damaged in some way?

12 A. It had been broken in such a manner that would allow a
13 person that had knowledge of it to start the vehicle.

14 Q. And you say it was still running when you found it?

15 A. Yes sir, it was.

16 Q. I'm showing you State's Exhibit Number 26 in evidence.

17 A. That's the car as it was sitting.

18 Q. And what point of view is that from? How was that
19 photograph taken, Detective Blackwell?

20 A. If you were standing, facing the Pantry, did a right
21 face, and looked straight across the roadway, that's where
22 that vehicle would be sitting.

23 Q. And State's Exhibit Number 25, do you recognize what
24 that is?

25 A. That's a color photograph of the same vehicle.

1 Q. And that vehicle was running, and it was across from
2 the Pantry at Redmond Signs?

3 A. Yes sir.

4 Q. Now, Detective Blackwell, did you take some of these
5 photographs as well?

6 A. I took the black and white one.

7 Q. That would be State's Exhibit Number 26, the frontal
8 view of the car?

9 A. Yes sir.

10 Q. Now, Detective Blackwell, in addition to going to the
11 scene, photographing the scene and collecting evidence, did
12 you also perform other duties in this investigation?

13 A. Yes sir, I did.

14 Q. On May the 28th of '93, did you meet with an individual
15 by the name of Peggy Williams?

16 A. Yes, I did.

17 Q. And what was your purpose in meeting with Ms. Williams?

18 A. To show her a series of line-ups, to see if she could
19 identify anybody there.

20 Q. Now, Detective Blackwell, let's talk a little bit about
21 these line-ups. Were these photographs all members of the
22 same race?

23 A. Yes sir.

24 Q. And what race were they in this particular case?

25 A. Black males.

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1 Q. Were they approximately the same age, or can you mix
2 them up, young men and older men?

3 A. You try to get them as close to the -- all being the
4 same as you can.

5 Q. And are they the same basic physical characteristics in
6 these photographs?

7 A. Yes sir.

8 Q. As close as you possibly can?

9 A. Yes sir.

10 Q. Now I'm showing you what's been marked as State's
11 Exhibit Number 36 in evidence, and ask if you can look at that
12 exhibit, Detective Blackwell.

13 A. Yes sir.

14 Q. Do those appear to be the photographs that you showed
15 Ms. Williams?

16 A. These appear to be photocopies of the photographs I
17 showed to Ms. Williams.

18 Q. Now, Detective, did you indicate to her that she should
19 pick somebody out of those photographs?

20 A. No sir. The first thing you explain to them after you
21 greet the people, we -- or I am about to show you some
22 photographs; the suspect may or may not be in them; if you do
23 not see them, don't worry about it; that is fine; we do not
24 want you picking anybody out that you cannot identify. We
25 give them the opportunity -- we instill in them that, if they

1 don't see them, don't pick anybody out.

2 Q. You didn't, in any way, direct her to any particular
3 photograph in the ones that you showed her?

4 A. No sir.

5 Q. How many photographs, if you can tell on the exhibit,
6 did you show Ms. Williams?

7 A. There's a total of eighteen.

8 Q. And did Ms. Williams take a look at all eighteen of
9 those photographs?

10 A. Yes sir, she did.

11 Q. And did she pick anybody out?

12 A. Yes sir, she did.

13 Q. Now, Detective, was she told the name of the individual
14 who she picked out?

15 A. She was given a control, or tracking number.

16 MR. AYER: Your Honor, I have a matter to take up with
17 the Court.

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen of the jury, let me ask that you go to the jury room
20 at this time. Do not discuss the case.

21 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right.

24 MR. AYER: Your Honor, I may be confused about Your
25 Honor's ruling this morning, but it's my understanding that

1 nothing about these numbers associated with the photograph,
2 which connected them with the Sheriff's Department, was
3 suppose to come in.

4 THE COURT: That's correct. The only ---

5 MR. AYER: Detective Blackwell mentioned the tracking
6 number on the photograph just a minute ago.

7 THE COURT: Well the number -- the only testimony about
8 the number was to be that we use a number instead of the name,
9 and that's the way we keep up with whose picture this is, and
10 there wasn't suppose to be any agency mentioned, Sheriff,
11 S.L.E.D. or anybody.

12 Q. Well, he said the name. He said the words tracking
13 number, which obviously means you are not just identifying it,
14 saying it's photo number 25, you are tracking it to something,
15 and I think there is a slight difference between a tracking
16 number, and just a number. Rather than saying Marcus Timmons,
17 you just say it says number eleven.

18 THE COURT: Well, he can just say that we couldn't --
19 obviously couldn't put the name on the photos, and we use a
20 number, and the number is tied to the name. I don't see much
21 difference between tying and tracking, I mean, it's -- it's
22 got to be a correlation between the number and the name.

23 MR. RIDDLE: Excuse me. And Your Honor, if I -- the
24 follow-up question to that, because what I had instructed Mr.
25 Blackwell when y'all started with Ms. Williams ---

1 THE COURT: Uh huh (indicating positive)

2 MR. RIDDLE: ---Was that it is a tracking number, that
3 is used for the purpose of making these photographic line-ups,
4 period, and so he mentioned tracking number, and the follow-up
5 question is, and that's a tracking number used for purposes of
6 these photographic line-ups, and then it goes from there.

7 THE COURT: All right. I'll note your objection. I'm
8 going to overrule the objection and just caution the witness
9 not to make any mention of the number -- tying the numbers
10 into any police agency, whether it's Cayce, Lexington County,
11 S.L.E.D. or any other police agency.

12 MR. SWARAT: I'm just going to ask him if each
13 photograph is assigned a number, and if that is the number
14 assigned to Mr. Timmons' photograph, and that's all I was
15 going to ask him.

16 THE COURT: All right.

17 MR. AYER: Your Honor, I would object to that.

18 THE COURT: I note your objection.

19 All right. Bring in the jury, please.

20 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
21 JURY.)

22 THE COURT: All right. You may continue.

23 MR. SWARAT: Thank you, Your Honor.

24 DIRECT-EXAMINATION BY MR. SWARAT CONTINUED:

25 Q. Detective Blackwell, we were talking about, that Ms.

1 Williams wasn't told the name of who she picked out.

2 A. That's correct.

3 Q. Each photograph is assigned a number?

4 A. That's correct.

5 Q. All eighteen of those individuals have a separate and
6 distinct number?

7 A. That's correct.

8 Q. What was the number of the picture she picked out,
9 Detective Blackwell?

10 A. She picked out number 928098.

11 Q. And that's on State's Exhibit Number 37 in evidence?

12 A. Yes sir.

13 Q. And that number 928098 corresponds with the person that
14 she picked?

15 A. Yes sir.

16 Q. As the robber at the Pantry?

17 A. Yes.

18 Q. That number 928098, the one Ms. Williams picked, whose
19 photograph is that, Detective Blackwell?

20 A. Marcus Timmons.

21 Q. And did she sign that form, Detective Blackwell?

22 A. Yes, she -- yes sir, she did.

23 Q. During the time that she was looking over those
24 photographs, did you have the opportunity to observe her
25 before she made her choice?

1 A. Yes sir.

2 Q. Did you note anything that she would have said at the
3 time she picked that photograph?

4 A. Just ---

5 MR. AYER: Your Honor, I object to hearsay.

6 THE COURT: All right. I'll sustain the objection.

7 MR. SWARAT: Your Honor, I believe she's testified to
8 it, and I believe it was in his presence.

9 THE COURT: Well, if she's already testified to it;
10 she's testified to it. Let's move on.

11 Q. How strong was her indication on that photograph,
12 Detective Blackwell?

13 MR. AYER: Your Honor, I object to the question.

14 THE COURT: All right. I'm going to overrule this
15 objection. He can describe her actions at the time?

16 A. It was a very definite identification.

17 Q. Did she show any hesitation whatsoever?

18 A. None whatsoever.

19 Q. Did she waiver in her choice?

20 A. No sir.

21 Q. Did she narrow it down to two or three individuals and
22 then pick one?

23 A. No sir.

24 Q. She picked that photograph, and only that photograph?

25 A. That's correct.

1 Q. Have you, in your experience in law enforcement, in
2 your forty some odd years of law enforcement, have you seen
3 people make hesitant identifications?

4 A. Yes sir, I have.

5 Q. Would you describe Ms. Blackwell's (s.i.c.) as hesitant
6 in any manner?

7 A. None.

8 Q. Detective Blackwell, are you familiar with the street
9 lingo, five-0?

10 A. Yes sir.

11 Q. What do you know that to mean?

12 A. Means police.

13 Q. Five-0 means police?

14 A. Yes sir.

15 MR. SWARAT: That's all I have, Your Honor.

16 CROSS-EXAMINATION BY MR. AYER:

17 Q. Detective Blackwell, you testified yesterday, incamera
18 here, and under oath; isn't that correct?

19 A. Yes sir, I did.

20 Q. Didn't you testify yesterday, when I asked you how long
21 did it take Ms. Williams to pick out a photograph, you
22 testified you didn't recall; isn't that correct?

23 A. You asked for -- excuse me -- a specific time. It was
24 not a -- I did not realize a specific time, but it was not a
25 long period of time.

1 Q. When I asked you how long it took, your testimony was
2 you don't recall; isn't that correct?

3 A. I did not recall exactly how long it took.

4 Q. Okay. And you said -- prior to getting ready for this
5 trial today, did -- let me ask you this. Did you look at
6 these three slips of photographs to get ready for the trial
7 today?

8 A. I have seen them, yes sir.

9 Q. Okay. And you saw them, obviously, in May of 1993; is
10 that correct?

11 A. That's correct.

12 Q. Have you seen them since May of '93?

13 A. No sir.

14 Q. All right. You indicated that you went to the Pantry
15 following that robbery; is that correct?

16 A. Yes sir.

17 Q. And you collected a lot of evidence?

18 A. Yes sir.

19 Q. You indicated you sent this over and under gun to
20 S.L.E.D. for prints; is that right?

21 A. Yes sir.

22 Q. Do you know if Marcus Timmons' prints were found on the
23 gun?

24 A. I do not know.

25 Q. You also -- did you take a photograph of footprints

1 behind the Pantry?

2 A. Yes sir, I did.

3 Q. Do you know if that footprint came back identified as
4 Marcus Timmons' shoe?

5 A. I do not know.

6 MR. AYER: Thank you, sir.

7 MR. SWARAT: Nothing on redirect, Your Honor. I would
8 ask that Detective Blackwell be excused.

9 THE COURT: Any objection to this witness being
10 excused?

11 MR. AYER: No objection, Your Honor.

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

13 MR. SWARAT: State calls Carlisle McNair, Captain
14 McNair.

15 CARLISLE McNAIR, first duly sworn,
16 testified as follows:

17 DIRECT-EXAMINATION BY MR. SWARAT:

18 Q. Captain McNair, by whom are you employed?

19 A. The Lexington County Sheriff's Department.

20 Q. And how long have you been employed at the Lexington
21 County Sheriff's Department?

22 A. I've been in law enforcement, September will be twenty-
23 one years.

24 Q. And in your capacity as a Captain with Lexington
25 County, are you in a supervisory type as well?

1 A. Yes sir.

2 Q. Captain, were you called to the scene of the Pantry on
3 State Street on February the 27th of '93?

4 A. Yes sir.

5 Q. Early morning hours?

6 A. Yes sir.

7 Q. During the time that you were there on the scene, were
8 some items of evidence collected?

9 A. Yes, it was.

10 Q. And specifically what types of evidence were collected,
11 if you recall?

12 A. Weapons.

13 Q. I'm showing you what's been marked as State's Exhibit
14 Number 2 in evidence, and ask you if you recognize that item.

15 A. I can identify it by serial number, I think.

16 COURT REPORTER: And would you please read that into
17 the record?

18 A. Yes Ma'am.

19 The serial number on this weapon is 8373603 -- excuse
20 me. That's a "B", not an "8". It's B373603. It's a over and
21 under double-barrel four ten shotgun that was found at the
22 Pantry.

23 Q. Now, is that a four ten shotgun, or a twenty gauge
24 shotgun?

25 A. You are right. I apologize. It's a twenty gauge, over

1 and under, twenty-two, twenty gauge shotgun. The serial
2 number would be 373603.

3 Q. So the top barrel is a twenty-two caliber rifle
4 barrel ---

5 A. That's correct.

6 Q. ---And the bottom barrel is a twenty gauge shotgun
7 barrel?

8 A. That's correct.

9 Q. Did you have the occasion to handle that weapon at the
10 scene at the Pantry, on that date, on the 27th?

11 A. Yes sir.

12 Q. And specifically, why did you handle that weapon? What
13 were you checking for on that weapon?

14 A. I was checking to see if it had been freshly fired or
15 not.

16 Q. Now, can you explain that to the jury? Do you have a
17 lot of experience with firearms?

18 A. As a police officer and a hunter, yes sir, I do.

19 Q. You hunt?

20 A. Yes sir.

21 Q. Use a shotgun?

22 A. Yes sir.

23 Q. Had the occasion to be around a freshly fired shotgun?

24 A. Many times.

25 Q. What were you checking for, Captain McNair, when you

1 checked that shotgun?

2 A. Just the smell of fresh gunpowder, just smelling to see
3 if -- you can usually determine if it's been fired or not by
4 just -- just smelling it.

5 Q. And what did you determine from your observation of
6 that particular weapon that night?

7 A. That it had been fired recently.

8 Q. State's Exhibit Number 2 that you have in your hand had
9 been recently fired?

10 A. Yes sir.

11 Q. And that was recovered behind the Pantry on State
12 Street?

13 A. That's correct.

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

15 MR. AYER: I have no questions for Captain McNair.

16 MR. SWARAT: Your Honor, I would ask that he be
17 excused.

18 MR. AYER: No objection.

19 THE COURT: Thank you. The witness is excused.

20 MR. RIDDLE: State calls Bill Wright, Your Honor.

21 MR. AYER: Your Honor, I have a matter I have to take
22 up with the Court.

23 THE COURT: All right. Mr. Foreman, ladies and
24 gentlemen of the jury, let me ask that you go to the jury
25 room. Please do not discuss the case.

1 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right. Be glad to hear from you.

4 MR. AYER: Your Honor, if I could I would like to
5 conduct an incamera hearing of Detective Wright. His
6 testimony is -- my understanding that he was involved
7 following the April 9th robberies. As Your Honor knows the
8 April 9th robberies don't play a part in this, and I would
9 like to know what his testimony is going to be before he
10 utters it, and I would like to ask him some questions about
11 that.

12 THE COURT: About what?

13 MR. AYER: About his stopping the van on April 9th,
14 following the April 9th robberies.

15 THE COURT: Well, I have already admonished the State.
16 I mean, I don't think they want to run the risk of a mistrial.
17 I feel like they would have admonished their witnesses that --
18 since the South Carolina Supreme Court said you are not going
19 into that, that's what it means, that they can't go into any
20 of that.

21 MR. AYER: Well, and I agree, and maybe my motion is
22 not even proper, I don't know, but I don't know exactly what
23 he's going to say, and I don't ---

24 THE COURT: I can say I don't either. I ---

25 MR. AYER: I would object -- I would object to his even

1 testifying, because it brings up April, brings up April 9th.
2 He came up and -- I don't know if he arrested them, or he's
3 the one that stopped them in the van. I don't know how you
4 get around April 9th by calling him, period. To me,
5 everything that he testifies to is intimately woven into April
6 the 9th, and I don't want us to have a misunderstanding about
7 what is connected to and what isn't connected to April 9th,
8 and it may not be directly connected, but it's more than
9 likely indirectly connected to April the 9th.

10 THE COURT: Well, Solicitor, can you give us a brief
11 synopsis of this witness's testimony?

12 MR. RIDDLE: Yes sir. What I have instructed Mr.
13 Wright, and what I intend to ask him is this. Did you come
14 into contact with Marcus Timmons on April the 9th. Who was
15 present? Marcus and a guy named Stacey Wright. Was there a
16 third guy present that ran? Yes. Pursuant to your
17 investigation, were you able to determine who that was? Yes,
18 it was Quincy Timmons.

19 And in the course of that contact with Mr. Marcus
20 Timmons, did you have an opportunity to see certain items?
21 Yes, I did. What were those items? I received -- or I seized
22 a ski mask, State's Number 4, a bandanna, State's Number 5, a
23 half a ski mask, State's Number 30, and a baseball cap,
24 State's Number 29. Were these in Mr. Marcus Timmons'
25 possession on April the 9th? Yes. End of story.

1 THE COURT: That's all this witness is going to testify
2 to?

3 MR. AYER: Well, see, Your Honor, I don't think -- and
4 we get into semantics here. Marcus Timmons' possession. All
5 of those items weren't in Marcus Timmons' possession. They
6 may have been in the van tied to the April 9th robberies.

7 THE COURT: Well, he can testify where he found them.
8 He doesn't have to use the word possession. He can -- you can
9 just say, where did you -- did you find any items, and if so,
10 where did you find them.

11 MR. RIDDLE: Your Honor, -- and I did. I apologize, I
12 left one thing out. I'm going to indicate that they were in a
13 van. That van was, in fact, stolen, but I don't intend to
14 bring that out, just that they were in a van, and that these
15 items were in the van that was occupied by Mr. Timmons.

16 MR. AYER: And Stacey Wright.

17 MR. RIDDLE: And Quincy Timmons.

18 MR. AYER: Quincy Jones.

19 THE COURT: Be careful how you phrase the question that
20 -- and let the witness answer the question. Don't suggest the
21 answer, and you know, you can ask him what he stopped. He can
22 tell you what he stopped, if it was a motorcycle, a van or a
23 car, and you can say, did you see or find anything in there,
24 and he can say what he found, or he found nothing.

25 MR. RIDDLE: And Your Honor, along those lines, I

1 wasn't even going to identify the driver, or who the
2 passengers were, because I didn't want to even get into the
3 issue of whether or not he committed a crime.

4 THE COURT: Okay.

5 MR. RIDDLE: I'm trying to sanitize this the best way I
6 can.

7 THE COURT: Okay. We will let him testify, and Mr.
8 Ayer, if you have an objection to any point, you will have to
9 just state your objection.

10 MR. RIDDLE: I again apologize, Your Honor. There is
11 one other thing. When they stopped Mr. -- or when they --
12 when he was in contact with Mr. Timmons, Marcus Timmons, he
13 asked Marcus Timmons his name. He wouldn't even tell him his
14 name, and I intended to bring that out.

15 THE COURT: All right.

16 MR. AYER: May I just ask them a question? This
17 doesn't have to be on the record.

18 Where is the dark blue hat?

19 MR. SWARAT: I think it's back in the office now. You
20 saw it yesterday.

21 MR. AYER: Can I ask them to bring -- there's a dark
22 blue hat, my understanding, was in that van also ---

23 THE COURT: Yes, we ---

24 MR. AYER: ---That the State has.

25 THE COURT: Whatever he found. I don't know -- I have

1 never tried this case before. I -- this is new to me, so
2 whatever the officer found, he can identify, or tell what he
3 found.

4 How long will it take them to go to wherever they are
5 going to ---

6 MR. SWARAT: Your Honor, he will be back by cross-
7 examination.

8 THE COURT: Huh?

9 MR. SWARAT: He will be back by cross-examination.

10 THE COURT: Okay. All right. If the State is ready
11 and the defense is ready we will -- how long will this witness
12 take?

13 MR. SWARAT: Five minutes tops, Your Honor, I believe.

14 THE COURT: Okay. Do you have some others before we
15 break for lunch?

16 MR. RIDDLE: Your Honor, the next witness after this is
17 going to be Quincy Timmons, and we need to settle what
18 portion, or all that whole issue.

19 THE COURT: Okay. Well, we'll break for lunch after
20 this witness then.

21 MR. RIDDLE: Your Honor, I've got one picture of the
22 van, a photograph of the outside of the van ---

23 THE COURT: Uh huh (indicating positive)

24 MR. RIDDLE: ---That I don't believe Mr. Ayer has an
25 objection to.

1 THE COURT: Is there some relevance that the picture --

2 -

3 MR. RIDDLE: Oh, this is the vehicle that Mr. Wright
4 was involved in with Marcus Timmons.

5 THE COURT: But I mean, is that relevant to these
6 cases?

7 MR. RIDDLE: It's -- this is the van that contained
8 those items.

9 THE COURT: Okay. But I mean, why is a photograph
10 necessary of the van? What's the relevance of the van,
11 whether it's high, low, wide, colors, whatever?

12 MR. RIDDLE: I don't know that there is any particular
13 relevance to it. I was just offering the photograph in ---

14 THE COURT: If it's not relevant, I don't see any point
15 in having the photograph ---

16 MR. RIDDLE: That's fine. I'll withdraw it.

17 THE COURT: Okay.

18 All right. Bring in the jury.

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JURY.)

21 THE COURT: All right. You may call your witness.

22 MR. RIDDLE: State calls Bill Wright to the stand.

23 WILLIAM SAMUEL WRIGHT, first duly
24 sworn, testified as follows:

25 DIRECT-EXAMINATION BY MR. RIDDLE:

1 Q. Mr. Wright, you are employed by the Sheriff's
2 Department?

3 A. I am.

4 Q. In what capacity?

5 A. I am currently a Lieutenant assigned to the West
6 Region, in the Operations Bureau, Lexington County Sheriff's
7 Office.

8 Q. Were you in that capacity back in 1993?

9 A. In 1993 I was an investigation assigned out at
10 headquarters, doing criminal investigations.

11 Q. So you moved from the Investigative Division into a
12 shift supervisor essentially?

13 A. Region supervisor, yes.

14 Q. Region supervisor, excuse me. Mr Wright, back on April
15 the 9th of 1993, did you have an occasion to come into contact
16 with the Defendant in this case, Marcus Timmons?

17 A. Yes sir, I did.

18 Q. And was that in connection with a van that was occupied
19 by several individuals?

20 A. It was.

21 Q. All right. And was Marcus Timmons one of those
22 individuals?

23 A. Marcus Timmons was one of the occupants, yes sir.

24 Q. How many occupants of the van were there originally?

25 A. There were a total of three when we first came into

1 contact with the vehicle.

2 Q. All right. And Mr. Timmons was one of them?

3 A. Marcus Timmons was one of those individuals.

4 Q. All right. Was Stacey Wright another one of the
5 individuals?

6 A. Yes sir. Stacey Wright was another one.

7 Q. Okay. Now, there was a third individual. What
8 happened to him at that time?

9 A. The third individual that evening ran from the vehicle.
10 We did not apprehend him that evening.

11 Q. Okay. Now, during the course of your contact with Mr.
12 Marcus Timmons on that night, did you have an occasion to take
13 several items that were contained in that van?

14 A. I did.

15 Q. Let me show you what's been marked State's Exhibit
16 Number 4. Do you recognize this item?

17 A. I do, sir.

18 Q. Was that one of the items which you seized on April the
19 9th, 1993?

20 A. Yes sir, it is.

21 Q. From the presence of Marcus Timmons?

22 A. From that van he occupied.

23 Q. State's Exhibit Number 5, red bandanna. Do you
24 recognize that?

25 A. That is also one of those items, yes sir.

1 Q. Is this an item that you seized from the presence of
2 Marcus Timmons?

3 A. It is, sir.

4 Q. From the van that he occupied?

5 A. Yes sir.

6 Q. State's Exhibit Number 29.

7 A. Also one of the items, sir.

8 Q. From the van?

9 A. Yes sir.

10 Q. State's Exhibit Number 30?

11 A. That is also one of those items, yes sir, from that
12 van.

13 Q. Now, when you first came in contact with Marcus
14 Timmons, do you try to ascertain who you are dealing with?

15 A. Yes sir. I attempted to figure out exactly who he was.
16 He wouldn't respond to my questions any more than an
17 occasional grunt.

18 Q. You asked him his name?

19 A. Yes sir, I did.

20 Q. And he wouldn't tell you?

21 A. No sir.

22 Q. Were you subsequently able to identify Marcus Timmons
23 as being that individual that you had?

24 A. I was.

25 Q. All right. And through your investigation, were you

1 able to identify who the individual was that ran?

2 A. Yes sir. I identified him as being Quincy Timmons.

3 Q. Quincy Timmons?

4 A. Yes sir.

5 Q. And do you know that to be Marcus Timmons' first
6 cousin?

7 A. That's my understanding, yes sir.

8 MR. RIDDLE: Beg the Court's indulgence.

9 Your Honor, that's all I have at this time.

10 CROSS-EXAMINATION BY MR. AYER:

11 Q. Mr. Wright, how are you?

12 A. Very good.

13 Q. The Solicitor asked you if you seized these items in
14 the presence of Marcus Timmons. I think your testimony was
15 that these items were in the van; is that correct?

16 A. The van he occupied, yes sir.

17 Q. Okay. And there was an individual in that van by the
18 name of Stacey Wright; isn't that correct?

19 A. Yes sir.

20 Q. Okay. Did Mr. Wright have on a hat, that you recall?

21 A. I'm not sure whether he was wearing one or not.

22 Q. Did you also find this hat in that van?

23 A. Yes sir. I believe it's another one of the items we
24 took from the van.

25 MR. RIDDLE: Your Honor, if he's going to publish that

1 he needs to move it in.

2 MR. AYER: I'm fixing to move.

3 THE COURT: All right. Any objection?

4 MR. RIDDLE: No sir.

5 THE COURT: All right. This is defense's exhibit.
6 Comes in without objection.

7 COURT REPORTER: Defendant's Number 1.

8 (CAP ADMITTED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
9 NUMBER 1.)

10 Q. Just a last question, Detective Wright. You said this
11 hat was on Stacey Wright's head, or you don't recall?

12 A. I don't recall. I know it's one of the items we seized
13 that evening.

14 MR. AYER: Thank you, sir.

15 THE COURT: Anything else of this witness?

16 MR. AYER: No sir.

17 THE COURT: Anyone object to the witness being excused?

18 MR. AYER: No sir, Your Honor.

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

20 A. Thank you, sir.

21 THE COURT: Let me see the attorneys at the bench just
22 a minute, about scheduling.

23 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

24 THE COURT: Mr. Foreman, ladies and gentlemen of the
25 jury, there are some matters that I'm going to have to take up

1 outside of your presence, so I'm going to give you a little
2 bit longer lunch hour. Going to ask that you be back from
3 lunch at 2:30 P.M. We will stay here and finish what we have
4 to do while you go on to lunch.

5 Once again, the same instructions that I have given you
6 throughout the trial would apply. Should there be a report in
7 the media, that is, a newspaper or similar publication, radio
8 or television, or even the internet, do not read, listen to or
9 view those reports. Also, do not discuss this case among
10 yourselves or with anyone else. When you return from lunch
11 please report directly to your jury room.

12 Everyone else please remain in your seats.

13 The jury is excused for lunch until 2:30 P.M.

14 **THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE**
15 **JURY.)**

16 **THE COURT:** All right. Do y'all want to do the --
17 this -- look at this transcript now? Have y'all had chances
18 to review it?

19 **MR. AYER:** Your Honor, I think we have. And I know --
20 I don't mean to take the Court's time, but I think we are
21 going to need some time to review what the Solicitor has
22 presented.

23 **THE COURT:** Oh, you haven't seen this?

24 **MR. AYER:** I have not seen that. Ms. Smith has seen
25 it, but I haven't seen it, but I would like to go through it,

1 with her, if that's all right.

2 THE COURT: Okay. Well, my understanding is that I had
3 asked them to take out any reference to any other crime or
4 crimes, especially those that the Supreme Court has already
5 addressed, and said would not be admissible, and I have just
6 glanced through my copy, and I see where they have marked out
7 pages and pages of stuff.

8 Do you still think there is some objectionable material
9 in there?

10 MR. AYER: Well, I would just like to take a look at
11 it.

12 THE COURT: Okay. Well, what time -- y'all want to
13 come back at 2:15?

14 MR. RIDDLE: I think it may take longer than that to go
15 through.

16 THE COURT: Well, I don't intend to go through this
17 question by question. I'm going to tell y'all that. I mean,
18 y'all are intelligent people. The Supreme Court has issued a
19 decision, and told us what to do -- what's admissible and not
20 as far as those other crimes are concerned. I don't see how
21 this can be so complicated.

22 MR. AYER: Your Honor, I agree. I would be remiss if,
23 before I said, oh, just go ahead and read it, I didn't even
24 look at it.

25 THE COURT: Uh huh (indicating positive)

1 MR. AYER: I just want to take a look at it. Not that
2 I don't trust Solicitor Riddle, but his idea of what's
3 inferred to April and mine might be slightly different.

4 THE COURT: I mean, we -- as we go through the thing it
5 would be like a live witness on the stand. You could still
6 object as they read the question.

7 MR. AYER: Well, and that ---

8 THE COURT: I don't intend to go through it and cleanse
9 this thing to a perfection. My concern was, first of all,
10 just to get rid of any matter that the Supreme Court already
11 said doesn't come in, and I had asked the State to do that,
12 and I feel like they don't want a mistrial, or the case
13 reversed any -- any more than anyone else, so ---

14 MR. RIDDLE: How about if -- may -- can I just propose
15 this?

16 THE COURT: All right.

17 MR. RIDDLE: How about if the attorneys come back at
18 quarter of two, and we will meet and go through it, and then
19 anything that we can't agree on, we could take up with the
20 Court at 2:15.

21 THE COURT: All right. And my understanding is,
22 Qunicy Timmons will be available around two o'clock or so and
23 Ms. ---

24 MR. RIDDLE: He's here now, and I'll get Ms. Fullwood
25 here.

1 **THE COURT:** Ms. Fullwood. Because I intend to let you
2 call him, and I'll have to give him another chance to -- we'll
3 just see what he says about testifying, and then, at that
4 point, I'll have to take up the matter of whether or not he
5 will be unavailable, and if so, can we use the transcript.

6 Okay.

7 **MR. AYER:** From a ground ruling standpoint, is it my
8 understanding that, if the transcript is admitted, are you
9 going to allow me -- when you say you allow me to object, are
10 you saying I object where Ms. Myles objected previously, or
11 can I object a new objection?

12 **THE COURT:** No. You can object as though the witness
13 were here, live, testifying. You can object to anything. You
14 are not bound by the transcript, so as they go through the
15 transcript, and you anticipate a question, or you can see it
16 coming, you can stand up and say, Your Honor, we object, and I
17 can take it up at that time.

18 **MR. AYER:** As though he were saying it right there?

19 **THE COURT:** As though he were saying it right here,
20 yes.

21 **MR. AYER:** All right, sir.

22 **THE COURT:** I mean, that -- it would be just as though
23 he were a live witness. They ask the question, and pop up and
24 say I object, then I would have to rule on it, but you can go
25 through -- through it at lunch. If there is something that

1 you anticipate a strong objection to, we can talk about it.

2 Mr. Quincy Timmons, of course, may change his mind and
3 testify. I don't know what he's going to do, so we'll have to
4 take that up first, to see what his position is going to be,
5 and Ms. Fullwood has already told me she has some motions to
6 argue about that, before he even goes on the stand, so, you
7 know, maybe we could start that about 2:15 with Ms. Fullwood,
8 and hear her motions, and then, you know, we will just have to
9 let the State, if they intend to call him as a witness, call
10 him, and see what his reaction is, what his position is.

11 MR. SWARAT: Your Honor, I believe there's one more
12 thing that's going to come up in addition -- in reference to
13 that transcript, that's going to be something we are going to
14 disagree on. I believe the issue of third party guilt is
15 probably going to come up, that they are going to try to get
16 into the guilt of Stacey Wright, and I believe that issue is
17 going to come up and we are going to have to address that if
18 they try to do that.

19 THE COURT: Stacey Wright.

20 MR. SWARAT: He has nothing to do with the February
21 27th crime spree. He was involved in the April 9th crime
22 spree.

23 THE COURT: Is that in this transcript? Did y'all not
24 redact it?

25 MR. AYER: Yes sir, we did. We redacted it.

1 MR. SWARAT: I don't think they agreed to the
2 redactions, because they want to get into Stacey Wright. Of
3 course Your Honor knows the law on third party guilt. They
4 can't do that.

5 THE COURT: All right. Okay.

6 MR. AYER: Your Honor, just for the record, I hadn't
7 thought about getting into Stacey Wright, but now that
8 Solicitor Swarat has mentioned it, perhaps I need to go back
9 and look at that.

10 THE COURT: Well, you can do it over lunch. My
11 understanding was, y'all had this yesterday, the transcript.
12 Did y'all not have it yesterday?

13 MS. SMITH: No sir, Your Honor. It was given this
14 morning.

15 THE COURT: Huh?

16 MS. SMITH: As we walked in this morning I was given --
17 -

18 THE COURT: Oh. I thought they had it yesterday, so
19 everybody could look at it overnight.

20 MR. RIDDLE: No sir. And that's my fault. I had it
21 yesterday, and I just ---

22 THE COURT: Okay.

23 MR. SWARAT: Your Honor, they've had it for months.
24 They didn't have the redacted version that we had proposed.

25 THE COURT: Okay.

1 MR. AYER: Your Honor, I've had the transcript for
2 years. I've had it for about two years.

3 THE COURT: All right. Well, we'll break for lunch.
4 Y'all come back at quarter of two, and then I'll be available,
5 and we'll see Ms. Fullwood and Mr. Timmons around 2:15.

6 MR. RIDDLE: Your Honor, did you say 2:15 for Ms.
7 Fullwood?

8 THE COURT: Yes. Yes. You can be back about 2:15.
9 That's fine.

10 (THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK, AND
11 OUTSIDE THE PRESENCE OF THE JURY.)

12 THE COURT: Yes. Just bring him around and let the
13 Clerk place -- place him under oath.

14 QUINCY TIMMONS, first affirming,
15 testified as follows:

16 DIRECT-EXAMINATION BY MR. RIDDLE:

17 QUINCY TIMMONS: James 5:12 say we aren't suppose to
18 swear on no Bible and ---

19 THE COURT: I beg your pardon.

20 QUINCY TIMMONS: James 5:12 says not to swear on the
21 Bible, nothing by Heaven or earth.

22 THE COURT: Sir, you can affirm.

23 CLERK OF COURT: Raise your right hand. Do you
24 solemnly swear or affirm that you give before the Court in
25 this matter shall be the truth, the whole truth, and nothing

1 but the truth, so help you God.

2 QUINCY TIMMONS: I affirm.

3 THE COURT: Okay. Do you want to just take the seat.
4 Would you state your full name, please.

5 QUINCY TIMMONS: Quincy Timmons.

6 THE COURT: Okay. And Mr. Timmons, I have appointed
7 Ms. Fullwood, who is present, the Public Defender, to
8 represent you in this matter. Have you been able to talk with
9 her?

10 QUINCY TIMMONS: Yes.

11 THE COURT: All right. On Monday I advised you of
12 your rights under the Fifth Amendment to the Constitution,
13 your right against self-incrimination. Did you understand
14 what I explained to you on Monday?

15 QUINCY TIMMONS: Yes.

16 THE COURT: Have you discussed this with Ms. Fullwood?

17 QUINCY TIMMONS: Yes.

18 THE COURT: Okay. Do you want me to repeat what I
19 stated to you on Monday?

20 QUINCY TIMMONS: If you want to.

21 THE COURT: Okay.

22 Ms. Fullwood, have you had a chance to talk with -- with
23 your client about this -- this matter about his rights under
24 the Fifth Amendment?

25 MS. FULLWOOD: Yes sir, I have.

1 THE COURT: Okay.

2 Mr. Timmons, the State of South Carolina has advised
3 that they intend to call you as a witness to testify in the
4 trial of this case, this case being the State versus Marcus
5 Timmons. I now advise you that, as a witness you have the
6 right to invoke the protections given you by the Fifth
7 Amendment to the Constitution of the United States, and as
8 similar counterpart provision of the Constitution of the State
9 of South Carolina. The Fifth Amendment to the Constitution of
10 the United States provides, in part, that no person shall be
11 compelled, in any criminal case, to be a witness against
12 himself. This provision of Constitution law means that you
13 cannot be compelled, or required to be a witness against
14 yourself. This provision of Constitutional law means that you
15 have the right to invoke the protection given you by the Fifth
16 Amendment, to any question asked you which you consider gives
17 you reasonable cause to be that the answer, if given, might
18 tend to subject you to criminal responsibility. This
19 privilege which you have is a personal right which can only be
20 claimed by you, therefore you have the right, Mr. Timmons, to
21 refuse to answer any question asked of you which you consider
22 gives you reasonable cause to believe that the answer to the
23 question, if given, might tend to incriminate you. If you
24 wish to exercise this right when a question is asked, you will
25 state to this Court that you, and I quote, refuse to answer

1 the question because the answer may tend to incriminate me.

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

7 Now, Mr. Timmons, do you understand what I have just
8 explained to you?

9 QUINCY TIMMONS: Yes.

10 THE COURT: And do you have any questions about what I
11 explained to you?

12 QUINCY TIMMONS: No.

13 THE COURT: And do you need any time to talk to your
14 attorney, Ms Fullwood, about this matter?

15 QUINCY TIMMONS: No.

16 THE COURT: On Monday the Solicitor, out of the
17 presence of the jury, asked you a series of questions, and on
18 each question you refused to answer, stating that the answer
19 may tend to incriminate you. As to all the questions asked on
20 Monday, the Court found, as a fact, that silence on your part,
21 that is, your refusal to answer, was not justified, that the
22 answer to those questions, if any, given by you, would not
23 incriminate you at all.

24 As a matter of fact, the State put on the record that
25 they have no outstanding warrants or indictments, or any

1 charge whatsoever that they could prosecute you on.

2 Now, Ms. Fullwood, at this time, is there anything you
3 have to say on this matter?

4 MS. FULLWOOD: Yes sir, there is.

5 THE COURT: Okay. I'll be glad to hear from you.

6 MS. FULLWOOD: Your Honor, I ask that the Court ---

7 QUINCY TIMMONS: Excuse me. Excuse me.

8 MS. FULLWOOD: Yes sir.

9 QUINCY TIMMONS: I want to testify.

10 MS. FULLWOOD: You want to testify?

11 QUINCY TIMMONS: Yes. Uh huh (indicating positive)

12 THE COURT: All right.

13 MS. FULLWOOD: All right, sir.

14 THE COURT: And Mr. Timmons, do you need for me to go
15 over any of that that I just went over with you?

16 QUINCY TIMMONS: No.

17 THE COURT: All right. Okay.

18 All right. The witness has indicated that he wishes to
19 testify in the trial of the case. Any objection to just
20 leaving him on the stand, or do you want him to step down if
21 he is, in fact, going to be the State's next witness.

22 MR. RIDDLE: Your Honor, I would like for him to be
23 sworn in front of the jury.

24 THE COURT: Well, he will be sworn in front of the
25 jury.

1 Okay. All right. Mr. Timmons, it may be better if you
2 could just step down and, see the law enforcement officer in
3 the light blue shirt. If you could just have a seat in front
4 of him, and when we get the jury in here we'll call you back
5 around.

6 MR. RIDDLE: Beg the Court's indulgence for just one
7 moment, Your Honor.

8 THE COURT: All right. Let me just ask the Bailiff.
9 Have all the jurors returned?

10 BAILIFF: All are present, yes sir.

11 THE COURT: All right.

12 MR. RIDDLE: Just one second. I just want to review
13 one thing, Your Honor.

14 THE COURT: Have you had enough time for us to ---

15 MR. RIDDLE: Yes sir. At this point, Your Honor -- at
16 this point, based on what Mr. Timmons has indicated on the
17 witness stand, I would renew my motion to have him called as a
18 Court's witness, pursuant to State versus Riddle, and State
19 versus Anderson. I would rely on factors that are -- and also
20 Rule 614, Your Honor. I would rely on factors as they are
21 addressed in Little. I think factor number one has
22 effectively been changed by the Rules, that being the vouching
23 requirement that is contained in Anderson and Riddle. I think
24 the South Carolina Rules have effectively vitiated that
25 requirement, but I would indicate to the Court that there is,

1 in fact, a close relationship between the accused and the
2 prospective witness. They are first cousins. That has
3 already been testified to.

4 There has previously been evidence that the accused, or
5 that the witness was an eye witness to the events which give
6 rise to the testimony. There is previous sworn statements by
7 the witness, which I believe, Your Honor, at this time, will
8 likely be contradictory, and additionally, Your Honor, I think
9 that the absence of the witness's testimony would result in a
10 miscarriage of justice, and I would just renew that at this
11 time.

12 In the alternative, Your Honor, I would move, pursuant
13 to Rule 611 -- I believe it's 611 -- that being the Rule
14 governing interrogation of witnesses, and the use of leading
15 questions. I think that, under 611(C), if he is not called as
16 a Court's witness, and allowed to be cross-examined by
17 everyone, that under 611(C), when a party calls a witness
18 identified with an adverse party, interrogation may be by
19 leading questions, and so I would move alternatively, that he
20 be called as a Court's witness, or that I be allowed, under
21 611(C), to use leading questions in my examination of Mr.
22 Timmons.

23 I base that, Your Honor, on Mr. Timmons' demeanor, and
24 his actions, and his responses to the question on the witness
25 stand Monday, which Your Honor observed, but which may not be

1 adequately reflected in the record, in terms of just the dry
2 black and white record taken down by the Court Reporter,
3 regarding Mr. Timmons' hostility toward myself when he was
4 being questioned in reference to the events which are giving
5 rise to his testimony, and so I would move for one of those
6 two things, either a 614, Court's witness, or 611, leading
7 questions, Your Honor.

8 THE COURT: All right. As to the Court calling the
9 witness under Rule 614, I'm going to find, at this time,
10 extraordinary circumstances do not exist. I'm going to
11 decline to call him as a Court's witness.

12 Under Rule 611 I'm going to hold that ruling in
13 abeyance, depending on what happens during the course of the
14 examination of the witness.

15 MR. RIDDLE: Your Honor, at any time would I need to
16 make a motion under 611 would you want me to restate all the
17 arguments which I have just made, or ---

18 THE COURT: No. You don't have to restate all the
19 argument. You can just say you are making your motion under
20 Rule 611. The record is already clear.

21 MR. RIDDLE: All right.

22 THE COURT: Okay.

23 All right. Anything else before we bring in the jury?

24 MR. AYER: Nothing from the Defendant, Your Honor.

25 THE COURT: Okay. You may bring in the jury.

1 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
2 JURY.)

3 THE COURT: All right. You may call your witness.

4 MR. RIDDLE: The State calls Quincy Timmons to the
5 witness stand, Your Honor.

6 QUINCY TIMMONS, first affirming,
7 testified as follows:

8 DIRECT-EXAMINATION BY MR. RIDDLE:

9 Q. Mr Timmons, how old are you?

10 A. Twenty-six.

11 Q. And you are in the Department of Corrections?

12 A. Yes.

13 Q. Where are you currently in the Department of
14 Corrections?

15 A. Kershaw.

16 Q. Kershaw Correctional Institution. What town is that
17 in?

18 A. Beats me.

19 Q. Is it over in Kershaw County?

20 A. I guess so.

21 Q. Somewhere near Camden?

22 A. Somewhere around that area.

23 Q. And you are in Kershaw Correctional Institution in
24 reference to the murder of Thomas Wise; are yo not?

25 A. Yes.

1 Q. Okay. And to an armed robbery at the E-Z Coin Laundry

2 ---

3 A. That's what the warrant says.

4 Q. ---And in reference to an attempted armed robbery at the
5 Conoco Station ---

6 A. That's what the warrant says.

7 Q. ---And in reference to the armed robbery, or attempted
8 armed robbery at the Pantry station on State Street?

9 A. That's what the warrant says.

10 Q. You were sentenced to life in prison for murder, were
11 you not?

12 A. Yes.

13 Q. And you received a sentence of between five years and
14 twenty-five years on the other charges; is that correct ---

15 A. No.

16 Q. ---All to run concurrently?

17 A. Concurrently.

18 Q. Yes sir. Is that correct?

19 A. Yes.

20 Q. This is from a series of incidents that took place on
21 February the 27th of 1993, correct?

22 A. Yes. That's what the warrant says.

23 Q. Okay. Are you related to Marcus Timmons?

24 A. Yes.

25 Q. How are you related?

1 A. First cousins.

2 Q. Explain to the jury, if you would, what that
3 relationship is, in terms of your mama and daddy and his mama
4 and daddy.

5 A. My mom is his dad's sister.

6 Q. First cousins?

7 A. First cousins.

8 Q. All right. Mr. Timmons, you don't want to be here
9 today, do you?

10 A. No, I don't.

11 Q. I'm going to ask you some questions about February the
12 27th, 1993, all right.

13 A. Yes.

14 Q. On February the 27th of 1993, did you come to Cayce,
15 South Carolina, West Columbia area?

16 A. I don't remember.

17 Q. You don't remember?

18 A. No.

19 Q. February the 27th, 1993, were you at the Conoco
20 Station?

21 A. I can't recall.

22 Q. February the 27th of 1993, did you go to the E-Z Coin
23 Laundry?

24 A. I can't recall.

25 Q. February the 27th of 1993, were you out on the side of

1 Highway 321?

2 A. I can't recall.

3 Q. February the 27th of 1993, did you go to the Pantry on
4 State Street?

5 A. Repeat that question.

6 A. February the 27th of 1993, did you go to the Pantry on
7 State Street at approximately 3:30 in the morning?

8 A. I can't recall.

9 Q. Can recall. Now, Mr. Timmons, you are serving life in
10 prison for murder, are you not?

11 A. Yes.

12 Q. You pled guilty to that?

13 A. Yes.

14 Q. ---And the Judge, at that time, gave you a large
15 sentence ---

16 A. Yes.

17 Q. ---In this very courtroom, correct?

18 A. Yes.

19 Q. You stood right here, right ---

20 A. Yes.

21 Q. ---With your lawyer, correct?

22 A. Yes.

23 Q. At that time, Mr. Timmons, you were asked about
24 whether you were involved in the Conoco, were you not?

25 A. Yes.

1 Q. And you were asked about whether you were involved with
2 the E-Z Coin, correct ---

3 A. Yes.

4 Q. ---And you were asked about whether you were involved
5 in the death of Mr. Wise, correct?

6 A. Yes.

7 Q. ---And you were asked about whether or not you were
8 involved with the killing at the -- or excuse me, the robbery
9 at the Pantry on State Street, correct?

10 A. Yes.

11 Q. Now, Mr. Timmons, at that time, there was a fellow
12 working in the Solicitor's Office by the name of Knox McMann;
13 is that correct ---

14 A. Yes.

15 Q. ---And he asked you about all those things, did he not?

16 A. Yes.

17 Q. Okay. He asked you about those things, and he asked
18 you about conspiracy as well, correct?

19 A. I can't recall.

20 Q. You can't recall that?

21 A. So many things he talked about.

22 Q. I'm sorry.

23 A. So many things he talked about, so many threats he
24 made.

25 Q. Okay. But you recall telling the Judge what you knew

1 about all of those events, correct?

2 A. What I knew about it ---

3 Q. Yes sir.

4 A. ---Or what was told to me to say about it?

5 Q. You recall telling the Judge about those events, don't
6 you?

7 A. The threats, yes.

8 Q. You remember, before you told the Judge about that, you
9 were sworn in, much like you were today, correct?

10 A. Yes.

11 Q. And I believe that was on December the 12th, 1994,
12 correct?

13 A. I can't recall.

14 Q. You can't recall.

15 A. It was several times.

16 Q. I'm sorry.

17 A. I've been in here several times. I can't recall if
18 that's the day.

19 Q. And the individual from the Solicitor's Office that had
20 the case at that time was a fellow by the name of Knox McMann,
21 right ---

22 A. Yes.

23 Q. ---And your attorney was Catherine E. Evans, Cathy
24 Evans, right?

25 A. Right.

1 Q. Do you remember a lady by the name of Linda Davis,
2 Court Reporter ---

3 A. No, I don't.

4 Q. ---Someone sitting right here, taking down everything
5 that was said?

6 A. I remember seeing her, yes, but as far as her name, no,
7 I don't know her.

8 Q. What I'm going to do is, I'm going to hand you a copy
9 of the transcript from your guilty plea, and I'm going to ask
10 you to read this and see if it refreshes your memory any about
11 those events, and what you testified to, okay.

12 A. Yes.

13 Q. Are you ready?

14 A. Yes.

15 Q. You have had a chance to review that, is that correct?

16 A. Yes.

17 Q. Look through the whole thing?

18 A. Yes.

19 Q. Does that help you with your memory any, Mr. Timmons?

20 A. With my memory?

21 Q. Yes sir.

22 A. Due to the fact that I was young, foolish, stupid, a
23 lot of stuff is lies.

24 Q. A lot of it is what?

25 A. Lies.

1 Q. Lies. Okay.

2 A. Yes.

3 Q. But does it help your memory any, Mr. Timmons?

4 A. Yes. It helps a lot.

5 Q. Okay. So now you remember what happened; is that
6 correct?

7 A. Yes, sure do.

8 Q. All right. Now, Mr. Timmons, you remember now going
9 to Cayce on February the 27th of 1993, right?

10 A. I can't recall that.

11 Q. Well, I thought you just testified that that document
12 helped refresh your memory, Mr. Timmons.

13 A. What went on to December the 12th, 1994?

14 Q. Yes sir.

15 A. Sir. What's on there, the testimony, what was said,
16 but like I said before, that was a whole lot of threats that
17 the first Solicitor made.

18 Q. Uh huh (indicating positive)

19 A. Tell me I was facing the death penalty, so any human
20 being would have did ---

21 Q. Let me ask you this.

22 A. ---To save his life.

23 Q. Let me ask you this. December 12th of 1994, you
24 appeared in this courtroom, correct?

25 A. Yes.

1 Q. Okay. And December 12th of 1994 you told the Judge, at
2 that time, Judge Westbrook, what is contained in that
3 document; is that correct?

4 A. Yes.

5 Q. Okay. And that was in connection with you pleading
6 guilty, correct?

7 A. Say that again.

8 Q. That was in connection with you pleading guilty,
9 correct?

10 A. Yes.

11 Q. All right. And then a day or two later, you testified
12 in the prior proceeding, did you not?

13 A. Yes. I was forced to.

14 Q. All right. Well, we are going to get to that in just
15 a minute, okay.

16 And at that time, when you testified, you told
17 essentially the same thing as you told in this, in a little
18 more detail; isn't that correct?

19 A. Yes.

20 Q. Now, you admit, Mr. Timmons, that that document helps
21 refresh your memory.

22 A. To what was said, yes.

23 Q. Okay. On February the 27th of 1993, did you and Marcus
24 Timmons come to the Cayce/West Columbia area, and try to rob
25 the Conoco?

1 A. No sir. Marcus wasn't there.

2 Q. Okay. On February the 27th, 1993, did you and Marcus
3 Timmons come to Cayce and try -- or -- and complete a robbery
4 at the E-Z Coin Laundry?

5 A. No sir. Marcus wasn't with me.

6 Q. On February 27th of 1993, Mr. Timmons, did you and
7 Marcus Timmons go out Highway 321 toward Swansea?

8 A. No sir.

9 Q. On February 27, 1993, did you all see a fellow on the
10 side of the road by the name of Thomas Wise, Mr. Timmons?

11 A. No sir.

12 Q. On February 27, of 1993, did you and Marcus Timmons rob
13 and murder Thomas Wise on the side of the road, Highway 321,
14 Lexington County, in the early morning hours?

15 A. On that night what you speak of, I have no, no -- I'm
16 going to say it one more time -- no activity, nor Marcus, in
17 that murder.

18 Q. On February the 27th of 1993, did you and Marcus
19 Timmons go to the Pantry on State Street and try to rob the
20 folks there?

21 A. Marcus wasn't with me.

22 Q. All right. Look in that transcript for me, if you
23 would, okay. You see on page two -- are you there?

24 A. Yes.

25 Q. Do you see, on line number eight, where it says "Quincy

1 Timmons, being first duly sworn, testified as follows:" You
2 see that?

3 A. Yes.

4 Q. And you agree that happened?

5 A. That's what it says on the paper, right.

6 Q. You took the oath, and swore you were going to tell the
7 truth, right?

8 A. Yes.

9 Q. Okay.

10 MR. AYER: Excuse me, Your Honor.

11 Where are we reading from?

12 MR. RIDDLE: Reading from Mr. Timmons' guilty plea,
13 page number two.

14 MR. AYER: Thank you.

15 Q. And then starting at line number thirteen, Mr. McMann,
16 the former Deputy Solicitor, asked you some questions, started
17 asking you questions, right?

18 A. Yes.

19 Q. And starting at line thirteen the question says, "Mr.
20 Timmons, I want to ask you a couple of questions about
21 February the 27th of 1993. That is the night you came to --
22 y'all came to Cayce." -- question. And what was your response
23 at that time?

24 A. "Yes sir."

25 Q. All right. And then the next question: "Who did you

1 come with?"

2 A. Yes. He told me to say Marcus Timmons.

3 Q. No sir. I'm not asking you what he told you to say ---

4 A. Right here it says, "Marcus Timmons."

5 Q. What -- tell me what the response is.

6 A. "Marcus Timmons."

7 Q. Marcus Timmons. And then the next question is: "What
8 is the relationship between you and Marcus?"

9 A. "First cousins."

10 Q. First cousins. The next question: "How did y'all get
11 from Columbia to Cayce?" The answer is.

12 A. It says right there, "Stole a car."

13 Q. "What kind of car?"

14 A. "A Regal."

15 Q. All right. And then he asked you: "Where was the car
16 that you stole?" And you answered?

17 A. "On Laurel Street."

18 Q. "Where?"

19 A. "On Laurel Street."

20 Q. "Laurel Street in Columbia" is what you answered, isn't
21 it?

22 A. Yes.

23 Q. And then he says: "What kind of car was it?" And you
24 said what?

25 A. "A Regal."

1 Q. The next question he asked you was this: "When y'all
2 stole the car -- was Marcus with you when you stole the car? "
3 And what did you tell him?

4 A. Like I said before, he told me to say Marcus Timmons.

5 Q. Let me ask you this question again.

6 A. Like I said before, he told me to say Marcus Timmons.

7 Q. Okay. Now, let me ask you this question, Mr. Timmons.
8 "When y'all stole the car -- was Marcus with you when you
9 stole the car?" And your answer, on line six was?

10 A. "Yes. According to this paper.

11 Q. "Yes.

12 MR. AYER: Your Honor, the witness does have a right to
13 explain his answer.

14 THE COURT: Yes. He can answer then explain his answer
15 to the question.

16 Q. The next question Mr. McMann asked you was: "Who all
17 came from Columbia to Cayce that night? And your answer was -
18 - and you can explain, if you want to, afterwards, but your
19 answer was what, Mr. Timmons?

20 A. What line are you on?

21 Q. Your answer would be on line eight.

22 A. "Just me and Marcus."

23 Q. Okay. About what ---

24 A. Excuse me. Like I said before ---

25 Q. Okay. Go ahead.

1 A. See, this whole thing right here was threats issued.
2 Like I said before, I was young; I was stupid, and I was
3 foolish. Marcus Timmons did not -- was not with me.

4 Q. Now, let's go back where we were, okay. Line nine:
5 About what time was it when y'all got to Cayce?"

6 A. "I believe it was about -- around -- I believe it was
7 after twelve o'clock."

8 Q. Okay. "Now, the first place y'all went to -- the first
9 place, were you able to rob that place?"

10 A. "No sir."

11 Q. "Do you go there, you and Marcus, for the purpose of
12 robbing that place?"

13 A. I went there for the purpose of robbing that place.

14 Q. What did you answer in February of '94, sir?

15 A. "Yes sir."

16 Q. The question was: "Did you go there, you and Marcus,
17 for the purpose of robbing that place?" And your answer was:
18 "Yes sir." Is that correct?

19 A. Yes sir.

20 Q. Okay. "When y'all left from Columbia to come to Cayce,
21 did you have guns with you?" What was your answer?

22 A. "Yes sir."

23 Q. "Did you have ski masks with you?"

24 A. "Yes sir."

25 Q. "And bandannas?"

- 1 A. "Well, a bandanna. Yes sir."
- 2 Q. "A bandanna?"
- 3 A. "A bandanna, which was mine."
- 4 Q. Then the next thing you were asked about was what type
5 of business it was. "Do you remember what type of business
6 the first place was?" And your answer was?
- 7 A. "Gas station."
- 8 Q. "Gas station."
- 9 A. "It was a gas station."
- 10 Q. All right. Then you were asked if that was in the
11 West Columbia/Cayce area, correct?
- 12 A. Yes.
- 13 Q. You were asked if it was still open.
- 14 A. Yes.
- 15 Q. As a matter of fact, you told, at that time, where it
16 was located, without even being asked, didn't you ---
- 17 A. Yes.
- 18 Q. ---Charleston Highway?
- 19 A. Yes.
- 20 Q. Next thing you were asked is whether or not the doors
21 were locked or unlocked, and what did you respond, Mr.
22 Timmons?
- 23 A. "It was locked."
- 24 Q. And you were asked if anybody was working inside.
- 25 A. Yes.

- 1 Q. "Male or female?"
- 2 A. "Female."
- 3 Q. "White female or black female?"
- 4 A. "White."
- 5 Q. "And were y'all able to get into that business?"
- 6 A. Yes.
- 7 Q. Did you respond yes, line thirteen?
- 8 A. Who?
- 9 Q. Line seventeen. Sixteen was the question.
- 10 A. No sir. "No sir."
- 11 Q. "Were y'all able to get into that business?" And your
- 12 answer was?
- 13 A. "No sir."
- 14 Q. "Did y'all both have guns, and both attempt to get into
- 15 that business?" Your answer was?
- 16 A. "Yes sir."
- 17 Q. "Why couldn't you get in there, Mr. Timmons?"
- 18 A. "Because the door was locked. That's why I couldn't
- 19 get in there."
- 20 Q. "Okay. Now, from there, from that gas station, where
- 21 is the next place y'all went to in Cayce?"
- 22 A. "Laundromat."
- 23 Q. "Which one?"
- 24 A. Who knows.
- 25 Q. Line twenty-five of page four. Your answer to where is

1 the next place y'all went to was, "To the laundromat, E-Z.",
2 correct?

3 A. Yes.

4 Q. "The E-Z Coin Laundromat?"

5 A. "I don't know about E-Z Coin. I know it's a
6 laundromat."

7 Q. "Okay. How many people were in the laundromat?" And
8 what did you respond?

9 A. "Three or four."

10 Q. Okay. Line 7. The question goes: "Of the three or
11 four, do you know how many were women, how many were men, how
12 many were chaps or children, and how many were adults?" Is
13 that correct?

14 A. Yes.

15 Q. And your memory at that time was what?

16 A. The paper says, "Two women and two children."

17 Q. "Okay. Two women, two children."

18 Q. Line thirteen. The question is asked of you: "Who
19 went in the laundromat with you?" And your answer, on line
20 fourteen, was what?

21 A. Line fourteen it says, "Me and Marcus."

22 Q. All right. Line fifteen says, "What did you have on?"
23 You said what?

24 A. "I had on a black ski mask."

25 Q. That's this ski mask right here, isn't it, Mr. Timmons?

1 A. Yes sir.

2 Q. Then line seventeen says: "What did Marcus have on?"
3 And your answer was?

4 A. "A piece that go around his mouth and nose, all the way
5 around."

6 Q. That's this, right?

7 A. He wasn't there with me.

8 Q. Thank you. "Did you have any kind of a gun?" Your
9 answer was?

10 A. "Yes."

11 Q. "What kind?"

12 A. "A .410."

13 Q. "Describe it." And what was your answer?

14 A. "Sawed-off."

15 Q. "It was a sawed-off shotgun?" That's this gun here,
16 right?

17 A. (NODS HEAD AFFIRMATIVE) Yes.

18 Q. And page six, still referring to that shotgun, you were
19 asked was it a single barrel or a double barrel, and what was
20 your response?

21 A. "Double barrel."

22 Q. That's this one, two?

23 A. (NODS HEAD AFFIRMATIVE)

24 COURT REPORTER: Your answer aloud, please.

25 A. Excuse me.

1 COURT REPORTER: Your answer aloud, please.

2 Q. I asked you if it was a double barrel, and the answer
3 is yes, or no?

4 A. Yes.

5 Q. Yes sir.

6 MR. RIDDLE: She just needs for you to speak out loud
7 instead of nodding or something like that, okay.

8 Q. Now, line five. "Did Marcus have any kind of gun?"
9 And your answer was?

10 A. This answer says, "Yes."

11 Q. Okay. And I believe the next question relates to what
12 kind of gun it is, right?

13 A. Yes.

14 Q. And what did you say?

15 A. "Twenty gauge, under and over."

16 Q. That's this, isn't it?

17 A. I only seen that gun when I went to Solicitor McMann --
18 that's his name -- when I went to his office. Yes, that's the
19 gun right there he had showed me.

20 Q. Yes.

21 A. Yes.

22 Q. And this is the gun that you told the Court February --
23 or excuse me, December of '94, that Marcus Timmons had,
24 correct?

25 A. Correct.

- 1 Q. Okay, sir.
- 2 A. That's what he told me to say.
- 3 Q. All right. Now, the next question is: "Did y'all
- 4 take one of the lady's purses---? And you said what?
- 5 A. "Yes."
- 6 Q. ---From the laundromat ---
- 7 A. "Yes."
- 8 Q. ---And the keys to her car?"
- 9 A. "Yes."
- 10 Q. Next question: "When y'all left out of there, did
- 11 either one of you shoot?" And the answer was?
- 12 A. "Yes."
- 13 Q. "Who shot?"
- 14 A. "It says Marcus."
- 15 Q. "Marcus." "From there, where is the next place y'all
- 16 went to?"
- 17 A. This says, "To Swansea."
- 18 Q. It says Swansea, but what does it say? Line twenty-two
- 19 and twenty-three.
- 20 A. "We was going to Swansea but we turned around. When we
- 21 turned back, that's when we saw Thomas Wise."
- 22 Q. My question was, "You didn't know his name, Thomas
- 23 Wise?" And you said?
- 24 A. Say what now?
- 25 Q. The question was, ---

1 A. Okay.

2 Q. ---"You didn't know his name, Thomas Wise?" And you
3 said?

4 A. "No, I did not."

5 Q. "You didn't know his name."

6 Now, on page seven you were asked where you saw Thomas
7 Wise at, and what did you tell the Court?

8 A. "He was walking down Charleston Highway."

9 Q. And the next question was whether or not y'all were
10 still in that stolen Buick Regal from Columbia, and you
11 indicated what?

12 A. "Yes."

13 Q. You were asked, "What was y'all's purpose in turning
14 around where Mr. Wise was at?" And you said?

15 A. "To rob him."

16 Q. "Did y'all rob Mr. Wise?" What did you say?

17 A. Right here it say, "Well, he didn't have nothing."
18 That's what it says here.

19 Q. "He ain't had nothing, right?"

20 A. "He ain't had nothing."

21 Q. Okay. And you were asked whether you got any money
22 from Mr. Wise, and what did you say?

23 A. "He ain't had nothing." No -- yes.

24 Q. The next question, line twelve: "Did you get any money
25 from Mr. Wise?"

1 A. "No sir."

2 Q. "Did you get any marijuana from Mr. Wise?"

3 A. "No sir."

4 Q. Then you were asked if you got anything.

5 A. "No sir."

6 Q. "Did both of you get out of the vehicle?"

7 A. "Yes sir."

8 Q. "Did you have any kind of weapon?"

9 A. "No sir."

10 Q. "Did Marcus have any kind of weapon?"

11 A. "Yes sir."

12 Q. "What kind of weapon did Marcus have?"

13 A. "Twenty gauge under and over."

14 Q. "The same twenty gauge he had at the E-Z shop?"

15 A. "Yes."

16 Q. "What did he do with the twenty gauge?"

17 A. "He shot."

18 Q. "Shot who?"

19 A. "Thomas Wise."

20 Q. "Who did that?"

21 A. "Marcus Timmons."

22 Q. "From there, where did you -- from where your cousin
23 shot -- from where your cousin, Marcus Timmons, shot Mr. Wise,
24 where did y'all go then?"

25 A. "To the Pantry on State Street."

1 Q. "Now, when you went in there, how many people were in
2 there?"

3 A. "Two."

4 Q. "What did you have on your face?"

5 A. "Black ski mask."

6 Q. That same black ski mask I just showed you, this one
7 right here, State's Exhibit Number 4?

8 A. Yes.

9 Q. Line fourteen: "What did you have on your face? Had
10 on a black ski mask, correct?"

11 A. "A black ski mask, yes sir."

12 Q. Then you volunteered some information about what Marcus
13 had on, didn't you?

14 A. It wasn't no volunteer. It was a threat.

15 Q. Well, you weren't asked at that time what Mr. Timmons,
16 Marcus Timmons, had on, were you?

17 A. No, I wasn't.

18 Q. Okay.

19 A. But it was told to me to say it.

20 Q. Okay. The question was, "What did you have on your
21 face, right?"

22 A. "I had on a black ski mask..."

23 Q. And what does it go on to say?

24 A. "...And Marcus had on a half face mask."

25 Q. That's this, right?

- 1 A. That's a half face, I guess. I don't know.
- 2 Q. Okay. Then the next question is, "What kind of gun did
- 3 you have?" And what did you say?
- 4 A. "Had the .410."
- 5 Q. "What gun did Marcus have?"
- 6 A. "Twenty gauge."
- 7 Q. "What happened when you were there?"
- 8 A. "Hit the dude that was working there."
- 9 Q. "You hit him?" Referring to you, Mr. Quincy Timmons?
- 10 A. "Yes. I hit him."
- 11 Q. Right. "With what?"
- 12 A. "The gun."
- 13 Q. "The sawed-off gun, right?"
- 14 A. "Yes."
- 15 Q. "Now, who arrived there while y'all were in there
- 16 robbing that place, Mr. Timmons?"
- 17 A. "Cayce Public Safety."
- 18 Q. "What did y'all do then?"
- 19 A. Says we ran out the place.
- 20 Q. "What happened to the shotgun?"
- 21 A. "We threw it in the back of a house that was behind the
- 22 pantry."
- 23 Q. "Where was the stolen car at?"
- 24 A. "Across the street."
- 25 Q. "Did y'all go back to that stolen car?"

- 1 A. "No sir."
- 2 Q. "Stole another car?"
- 3 A. "Yes sir."
- 4 Q. "Down there at the motel?"
- 5 A. "Yes sir."
- 6 Q. And that's talking about the Tremont Inn, isn't it?
- 7 A. Who?
- 8 Q. I'm just asking you. That's talking about the Tremont
- 9 Inn, isn't it?
- 10 A. I don't know the name of it.
- 11 Q. It's the one right down there on Knox Abbott Drive,
- 12 right by the River, right?
- 13 A. I don't know the name of it.
- 14 Q. Okay. Then you were asked: "Who had this shotgun?"
- 15 And the question was what -- the answer is what?
- 16 A. What line you at?
- 17 Q. Line twenty-two.
- 18 A. "I did."
- 19 Q. And the next question was: "That's the .410 double
- 20 barrel shotgun you had?" And your answer was?
- 21 A. "Yes sir."
- 22 Q. Okay. And the next question: "Is this the shotgun
- 23 that Mr. Wise was shot with?" And you said what?
- 24 A. "No sir."
- 25 Q. And then you said -- the question was: "Is this the

1 shotgun that was shot at the laundromat?" And you said what?

2 A. "No sir. "

3 Q. And the next question was about who had this shotgun,
4 right? And what did you say?

5 A. Line six?

6 Q. Line six.

7 A. "Marcus."

8 Q. "Marcus." And what kind of shotgun did you say it was?

9 A. "The twenty gauge under and over."

10 Q. And you were asked to explain. The question was: "So
11 it's got a twenty gauge barrel and a .22 barrel?" And you
12 said?

13 A. "Yes."

14 Q. And then the next question is: "Is this the gun that
15 Marcus shot Mr. Wise with?" And your answer was what?

16 A. "Yes."

17 Q. Now let me ask you this. You didn't get caught the
18 night of February 27th, did you?

19 A. No.

20 Q. Okay. Let me skip forward in this thing a little bit,
21 okay. Go over to page twelve. Are you there?

22 A. Yes.

23 Q. You were again asked about this black ski mask, and you
24 were asked: "Who was wearing it the night that Thomas Wise
25 got killed?" And your answer, on line seven was?

1 A. "I was wearing it."

2 Q. And then you were asked: "This is the one that you
3 were wearing?" And I believe you -- this transcript says that
4 you nodded; isn't that correct?

5 A. That's what it says.

6 Q. Okay. And then you were asked about the bandanna, and
7 that half face mask, and you said what, on line twelve? "Who
8 was wearing that?"

9 A. "Marcus been wearing that."

10 Q. "Okay. Marcus was wearing it?" And your response was?

11 A. Yes. "Yes sir."

12 Q. Now, let's skip on down to line twenty-two, okay. You
13 were asked, Quincy -- now the Judge asked you this. "I've
14 never talked to you about the facts of the case, about what
15 happened before right now, have I?" And you responded?

16 A. Line twenty-five?

17 Q. Line twenty-five.

18 A. "Yes sir."

19 Q. Okay. And the question was, "I came back to the
20 holding cell today and talked to you, didn't I?" And your
21 answer was?

22 A. "Yes sir."

23 Q. The next question is: "Your lawyer was present." And
24 your response was?

25 A. "Yes sir."

1 Q. Okay. So back in December of '94 you told the Court
2 that the only time that Mr. McMann ever talked to you about
3 this case, your lawyer was there with you; isn't that correct?

4 A. That's what it says.

5 Q. Okay. Next question, line six: "Have I promised you
6 anything?"

7 A. "No sir."

8 Q. "Have I made any deals with you?"

9 A. "No sir."

10 Q. "Have I dropped any charges against you?"

11 A. "No sir."

12 Q. "And for return for you telling this Court your
13 involvement, and who you were involved with?" And your answer
14 was?

15 A. "No sir."

16 Q. "Have I cut you any slack at all?"

17 A. "No sir."

18 Q. "Have you told me whether or not you were going to
19 testify?" And your answer was a question, right? I think you
20 misunderstood that question; is that correct?

21 A. It says here: "Sir?"

22 Q. Yes. It says, "Sir?", question mark.

23 A. Uh huh (indicating positive)

24 Q. Then the question again was: "Have you told me whether
25 or not you are willing to testify against Mr. Marcus Timmons?"

1 And you said?

2 A. "Yes sir."

3 Q. "What have you told?" The answer was.

4 A. Are you on twenty-four?

5 Q. What have you told me? Line twenty-three. Line
6 twenty-four was your answer.

7 A. Okay. "What I told you, I am saying that he shot the
8 man."

9 Q. Okay. And the question on page fourteen, top of the
10 page, first line: "Are you going to tell what you just told in
11 court?" And your answer was?

12 A. "Yes sir."

13 Q. Next question: "That's the truth of what happened?"
14 And your answer was?

15 A. "That's the truth."

16 Q. "That's the truth." And the question was: "And I have
17 given you nothing for that?" And the answer was?

18 A. "Nothing."

19 Q. So on December the 12th of 1994, you took an oath, and
20 swore to tell the truth, and told the Court that it was you
21 and Marcus Timmons that did the Conoco, the E-Z Coin, killed
22 Mr. Wise, and then did the Pantry; isn't that correct?

23 A. The testimony -- that's what it says here.

24 Q. And that's what you told the Court?

25 A. That's what I told the Court.

1 Q. Okay. Now, that was when Mr. McMann was asking you the
2 questions, right?

3 A. What was when ---

4 Q. The part we've just talked about, that you were reading
5 from. That was when Mr. McMann you was asking you questions,
6 right?

7 A. I believe so.

8 Q. Okay. And I think it says ---

9 A. Yes.

10 Q. ---Right here on page two ---

11 A. Yes, that's ---

12 Q. ---Before the question starts it says, Examination by
13 Mr. McMann, correct?

14 A. Yes.

15 Q. Now, prior to that, the Judge, at that time, Judge
16 Westbrook, was asking you some questions, wasn't he?

17 A. Where now you are at?

18 Q. I'm not on -- I'm in this book now.

19 A. Oh.

20 Q. The Judge asked you some questions, didn't he?

21 A. Yes.

22 Q. Okay. And he was asking you questions about the fact
23 that you were pleading guilty, right?

24 A. Yes.

25 Q. Okay. And he went through a lot of questions with you,

1 didn't he?

2 A. Yes.

3 Q. Okay. Now I'm going to show you this, and I don't have
4 but one copy of this. The Court says to you, "Mr. Timmons,
5 are you pleading guilty of your own freewill?" And what was
6 your response?

7 A. "Yes sir."

8 Q. The Court then asked you, "Has anybody promised you
9 anything at all to get you to plead guilty?" And what was
10 your response?

11 A. "No sir."

12 Q. The next question, Mr. Timmons. The Court says, "Has
13 anybody threatened you in any way to get you to plead guilty?"
14 And what was your response?

15 A. "No sir."

16 Q. "Have you been forced, in any fashion, to get you to
17 plead guilty?"

18 A. "No sir."

19 Q. "Are you pleading guilty of your own freewill?"

20 A. "Yes sir."

21 Q. "Are you pleading guilty to all of these? As I have
22 indicated just a moment ago, are you pleading guilty to all of
23 them because you are guilty?"

24 A. "Yes sir."

25 Q. "You admit you did what you were charged with in every

1 one of these indictments?"

2 A. "Yes sir."

3 Q. "Now, at this time you are represented by Ms. Evans.
4 Are you satisfied with her services in this matter?"

5 A. "Yes sir."

6 Q. "Have you had her advice regarding all of these
7 charges?"

8 A. "Yes sir."

9 Q. "Have you been satisfied with her advice?"

10 A. "Yes sir."

11 Q. "Do you feel like she has done everything you wanted
12 her to do?"

13 A. "Yes sir."

14 Q. "Has she spent the kind of time that you wanted her to
15 spend with you going over these charges?"

16 A. "Yes sir."

17 Q. "At this time, are you under the influence of any drugs
18 or alcohol, or medication of any kind?"

19 A. "No sir."

20 Q. "Are you under the influence of anything that
21 influences your judgment in any way?"

22 A. "No sir."

23 Q. "You feel like you know what you are doing today?"

24 A. "Yes sir."

25 MR. RIDDLE: Beg the Court's indulgence one moment.

1 Q. Now, the Judge, also, at that same time, asked you some
2 questions about the facts of this case, did he not?

3 A. Yes.

4 Q. Okay. I'm going to show you this as well. "I gather
5 you didn't do the actual shooting; you didn't actually pull
6 the trigger; is that correct?" And your answer?

7 A. "No sir."

8 Q. "And who did that?"

9 A. "Marcus Timmons."

10 Q. "You were with Mr. Timmons at the time?"

11 A. "Yes."

12 Q. "You were participating with Mr. Timmons? I gather
13 there is an armed robbery charge with this. You were
14 participating with Mr. Marcus Timmons in an armed robbery?"

15 A. "Yes sir."

16 Q. "As I understand, you are saying that he actually did
17 the shooting. Did you actually see him shoot the shotgun and
18 kill Mr. Wise ---

19 A. "Yes sir."

20 Q. ---And you were a part of the incident?"

21 A. "Yes sir."

22 Q. "And you are admitting that you did take part in the
23 armed robbery on February 27, 1993?"

24 A. "Yes sir."

25 Q. And then you were asked about a criminal conspiracy

1 charge. It says, "On count three of the indictment you are
2 charged with criminal conspiracy. Are you also admitting that
3 you did take part, on February the 27th, with Marcus Timmons,
4 in a conspiracy to commit the crime of armed robbery?" And
5 your response was?

6 A. "Yes sir."

7 Q. Okay. Now, all of that, Mr. Timmons, took place on
8 December the 12th of 1994. You remember that?

9 A. Yes.

10 Q. At any -- on December the 12th of 1994, did you tell
11 Judge Westbrook that Mr. McMann had threatened you?

12 A. No.

13 Q. So I could give you that book, and you could look
14 through it and it wouldn't be there; that's correct, right?

15 A. It wouldn't be there. I've got that book and it ---

16 Q. I'm sorry.

17 A. I've got that same book in the Institution with me.

18 Q. Okay. At any time on December the 12th of 1994, did
19 you tell your lawyer, Ms. Evans, that you had been threatened
20 by Mr. McMann?

21 A. She know.

22 Q. She knows?

23 A. Yes, she knows, from the beginning.

24 Q. Okay. Now, a day or two later you testified again,
25 didn't you?

1 A. On what?

2 MR. AYER: Your Honor, I have a matter to take up with
3 the Court.

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, let me ask that you go to the jury
6 room. Do not discuss the case.

7 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right.

10 MR. RIDDLE: Your Honor, excuse me. I would ask that
11 the witness be excused during this.

12 THE COURT: All right. Is someone present that can
13 take the witness out and stay with him?

14 (AT THIS TIME THE WITNESS, QUINCY TIMMONS, WAS ESCORTED
15 FROM THE COURTROOM.)

16 THE COURT: Mr. Ayer?

17 MR. AYER: Yes sir, Your Honor. Your Honor, it just
18 appears to me that we are beginning to skate real close to the
19 line of the prior trial. Solicitor Riddle has questioned Mr.
20 Timmons about his guilty plea, about being questioned by Judge
21 Westbrook, about Solicitor Knox McMann. Two days later he
22 appears in -- I don't know exactly what the word Solicitor
23 Riddle was going to use, but -- and I don't know whether Mr.
24 Timmons needs to be cautioned as to not to mention that the
25 testimony was actually in the trial of Marcus Timmons, but it

1 just seems to me that we are beginning to skate real close to
2 that line.

3 MR. RIDDLE: Your Honor, I do not intend to mention a
4 prior trial.

5 THE COURT: Well, just keep in mind that this is your
6 witness, and if y'all want to try this case a third time, I'll
7 be glad to accommodate you.

8 MR. RIDDLE: Your Honor, I'm doing the best I can, but
9 as Your Honor is well aware, he is incredibly hostile to the
10 State's position ---

11 THE COURT: Well, that's not anybody's fault. That's
12 just the way things are. I'm just telling you though, we are
13 concerned with this Defendant's right to a fair trial.

14 You have already had this case across the river to South
15 Carolina Supreme Court one time. If y'all want to go again,
16 that's fine, or if you want to retry it again, that's fine.

17 MR. RIDDLE: I don't want to do either of those.

18 THE COURT: Okay.

19 MR. RIDDLE: I can assure the Court, and -- I am not
20 going to ask him about the prior trial.

21 THE COURT: What are you going to now, this transcript?

22 MR. RIDDLE: Yes sir, but I'm not ---

23 THE COURT: What's the purpose of that?

24 MR. RIDDLE: I'm just -- I was actually going to look
25 through and see if there were any other areas which I had not

1 covered in the prior stuff. I'm not planning on going through
2 that entire transcript again. I was just going to see if --
3 scan through it and see if there were other areas.

4 Frankly, Your Honor, if I could have just a few ---

5 THE COURT: Let's take about a five minute break.

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

8 THE COURT: The witness is going to need a transcript,
9 and she has one.

10 MR. RIDDLE: Oh, that's perfect, yes sir.

11 COURT REPORTER: Court's Exhibit Number 2.

12 THE COURT: State ready?

13 MR. RIDDLE: The State is ready, Your Honor.

14 THE COURT: Defendant ready?

15 MR. AYER: Defendant is ready, Your Honor.

16 THE COURT: All right. Let me get the witness in here
17 first. He should be right outside this door.

18 (WITNESS, QUINCY TIMMONS, TAKES THE WITNESS STAND.)

19 THE COURT: Mr. Timmons, if you would just have a seat
20 there in the witness chair, and I would remind you that you
21 are still under oath.

22 You may bring in the jury.

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right. You may continue.

1 DIRECT BY MR. RIDDLE CONTINUED:

2 Q. Mr. Timmons, I have placed an additional document on
3 the stand there. Can you refer to page three eighty-one,
4 please sir.

5 Are you on three eight-one?

6 A. Yes.

7 Q. Would you look at line twelve? Would you agree with me
8 that that indicates you were sworn in, took an oath?

9 A. Yes.

10 Q. Now, if you would, sir, please turn to page three
11 ninety-three.

12 A. I'm there.

13 Q. Referring to February the 27th, line eighteen, you
14 agree that you were asked about what time was it when you
15 first saw Marcus that night, and you responded that it was
16 after twelve; he had just gotten off from work? Line nineteen
17 and twenty.

18 A. "Yes."

19 Q. And then, on twenty-one you were asked where he worked,
20 and you indicated it was Bojangles.

21 A. Yes.

22 Q. Now, if you would, sir, please flip to page three
23 ninety-seven. About halfway down the page you were talking
24 about stealing that Buick from Hancock Motors, correct?

25 A. Yes.

1 Q. The question on line twelve was, "Tell the jury exactly
2 what you had to do to steal the car once you got in." And
3 your answer was, "Okay, we had to get the tilt button, let the
4 steering wheel go up, take a flathead screwdriver and break
5 the column." Is that correct?

6 A. Yes.

7 Q. And then you indicated you were talking about the
8 column around the steering wheel?

9 A. Okay, yes.

10 Q. All right. Now, if you would, sir, flip to page four-
11 0-one, line eight. The question was, "Where was the first
12 place y'all stopped at that night to rob?" And your answer
13 was, "The Conoco station on Charleston Highway." Is that
14 correct?

15 A. Yes.

16 Q. Now, if you would, turn to page four-0-nine. You are
17 talking about after you leave the Conoco, and on line twenty-
18 three is, "Do you pass any other business open?" And your
19 answer, on line twenty-four, is what?

20 A. "It was a laundromat."

21 Q. All right. Four -- page four-eleven, line nineteen.
22 "What happens in the laundromat?" Line twenty, your answer:
23 "We rob the place; we rob the people that was in the
24 laundromat." Is that correct?

25 A. Yes.

1 Q. Flip to the very next page, sir, if you would. "After
2 you leave the laundromat...-- question eleven -- or line
3 eleven -- ...what happens?" And your answer was, "Shot the
4 shotgun." Is that correct?

5 A. Yes.

6 Q. And then line seventeen. "Who shoots this shotgun?"
7 And your answer was, "Marcus."

8 A. Yes.

9 Q. You were asked, line nineteen, "Was that inside the
10 laundromat?" Line twenty, your answer was: "In the parking
11 lot by the car." Is that correct?

12 A. Yes.

13 Q. And you were asked: "Outside the laundromat?" And you
14 responded, "Yes sir."

15 A. Yes.

16 Q. On page four-thirteen, Mr. Timmons, line twelve, the
17 question is: "What happened next?" And I believe your answer
18 was: "We were going to Swansea but we turned back around."
19 Is that correct?

20 A. Yes.

21 Q. And the very next line: "What highway were y'all going
22 to take to Swansea?" And your answer is: "I believe it was
23 Charleston Highway." Is that correct?

24 A. Yes.

25 Q. And at line eighteen: "Did you see anyone?" And your

1 answer was, "Yes sir."

2 A. Yes.

3 Q. You were asked where the person was that you saw, and
4 your answer, at line twenty-five was: "He was walking down
5 the highway, Charleston Highway?"

6 A. Yes.

7 Q. On the next page, sir, you were asked, what was near or
8 around where he was walking, and your answer was, "It was an
9 old truck stop, I believe, then it was a Fast Fare in the
10 middle of the highway." Is that correct?

11 A. Yes.

12 Q. At line nine, "When you see this person, which side of
13 the road is he on to start with?" And your answer is: "He
14 was on the right side of the road, coming back toward West
15 Columbia and Cayce." Is that correct?

16 A. Yes.

17 Q. Then you were asked if it was the same side of the road
18 y'all were on, and your answer was; is that correct?

19 A. Yes.

20 Q. Your answer was, "Yes sir." Is that correct?

21 A. Yes.

22 Q. Okay. Down near the bottom of that page you were asked
23 if you were familiar with a place called Sam's Club, and you
24 indicated, "It's further up, I believe." Is that correct?

25 A. Yes.

- 1 Q. "But in the same general area?" And your answer was?
- 2 A. "Yes sir."
- 3 Q. On page four fifteen, Mr. Timmons, you were asked what
- 4 the person is doing when you see him, and on line three your
- 5 answer is, "Just walking." Is that correct?
- 6 A. Yes.
- 7 Q. You were asked if you can describe him. You indicate -
- 8 --
- 9 A. Yes sir.
- 10 Q. ---He's a white male, correct?
- 11 A. Line seven.
- 12 Q. Line seven, "He was white." And then the question in
- 13 eight, "Male or female?" And you indicate male?
- 14 A. Yes.
- 15 Q. Line ten, "What do y'all decide to do?" And the answer
- 16 is?
- 17 A. "To rob him."
- 18 Q. "Who was driving?"
- 19 A. "I was."
- 20 Q. "Who was in the car with you?"
- 21 A. "Marcus."
- 22 Q. "Where is he at?"
- 23 A. "On the passenger's side."
- 24 Q. "You decide to rob him. Where do you pull over to.
- 25 What do you do?" And your answer was?

1 A. "Pulled over. We pulled over right to him and we asked
2 -- well, I asked him to give the money."

3 Q. "You asked for the money?"

4 A. "Yes sir."

5 Q. Now you were asked if you were disguised and your
6 answer was?

7 A. "Yes sir."

8 Q. You were asked what kind of disguise you had on, on the
9 next page, correct?

10 A. Yes sir.

11 Q. And your answer was, "The white ski mask."

12 A. "Black ski mask."

13 Q. You were asked when you put that on, and you answered
14 that it was when you saw him, correct?

15 A. Yes.

16 Q. You were asked if you had taken it off after you left
17 the laundromat, and then put it back on; is that correct?

18 A. Yes.

19 Q. And that's, in fact, what you did, correct? You took
20 it off ---

21 A. Yes. That's what it says, "Yes."

22 Q. You were asked, at that time, on line ten, if you had a
23 weapon, and your answer was, "No sir", correct?

24 A. Correct.

25 Q. You were asked what Marcus was doing while you were

1 asking the man to give you the money, and your answer was,
2 "Pointing the shotgun." Is that correct?

3 A. Yes.

4 Q. Down at line nineteen you are asking -- you are
5 answering about which shotgun, and they say, "This one, the
6 long gun?" And your answer is, on line twenty?

7 A. "Yes."

8 Q. Yes sir. On page four seventeen, Mr. Timmons, line
9 five, you were asked how Marcus has the shotgun, and your
10 answer, on line six was, "He had it across my chest, pointing
11 out the window."

12 A. Yes.

13 Q. And you were asked, line eight, "Pointing at who?" And
14 your answer was?

15 A. "At the white man."

16 Q. Then you were asked if you got any money at that time,
17 and you said?

18 A. "No sir."

19 Q. Now, at line -- go to the next page, four eighteen.
20 You were asked if you got out and chased him; is that correct?

21 A. Yes.

22 Q. And you responded that you did?

23 A. Yes.

24 Q. You were asked if you chased him across the highway,
25 correct?

- 1 A. Yes.
- 2 Q. "And then what happens after that?" And your answer
- 3 was, "When he stopped, that's when Marcus told me to get out
- 4 of the way." Is that correct?
- 5 A. Yes.
- 6 Q. You were asked, "What happened between you and the
- 7 man?" And your answer on line nine is, "We were fighting.",
- 8 correct?
- 9 A. Yes.
- 10 Q. "Physically fighting?" And your answer was yes,
- 11 correct?
- 12 A. Yes.
- 13 Q. You were asked if you still had the ski mask on,
- 14 correct?
- 15 A. Yes.
- 16 Q. "Does anyone come up while you were fighting with the
- 17 man?" Your answer, one line sixteen was?
- 18 A. "Yes."
- 19 Q. On line seventeen you were asked, who, correct?
- 20 A. Yes.
- 21 Q. And your answer was?
- 22 A. "Marcus."
- 23 Q. You were asked if you can see what Marcus has in his
- 24 hand, and your answer was yes; is that correct?
- 25 A. Yes.

- 1 Q. "What was in his hand?" Line twenty-two.
- 2 A. "The long gun.", right there?
- 3 Q. Line twenty-three. "When Marcus comes up there, what
- 4 does he say?" The answer, one twenty-four is?
- 5 A. "Get out the way."
- 6 Q. "Who does he say it to?"
- 7 A. "Me."
- 8 Q. "How does he say it?"
- 9 A. "Get out the way."
- 10 Q. "Loud or soft?"
- 11 A. "Loud."
- 12 Q. "What did you do?"
- 13 A. "Get out the way."
- 14 Q. "Then what happens?"
- 15 A. "Then I heard the shot fired."
- 16 Q. "What do you see?"
- 17 A. "I ran to the car."
- 18 Q. "When he shoots -- who shoots the gun?"
- 19 A. "Marcus."
- 20 Q. "Who does he shoot the gun at?"
- 21 A. "The white male."
- 22 Q. "What happens to the white male?"
- 23 A. "I guess he hit the ground."
- 24 Q. "Did you see him?"
- 25 A. "No sir."

- 1 Q. "When you went back across the street, where was the
2 white male?"
- 3 A. "Still on the other side."
- 4 Q. "Standing?"
- 5 A. "No sir."
- 6 Q. "Where was he?"
- 7 A. "In the ditch."
- 8 Q. "When you got out and chased the man across the road,
9 Quincy, did you have the other shotgun?"
- 10 A. "No sir."
- 11 Q. "Where was it?"
- 12 A. "In the car."
- 13 Q. "Who shot the man?"
- 14 A. "Marcus."
- 15 Q. "You pled guilty to murder ---"
- 16 A. "Yes sir."
- 17 Q. "---Because you were there?"
- 18 A. "Yes sir."
- 19 Q. "You were present?"
- 20 A. "Yes sir."
- 21 Q. "You participated?"
- 22 A. "Yes sir."
- 23 Q. "What was your intent in stopping at the man?"
- 24 A. "To rob him."
- 25 Q. "Did you shoot him, Quincy?"

- 1 A. "No sir."
- 2 Q. "Who did?"
- 3 A. "Marcus."
- 4 Q. "Did you see what area of his body he got shot?"
- 5 A. "No sir."
- 6 Q. "When Marcus yelled at you to get out of the way, which
- 7 way were you facing?"
- 8 A. "I was facing him."
- 9 Q. "Him who?"
- 10 A. "The white male."
- 11 Q. "Marcus is in behind you?"
- 12 A. "Yes, at an angle."
- 13 Q. "Y'all get back in the car?"
- 14 A. "Yes sir."
- 15 Q. "And headed which way?"
- 16 A. "To West Columbia."
- 17 Q. "Did y'all talk about this, Quincy?"
- 18 A. "It wasn't like no conversation or nothing. It wasn't
- 19 like no conversation."
- 20 Q. "Were there words passed?"
- 21 A. "Yes."
- 22 Q. "What were those words, Quincy?"
- 23 A. "He shot him."
- 24 Q. "What did y'all say to each other about that?"
- 25 A. "I ain't said nothing. I kept driving."

1 Q. "What did Marcus say?"

2 A. "He shot him."

3 Q. "That didn't bother you, Quincy?"

4 A. "Yes, it bothered me."

5 Q. "But it didn't keep you from trying to commit another
6 armed robbery, did it ---"

7 A. "No, it didn't."

8 Q. ---Or Marcus from committing another armed robbery?"

9 A. "No, it didn't."

10 Q. "Quincy, y'all went from there to what kind of
11 building; what kind of a business?"

12 A. "It was a Pantry."

13 Q. "Where was it located at?"

14 A. "State Street."

15 Q. "This would be the fourth, either robbery, or attempted
16 armed robbery of the night?"

17 A. "Yes sir."

18 Q. "And y'all are still in Mr. Glover's Buick?"

19 A. "Yes sir."

20 Q. "The Buick Regal?"

21 A. "Yes sir."

22 Q. Now skipping to four twenty-three, Mr. Timmons, talking
23 about the Pantry armed robbery, line thirteen -- excuse me --
24 fourteen. "What kind of disguise did Marcus put on?? Your
25 answer on line fifteen.

1 A. "A bandanna -- bandanna, the half face ski mask and
2 that cap right there."

3 Q. "And the same guns?"

4 A. "Yes sir. "

5 Q. "You've got the sawed-off?"

6 A. "Yes."

7 Q. Now, on page four twenty-four, Mr. Timmons, the next
8 page, line two. You are asked, what happened there. On line
9 three your answer is what?

10 A. "We went in to rob the place. I went to the male."

11 Q. "Behind the counter?"

12 A. "Behind the counter." Do you want me to finish the
13 whole thing?

14 Q. Finish the whole -- line four.

15 A. "Marcus stood beside the lady."

16 Q. On page four twenty-five, line two, Mr. Timmons, you
17 were asked: "Who was dealing with the lady?" And your
18 answer, on line three was?

19 A. "Marcus."

20 Q. And a couple of lines down, "Did Marcus have the
21 shotgun on the lady?" And your answer was?

22 A. "Yes."

23 Q. On the next page, four twenty-six, y'all were talking
24 about the stuff that you had taken at the E-Z Coin, that
25 purse. Do you see that?

1 A. Which line?

2 Q. Line fourteen, you are talking about the contents of
3 the purse. Question on thirteen: "What were the items from
4 that pocketbook?" Do you see that?

5 A. Yes.

6 Q. And your answer was?

7 A. "It was a medicine bottle, a brush and a wallet."

8 Q. And on fifteen, "Where were those items when y'all got
9 out and robbed the Pantry?" And your answer on seventeen was?

10 A. "It was in the floor of the car."

11 Q. "Did you handle them?"

12 A. "Yes sir."

13 Q. "And you know your fingerprint was found on them?"

14 A. "Yes sir."

15 Q. On page four sixty-one, Mr. Timmons, line fifteen, you
16 were asked: "On February the 27th in Cayce, who was with you
17 that night?" And your answer was?

18 A. "Marcus Timmons."

19 Q. Line eighteen. "Who shot the man on 321 Highway?" And
20 your answer was?

21 A. "Marcus Timmons."

22 MR. RIDDLE: Thank you. I don't have any further
23 questions, Your Honor.

24 MR. AYER: May it please the Court.

25 CROSS-EXAMINATION BY MR. AYER:

1 Q. Mr. Timmons, the truth is that, on February the 27th,
2 on that morning, Marcus Timmons was not with you, was he?

3 A. That's the truth.

4 Q. And on the morning of February 27th, Marcus Timmons did
5 not rob the Conoco, did he?

6 A. True.

7 Q. And on that same morning, Marcus Timmons did not rob
8 the E-Z Laundromat; isn't that correct?

9 A. That's correct.

10 Q. And on the same morning Marcus Timmons did not kill
11 Thomas Wise, did he?

12 A. Neither one of us was there.

13 Q. All right. On that same morning, did Marcus Timmons
14 rob the Pantry?

15 A. No. He wasn't there.

16 Q. Okay. The truth of the matter is, he was not with you
17 on the morning of the 27th; isn't that correct?

18 A. He wasn't.

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

20 REDIRECT-EXAMINATION BY MR. RIDDLE:

21 Q. Did I understand you to say that he wasn't with you?

22 A. He wasn't.

23 Q. Did I further understand you to say that you were not
24 there when Mr. Wise was killed?

25 A. I wasn't.

1 Q. So you have no idea where Marcus Timmons was, do you,
2 according to your testimony?

3 A. He wasn't with me.

4 Q. According to your testimony today, you weren't with
5 him?

6 A. No. We wasn't together.

7 Q. And you weren't there when Mr. Wise was killed?

8 A. No, I wasn't.

9 Q. Everything you told the Court back in 1994 was a lie;
10 is that correct?

11 A. Yes.

12 MR. RIDDLE: Nothing further.

13 MR. AYER: Nothing further, Your Honor.

14 THE COURT: Anyone object to the witness being excused?

15 MR. RIDDLE: No sir.

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

17 MR. RIDDLE: Your Honor, the State calls Chuck Counts
18 to the stand.

19 CHARLES EDWARD COUNTS, first duly
20 sworn, testified as follows:

21 DIRECT-EXAMINATION BY MR. RIDDLE:

22 Q. Mr. Counts, where are you employed?

23 A. I am a New -- employed with the Newberry City Police
24 Department in Newberry, South Carolina.

25 Q. How long have you been with them?

1 A. Approximate six years and four months.

2 Q. Back in 1993 you were not with Newberry?

3 A. That is correct.

4 Q. Where were you employed in '93?

5 A. I was a Special Agent with the South Carolina Law
6 Enforcement Division in Columbia.

7 Q. And you left there to take the job as -- what -- you
8 are a Captain with Newberry?

9 A. I am the Captain of the Police Department, or the
10 Assistant Chief of the Police Department.

11 Q. In 1993, you were a Special Agent with S.L.E.D. What
12 were your job duties then?

13 A. I was a crime scene analyst, and fingerprint examiner.

14 Q. You worked in the lab?

15 A. Yes sir, I did.

16 Q. All right. And how does S.L.E.D. get involved in a
17 case such as this, ordinarily?

18 A. They are called in by a local law enforcement agency.
19 S.L.E.D. is specifically an assisting agency.

20 Q. All right. And you were asked by the Sheriff's
21 Department, and by Cayce and West Columbia to examine some
22 evidence as it relates to the Defendant, Marcus Timmons, and
23 also as it relates to Quincy Timmons?

24 A. Yes sir, I was.

25 Q. Is one of the items that you looked at a Buick Regal

1 that was recovered in the City of Cayce during the early
2 morning hours of February the 27th of 1993?

3 A. Yes sir, it was.

4 Q. All right. That Buick Regal, you not only examined
5 the vehicle, but you examined some contents in the vehicle as
6 well; is that correct?

7 A. Yes sir, that is correct.

8 Q. All right. And during the course of that examination,
9 did you have an occasion to examine a makeup brush, or a blush
10 brush that a lady would use to apply makeup to her face?

11 A. Yes sir, I did.

12 Q. All right. And where did you find that brush, Agent
13 Counts? Did you find that in the vehicle yourself?

14 A. Yes sir, I did. It was in the floorboard of the
15 vehicle.

16 Q. And when you examined that, tell the jury what you were
17 looking for.

18 A. I was processing it for latent fingerprints, latent
19 meaning hidden fingerprints.

20 Q. And were you able to get any fingerprints off the blush
21 brush -- and I'm going to trip up on -- off of the brush, in
22 connection with this case, sir?

23 A. Yes sir, I was.

24 Q. Explain to the jury, if you would, how you go about
25 what to do, and also what the results of your examination on

1 that brush was.

2 A. First I need to tell you a little bit about the science
3 of fingerprints. The skin on your hands, your fingers, and
4 the bottom of your feet, is different than any other skin on
5 the human body. If you look at your hands and your feet very
6 closely, you will see that the skin has raised ridges, and
7 they are rough and corrugated. They don't run in a straight
8 line, parallel to each other, and these lines are unique only
9 to your skin. No two fingerprints or footprints, or palm
10 prints have ever been found the same on an individual.

11 Q. Excuse me. Let me stop you for just a second. Tell me
12 the kind of training and expertise you have had in the area of
13 fingerprints.

14 A. I started my training in 1978 with the Richland County
15 Sheriff's Department, where I was sent to basic fingerprint
16 school at the Criminal Justice Academy. I took various
17 courses in developing fingerprints, comparing fingerprints. I
18 then furthered my education, not only with the Richland County
19 Sheriff's Department with -- but with S.L.E.D., by attending
20 the F.B.I. school in Quantico, Virginia. It was an advanced
21 administrative course in latent fingerprints, which was three
22 weeks of in depth studying of how to develop fingerprints, and
23 compare those fingerprints to inked fingerprints of
24 individuals.

25 And I became certified as a senior crime scene analyst,

1 which incorporated fingerprints. I have spent up -- at this
2 period of time, in 1993, approximate sixteen years involved in
3 fingerprint work, and processing crime scenes, developing
4 latent fingerprints, and comparing those latent fingerprints
5 to unknown individuals. I also fingerprinted cadavers, in
6 identifying them. So I spent -- over my career I've attended
7 approximately thirty seminars and schools, including the
8 F.B.I. Academy in Quantico, Virginia, training and doing
9 fingerprinting, and comparing fingerprints, photographing
10 fingerprints, identifying fingerprints, and as a result,
11 testifying in court over a hundred times as an expert in the
12 field of fingerprints.

13 MR. RIDDLE: Your Honor, at this time I would move that
14 Agent Counts be qualified as an expert in the area of latent
15 fingerprints comparison and analysis.

16 MR. AYER: Without objection, Your Honor.

17 THE COURT: All right. The witness is qualified as an
18 expert in latent fingerprint analysis.

19 Q. You were talking about -- a little bit about the
20 science of fingerprints, and the ridges on hands and feet.

21 A. Yes sir.

22 These ridges, the raised ridges on your hands or feet
23 are constantly exuding perspiration, and when your hand or
24 your feet come in contact with another surface, you exude that
25 perspiration, and it's transferred to that surface.

1 Now, unlike -- even though fingerprints is an exact
2 science, and that ridge detail is only unique unto yourself,
3 there are many variables in the field of fingerprints.
4 Basically what you touch, and what's on your hands at the
5 time, and whether you are sweating a lot -- some people don't
6 sweat hardly at all. Other people have lotions on their
7 hands, or other foreign substances, which interfere. You are
8 looking for minute lines that are in the same ridge
9 arrangement as the ridges on your hands, so, as to whether an
10 item will result in an identifiable latent fingerprint comes
11 from the fact of the environment, the item you touch, and
12 whether you are sweating or have contaminate on your hands.
13 So there is no set rules. If I passed an item around, and
14 everybody on the jury touched that item, some would leave
15 identifiable ridge detail, others would not, for various
16 reasons.

17 In this particular makeup brush, I did examine this by
18 putting black powder on it. The black powder will adhere to
19 any moisture left on the particular item, and make visible to
20 the human eye any ridge detail that had exuded that
21 perspiration, and made the latent visible to human eye.

22 In this case I was able to find a latent on the makeup
23 brush, and I lifted the latent. You lift a latent by placing
24 transparent tape over the latent, and lifting the tape off.
25 It, in turn, takes the impression that you can see with an

1 eye, and I placed it on a white card. That card was later
2 used to -- and compared to, inked fingerprints of an
3 individual, or many individuals in this particular case, but
4 it came back and matched one particular individual.

5 Q. And you compared it to a known fingerprint card and got
6 a match?

7 A. Yes sir, I did. I compared it to, actually eleven
8 other people in this case, but it came back -- I identified
9 it, positively identified it, as being the left thumb of
10 Quincy Timmons.

11 Q. When were you able to match the fingerprint of Quincy
12 Timmons to fingerprint that you had lifted off of that makeup
13 brush?

14 A. This was done on June the 10th of 1993.

15 Q. So this case was unsolved for a good period of time?

16 A. That is correct.

17 Q. All right. Now, you indicated you could pass
18 something around to the jury, some may or may not leave
19 fingerprints. If you touch something, does that automatically
20 mean that there is going to be a fingerprint that you can
21 identify?

22 A. No sir.

23 Q. Tell the jury some of the things that can affect
24 whether or not you leave a fingerprint that is identifiable to
25 a particular person.

1 Q. Number one would be the surface area that you touched;
2 is it sufficient surface area to give you enough
3 characteristics to determine if that particular hand or foot
4 came in contact with that item.

5 Q. And we are talking about like leaving a partial print,
6 or just a ---

7 A. Correct. Most prints that are identified are partial
8 prints. It's rare that an individual will grab an item and
9 you would have a full finger to touch it. Most are tips, or
10 the edges of fingers, or parts of palms, but you only need a
11 small surface area, if there is a lot of characteristics.

12 When I talked about the skin rough and corrugated,
13 broken ridges, all those are unique characteristics unto you.
14 So the surface area, the portion of the hand -- if there is
15 sufficient surface area for you to touch, and you leave a
16 sufficient amount of ridges, touch that, that have
17 characteristics that can be identified and reproduced,
18 specifically on fingerprint cards, and you can compare those,
19 you can make an identification.

20 Another -- the type of surface you touch -- if you touch
21 a piece of paper, your fingerprints are actually invisible at
22 that point in time, versus if you were to touch a mirror or a
23 glass, and you could hold that item up and see the
24 fingerprints on the glass. Depends on the -- what you have on
25 your hands. If you have a lot of lotion on your hands you can

1 contaminate the ridges, run the ridges together, keep the
2 ridges free from even making an impression. If you touch a
3 dusty surface, you might be able to see the fingerprint there,
4 which it would have to be fingerprinted -- excuse me --
5 photographed. If you tried to lift it, you would obliterate
6 the ridge detail in the print.

7 Other variables would be the sunlight, the heat, the
8 moisture. You are looking for minute, minute ridges, minute
9 perspiration coming off those ridges. And anything, any dust,
10 any heat, all that can contaminate the print and make it
11 evaporate. The moment you touch something, your fingerprint
12 is starting to deteriorate. Rain can wash it away, the dew,
13 other fingerprints, smearing. Any type of movement in the
14 hand runs the ridges together, so more times than not you are
15 going to leave an unidentifiable fingerprint versus an
16 identifiable fingerprint.

17 Q. Let me ask you this. If you have an identifiable
18 fingerprint, is there any way for you to tell us, an analyst
19 or an expert in this area, when that fingerprint was placed on
20 a particular item?

21 A. No sir. You can't date a fingerprint.

22 Q. Okay. So a fingerprint could have come from today,
23 yesterday, last week, last year. You can't tell that. You
24 just can tell whether or not it's been touched?

1 A. That's correct.

2 MR. RIDDLE: Beg the Court's indulgence.

3 Q. Now, you found a fingerprint in this case on that
4 brush, correct?

5 A. Yes sir.

6 Q. And were you able to match that fingerprint to Quincy
7 Timmons, correct?

8 A. That is correct.

9 Q. You did not find any fingerprints as it relates to
10 Marcus Timmons?

11 A. I did not.

12 Q. Is it possible for Marcus Timmons to have touched a
13 number of items in this case and not left any fingerprints
14 that you could identify?

15 A. That is possible.

16 Q. The fact that you do not find fingerprints of Marcus
17 Timmons does not exclude him from this case?

18 A. Not at all, no sir. He could have had something on his
19 hands, which we virtually ---

20 MR. AYER: Your Honor, I object to this line of
21 questioning. It calls for way too much speculation.

22 THE COURT: Repeat the question.

23 MR. RIDDLE: I just asked if the absence of
24 fingerprints, as they relate to Marcus Timmons, excludes him
25 from this case, based on his experience.

1 THE COURT: I sustain the objection.

2 Q. Let me ask you this, Agent Counts. An identifiable --
3 an identifiable fingerprint, you can include somebody based on
4 that; is that correct?

5 A. That is correct.

6 Q. The lack of identifiable fingerprints ---

7 MR. AYER: Your Honor, the same objection.

8 THE COURT: What's your question again?

9 MR. RIDDLE: The question is whether -- it relates to
10 whether fingerprints is a science of inclusion or exclusion.
11 The question I asked was, the presence of an identifiable
12 fingerprint would include somebody in a case, and the follow-
13 up question was, the lack of an identifiable fingerprint does
14 not necessarily exclude someone from a case?

15 THE COURT: Okay. I'll -- over your objection, I'll
16 let him answer that question.

17 Q. Is that correct, Agent Counts? The lack of an
18 identifiable fingerprint, you can't say somebody is not
19 involved because you can't find a fingerprint that matches?

20 A. That is correct.

21 MR. RIDDLE: Thank you, sir. That's all the questions
22 I have.

23 CROSS-EXAMINATION BY MR. AYER:

24 MR. AYER: May it please the Court.

25 Q. Mr. Counts, just briefly, again, you did not find a

1 fingerprint in your investigation belonging to Marcus Timmons,
2 did you?

3 A. I did not.

4 MR. AYER: Thank you, sir.

5 MR. RIDDLE: No further questions, Your Honor. I would
6 ask that this witness be excused.

7 MR. AYER: No objections.

8 A. Thank you.

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

10 A. Thank you, Your Honor.

11 MR. SWARAT: State calls Willie Williams.

12 MR. AYER: Your Honor, I have a matter to take up with
13 the Court.

14 THE COURT: Mr. Foreman, ladies and gentlemen of the
15 jury, let me ask that you go to the jury room. Please do not
16 discuss the case.

17 THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right. Your objection.

20 MR. AYER: Your Honor, it's my understanding that Mr.
21 Williams is going to testify to some discussions that he had
22 with the Defendant in jail, prior to the arrest for this
23 charge. We can proffer that testimony if you like. Again, I
24 would like to make -- assuming that that is the case, I ---

25 THE COURT: Who is it, the next witness?

1 MR. AYER: Willie Williams.

2 THE COURT: And he's being offered for what now?

3 MR. AYER: Well, it's my understanding that Willie
4 Williams was in the Lexington County Jail at the same time the
5 Defendant was in the jail, and he's going to testify to the
6 Defendant being in jail prior to his being arrested for this
7 particular charge, and I -- again, I object, and move to
8 exclude and suppress that testimony as being too prejudicial
9 to my client, because obviously it indicates that he has -- he
10 is arrested, because he had discussions with Mr. Williams, or
11 at least Mr. Williams is going to allege that, while he was in
12 jail.

13 THE COURT: What is the gist of this witness's
14 testimony going to be?

15 MR. SWARAT: Your Honor, Mr. Williams was in the
16 company of Mr. Timmons throughout Mr. Timmons' stay at the
17 Lexington County Detention Center. During that time Marcus
18 Timmons confessed to Mr. Williams that he killed the man on
19 321, the victim in this case, that he shot him with a twenty
20 gauge shotgun, that he shot him in the back, that he was with
21 Quincy Timmons when he shot him in the back, that they were
22 trying to rob him. He confessed to the homicide in this case
23 to Mr. Williams.

24 Mr. Williams testified in the first trial.

25 THE COURT: Okay.

1 MR. AYER: And again, Your Honor, that was prior to Mr.
2 Timmons being charged for this crime, which again, brings his
3 character into the trial, gives the indication that he has a
4 record prior to this trial.

5 In addition, I would like to question Mr. Williams, if I
6 possibly can, about his own arrest record. I have ---

7 THE COURT: Well, you can on -- if I allow him to
8 testify, on cross-examination, if -- it's under the rule. If
9 he has convictions it's square under the Rule. I forget the
10 number right now, but ---

11 MR. SWARAT: Your Honor, I believe it's 609. I'm going
12 to bring that out on direct.

13 THE COURT: Okay. Do y'all have copies of his N.C.I.C.
14 record, or ---

15 MR. AYER: I have a copy of the record, but I don't
16 know whether it's complete or not. I think he has the Federal
17 record, and I have a copy of the State record, and I wanted to
18 ask him about his Federal charges.

19 MR. SWARAT: Your Honor, I was going to bring out his
20 Federal charges on direct. Those are the only charges, I
21 believe, that are admissible. He has a distribution of
22 cocaine from 1993. He also has a probation or parole
23 violation for possession of a firearm. I was going to bring
24 those two out. He has no other conviction that would satisfy
25 any of the requirements of the rule that would be admissible.

1 THE COURT: Mr. Ayer, are you aware of other
2 convictions that -- that may or may not come under the Rule?

3 MR. AYER: I'm not aware of anything. Mr. Swarat says
4 distribution of cocaine, and then a probation violation. Was
5 the probation violation from the possession of a shotgun?

6 MR. SWARAT: That's correct.

7 MR. AYER: The distribution of cocaine was a Federal
8 charge, right?

9 MR. SWARAT: Both were Federal charges.

10 Your Honor, I was not going to go into the specific
11 dates that he had these conversations with Mr. Timmons. I was
12 not going to allude to any of the arrests from April 9th of
13 '93 for those armed robberies. I was just going to go into
14 the substance of his conversations with Mr. Timmons and how he
15 came to know Mr. Timmons, and Quincy Timmons, how he
16 interacted with them throughout his stay in the Detention
17 Center, just lay a foundation ---

18 THE COURT: When was this conversation allegedly taking
19 place? What's the date?

20 MR. SWARAT: It took place in between April and June of
21 1993.

22 MR. AYER: Yes.

23 THE COURT: And you object for what reason?

24 MR. AYER: Again, Your Honor, I think the testimony
25 earlier -- it may have been with Mr. Counts -- was that the

1 fingerprints came back in June, and no question -- I think
2 there has been testimony as to when Mr. Timmons was arrested,
3 sometime in June, or if he had some in or -- some point I
4 think it's been made aware that he was arrested in June. In
5 fact, the conversation with Mr. Williams, I think, perhaps
6 aided in leading to his arrest, and my objection again is
7 that, if Mr. Williams had a discussion with Mr. Timmons in
8 jail, it was too prejudicial where my client is concerned, and
9 introduces his character into evidence, because if he's in
10 jail, he obviously had a record at that point, and that was
11 prior to his being arrested for this charge, so a jury knows
12 that he's in jail already, and there has been -- well, I take
13 that -- strike that. But they know he's in jail already,
14 while he's having the discussion with Mr. Williams, and I
15 think it's too prejudicial and again, introduces my client's
16 character into the trial without my client introducing it.

17 THE COURT: I was just sitting here thinking about the
18 rules. Can you cite a rule? I'm not thinking of any rule of
19 evidence that we have that would preclude this ---

20 MR. AYER: Well, Your Honor, I can't think of the rule
21 off the top of my head, but the rule about not introducing
22 character into evidence, unless the defendant introduces it
23 himself. I don't know the rule off the top of my head.

24 And you know, further, I think the Solicitor said he was
25 -- testified in the first trial. In the first trial I think

1 he just testified in reply to a response of a defense witness,
2 not that the State is married to do the same thing this time,
3 but he was introduced last time to impeach Mr. Timmons'
4 testimony. He wasn't introduced on direct, and they are
5 introducing my client's character by indicating that he had a
6 discussion with a man in jail, that took place prior to his
7 charge for this particular crime, and his character is being
8 introduced without him introducing it. The State is bringing
9 it up, first of all.

10 THE COURT: Well, we are not -- we are not talking
11 about evidence of other bad acts or crimes. We are talking
12 about this specific crime, so I don't think it would be
13 covered under 404.

14 MR. AYER: But when he's in jail we aren't talking
15 about this particular crime. When we are in jail -- when he's
16 in jail we are talking about April 9th. We are sort of back-
17 dooring the April 9th. He was in jail in Lexington County for
18 the April 9th charges, and that's when he had the discussion
19 with Willie Williams, as a result of the April 9th charges,
20 that were kept out in the first trial. That's when he had
21 these discussions, or that's what Willie Williams is going to
22 say, that he talked to Mr. Timmons while he was in jail, and
23 he's not going to say, obviously, April 9th, but there has
24 been discussion here, and that is why Mr. Timmons was in jail
25 to begin with, so again, the inference to the jury is that my

1 guy is in jail. It's not like they had this discussion at the
2 office, or at work or something; they had it in jail, as a
3 result of the April 9th crimes, and it was prior to this being
4 -- even being arrested for this crime.

5 THE COURT: Well, the arrest doesn't really have
6 anything to do with it, I mean, whether he was in jail on this
7 crime or not. What I'm concerned about is the issue of him
8 being in jail, if that is a 404 violation of introducing
9 character or -- general character of the accused.

10 MR. AYER: Well, I -- I certainly think it does. If
11 he's in jail at the time that this discussion takes place, and
12 this is -- this is, as we have discussed, the April 9th is the
13 reason that he was there.

14 THE COURT: That doesn't -- that -- I can keep that
15 out, why was he in jail at that time. That's not relevant to
16 the trial of this case.

17 MR. AYER: But clearly, to some degree, if you testify
18 that you had a discussion with an individual while he's in
19 jail, that has got to bring his character into the trial. If
20 you are in jail that reflects on your character, and he's
21 having these discussions with Mr. Timmons, again, not at the
22 office, not at the ballgame, but he's having them in jail.

23 MR. SWARAT: Your Honor, I would submit that the
24 prejudicial effect of that certainly is outweighed by the
25 probative value of this testimony.

1 Mr. Williams is going to testify about his conversations
2 directly with Marcus Timmons about this murder, and he's going
3 to testify about facts about the murder that only the killer
4 could know. I think that's extremely probative, for this jury
5 to understand that Marcus Timmons was talking about this
6 crime, and his commission of this crime.

7 Certainly it has a little bit of a prejudicial effect,
8 but near as prejudicial effect as it is probative.

9 THE COURT: Mr. Ayer, if you can't cite me a specific
10 rule -- I can't think of one right now -- I'm going to allow
11 the testimony to come in.

12 I will ask you to instruct the witness not to mention,
13 unless he is specifically asked, where the conversation took
14 place.

15 MR. SWARAT: I'm going to have to bring out where he
16 is, because that's -- he's there on the charges.

17 THE COURT: Where he is today, but when did this
18 conversation take place?

19 MR. SWARAT: It took place in between April and June of
20 1993.

21 THE COURT: Okay.

22 MR. SWARAT: And Your Honor, to follow up on that, I
23 need to go into some additional things that Mr. Williams did
24 with that information. He tells a minister in the jail about
25 this conversation he's had with Marcus, tells him he's got

1 concerns about it; what should I do about it, minister.

2 Then he tells his own attorney on the Federal charges,
3 who is Cam Littlejohn. Mr. Williams, together with Cam
4 Littlejohn, contacts the Lexington County Sheriff's Department
5 with this information, and then Detective Hickman, who
6 testified earlier, went down, with Cam Littlejohn present,
7 with Mr. Williams, and took a recorded statement about this
8 information, about Marcus Timmons telling him he killed the
9 man on 321, and all the facts surrounding that murder. I need
10 to get into that information, because I may have to call Mr.
11 Littlejohn if he tries to go into some type of prior
12 inconsistent statement, and I've got Mr. Littlejohn subpoenaed
13 for that purpose.

14 THE COURT: What would be the relevance of -- if the
15 witness says, this Defendant told me something, what's the
16 relevance of who all he told?

17 MR. SWARAT: I think it corroborates his testimony.

18 MR. RIDDLE: It also, Your Honor -- and I don't mean to
19 just jump in, but it also would certainly go to rebut any
20 charges of recent fabrication, or why he didn't tell anybody
21 about it at the time, which, in fact, he did do. He did tell,
22 when he got this information, law enforcement about the
23 information, and they took a statement from him in reference
24 to the information, and it goes directly to him coming forward
25 with the information as soon as he gets it, which goes clearly

1 to his credibility and believability as to whether or not he
2 actually had this conversation.

3 THE COURT: All right. Who -- how many more witnesses
4 does the State intend to call in this case?

5 MR. SWARAT: Your Honor, I believe there are about
6 three more, and two of them are very short.

7 MR. RIDDLE: I think three, Your Honor. Let me check
8 one second.

9 MR. SWARAT: We have the ballistics expert, the
10 pathologist, and I believe Mr. Williams. Those will be the
11 last three.

12 THE COURT: Are you going to call the pathologist?

13 MR. SWARAT: Yes sir.

14 THE COURT: How long will he take?

15 MR. SWARAT: I can't imagine more than ten minutes at
16 maximum, and we weren't going to do it today.

17 THE COURT: Now, don't -- don't start stretching the
18 truth. Y'all have never had a witness on the stand for ten
19 minutes.

20 MR. SWARAT: It depends on what Mr. Ayer asks him, I
21 believe.

22 MR. RIDDLE: Thirty, Your Honor.

23 MR. AYER: Your Honor, if I could be heard further?

24 THE COURT: You can't even get a pathologist qualified
25 as an expert in ten minutes. What I'm saying is, I'm thinking

1 about just stopping for the day. The jury -- if we start with
2 this witness it sounds like it might be thirty minutes to an
3 hour, and I don't want to keep them here ---

4 MR. SWARAT: That suits the State. That's fine with
5 the State.

6 MR. AYER: That's fine with me, Your Honor.

7 THE COURT: Okay. And we will just -- if this is going
8 to be your first witness in the morning we can start promptly
9 at nine o'clock.

10 Mr. Ayer, if you have some law you want to pass up in
11 the morning, I'll be glad to take a look at it. Right now I
12 can't think of any reason not to allow the witness to testify,
13 but I'll certainly be glad to hear from you first thing in the
14 morning.

15 MR. AYER: All right. Thank you, sir.

16 THE COURT: All right. Let's bring in the jury.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 THE COURT: Mr. Foreman, ladies and gentlemen of the
20 jury, we will stop for the evening. While you are away, do
21 not discuss the case among yourselves or with anyone else.
22 Should there be a report in the media, do not read, listen to
23 or view those reports. You are to base your verdict in the
24 case solely on the evidence and the law that you receive in
25 this courtroom.

1 When you return tomorrow morning, please report direct
2 to your jury room, and I'm going to ask that you be in the
3 jury room at 9:00 A.M. tomorrow morning.

4 Everyone else please remain in your seats. The jury is
5 excused till 9 A.M. tomorrow morning.

6 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
7 JURY.)

8 THE COURT: All right. While I think about it, are
9 y'all aware of any requests to charge that y'all are going to
10 have?

11 MR. RIDDLE: No sir. I just was -- I had a question
12 about your normal charges.

13 THE COURT: Uh huh (indicating positive)

14 MR. RIDDLE: Do you charge the Darby language as far as
15 reasonable doubt goes, or Manning or Victor or ---

16 THE COURT: We do. Do. I charge Man -- the same
17 charge I gave them at the beginning of the trial, identical,
18 Manning ---

19 MR. RIDDLE: Okay. I think that was the Victor charge.

20 THE COURT: Manning and the charge out of Victor. You
21 heard it ---

22 MR. RIDDLE: Yes sir.

23 THE COURT: ---At the very beginning. Same charge.

24 MR. RIDDLE: All right.

25 And as far as circumstantial evidence, you charge

1 Grippon ---

2 THE COURT: Uh huh (indicating positive)

3 MR. RIDDLE: Grippon.

4 THE COURT: Uh huh (indicating positive)

5 MR. RIDDLE: I'm not sure how you say it, but ---

6 THE COURT: I don't know either, but that's the one.

7 MR. RIDDLE: Okay. And I believe that's it.

8 Everything else is, as far as I can tell, is pretty
9 straightforward.

10 THE COURT: What I have tried to do is, since this
11 occurred in 1993, some of the statutes have been amended.
12 I've tried to go back and find the armed robbery statute as it
13 existed in '93, and the conspiracy statute, and I think I've
14 found those. As to the other statutes, my understanding
15 though, the murder statute has not changed. I know the
16 penalty part has, but the part that defines a crime itself has
17 not changed, and I think the armed robbery one, and the
18 conspiracy are the only ones that -- that have changed, and in
19 armed robbery they added the language about what may have
20 appeared to be a weapon, etcetera, and conspiracy they changed
21 the wording just a little bit, but they re -- when they redid
22 the Classification Act they amended some of those criminal
23 statutes.

24 MR. AYER: Your Honor, I assume you are going to charge
25 the normal presumption -- presumption of innocence charges.

1 THE COURT: Yes. Why do defense attorneys ask that all
2 the time?

3 MR. AYER: Just to make sure, I guess.

4 MR. SWARAT: Your Honor, we've got a lot of things that
5 have been covered. I'm going to try to come up with a laundry
6 list of everything that we've gone through and try to do that.

7 THE COURT: Okay. Now we will charge -- he will be
8 given a very substantial charge on burden of the State, beyond
9 a reasonable doubt, presumption of innocence and so forth.

10 MR. AYER: How about eye witness identification, and
11 reliability of it, Your Honor. Do you have a charge on that?

12 THE COURT: We have a charge. If you want, you know,
13 me to consider one, if you want to pass it up. I can't
14 remember right offhand where that charge comes from, but I
15 think it comes from one of the cases.

16 MR. RIDDLE: I was just going to tell Your Honor, I've
17 got Judge Westbrook's charge from the '94 trial, and I'll be
18 glad to make a copy of it as far as ---

19 THE COURT: If you want ---

20 MR. RIDDLE: You talked about the changes in the law
21 and I ---

22 THE COURT: Yes.

23 MR. RIDDLE: ---And I just -- I'll be glad to make you
24 a copy of this because ---

25 THE COURT: That may help some.

1 MR. RIDDLE: I thought it might. I'll make you a copy
2 of this.

3 THE COURT: Okay.

4 MR. RIDDLE: I can do that this afternoon. Do you want
5 it this afternoon? I'll be ---

6 THE COURT: Yes, if you can get it back over to me.

7 MR. RIDDLE: Yes sir. It's only about twenty pages, or
8 thirty pages, maybe, so I can get it -- get it done and
9 brought back over here to you pretty quick.

10 MR. AYER: Your Honor, my understanding is, there is a
11 charge, or there is law on cross racial identification.

12 THE COURT: There's a what?

13 MR. AYER: There is law, or a charge of cross racial
14 identification.

15 THE COURT: I don't believe ---

16 MR. RIDDLE: That's a charge on the facts, Your Honor.
17 There is no charge on that.

18 THE COURT: Just pass up whatever you have and I'll
19 take a look at it. We will have a charge conference before we
20 have closing arguments, but I -- it helps me if I can look at
21 them ahead of time. It kind of speeds things up.

22 MR. RIDDLE: All right, sir.

23 THE COURT: Okay. We will be in recess till 9 A.M.
24 tomorrow morning.

25 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, AUGUST 31,

1 2000, OUTSIDE THE PRESENCE OF THE JURY.)

2 THE COURT: All right. Is the State ready?

3 MR. SWARAT: State's ready.

4 THE COURT: Defendant ready?

5 MR. AYER: The Defendant is ready, Your Honor.

6 Are you going to continue to hear my argument on the
7 motion to exclude Mr. Williams' testimony? I have case law,
8 Your Honor, and if I could, I would like to be heard further
9 on this matter.

10 THE COURT: Okay.

11 MR. AYER: Your Honor, first of all, as Your Honor
12 probably knows, without me having to tell you, the thrust of
13 my case, Your Honor, or a great deal of the thrust, is that
14 the jury not project onto Mr. Timmons a feeling or a sense of
15 guilt, and it is very important in our case, as it is
16 important in any case, for a jury to not know, not learn that
17 a person had a prior record, or that a person was in jail at
18 the time they were arrested for the charge for which they are
19 being tried on.

20 In this case, Your Honor, it's my understanding that Mr.
21 Williams, more than likely, will testify that, when he was in
22 Lexington County Jail, Marcus Timmons and Quincy Timmons came
23 into the jail. This was in April of 1993. Mr. Timmons was
24 not arrested for the charge on which he is being tried today
25 until June 29th of 1993. Your Honor, I would submit the

1 jury -- two and two makes four, and the jury will be able to
2 figure out, and the number of occasions that Mr. Timmons was
3 in jail when he was arrested for this charge.

4 Mr. Willie Williams' testimony that Marcus Timmons told
5 him about this trial -- told him about this murder, is going
6 to be introduced, and I think I have a right -- the State may
7 ask him, but I've got a right to ask him about what he did
8 with that information, who he told, and ultimately that
9 information is what led to Mr. Timmons' arrest for this trial,
10 for this charge.

11 Also, Your Honor, I may want to use dates -- if I put up
12 a case I may want to use dates in my case, and essentially
13 what's going to happen here is, I won't even be able to ask my
14 client when he was arrested. He was arrested June 29th. I
15 may want to make some issue out of the difference, or the time
16 lapse between February 27th and June 29th. I may want to ask
17 Mr. Williams, when did my client tell you this; did he tell
18 you this three weeks ago, or when did he tell you. He's going
19 to say, he told me that, probably in May, or April of 1993, in
20 the Lexington County Jail, and then I'm left with not even
21 being able to bring out that my client was arrested for this
22 truck charge in June -- on June 29th, I think it is. So, even
23 if the State says, well, we won't mention any dates, I need to
24 know dates, because I need, and have a right, in proper
25 representing of my client, to ask Mr. Williams when it is Mr.

1 Timmons told him this, and what he did with that information,
2 who he took it to, and all this ties in to the April
3 robberies, because the April robberies is why Mr. Timmons was
4 in jail to begin with, gave him the opportunity to even be in
5 the same room with Mr. Williams. All this ties back to April,
6 and again, it lets the jury know that my client was in jail.

7 These cases that I handed you, they are not directly on
8 point, but I have not found a case directly on point, but I
9 will say, by inference, these cases seem to say to me that, if
10 it came out that a defendant was in jail at the time that he
11 informed the person who is testifying, that it would be
12 prejudicial.

13 The language in State versus Miller, 190 S.E. 2d 23,
14 says that, while the fact that appellate was being held in
15 jail would give rise to an inference that he was being held on
16 the charge involved in the line-up, there is nothing to show
17 that any inference could reasonable arise that he was being
18 held on any other charge. And there is no question, in this
19 case, Your Honor, that an inference could clearly reasonably
20 arise that he was being held in April, when he talked to
21 Willie Williams, on another charge, because he hadn't even
22 been arrested for this charge yet.

23 And then in the State versus Owens, 359 S.E. 2d 275, it
24 indicates that evidence produced at trial indicated only that
25 appellate was in jail for the crime for which he was then

1 being tried. And the inference there, Your Honor, is that,
2 had he been in jail on a crime other than which he was being
3 tried, the result from the Supreme Court would have been
4 different, at least that's the inference that I would draw.
5 And I just submit to the Court that it's clearly going to be
6 obvious that he was in jail on another crime, another charge,
7 when this supposedly confession took place, and it is too
8 prejudicial to Mr. Timmons to be allowed to come in, and I
9 move to have it suppressed.

10 THE COURT: State.

11 MR. RIDDLE: Your Honor, everybody knows that, if you
12 get charged with a crime you go to jail, I mean, that's pretty
13 basic. Mr. Timmons is charged with murder. He would have
14 been in jail. What Mr. Ayer is telling the Court is, we
15 shouldn't allow any of it, because if we put in the statement
16 that he confessed to a crime, then he wants to be able to ask
17 him about the date. Well, if he chooses to ask him about it
18 happened in April, that's his choice. If he opens that door
19 and walks through it, that's his choice. We ought to be able
20 to offer that, in 1993, when Mr. Williams was in jail, and Mr.
21 Timmons was in jail, that Mr. Timmons confessed to Mr.
22 Williams. Now, if he wants to start asking about April, he
23 can ask him about April. He can ask him about it if he wants
24 to. There is nothing to stop him from doing it. The only
25 thing we can't do is put in front of this jury that he was in

1 jail on another charge, and we are not going to do that, Your
2 Honor. We are going to ask this witness, Mr. Williams, were
3 you in jail; was Mr. Timmons in jail at the time.

4 And these cases -- they say, you know, that everybody
5 assumes -- the inference is that he was in jail on the crime
6 for which he is charged. I don't know how he can have his
7 cake and eat it too. He says we shouldn't be able to offer
8 it, and then he wants to come back and say, because I'm going
9 to have to ask him about the dates. If he doesn't want that
10 in evidence, he shouldn't ask him about the dates, because we
11 are not going to, but this statement is highly probative, Your
12 Honor. It goes directly -- I mean, it's a statement from the
13 Defendant's own mouth, admitting to this homicide, with
14 information that only the killers could know about it, and we
15 are willing to sanitize it to avoid the undue prejudice to the
16 Defendant about the dates. That's not a problem. We agree to
17 do that. Now, if he chooses to bring that up, then that's a
18 tactical decision being made by the defense, but that's not a
19 reason to exclude the statement.

20 THE COURT: Any reply?

21 MR. AYER: Well, Your Honor, I just reiterate again.
22 That's my very point, I mean, I have a right -- if he's going
23 to say my client confessed to the crime of murder, I mean,
24 it's -- it violates my right, in my opinion, to confront that
25 witness a hundred percent when I can't even ask him whether it

1 happened two weeks ago, or seven years ago, or when it
2 happened.

3 THE COURT: You can ask him anything. You are not
4 precluded from asking him -- as long as it's relevant to the
5 case.

6 MR. AYER: Well, I know I can ask him anything, but it
7 will be prejudicial to me, and that information ---

8 THE COURT: Well, one thing I've noticed in my years in
9 the courtroom. I have never -- in criminal court I very
10 rarely experienced anything that wasn't prejudicial to a
11 defendant. Just about every bit of testimony that's brought
12 out carries some prejudice toward the defendant, and it's just
13 the nature of the proceeding.

14 I'm going to give a -- when we get to that point with
15 the witness, I will stop the trial and give a curative
16 instruction to the jury that they are not to consider the
17 Defendant's residence at that time, adversely to him; they are
18 to draw no inference from that whatsoever, and it does not
19 have any bearing whatsoever on his guilt or innocence in these
20 cases.

21 MR. RIDDLE: We don't have any objection one way or the
22 other. I don't know how the defense feels about whether they
23 want the curative instruction or not, but whatever the defense
24 wants from the Court in terms of a curative instruction, we
25 are in agreement with.

1 MR. AYER: Your Honor, can I think about that? Because
2 you -- you may charge it whether I think about it or not.

3 THE COURT: Well, I just think, out of an abundance of
4 precaution I should tell the jury that this particular fact
5 that -- that on this particular date the Defendant was in
6 jail, that the jury is to draw no inference from that, and it
7 has no bearing -- the fact that he was in jail on that date
8 has no bearing on his guilt or innocence in the charges that
9 are now before the court.

10 I mean, if you want to ask me not to charge that, but
11 that's -- I can listen to you.

12 MR. AYER: I don't. Maybe it's out of line, Your
13 Honor, but to me that's kind of like telling the jury not to
14 like ice cream if they like ice cream, I mean, if they like it
15 they like it. But anyhow -- and I apologize. That was
16 probably out of line, Your Honor.

17 THE COURT: No. That's okay.

18 MR. AYER: Because I don't really see any way they can
19 avoid holding it against him. That's -- again, those cases
20 pretty much say that, because the person was in jail for the
21 crime he was being tried on there is no prejudice. The
22 inference is, if he was in jail on another crime it would
23 clearly be prejudice. I don't know how the prejudice is
24 avoided, but ---

25 Your Honor, on another matter ---

1 **THE COURT:** This is not testimony about a prior bad
2 act. This is testimony about the allegations in these
3 particular indictments. We are not going to go into any other
4 prior bad acts, if any, of this Defendant. We are going to
5 confine this solely to the allegations in these indictments,
6 so this will not be testimony about any prior bad acts alleged
7 by ---

8 **MR. AYER:** But again, Your Honor, that language in that
9 case talks about the jury could not draw a reasonable
10 inference of anything other than the charge. Clearly, in this
11 case, if he's in jail there is a reasonable inference that
12 other bad acts occurred. We are not going to go into them
13 directly, but again, the language, and reasonable inference,
14 it is reasonable to infer, if you are in jail with somebody
15 for three months, and then they get arrested on something,
16 they were in there for something else, and that inference is
17 clearly there. Now, whether or not we mention it in court,
18 Mr. Williams says it, there's -- in my opinion there is no ---

19 **THE COURT:** If you want to make a motion, or ask the
20 Court not to give any curative instruction, I'll be glad to
21 listen to it, if that's what you want me to do.

22 **MR. AYER:** Okay. Do I have to do that right now?

23 **THE COURT:** Well, since -- is he your first witness?

24 **MR. SWARAT:** That's correct, Your Honor.

25 **MR. AYER:** Beg the Court's indulgence.

1 THE COURT: Okay.

2 MR. AYER: Your Honor, can I wait until his testimony
3 is over to ask you, or is that the cart before the horse?

4 THE COURT: Well, once it's heard it's heard, but I'll
5 consider -- at this point I'm going to consider that you are
6 asking me not to say anything to the jury, in other words, not
7 to give a curative instruction.

8 What I had proposed to do is, when they ask the
9 question, where did you meet the Defendant -- I guess that's
10 going to be a question, or something similar to that -- at
11 that point I would just -- when he answered I was going to
12 stop and tell the jury that they are to draw no inference from
13 the Defendant's residence at the time of the alleged
14 conversation between the witness and the Defendant, but if the
15 Defendant requests that I not give a curative instruction I
16 will certainly consider that.

17 MR. AYER: Your Honor, would your instruction be pretty
18 straightforward like you just uttered?

19 THE COURT: Uh huh (indicating positive)

20 MR. AYER: Okay. I mean, you are not going to go into
21 the dates and that kind of thing?

22 THE COURT: All I'm going to say is, I instruct you now
23 that you are to draw no inference from the Defendant's
24 residence at the time of the alleged conversation. The
25 Defendant's residence at the time of the alleged conversation

1 has no bearing whatsoever on the question of guilt or
2 innocence in the trial of these cases.

3 MR. AYER: All right. We would request that you say
4 that then.

5 Your Honor, before the jury comes out for Mr. Williams,
6 I would move for an incamera hearing. I have a record of Mr.
7 Williams that has some charges on here, and some crimes on
8 here that I don't quite understand, and I don't want to ask
9 him about them while the jury is here, and say something I
10 shouldn't say. Could I ---

11 THE COURT: Well, you can just -- you just ask him,
12 have you ever been convicted of, or on or about such and such
13 a date, were you convicted of the crime of so and so. If he
14 denies it you can then go into extrinsic evidence to prove it.
15 If he admits it, you just move on.

16 MR. SWARAT: Your Honor, I know of only two crimes that
17 qualify under the rules. It's the distribution of cocaine I
18 mentioned in '93, and also the possession of a firearm, which
19 he had a probation revocation on. Those are the only two I
20 know that qualify under the rules.

21 MR. AYER: All right, Your Honor, on 4/18/91 I have an
22 arrest charge for pointing a firearm.

23 MR. SWARAT: Arrest charge or conviction?

24 MR. AYER: Well, that's my question. It just says
25 arrest charge and then -- is that -- says arrest charge,

1 pointing firearm, photo available, and that's all it says. It
2 doesn't have a disposition.

3 THE COURT: Well, you can ask him, have you ever been
4 convicted of.

5 MR. SWARAT: Your Honor, if it was '91 then we know the
6 answer to that question, because it would have come up in the
7 '94 trial, and it didn't come up in the trial. He doesn't
8 have a conviction on it.

9 MR. AYER: What makes you think it would have come up
10 in the '94 trial?

11 MR. SWARAT: Well, if it happened in '91 I would expect
12 it would be taken care of by '94.

13 MR. AYER: See, that's going to get -- that's why -- I
14 mean, I just want to know, and I don't want to ---

15 MR. SWARAT: Why don't I ask him. I mean, we can take
16 care of it that way.

17 MR. AYER: Yes. But ---

18 MR. SWARAT: Can you ask him if he got convicted of
19 pointing a firearm in '91.

20 THE COURT: You can ask him on the record, have you
21 ever been convicted, or were you convicted in 1991 of such and
22 such a crime, and he can deny it. If you have proof of it you
23 can call witnesses to prove that what he says is not the
24 truth.

25 MR. AYER: Well, that's where I -- I don't know whether

1 they have proof of it or not. I've been given the arrest
2 record, and at this time I don't know, and I don't want to
3 bring it up if he hasn't been, but if he has I'd like to know,
4 and maybe I don't have ---

5 THE COURT: Does the State have any evidence of a
6 conviction?

7 MR. SWARAT: No sir.

8 THE COURT: Where did your information come from, Mr.
9 Ayer?

10 MR. AYER: The arrest record that the State handed me.

11 MR. SWARAT: We have no information of a conviction on
12 that charge, or a charge like that, other than the possession
13 of a shotgun that he was convicted of.

14 MR. AYER: And in 5/94 it says, Criminal Domestic
15 Violence Act.

16 MR. SWARAT: Obviously that wouldn't apply.

17 MR. AYER: It says sentence unknown. Is the sentence
18 ~~more than~~ more than one year?

19 MR. SWARAT: It carries thirty days, to my knowledge,
20 so no, it would be less than one year.

21 THE COURT: All right. We'll call the witness in. Is
22 he available?

23 MR. SWARAT: He is, Your Honor.

24 THE COURT: All right. Is the jury ready?

25 BAILIFF: Yes sir.

1 THE COURT: All right. You can bring in the jury.

2 MR. SWARAT: He knows nothing about that charge, Your
3 Honor. The witness knows nothing about that charge.

4 THE COURT: Okay.

5 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
6 JURY.)

7 THE COURT: All right. You may call your witness.

8 MR. SWARAT: State calls Willie Williams.

9 WILLIE D. WILLIAMS, first duly
10 sworn, testified as follows:

11 DIRECT-EXAMINATION BY MR. SWARAT:

12 Q. Mr. Williams, where are you from?

13 A. I live in York County.

14 Q. York County. What town do you live in in York County?

15 A. I live in York.

16 Q. And where are you from originally, Mr. Williams?

17 A. I was born and raised in McConnells. That's in York
18 County.

19 Q. McConnells, near Brattonsville?

20 A. Yes.

21 Q. Where they just filmed that movie?

22 A. Yes.

23 Q. Mr. Williams, how old are you, sir?

24 A. I'm fifty. I'll be fifty-one September 6.

25 Q. You are fifty years old?

1 A. Yes sir.

2 Q. Mr. Williams, are you married?

3 A. Yes.

4 Q. How long have you been married, sir?

5 A. I've been married for thirty-one years.

6 Q. Thirty-one years to the same lady?

7 A. Yes.

8 Q. Do you have any children, Mr. Williams?

9 A. Yes. I have six kids.

10 Q. Do you have any grands?

11 A. I have four grands.

12 Q. Mr. Williams, how are you employed?

13 A. I was junior sales manager for Winn-Dixie. Now, when I
14 go back I start working at Movie Gallery, manager of Movie
15 Gallery, in Clover.

16 Q. What type of work have you done in the past? Who have
17 you worked for in the past?

18 A. I worked for the State for about -- the State Highway
19 Department for about eleven years. I was a heavy equipment
20 operator and truck driver. I drove tractor and trailer for
21 about three years. I drove concrete truck for about four
22 years, did odds and end jobs, curb and gutter, brick mason. I
23 did a little bit of everything.

24 Q. Mr. Williams, have you served in the military?

25 A. Yes, I did. I served in 82nd Airborne, and I was in

1 Vietnam once in the 3rd Airborne Division.

2 Q. You were a paratrooper?

3 A. Yes sir.

4 Q. You jumped out of airplanes?

5 A. Yes sir.

6 Q. Now, Mr. Williams, back in 1993, were you charged with
7 distribution of cocaine?

8 A. Yes sir.

9 Q. Convicted of that charge?

10 A. Yes sir.

11 Q. Okay. Was that by the State Government, or was that
12 the Federal Government?

13 A. It was by the Feds.

14 Q. Federal Government?

15 A. Yes.

16 Q. As a result of that, were you sentenced on that charge?

17 A. Yes, I were.

18 Q. And what type of sentence did you receive?

19 A. Well, it was me and my son. My son was really -- I was
20 charged with being a conspirator to my son. My son received
21 five years. I received time served, I think three or four
22 months house arrest, and three years probation.

23 Q. Now, at some time while you were on probation, Mr.
24 Williams, was your probation violated for a firearms charge?

25 A. Yes, it was.

1 Q. For a shotgun that you had?

2 A. Yes sir.

3 Q. And as a result of that shotgun charge, did you go back
4 to jail?

5 A. Yes sir.

6 Q. Now, during the time you went back to jail, at some
7 point in the year of 1993, were you housed in the Lexington
8 County Detention Center?

9 A. Yes sir.

10 Q. Now, Mr. Williams, while you were housed in the
11 Lexington County Detention Center, did you have the
12 opportunity to speak with and meet other inmates that were in
13 that facility?

14 A. Yes. When we come out everybody converse and meet up
15 in the day room. They would let like -- they had (A), (B) and
16 (C) wing. They would let a wing and half out for a few hours,
17 and then they would let the other wing and a half out, and at
18 night they let everybody out in the day room to watch the ---

19 Q. Mr. Williams, how many floors did they have in the
20 Lexington County Detention Center -- and you are going to have
21 to speak up, please, if you could.

22 A. They had three floors.

23 Q. Three floors?

24 A. Yes sir.

25 Q. Do you recall which floor you were housed on?

1 A. I was housed on the third floor, (B) wing.

2 Q. Now you said (B) wing?

3 A. Yes sir.

4 Q. Is there also an (A) wing and a (C) wing?

5 A. That's right.

6 Q. And you said a little something about where those areas
7 converge. What do they call the area where those converge?

8 A. They -- when all of them -- the area -- the big area is
9 the day room, or the T.V. room, where we all go out and
10 exercise and watch T.V., or read the Bible, the paper,
11 wherever we've got.

12 Q. That's where you have your recreational time?

13 A. Yes.

14 Q. And do you do that recreation with the other prisoners
15 that are at the Lexington County Detention Center?

16 A. Yes. They have different groups, I mean people in
17 different things. We used to go out there and watch T.V. and
18 exercise, and we had little Bible study groups and stuff like
19 that too.

20 Q. Okay. Now, during the time in 1993 that you were
21 housed in Lexington County, did you come to meet an individual
22 by the name of Marcus Timmons?

23 A. Yes, I did.

24 Q. Did you also come to meet an individual by the name of
25 Quincy Timmons?

1 A. Yes, I did.

2 Q. How did you meet Quincy Timmons?

3 A. Well, Quincy was part -- well, he was part of our Bible
4 study group. I met them both at the same time, when I came
5 down there, just by being out in the T.V. room. Quincy became
6 a part of our Bible study group, and he was part of my -- I
7 had an exercise group that we did push-ups and back-arms and
8 stuff. He was a part of that also.

9 Q. Okay. Was Marcus part of the Bible study group and the
10 workout group?

11 A. No, he wasn't.

12 Q. Okay. But did you also interact with Marcus Timmons?

13 A. Oh yeah, we talked.

14 THE COURT: Let me interrupt you at this point.

15 Mr. Foreman, ladies and gentlemen of the jury, I
16 instruct you now that you are not to draw any inference from
17 the Defendant, Marcus Timmons, place of residence at the time
18 of any alleged conversation that this witness testifies about.
19 The Defendant, Marcus Timmons, residence at the time of any
20 alleged conversation has no bearing whatsoever on the
21 Defendant's guilt or innocence in the trial of these cases.

22 All right. You may proceed.

23 Q. Mr. Williams, was Quincy Timmons respectful of you back
24 then?

25 A. Yes. Quincy was -- I think he look upon me as

1 something like a father figure. He was quiet. He respected
2 me a lot, or he was -- I never had any trouble out of him or
3 nothing like that. He would listen to me a lot.

4 Q. How about Marcus Timmons; was he that type of person
5 with you?

6 A. Marcus, he showed me respect, but he was also -- Marcus
7 was kind of loud. He talked a lot.

8 Q. Now, did -- on a particular occasion -- let me ask you
9 about this. Are there telephones that y'all have access to in
10 the Detention Center?

11 A. Yes. I think there's two or three on each wing.

12 Q. Are those telephones in pretty high demand?

13 A. Oh yes.

14 Q. Do you recall a particular occasion where Marcus and
15 another individual had an argument over the phone?

16 A. I remember the night when he come out in the day room
17 and he -- he had been on the phone earlier because we - I --
18 the T.V. area in the day room -- they would leave the doors
19 open. You can look down. He was on the top -- at the end of
20 the phones toward the day room, and like I said, the line --
21 people line up. We would usually take a -- pass a pad around.
22 Each person gets like ten minutes on the phone, to hold down -
23 - that keeps down arguments and fights and stuff because we
24 really get busted up about the phones and the T.V. in jail.

25 Q. That particular night, did Marcus get in an argument