

STATE OF SOUTH CAROLINA

VOLUME I OF II

IN THE SUPREME COURT

\_\_\_\_\_  
Certiorari to Spartanburg County

Honorable R. Ferrell Cothran, Circuit Court Judge

\_\_\_\_\_  
KENNETH JOWAN CRAIG,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-001616

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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1 STATE OF SOUTH CAROLINA  
2 COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

3  
4 STATE OF SOUTH CAROLINA,  
5 PLAINTIFF,  
6 VS.  
7 KENNETH JOWAN CRAIG,  
8 DEFENDANT.

TRANSCRIPT  
OF  
RECORD  
2013-GS-42-2844 - 2855  
2012-GS-42-2199

9  
10  
11 July 22<sup>nd</sup> - 25<sup>th</sup>, 2013  
12 Spartanburg, South Carolina  
13

14 B E F O R E:

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

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

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18 ASSISTANT SOLICITORS  
19 Attorneys for the State

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21 Assistant Public Defender  
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24 PAMELA E. GREEN  
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Seventh Judicial Circuit

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## P R O C E E D I N G S

1  
2  
3 THE COURT: All right. In -- the first case looks like  
4 State versus Kenneth Craig. I have received the State's  
5 request for voir dire, and a jury -- and a witness list.

6 Mr. Wheelchel, do you have yours?

7 MR. WHELCHER: Yes, sir, Your Honor.

8 THE COURT: All right. You can bring it up. You can  
9 bring it up. Thank you, sir.

10 All right. Have you had a chance to review his voir  
11 dire?

12 SOLICITOR JORDAN: I have not.

13 Do we need to get the defendant in?

14 THE COURT: Oh, yeah, yeah, we can, we can bring him  
15 in. We're ready.

16 MR. WHELCHER: Yes, sir, I think there's a matter we  
17 need to discuss.

18 THE COURT: Before we bring the defendant?

19 MR. WHELCHER: No, sir, Your Honor. There are direct  
20 indictments. He has not been arraigned.

21 THE COURT: Oh, well, yeah, we definitely need to take  
22 care of that.

23 MR. WHELCHER: There's an amended indictment and a --  
24 direct indictments, Your Honor. So, I think---

25 THE COURT: Okay.

1 MR. WHELCHEL: I think he needs to be arraigned on all  
2 of them.

3 SOLICITOR JORDAN: Yes, sir.

4 SOLICITOR REESE: Your Honor, may I approach on a  
5 scheduling issue?

6 THE COURT: Yes.

7 (WHEREUPON, a bench conference was held at this time  
8 with Solicitor Reese.)

9 THE COURT: All right. You want to call the  
10 indictments and tell me which ones he has -- well, let's get  
11 him in and then we'll call them.

12 SOLICITOR JORDAN: And, Your Honor, I would ask for  
13 just a quick break to run to the restroom before we pick a  
14 jury and also to get my victims down here.

15 THE COURT: We're gonna take a short break once we get  
16 everything straightened out.

17 SOLICITOR JORDAN: Okay.

18 (WHEREUPON, the defendant comes into the courtroom at  
19 this time.)

20 THE COURT: All right. Ms. Jordan, you may call the  
21 cases.

22 SOLICITOR JORDAN: Thank you, Your Honor.

23 Your Honor, at this time the State calls Kenneth Jowan  
24 Craig. He is being called before the Court on 14 different  
25 indictments.

1       The first is 2012-GS-42-2199. It's an amended  
2 indictment that has two counts. The first count charges him  
3 with armed robbery as to the victim Amanda Kiwitz, and also  
4 the second count charges him with possession of a weapon  
5 during the commission of a crime of violence or violent  
6 crime.

7       THE COURT: Has he been indicted -- tell me if he has  
8 been indicted on those.

9       SOLICITOR JORDAN: He has been indicted, Your Honor.  
10 It was an amended indictment. He has been indicted---

11       THE COURT: All right. So, he has not yet been  
12 arraigned on that charge, is that right?

13       SOLICITOR JORDAN: On the amendment, yes, sir, Your  
14 Honor.

15       THE COURT: Okay.

16       SOLICITOR JORDAN: Correct.

17       The next several charges, Your Honor, are all attempted  
18 armed robberies under 2013-GS-42-2844. That's as to victim  
19 Brent Atkins.

20       2845. That's as to victim Bryan Rogers.

21       2846. That's as to victim Victoria Felton.

22       2847. That's as to victim Julie Tesnar.

23       2848. That's as to victim James Wesley Long. It's  
24 listed as James Long in the indictment.

25       2849. That's attempted armed robbery as to Kimberly

1 Henderson.

2 2850. As to victim Nikki Scruggs.

3 2851. That's as to victim Jamie Mattox.

4 2852. That's as to victim Linda Greene.

5 2853 is as to victim Kesha Jolly.

6 2854. That's as to victim Justin Harrison.

7 Your Honor, those are attempted armed robberies.

8 The last charge is an armed robbery charge under 2855  
9 as to victim Joseph McCullough.

10 THE COURT: All right. And has -- have -- has he been  
11 arraigned on all those charges?

12 SOLICITOR JORDAN: No, sir, Your Honor.

13 THE COURT: Okay. Pass, pass it up please.

14 (Solicitor Jordan complies.)

15 THE COURT: All right, sir. Your name is Kenneth Jowan  
16 Craig?

17 DEFENDANT: Yes, sir.

18 THE COURT: Did I say that correctly?

19 DEFENDANT: Yes, sir.

20 THE COURT: All right. Mr. Craig, I'm going to go over  
21 these indictments with you at this point in time. If you  
22 have any questions I'll be asking you -- please ask me and  
23 I'll be glad to explain them further.

24 All right. The first one I'm going to discuss with you  
25 is Case Number 13-GS-42-2855. It is an indictment for armed

1 robbery.

2 That indictment states that Kenneth Jowan Craig did, in  
3 Spartanburg County, on or about January 21, 2012, while  
4 armed with a pistol, dirk, slingshot, metal knuckles, razor,  
5 knife, or other deadly weapon, or while alleging, either by  
6 actions or by words, that he was armed while using a  
7 representation of a deadly weapon or any object which a  
8 deadly person, which a person present during the commission  
9 of a robbery reasonably believed to be a deadly weapon  
10 feloniously take from the person or presence of Joseph  
11 McCullough, by means of force, violence, and/or  
12 intimidation, goods or monies in violation of Section  
13 16-11-330(a) of the Code of Laws of South Carolina, 1976 as  
14 amended, against the peace and dignity of the state, and  
15 contrary to the statute in such case made and provided.

16 Sir, do you understand the indictment I just read?

17 DEFENDANT: Yes, sir.

18 THE COURT: How do you plead to that indictment?

19 DEFENDANT: Not guilty.

20 THE COURT: And do you wish -- how do you wish to be  
21 tried?

22 DEFENDANT: By jury.

23 THE COURT: All right, sir. God grant you a speedy  
24 delivery.

25 Now, the next indictments I believe all involve the

1 same occasion. I'm going to read the first one. Then I'll  
2 go over the various victims that have been alleged. I'm not  
3 going to read them specifically.

4 Is that okay, Mr. Wheelchel?

5 MR. WHEELCHEL: It is, Your Honor.

6 THE COURT: And is that okay with you, Mr. Craig?

7 DEFENDANT: Yes, sir.

8 THE COURT: All right. The next case is  
9 2013-GS-42-2854, an indictment for attempted armed robbery.

10 This indictment states that Kenneth Jowan Craig did, in  
11 Spartanburg County, on or about January 21, 2012, while  
12 armed with a pistol, dirk, slingshot, metal knuckles, razor,  
13 knife, or other deadly weapon or while alleging, either by  
14 actions or word, he was armed while using a representation  
15 of a deadly weapon or any object which a person present  
16 during the commission of an attempted armed robbery  
17 reasonably believed to be a deadly weapon feloniously  
18 attempt to take from the person or presence of Justin  
19 Harrison, by means of force and/or intimidation, to wit,  
20 goods or monies in violation of Section 16-11-330(b) of the  
21 Code of Laws of South Carolina, 1976 as amended, against the  
22 peace and dignity of the State and contrary to the statute  
23 in such case made and provided. That's the first of those  
24 indictments.

25 The next one is 2013-GS-42-2853 also for attempted

1 armed robbery. It alleges the same person and date. It  
2 alleges as the alleged victim Kesha Jolly.

3 The next indictment is 2013-2853. Also for attempted  
4 armed robbery. It has the same statement of facts as the  
5 previous ones. It states that you did, on January 21<sup>st</sup>,  
6 2012, attempt an armed robbery of the person of Linda  
7 Greene.

8 The next indictment is 2013-GS-42-2851. Again for  
9 attempted armed robbery. Has the same allegations as  
10 previously stated. This time it alleges the victim to be  
11 Jamie Mattox.

12 The next indictment is GS -- 13-GS-42-2850. Again for  
13 attempted armed robbery. It has the same allegation of  
14 fact. This time it alleges the victim to be Nikki Scruggs.

15 The next indictment is 2013-GS-42-2849. This also is  
16 for attempted armed robbery. It has the same allegation of  
17 fact. This time it alleges the victim to be Kimberly  
18 Henderson.

19 The next case is 2013-GS-42-2848. Again for attempted  
20 armed robbery. It contains the same allegations of fact as  
21 previously stated. This time it indicates the victim to be  
22 James Long.

23 The next case, 2013-GS-42-2847, again for attempted  
24 armed robbery. It contains the same allegation of fact.  
25 This time it alleges the victim to be Julie Tesnar.

1       Next is GS -- 13-GS-42-2846. Again for the offense of  
2 attempted armed robbery. It contains the same allegations  
3 of facts. Alleges the victim to be Victoria Felton.

4       Next is GS -- 13-GS-42-2845. Again for the offense of  
5 attempted armed robbery. Same allegation of fact. And it  
6 alleges the victim to be Bryan Rogers.

7       Next is 13-GS-42-2844. Again for the offense of  
8 attempted armed robbery. It contains the same allegations  
9 of fact as previously stated, and alleges the victim to be  
10 Brent Atkins.

11       All right. Those are the charges of attempted armed  
12 robbery.

13       Mr. Craig, did you understand those indictments?

14       DEFENDANT: Yes, sir.

15       THE COURT: You have the right to plead either guilty  
16 or not guilty.

17       How do you plead to those indictments?

18       DEFENDANT: Not guilty.

19       THE COURT: How do you wish to be tried?

20       DEFENDANT: By jury.

21       THE COURT: And God grant you a speedy delivery.

22       The final indictment is Case Number 12-GS-42-2199.

23       This is a two count indictment.

24       Has he been arraigned on this charge, these charges?

25       MR. WHELCHEL: No, sir.



1 THE COURT: All right. The first count is armed  
2 robbery.

3 This states that -- in the first count it states that  
4 the defendant, Kenneth Jowan Craig, did, in Spartanburg  
5 County, on or about January 21, 2012, while armed with a  
6 pistol, dirk, slingshot, metal knuckles, razor, knife, or  
7 other, other deadly weapon, or while alleging, either by  
8 actions or word, that he was armed while using a  
9 representation of a deadly weapon or any object which a  
10 person present during the commission of the robbery  
11 reasonably believed to be a deadly weapon, feloniously take  
12 from the person or presence of Amanda Kiwitz by means of  
13 force, violence, and/or intimidation, to wit, goods or  
14 monies in violation of Section 16-11-330(a) of the Code of  
15 Laws of South Carolina, 1976 as amended.

16 Now, do you understand the first count of that  
17 indictment?

18 DEFENDANT: Yes, sir.

19 THE COURT: How do you plead to that charge?

20 DEFENDANT: Not guilty.

21 THE COURT: And how do you wish to be tried?

22 DEFENDANT: By jury.

23 THE COURT: And God grant you a speedy delivery in that  
24 matter.

25 Count Two is the possession of a firearm during the

1 commission of a violent crime. This states that Kenneth  
2 Jowan Craig did, in Spartanburg County, on or about  
3 January 21, 2012, possess a firearm during the commission of  
4 a violent crime as defined in Code Section 16-1-60. To wit,  
5 armed robbery, in violation of Code Section 16-23-490 of the  
6 Code of Laws of South Carolina, 1976 as amended, against the  
7 peace and dignity of the State and contrary to the statute  
8 in such case made and provided.

9 Do you understand that charge, sir?

10 DEFENDANT: Yes, sir.

11 THE COURT: How do you plead?

12 DEFENDANT: Not guilty.

13 THE COURT: Do you wish to be tried by jury?

14 DEFENDANT: Yes, sir.

15 THE COURT: All right. God grant you a speedy  
16 delivery.

17 I believe that involves arraignment on all charges and  
18 he has pled not guilty and requested jury trial.

19 Now, are there any other matters that we need to  
20 consider before we select a jury from the State's  
21 prospective?

22 SOLICITOR JORDAN: Your Honor, the only thing may just  
23 be as far as scheduling and how long we think the pretrial  
24 matters may take. I don't know if you want to take that up  
25 now before we pick the jury or---

1 THE COURT: well, we can because we probably will be  
2 releasing the jury either for the remainder of the afternoon  
3 or bring them back to start the trial.

4 How long do you think pretrial matters will take us,  
5 Mr. Wheelchel?

6 MR. WHELCHER: I don't know, Your Honor. That's my  
7 problem. I don't know how many -- I don't know how many the  
8 State is gonna have at this point, and depending on the  
9 number they have depends on how many I have, if any.

10 SOLICITOR JORDAN: A lot -- we do have a motion in  
11 reference to third party guilt that I'll pass up at the  
12 proper time. We also have a motion in limine that should be  
13 very short. There's also the issues of the Jackson v. Denno  
14 if we choose to use those statements that -- there are some  
15 statements that we may seek to introduce.

16 THE COURT: well, what I can do is I can bring the jury  
17 back around 3:30 in the afternoon, and if we can't get  
18 started, we'll send them back home and bring them back in  
19 the morning --

20 SOLICITOR JORDAN: Yes, sir.

21 THE COURT: -- once we get them selected.

22 Mr. Wheelchel, do you think that would be a wise course  
23 of action?

24 MR. WHELCHER: I do, Your Honor.

25 THE COURT: Okay. We'll do it in that, that fashion

1 then.

2 All right. Now, there is some voir dire that's been  
3 presented to me, and I haven't read it in detail, but I'll  
4 start with the State's.

5 Have you had a chance to look at that, Mr. Wheelchel?

6 MR. WHELCHEL: Yes, sir, Your Honor.

7 THE COURT: Any objections?

8 MR. WHELCHEL: Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. WHELCHEL: No, sir.

12 THE COURT: All right. Any objections to the  
13 defendant's request, Ms. Jordan?

14 SOLICITOR JORDAN: No objections.

15 THE COURT: All right. We're gonna take about a five  
16 to ten minute break, and then we'll bring the jury panel  
17 around for jury selection.

18 SOLICITOR JORDAN: Your Honor, if I may just bring up  
19 one, one issue. I know that this case did receive a lot of  
20 media attention. Nothing that I think requires any sort of  
21 venue change or anything like that.

22 THE COURT: Right.

23 SOLICITOR JORDAN: But it may be worth going into a  
24 little bit more of the facts on the record so that we don't  
25 start the trial and have someone go oh, yeah, I've read

1 about this one.

2 THE COURT: Well, let me see if I understand the facts.  
3 What would you think that should be gone over, Ms.  
4 Jordan?

5 SOLICITOR JORDAN: I think they should go over that it  
6 was a Waffle House located at 2230 Chesnee Highway near  
7 I-85, that two robbers entered, one of the robbers was shot  
8 and killed by a customer inside the store, the other robber  
9 fled.

10 THE COURT: Okay. Any objection to my discussing that  
11 with them?

12 MR. WHELCHER: No, sir, Your Honor.

13 THE COURT: Okay. All right. I'll, I'll try to limit  
14 it to that.

15 All right. Take about a five to ten minute break.

16 SOLICITOR JORDAN: Thank you.

17 (WHEREUPON, a short recess was taken at this time.)

18 THE COURT: All right. Let's bring the jury in.

19 SOLICITOR JORDAN: Your Honor, just for clarification.  
20 These are not all of my witnesses. These are just the named  
21 victims in the case.

22 THE COURT: I understand.

23 MR. WHELCHER: May we approach for a moment, Your  
24 Honor?

25 THE COURT: Yes, sir.

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

3           THE COURT: Thank you, Mr. Scruggs.

4           BAILIFF: Yes, sir.

5           THE COURT: All right. Ladies and gentlemen of the  
6 jury, we're about to begin the trial of the State of South  
7 Carolina versus Kenneth Jowan Craig.

8           Now, there are several indictments that are before the  
9 Court and let me, before I go over the indictments, explain  
10 to you what that is.

11          The indictment is the document that brings the charges  
12 before the Court. It informs the Court of the charges to be  
13 tried in the trial. It informs the defendant of the charges  
14 that have been lodged against the defendant.

15          Now, an indictment does not constitute evidence one way  
16 or the other of guilt or innocence in a case and can not be  
17 used by a jury in determining those questions. Again, it is  
18 simply the document that brings the case before the Court  
19 and informs us of the charges to be tried.

20          Now, I'm going to go over the indictments with you in  
21 this matter so that you will understand a little more about  
22 what's been alleged in the case, and I'll give you a brief  
23 statement concerning the case once I have completed going  
24 over the indictments with you. The reason I'm going over  
25 that information is so that, later on when I ask you

1 questions that pertain specifically to this case, that you  
2 understand what I'm talking about and have some knowledge of  
3 the questions that I'm asking. Hopefully it will help you  
4 better answer my questions when I get to that point.

5 The first indictment that I'm going to go over with you  
6 is Case Number 2012-GS-42-2199. That indictment is for two  
7 charges. It has two counts in the indictment.

8 The first count is for armed robbery. The indictment  
9 states that Kenneth Jowan Craig did, in Spartanburg County,  
10 on or about January 21<sup>st</sup> of 2012, commit a robbery while  
11 armed with a pistol, dirk, slingshot, metal knuckles, razor,  
12 or other deadly weapon, or while alleging, either by action  
13 or words, that he was armed while using a representation of  
14 a deadly weapon or any object which a person present during  
15 the commission of the robbery reasonably believed to be a  
16 deadly weapon and did feloniously take from the person or  
17 presence of Justin Harrison and/or Kesha Jolly and/or Linda  
18 Greene -- excuse me. Wait a second. I'm not reading that  
19 correctly.

20 Take from the person or presence of, excuse me, Amanda  
21 Kiwitz by means of force, violence, and/or intimidation, to  
22 wit, goods or monies in violation of Section 16-11-330(a) of  
23 the Code of Laws of South Carolina, 1976 as amended. That's  
24 Count One.

25 Count Two is the possession of a firearm during the

1 commission of a violent crime. That indictment states that  
2 Kenneth Jowan Craig did, in Spartanburg County, on or about  
3 January 21 of 2012, possess a firearm during the commission  
4 of a violent crime as defined in Code Section 16-1-60, to  
5 wit, armed robbery, in violation of Code Section 16-23-490,  
6 Code of Laws of South Carolina, 1976 as amended, against the  
7 peace and dignity of the State and contrary to the statute  
8 in such case made and provided.

9 The next indictment I'll discuss with you is Case  
10 Number 13-GS-42-2855. This one is also for the offense of  
11 armed robbery.

12 The indictment states that the defendant, Kenneth Jowan  
13 Craig, did, in Spartanburg County, on or about January 21,  
14 2012, while armed with a pistol, dirk, slingshot, metal  
15 knuckles, razor, knife, or other deadly weapon, or while  
16 alleging, either by action or words, he was armed while  
17 using a representation of a deadly weapon or any object  
18 which a person present during the commission of the robbery  
19 reasonably believed to be a deadly weapon feloniously take  
20 from the person or presence of Joseph McCullough, by means  
21 of force, violence, and/or intimidation, to wit, goods or  
22 monies, in violation of Section 16-11-330(a) of the Code of  
23 Laws of South Carolina, 1976 as amended, against the peace  
24 and dignity of the State and contrary to the statute in such  
25 case made and provided.



1        Now, I have a series of other indictments that are  
2 presented against this defendant. I'm going to read one of  
3 them in full and then I'll explain the others to you by  
4 number as we go along. All of these indictments are for the  
5 same offense. That offense is attempted armed robbery.

6        The first one that I'll discuss with you is Case Number  
7 2844. That's 13-GS-42-2844, attempted armed robbery, and it  
8 states that Kenneth Jowan Craig did, in Spartanburg County,  
9 on or about January 21 of 2012, while armed with a pistol,  
10 dirk, slingshot, metal knuckles, razor, knife, or other  
11 deadly weapon, or while alleging, either by action or words,  
12 he was armed while using a representation of a deadly weapon  
13 or any object which a person present during the commission  
14 of an attempted armed robbery reasonably believed to be a  
15 deadly weapon feloniously attempt to take from the person or  
16 presence of Brent Atkins, by means of force or intimidation,  
17 to wit, goods or monies, in violation of Section  
18 16-11-330(b) of the Code of Laws of South Carolina, 1976 as  
19 amended, against the peace and dignity of the State and  
20 contrary to the statute made and provided.

21        Now, the next indictment is 13-GS-42-2845. It's for  
22 that same offense, attempted armed robbery, same date, and  
23 it alleges the victim to be Bryan Rogers.

24        The next indictment is 13-GS-42-2846. Again alleges  
25 attempted armed robbery on the same date. In this case the

1 victim is identified as Victoria Felton.

2 The next case is 13-GS-42-2847. Again for attempted  
3 armed robbery. Same date is alleged. The victim in this  
4 case is Julie Tesnar.

5 The next case is 13-GS-42-2848. Again for attempted  
6 armed robbery. Alleges the same date of the offense. This  
7 time the victim is alleged to be James Long.

8 The next case is 13-GS-42-2849. Again for attempted  
9 armed robbery. Same date as alleged. This time the victim  
10 is alleged as Kimberly Henderson.

11 The next case is 13-GS-42-2850. Attempted armed  
12 robbery is again alleged. In this case the victim is  
13 alleged to be Nikki Scruggs.

14 Next case is 13-GS-42-2851. Again the offense is  
15 attempted armed robbery. In this case the alleged victim is  
16 Jamie Mattox.

17 Next case is 13-GS-42-2852. Again the offense is  
18 alleged as attempted armed robbery. In this case the victim  
19 is Linda Greene.

20 Next case is 13-GS-42-2853. Again for attempted armed  
21 robbery. In this case the victim is alleged to be Kesha  
22 Jolly.

23 The next case is 13-GS-42-2854. Again for attempted  
24 armed robbery. In this case the alleged victim is Justin  
25 Harrison.

1       Those are the indictments that have been presented to  
2 the Court and those are the indictments that will be tried  
3 in this case.

4       Now, this case involves -- and you may have heard  
5 something about it. So, I'll tell you what it involves. It  
6 involves an alleged robbery which occurred at a Waffle  
7 House. That Waffle House is located on the Chesnee Highway  
8 near I-85. This particular event resulted in a shooting in  
9 which one of the customers shot one of the participants in  
10 the crime. So that -- you may know something or have heard  
11 something about that case. I want to make you aware of what  
12 this matter involves so that you can more fully answer the  
13 questions that I'm about to ask you.

14       Now, before I actually begin the trial of the case I'm  
15 going to ask that the attorneys involved in this case  
16 introduce themselves.

17       Now, in the case of the State, there's a number of  
18 people who are alleged to be victims in this case. I'll ask  
19 the State to also identify or introduce the alleged victims.  
20 When their name is called, I'll ask that they stand and face  
21 you so that you can put a face with the names.

22       First of all, I'll ask the attorneys introduce  
23 themselves please.

24       SOLICITOR JORDAN: Thank you.

25       My name is Jennifer Jordan. I'm an assistant solicitor

1 here in the Seventh Circuit. I prosecute cases for  
2 solicitor Barry Barnette in Spartanburg and Cherokee  
3 Counties.

4 Seated with me at the table is Susan Reese. She's also  
5 an assistant solicitor here in Spartanburg County. Also  
6 seated at the table is my paralegal, Christy Bell-Lindsey.

7 THE COURT: All right. Now, if you would -- would you  
8 like to introduce -- do you want me to call their names or  
9 you got them listed?

10 SOLICITOR JORDAN: Either way, Your Honor.

11 THE COURT: All right. Why don't you call their names?  
12 When your name's called, please stand and face the jury  
13 panel. These are the people that are alleged to be victims  
14 in the case.

15 SOLICITOR JORDAN: Your Honor, I'll start with Brent  
16 Atkins.

17 (Witness stands.)

18 THE COURT: Thank you. You can be seated once you face  
19 the jury.

20 SOLICITOR JORDAN: Kimberly Henderson.

21 (Witness stands.)

22 THE COURT: James Wesley Long.

23 (Witness stands.)

24 SOLICITOR JORDAN: Jamie Mattox.

25 (Witness stands.)

1 SOLICITOR JORDAN: Joseph McCullough.

2 (Witness stands.)

3 SOLICITOR JORDAN: Amanda Kiwitz.

4 (Witness stands.)

5 SOLICITOR JORDAN: Linda Greene.

6 (Witness stands.)

7 SOLICITOR JORDAN: Bryan Rogers.

8 (Witness stands.)

9 SOLICITOR JORDAN: Justin Harrison.

10 (Witness stands.)

11 SOLICITOR JORDAN: Kesha Jolly.

12 (Witness stands.)

13 SOLICITOR JORDAN: Victoria Felton.

14 (Witness stands.)

15 SOLICITOR JORDAN: And Nikki Scruggs.

16 (Witness stands.)

17 SOLICITOR JORDAN: And, Your Honor, also seated right  
18 behind me is Investigator Jason Bryant with the Spartanburg  
19 County Sheriff's Office.

20 THE COURT: All right, sir. If you'll stand and face  
21 the jury panel as well for me.

22 (Witness stands.)

23 THE COURT: Thank you very much.

24 Then I'll ask that the defense attorney introduce  
25 himself as well as the defendant to the jury panel.

1 MR. WHELCHER: Thank you, Your Honor.

2 My name is Dick Whelcher. I am an attorney here in  
3 Spartanburg County. Have been so for more than 30 years,  
4 and I represent Kenneth Craig, my client.

5 (Defendant stands.)

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

7 (Defendant complies.)

8 THE COURT: Now, ladies and gentlemen, I'm going to go  
9 through a process similar to what we did in jury  
10 qualification. I'll be asking question of you and I'll be  
11 asking that you stand to answer those questions. Again,  
12 it's extremely important that the information that I receive  
13 from you in response to these questions is truthful, honest,  
14 and complete information. For that reason, again, it's  
15 required that you be sworn to tell the truth in this case as  
16 to the answers that you're about to give to the Court.

17 Madam Clerk, please swear the potential jury panel for  
18 me.

19 CLERK: Yes, sir.

20 (WHEREUPON, the jury panel was placed under oath at  
21 this time.)

22 THE COURT: Now, if there was any member of the jury  
23 panel who either failed or refused to take the oath that the  
24 clerk just administered, please stand.

25 (No response.)

1 THE COURT: The record will reflect that all members of  
2 the jury panel have been sworn concerning the questions that  
3 I'm about to ask.

4 The first question that I have, is there any member of  
5 the jury panel who has ever been related by marriage or are  
6 you related by blood to the defendant, Kenneth Jowan Craig,  
7 or any of the individuals who have been identified as  
8 potential victims in this case?

9 Their names have been called and you've seen them  
10 personally.

11 If that's true, please stand.

12 (No response.)

13 THE COURT: Is there any member of this jury panel who  
14 is ever had a close personal or a social relationship either  
15 with the defendant or any of the individuals identified as  
16 potential victims in this case, if that's true, please  
17 stand.

18 (No response.)

19 THE COURT: Has any member of the jury panel ever been  
20 represented by any of the attorneys involved in this case or  
21 have they ever appeared on the other side of some legal  
22 issue or matter from you, if that's true, please stand.

23 (No response.)

24 THE COURT: Is there any member of the jury panel who  
25 is ever been related by marriage or are you related by blood

1 or have you had a close social or a personal relationship  
2 with any of the attorneys involved in this case, if that's  
3 true, please stand.

4 (Jurors respond.)

5 THE COURT: Ma'am, your name and number please?

6 THE JUROR: Casey Robinson, 156.

7 THE COURT: Yes, ma'am.

8 THE JUROR: I'm related to the paralegal.

9 THE COURT: All right. Now, you're related -- can you  
10 tell me how close that relationship is?

11 THE JUROR: Second, third cousin.

12 THE COURT: Okay. Second or third cousin.

13 Now, ma'am, if you were selected to serve as a member  
14 of the jury in this case, would the fact that you have that  
15 relationship to the paralegal, would that affect your  
16 ability to be fair and impartial in this matter?

17 THE JUROR: No, sir.

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

20 Yes, ma'am, your name and number?

21 THE JUROR: April Million, 124.

22 THE COURT: Yes, ma'am.

23 THE JUROR: Jennifer Jordan was a teacher of the  
24 program I took.

25 THE COURT: I see.



1        Now, ma'am, would the fact that she had taught you in  
2 the past, if you were selected as a juror, would that affect  
3 your ability to be fair and impartial---

4        THE JUROR: No, sir.

5        THE COURT: ---in this case?

6        Thank you very much.

7        MR. WHELCHER: Excuse me, Your Honor. I didn't get the  
8 number.

9        THE COURT: Your number please, ma'am?

10       THE JUROR: 124.

11       THE COURT: Thank you very much.

12       Anyone else?

13       (No response.)

14       THE COURT: Now, ladies and gentlemen of the jury, I'm  
15 going to go over a list of people that have been provided to  
16 me and these people are identified as possible witnesses in  
17 this case. It's rather lengthy. So, I would ask that you  
18 listen carefully as I go through the list, and I'll give you  
19 any information that's been provided to me to help identify  
20 these individuals to you. So, listen carefully.

21       Jason Bryant with the Sheriff's, Spartanburg Sheriff's  
22 office.

23       Brian Outlaw with the Sheriff's Office.

24       Terry Carter also with the Coroner's, with the  
25 Coroner's Office.

1 Rick McGraw with the Coroner's Office.

2 Joey Lathan with the Coroner's Office.

3 Sean or Sean Nix with the Sheriff's Department.

4 Rod Shaffer with the Sheriff's Department.

5 Brian Andrews.

6 I'll just list the ones that are with the sheriff so I  
7 won't say that over and over.

8 Brian Andrews.

9 Nikki Wood.

10 Joey Guffey.

11 Justin Horton.

12 David Hogsed.

13 Elizabeth Renneker.

14 They're all with the Sheriff's Office.

15 Doctor David Wren with the Spartanburg Regional Medical  
16 Center.

17 The following individuals are also with the Sheriff's  
18 office:

19 Allan Wood.

20 Randall Barnett.

21 Lorin Williams.

22 Ted Saar.

23 Tommy Clark.

24 Anthony Knighton.

25 Deputy Robert Rosenberg.

1 Deputy Anita Mullinax.

2 Deputy Angela Nelson Faulkner.

3 Kim Ashley with the Spartanburg County Detention  
4 Facility.

5 Freddie Thompson with Spartanburg County  
6 Communications, the 9-1-1 office.

7 Tracey McKinnon with SLED.

8 Michael Moskal with SLED, and SLED is the State Law  
9 Enforcement Division.

10 Ila Simmons with SLED.

11 Are the remaining members of that list the alleged  
12 victims?

13 SOLICITOR JORDAN: No, sir, Your Honor. They're a  
14 mixture of victim and witnesses.

15 THE COURT: I'll just call their names. Then that will  
16 make it easier.

17 SOLICITOR JORDAN: Okay.

18 THE COURT: Brittany McSwain.

19 Julie Tesnar Black.

20 Michael Justin Harrison.

21 Roderick Drummond, Sr. and Roderick Drummond, Junior.

22 Joseph McCullough.

23 Patricia McSwain.

24 Kimberly Ann Henderson.

25 Kamania Adisa Norman.

1       Brent Atkins.  
2       James Wesley Long.  
3       Victoria S. Felton.  
4       Jamie Mattox.  
5       Kesha Jolly.  
6       Linda Greene.  
7       Amanda Kiwitz.  
8       Bryan Rogers.  
9       Nikki Scruggs.  
10      Josh Fielder.  
11      Steve Kahler, K-A-H-L-E-R.  
12      Billy Chronister.  
13      Gerald Davis.  
14      Russell McSwain.  
15      Adrian Lamont Dawkins.  
16      Carolyn Dunthy with the Spartanburg County Detention  
17 Center.  
18      James Wilkens.  
19      Gerald Davis.  
20      Now, as to the individuals that I've identified as  
21 possible witnesses, has any member of the jury panel ever  
22 been related by marriage or are you related by blood or have  
23 you ever had a close social or a personal relationship with  
24 any of those people that I've identified as possible  
25 witnesses in this case, if that is true, please stand.

1 (Juror responds.)

2 THE COURT: Your name and number, sir?

3 THE JUROR: Michael Robbins, Juror Number 152.

4 THE COURT: And who would it have been, sir?

5 THE JUROR: David Hogsed.

6 THE COURT: Yes, sir, and how, how, how well do you  
7 know him?

8 THE JUROR: He's a second cousin.

9 THE COURT: He's a second cousin of yours?

10 THE JUROR: Yes, sir.

11 THE COURT: Now, is that a -- are you fairly close with  
12 him or are you just acquainted?

13 THE JUROR: No, sir. No, sir.

14 THE COURT: Now, if you were selected to serve on the  
15 jury panel, would that fact affect your ability to be fair  
16 and impartial to both the State and the defense in this  
17 case?

18 THE JUROR: No, Your Honor.

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

20 Anyone else?

21 (No response.)

22 THE COURT: Has any member of the jury panel or a  
23 member of your immediate family or a close personal friend  
24 of yours ever been accused of or charged with a violent  
25 crime such as robbery, burglary, criminal sexual conduct,

1 murder, and/or attempted murder, if that is true, please  
2 stand.

3 (Jurors respond.)

4 THE COURT: Name and number, sir?

5 THE JUROR: Joseph McKnight, Number 116.

6 THE COURT: Yes, sir, your situation?

7 THE JUROR: My first cousin that was convicted of being  
8 a child sexual predator.

9 THE COURT: All right. Would the fact that that had  
10 occurred in your family, would that affect your ability to  
11 be fair and impartial if you were a juror in this case?

12 THE JUROR: No, Your Honor.

13 THE COURT: Thank you, sir.  
14 Name and number?

15 THE JUROR: Trey Williams, 191.

16 THE COURT: Yes, sir.

17 THE JUROR: My brother got armed robbery. I think  
18 armed robbery charges.

19 THE COURT: Was he, was he charged or convicted?

20 THE JUROR: He was convicted.

21 THE COURT: All right, sir. Would the fact that that  
22 person has had that type of conviction, would that affect  
23 your ability to be fair and impartial in this case?

24 THE JUROR: No.

25 THE COURT: Thank you.

1 Ma'am, name and number?

2 THE JUROR: Donna Hyatt, Number 83. My first cousin's  
3 been charged with robbery.

4 THE COURT: All right. Would that affect your ability  
5 to be fair and impartial if you were selected in this trial?

6 THE JUROR: No, it would not.

7 THE COURT: Thank you, ma'am.

8 Name and number please, ma'am?

9 THE JUROR: 126. My daddy was convicted of sex abuse.

10 THE COURT: Of what?

11 THE JUROR: Sex abuse.

12 THE COURT: All right. Now, ma'am, would that  
13 conviction affect your ability to be fair and impartial if  
14 you were selected as a juror in this case?

15 THE JUROR: No, sir.

16 THE COURT: Thank you.

17 Name and number please?

18 THE JUROR: Retha Avery, Juror Number 1. My sister was  
19 convicted of burglary, burglary.

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

22 THE JUROR: No, sir.

23 THE COURT: Thank you, ma'am.

24 Name and number please, ma'am?

25 THE JUROR: Stephanie Hudson, 79. My first cousin was

1 convicted of armed robbery.

2 THE COURT: All right. Would that conviction affect  
3 your ability to be fair and impartial if you were selected  
4 in this case?

5 THE JUROR: No, sir.

6 THE COURT: Thank you.

7 Ma'am, name and number please.

8 THE JUROR: April Million, 124. My uncle was convicted  
9 of rape.

10 THE COURT: All right. Would that affect your ability  
11 to be fair and impartial if you were a juror in this matter?

12 THE JUROR: No, Your Honor.

13 THE COURT: Thank you very much.

14 Anyone else?

15 (No response.)

16 THE COURT: Has any juror or a member of your immediate  
17 family or a close personal friend of yours ever been a  
18 victim or a witness to a violent crime such as, again,  
19 robbery, burglary, criminal sexual conduct, murder, or  
20 attempted murder, if that's true, please stand.

21 (Juror responds.)

22 THE COURT: Ma'am, your name and number?

23 THE JUROR: Teresa Cross, 35.

24 THE COURT: Yes, ma'am.

25 THE JUROR: Robbery, armed robbery last -- well, home



1 invasion, armed robbery last year, January 31<sup>st</sup>.

2 THE COURT: And who's the victim, yourself or a family  
3 member?

4 THE JUROR: Myself.

5 THE COURT: All right. Ma'am, would the fact that  
6 you've been involved in that in the past, would that affect  
7 your ability to be fair and impartial if you were involved  
8 in this trial?

9 THE JUROR: No, sir.

10 THE COURT: Thank you.

11 Sir, name and number?

12 THE JUROR: Joe McKnight, Juror Number 116.

13 THE COURT: Yes, sir.

14 THE JUROR: Close personal friend, their daughter was  
15 murdered 14 years ago.

16 THE COURT: All right. Would that fact affect your  
17 ability to be fair and impartial if you were serving on this  
18 jury?

19 THE JUROR: No, sir.

20 THE COURT: Thank you.

21 Ma'am, name and number?

22 THE JUROR: Betty Turner, 177.

23 THE COURT: Yes, ma'am.

24 THE JUROR: We've had personal property stolen.

25 THE COURT: All right. Would that fact affect your

1 ability to be fair and impartial if you were a juror in this  
2 case?

3 THE JUROR: No, sir.

4 THE COURT: Thank you.

5 Name and number, ma'am?

6 THE JUROR: Alecia Means, 118. My home was burglarized  
7 this past March.

8 THE COURT: All right. Ma'am, would that fact affect  
9 your ability to be fair and impartial in the trial of this  
10 case?

11 THE JUROR: No.

12 THE COURT: Thank you.

13 Name and number please, ma'am?

14 THE JUROR: My name is Alecia Whiteside, Number 187.  
15 My home was burglarized in October of last year.

16 THE COURT: All right. Would that fact affect your  
17 ability to be fair and impartial if you were a juror in this  
18 case?

19 THE JUROR: No, sir.

20 THE COURT: Thank you.

21 Sir, name and number?

22 THE JUROR: My name is Dennie Clain. My number's 112.  
23 My wife was attacked and strong armed robbery in our home.

24 THE COURT: All right. Would, would that affect your  
25 ability to be fair and impartial if you were a juror in the

1 matter?

2 THE JUROR: No, sir.

3 THE COURT: Thank you.

4 Anyone else?

5 (No response.)

6 THE COURT: Has any member of the jury panel or a  
7 member of your immediate family or a close personal friend  
8 of yours ever been accused of or charged or been a victim or  
9 a witness in a crime involving a gun or a firearm, if that's  
10 true, please stand.

11 (Jurors respond.)

12 THE COURT: Name and number, sir?

13 THE JUROR: Joe McKnight, Juror Number 116.

14 THE COURT: Yes, sir.

15 THE JUROR: That's what I mentioned earlier, the  
16 daughter of a personal friend of mine was murdered.

17 THE COURT: All right. And that involved a firearm?

18 THE JUROR: Yes, sir.

19 THE COURT: Again, would it affect your impartiality?

20 THE JUROR: No, sir.

21 THE COURT: Thank you.

22 Ma'am?

23 THE JUROR: Stephanie Hudson, 79.

24 THE COURT: Yes, ma'am.

25 THE JUROR: My boyfriend's nephew got shot in the head

1 not too long ago.

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

4 THE JUROR: No, sir.

5 THE COURT: Thank you.

6 Has any member of the jury panel or a member of your  
7 immediate family or a close personal friend ever been  
8 involved in a case which was handled by the Spartanburg  
9 County Sheriff's Office or the Seventh Circuit Solicitor's  
10 office as a victim, witness, or a defendant, if that's true,  
11 please stand.

12 (Jurors respond.)

13 THE COURT: Name and number please, ma'am?

14 THE JUROR: Lori Hudson, Number 78. I'm currently  
15 serving on a board for a not for profit working with the  
16 solicitor's office to prosecute cases.

17 THE COURT: All right. Would that affect your  
18 impartiality if you were in this case?

19 THE JUROR: No.

20 THE COURT: Thank you.

21 Name and number please, ma'am?

22 THE JUROR: Tenesha Cross, Number 35. Victim from last  
23 year.

24 THE COURT: All right. Would that affect your  
25 impartiality in this matter?

1 THE JUROR: No.

2 THE COURT: Thank you, ma'am.

3 Anyone else?

4 (No response.)

5 THE COURT: All right. I've given some basic  
6 information about what this case involves.

7 Has any member of the jury panel gathered or received  
8 any information outside of this courtroom, either from  
9 newspapers, radio, television, Internet, or any other source  
10 such that it would have caused you to either form or express  
11 an opinion concerning the issues or matters to be tried in  
12 this case, if that's true, please stand.

13 (No response.)

14 THE COURT: Is there any member of the jury panel who  
15 is related by blood or marriage, either now or formerly, to  
16 anyone employed in any of the following locations:

17 The Seventh Judicial Solicitor's Office, the  
18 Spartanburg Department of Public Safety, the Spartanburg  
19 County Sheriff's Office, the police departments of any  
20 municipality in South Carolina, in Spartanburg County and/or  
21 the State Law Enforcement Division, if that's true, please  
22 stand.

23 (Jurors respond.)

24 THE COURT: Yes, sir, name and number?

25 THE JUROR: Keith Bullard, 141. My wife is employed by

1 the Solicitor's Office.

2 THE COURT: All right. Would that fact affect your  
3 ability to be fair and impartial if you were a juror in this  
4 case?

5 THE JUROR: No, sir.

6 THE COURT: Thank you, sir.

7 Name and number, sir?

8 THE JUROR: Michael Robbins, 152.

9 THE COURT: Yes, sir.

10 THE JUROR: David Hogsed is an investigator with the  
11 Sheriff's Department.

12 THE COURT: All right. And you indicated that would  
13 not affect your impartiality.

14 Is that still true?

15 THE JUROR: Yes, sir.

16 THE COURT: Thank you.

17 Name and number please, ma'am?

18 THE JUROR: Lynn Wilson, 190.

19 THE COURT: Yes, ma'am.

20 THE JUROR: My uncle is a Spartanburg magistrate.

21 THE COURT: All right. Would that affect your  
22 impartiality if you were a juror in this case?

23 THE JUROR: No.

24 THE COURT: Thank you.

25 Ma'am, name and number?

1 THE JUROR: Casey Robinson, 156. My grandmother is a  
2 retired captain with Spartanburg County.

3 THE COURT: All right. From the Sheriff's Office?

4 THE JUROR: I believe so.

5 THE COURT: Okay. All right. Would that affect your  
6 impartiality if you were a juror in this case?

7 THE JUROR: No.

8 THE COURT: Thank you very much.

9 MR. WHELCHER: Could I get her number again, Your  
10 Honor?

11 THE COURT: Your number please, ma'am?

12 THE JUROR: 156.

13 THE COURT: 156.

14 MR. WHELCHER: Thank you, sir.

15 THE COURT: Thank you.

16 Has any member of the jury panel ever been previously  
17 employed by any law enforcement agency, either civilian or  
18 military, if that's true, please stand.

19 (No response.)

20 THE COURT: Has any member of the jury panel previously  
21 served as a juror in a case involving a trial involving a  
22 criminal matter, if that's true, please stand.

23 (Jurors respond.)

24 THE COURT: Name and number, sir?

25 THE JUROR: Joseph McClain, 112.

1 THE COURT: You served as a juror previously?

2 THE JUROR: I served as an alternate juror.

3 THE COURT: All right. Is there anything else about  
4 that experience that would cause you to not be impartial in  
5 this matter?

6 THE JUROR: No, sir.

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

8 Name and number please, ma'am?

9 THE JUROR: Sara Atkins, Number 130.

10 THE COURT: And you previously served on a jury in a  
11 criminal case?

12 THE JUROR: Yes.

13 THE COURT: Would anything about that experience affect  
14 your impartiality in this matter?

15 THE JUROR: No, sir.

16 THE COURT: Thank you very much.

17 Name and number please, sir?

18 THE JUROR: Thrift Sandford, Number 48.

19 THE COURT: Yes, sir.

20 THE JUROR: I served on a juror on a murder trial---

21 THE COURT: All right.

22 THE JUROR: ---back in early 80's.

23 THE COURT: All right. Would anything from that  
24 experience cause, affect your impartiality, sir?

25 THE JUROR: No, sir.



1 THE COURT: Thank you.

2 Name and number please, ma'am?

3 THE JUROR: Diana Harvey, 83.

4 THE COURT: Yes, ma'am.

5 THE JUROR: Served on a jury trial on a threat offense.

6 THE COURT: All right. Now, ma'am, would anything from  
7 that experience affect your ability to be fair and impartial  
8 in this case?

9 THE JUROR: No, sir.

10 THE COURT: Thank you, ma'am.

11 Anyone else?

12 (No response.)

13 THE COURT: Is there anyone on the jury panel who is  
14 inclined to believe that a person is guilty simply because  
15 that person has been arrested for a crime, if that's true,  
16 please stand?

17 (No response.)

18 THE COURT: Is there any member of the jury panel who  
19 would be inclined to believe the testimony of a police  
20 officer over that of a private citizen simply because that  
21 person is a police officer, if that's true, please stand.

22 (No response.)

23 THE COURT: Is there any member of the jury panel who  
24 is aware of any bias or prejudice that you might have either  
25 for or against either the State or the defense in this case,

1 if that's true, please stand.

2 (No response.)

3 THE COURT: Is there any member of the panel who may  
4 have served as a member of the Grand Jury which indicted  
5 this case?

6 Those indictments were handed down in 2012 and 2013.

7 If that's true, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury panel who  
10 is a member of or a contributor to a group which has as its  
11 primary concern the promotion of law enforcement and  
12 victim's rights?

13 Those groups would include, but not be limited to  
14 Mothers Against Drunk Driving, Students Against Drunk  
15 Driving, Citizens Against Violent Crime, the South Carolina  
16 Sheriff's Association, the South Carolina Troopers  
17 Association, or the Fraternal Order of Police.

18 Those are some of the organizations, but not limited to  
19 those.

20 If that's true, please stand.

21 (Juror responds.)

22 THE COURT: Ma'am, your name and number?

23 THE JUROR: Sharon Doyle, Juror 43.

24 THE COURT: Yes, ma'am.

25 THE JUROR: The South Carolina Sheriff's Association.

1 THE COURT: All right. Would the fact that you're a  
2 member of that association, would that affect your  
3 impartiality---

4 THE JUROR: No, sir.

5 THE COURT: ---if you were a juror?

6 Thank you, ma'am.

7 Anyone else?

8 (No response.)

9 THE COURT: Now, does any member of this jury panel  
10 know of any reason whatsoever why he or she should not serve  
11 as a juror in this case with particular emphasis being  
12 placed upon your ability to be both fair and impartial to  
13 both the State and the defense, if that's true, please  
14 stand.

15 (No response.)

16 THE COURT: Does the State have additional questions?

17 THE JUROR: No, sir, Your Honor.

18 THE COURT: Defense have additional questions?

19 MR. WHELCHER: None, Your Honor.

20 THE COURT: All right. I'm gonna ask then that the  
21 clerk begin the jury selection process.

22 Ladies and -- do we have somebody who needs some water  
23 back here?

24 Okay. Let's -- the bailiff will take care of that.  
25 Just give us a second.

1 (Pause.)

2 THE COURT: All right. Ladies and gentlemen, let me  
3 explain what we're doing at this point in time so you'll  
4 have some knowledge about what we're doing.

5 It use to be we pick juries by having a wooden barrel  
6 and you would spin it and people would reach in and pull the  
7 names out. In fact, we had to use a legally blind person to  
8 do that. We still have the barrel in the back in case the  
9 computer breaks down, but the computer now does that for us,  
10 and that particular -- what it's doing, it's randomly  
11 selecting a list of names. Once that process is been  
12 completed I'll receive a copy and the people in the  
13 courtroom will receive a copy, copy along and then we will  
14 begin to call names from that list in the order in which  
15 they're printed on the list.

16 Now, if your name is called, I'm going to ask that you  
17 come forward, step all the way down right in front of the  
18 clerk here, all the way down to the bar, turn and face the  
19 back-door of the courtroom. At that point in time the  
20 attorneys will be in a position to exercise the strikes that  
21 are allowed by law.

22 Now, in this particular case, the State is given five  
23 strikes and the defense is given ten strikes. We'll be  
24 picking an alternate with the State having one strike and  
25 the defense having two strikes.

1        Now, bring with you any personal belongings that you  
2 brought into the courtroom when you come down front. If you  
3 have a pocketbook or something of that nature, because if  
4 you're selected to serve on a jury, you'll immediately have  
5 a seat in the jury box. You will not be going back to your  
6 seat if you're selected.

7        All right. I'm gonna ask that the clerk begin the jury  
8 selection process. Again, when your name is called, come  
9 forward in front of her and stand where the bailiff is.

10        (WHEREUPON, the jury selection process began with and  
11 the following takes place after the call of Juror 141, Keith  
12 Poole.)

13        THE CLERK: 141, Keith Poole.

14        What says the State?

15        SOLICITOR JORDAN: Please seat this juror.

16        THE CLERK: What says the defense?

17        MR. WHELCHER: May we approach, Your Honor?

18        THE COURT: You may.

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

21        THE COURT: All right. I'll exclude the juror. He can  
22 be seated.

23        THE CLERK: Yes, sir.

24        THE COURT: You can be seated back in the back, sir.

25        THE JUROR: Oh, okay.

1 THE COURT: Thank you.

2 (WHEREUPON, a jury panel of 12 jurors and one alternate  
3 juror was selected at this time.)

4 THE COURT: Any objection to the jury selection process  
5 from the State?

6 SOLICITOR JORDAN: No, sir, Your Honor.

7 THE COURT: Any objection from the defense?

8 MR. WHELCHEL: Beg the Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 MR. WHELCHEL: Thank you, sir.

11 (Pause.)

12 MR. WHELCHEL: None, Your Honor.

13 (Pause.)

14 THE COURT: All right. Ladies and gentlemen of the  
15 jury, you have been selected as jurors in this case. Just  
16 let me go over some things with you.

17 I note that it's almost one o'clock, and I'm gonna  
18 release you to go get lunch, and you'll be leaving the  
19 courthouse, and every time you leave the courthouse I'm  
20 going to give you the same instructions.

21 The first thing is I'm gonna ask you not to try to  
22 gather any information about this case independently from  
23 any source outside of this Court or courtroom. When you  
24 come back into the courtroom, and we start the trial of the  
25 case, you'll be taking an oath. That oath is to decide this

1 case based upon the law and the evidence that's presented  
2 during the trial.

3 Now, I'll be giving you the law at the end of the  
4 trial. I'll be explaining that to you and charging you the  
5 law that you're to use. The only evidence you'll hear in  
6 this case will be testimony from witnesses. Those witnesses  
7 will be sworn to tell the truth. They'll be testifying from  
8 this witness stand during this trial, and the only other  
9 evidence in this case will be whatever documents or other  
10 information is allowed into the record of the case through  
11 the testimony of those witnesses.

12 So, there is no evidence in this case outside of this  
13 courtroom. It would be a violation of your oath, as a  
14 juror, to try to gather any information about this case from  
15 any source outside of the courtroom. I realize we live in  
16 an information age. You can push a button and get  
17 information about anything. But please don't try to do  
18 that. Again, it would be a violation of your oath, and I  
19 don't want to really have to deal with that issue should it  
20 come up.

21 Also, you've -- we've gone to a lot of trouble this  
22 morning to pick a fair, impartial juror, jury made up of  
23 jurors with an open mind concerning the issues that are  
24 before this Court, and I'm going to ask you to try to keep  
25 that open mind until you've heard the arguments by the

1 lawyers, you've heard all the evidence from the witnesses  
2 who will testify during this case, you've heard my charge  
3 concerning the law in this case. Only then will you have  
4 all of the tools you need to begin to make up your mind  
5 about the issues that will be before you during this trial.

6 For that reason I'll ask you not to even discuss the  
7 fact that you're involved in this case with anyone. Not  
8 even among yourselves. Even the most innocent conversation  
9 that you might have with someone else, either about the  
10 personalities involved or the charges that are involved or  
11 the issues that are before the Court, those conversations  
12 might begin to cause you to make up your mind before you've  
13 ever heard anything about the case, and I'm going to try to  
14 ask you, ask you to try to keep that open mind until you've  
15 heard everything you need to hear about this case, and only  
16 then begin to discuss it with your fellow jurors in an  
17 effort to try to resolve the issues that are before us in  
18 this trial.

19 So, don't discuss the case with anyone. Don't allow  
20 anyone to discuss it with you. Should anyone ask you about  
21 the case that you've been picked on, it's okay to say I've  
22 been selected as a juror and I'll talk to you about it when  
23 I'm finished. That's the best answer you can give them.

24 Now, should anyone try to contact you about your  
25 service on the jury, I've explained to you that jury



1 tampering is a felony in this state. If someone calls you  
2 or tries to contact you about your service on this jury,  
3 please report it upon your return. I can assure you I take  
4 it seriously. I'll see that the proper investigations are  
5 begun should that have occurred.

6 So, my instructions are don't discuss the case with  
7 anyone. Don't, don't allow anyone to discuss it with you.  
8 Don't try to gather any information about this case. Report  
9 any contact you might have from anyone about this matter,  
10 and, lastly, I don't control the media. I don't tell them  
11 what to put on the radio or on the television or what to  
12 print in newspapers. They, they certainly have freedom to  
13 do whatever they'd like to put in those papers.

14 So, don't listen to, watch, or read any media reports  
15 about the case. I can assure you those media reports more  
16 than likely contain information that would not be admissible  
17 in a Court of law under the rules that govern the  
18 admissibility of evidence during a trial. Those rules have  
19 been developed over hundreds of years in an effort to see  
20 that only proper information is considered by a jury in  
21 reaching a verdict in the case.

22 So, again, don't listen to, watch, or read media  
23 reports. If it comes on the radio or on television, you're  
24 nearby, walk away, turn it off, don't listen to it. Again,  
25 the only thing that you need to have concerning this case

1 you'll get in this courtroom during this trial and that will  
2 be evidence that's presented as the case goes forward.

3 Now, I've got some preliminary matters also I need to  
4 take up with the attorneys before we actually begin the  
5 trial of the case. I'll ask you to be back in the jury room  
6 in use for this trial at 3:30 this afternoon.

7 The bailiffs will show you where to go. Don't go back  
8 to the assembly room. Go back to the jury room in use for  
9 this trial. Be there at 3:30. We should be in a position  
10 to give you further instructions concerning your service at  
11 that point in time and to begin the trial.

12 At this time you're free to go. Have a good lunch.  
13 We'll see you later on.

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

16 THE COURT: All right. We'll reassemble to, to  
17 concern, consider pretrial matters at two o'clock.

18 Court's in recess.

19 Thank you very much.

20 SOLICITOR JORDAN: Thank you.

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

22 THE COURT: All right. We are back on the record in  
23 the case of The State of South Carolina versus Kenneth Jowan  
24 Craig. During our break I met with the attorneys on both  
25 sides of the case, and I was informed of a juror contact

1 that one of the attorneys had.

2 Would you like to put that on the record?

3 SOLICITOR REESE: Yes, Your Honor, Susan Reese.

4 Your Honor, as I coming from lunch one of the jurors, I  
5 believe Number 125, just approached me. He apologized.

6 said that he had not understood your instructions, and could  
7 he leave the courthouse until 3:15 or did he have to stay  
8 here at this time. I told him it was my understanding he  
9 could leave until 3:15 and that was the end of the contact.

10 THE COURT: Okay. Do you wish to inquire any further  
11 into that, Mr. Wheelchel?

12 MR. WHELCHEL: Beg the Court's indulgence, Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. WHELCHEL: No, sir.

16 THE COURT: All right. Now, at this time I want to  
17 take up any pretrial matters the attorneys would like to  
18 discuss. My understanding is both the State and the defense  
19 have some questions they'd like to raise.

20 Ms. Jordan.

21 SOLICITOR JORDAN: Yes, sir.

22 Your Honor, the first motion I have that will be  
23 relatively brief I hope is a motion in limine.

24 THE COURT: Yes, ma'am.

25 Thank you.

1           SOLICITOR JORDAN: And, Judge, the basis of this motion  
2 is that Justin Harrison is the citizen who was inside the  
3 Waffle House who shot and killed Dante Williams who was one  
4 of the robbers that day. Justin Harrison's father was  
5 involved in another justified shooting here in Spartanburg  
6 County the year before this happened, and I just want to  
7 preclude any reference to that in front of the jury, and  
8 request that we have some sort of in camera hearing before  
9 the defense tries to bring up any inference or any mention  
10 of that other justified shooting.

11           THE COURT: Mr. Wheelchel.

12           MR. WHELCHER: Yes, sir.

13           (Pause.)

14           MR. WHELCHER: We have no objection to this motion,  
15 Your Honor.

16           THE COURT: All right. Then I would ask before the  
17 defense makes any reference to that prior incident that the  
18 Court be made aware so that we can take up any matters  
19 outside of the jury's hearing before we go there.

20           MR. WHELCHER: And, Your Honor, we didn't know anything  
21 about it until the solicitor told us about it.

22           SOLICITOR JORDAN: Maybe in May.

23           MR. WHELCHER: I forget when, but we, you know, even  
24 then we weren't planning on --.

25           THE COURT: I understand.

1 All right. All right. Now, yes, ma'am, anything else?

2 SOLICITOR JORDAN: Your Honor, my next motion is one  
3 that I'm making as I think I usually do in cases. It's a  
4 motion in limine as far as to exclude any reference to third  
5 party guilt in this case. In addition to the motion, I do  
6 have a memorandum that I'd like to pass up to the Court. I  
7 believe I've previously e-mailed the memorandum to Mr.  
8 Wheelchel.

9 THE COURT: Thank you.

10 Mr. Wheelchel.

11 MR. WHEELCHEL: Your Honor, I would be opposed to the  
12 state's motion concerning third party guilt. They know  
13 obviously that my client gave a statement approximately  
14 three weeks after he was arrested on this charge, and in  
15 that statement he told the investigators that were taking  
16 his statement that he dropped off the deceased or what will  
17 end up being shown as the deceased in this case and the  
18 other gentleman by the name of Gerald Davis also known as  
19 Slack. That's in his statement, Your Honor, and that would  
20 be his defense or part of his defense.

21 THE COURT: When you say he dropped them off, you mean  
22 at the location where the event occurred?

23 MR. WHEELCHEL: Exactly, Your Honor.

24 THE COURT: Okay.

25 MR. WHEELCHEL: He took them to that location, and after

1 the---

2 THE COURT: well, I don't -- I'm not sure that that  
3 would be evidence of third party guilt. That simply would  
4 be a statement of what he did, is that correct?

5 MR. WHELCHEL: Well---

6 THE COURT: Is he -- does he -- I haven't read his  
7 statement. So, I don't know what it says.

8 MR. WHELCHEL: Yes, sir.

9 THE COURT: Did he, did he then purport to have been  
10 there or have some evidence to what occurred?

11 MR. WHELCHEL: No, sir, Your Honor.

12 SOLICITOR JORDAN: Your Honor, would it help if we did  
13 a quick Jackson v. Denno on the written statement first?

14 THE COURT: well, it might -- well, is there going to  
15 be a challenge as to the voluntariness of the statement?

16 MR. WHELCHEL: The statement of my client?

17 THE COURT: Yes.

18 MR. WHELCHEL: No, sir.

19 THE COURT: So, you're not gonna challenge that  
20 statement?

21 MR. WHELCHEL: No, sir.

22 THE COURT: Okay.

23 SOLICITOR JORDAN: Your Honor, our position is that all  
24 he's doing is basically pointing the finger or raising mere  
25 suspicion as to Gerald Davis and placing him under suspicion

1 for doing this crime and taking away from him. It's just  
2 his word. Mr. Wheelchel served me with an alibi notice about  
3 ten days ago that basically, in one paragraph, stated what  
4 the defendant's statement was as far as just dropping them  
5 off.

6 My position is that it is third party guilt, that all  
7 he's doing is merely pointing a finger at another individual  
8 to take it away from him.

9 THE COURT: Give me a minute.

10 (Pause.)

11 SOLICITOR JORDAN: Yes, sir, and it doesn't, it  
12 doesn't -- it's not inconsistent with his own guilt in this  
13 case because, if anything, all he's doing is admitting to  
14 being the drive away, the ride there and the ride back for  
15 the one individual who lived if the jury was to buy his  
16 story.

17 THE COURT: Well, maybe the statement went further than  
18 I thought it did.

19 Does it indicate that he gave him a ride from the  
20 location as well?

21 SOLICITOR JORDAN: Yes.

22 MR. WHELCHEL: Yes, sir.

23 SOLICITOR JORDAN: Your Honor, if possible, if there's  
24 no objection to it, I'll pass the statement up and let the  
25 court take a look at it.

1 THE COURT: That might be a good idea. Let me see what  
2 we're talking about.

3 SOLICITOR JORDAN: And I do apologize. I didn't make  
4 an extra copy. If Ashley would help me.

5 And, Your Honor, just to let the Court know, the way  
6 this statement came to be is that the defendant was  
7 incarcerated on these charges. He wrote an inmate request  
8 form to Investigator Jason Bryant who's seated behind me  
9 here today stating that he knew who really committed this  
10 crime. Based upon that, Officer or Investigator Bryant,  
11 along with Officer Travis Barnett, went and interviewed the  
12 defendant and this statement is a result of that.

13 (Pause.)

14 THE COURT: All right. Mr. Wheelchel, I'll hear from  
15 you about this.

16 MR. WHELCHER: Your Honor, in order for the State to  
17 successfully preclude my client from putting up a third  
18 party guilt evidence they have to show how -- beg the  
19 Court's indulgence.

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

21 MR. WHELCHER: They have to show, under the case of  
22 United States versus Holmes, a Supreme Court case I'm sure  
23 Your Honor's familiar with.

24 THE COURT: Yes, sir.

25 MR. WHELCHER: That going's up to the United States



1 Supreme Court after the South Carolina Supreme Court  
2 incorrectly ruled, according to the Federal Supreme Court,  
3 that they could not limit a criminal defendant's ability to  
4 put up a complete defense.

5 In that case, Your Honor, it says -- the Holmes case  
6 says that while the Constitution prohibits the exclusion of  
7 defense evidence under rules that serve no legitimate  
8 purpose or they're dis -- or they're disproportional to the  
9 incident they are asserting to promote, well established  
10 rules of evidence permit trial judges to exclude evidence if  
11 its probative value is outweighed by certain other factors  
12 such as unfair prejudice.

13 There is no unfair prejudice here cause my client is  
14 the one who's on trial. The State has known about the  
15 existence of this statement and his defense long before I  
16 ever became involved in the case, Your Honor, or confusion  
17 of the issues.

18 Two people went into the Waffle House. The State  
19 maintains obviously that the two people are the deceased and  
20 my client. My client gave a statement wherein he basically  
21 says I took them there, they told me to take them there on  
22 the way somewhere else, and I'm not getting into all the  
23 detail of the statement, Your Honor, but he dropped,  
24 according to him, Gerald Davis and Dante off at the Waffle  
25 House and left, went down the street, and was getting gas,

1 saw the police cars going to the Waffle House, and came back  
2 to the Waffle House and could not get in.

3 Now, all of that may not be in the statement, but that  
4 will be his testimony --

5 THE COURT: So far it is.

6 MR. WHELCHER: Because I have fleshed out some of the  
7 detail that he was not cross-examined on, shall we say, by  
8 the detectives at the time. He contacted them and told them  
9 he knew who really did this. They came, took his statement,  
10 and left is my understanding.

11 There is other evidence that puts Slack, that involves,  
12 excuse me, Gerald Davis, also known as Slack, into this  
13 particular case, Your Honor. He was there, is my  
14 understanding, the night before and went out with Dante, but  
15 not with my client according to the statements I was  
16 provided on, I was given this past Friday.

17 In addition, they have State's witness, Mr. Drummond,  
18 who will testify, I believe, that he provided the car that  
19 was used in this robbery to Dante and then Dante allowed  
20 other people to use the car he claims. He doesn't know.  
21 But he knows that he gave the car to Dante. The Sheriff's  
22 office has taken that car, photographed it, and obtained  
23 those photographs from the rightful owner.

24 And in addition to all of that, Your Honor, when my  
25 client was initially interviewed by the investigators, they

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1 told him that they knew that Dante -- excuse me. They knew  
2 that Slack gave Dante the gun. They just wanted him to fess  
3 up and help himself.

4 So, at that point, at his initial arrest on the 21<sup>st</sup> of  
5 January, they already knew of Dante's, excuse me, of Slack's  
6 involvement in providing the gun. They did not know that  
7 Slack was the actual one who went into the Waffle House.

8 That would be a quick summation of my client's  
9 proffered testimony, Your Honor. Actually I can put him on  
10 the stand to---

11 THE COURT: Is that that Holmes case?

12 MR. WHELCHER: Yes, sir.

13 THE COURT: Pass it up please.

14 MR. WHELCHER: Yes, sir. I just tell the Court I've  
15 already marked it in some places.

16 THE COURT: I can overlook that.

17 All right. The State wish to make some offer in the  
18 case or I'm -- take testimony on this point in any fashion?

19 SOLICITOR JORDAN: Your Honor, the testimony, I guess,  
20 would come from his defendant is what we're just trying to  
21 exclude or trying to rebut.

22 THE COURT: All right. Do you wish to make any proffer  
23 on this point?

24 MR. WHELCHER: Yes, sir.

25 THE COURT: All right.

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1 SOLICITOR JORDAN: At the, at the appropriate time,  
2 if need be, I would ask to be able to call Jason Bryant in  
3 response to whatever the defendant may say.

4 THE COURT: All right. You ready?

5 MR. WHELCHER: Yes, sir.

6 THE COURT: Call the witness.

7 Come forward, sir.

8 MR. WHELCHER: Call Kenneth Craig, Your Honor.

9 KENNETH CRAIG, being first duly  
10 sworn, testified as follows:

11 THE COURT: State your name please, sir.

12 THE WITNESS: Kenneth Jowan Craig.

13 THE COURT: Thank you.

14 Yes, sir, your witness.

15 MR. WHELCHER: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. WHELCHER:

18 Q Mr. Craig, you were arrested on the 21<sup>st</sup> of January  
19 of last year charged with, at that time, armed robbery, is  
20 that correct?

21 A Yes, sir.

22 Q Subsequently you've been indicted on multiple counts  
23 that we went through this morning with the Judge for  
24 attempted armed robbery, is that correct?

25 A Yes, sir.

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by Mr. Welchel

- 1 Q Now, after you were arrested or let me back up.  
2 When the officers came to you and asked you to come  
3 down to the Sheriff's Department was it?  
4 A Yes, sir.  
5 Q Okay. You're gonna have to speak up so --.  
6 A Yes, sir.  
7 Q Okay. And that was on the evening of the 21<sup>st</sup> of  
8 January, is that correct?  
9 A Yes, sir.  
10 Q Okay. And who -- which two officers were there with  
11 you, sir?  
12 A Jason Bryant. I can't remember the other one's name.  
13 Q Okay. Would it be Mr. Williams, Lorin Williams, and  
14 one of them was Jason Bryant, this fellow here?  
15 A Yes, sir.  
16 Q Okay. They took you to the Sheriff's Department or the  
17 jail, wherever it was they took you, and told you what, sir?  
18 A Well, the one sitting down, that's the name I don't  
19 know, he say listen, we know Slack gave you the gun. I  
20 don't want to see you do no time for something you not, you  
21 didn't do it. By that time Jason Bryant stands up and say F  
22 this. Stand up, got you down to your coat, put your hands  
23 behind your back, read me my rights, and took me on to the  
24 county.  
25 Q So, at that point you didn't have a chance to give a

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by Mr. Welchel

1 statement?

2 A No.

3 Q Okay. But you knew that you had dropped off Slack and  
4 Dante?

5 What is Dante's full name, sir?

6 A I believe it's Dante Demont Williams.

7 Q Okay. You had dropped Dante and Slack off at the  
8 Waffle House?

9 A Yes, sir.

10 Q Okay. Where had you been prior to that, sir?

11 A What do you mean?

12 Like over Ms. Pat---

13 Q Before you went to the Waffle house.

14 A Ms. Patricia McSwain house.

15 Q Okay. And did you leave Patricia McSwain's house --  
16 when you left her house, who was in the car?

17 A Me, Dante, and Slack.

18 Q Okay. Was it your car?

19 A No.

20 Q Was it Dante's car?

21 A No.

22 Q Do you know who got the car, who provided the car for  
23 the three of you?

24 A I really don't. I know who car it was now though.

25 Q Okay. But at that time you didn't know where the car

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by Mr. Wheelchel

- 1 came from?
- 2 A No, sir.
- 3 Q Okay. Who originally had -- when you first saw the
- 4 keys to this vehicle, who had them?
- 5 A It was in the car. No, matter of fact, I take that
- 6 back. Tae brought them in the house.
- 7 Q Dante?
- 8 A Dante brought them in the house.
- 9 Q Okay. And then, when you left Alexander Avenue, that's
- 10 where Dante was staying at the time, is that right?
- 11 A I believe so, yes, sir.
- 12 Q With Patricia Hill?
- 13 No.
- 14 SOLICITOR JORDAN: McSwain.
- 15 MR. WHELCHER: Thank you.
- 16 Q Patricia McSwain, is that correct?
- 17 A Yes, sir.
- 18 Q And you were at the house too?
- 19 A Yes, sir.
- 20 Q Okay. And there were a lot of people at the house?
- 21 A Yes, sir.
- 22 Q Okay. When you left, there was the three of you that
- 23 you just testified to, is that right?
- 24 A Yes, sir.
- 25 Q Okay. Did you know, when you left, that y'all were

Kenneth Craig - Direct examination  
by Mr. Whelchel

1 going to the Waffle House?

2 A No, sir.

3 Q Okay. How was it that you ended up at Waffle House?

4 A I was told over in Cowpens.

5 Q Okay. And who said that?

6 A Slack. Gerald Davis.

7 MR. WHELCHER: Okay. Would you stand up, sir?

8 (WHEREUPON, a person in the audience stands up.)

9 Q Is that Slack?

10 A Yes, sir.

11 Q Okay. Slack told you --

12 THE COURT: You can be seated.

13 Q -- to go to Cowpens?

14 A Yes, sir.

15 Q Okay. And then what happened?

16 A Well, we stopped -- I stopped by Citgo to get some gas.

17 Q Okay.

18 A You know, we go up towards -- when I come out the --

19 when I come out the store he be on the phone.

20 Q He who?

21 A Gerald Davis.

22 Q Slack?

23 A Yeah, Slack, he's on the phone.

24 Q Okay.

25 A So, we get up there by the subway, and he hang his



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1 phone up and say never mind, Breck, drop us at the waffle  
2 House. So, I went---

3 Q Wait a minute. Wait a minute.

4 A He said never mind, Breck, drop us at the Waffle House.

5 Q Okay.

6 A So, I went in through the front. There was a truck  
7 pulling, pulling a camper trailer or whatever you call it,  
8 and I let them out right in front of that.

9 Q Hang on a minute.

10 (Pause.)

11 SOLICITOR JORDAN: Your Honor, if I may approach just  
12 to see -- if he's gonna do some pointing, just to see where  
13 he points.

14 THE COURT: I'm sorry.

15 Do what?

16 SOLICITOR JORDAN: If I may approach. If he's gonna  
17 point I'd like to see where he's pointing in the picture.

18 THE COURT: Oh sure. Come on up.

19 Q Now, sir, do you recognize that, the area that's  
20 depicted in those photographs?

21 A Yes, sir.

22 MR. WHELCHER: Okay. And, Your Honor, I think we would  
23 have to make this a defense exhibit for the purposes of this  
24 hearing.

25 THE COURT: Any objection?

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1 SOLICITOR JORDAN: Just that those may be the only  
2 copies I have of that.

3 THE COURT: Well, she can mark them for this hearing  
4 and then, if you want to introduce it later on, you  
5 certainly can do that in trial.

6 SOLICITOR JORDAN: I do.

7 THE COURT: Any objection to its authenticity or---

8 SOLICITOR JORDAN: No, sir.

9 THE COURT: ---admissibility?

10 SOLICITOR JORDAN: No, sir.

11 THE COURT: All right. Let's mark them as defense  
12 exhibit.

13 (WHEREUPON, the two photographs were marked as  
14 Defendant's Exhibit No. 1 and 2 and received into evidence  
15 for purposes of this hearing only.)

16 Q Mr. Craig, I'm handing you two photographs. They have  
17 been marked Defense Exhibit No. 1 and No. 2 for the purposes  
18 of this hearing.

19 Please look at those two exhibits and see if you  
20 recognize the area there's depicted in those photographs.

21 A Yes, sir.

22 Q Okay. Defense Exhibit No. 1, do you know what this is,  
23 sir?

24 A 221.

25 Q Okay. And this?

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by Mr. Wheelchel

- 1 A 85.
- 2 Q Okay. And where would the Waffle House be, sir?
- 3 A Right there.
- 4 Q Okay. And---
- 5 A (Witness points.)
- 6 MR. WHEELCHEL: Beg the Court's indulgence.
- 7 (Pause.)
- 8 A This.
- 9 Q Okay. Which one's the Waffle House, sir?
- 10 A Right there.
- 11 Q Where the little knife and fork is?
- 12 A Yes, sir.
- 13 Q Okay. And that's the McDonald's above it?
- 14 A Yes.
- 15 Q Okay. Where's the Citgo that you went to?
- 16 A Right across from the Motel 6.
- 17 Q Uh-huh. (Affirmative).
- 18 Okay. And the Motel 6 is on the south side of 85?
- 19 A Uh-huh. (Affirmative).
- 20 Yes, sir.
- 21 Q Okay. Defendant's Exhibit No. 2 for the purposes of
- 22 this hearing, would you point out the Waffle House there,
- 23 sir?
- 24 A Right there.
- 25 Q Okay. And you went to the Waffle House at the

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by Mr. Welchel

1 instructions of Slack, is that correct?

2 A Yes, sir.

3 Q You let Slack and---

4 A Dante---

5 Q ---Dante?

6 A ---out.

7 Q Okay. Where did you go after you let them out?

8 A Back down 221.

9 Q Where did you stop after you left the Waffle House?

10 A I stopped at that red light there.

11 Q Okay. Did you eventually stop and get gas?

12 A No, I got the gas before then.

13 Q Okay.

14 A Got the gas before then.

15 Q Okay. So, once you left the Waffle House after letting  
16 Slack and Dante out, where did you go?

17 A Back down 85. I mean 221 I mean.

18 Q Okay.

19 A 221.

20 Q All right. That's what I'm trying to understand. You  
21 went back down 221.

22 At some point did you turn around?

23 A Yeah, at Citgo.

24 Q Okay. Why?

25 A Cause I seen police lights going past me and I'm being

Kenneth Craig - Direct examination  
by Mr. Whelchel

- 1 nose, and I know -- like I said, I dropped Tae off at the  
2 Waffle House.
- 3 Q Okay.
- 4 A I turned around in the Citgo parking lot.
- 5 Q So, did you -- how many police cars did you see pass  
6 you going up 221, sir?
- 7 A About four.
- 8 Q Okay. When you went back to the Waffle House, were you  
9 able to get in the parking lot of the Waffle House?
- 10 A No, sir.
- 11 Q Okay. Why not?
- 12 A Police had, police had it blocked off around it.
- 13 Q Okay. So, what did you do when you couldn't get in the  
14 parking lot?
- 15 A Went up behind McDonald's way trying to get in from up  
16 that way and couldn't get in there either.
- 17 Q The police had that blocked off too?
- 18 A Yeah.
- 19 Q Okay. So, what did you do then?
- 20 A Kept on pushing. I ran into him right here, right here  
21 by the fence, over by the fence.
- 22 Q Okay. Up this road here?
- 23 A Up the right -- uh-huh. (Affirmative).
- 24 Q Okay. Did you run into anybody on Mt. Pleasant Road?
- 25 A Yeah.

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by Mr. Welchel

- 1 Q who?
- 2 A Gerald Davis.
- 3 Q slack?
- 4 A Yeah.
- 5 Q Okay. Where was he when you saw him?
- 6 A Behind the fence.
- 7 Q Okay.
- 8 A You can't see that much better. This fence right here.
- 9 Q Okay. He was running along that fence?
- 10 A That fence right there.
- 11 Q Okay. Did he get in the car with you?
- 12 A Yeah.
- 13 Q Okay. After he got in the car with you, did he make
- 14 any statements to you?
- 15 A Yeah.
- 16 Q Did he tell you what had happened in the waffle House?
- 17 A Yeah.
- 18 Q Okay. What did he tell you happened in the waffle
- 19 House?
- 20 A I think Tae dead. You got to tell the family.
- 21 Q Excuse me?
- 22 A I think Tae dead. You got to tell the family.
- 23 Q Okay. Before going into the waffle House, had anybody
- 24 told you we're going to rob the waffle House?
- 25 A No.

Kenneth Craig - Direct examination  
by Mr. Wheelchel

- 1 Q Had anybody, either Tae or Slack --
- 2 A No.
- 3 Q -- told you we're going to rob the Waffle House?
- 4 A No, sir.
- 5 Q Let us off at the Waffle House?
- 6 A Yes, sir.
- 7 Q Come pick us up after?
- 8 A No.
- 9 Q Okay. Were you in the Waffle House at all?
- 10 A No.
- 11 Q Okay. After you ran into Slack here, where did you end
- 12 up taking Slack cause you were driving the vehicle, right?
- 13 A Yeah.
- 14 Q At any point after the robbery did Slack start driving
- 15 the vehicle?
- 16 A No.
- 17 Q Okay. You -- where did you let Slack out of the car if
- 18 you did?
- 19 A Alexander.
- 20 Q Alexander Avenue?
- 21 A Avenue, yeah.
- 22 Q Okay. And that's where you had stayed the night
- 23 before, is that right?
- 24 A Yes, sir.
- 25 Q And that's where Dante lived?

Kenneth Craig - Direct examination  
by Mr. Welch

- 1 A Yes, sir.
- 2 Q Dante lives on Alexander Avenue?
- 3 A Yes, sir.
- 4 Q And Slack lives on Ridgeview or---
- 5 A Ridgewood.
- 6 Q Ridgewood. Excuse me.
- 7 A One street over.
- 8 Q The very next street over?
- 9 A Yes, sir.
- 10 Q Did you see which way Slack went when he got out of the
- 11 car?
- 12 A Yes, sir.
- 13 Q Where did he go?
- 14 A Down the alley.
- 15 Q Okay. Is his house down that alley?
- 16 A It's on that road. Ain't, ain't too far from it.
- 17 Q You can walk from Alexander --
- 18 A Oh, yeah.
- 19 Q -- to Ridgewood going through that alley --
- 20 A Yes, sir.
- 21 Q -- down to his house?
- 22 A Yes, sir.
- 23 Q Okay, sir. Did you subsequently learn that the
- 24 automobile belonged to Mr. Drummond?
- 25 A Yes, sir.



Kenneth Craig - Direct examination  
by Mr. Wheelchel

1 Q Okay. Did you obtain that automobile from Mr.  
2 Drummond?

3 A No.

4 Q Did you even know Mr. Drummond prior to that weekend?

5 A No.

6 Q Did you give a gun to Dante?

7 A No.

8 Q Did you have a gun?

9 A No.

10 Q Okay. Answer any questions the State may have, sir.

11 THE COURT: Ms. Jordan, your witness.

12 SOLICITOR JORDAN: No questions.

13 THE COURT: You may step down.

14 Defense wish to make any further proffer?

15 MR. WHELCHER: No, sir, Your Honor. That's our proffer  
16 at this time.

17 THE COURT: The statement made by your client --

18 MR. WHELCHER: Yes, sir.

19 THE COURT: -- is that -- have you introduced that as  
20 an exhibit?

21 MR. WHELCHER: Yes, sir. I'm sorry, Your Honor. Yes,  
22 sir, I do.

23 THE COURT: It was handed to me, but I don't think it  
24 ever got put on the record.

25 Any objection?

1 I think you provided it.

2 SOLICITOR JORDAN: No, sir.

3 THE COURT: Any objection?

4 All right. It will be made I guess a defense exhibit.

5 SOLICITOR JORDAN: For purposes of this hearing,  
6 correct, Your Honor?

7 THE COURT: Oh, yes, ma'am, it's just for purposes of  
8 this hearing.

9 (WHEREUPON, the statement was marked as Defendant's  
10 Exhibit No. 3 and received into evidence for purposes of  
11 this hearing only.)

12 THE COURT: Now, does the State wish to make any  
13 proffer in the matter?

14 SOLICITOR JORDAN: No, sir.

15 THE COURT: All right. Then I'll hear from you in  
16 argument. It's your motion, Ms. Jordan. I'll let you go  
17 first.

18 Ms. Jordan, I note, in reading your brief, most of the  
19 cases that you cited are, are before the Supreme Court  
20 decision in the Holmes case.

21 SOLICITOR JORDAN: Yes, sir, and then we talked about  
22 Holmes at the very end of the brief.

23 THE COURT: Yes, you do. I've run across that case a  
24 couple of times already and I've read it several times. But  
25 the other cases you talk about were pre that.

1 SOLICITOR JORDAN: Yes, sir.

2 THE COURT: I think, I think, according to Holmes, I'm  
3 suppose to evaluate this matter from, not from one side of  
4 the case or the other, but evidence as a whole, and almost  
5 do a prejudicial/nonprejudicial analysis as well as how  
6 closely that evidence is connected to the actual event.

7 SOLICITOR JORDAN: Yes, sir.

8 THE COURT: It's not speculative or remote I think is  
9 what I'm suppose to do. But I'll hear from you in regard to  
10 it if you'd like to argue it.

11 SOLICITOR JORDAN: Your Honor, we would just base, base  
12 our arguments on the memoranda that the Court has in front  
13 of him.

14 THE COURT: All right. I'll hear from you, Mr.  
15 Whelchel.

16 MR. WHELCHER: If I may, Your Honor, as you've pointed  
17 out to the State, all of the cases they cited were prior to  
18 Holmes, are just that, prior to Holmes. Holmes, as we all  
19 know, is now the seminal case as far as third party guilt is  
20 concerned, and it was a South Carolina case that was  
21 overturned because our Supreme Court did not allow a  
22 defendant who made a proper showing of third party guilt---

23 THE COURT: Well, I think what they said was the  
24 analysis made by the Trial Court and the Supreme Court was  
25 from the prospective of how strong the State's case was. If

1 the State's case is strong --

2 MR. WHELCHER: Exactly, Your Honor.

3 THE COURT: -- very strong, then they just said exclude  
4 the third party guilt evidence. And, again, I think the  
5 analysis in Holmes says you have to look at it from the  
6 strength of all of the evidence, both sides of the  
7 evidence---

8 MR. WHELCHER: Yes, sir.

9 THE COURT: ---and to make an analysis as to whether or  
10 not its probative value outweighs its prejudicial effect or  
11 confusion of the issues, and whether or not it's  
12 sufficiently connected to the events in question---

13 MR. WHELCHER: Yes, sir.

14 THE COURT: ---or if it's remote, speculative, and,  
15 therefore, confusing.

16 MR. WHELCHER: Yes, sir, I don't think there can be any  
17 argument that it's remote or speculative or confusing  
18 because my client's testimony is essentially that's the  
19 fellow who robbed the waffle House and it's not me. I mean  
20 it doesn't change anything.

21 There's no question but that a robbery, at this point a  
22 robbery occurred at a waffle House, and he provided the  
23 testimony, through his statement and through his testimony  
24 today, that it was someone else other than him.

25 THE COURT: well -- and I gather his testimony is also

1 that he was near by the scene or actually delivered one of  
2 the -- we know one individual who was engaged in it because  
3 he didn't leave the scene --

4 MR. WHELCHEL: Yes, sir.

5 THE COURT: -- and he indicates that he allowed,  
6 allowed this person or drove that person there, and allowed  
7 them to leave the car at the Waffle House.

8 MR. WHELCHEL: There's no testimony before Your Honor  
9 at this time that he knew that a robbery was going to take  
10 place.

11 THE COURT: Well, I didn't say that. I didn't say  
12 that.

13 MR. WHELCHEL: Yes, sir.

14 THE COURT: Now -- but I'm talking -- I'm trying to do  
15 my analysis in how closely connected the testimony would be  
16 to the events --

17 MR. WHELCHEL: I---

18 THE COURT: -- and it appears to be fairly closely  
19 connected to the events.

20 MR. WHELCHEL: The only way it can get any closer, Your  
21 Honor, if he just said yeah, it was me. I mean that's -- I  
22 think that's the only way it can get any closer.

23 THE COURT: All right. Anything further, Ms. Jordan?

24 SOLICITOR JORDAN: No, sir.

25 THE COURT: All right. I'm gonna deny the State's

1 motion.

2 SOLICITOR JORDAN: Yes, sir.

3 THE COURT: Now, any other motions from the State?

4 SOLICITOR JORDAN: None from the State at this, at this  
5 time.

6 THE COURT: Defense motions.

7 MR. WHELCHER: Your Honor, I know it's been a very  
8 short time, but could we have a slight recess or real quick  
9 recess?

10 THE COURT: Oh, sure. We can take about a ten minute  
11 recess.

12 Court will be in recess for about ten minutes.

13 MR. WHELCHER: Thank you, sir.

14 THE COURT: Okay.

15 (WHEREUPON, a short recess was taken at this time.)

16 THE COURT: All right. Mr. Scruggs, if you would,  
17 please bring the jury in.

18 BAILIFF: Yes, sir.

19 (WHEREUPON, the following takes place within the  
20 presence of the jury.)

21 THE COURT: Ladies and gentlemen of the jury, the  
22 pretrial matters that we've been going over appear that  
23 they're gonna take a little longer than I first estimated.  
24 Rather than have you sit back and wait any longer, I'm going  
25 to go ahead and release you for the rest of the afternoon.

1 I'll ask that you be back in the jury room that you return  
2 to at 9:30 in the morning.

3 The same instructions apply that I gave when we, when  
4 you left for lunch. That is, don't listen to, watch, or  
5 read media reports. Don't try to gather information on your  
6 own. Don't discuss the case with anyone. Don't allow  
7 anyone to discuss it with you and report any contact you  
8 might receive concerning your service on the jury panel.

9 Be back in the jury room, 9:30 in the morning. We  
10 should be in a position to begin at that time.

11 You're free to go home. Have a good evening. Thank  
12 you very much for your patience.

13 (WHEREUPON, the following takes place outside the  
14 presence of the jury.)

15 THE COURT: All right. I'd ask that the attorneys be  
16 available to meet with me at nine o'clock in the morning.  
17 The jury will return at 9:30.

18 Court's in recess until then. Thank you very much.

19 SOLICITOR JORDAN: Thank you, Your Honor.

20 MR. WHELCHER: Thank you, Your Honor.

21

22 (WHEREUPON, Court was in recess for the evening.)

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Tuesday, July 23<sup>rd</sup>, 2013

THE COURT: State ready to proceed at this time?

SOLICITOR JORDAN: Yes, sir, Your Honor.

THE COURT: Okay.

SOLICITOR JORDAN: I am missing one of my three first witnesses, but she is in route.

THE COURT: Okay.

All right. Defense ready?

MR. WHELCHER: Yes, we are, Your Honor.

May we approach?

THE COURT: You certainly may.

MR. WHELCHER: Thank you, sir.

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

THE COURT: All right. Before we begin the trial of this case, I do note there's a good number of people in the gallery and people are welcome to attend the trial and view, and view the case. I will caution those who are present, if any type of outburst or verbal communications that can be heard by the bench or jury, will not be tolerated.

Also, head nodding or indicating whether you agree or disagree with what witnesses have to say will also not be tolerated. You're welcome to come and observe, but you're not here to participate unless you're called as a witness in



1 the trial.

2       So, if I see that type of activity, I will exclude  
3 those individuals from the courtroom, and I do reserve the  
4 right to hold people behaving in that manner in contempt of  
5 Court and sentence them accordingly. So, if you have  
6 difficulty in controlling your emotions or being able to  
7 watch quietly, if you are unable to do so, it would be a --  
8 it would be wise not to be present in the courtroom.

9       Bring the jury in.

10       (WHEREUPON, the following takes place within the  
11 presence of the jury.)

12       THE COURT: All right. The record will reflect the  
13 jury has returned to the courtroom.

14       As you come and go, there are no assigned seats in the  
15 jury box. You're just to fill in the box as you're coming  
16 in and, ma'am, of course, you are the alternate. So, you do  
17 have an assigned seat. You have to sit in that seat on  
18 every occasion.

19       I hope everyone had a good evening, and it's nice to  
20 have you back in the courtroom this morning.

21       Before I begin this morning, I would inquire of you,  
22 and I remind you that you remain under oath concerning your  
23 responses to the Court in this proceeding, if anyone had any  
24 difficulty in complying with my instructions concerning your  
25 behavior during your absence from the courthouse, I'd ask

1 for you to please stand.

2 (No response.)

3 THE COURT: It appears that everyone has been able to  
4 comply with the Court's instructions thus far.

5 I told you when you returned to the courthouse that you  
6 would be taking an oath concerning your duties and your  
7 responsibilities in this case. At this time I am going to  
8 ask that the clerk please swear you concerning those  
9 responsibilities.

10 Yes, ma'am.

11 CLERK: Yes, sir.

12 (WHEREUPON, the jury panel was placed under oath at  
13 this time.)

14 THE COURT: Now, if any of you either failed or refused  
15 to take the oath that was just administered by the clerk,  
16 I'd ask that you please stand at this time.

17 (No response.)

18 THE COURT: It appears that all of you have been sworn  
19 now concerning your duties and responsibilities in the case,  
20 and before we begin the actual trial of the case, there's  
21 some things that I would like to go over with you so that  
22 perhaps you'll better understand your duties and  
23 responsibilities during the trial, and, of course, my duties  
24 and responsibilities and the roles that other people play in  
25 this trial as we go forward.

1        Now, yesterday, as part of our screening of the jury,  
2 what we call a voir dire, it become apparent to me that most  
3 of you have never participated in the actual trial of a  
4 criminal case, and for those of you who have never been in  
5 this situation before, and have never served in this  
6 capacity, probably most of what you might know or have  
7 knowledge of concerning the jury, jury trial system in our  
8 country I would suppose that you might of learned from  
9 television shows you've watched or movies that you've seen  
10 or books that you've read, things of that nature.

11        And while those are interesting sources of information,  
12 I hope you realize that those sources of information are  
13 intended, intended to entertain you. In the case of  
14 television, it's always surprising to me that you can have  
15 an event occur and you can have a trial occur and the whole,  
16 whole matter gets wrapped up in an hour and you still have  
17 time to stop about five or six times for commercials.

18        Now, I think, as this trial goes on, you're gonna  
19 realize that the people that wrote those stories have taken  
20 what's called literary license with what goes on in the  
21 courtroom. That means that they have changed what goes on  
22 in courtrooms to fit the story lines so it will be  
23 entertaining to you, that you can follow the, the plot of  
24 what they're trying to tell you, and keep your attention so  
25 you'll watch those commercials.

1        Now, what you're engaged in today is intended for  
2 anything but your entertainment. This is not intended to  
3 entertain you at all. What you're engaged in is a  
4 fundamental part of our democracy. I hope you understand  
5 and appreciate that, in most nations in this world today,  
6 citizens are not allowed to directly participate in the  
7 decision making process that goes on in the courtrooms in  
8 those countries. Our country is in the minority in the  
9 world in that we do have, as part of our Constitution, both  
10 in the State and in the United States, the right to a trial  
11 by a jury of one's peers.

12        Now, that right was originally embodied in a document  
13 called the Magna Carta. That document was signed in England  
14 in the Year 1215. That means in about two years it will  
15 experience it's 800<sup>th</sup> birthday.

16        Now, anything that's been around for 800 years is been  
17 tried and apparently is true. It's a system that we have  
18 developed over many years in our, in our justice system.

19        Not a perfect system. Nothing invented or run by man  
20 would ever be perfect. But it's an honest and a sincere  
21 effort to see that justice is done between the parties that  
22 are before the Court.

23        Now, what you're engaged in here is a search for the  
24 truth. As I said, it's an effort to see that justice is  
25 done in this matter.

1        Now, if I had stopped you in the hallway yesterday  
2 before you walked into the courtroom, and I had said let me  
3 ask you what you expect a search for the truth to be like,  
4 what would you expect it to be like, you might tell me well,  
5 you know, if I'm searching for the truth I want to go slow,  
6 I want to be deliberate, I might even want to be repetitive.  
7 In other words, go over things many times to be sure that I  
8 got it right, and that's what I think you would expect a  
9 search for the truth to be like.

10       And I will tell you that searching for the truth and  
11 attempting to do justice is a slow and deliberate process  
12 just as you would expect it to be. Probably the opposite of  
13 what you see on television and in the movies because this  
14 courtroom is a place of honor. This courtroom is dedicated  
15 to the preservation of citizen's rights through both the  
16 Constitution of this state and of the United States, and you  
17 are a participant in that process.

18       Now, the attorneys that are going to appear in this  
19 particular case are here to represent their client's  
20 interest. On one side is the State of South Carolina that  
21 is brought criminal charges against one of its citizens, and  
22 on the other side is, of course, the defendant in this  
23 matter.

24       Now, those attorneys are here to represent their  
25 client's interest, and I'm sure they'll do an excellent job

1 in presenting the cases that they have to present to you  
2 concerning this matter during this trial. But I'm going to  
3 tell you that also, first and foremost, those attorneys,  
4 those lawyers are officers of this Court. At some point in  
5 time they appeared before this Court or some other tribunal.  
6 At that time they took an oath as prescribed by the Court  
7 system, and that oath includes an agreement or a pledge to  
8 assist you in your search for the truth in this trial.

9 I, I will tell you that you can expect from the  
10 attorneys that they'll act in a reasonable and a  
11 professional and an ethical manner in the presentation of  
12 their client's cases before you during this trial.

13 I'm gonna remind you too that you've come before this  
14 Court. You just took an oath. That oath is to decide this  
15 case based upon the law and the evidence presented in this  
16 case. You too are now expected to act in a reasonable, a  
17 professional, and an ethical manner in discharging your  
18 duties as jurors in this case.

19 As I told you yesterday, it's my belief that service on  
20 a jury panel is the second highest service that any citizen  
21 can render to one's government and I want to thank you for  
22 your willingness to accept the responsibility that you have  
23 accepted in this case.

24 Now, what I'm telling you now is not intended to be a  
25 charge concerning the law that you will apply in this

1 matter. Later on, when all the arguments have been made,  
2 all the evidence has been presented, and all that's in the  
3 record, that, at this time, I will charge you or go over  
4 with you or explain to you the law that you're to apply in  
5 this case. Again, what I'm telling you now is intended to  
6 explain to you our rights and duties in this case and the  
7 procedure that we are going to follow as we go through this  
8 matter.

9 Now, I've gone over with you earlier the indictments in  
10 this case. I'm not going to read those to you again at this  
11 time. I will go over those with you in more detail when I  
12 charge you concerning the law in this case, and I've  
13 explained to you that the indictments, the documents I went  
14 over with you yesterday, are simply the charge by which this  
15 case has been brought to this Court. It is not, in any  
16 sense, evidence, evidence of the allegations that are  
17 contained in the indictments.

18 To those indictments the defendant has pled not guilty,  
19 and, under the laws and the Constitution of this State and  
20 the United States, that plea places the burden of proof in  
21 this case upon the State and only on the State. The State  
22 has the burden of proving the allegations contained in the  
23 indictments by proof beyond a reasonable doubt.

24 Now, later on I will explain those concepts to you in  
25 more detail during my charge on the law. But suffice it to

1 say, at this time, you should understand that it is the  
2 State's responsibility to prove the allegations that are  
3 contained in the indictments, and the indictments do not  
4 constitute evidence in any manner whatsoever concerning the  
5 issues that are before you in this trial.

6 Now, your job or your purpose, as jurors, is to find  
7 and determine the facts in this case. I will tell you that,  
8 in every case tried in this courtroom in front of a jury,  
9 the jury is always the sole and exclusive judge of the facts  
10 in this case. I will be presiding over the trial and it  
11 will be my responsibility to rule on the appropriateness of  
12 questions that may have been asked, the appropriateness of  
13 evidence that may be presented to be put into the record.

14 I will tell you now that you should not take from  
15 anything that I say or do in the discharge of my duties as  
16 the presiding officer to somehow indicate to you that I have  
17 an opinion as to how you determine the facts. I've told you  
18 that you are the sole and exclusive judges of the facts.  
19 The law does not allow, allow me an opinion on those  
20 matters. I can assure you I have no opinion as to how you  
21 determine the facts in this case.

22 You are to determine the facts from the testimony that  
23 you hear and the other evidence that goes into the record of  
24 the case through that testimony. You determine the  
25 inferences you feel that might be properly drawn from the



1 evidence that you hear. I will tell you that it's  
2 especially important that you perform your duties as jurors,  
3 that is the determiners of facts, diligently and  
4 conscientiously.

5 I will tell you also that ordinarily, under our system  
6 of justice, there's no means by which an erroneous  
7 determination of facts made by a jury can ever be, be  
8 changed. For that reason, pay attention to what goes on in  
9 the courtroom. Listen to what's said. Pursue your task  
10 diligently and conscientiously in determining the facts in  
11 this case.

12 Now, the same law that makes you the sole judges of the  
13 facts makes me the sole judge of the law in this case. I  
14 will tell you that, under the oath that you have taken as  
15 jurors, it's your responsibility to accept the law exactly  
16 as I give it to you. Then, during your deliberations, you  
17 are to apply that law to the facts as you determine those  
18 facts to be.

19 The law doesn't allow me, as I've told you, to have an  
20 opinion or to disagree with you concerning your  
21 determination of the facts in this case. That same law does  
22 not allow you to disagree with me concerning the law to be  
23 applied in this matter. So, if you walked into the  
24 courtroom today, you had some notion as to what the law is  
25 or you have a belief as to what the law ought to be, you

1 should leave those notions outside of the jury room before  
2 beginning deliberations. It's your responsibility, under  
3 the oath that you've taken, to take the law exactly as I  
4 give it to you and then apply it to the facts as you've  
5 determined those facts to be.

6 I told you yesterday, and you'll get tired of hearing  
7 me say this, I'll remind you every time you walk out of that  
8 door out of this courtroom not to begin any discussions  
9 about this case with anyone at anytime until I've asked you  
10 to begin your deliberations, and I explained to you  
11 yesterday it's important that you keep an open mind about  
12 this case until you've heard all of the evidence, all of the  
13 arguments, and all of the law, and only then will you have  
14 the information that you need to begin to make up your mind  
15 concerning the issues that are before you.

16 Now, we'll begin the trial in a few minutes with the  
17 attorneys being allowed to make what's called opening  
18 statements. Now, opening statements are intended to explain  
19 to you what the case is about, perhaps what they intend to  
20 prove during the trial, to familiarize you with what's being  
21 presented to you during the trial.

22 Now, at the close of the trial, once all the evidence  
23 is been put in, we'll allow the attorneys to again address  
24 you directly and the attorneys are only allowed to address  
25 the jury directly on two occasions, during opening

1 statements and during closing arguments.

2 I will tell you also that the statements made by  
3 lawyers do not constitute evidence. They do not -- they are  
4 not evidence in this case. Can not be used by you as  
5 evidence of guilt or innocence in this case. Again, the  
6 purpose is to explain to you what the trial is about at the  
7 beginning of the trial, and at the close of the trial to sum  
8 up the evidence that you've heard from their client's  
9 prospective.

10 Again, attorneys' statements do not constitute  
11 evidence. The only evidence in the case is testimony of  
12 witnesses that have been sworn to tell the truth. They'll  
13 testify from this witness stand and any other documents or  
14 other items of evidence that get into the record or are  
15 placed into the record through that testimony.

16 The only other way that matters are placed into the  
17 record is by agreement of the lawyers. If they agree that a  
18 matter should be placed into evidence, then generally it  
19 will. But that's what we're talking about when we talk  
20 about evidence in the case.

21 Now, let me caution you about one thing. From time to  
22 time, as the presiding officer, there might be a discussion  
23 that I have to have with the attorneys concerning the  
24 admissibility of evidence. You see the admissibility of  
25 evidence is ruled, is governed by the rules of evidence that

1 have been in effect for hundreds of years in our Court  
2 system. And, so, it's a long standing rule of evidence that  
3 certain things have to meet certain criteria before they're  
4 allowed into the record. And if I believe that a discussion  
5 concerning the admissibility of a piece of evidence might  
6 lead to a discussion of some matter that's not admissible  
7 into evidence, therefore, something you should not consider  
8 in reaching a verdict, I may ask you to leave the courtroom  
9 while I discuss those matters with the lawyers.

10 Now, don't take from the fact that I asked you to step  
11 outside into the jury room while I have those discussions to  
12 somehow indicate that I've got an opinion as to how you  
13 determine the facts in this case. I hope you realize it's  
14 simply me doing my job. My job is to see to it that you  
15 only consider properly admitted evidence in reaching a  
16 verdict in this case.

17 So, once we've completed that discussion, I'll ask you  
18 to come back into the courtroom. I'll announce whatever  
19 ruling I've made during the, during your absence, and we'll  
20 proceed with the trial. But, again, don't think that I'm  
21 trying to influence your decision concerning the facts by  
22 doing that. Again, it's just me doing my job.

23 Now, I've told you that you are the sole judges of the  
24 facts in this case, and I will tell you that that makes you  
25 the sole judges of the credibility of the evidence you hear.

1 In other words, the believability of the testimony that's  
2 presented. That's one of the more important jobs that you  
3 will do is determining credibility and believability in this  
4 case.

5 I will tell you, in deciding whether or not to believe  
6 the testimony that you hear, to use your own good common  
7 sense in doing so. Every single day of your life you use  
8 your common sense to make decisions as to what you choose to  
9 believe and perhaps what you choose not to believe. Today  
10 and the days that follow are no different than any other  
11 days in your lives. It will be your responsibility to  
12 determine the believability and the credibility of the  
13 testimony that you hear.

14 For that reason, again, try to pay attention carefully  
15 to what's being said, the way it's being said. You have the  
16 right to consider anything that's in the record of the case  
17 and that is gone on in the trial in making the  
18 determinations that you need to make in this case.

19 I will tell you, in deciding whether or not, in  
20 deciding a question of credibility concerning a witness, you  
21 have the right to consider such factors as whether or not a  
22 witness has a stake in the outcome of the trial. You have  
23 the right to consider whether a witness might have a bias or  
24 a prejudice one way or the other. You have the right to  
25 decide whether or not the witness actually had the ability

1 to know the facts about which the witness is testified.

2 And, finally, we always put the witness stand right in  
3 front of the jury box. That's the way it's been in every  
4 courtroom I've ever been in. And the -- one of the reasons  
5 for that is so that you can observe the witnesses as they  
6 testify, how they speak, the way they deliver their  
7 testimony. Again, pay close attention to what goes on in  
8 the witness stand and be in a position to make decisions  
9 concerning credibility and believability of the testimony  
10 you hear.

11 As the sole judges of the facts, you have the right to  
12 believe all of, part of, or none of what a witness might  
13 tell you. You have the right to believe one witness against  
14 all the others, all the others against one. It will be your  
15 decision concerning credibility in the case or the testimony  
16 you hear. You also will need to decide what inferences you  
17 can draw from the testimony that you can hear. You also  
18 will need to decide what weight you choose to assign to  
19 every piece of evidence that you observed during the trial.

20 So, again, pay, pay close attention to what goes on in  
21 the courtroom. Be in a position to judge those matters when  
22 you're called upon to deliberate in this case.

23 Now, I'm not a judge who appoints a foreperson of the,  
24 the jury at the beginning of the trial. I do that at the,  
25 during my charge on the law. I try to emphasize, by doing

1 that, that each of you has to agree on the verdict at the  
2 close of the trial in order for the jury to reach a verdict.  
3 That means it has to be unanimous. So, no juror has any  
4 greater say in the outcome of the case than any other juror.  
5 You all must agree before the verdict is reached by the  
6 jury.

7 So, the foreperson is no more important than any other  
8 juror in, in the deliberations in this case. I want you all  
9 to think that you might be a foreperson in this matter. So,  
10 I'll appoint that person at the close of the trial during my  
11 charge on the law. In the mean time, if you feel a need to  
12 communicate with the Court about anything, inform one of the  
13 bailiffs and they'll bring the messages to me if you have  
14 something you feel that needs to be communicated to me.

15 Now, I want to be sure that I have not violated  
16 anyone's rights in what I've told you in my opening  
17 comments.

18 Does the State have an objection to the Court's opening  
19 comments?

20 SOLICITOR JORDAN: No, sir, Your Honor.

21 THE COURT: Defense have any objection?

22 MR. WHELCHER: None, Your Honor.

23 THE COURT: All right. Now, ladies and gentlemen, I've  
24 explained to you that the State has the burden of proof in  
25 the case. That means we allow the State to go first with

1 its presentation of, or excuse me, its arguments and also  
2 with its presentation of evidence followed by the defense if  
3 the defense chooses to do that. Then, once the, all the  
4 evidence is been presented, we'll do closing statements or  
5 arguments by counsel. Once those have been completed, it  
6 will be my obligation to charge you concerning the law that  
7 you'll apply in the case. Once I've completed that charge  
8 on the law the case will be given to you for your  
9 deliberations and verdict.

10 So, that's the steps that we'll go through, opening  
11 statements, presentation of evidence, closing statements,  
12 charge on the law, then your deliberations. So, that's the  
13 procedure that we'll be following.

14 Since the State has that burden of proof, they'll be  
15 going first in opening comments.

16 Ms. Jordan, are you gonna begin?

17 SOLICITOR JORDAN: Yes, sir, Your Honor.

18 THE COURT: All right.

19 MR. WHELCHER: Your Honor, before Ms. Jordan starts,  
20 can we move this?

21 I can't see through all of that.

22 THE COURT: All right.

23 SOLICITOR JORDAN: Could I---

24 MR. WHELCHER: And I'm just blinded by the light.

25 SOLICITOR JORDAN: Can we just lower this?



1           Would that be enough?

2           MR. WHELCHER: But it's the light. I can't see.

3           Can you put something---

4           THE COURT: Are you gonna use that during opening  
5 statements?

6           MR. WHELCHER: Okay. Great.

7           SOLICITOR JORDAN: Not in my opening, Your Honor.

8           THE COURT: Okay. All right. Yes, Mr. Whelcher.

9           Now, Ms. Jordan, you may proceed with your opening  
10 comments.

11          SOLICITOR JORDAN: Okay.

12          Good morning, ladies and gentlemen of the jury.

13                 the           was an important day in the life of  
14 Dante Williams. It was his birthday. Unfortunately Dante  
15 Williams decided to spend the beginning of his birthday in  
16 2012 with the defendant, Kenneth Craig. They were at some  
17 family members house of Dante's, and you're gonna hear from  
18 those family members, and they're gonna tell you some of the  
19 things that transpired in the early morning hours of January  
20 the 21<sup>st</sup> of 2012 between Dante Williams and Kenneth Craig.

21          It was a regular ordinary beginning of the day for 13  
22 other people. The Waffle House located on 221 in Chesnee  
23 here in Spartanburg County, there were six employees  
24 working. Kesha Jolly, James Wesley Long, Kimberly  
25 Henderson, Victoria Felton, Brent Atkins, and Julie Tesnar

1 black. They were all just going to their job, doing their  
2 job, working that night.

3 Along with the six of them at that waffle House were  
4 seven individuals who were there. Justin Harrison was  
5 there. Just got off work. Stopped by to have a bite before  
6 he went home.

7 Bryan Rogers and Linda Greene were also there. They  
8 had been in South Carolina attending an auction. Stopped by  
9 the waffle House.

10 Also there was Nikki Scruggs, Jamie Mattox, two friends  
11 who had spent the evening together, decided to end it at  
12 waffle House.

13 The last two people that were there were in the back  
14 corner. The ones in the back corner were Joseph McCullough  
15 and Amanda Kiwitz.

16 Unfortunately their nice quiet evening or late early  
17 morning ended when they crossed paths with Dante Williams  
18 and Kenneth Craig. You'll hear from witnesses---

19 MR. WHELCHEL: Objection, Your Honor.

20 She's talking about Kenneth Craig. There's been no  
21 identification of Kenneth Craig. I understand he's the  
22 person who's on trial. I would ask that she open her, begin  
23 her opening preparatory remarks that the evidence that may  
24 show it's Kenneth Craig. I would object to that.

25 SOLICITOR JORDAN: Your Honor, I just am stating the

1 facts as we intend to present them at trial.

2 THE COURT: Overruled.

3 You may proceed.

4 SOLICITOR JORDAN: Thank you.

5 Their, their lives interchanged.

6 You're going to hear from some of the people who were  
7 at that Waffle House that night. They're gonna tell you  
8 what they saw and what they heard.

9 I'll tell you right now, you're not gonna hear from all  
10 of them who are there. You're not gonna have 13 different  
11 people who are gonna come up here and identify him.  
12 Everybody there had a different prospective, a different  
13 view, a different angle.

14 You're also gonna hear from some of the officers who  
15 were there who are gonna talk to you about the work that  
16 they did in relationship to this case.

17 I will tell you that Dante Williams life ended on the  
18 same day that he was born. He was shot and killed that  
19 night by one of the customers at the Waffle House. The  
20 defendant went out the door.

21 Ladies and gentlemen, one of the things that I do love  
22 about our jury system here in the U.S. is that we, we have  
23 people who come in here and collectively, as a group of 12,  
24 use their common sense that they use in their everyday life  
25 to look at the facts, to analyze everything that we're gonna

1 put before you before you render a verdict. I'm going to  
2 come back to you at the end of this trial and I'm gonna ask  
3 you to return a verdict of guilty as to Kenneth Craig on all  
4 of these charges.

5 Thank you.

6 THE COURT: Mr. Wheelchel, for the defense.

7 MR. WHELCHEL: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MR. WHELCHEL: Does Your Honor have the indictments?

10 THE COURT: Mr. Wheelchel. Mr. Wheelchel.

11 MR. WHELCHEL: Ladies and gentlemen of the jury, as  
12 you've been told, my name is Dick Wheelchel. I'm an attorney  
13 here in Spartanburg. As you can see, I've been doing that  
14 for a while, and I represent Kenneth Craig.

15 Kenneth Craig, as you all know, is the fellow that's  
16 been charged in all of these indictments brought to you by  
17 the State. The judge has already told you that the  
18 indictments don't mean anything as far as evidence is  
19 concerned. They are the equivalent of the umpires yelling  
20 play ball to start a baseball game.

21 I mean I don't mean to make light of this process. But  
22 when an umpire -- the baseball game doesn't start until the  
23 umpire yells play ball. A trial can not start until there's  
24 an indictment. But that doesn't mean anything as far as  
25 your using the fact that there's an indictment to find

1 anybody guilty. The judge has already told you that. He'll  
2 tell you that again.

3 I never get tired of coming to this courtroom and  
4 hearing Judge Couch's opening remarks to the jury. I don't  
5 know how many cases I've tried in front of him. I haven't  
6 bothered counting anymore. But I was a history and  
7 government major in Wofford. When you start talking about  
8 the Constitution and the Declaration of Independence and  
9 that stuff, I kind of get into that.

10 But he told you about the lawyer's oath, the oath that  
11 you took, and how you must remember facts. How very  
12 important it is for you to remember these facts.

13 The burden of proof proving to you that this happened,  
14 when it happened, how it happened, and by whom it happened  
15 lies here with the State of South Carolina. They have to  
16 prove that those armed robberies and attempted armed  
17 robberies happened the way they say in that indictment to  
18 your satisfaction beyond a reasonable doubt. They have to  
19 prove that to you with evidence so strong and so convincing  
20 as to remove the presumption of innocence from my client,  
21 Kenneth Craig.

22 Because Kenneth Craig, you may hear him referred to as  
23 Midget, called that all his life, Kenneth Craig, like  
24 everybody, every citizen in this state and in this country,  
25 is presumed innocent under our law. He is presumed innocent

1 halfway through this trial, all the way through this trial.  
2 He and everybody who sits at that table that's hauled into  
3 this courtroom by the State, they're very few people who  
4 come in here willingly, that's why the judge is telling you  
5 about how very exceptional this system is. Very few  
6 countries have a system such as you determining his fate.

7 There's a lot of them that require just the opposite.  
8 Him or anybody accused to prove their innocence. Thank God  
9 we don't have that here.

10 But that's what is required of the State, and the judge  
11 is already told you there's no burden of proof whatsoever on  
12 the defense. None. It all lies with the State of South  
13 Carolina, and that's the way it should be.

14 As he told you, it started with the Magna Carta. It's  
15 about 800 years old. The Constitution's been working for a  
16 couple hundred years in this country, and we all know it  
17 works well.

18 What you need to understand about this particular  
19 situation is this. At the time that Kenneth Craig was  
20 arrested---

21 SOLICITOR JORDAN: Objection, Your Honor.

22 May I approach?

23 THE COURT: Yes, you may.

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

1 THE COURT: You may proceed, Mr. Wheelchel.

2 MR. WHELCHER: Thank you, Your Honor.

3 THE COURT: At the time that Kenneth Craig -- nobody,  
4 nobody had said that's him, that's the man who robbed the  
5 Waffle House, one of the two, cause we all know, as you've  
6 been told in the opening, the other person there was shot  
7 and killed. Not one of the people at the Waffle House,  
8 before my client was arrested on all the charges, identified  
9 him.

10 Thank you.

11 THE COURT: The State may call its first witness.

12 SOLICITOR JORDAN: Thank you, Your Honor.

13 Your Honor, the State calls Brittany McSwain.

14 THE COURT: Come forward please.

15 Ma'am, if you'll step over here to my left to be sworn  
16 in please.

17 BRITTANY MCSWAIN, being first duly  
18 sworn, testified as follows:

19 THE COURT: Ma'am, once you're seated, state your name  
20 please.

21 WITNESS: Brittany McSwain.

22 THE COURT: Thank you.

23 Ms. Jordan, your witness.

24 DIRECT EXAMINATION

25 BY SOLICITOR JORDAN:

Brittany McSwain - Direct examination  
by Solicitor Jordan

1 Q Miss McSwain, if you would, could you adjust the  
2 microphone so that you can speak into that?

3 You have a very soft voice.

4 THE COURT: And, ma'am---

5 A Okay.

6 Q Could you state your name again?

7 A Brittany McSwain.

8 THE COURT: That's much better. If you'll talk like  
9 that I think everybody will be able to hear you. Thank you,  
10 ma'am.

11 Q Brittany, how old are you?

12 A Seventeen years old.

13 Q And where do you go to school?

14 A Spartanburg High school.

15 Q What grade will you be entering in the Fall?

16 A Twelfth.

17 Q Okay. Where do you live?

18 A

19 Q Okay. Who lives there with you?

20 A My mother, Patricia McSwain, and my aunt, Tameka  
21 McSwain, and my cousin, Joshua McSwain.

22 Q Okay. If you could, just speak a little bit louder for  
23 me.

24 Do you know Dante Williams?

25 A Yes.



Brittany McSwain - Direct examination  
by Solicitor Jordan

1 Q Okay. How do you know him?

2 A He's my first cousin.

3 Q Okay. What did you call Dante?

4 A He was like a close brother to me.

5 Q Okay. What name did you use to refer to him?

6 A TaTa.

7 Q Okay. Did you know Kenneth Jowan Craig?

8 A Just a little. He had just started coming around.

9 Q Okay. By just started, how long do you mean?

10 A Like two weeks before the attack happened.

11 Q Okay. While -- do -- when he would come around, what  
12 would he do?

13 A He would just hang around, sit on the porch talking,  
14 Dante or Josh.

15 MR. WHELCHEL: Your Honor, she's gonna have to speak  
16 up. I can---

17 THE COURT: Yes, ma'am, I'm gonna ask you to speak up  
18 louder please so that we can hear.

19 THE WITNESS: Yes, sir.

20 Q If it will help, you can adjust the microphone even  
21 closer if that will help.

22 Did Kenneth have a nickname?

23 A Midget.

24 Q Okay. Do you see Kenneth today, Kenneth Craig?

25 A Yes, ma'am.

Brittany McSwain - Direct examination  
by Solicitor Jordan

1 Q Okay. Could you point him out to the jury?

2 A (Witness points.)

3 Right there.

4 SOLICITOR JORDAN: Okay. Your Honor, if the record  
5 will reflect she's identified the defendant as Kenneth  
6 Craig.

7 THE COURT: The record will so reflect.

8 You may proceed, Ms. Jordan.

9 Q Brittany, whose birthday was on ?

10 A Dante.

11 Q How old was Dante going to be last year on the  
12 of 2012?

13 A Twenty years old.

14 Q Was it -- was he gonna be 19 or 20?

15 A Nineteen. I'm sorry.

16 Q Okay. I'm gonna take you back to the day before his  
17 birthday on January the of 2012.

18 Who was at your house that evening?

19 A Adisa Norman, me, and Roderick Drummond, and Joshua  
20 McSwain.

21 Q Okay. And who else was there?

22 A Midget.

23 Q Okay. Who is Adisa?

24 A My friend.

25 Q Okay. Who is Roderick Drummond?

Brittany McSwain - Direct examination  
by Solicitor Jordan

- 1 A My cousin.
- 2 Q Okay. Is this Roderick Drummond, Junior or Senior?
- 3 A Junior.
- 4 Q Okay. While y'all were there that evening, did you or
- 5 did Midget or Kenneth Craig discuss anything with Dante?
- 6 A Yes.
- 7 Q What did he discuss with him?
- 8 A About going on a mission, but I don't know what the
- 9 mission was.
- 10 Q Okay. Where did Midget and Dante have this
- 11 conversation?
- 12 A In my living room.
- 13 Q Okay. Did Dante leave with anyone that night before he
- 14 left with or did, did Dante leave with anyone that night
- 15 before he left with the defendant?
- 16 A Yes.
- 17 Q Who did he leave with?
- 18 A Gerald.
- 19 Q Who is Gerald?
- 20 A Slack, the one --.
- 21 Q Do you know Gerald's last name?
- 22 A No, ma'am.
- 23 Q Okay. Was anyone else with them?
- 24 A His girlfriend, Nicole.
- 25 Q Okay. Whose girlfriend?

Brittany McSwain - Direct examination  
by Solicitor Jordan

1 A Gerald.

2 Q Okay. Did Dante come back that evening?

3 A Yes.

4 Q Okay. Did Dante leave again?

5 A Yes.

6 Q That time -- the second time he left for the evening,  
7 about what time was it?

8 A Around 11:30 maybe.

9 Q Was that when he left with Gerald?

10 MR. WHELCHER: Objection, Your Honor. Leading the  
11 witness.

12 THE COURT: Overruled.

13 Q What time did he leave with Gerald and Nikki?

14 A Maybe 10:00.

15 Q Okay. About what time, in the early morning hours, did  
16 he leave with Kenneth Craig or Midget as everybody called  
17 him?

18 A Left at night. Early.

19 Q Okay. What -- about what time was that?

20 A 12:00.

21 Q Okay.

22 A Midnight.

23 Q Was it already -- at that point in time was it already  
24 Dante's birthday?

25 A Yes.

Brittany McSwain - Direct examination  
by Solicitor Jordan

1 Q Okay. Do you recall any other conversations that night  
2 between Dante and Midget?

3 A (Witness nods negatively.)

4 Q Okay.

5 THE COURT: You have to answer verbally, ma'am.

6 A No, ma'am.

7 THE COURT: Thank you.

8 Q Okay. When Dante and Midget left, did Dante, oh, I'm  
9 sorry, did Midget say anything regarding his clothing?

10 A Yes.

11 Q What did he state?

12 A He took off his brown and white jacket and said I'm in  
13 all black, let's go.

14 Q Okay. Did -- what kind of clothing was Midget wearing  
15 if you recall?

16 A Black t-shirt, black pants, black shoes.

17 Q Okay. Were those the same items that he was wearing  
18 later the next, later that night when officers arrived at  
19 the house?

20 A No.

21 Q Are, are you sure if those were the same items or not?

22 A He had on the same clothes, but he had on a brown  
23 jacket when he came back.

24 Q Okay. So, everything was the same except for the  
25 jacket?

Brittany McSwain - Direct examination  
by Solicitor Jordan

1 A Yes.

2 Q Okay. Did Dante -- when -- who did Dante leave with?

3 A Midget. Midget.

4 Q Midget.

5 Okay. When -- did Dante come back for anything?

6 A Gloves.

7 Q Okay. Do you recall if Midget had any gloves when he  
8 left?

9 A Yes.

10 Q Okay. Do you recall what color they were?

11 A No, ma'am.

12 Q Okay. Once Dante left with Midget, did you see him  
13 again?

14 A No, ma'am.

15 Q Okay. Did you see Midget again?

16 A Yes.

17 Q What -- when did you see him again?

18 A Around 3:30 that morning.

19 Q Okay. So, 3:30 in the AM?

20 A Yes. Yes, ma'am.

21 Q Okay. When he came back into the house, was anyone  
22 with him?

23 A No, ma'am.

24 Q Okay. What did Midget do or describe to the jury what  
25 Midget did when he came back into the house?

Brittany McSwain - Direct examination  
by Solicitor Jordan

1 A Threw the keys at Roderick, Junior and he said I don't  
2 know who car this is. I'm just waiting on my boy Dante to  
3 call me back.

4 Q Okay. Who is -- how was he acting?

5 A Kind of nervous and shooked up about something.

6 Q Okay. Did he come in -- how did he come into the  
7 house?

8 A He kind of like walked fast and threw the keys.

9 Q Okay. Did, did Midget say anything about where Dante  
10 was?

11 A He said he was in Pineview Hills. He had dropped him  
12 off there.

13 Q Okay. At that point in time what did you do?

14 A I was kind of like cautious cause I knew something had  
15 happened to Dante by the way he was acting.

16 Q Okay. What -- did you, did you remain at the house?

17 A Yes.

18 Q Okay. What did you do when, when you were at the  
19 house?

20 A Nothing. I just asked him where was Dante. He said he  
21 had dropped him off.

22 Q Okay. When did you find out that Dante was no longer  
23 alive?

24 A When his mother called.

25 Q Okay. Who was his mother?

Brittany McSwain - Direct examination  
by Solicitor Jordan

1 A Tonya McSwain.

2 Q Okay. Did you speak with law enforcement or the police  
3 about this case?

4 A Yes.

5 Q Okay. When did you speak to them about this case?

6 A The next morning.

7 Q That day -- when you spoke with them, did you also  
8 provide them with a written statement?

9 A Yes, ma'am.

10 SOLICITOR JORDAN: Okay. If I may have, have a moment,  
11 Your Honor?

12 THE COURT: Yes, ma'am.

13 (Pause.)

14 Q Please answer any questions that Mr. Wheelchel may have.

15 THE COURT: All right. Mr. Wheelchel, your witness.

16 MR. WHELCHEL: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. WHELCHEL:

20 Q Miss McSwain, last week when I came to Alexander Avenue  
21 and attempted to talk to you you refused to talk to me, is  
22 that correct?

23 A Yes, sir.

24 Q Okay. And you told me that your solicitor told you---

25 SOLICITOR JORDAN: Your Honor, I object to this.



Brittany McSwain - Cross-examination  
by Mr. Welchel

1 Q ---you didn't have to talk to me, is that correct?

2 SOLICITOR JORDAN: I object.

3 A Yes, sir.

4 THE COURT: Wait one second. Don't answer the  
5 question.

6 Objection?

7 SOLICITOR JORDAN: First of all, it's hearsay, and  
8 second of all, it's commenting on, on -- I would just ask to  
9 approach on this.

10 THE COURT: I'll ask the jury to retire to the jury  
11 room. Don't begin any discussions until I've asked you to  
12 do so.

13 You may retire at this time.

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

16 THE COURT: The last question was?

17 There were a couple people talking. I couldn't hear  
18 all of the question.

19 COURT REPORTER: And you told me that your solicitor  
20 told you you didn't have to talk to me, is that correct?

21 THE COURT: All right. Objection.

22 SOLICITOR JORDAN: Your Honor, first of all, it's  
23 hearsay. It's going as to what I would have said, but I did  
24 not say that, and he hasn't prefaced it with any sort of  
25 timing or anything along those lines at all. The witness

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 always has a right to speak to who they want to if they want  
2 to and that's their choice.

3 THE COURT: Mr. Wheelchel.

4 MR. WHELCHER: Your Honor, I asked her, as far as  
5 timing is concerned, if she remembered when I came to speak  
6 to her last week. I was not given this statement by the  
7 State until last week, and when I went to talk to this lady,  
8 I had my investigator with me, and she refused to talk to  
9 us, and told us that her solicitor, she didn't name one, but  
10 her solicitor had told her that she didn't have to talk to  
11 us and she refused to talk to us.

12 SOLICITOR JORDAN: Your Honor, that is different than  
13 what he---

14 THE COURT: That is different than what was asked.

15 MR. WHELCHER: Well, I was merely trying to lay the  
16 foundation to ask the Court to treat her as a hostile  
17 witness, Your Honor.

18 THE COURT: I'm gonna sustain the objection as to  
19 hearsay, what she might of heard. Now, if, if -- from the  
20 solicitor -- you're asking her what the solicitor's told  
21 her?

22 MR. WHELCHER: No.

23 THE COURT: Is that what you're asking?

24 MR. WHELCHER: No, sir, I probably did not phrase the  
25 question properly.

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 THE COURT: All right. And if the statement was that  
2 the solicitor told her she didn't have to talk to you, she  
3 doesn't have to talk to anyone. People are free to talk or  
4 not to talk.

5 MR. WHELCHER: Yes, sir.

6 THE COURT: I'll let you, I'll let you ask if, if --  
7 what she told you --

8 MR. WHELCHER: Yes, sir.

9 THE COURT: -- and then I'll let her speak for herself.  
10 But as to her quoting what a solicitor may of said, hearsay.

11 MR. WHELCHER: Yes, sir, I understand, Your Honor.

12 THE COURT: All right.

13 SOLICITOR JORDAN: Your Honor, could we have a proffer  
14 of the questions that he's going to ask so that we don't run  
15 into this again or am I jumping the gun on asking for that?

16 THE COURT: Well, I don't know if, if he's gonna  
17 explore it any further. Let's find out from Mr. Wheelchel  
18 where we're gonna go with that.

19 MR. WHELCHER: I can go ahead and do the proffer real  
20 quick, Your Honor, since---

21 THE COURT: Sure. Go ahead.

22 CONTINUED CROSS-EXAMINATION

23 BY MR. WHELCHER:

24 Q Ma'am, did you tell me that you didn't have to talk to  
25 me and you were told that you didn't have to talk to me?

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 A No, sir, I told you I did not want to talk to you.

2 Q You told me you did not want to talk to me?

3 A Yes.

4 Q Okay.

5 THE COURT: Anything else, Mr. Wheelchel?

6 MR. WHEELCHEL: Not at this time, Your Honor. I would  
7 offer my investigator since---

8 THE COURT: Well, I mean you're gonna have the right to  
9 call witnesses in a little bit.

10 MR. WHEELCHEL: Okay.

11 THE COURT: We're not, we're not going to get into  
12 pitting witnesses at this stage of the procedure. I've  
13 heard what her testimony's gonna be, and I'll let you ask  
14 that question as to what she told you when you asked to talk  
15 to her.

16 MR. WHEELCHEL: All right, Your Honor.

17 THE COURT: That's not the way it was asked previously.  
18 Bring the jury in.

19 MR. WHEELCHEL: Is Your Honor going to allow me to treat  
20 her as a hostile witness?

21 SOLICITOR JORDAN: Your Honor, I don't---

22 THE COURT: Just one second.

23 No, sir.

24 SOLICITOR JORDAN: I'm sorry.

25 THE COURT: I'm not gonna allow -- she's, she's --

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 because she refused to talk voluntarily to you?

2 MR. WHELCHEL: Yes, sir.

3 THE COURT: No, sir.

4 MR. WHELCHEL: Okay.

5 THE COURT: You know, people have the right to -- we  
6 have free speech, freedom of speech in this country. People  
7 have the right to talk to whoever they want to, and if she  
8 chooses not to talk to you, that's her right.

9 MR. WHELCHEL: The problem I have with that, Your  
10 Honor, is that freedom of speech does not outlay my client's  
11 right to confront and I understand this---

12 THE COURT: Well, I'm gonna let you ask her questions.

13 MR. WHELCHEL: Yes, sir.

14 THE COURT: I've told you you can ask her what she  
15 said. That's fine.

16 Have I limited your questioning other than asking what  
17 a solicitor told her?

18 MR. WHELCHEL: No, sir.

19 THE COURT: Okay. Bring the jury in.

20 (WHEREUPON, the following takes place within the  
21 presence of the jury.)

22 THE COURT: All right. Ladies and gentlemen, I have  
23 sustained an objection by the State, and I've asked the  
24 defense to rephrase its question.

25 You may proceed, Mr. Wheelchel.

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 MR. WHELCHER: Thank you, Your Honor.

2 CONTINUED CROSS-EXAMINATION

3 BY MR. WHELCHER:

4 Q When I came to see you last week at --

5 , that's where you live, ma'am?

6 A Yes, sir.

7 Q Okay. When I came to see you last week to discuss this  
8 statement with you, you refused to talk to me, is that  
9 correct?

10 A Yes, sir.

11 Q All right, ma'am. And why?

12 A I just refused to talk to you.

13 Q Oh, okay. And that's the only thing you told me, you  
14 were going -- you were refusing to talk to me?

15 A Yes, sir.

16 Q Nothing else?

17 A Nothing else.

18 Q All right, ma'am. Now, you gave a statement on the  
19 21<sup>st</sup> of 2012, is that correct?

20 A Yes, sir.

21 Q Have you seen that statement?

22 A Yes, sir.

23 Q Do you have a copy with you?

24 A No, sir.

25 Q Okay.

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 THE COURT: You may approach the witness.

2 MR. WHEELCHEL: Thank you, Your Honor.

3 Q I want you to look at that please, ma'am, and see if  
4 that's your statement you gave.

5 (Pause.)

6 Q Okay. I didn't want to rush you.

7 Is that, is that your statement?

8 A Yes, sir.

9 Q Okay. Now, here in your statement you talked about --  
10 you didn't write this statement, did you?

11 A Yes, sir, I did.

12 Q Excuse me?

13 A Yes, sir, I wrote that statement.

14 Q Okay. Who is Mitchell?

15 A That's what I thought his real name was.

16 Q Okay. So, you thought the fellow you've identified  
17 as---

18 A Yes, sir.

19 Q ---Kenneth Craig, you thought his name was Mitchell?

20 A Yes, sir.

21 Q Okay. And I guess you've now figured out that they  
22 were calling him Midget?

23 A Yes.

24 Q You had just met him recently, is that right?

25 A Yes, sir.

Brittany McSwain - Cross-examination  
by Mr. Welchel

- 1 Q Okay. And Dante, Dante is your cousin?
- 2 A Yes, sir.
- 3 Q Okay. Adisa, who is Adisa?
- 4 A My friend.
- 5 Q Okay. So, Mitchell, excuse me, Midget, Dante, Adisa,  
6 and you were at , is that right?
- 7 A Yes, sir.
- 8 Q And when you say that Mitchell asked Dante if he wanted  
9 to hit a lick for his birthday, Dante answered I don't, man,  
10 I just want to chill for my birthday.
- 11 Is that right?
- 12 A Yes, sir.
- 13 Q Okay. After that, Gerald, Slack, came and asked did he  
14 want to ride with him and that was around 11:30 Friday  
15 night, is that right, ma'am?
- 16 A Yes, sir.
- 17 Q Do you know Gerald's last name?
- 18 A No, sir.
- 19 Q How long have you known Gerald?
- 20 A About a year.
- 21 Q About a year before this?
- 22 A Yes, sir.
- 23 Q Is Gerald here in the courtroom?
- 24 A Yes, sir.
- 25 Q Would you point him out please, ma'am?



Brittany McSwain - Cross-examination  
by Mr. Welchel

- 1 A Right there.
- 2 Q Could you describe what he has on?
- 3 A A plaid t-shirt.
- 4 Q Is that Gerald who just stood up?
- 5 A Yes, sir.
- 6 Q Okay. So, who goes with Gerald and Dante when they
- 7 take that ride that night?
- 8 A Nicole.
- 9 Q And is she here too?
- 10 A Yes, sir.
- 11 Q Is, is that Nicole who---
- 12 A Yes, sir.
- 13 Q Okay. And are you related to Nicole?
- 14 A No, sir.
- 15 Q Okay. And what you put in your statement is that Dante
- 16 told you that Gerald, and Nicole, and Dante went to Wendy's?
- 17 A Yes, sir.
- 18 Q Okay. But you didn't see them go to Wendy's?
- 19 A No, sir.
- 20 Q Okay. Did Dante have a car?
- 21 A No, sir.
- 22 Q Did Mitchell, as you were calling him at the time, have
- 23 a car?
- 24 A No, sir.
- 25 Q Well, who had the car?

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 A I recall Roderick Drummond.

2 Q Okay. Did Roderick Drummond go with them?

3 A No, sir.

4 Q Did somebody borrow Roderick Drummond's car?

5 A I'm not sure who did.

6 Q Okay. Do you know Roderick Drummond's car when you see  
7 it?

8 A Yes.

9 Q Okay. Did you see these people leave together or were  
10 you told that they left together?

11 A I was told.

12 Q Okay.

13 SOLICITOR JORDAN: Your Honor, could I ask for a  
14 clarification as to who these people are because as of right  
15 now she's gotten two different sets, two different people,  
16 two different groups of people leaving at two different  
17 times?

18 MR. WHEELCHEL: Sure.

19 Q Did you see Gerald, Nicole, and Dante leave together?

20 A Saw Dante get in the car with Gerald and Nicole.

21 Q Oh, okay. And then you were told they went to Wendy's?

22 A Yes.

23 Q Okay. So, according to your testimony, you say that  
24 Midget asked Dante if he wanted to hit a lick?

25 A Yes, sir.

Brittany McSwain - Cross-examination  
by Mr. Welchel

- 1 Q Dante said no, I just want to chill?
- 2 A Yes, sir.
- 3 Q Then Dante leaves and goes off in somebody's car.
- 4 Do you know whose car?
- 5 A No, sir, I don't know whose car.
- 6 Q Okay. But Dante leaves with this man --
- 7 A Yes, sir.
- 8 Q -- and this lady beside him?
- 9 A Yes, sir.
- 10 Q Are you related to either one of them?
- 11 A No, sir.
- 12 Q Okay. And it's not until after Dante leaves and goes
- 13 off with Slack -- Slack is Gerald Davis, is that right?
- 14 A Yes, sir.
- 15 Q That's, that's how you know him?
- 16 A Yes, sir.
- 17 Q Okay. So, not until Dante leaves and goes off with
- 18 Gerald Davis and what was the lady's name?
- 19 A Nicole.
- 20 Q Nicole.
- 21 And comes back does Dante mention anything about a
- 22 mission?
- 23 A Yes, the same mission that Mitchell/Midget was talking
- 24 about earlier that day.
- 25 Q Okay. You don't know that. You just assume it.

Brittany McSwain - Cross-examination  
by Mr. Wheelchel

1 A Yes, I'm assuming.

2 Q Okay. And Dante had already told him, according to  
3 you, that he didn't want to do that?

4 A Yes, sir.

5 Q But after he has this trip with Slack and Nicole, he  
6 comes back, and according to you, he wants to talk to Midget  
7 about a mission?

8 A Yes, sir.

9 MR. WHELCHER: Okay. Beg the Court's indulgence, Your  
10 Honor.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q Were you at Alexander Avenue when the police came that  
14 night and asked my client to come with them?

15 A Yes, sir.

16 Q Okay. Was he wearing the same clothes?

17 A Yes, sir.

18 Q Wearing the same clothes when he went with the police

19 --

20 A Yes, sir.

21 Q -- that evening was he wearing when he left earlier?

22 A Yes, sir.

23 Q With -- where were you when Dante and Mr. Craig left?

24 A In the house.

25 Q You were in the house?

Brittany McSwain - Cross-examination  
by Mr. Welchel

- 1 A Yes, sir.
- 2 Q What room in the house, ma'am?
- 3 A In the front living room by the front door.
- 4 Q Okay. So, they left from that room?
- 5 A Yes, sir.
- 6 Q Okay. Did you watch them leave from that room?
- 7 A Yes, sir.
- 8 Q Okay. Then what happened?
- 9 A I'm not sure.
- 10 Q You don't know if they got in the car together?
- 11 A (Witness nods negatively.)
- 12 Q You don't know if anybody else got in the car with
- 13 them?
- 14 A No, sir.
- 15 Q Slack lives one block over from Alexander Avenue, is
- 16 that correct?
- 17 A Yes, sir.
- 18 Q And there's an alley or a pathway that you can walk
- 19 from Alexander Avenue to Slack's house, is that correct?
- 20 A Yes, sir.
- 21 Q And you can be from Alexander Avenue to Slack's house
- 22 in less than a minute?
- 23 A Yes, sir.
- 24 Q Just walking at a normal pace?
- 25 A (Witness nods affirmatively.)

Brittany McSwain - Cross-examination  
by Mr. Welchel

1 Q Not far at all?

2 A No, sir.

3 (Pause.)

4 Q I want to make sure I understand something, ma'am.

5 After Dante left that night, he came back about five  
6 minutes later --

7 A Yes, sir.

8 Q -- is that right?

9 And got gloves?

10 A Yes, sir.

11 Q Thank you.

12 THE COURT: Redirect?

13 SOLICITOR JORDAN: Yes, sir.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION

16 BY SOLICITOR JORDAN:

17 Q Brittany, who, who was the first person who began the  
18 conversation that day about a lick or a mission?

19 A Midget.

20 Q Okay. Did he state why he wanted to do a lick or a  
21 mission?

22 A For Dante's birthday.

23 Q Okay. When Dante left with---

24 THE COURT: Ms. Jordan, let me interrupt you and ask  
25 the attorneys to approach briefly.

Brittany McSwain - Redirect examination  
by Solicitor Jordan

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

3 THE COURT: Ms. Jordan, you may proceed.

4 SOLICITOR JORDAN: Thank you, Your Honor.

5 Q When Dante left with Gerald or Slack and Nicole, did he  
6 come back?

7 A Yes, ma'am.

8 Q When he left the second time, who did he leave with?

9 A Midget.

10 Q Okay. And is that at the point in time that Midget  
11 made the comment I'm in all black?

12 A Yes.

13 Q Okay. You also were talking about a jacket earlier.

14 When, when he left in all black, what kind of jacket  
15 did he take off?

16 A Brown and white looking jacket.

17 Q Okay. And is that the brown and white jacket he had on  
18 later when the police came?

19 A Yes.

20 Q Okay. And the only conversations you heard that day  
21 were between Dante and Midget, is that correct?

22 A Yes, ma'am.

23 Q Did you hear any conversations between Slack and Dante?

24 A No, ma'am.

25 SOLICITOR JORDAN: Nothing further.

Brittany McSwain - Recross examination  
by Mr. Wheelchel

1 THE COURT: Recross.

2 RE CROSS EXAMINATION

3 BY MR. WHELCHER:

4 Q And the conversation you allegedly heard between my  
5 client and Dante, Dante refused the alleged invite to hit a  
6 lick, is that correct?

7 A Yes, sir.

8 Q And then after he goes on this trip with Slack and  
9 Slack's lady, Nicole, Nicole, Nicole, right?

10 A Yes.

11 Q Then he comes back and he's got a mission, is that  
12 right?

13 A Yes, sir.

14 MR. WHELCHER: Thank you, Your Honor.

15 THE COURT: All right, ma'am. You may step down.

16 Do you wish to excuse the witness or---

17 SOLICITOR JORDAN: Yes, sir, Your Honor.

18 THE COURT: Any objection to her being excused?

19 MR. WHELCHER: No, sir.

20 THE COURT: Ma'am, you're free to leave if you'd like.  
21 You can stay if you'd like. It will be your choice.

22 All right. Ladies and gentlemen of the jury, we're  
23 gonna take a short break, five or ten minutes, for the  
24 people in the courtroom. I know you've been out, but we  
25 haven't. So, we'll take a short recess.



1 As always, when you leave the courtroom, I'll ask you  
2 not to begin discussions until I've asked you to do so.

3 You may retire to the jury room.

4 Please remain seated until the jury has retired. Thank  
5 you.

6 (WHEREUPON, the following takes place outside the  
7 presence of the jury.)

8 THE COURT: Court's in recess for about five to ten  
9 minutes.

10 Thank you.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: Okay. All right. State ready to proceed?

13 SOLICITOR JORDAN: Yes, sir.

14 THE COURT: All right. Defense ready?

15 MR. WHELCHER: Yes, sir.

16 THE COURT: Bring the jury in.

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

19 THE COURT: All right. The record will reflect the  
20 jury has returned to the courtroom.

21 At this time the State may call its next witness.

22 SOLICITOR JORDAN: Thank you, Your Honor.

23 The State calls Adisa Norman.

24 THE COURT: Come forward please.

25 Ma'am, step over here to my left and to be sworn.

Adisa Norman - Direct examination  
by Solicitor Jordan

1 ADISA NORMAN, being first duly  
2 sworn, testified as follows:

3 THE COURT: Have a seat please. Once you're seated,  
4 state your name please.

5 WITNESS: Adisa Norman.

6 THE COURT: Thank you, and, ma'am, please speak into  
7 the microphone as closely as you can. There we go.

8 DIRECT EXAMINATION

9 BY SOLICITOR JORDAN:

10 Q Could you scoot as close as you can to the front of  
11 that witness box?

12 A (Witness complies.)

13 Q Okay. Can you state your name one more time for the  
14 jury, your full name?

15 A Kamania Adisa Norman.

16 Q Okay.

17 THE COURT: Be sure to speak up loud enough for the  
18 people to be able to hear you in the back row of the jury.

19 You may proceed.

20 Q What name do you or do you prefer to be called?

21 A Adisa.

22 Q Okay. Adisa, how old are you?

23 A I'm 16.

24 Q Where do you go to school?

25 A Dorman.

Adisa Norman - Direct examination  
by Solicitor Jordan

- 1 Q Starting in the Fall, what grade will you enter?  
2 A Tenth.  
3 Q Okay. Do you know Brittany McSwain?  
4 A Yes, ma'am.  
5 Q How do you know her?  
6 A She my best friend.  
7 Q Okay. Do you know other members of her family such as  
8 Dante Williams?  
9 A Yes, ma'am.  
10 Q Okay. Do you also know Joshua Fielder?  
11 A Yes, ma'am.  
12 Q Okay. Did you -- do you recall where you were on  
13 January the 20<sup>th</sup> of 2012?  
14 A Yes, ma'am.  
15 Q Where were you?  
16 A .  
17 Q Why were you there?  
18 A For Brittany.  
19 Q Okay. Did you spend a lot of time at that home?  
20 A Yes, ma'am.  
21 Q Okay. Who else was with you that evening?  
22 A Dante, Josh, Brittany, Midget, and Rod.  
23 Q Okay. When you say Midget, can you point to the jury  
24 and tell them who you're referring to?  
25 A Right there.

Adisa Norman - Direct examination  
by Solicitor Jordan

1 Q Okay. The gentleman, the gentleman in the blue?

2 A Yes, ma'am.

3 SOLICITOR JORDAN: Okay. If the record reflects she  
4 just identified the defendant.

5 THE COURT: The record shall so reflect.

6 You may proceed.

7 Q Adisa, did you have any point in time that evening to  
8 hear any conversation between Midget and Dante?

9 A Yes, ma'am.

10 Q What was that conversation in regard to?

11 A I don't remember.

12 Q Okay. Do you, do you recall if they were talking about  
13 anything that they were going to do or that one of them  
14 wanted to do?

15 MR. WHELCHER: Objection, Your Honor.

16 THE COURT: Yes, sir.

17 MR. WHELCHER: She asked if she recalled the  
18 conversation. She said she don't remember, and now she's  
19 trying to ask her to tell us about something she doesn't  
20 remember.

21 THE COURT: Ms. Jordan.

22 SOLICITOR JORDAN: Your Honor, I was just, I was just  
23 trying to refresh her memory just to --.

24 THE COURT: All right. Well, I'll let you ask if she  
25 recalls a conversation if you want to be sure or ask it in a

Adisa Norman - Direct examination  
by Solicitor Jordan

1 different context. But if she doesn't recall, I don't know  
2 how she could---

3 SOLICITOR JORDAN: Yes, sir.

4 THE COURT: ---relate what was in a conversation she  
5 doesn't recall.

6 SOLICITOR JORDAN: Yes, sir.

7 Q Later that evening---

8 THE COURT: You may proceed.

9 Q ---did, did you see Dante and Midget leave?

10 A Yes, ma'am.

11 Q When they left, could you describe how they were  
12 dressed?

13 A Midget had on all black wearing all dark clothes, but I  
14 don't remember what Dante had on.

15 Q Okay. Do you recall if anyone had on gloves?

16 A Yes, ma'am.

17 Q Who had on gloves?

18 A Dante.

19 Q Okay. Did -- well, did he initially leave with the  
20 gloves or did he come back to get them?

21 A I think he came back to get them.

22 Q Okay. Did you stay at the house that night?

23 A Yes, ma'am.

24 Q Okay. When -- once Dante left with the gloves, did you  
25 see him again?

Adisa Norman - Direct examination  
by Solicitor Jordan

- 1 A No, ma'am.
- 2 Q Okay. Did you see Midget again?
- 3 A Yes, ma'am.
- 4 Q When did -- did Midget -- who did Midget come back  
5 with?
- 6 A Hissself.
- 7 Q Okay. When he came back, what was his demeanor or how  
8 did he appear when he came back?
- 9 A Nervous.
- 10 Q Okay. What did he do when he came in?
- 11 A He gave Rod the keys.
- 12 Q Okay. How did he give him the keys?
- 13 A He threw them at Rod.
- 14 Q Okay. Did he say anything?
- 15 A Yes, ma'am.
- 16 Q What did he say?
- 17 A He said he don't know how Tae got the car.
- 18 Q Okay. Did he also -- did he say anything in reference  
19 to where Tae was?
- 20 A Yes, ma'am.
- 21 Q What did he say?
- 22 A He say he dropped Dante off in Pineview Hills --
- 23 Q Okay.
- 24 A -- and then Dante got in a white car.
- 25 Q Okay. Did, did you find out later what happened to

Adisa Norman - Direct examination  
by Solicitor Jordan

1 Dante?

2 A Yes, ma'am.

3 SOLICITOR JORDAN: Okay. Your Honor, if I may have a  
4 moment?

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 Q Please answer any questions that Mr. whelchel may have.

8 THE COURT: Mr. whelchel, your witness.

9 MR. WHELCHER: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. WHELCHER:

13 Q All of this happened on Dante's birthday, is that  
14 correct?

15 A Yes, sir.

16 Q Were you also there when Dante left with Slack?

17 A I didn't see Slack that night.

18 Q Okay. You didn't see Slack come over there and leave  
19 with Dante?

20 A No, sir, I was in the house the whole time.

21 Q Excuse me?

22 A I was in the house.

23 Q Okay. Well, Dante was in the house too, wasn't he?

24 A Yes, sir.

25 Q Okay. So, you have no knowledge whatsoever of whether

Adisa Norman - Cross-examination  
by Mr. Wheelchel

1 or not Dante left with slack?

2 A No, sir.

3 Q Okay. And you were in the house with, with -- excuse  
4 me.

5 You were in the house with Brittany?

6 A Yes, sir.

7 Q Was she a friend of yours?

8 A Yes, sir.

9 Q Okay. How long have you known Brittany?

10 A Like seven or eight years.

11 Q Y'all go to school together?

12 A We went to school together.

13 Q Okay. And when the Sheriff's Office came and talked to  
14 you, you didn't give a written statement?

15 A No, sir.

16 Q Nobody asked you to give a written statement?

17 A No, sir.

18 MR. WHEELCHEL: Okay. Beg the Court's indulgence, Your  
19 Honor.

20 THE COURT: Yes, sir.

21 (Pause.)

22 Q Were you in the house or let me back up.

23 When did you get to Alexander Avenue?

24 A When?

25 Q Yeah, that, that weekend.



Adisa Norman - Cross-examination  
by Mr. Welchel

- 1 A Earlier that day.
- 2 Q Which day are we talking about, Friday, Saturday, or---
- 3 A Friday.
- 4 Q So, did you spend Friday night?
- 5 A Yes, sir.
- 6 Q Okay. Who was there Friday night?
- 7 A Brittany, Dante, Rod, Josh, Patricia.
- 8 Q And that's Patricia McSwain's house, is that correct?
- 9 A Yes, sir.
- 10 Q So, who spent the night Friday night, according to you,
- 11 is Patricia, you, Dante, Rod, am I right, and Brittany, is
- 12 that right?
- 13 A And Midget.
- 14 Q Well, yeah.
- 15 You and those other four?
- 16 A Yes, sir.
- 17 Q Okay. So, when was the first time that day or you
- 18 spent Friday night.
- 19 Did you spend Saturday night too?
- 20 A Yes, sir.
- 21 Q Okay. When was the first time during that weekend that
- 22 you saw Midget?
- 23 A When I got to the house.
- 24 Q What?
- 25 A When I got to Patricia's house.

Adisa Norman - Cross-examination  
by Mr. Welch

1 Q On Friday or Saturday?

2 A On Friday.

3 Q So, he was already there?

4 A Yes, sir.

5 Q But he didn't spend the night?

6 A Yes, he did.

7 Q Okay. Well, I just asked you a minute ago who all  
8 spent the night.

9 SOLICITOR JORDAN: Your Honor, she---

10 Q Is, is he now one of the people that spent the night?

11 SOLICITOR JORDAN: Your Honor, my---

12 A I said he spent the night.

13 Q Okay.

14 SOLICITOR JORDAN: I think she just answered it. He --  
15 she already answered that question and said he spent the  
16 night.

17 THE COURT: Is there an objection?

18 SOLICITOR JORDAN: Not now.

19 THE COURT: Okay. Thank you.

20 You may proceed.

21 Q I'm just trying to make sure I understand who all the  
22 people are that you say were there.

23 Okay. So, were you there when Dante left --

24 A Yes, sir.

25 Q -- with Gerald, Slack?

Adisa Norman - Cross-examination  
by Mr. Welchel

- 1 A I didn't see him leave with slack.
- 2 Q Were you there when he left?
- 3 A Yes, sir.
- 4 Q Okay. And you were there when he came back?
- 5 A Yes, sir.
- 6 Q Okay. And you heard him say he had a mission?
- 7 A Yes, sir.
- 8 Q You heard that?
- 9 A Yes, sir.
- 10 Q But he had left and when he left Midget was still
- 11 there?
- 12 A No, Midget left with him.
- 13 Q Midget left with him.
- 14 So, what time was that, ma'am?
- 15 A I'm not sure.
- 16 Q Was it Friday or Saturday?
- 17 A Friday.
- 18 Q So this is Friday?
- 19 A Yes, sir.
- 20 Q How long was Dante gone?
- 21 A Dante left twice.
- 22 Q That's what I'm trying to make sure I understand.
- 23 A He left twice.
- 24 Q Dante left twice?
- 25 A Yes, sir.

Adisa Norman - Cross-examination  
by Mr. Whelchel

1 Q When he left the first time, who did he leave with,  
2 ma'am?

3 A Hisself.

4 Q Excuse me?

5 A Hisself.

6 SOLICITOR JORDAN: Your Honor, I object at this point.  
7 Asked and answered.

8 THE COURT: He's on cross-examination. I'll let him  
9 proceed.

10 Q When he left the first time, he left with anybody?  
11 That's what I'm trying to understand, ma'am.

12 A He left by himself the first time.

13 Q Okay. Were you with Brittany all that weekend?

14 A Yes, sir.

15 Q Okay. Thank you, ma'am.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY SOLICITOR JORDAN:

19 Q In reference to the mission that Mr. Whelchel brought  
20 up, who was the first person that mentioned a mission that  
21 weekend or that Friday or Saturday?

22 A Dante.

23 Q Okay. What -- when he -- when Dante left with, with  
24 Midget, was it already Dante's birthday?

25 Do you recall?

Adisa Norman - Redirect examination  
by Solicitor Jordan

1 A No. No, ma'am.

2 Q No, ma'am, you don't recall?

3 A I don't recall.

4 Q Okay. Thank you.

5 THE COURT: Anything further?

6 MR. WHELCHER: No, sir.

7 THE COURT: You may step down. Thank you very much.

8 You wish to excuse the witness?

9 SOLICITOR JORDAN: Yes, Your Honor.

10 THE COURT: Any objections?

11 MR. WHELCHER: No, sir.

12 THE COURT: Ma'am, you're free to leave if you'd like.

13 You have the right to stay as well.

14 You may call your next witness.

15 SOLICITOR JORDAN: State calls Justin Harrison.

16 THE COURT: Come forward, sir, to my left and be sworn.

17 JUSTIN HARRISON, being first duly

18 sworn, testified as follows:

19 THE COURT: Have a seat, sir. Once you're seated,

20 state your name.

21 THE WITNESS: Justin Harrison.

22 THE COURT: Thank you.

23 Ms. Jordan, your witness.

24 SOLICITOR JORDAN: Thank you, Your Honor.

25 DIRECT EXAMINATION

Justin Harrison - Direct examination  
by Solicitor Jordan

1 BY SOLICITOR JORDAN:

2 Q Justin, how old are you?

3 A Twenty-four.

4 Q where do you live?

5 A Boiling Springs.

6 Q Okay. And who do you live with?

7 A My grandma.

8 Q Okay. where do you work?

9 A Do I have to answer that?

10 Q Yes, sir.

11 A It's now CBI -- CB&I in Laurens, South Carolina.

12 Q Okay. How long have you been there?

13 A A little over two years.

14 Q Okay. Did you work there in January of 2012?

15 A Yes.

16 Q Okay. Were you working on the, the Friday night of  
17 January 20<sup>th</sup>?

18 A Yes.

19 Q Okay. what hours did you normally work?

20 A Normally we were on ten hour shifts, but for the last  
21 two weeks we were on five eights.

22 Q Okay. Do you recall what time you got off on the  
23 20<sup>th</sup>?

24 A Twelve o'clock midnight.

25 Q okay. when you left work, where did you go?

Justin Harrison - Direct examination  
by Solicitor Jordan

- 1 A To the Waffle House.
- 2 Q And which Waffle House is that?
- 3 A The one on 221.
- 4 Q Okay. Do you know what county that's in?
- 5 A It's still Spartanburg.
- 6 Q Okay. Did you go straight there?
- 7 A Yes.
- 8 Q Okay. Why did you choose that Waffle House?
- 9 A Because the other Waffle House was right beside a motel
- 10 and I was advised not to go there.
- 11 Q Okay. Did you -- before you went to Waffle House, did
- 12 you have anything alcoholic to drink?
- 13 A No.
- 14 Q Did you have any type of illegal substances in your
- 15 system?
- 16 A No.
- 17 Q Okay. Had you been to that Waffle House after work
- 18 before?
- 19 A Yes.
- 20 Q And when you -- I'm gonna show you a picture and ask if
- 21 you can identify this. Actually I'm gonna show you a few.
- 22 (WHEREUPON, three photographs were marked as State's
- 23 Exhibit Nos. 1 through 3 for identification purposes only at
- 24 this time.)
- 25 Q Justin, I'm gonna hand you what the court reporter just

Justin Harrison - Direct examination  
by Solicitor Jordan

1 marked as State's Exhibits 1, 2, and 3, and ask you if you  
2 can review those and if you can identify those.

3 A Yes.

4 Q Okay. Can you tell the jury what is in photographs  
5 starting with the one on top?

6 That's State's Exhibit No. 3.

7 A That's the area around the Waffle House.

8 Q Okay. Flip over to the next one.

9 Can you explain what's in State's Exhibit No. 2?

10 A Still the same area. A little larger view with 85 and  
11 221 in the same picture.

12 Q Okay. Can you explain to the jury what's in or  
13 actually when this -- can you tell the jury what's in  
14 State's No. 1, that first photograph?

15 A The second seats where I was sitting at. There's a  
16 black bag and Dante lying on the floor.

17 SOLICITOR JORDAN: Your Honor, at this point we would  
18 move to admit State's Exhibit 1, 2, and 3.

19 THE COURT: Any objections?

20 MR. WHELCHER: No, sir.

21 THE COURT: Without objection, they'll be admitted.

22 (WHEREUPON, State's Exhibit Nos. 1, 2, and 3 were  
23 received into evidence at this time.)

24 THE COURT: You may publish.

25 SOLICITOR JORDAN: Thank you.



Justin Harrison - Direct examination  
by Solicitor Jordan

1 THE COURT: You welcome.

2 Q Justin, I'm gonna hand you a pointer and ask you to  
3 show the jury what you just referenced as to where you were  
4 seated when you went in the -- push the button and point.

5 A That second seat.

6 Q Okay. I'm gonna take you back for a minute.

7 Before you entered the Waffle House, what did you do?

8 A I reached into my glove compartment and put my Glock in  
9 my holster.

10 Q Okay. Justin, are you a concealed weapons permit  
11 holder?

12 A I am.

13 Q Okay. How long have you had that permit at that point  
14 in time?

15 A It's a few months.

16 Q Okay. Did -- when you went inside, did you, did you  
17 order any food?

18 A Yes.

19 Q Okay. Did you receive your food?

20 A Yes.

21 Q Okay. Justin, what, what was the first thing that made  
22 you aware that something was wrong?

23 A When I heard two people come through the door and one  
24 shouting you know what time it is, get down, get down, if  
25 you move we're gonna kill you, if you move you die.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 Q Okay. Did you -- what did you -- what did you think  
2 was happening?

3 A I figured they was robbing the place.

4 Q Okay. How many people came in?

5 A Two.

6 Q Okay. What was the first person carrying?

7 A As far as the first person, can you clarify?

8 Q Well, I'll ask you this.

9 The first person that you saw, what were they carrying?

10 A A pistol.

11 Q Okay. What did the pistol look like?

12 A It was black.

13 Q Okay. Did the other person have anything in their  
14 hands?

15 A A black trash bag.

16 Q Okay. And I believe that you referenced a bag in  
17 State's Exhibit No. 1.

18 Could you use the pointer?

19 A Right there.

20 Q Okay. Do you know or do you recall how that bag was  
21 placed there?

22 A I do not.

23 Q Okay. Justin, what -- was, was one of them talking or  
24 were they both talking?

25 A I just heard one.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 Q Okay. So, did you, did you follow their commands and  
2 get down?

3 A No.

4 Q Okay. why?

5 A My best chance of survival was to be aware of the  
6 situation and not have my head in the floor.

7 Q Okay. Was there a benefit to you remaining at the bar?

8 A Just like I said.

9 Q Okay. What did you see the two robbers doing?

10 A The one with the black trash bag -- after I saw the gun  
11 I thought this just got serious. Stared forward. The guy  
12 with the trash bag, he crosses my vision and I see the other  
13 one in the -- it kind of makes a L-shape in the Waffle  
14 House. He was over there, I assume, robbing customers.

15 (WHEREUPON, a diagram was marked as State's Exhibit No.  
16 4 for identification purposes only at this time.)

17 Q Justin, I'm gonna show you what the court reporter just  
18 marked as State's Exhibit No. 4 and ask if you can identify  
19 that.

20 A Yes, that's the Waffle House layout.

21 SOLICITOR JORDAN: Okay. Your Honor, at this point in  
22 time I'd move to admit this into evidence as State's Exhibit  
23 4.

24 THE COURT: Any objection?

25 MR. WHELCHER: No, sir, Your Honor.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 THE COURT: Without objection, it will be admitted as  
2 has been marked.

3 (WHEREUPON, State's Exhibit No. 4 was received into  
4 evidence at this time.)

5 THE COURT: You may publish.

6 Q Using the pointer again, could you just reference to  
7 the jury where you were seated?

8 A Right there.

9 Q Okay. Which door or what's the only entrance or exit  
10 that you're aware of for the public at Waffle House?

11 A (Witness points.)

12 Q Can you explain to the jury what their Waffle House  
13 entrance looks, looks like for those who may not know?

14 A It's a set of two doors. One opens out toward the  
15 parking lot, then you make a L-turn, and another, another  
16 one opens up right there.

17 (WHEREUPON, two photographs were marked as State's  
18 Exhibit Nos. 5 and 6 for identification purposes only at  
19 this time.)

20 Q Justin, I'm gonna you show you State's 5 and 6, and ask  
21 you to identify -- if you recognize those and if you can  
22 identify them.

23 A Yes, it's the two doors leading into the Waffle House.

24 SOLICITOR JORDAN: Your Honor, at this time the State  
25 moves to admit 5 and 6 into evidence.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 THE COURT: Any objections?

2 MR. WHELCHEL: No, sir, Your Honor.

3 THE COURT: Without objections they'll be admitted as  
4 marked.

5 (WHEREUPON, State's Exhibit Nos. 5 and 6 were received  
6 into evidence at this time.

7 THE COURT: You may publish.

8 SOLICITOR JORDAN: Thank you.

9 Q Justin, what were these two individuals wearing?

10 A All black.

11 Q Okay. What was on their hands?

12 A Black gloves.

13 Q What was on their -- did they have anything shielding  
14 their face?

15 A I know the guy I shot did.

16 Q Okay. Do you know if the other one had anything on his  
17 face?

18 A At the time I initiated contact he did not.

19 Q Okay. What, what did you think when the individual  
20 with the gun came towards you?

21 A He was gonna kill me.

22 Q Okay. What did you do?

23 A I stood up and I met force with force.

24 Q Okay. What happened at that point?

25 A He dropped to the ground.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 Q Okay. Where did you -- what did you then do?

2 A I then proceeded toward the second suspect.

3 Q Okay. Where did you meet up with this second suspect?

4 A Backed up in that corner.

5 Q Okay. And I'll back you up for a moment.

6 Where, where were you when you shot and killed Dante  
7 Williams?

8 A I was somewhere around there at the juke box.

9 Q Okay. When you met up with the second individual in  
10 the back corner, what happened?

11 A I told him to get down and he starts saying I got to  
12 check on my buddy, got to check on my buddy. I say you  
13 ain't going nowhere. I look over to the waitress and tell  
14 her to call 9-1-1. She says I can't, the phone line's been  
15 cut.

16 I'm looking down. I had a shirt on with a pocket where  
17 I normally keep my cell phone. Looked down, he started  
18 coming toward me, I redrew or repointed my gun at him, told  
19 him I told you to get down. He's up coming toward me. Then  
20 he gets back down.

21 He starts crawling and I kick him maybe three times,  
22 and at that point in time I figure he's going for the gun.  
23 He has no care about his buddy. I'm trying to restrain him.  
24 He goes over towards the body, and at that point, point,  
25 figured he was about to run. I tried to get between him and

Justin Harrison - Direct examination  
by Solicitor Jordan

1 the door, and by the time I'm beside him, he gets up, he  
2 takes off, we wrestle through the door leading out. He puts  
3 both hands on my gun, and at that point I figured he's  
4 trying to disarm me, and I twisted up towards his chest and  
5 pulled the trigger.

6 Then following him out, he runs off. I go back into  
7 the Waffle House, sit I believe it was at that seat. I  
8 unload -- basically make the gun safe. Drop the mag and  
9 rack the shell that got stuck in the breach.

10 Q Okay. I'm gonna take you back, take you back a little  
11 bit further real quick.

12 You mentioned, you mentioned a phone in your pocket.  
13 What did you do with that phone?

14 A I handed it to the waitress.

15 Q Okay. At the point in time that you were in the back  
16 corner---

17 (WHEREUPON, a video was marked as State's Exhibit No. 7  
18 for identification purposes only at this time.)

19 Q I'm gonna show you what's now State's Exhibit No. 7.  
20 Ask if you can identify that photograph.

21 A Yes, that's the corner.

22 SOLICITOR JORDAN: Your Honor, at this time the State  
23 moves to admit No. 7 into evidence.

24 THE COURT: Any objection?

25 MR. WHELCHEL: No, sir, Your Honor.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 THE COURT: Without objection it will be admitted as  
2 marked.

3 (WHEREUPON, State's Exhibit No. 7 was received into  
4 evidence at this time.)

5 THE COURT: You may publish that document.

6 SOLICITOR JORDAN: Thank you, Your Honor.

7 Q Can you show the jury, on State's Exhibit No. 7, where,  
8 where the second robber was.

9 A Backed up in that corner.

10 Q Okay. Where -- how close did you get to him?

11 A It was pretty much right there.

12 Q Okay. Did you advance towards the corner at any point?

13 A I did, but I kept my distance.

14 Q Okay. At this point in time did he have anything  
15 obstructing his face?

16 A No.

17 Q Were you able to get a clear look at his face?

18 A Yes.

19 Q How long do you, do you recall that you were able to  
20 get a clear look at his face?

21 MR. WHELCHER: Objection, Your Honor. I have a matter  
22 of law I'd have to take up.

23 THE COURT: All right, sir.

24 Ladies and gentlemen of the jury, at this time I'll ask  
25 you to step back to the jury room. Don't begin any



Justin Harrison - Direct examination  
by Solicitor Jordan

1 discussions until I ask you to do so.

2 Thank you very much.

3 (WHEREUPON, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: Yes, sir, Mr. Wheelchel.

6 MR. WHELCHER: Your Honor, I believe that the State was  
7 about to ask for an identification of my client as the  
8 second robber, which is the term being used so far, and I  
9 would object to the identification of my client at all at  
10 this point. I believe the Court has to determine whether or  
11 not the identification is reliable before---

12 THE COURT: Well, the question she was asked was how  
13 long did you look at his face.

14 MR. WHELCHER: Yes, sir, I may of been premature. But  
15 I think that's where we're going.

16 SOLICITOR JORDAN: That is where I'm going, Your Honor.

17 THE COURT: Okay. Well, it would seem she was asking  
18 questions to lay a foundation as to the reliability or  
19 non-reliability of any identification.

20 MR. WHELCHER: Yes, sir.

21 THE COURT: All right. But I'll hear you out.  
22 Go ahead.

23 MR. WHELCHER: Your Honor, this gentleman's  
24 identification, initial identification did not take place  
25 until three days after my client was arrested. He was not

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1 asked, was not shown, as far as I've been told, was not  
2 given a photographic lineup, was not given a show-up.

3 what happened in this case, Your Honor, and I have  
4 several different items of law that I need to take up at  
5 this time, and Your Honor may want to go ahead and let the,  
6 the jury go to lunch. I suspect these may take some, some  
7 time.

8 THE COURT: Yes, ma'am.

9 SOLICITOR JORDAN: Your Honor, I don't know exactly  
10 what all his matters of law are going to be or whether or  
11 not he's asking for a hearing outside the presence of the  
12 jury. I think State versus Lewis is clear that there's --  
13 no hearing is necessary if law enforcement conducted no  
14 pretrial out-of-court identification.

15 Mr. Welchel's correct. Justin was never shown a  
16 lineup in this case at all. He actually viewed the  
17 defendant's photograph on the evening, on the news. Don't  
18 know what time of, when it was.

19 When Officer Bryant went to speak with him on the  
20 24<sup>th</sup>, yes, sir, on the afternoon of the 24<sup>th</sup>, that is at  
21 which point in time Officer Bryant asked him if he had seen  
22 the news of the second arrest and he said yes, and asked him  
23 what he thought as to the photograph that he saw. I don't  
24 know why the jury should be released at this point.

25 THE COURT: I think he's saying that his hearing may

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1 take that long---

2 MR. WHELCHER: Yes, sir.

3 THE COURT: ---or his argument may take that long  
4 concerning the identification of his client. We're at  
5 11:30. So, he's---

6 SOLICITOR JORDAN: Yes, sir.

7 THE COURT: Do you intend to make some, a proffer of  
8 some kind?

9 MR. WHELCHER: Your Honor, I, I have several motions  
10 this---

11 THE COURT: Well, I don't doubt that. But I'm just  
12 trying to find out exactly -- how long do you think this  
13 will take, Mr. whelcher?

14 I'll ask you the \$24,000 question.

15 MR. WHELCHER: Well, I was wrong yesterday. So, I  
16 think once we start this it will run into the lunch period,  
17 and, Your Honor, that's about all I can say at this point  
18 because---

19 THE COURT: Well, I'm trying -- if I do release them  
20 I'm trying to figure out when to bring them back.

21 SOLICITOR JORDAN: And, Your Honor, I guess my, my  
22 concern is that, is he, is he, at this point, entitled to an  
23 in camera hearing cause I think, under State versus Lewis,  
24 that he's not.

25 MR. WHELCHER: Your Honor, the problem is this. That

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1 in part of my asking if the jury be released or excused at  
2 this point, but it's not entirely that. So, there's several  
3 motions that require the jury to be excused so that we can  
4 have these hearings outside of their presence.

5 SOLICITOR JORDAN: Your Honor, may we just inquire as  
6 to what all the motions are?

7 THE COURT: Yeah, let's -- give me -- tell me the  
8 motions.

9 Mr. Wheelchel, I've got to plan what to do.

10 MR. WHELCHER: I know, Your Honor.

11 THE COURT: So, you're gonna have to tell me or we're  
12 just gonna shut this down and bring the jury back.

13 Now, how's he want to do this?

14 MR. WHELCHER: I wanted to make sure there wasn't an ID  
15 before we got this. So --.

16 THE COURT: Well, there hasn't been. So now tell me  
17 what your motions are.

18 MR. WHELCHER: All right. My initial motion, Your  
19 Honor, is that this identification should be suppressed in  
20 that any and all evidence allegedly obtained as a result of  
21 my client's arrest needs to be suppressed because it was in  
22 violation of his Constitutional rights. As I told the jury  
23 before, nobody had made an identification of my client as  
24 the person who was involved in the robbery until this point  
25 that they're about to bring out.

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1        His arrest, Your Honor, in my opinion, is without  
2        probable cause, and because his arrest was, is without  
3        probable cause, everything stemming from there is to be, in  
4        my opinion, withheld from the jury and is not admissible,  
5        and I think what was -- I don't know if -- there is, in the  
6        list of potential State's documents or exhibits, a  
7        photograph of my client, the booking photograph of my  
8        client, and I think there, they're -- I'm assuming they're  
9        planning on using that at some point because that was in the  
10       paper also and essentially what happened is this, Your  
11       Honor.

12       After my client was arrested, the State did nothing as  
13       far as identification is concerned. At the time he was  
14       arrested nobody, who was a patron or employee of the Waffle  
15       House, had identified my client as either of the persons  
16       involved in the armed robbery.

17       So, my motion is that the arrest of my client is  
18       without probable cause. As a matter of fact, Your Honor,  
19       the warrant itself claims that the robbery happened at the  
20       Waffle House at such and such a time and date, and then, at  
21       the end of the warrant, the probable cause is listed, is  
22       shown as based on police investigation, and my motion is  
23       initially that that warrant does not state probable cause  
24       for the arrest of my client, and that this identification is  
25       a direct result of the photographs that were taken as a

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1 result of the arrest of my client.

2 Subsequent to his arrest, on the, later on the 21<sup>st</sup>,  
3 there was no show-up, one person show-up or anything like  
4 that, one person identification, or photographic lineup,  
5 Your Honor. What the State did---

6 THE COURT: I don't know of a case though that says  
7 that that's a prerequisite to the issuance of a warrant.

8 MR. WHELCHER: I think the warrant -- my argument, Your  
9 Honor, is that the warrant didn't have probable cause, it  
10 did not state probable cause, that they had no probable --  
11 nobody had identified him at that point. The only evidence  
12 they have at that point is the fact that he was at this  
13 Alexander Avenue residence and then left with the other  
14 fellow. Nobody, at that time, has put him in that Waffle  
15 House.

16 They arrested him. They photographed him. They let  
17 that -- well, that was taken up by the papers and the TV,  
18 and then they go to him three days later and say have you  
19 seen the news. So, they used the news.

20 THE COURT: Well, I understand what you're saying, and  
21 we'll hear you out.

22 MR. WHELCHER: So---

23 THE COURT: I'll let you -- now, how many motions you  
24 got?

25 I still haven't gotten an answer to my question and I'm

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1 asking it again.

2 MR. WHELCHER: Your Honor?

3 THE COURT: You got one motion I believe to suppress  
4 the warrant.

5 MR. WHELCHER: Yes, sir---

6 THE COURT: Is that what I've heard?

7 MR. WHELCHER: ---and everything---

8 THE COURT: What other motions do you have?

9 MR. WHELCHER: Well, Your Honor---

10 THE COURT: Let's do this without arguing them. Let's  
11 just tell me about them.

12 MR. WHELCHER: I'm sorry, Your Honor.

13 The initial motion is to suppress the warrant, and the  
14 secondary motion is to suppress the warrant and the  
15 identification that leads from the warrant, the alleged  
16 identification that leads from the warrant and property  
17 evidence that they claim was taken as a result of this  
18 illegal arrest.

19 THE COURT: Two motions?

20 MR. WHELCHER: Yes, sir.

21 THE COURT: Okay. Now, it sounds like we're gonna have  
22 to take a proffer from the officers as to the, how they got  
23 the warrant.

24 SOLICITOR JORDAN: Your Honor, I, I don't---

25 THE COURT: I think we---

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1 SOLICITOR JORDAN: I would, I would object.

2 THE COURT: Seems like we might should of done this  
3 pretrial, but---

4 SOLICITOR JORDAN: I, I agree with that aspect of it,  
5 but my, my, my issue, at this point, is we're way past the  
6 probable cause stage. He has -- he was arrested based on a  
7 judge signing a warrant for probable cause. He then had a  
8 probable cause hearing on March the 19<sup>th</sup> of 2012 where,  
9 once again, a magistrate judge said there's probable cause.  
10 He is not before this Court on a warrant. He is before this  
11 Court on 13 indictments. We are well past---

12 THE COURT: And we've had the -- we've gone past the  
13 stage where you have the right to object to the indictment.

14 SOLICITOR JORDAN: Yes, sir, under State versus Gentry  
15 we have. So, I do object to that, to anything in regards to  
16 the warrant, probable cause of that warrant. We're past  
17 that. We are at, as he pointed out to the jury, beyond a  
18 reasonable doubt on indictments.

19 THE COURT: Mr. Wheelchel.

20 MR. WHELCHEL: Your Honor, I don't believe the  
21 Constitution of this State or the United States limits my  
22 client to when he can make an objection to the introduction  
23 of this type of evidence.

24 THE COURT: Talking about the identification evidence?

25 MR. WHELCHEL: The identification and everything else



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1 that's taken from the arrest.

2 THE COURT: Well, you can state the reasons why you  
3 think the identification should fail. But to attack the  
4 warrant, I think you're a little late to attack the warrant.

5 MR. WHELCHER: No, sir.

6 THE COURT: Tell me what case says you can.

7 MR. WHELCHER: Well, Your Honor, the Constitution says  
8 I can cause---

9 THE COURT: Well, I, I -- okay. Tell me what case says  
10 you can. Let me ask that question one more time.

11 MR. WHELCHER: Your Honor, the case that I have, Your  
12 Honor, is the case of the State versus Ellefson.

13 THE COURT: Go ahead.

14 MR. WHELCHER: I'll give you the---

15 THE COURT: Just flip the thing over. There we go.

16 SOLICITOR JORDAN: Our paper.

17 MR. WHELCHER: I'm sorry, Your Honor. The case of  
18 State versus Ellefson, E-L-L-E-F-S-O-N. The cite is 224  
19 S.E.2d 666. It's a 1976 --.

20 THE COURT: That's after Gentry?

21 MR. WHELCHER: No, sir.

22 THE COURT: It's before Gentry?

23 MR. WHELCHER: Yes, sir.

24 THE COURT: Gentry's after that. That's what I meant  
25 to say.

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1 MR. WHELCHEL: Okay.

2 SOLICITOR JORDAN: I think -- can I just look over his  
3 shoulder real quick to get the cite again?

4 THE COURT: Sure.

5 SOLICITOR JORDAN: Your Honor, might I have a moment to  
6 pull that case --

7 THE COURT: Yeah, let's go ahead and pull it.

8 SOLICITOR JORDAN: -- unless Mr. Whelchel has an extra  
9 copy.

10 (Pause.)

11 THE COURT: I've read Ellefson. I've just briefly read  
12 it. It's a search and seizure case that occurred after  
13 someone was arrested, right?

14 MR. WHELCHEL: Yes, sir.

15 THE COURT: What's that got to do with the issue that I  
16 have here?

17 MR. WHELCHEL: When my client is arrested without  
18 probable cause, Your Honor, everything that stems from his  
19 arrest is tainted and should be, should not be allowed to go  
20 to the jury, which includes the pictures that were used in  
21 his photograph.

22 THE COURT: His likeness?

23 MR. WHELCHEL: Yes, sir. Everything that was obtained  
24 as a result of that illegal arrest, Your Honor, should be---

25 THE COURT: Well, it---

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1 MR. WHELCHER: ---is fruit of the poisonous tree.

2 THE COURT: Have you read State versus Drayton?

3 SOLICITOR JORDAN: I have a copy for him if he needs  
4 it.

5 Under 293 S.C. 417?

6 THE COURT: Yes, ma'am.

7 SOLICITOR JORDAN: Your Honor, I also, in that same  
8 line---

9 MR. WHELCHER: I think I may have.

10 SOLICITOR JORDAN: In that same line I also have State  
11 versus Tisdale under 338 S.C. 607.

12 MR. WHELCHER: And I think we can distinguish Tisdale,  
13 this case from Tisdale.

14 THE COURT: I think Drayton involved an in-court  
15 identification that was held to be reliable despite the fact  
16 that they observed the defendant on television after his  
17 arrest and at a preliminary hearing.

18 MR. WHELCHER: Could you say that again, Your Honor?

19 THE COURT: My understanding of Drayton --

20 MR. WHELCHER: Yes, sir.

21 THE COURT: -- is that an in-court identification is  
22 reliable despite the fact that the witness observed the  
23 defendant on television after his arrest and at a  
24 preliminary hearing.

25 MR. WHELCHER: Yes, sir, but I'm asking for the hearing

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1 before Your Honor. Your Honor has to determine---

2 THE COURT: Oh, I haven't said I've determined  
3 anything.

4 MR. WHELCHER: Okay.

5 THE COURT: I just asked you if you read the case.

6 MR. WHELCHER: Yes, sir. Yes, sir. But what I'm  
7 asking for is the hearing, at this point, to determine, for  
8 this Court to determine the reliability because under---

9 THE COURT: Oh, I'm -- we were heading there I think---

10 MR. WHELCHER: Okay.

11 THE COURT: ---when you objected to her question as to  
12 how long you got to observe the witness.

13 MR. WHELCHER: Yes, sir, I may of been a couple  
14 questions too early.

15 THE COURT: Okay.

16 MR. WHELCHER: And I apologize for that. But I, I  
17 didn't want it to get right up the edge.

18 THE COURT: Well, I think we have to address your other  
19 issue first I guess.

20 Are you still taking the position that the, in spite of  
21 what Drayton says, the fact that he may of been arrested  
22 somehow prevents them from having an in-Court  
23 identification?

24 MR. WHELCHER: When he's arrested without probable  
25 cause. I don't think there's -- they talk about probable

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1 cause---

2 THE COURT: Well, I didn't see that.

3 MR. WHELCHER: Drayton -- I'm sorry, Your Honor.

4 THE COURT: I see them talking about probable cause.

5 I'll go back and take a look at that.

6 MR. WHELCHER: Yes, sir.

7 THE COURT: I mean I didn't see the word probable cause  
8 in there. I looked for it.

9 MR. WHELCHER: Yes, sir.

10 THE COURT: I just -- it may of got away from me.

11 MR. WHELCHER: May I -- Your Honor, Drayton is an  
12 identification case.

13 THE COURT: Yes, sir.

14 MR. WHELCHER: But---

15 THE COURT: It is.

16 MR. WHELCHER: The probable cause arguments --.

17 THE COURT: Well, I'm back to your probable cause  
18 argument. I understand you have that argument as well. But  
19 we'll talk about -- I think I will release the jury for  
20 lunch and tell them to come back.

21 Bring them in.

22 (WHEREUPON, the following takes place within the  
23 presence of the jury.)

24 THE COURT: All right. Ladies and gentlemen, there's  
25 some matters I will have to take up with the attorneys at

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1 this time, and it's already ten minutes to 12:00, and I  
2 don't want you to sit back there while I'm going over these  
3 things with the attorneys and not have your lunch.

4 So, I'm gonna go ahead and release you to go for your  
5 lunch at this point in time. I'll ask that you be back in  
6 the jury room by two o'clock this afternoon. We should be  
7 in a position to resume at that time.

8 I'll give you the same instructions I have given you  
9 every time you have left the courthouse. Don't discuss the  
10 case with anyone. Don't allow anyone to discuss it with  
11 you. Don't attempt to gather any information on your own.  
12 Don't listen to, watch, or read media reports. Please  
13 report any contact that you might have from someone else  
14 concerning your participation on the jury. Be back in the  
15 jury room at two o'clock.

16 Thank you very much. You're free to go at this time.

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

19 THE COURT: Just, just for my information, Ms. Jordan,  
20 I don't believe that there was any formal identification  
21 process conducted by the State in this case, is that  
22 correct?

23 SOLICITOR JORDAN: Correct.

24 THE COURT: So, the State did not take a picture to him  
25 initially?

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by Solicitor Jordan

1 That was on television apparently when the arrest  
2 occurred?

3 SOLICITOR JORDAN: Your Honor, I would, I would defer  
4 to Justin again, but I recall that it was on television, but  
5 I would, I would ask him to make sure it wasn't the  
6 television or the print media.

7 THE COURT: Okay. But it was some form of the media?  
8 It was not State sponsored?

9 SOLICITOR JORDAN: Yes, sir.

10 THE COURT: The State did not conduct the  
11 identification process?

12 SOLICITOR JORDAN: Yes, sir, you're correct. It was  
13 the media. It was not the State.

14 THE COURT: Okay. All right. I just wanted to be sure  
15 I had that correct in my mind.

16 SOLICITOR JORDAN: All right. And just for the record,  
17 none of the people in the waffle House were shown lineups.  
18 It's not just as to Justin. It's to all.

19 THE COURT: Oh, I understand.

20 SOLICITOR JORDAN: Any witness that I may call from  
21 this group.

22 THE COURT: All right now. On the question of whether  
23 or not, at this point in time you have the right to  
24 challenge the probable cause for the warrant, can you  
25 address how Gentry might affect this situation?

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by Solicitor Jordan

1 MR. WHELCHER: I don't think Gentry affects that at  
2 all, Your Honor, cause Gentry deals with the indictment  
3 itself, and, quite frankly, my understanding---

4 THE COURT: well, it has -- what Gentry says though is  
5 that objections to matters such as the indictment, things  
6 that occurred -- and I'm gonna go read Gentry cause I think  
7 it may mention something besides indictments. But it says  
8 those objections have to be raised before the jury is sworn.

9 MR. WHELCHER: I'll go look at Gentry too, Your Honor,  
10 but I don't think it says specifically with indictments, and  
11 I don't think that my client is precluded from bringing a  
12 constitutional violation at this point because there was not  
13 the normal situation, Your Honor---

14 THE COURT: well, see, I don't know the circumstances  
15 under which he was arrested. What I do know thus far---

16 MR. WHELCHER: That's right.

17 THE COURT: ---I think from the testimony I've heard is  
18 that the, there were people present at, at the home --

19 MR. WHELCHER: Yes, sir.

20 THE COURT: -- the location, who saw him apparently  
21 dressed in the manner in which the people, the perpetrators  
22 were dressed, that they saw him leave with the, the deceased  
23 perpetrator sometime within a reasonable period of time  
24 before the incident occurred in the same vehicle, and that  
25 that, when they left, there had been some talk of some type



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by Solicitor Jordan

1 of a mission or hitting a lick is I think what I heard thus  
2 far.

3 MR. WHELCHEL: Yes, sir.

4 THE COURT: And I, I believe that information may of  
5 been available to the police before the arrest occurred. I  
6 don't know that for sure. But I don't know exactly when  
7 they interviewed those witnesses.

8 MR. WHELCHEL: Yes, sir.

9 THE COURT: Okay. So, that's what I'm hearing thus far  
10 concerning probable cause.

11 MR. WHELCHEL: I understand, Your Honor.

12 THE COURT: Okay. Now, do you want to, do you want to  
13 make a proffer on that particular issue?

14 MR. WHELCHEL: Logistically, Your Honor---

15 THE COURT: We're gonna do it right now.

16 MR. WHELCHEL: Okay. Well, that's what I needed to  
17 know.

18 THE COURT: Yes, sir, we're gonna get on with this if  
19 we can.

20 MR. WHELCHEL: Okay.

21 THE COURT: So, do you wish to make some type of a  
22 proffer on that particular issue?

23 You're making the motion.

24 MR. WHELCHEL: Yes, sir, the arrest issue?

25 THE COURT: Yes, sir, I'll go ahead and let you put up

Justin Harrison - Direct examination  
by Solicitor Jordan

1 whatever you want to put up. Now, I'm not agreeing, at this  
2 point in time, that you even have the right to put it up.

3 SOLICITOR JORDAN: And, Your Honor, we just would like  
4 to note our objection on the record.

5 THE COURT: Oh, you're reserving that fully. I'm just  
6 trying to move this along if we can.

7 MR. WHELCHEL: Yes, sir.

8 THE COURT: So, if you'd like to go ahead and make the  
9 proffer, I'll be happy to hear it, and I'll ask this  
10 witness -- are you gonna use this witness for this purpose?

11 MR. WHELCHEL: No, sir.

12 THE COURT: All right. I'm gonna ask you, Mr.  
13 Harrison, step down. I will instruct you in the time that  
14 you're not on the stand you should not discuss your  
15 testimony, either what you've already said, or what you  
16 might say, with anyone.

17 You understand that, sir?

18 WITNESS: Yes, sir.

19 THE COURT: All right. You can have a seat.

20 MR. WHELCHEL: Your Honor, I was gonna -- I may use  
21 this witness, but I was gonna start with Investigator  
22 Bryant.

23 THE COURT: All right. You may call the witness.  
24 Come forward, Investigator Bryant.

25 JASON BRYANT, being first duly

Jason Bryant - Direct examination  
by Mr. Whelchel

1 sworn, testified as follows:

2 THE COURT: Have a seat, sir. State your name once  
3 you're seated.

4 WITNESS: My name is Jason Bryant with the Spartanburg  
5 County Sheriff's office.

6 THE COURT: And your witness, Mr. Whelchel, and please,  
7 please let's confine this examination to the question of  
8 probable cause---

9 MR. WHELCHER: Yes, sir.

10 THE COURT: ---prior to arrest.

11 MR. WHELCHER: Yes, sir.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. WHELCHER:

15 Q Now, Investigator Bryant, you obtained the warrant in  
16 this case for Kenneth Craig?

17 A If I could see the actual document I appreciate it.

18 SOLICITOR JORDAN: Your Honor, could we look at the  
19 very first indictment, the 2012 indictment?

20 It may be encompassed it in.

21 THE COURT: I think it may be in there. Let me see.  
22 I'll just hand it to the officer and he can take a look at  
23 it.

24 There you are.

25 WITNESS: Thank you, sir.

Jason Bryant - Direct examination  
by Mr. Welchel

1 THE COURT: Yes, sir.

2 A I did, yes, sir.

3 Q Did you find the copies?

4 A I have a copy of it, yes, sir, attached to the  
5 indictment.

6 Q Okay. Now, at the time that you obtained the  
7 warrant -- thank you, sir.

8 Would you read this statement here for the record  
9 starting what is listed as the probable cause, probable  
10 cause is based on the following facts?

11 A That on January the 21<sup>st</sup>, 2012, in the City and  
12 County of Spartanburg, one Kenneth Jowan Craig did take  
13 money belonging from the Waffle House at 2230 Chesnee  
14 Highway, Spartanburg, South Carolina, with the intent to  
15 deprive while armed with a handgun, deadly weapon.  
16 Affiant's belief is based upon police investigation.

17 Q Okay. And when you contacted or talked to the  
18 magistrate to obtain that warrant---

19 A I'm sorry, sir. I didn't hear you.

20 Q I'm sorry.

21 You talked to a magistrate to obtain that warrant?

22 A I did.

23 Q Who -- which magistrate gave you the warrant?

24 A Judge Atkins.

25 Q Nancy Atkins?

Jason Bryant - Direct examination  
by Mr. Wheelchel

1 A That's correct.

2 Q Were you aware, at the time that Nancy Atkins gave you  
3 the warrant, that Brent Atkins, one of the victims in this  
4 case, was her son?

5 A Not at that time, no, sir.

6 SOLICITOR JORDAN: Your Honor, I'd object at this point  
7 of a conflict at this point because, as I've stated earlier,  
8 we're way past the indictment stage or the warrant stage.

9 THE COURT: I'll -- do you disagree with her---

10 MR. WHELCHER: Yes, sir, Your Honor.

11 THE COURT: ---characteristic?

12 Well, tell me how you disagree.

13 MR. WHELCHER: Excuse me?

14 THE COURT: Do you disagree with her characterization  
15 of the---

16 MR. WHELCHER: Yes, sir.

17 THE COURT: Okay. Tell me how you disagree with that.

18 MR. WHELCHER: Your Honor, probable cause has to be  
19 based on them obtaining information and going to a neutral  
20 and detached magistrate. A neutral and detached magistrate,  
21 I don't think, can be the mother of one of the victims in  
22 the case.

23 SOLICITOR JORDAN: Your Honor, at this point in time I  
24 still object to it because we're way past the warrant stage.  
25 We are at indictment and I, I kind of am trying to figure

Jason Bryant - Direct examination  
by Mr. Wheelchel

1 out what his theory is behind this other than he's arguing  
2 some fruit of the poisonous tree on probable cause on the  
3 warrant that, even if you took away Judge Atkins, who we do  
4 not even know if she knew at this point in time her son was  
5 a victim or not, you still have a separate judge in the  
6 Magistrate Court, Judge Tommy Wall, who did, at a probable  
7 cause hearing where Officer, Investigator Bryant testified,  
8 issued probable cause at that point in time.

9 I think all we're doing at this point is muddying the  
10 water. I understand the Constitution does, says that a  
11 person can not be arrested without probable cause, but we're  
12 past that. We're way past start and we're, we're -- to use  
13 his analogy of playing ball, we're heading around first and  
14 second base at this point and he wants us to go back to the  
15 dugout and start all over.

16 MR. WHELCHEL: I disagree with that, Your Honor. I  
17 won't---

18 THE COURT: I'm gonna go ahead and let him make his  
19 proffer.

20 SOLICITOR JORDAN: Yes, sir.

21 THE COURT: You've reserved your right to object to the  
22 whole procedure and the motion. I have my doubts about it  
23 myself.

24 SOLICITOR JORDAN: Thank you.

25 THE COURT: But I'm gonna allow him to present whatever

Jason Bryant - Direct examination  
by Mr. Wheelchel

1 evidence he wishes to present, and then I'll make whatever  
2 rulings I think are appropriate.

3 You may proceed.

4 MR. WHELCHEL: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MR. WHELCHEL:

7 Q Now, you talked to the magistrate and obtained the  
8 warrant --

9 A Yes, sir.

10 Q -- that you have before you, is that correct?

11 A Yes, sir.

12 Q And the warrant reflects that your probable cause is  
13 based on your investigation?

14 A Yes, sir.

15 Q Am I correct in assuming that you told the magistrate  
16 more than is based on the investigation?

17 A I explained to her the individuals that we had spoken  
18 with.

19 Q Which would be who?

20 A Miss McSwain, the individuals from the family members  
21 of Dante Williams, people at , and those  
22 people.

23 Q Okay. And of those people that you spoke to at  
24 , how many of them were at the Waffle House  
25 when this happened?

Jason Bryant - Direct examination  
by Mr. Welchel

1 A None.

2 Q Okay. So, the evidence that you had at that time was  
3 that my client had been in the company of Dante?

4 A Had planned a robbery or a mission or a lick with him,  
5 had changed his clothes---

6 Q Well---

7 A ---had -- was the only one that had left with him prior  
8 to the robbery.

9 Q Is that what you told the judge?

10 A That's correct.

11 Q Did you tell the judge about Slack's involvement?

12 A I did not know of Slack at that time or Slack, any  
13 involvement of Slack because Dante Williams had left with  
14 Kenneth Jowan Craig and only Kenneth Jowan Craig at that  
15 time according to witnesses that have already testified.

16 Q You took the statements or your people cause you're the  
17 chief investigator?

18 A I apologize, sir.

19 Q You are the chief investigator in this case?

20 A I am, I am a violent crime investigator, yes, sir.

21 Q Okay. And you or your people took the witness  
22 statements from specifically Brittany McSwain?

23 A If I remember correctly Allan Wood, at that time, was  
24 the one that had taken that. I believe I had either  
25 notarized or witnessed the statement.



Jason Bryant - Direct examination  
by Mr. Whelchel

1 Q Okay.

2 A And there was also another statement that was taken at  
3 and also I interviewed -- if I can refer to my notes  
4 please?

5 Q Sure.

6 A I did interview Adisa.

7 Q Excuse me?

8 A Adisa.

9 Q Okay. So, you took statements from Brittany?

10 A (Witness nods affirmatively.)

11 Q You interviewed Adisa whose already testified?

12 A There's also a Josh Fielder.

13 Q You take a statement -- somebody took a statement from  
14 him?

15 A A statement was taken from him.

16 Q Okay. And of those statements, none of those people  
17 were at that Waffle House at all?

18 A No, sir, but they did state that the prior engagement,  
19 involvements, plan to do a robbery and that they had changed  
20 clothes and left together.

21 Q Okay. Their planned statements to do a robbery was,  
22 according to the evidence that's been submitted at that  
23 point, was my client asking, according to the witnesses, my  
24 client asking Dante if you wanted to hit a lick and Dante  
25 saying no, I don't want to or something of that nature?

Jason Bryant - Direct examination  
by Mr. Whelchel

1 A Well, according---

2 Q Is that correct?

3 A According to statements that were taken, and I don't  
4 have those with me up here.

5 Q Do you want to step down to get them?

6 A It doesn't matter. That will be fine. If I could have  
7 that blue and black notebook in that chair please?

8 Your Honor, this was an indictment without a copy of a  
9 warrant. I didn't want to get that---

10 THE COURT: That's amended I believe.

11 A And I'll give that to you also.

12 If I could refer to my notes just one second please?

13 who do you want to start with or which statement you  
14 want to start with?

15 Q what I want to start with?

16 A Yes, sir.

17 Q Okay. Did you inform the magistrate, when you talked  
18 to the magistrate, that you had this witness -- I'm sorry.  
19 The first girl that testified here today. I can't remember.

20 A Brittany.

21 Q Brittany. Thank you.

22 Did you inform the magistrate that Brittany had given  
23 you a statement?

24 A Yes, sir.

25 Q okay. And did you show her the statement?

Jason Bryant - Direct examination  
by Mr. Welchel

- 1 A I do not recall if I did or had---
- 2 Q Or did you just summarize the statement?
- 3 A I could have. I could of either way. I do not recall.
- 4 Q You just don't remember?
- 5 A Don't remember.
- 6 Q Okay. So, if you don't remember whether you showed her
- 7 the statement or summarized the statement, do you remember
- 8 what you told her?
- 9 A Absolutely.
- 10 Q About what Brittany said?
- 11 A Absolutely.
- 12 Q Okay. And did you tell her that Brittany said that my
- 13 client asked Dante if he wanted to hit a lick?
- 14 A I, I summarized the statement to the judge. I'll be
- 15 glad to go over the statement with you.
- 16 Q I'm -- if you -- well, you said you didn't show her the
- 17 statement, is that right?
- 18 A I provided the judge information that was on the
- 19 statement.
- 20 Q Okay. That's what I'm trying to find out, detective.
- 21 You summarized what you believed to be the evidence as
- 22 you had it at that point?
- 23 A Correct.
- 24 Q Okay. When you summarized that evidence, did you tell
- 25 the judge that Dante, in response to people who have said

Jason Bryant - Direct examination  
by Mr. Welchel

1 that my client asked him if he wanted to hit a lick, said  
2 no?

3 A I do not recall.

4 Q Okay. Did you tell the judge that after Dante said --  
5 or you don't even know cause you don't remember, is that  
6 right?

7 A I do not recall making that statement to them, no.

8 Q Okay. Did you inform the judge that it was not until  
9 after Dante had a conversation and a trip with Slack that---

10 SOLICITOR JORDAN: Judge, I object at this point. I  
11 actually -- never mind. I withdraw that.

12 Q I'll start again.

13 Did you inform the magistrate that after Dante had a  
14 meeting or a trip or something of that nature with Slack  
15 that's in the Brittany Williams statement that he came back  
16 and he announced he had a mission?

17 A I did discuss---

18 Q Did you tell her that?

19 A ---the mission with the judge---

20 Q Okay.

21 A ---and that Dante and Kenneth Jowan Craig had left  
22 together.

23 Q Okay.

24 A I did.

25 Q They, they left the house after Dante says he has a

Jason Bryant - Direct examination  
by Mr. Wheelchel

1 mission?

2 A Correct.

3 Q Okay. Did any of the statements reflect -- did you  
4 discuss all of the statements or which statements did you---

5 A That would be the interview---

6 Q You only had two at that time, is that right?

7 A Two statements and one interview if I remember  
8 correctly.

9 Q And the interview was with?

10 A Adisa.

11 Q Adisa.

12 A That's correct.

13 Q Nobody knows what the mission is?

14 A Well, they were gonna do a lick or a robbery for, in  
15 celebration to Dante's birthday.

16 Q Oh, yeah. Nobody knows what the mission is that  
17 Dante's talking about when he comes back---

18 A Well, it's the---

19 Q ---and asked for a mission?

20 A It's the lick that they had discussed in regards to---

21 Q What I'm asking you is where does it say that in those  
22 statements?

23 A One second. In the interview with Adisa Norman, she  
24 stated that Dante and Midget spoke of a lick that they were  
25 going to do, wanting to go do a lick for his birthday.

Jason Bryant - Direct examination  
by Mr. Welchel

1 Q She didn't say which one said what?

2 A That was in regards to the interview of Adisa.

3 Q Who said what?

4 It's important.

5 A That was -- well, that was in regards to -- hold on one  
6 second if I can refer --.

7 Q My question, Investigator Bryant, is Dante and Kenneth  
8 Craig, is that right?

9 A Yes, sir.

10 Q Spoke of a mission according to the statement or the  
11 interview?

12 A Of a lick.

13 Q Excuse me.

14 A Yes.

15 Q Okay. Can you show me in that interview where you're  
16 talking about?

17 A She stated that Dante and Midget spoke of a lick that  
18 they were going to do, they wanted to do a lick for his  
19 birthday.

20 Q Who said anything about the lick, Dante or Midget?

21 A Both of those, both of those were engaged in a  
22 conversation.

23 Q And who said what about the lick?

24 That's what I'm trying to find out.

25 A Both of them.

Jason Bryant - Direct examination  
by Mr. Whelchel

- 1 Q Where does it say that---
- 2 A Both.
- 3 Q ---that both of them involved---
- 4 A She---
- 5 Q ---talked about the lick?
- 6 A She stated that Dante and Midget spoke of a lick that
- 7 they were gonna do wanting to do a lick for his birthday.
- 8 Q Uh-huh. (Affirmative).
- 9 A Both of them were engaged in a conversation in regards
- 10 to the lick that they wanted to do for his birthday.
- 11 Q According to her?
- 12 A That's correct.
- 13 Q Okay. And was that information related?
- 14 A It was.
- 15 Q Okay. What other information was related?
- 16 A Information that was on Brittany McSwain's statement,
- 17 and also -- if I could have just one moment?
- 18 Information that was on Joshua Derard Felder's
- 19 statement.
- 20 Q Okay. Okay. Now, when you obtained this warrant,
- 21 how---
- 22 A Sir?
- 23 Q How is it that you told the magistrate that it was my
- 24 client, Kenneth Craig, who was the one who did the armed
- 25 robbery?

Jason Bryant - Direct examination  
by Mr. Welchel

1 A In, in his statement I discussed also that I know of---

2 Q whose statement?

3 whose statement?

4 A In Felder's -- Fielder's statement.

5 Q Okay.

6 A I know a lick is a armed robbery. It was Dante's  
7 birthday. Midget and Dante both were talking about the  
8 lick. Midget was wearing the same clothes he has on now,  
9 dark jeans, black shoes, black shirt. He had taken off the  
10 jacket and didn't want to take it.

11 He and Dante left in my cousin's daddy's Crown Vic,  
12 blue in color. Midget was driving. Dante left and came  
13 back shortly and he had a gun, but I didn't see the gun.

14 After they left, Midget came back in about 30 minutes  
15 by himself. He said that he had dropped off Dante, dropped  
16 Dante off at Pineview Hills to a girl's house in a white  
17 Chrysler or something similar to that vehicle. Dante was  
18 suppose to call when he was ready to be picked up.

19 Then I went by Tonya Woodruff -- then time went by and  
20 Tonya Woodruff called inquiring about Dante or Tae and then  
21 calling back saying he was dead. We had went to sleep by  
22 then.

23 Q Did you read that to the magistrate as you just did now  
24 or did you---

25 A I, I gave that information to the magistrate. I



Jason Bryant - Direct examination  
by Mr. Wheelchel

1 summarized that information to the magistrate.

2 Q Okay. Now that the magistrate has all of that  
3 information summarized---

4 A Yes.

5 Q ---did you tell the magistrate that anybody at the  
6 Waffle House had identified my client as the, one of the  
7 persons committing the armed robbery?

8 A I told the magistrate that individuals had stated that  
9 they had planned the robbery, they had left shortly after,  
10 and that he had stated that he had went to---

11 Q He who?

12 A ---dropped -- that -- Mr. Craig. I apologize. Let  
13 me -- I apologize. I advised the magistrate that they had  
14 planned the robbery, changed clothes, came back in for the  
15 gloves, and had left together, and shortly afterwards, and  
16 that the only one that had came back was Mr. Craig.

17 Q Okay. And you didn't have a statement at that time by  
18 Mr. Craig when you went to see the magistrate?

19 A No, sir, he did not -- we did not take a statement from  
20 him.

21 Q Okay. And nobody has identified at the time you  
22 obtained the warrant?

23 A At that time Mr. Craig -- there was an interview and he  
24 advised that he had no information in regards to anything  
25 that had happened. He had dropped Dante off.

Jason Bryant - Direct examination  
by Mr. Whelchel

1 Q You had already---

2 A It was later---

3 Q You had already---

4 A ---that he had changed his story and did have knowledge  
5 of it.

6 Q I'm talking about what you told the magistrate.

7 A Oh, no, sir, at that time no statement was taken from  
8 him.

9 Q Okay. And did you already have the warrant when you  
10 took my client from Alexander Avenue?

11 A No, sir.

12 Q You -- somebody got it in the process?

13 A That's correct.

14 Q Okay.

15 A I did --

16 Q So---

17 A -- at that time.

18 Q Were you the one who transported him?

19 A Myself and Investigator Williams.

20 Q Okay. And did you attempt to interview him and then  
21 get the warrant or how did that work?

22 A We went to the Sheriff's Office where I did attempt to  
23 interview him.

24 Q Okay. And, again, once you had told all that you  
25 summarized here earlier in your testimony to the magistrate,

Jason Bryant - Direct examination  
by Mr. Wheelchel

1 did the magistrate inquire of you of his, has there been  
2 any, has there been any identification?

3 A well, she had knew of the information of the prior  
4 happenings in regards to the incident and coming back.

5 Q She knew of what information?

6 A That they had discussed planning the robbery for his  
7 birthday.

8 Q I understand that.

9 A That they had left together.

10 Q I understand.

11 A That they had changed clothes, they had -- I'm dressed  
12 in all black.

13 Q I understand that.

14 A I'm ready. Life's good.

15 Q Okay. Had any information regarding the identity of my  
16 client as the person, one of the persons involved in the  
17 armed robbery been given to the magistrate at that point, an  
18 actual identification?

19 A The information was provided to the magistrate in  
20 regards to the preparation and the planning of the robbery.

21 Q I'm---

22 THE COURT: Mr. Wheelchel, I think the question's been  
23 asked and answered.

24 MR. WHEELCHEL: All right.

25 So, the answer would be no---

Jason Bryant - Direct examination  
by Mr. Whelchel

1 A The answer would be the information---

2 Q Oh, okay.

3 A ----provided to the magistrate---

4 THE COURT: As I said, it's been asked and answered,  
5 Mr. Whelchel.

6 MR. WHELCHER: That's all I would have, Your Honor.

7 THE COURT: All right. Do you wish to cross-examine  
8 the witness?

9 SOLICITOR JORDAN: Your Honor, not waiving my objection  
10 to all of this I do.

11 THE COURT: Okay. Your objection is preserved. You  
12 may cross-examine him.

13 CROSS-EXAMINATION

14 BY SOLICITOR JORDAN:

15 Q Did you, did you, did you or other officers on scene  
16 that night at the Waffle House obtain some general  
17 information as to the race and sex of the defendant?

18 A That's correct.

19 Q Did you also view a video that captured the entire  
20 crime on it?

21 A We did.

22 Q And on that video what did you see?

23 A Observed two individuals going to the Waffle House.  
24 One with a pistol, one with a bag. We did observe on the  
25 video the fatal gunshot of Dante Williams, and the other

Jason Bryant - Cross-examination  
by Solicitor Jordan

1 individual in the altercation with Mr. Harrison and him  
2 fleeing the scene.

3 Q Okay. Were you able to identify them by race and  
4 gender on the video?

5 A You could, you could observe that they were black  
6 males.

7 Q Okay. And you also used that information you gathered  
8 from the multiple people inside?

9 A That's correct.

10 Q Okay. And you presented to that, to the judge all this  
11 information, including the statements you received from Josh  
12 Felder, Brittany McSwain, and the oral statements you  
13 received from Adisa Norman?

14 A The, the information from Brittany, from Josh, and the  
15 interview of Adisa.

16 Q Okay. And a probable cause warrant was issued?

17 A That's correct.

18 Q Okay. Do you recall the following -- well, I guess it  
19 was two months later.

20 Do you recall attending a probable cause hearing here  
21 at the Spartanburg County Courthouse---

22 A I did.

23 Q ---in this case?

24 Who was the defense attorney at that point?

25 A It was Mr. Whelchel.

Jason Bryant - Cross-examination  
by Solicitor Jordan

1 Q Okay. Do you recall who the judge was?

2 A Judge Wall.

3 Q Okay. Was -- were you subject to cross-examination at  
4 that point?

5 A I was.

6 Q Okay. Was probable cause granted?

7 A It was.

8 Q Okay. Just to clarify something, when did you obtain  
9 the warrant?

10 Did you obtain it before or after you talked to the  
11 defendant at the Spartanburg County or the Sheriff's Office?

12 Did you obtain the warrant before you spoke to him or  
13 after you spoke to him?

14 A After.

15 Q Okay. And at that point he denied everything?

16 A That's correct.

17 Q Which is inconsistent with what he told you later?

18 A That's correct.

19 SOLICITOR JORDAN: Okay. Your Honor, we have nothing  
20 other than just plain argument at this point.

21 THE COURT: Okay. Wish to ask any other questions?

22 MR. WHELCHER: No, Your Honor.

23 THE COURT: You may step down.

24 Wish to call any other witnesses as far as the proffer  
25 is concerned?

1 MR. WHELCHER: No, sir.

2 THE COURT: All right. You may step down. Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Mr. Welchel.

5 MR. WHELCHER: Your Honor, it is still the defense  
6 position that once -- that when a warrant is issued it must,  
7 it must be issued with probable cause that relates back to  
8 the Fourth Amendment of the United States Constitution and  
9 our Constitution for this state, and that, in this instance,  
10 this warrant that he's, he obtained does not, was issued, in  
11 my opinion, without probable cause. There is insufficient  
12 evidence to show that the, a crime was committed and that  
13 person committed the crime.

14 There might be some speculation and some stuff, some  
15 evidence about or some statements they obtained about who  
16 was with who and everything like that prior to the robbery,  
17 and some people after the robbery.

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

19 MR. WHELCHER: But my understanding of probable cause  
20 is simply this. There has to be evidence to show that a  
21 crime was committed, and that that person committed the  
22 crime, and I don't think the evidence---

23 THE COURT: Well, the standard of proof though for  
24 probable cause is much lower than proof in this Court.

25 MR. WHELCHER: Oh, I understand that, Your Honor. I'm,

1 I'm not saying that. I'm saying that, in our opinion, in my  
2 opinion, that that standard was not met, still has not been  
3 met, and my client---

4 THE COURT: So, so what effect does that have on this  
5 whole matter?

6 I mean that -- wait -- let me be sure I'm clarifying  
7 your position and correctly. I want to be sure I'm deciding  
8 what you're asking me to decide.

9 MR. WHELCHER: Yes, sir.

10 THE COURT: My understanding is this all stems from  
11 your challenge of the identification of your client as a  
12 result of his having been arrested and apparently the  
13 publication in the media of a booking photo.

14 MR. WHELCHER: Yes, Your Honor. I don't know what was  
15 published cause I haven't been given---

16 THE COURT: Well, I'm talking about what was in the  
17 media. Not what you've been given. That's available to you  
18 I suppose.

19 MR. WHELCHER: Yes, sir, Your Honor. The problem is  
20 it's incumbent upon the State to prove that the---

21 THE COURT: Well, they didn't get there. You stopped  
22 them when they asked about whether or not, how long they had  
23 looked at this gentleman. But I understand that. But  
24 I'm -- let's, let's get -- again, I want to get to the  
25 issues you want me to decide.



1 MR. WHELCHEL: I understand, Your Honor.

2 THE COURT: Let's try to stay out of the argument.

3 MR. WHELCHEL: My problem is they kind of dovetail.

4 THE COURT: Well, let's get to the issues you want me  
5 to decide. My understanding is that you are challenging any  
6 identification by Mr. Harrison in particular---

7 MR. WHELCHEL: Yes, sir.

8 THE COURT: ---at this point in time. If that  
9 identification was based upon a booking photo published in  
10 the media as a result of what you claim to be an illegal  
11 arrest --?

12 MR. WHELCHEL: Exactly, Your Honor.

13 THE COURT: All right. And is that all you're asking  
14 me to decide?

15 And, so, the reason we're going through the probable  
16 cause hearing is because you're trying to establish that it  
17 was an illegal arrest to begin with.

18 MR. WHELCHEL: That's first, Your Honor.

19 THE COURT: All right. Well, tell me the whole thing.

20 MR. WHELCHEL: Your Honor, if Your Honor---

21 THE COURT: This is not hide and seek.

22 MR. WHELCHEL: I know.

23 THE COURT: I need to know what you're wanting me to  
24 decide.

25 MR. WHELCHEL: Your Honor, if Your Honor decides or

1 rules that there was probable cause and that Your Honor is  
2 going to allow this identification to go forward, it is  
3 still my position that Your Honor has to have, at this  
4 point, an in camera hearing to determine that the  
5 identification is reliable, that---

6 THE COURT: well, that -- you're getting -- you know,  
7 we didn't get to that point. You were challenging any  
8 identification is what I understood---

9 MR. WHELCHER: Yes, sir.

10 THE COURT: ---if it was based upon the photos that was  
11 taken -- you started talking about fruit of the poisonous  
12 tree. I heard you make that argument.

13 MR. WHELCHER: Yes, sir.

14 THE COURT: And I assume what you were arguing was that  
15 because the booking photo was obtained as a result of an  
16 illegal arrest that the State should not be allowed to use  
17 that identification because it was fruit of the poisonous  
18 tree.

19 Did I hear that correctly?

20 MR. WHELCHER: Yes, sir.

21 THE COURT: So, is that where we are?

22 MR. WHELCHER: At this point, yes, sir.

23 THE COURT: well, tell me where -- is there another  
24 motion?

25 MR. WHELCHER: well, I don't---

1 THE COURT: You keep hedging on me, Mr. whelchel.

2 MR. WHELCHER: I'm not trying---

3 THE COURT: I am trying to get to the point as to what  
4 you want me to decide.

5 MR. WHELCHER: That's what I want you to decide at this  
6 point, Your Honor.

7 THE COURT: All right. Now, one thing I want to ask  
8 you, Mr. whelchel.

9 MR. WHELCHER: Yes, sir.

10 THE COURT: The booking photo was publish in the media,  
11 and I asked if the State made any efforts to hold any type  
12 of formal identification process. I was told by the State  
13 that there was none.

14 Do you agree with that statement?

15 MR. WHELCHER: I don't know, Your Honor. See that's,  
16 that's---

17 THE COURT: well, if you -- you have the right to offer  
18 proof at this point in time if the State participated in a  
19 formal identification process. You know, a show-up lineup,  
20 a photo lineup, a stand-up in the row lineup, any type of  
21 identification process that was sponsored by the State, that  
22 the State did---

23 MR. WHELCHER: Yes, sir.

24 THE COURT: ---State action, and that's -- there's a  
25 difference you know.

1 MR. WHELCHER: Oh, yeah, I understand.

2 THE COURT: If people just identify people when they  
3 see them on the street, that's not -- a different  
4 identification from when the State sponsors an  
5 identification, and the question of suggestiveness for the  
6 State sponsored identification are not necessarily present  
7 if I happen to walk down the street and see a gentleman I  
8 observed committing a crime earlier in the week and say  
9 that's the guy who did it, and I call a policeman and say  
10 that's the guy who did it. There's a difference in that  
11 identification---

12 MR. WHELCHER: Oh, I---

13 THE COURT: ---that I have to analyze.

14 MR. WHELCHER: Yes, sir.

15 THE COURT: So, I'm trying to determine if you're  
16 claiming that the State conducted any type of formal State  
17 identification process here.

18 MR. WHELCHER: Yes, sir.

19 THE COURT: Okay. What did they do?

20 MR. WHELCHER: The State advocated their  
21 responsibility, in my opinion in this case, to do that  
22 lineup or to conduct that lineup in a method that should be  
23 done in accord with Neal v. Biggers.

24 Here's what the State did, Your Honor. The State  
25 obtained the arrest warrant for my client. Then they

1 contacted what's going to be their main witness for  
2 identification and in this case, Your Honor. Three days  
3 after they contacted him, they contacted him and asked him  
4 did you see the news --

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

6 MR. WHELCHER: -- and then he told them what they're  
7 doing---

8 THE COURT: He told them that he had?

9 MR. WHELCHER: Yes, sir.

10 THE COURT: Okay.

11 MR. WHELCHER: And I think he'll identify my client,  
12 Your Honor. Subsequently, or as soon as they asked him did  
13 you see the news, then they get into the question of is that  
14 the fellow and he said yes. They're using the -- they're  
15 using the press, Your Honor, to establish their  
16 identification, and I think that use of the press to  
17 establish their identification three days after my client's  
18 arrest is improper and that's what I'm objecting to.

19 THE COURT: Okay.

20 MR. WHELCHER: Now, I understand the Tisdale situation  
21 --

22 THE COURT: Yes, sir.

23 MR. WHELCHER: -- the rulings in Tisdale.

24 THE COURT: Yes, sir.

25 MR. WHELCHER: I think this situation can be -- I think

1 it's a different situation than in Tisdale and if you want  
2 me to argue Tisdale now --?

3 THE COURT: Now would be the time.

4 MR. WHELCHER: Your Honor, Tisdale involved robbery of,  
5 if I remember correctly, a First Citizens Bank.

6 Beg the Court's indulgence, Your Honor.

7 (Pause.)

8 MR. WHELCHER: Tisdale involved the arrest of  
9 Mr. Tisdale after a bank robbery, Your Honor. The day after  
10 the bank robbery, three witnesses from the bank, who have  
11 had sufficient time, according to the Court, to make their  
12 identification of him called the State or called the  
13 investigators involved and told them that the fellow that  
14 was in the newspaper and that they had witnessed or seen in  
15 the newspaper was the fellow that committed the robbery.  
16 That was the very day after the robbery, Your Honor.

17 A short amount of time in time span between the robbery  
18 itself and the identification, and there is no question but  
19 that in this situation, in that situation with Tisdale that  
20 court ruling was proper.

21 what differentiates this case, in my opinion, is this.  
22 This identification was not conducted until three days after  
23 my client was arrested, and my client had been on the TV and  
24 in the newspapers almost constantly for that amount of time.  
25 They advocated, in my opinion, their responsibility to

1 perform an identification properly, and just let the press  
2 do it for them.

3 THE COURT: Are you telling me the State controls the  
4 press' publication of that picture?

5 MR. WHELCHER: No, sir, the State---

6 THE COURT: If there's some evidence, if there's some  
7 evidence of the, that I'd like to hear that.

8 MR. WHELCHER: No, sir, but they know and we all know  
9 that the State takes the, excuse me, the press takes the  
10 photographs from a booking report and puts them in the paper  
11 on a routine basis, and, in this particular case, because of  
12 this, the notoriety of this case, Your Honor, there was no  
13 question but that it was going to be on television and in  
14 the paper, and the key fact is this, Your Honor.

15 When the State, through the Investigator Bryant,  
16 contacts the witness, they contact him and begin, according  
17 to the, what testimony I've heard, they begin, and it's in  
18 the investigative notes, they begin their conversation with  
19 have you seen the news of the shooter or the second person's  
20 arrest. They use the news to do the identification.

21 THE COURT: Again, is there any evidence of some prior  
22 arrangement or some effort by the press to be sure those  
23 pictures were published?

24 MR. WHELCHER: Oh, no, sir.

25 THE COURT: There's no evidence of that?

1 MR. WHELCHEL: No, I'm not---

2 THE COURT: So, as far as we know, those -- the reports  
3 that you're talking about were done by the media in the  
4 general course of their business?

5 That's what they do?

6 MR. WHELCHEL: Yes, sir.

7 THE COURT: Okay.

8 MR. WHELCHEL: My -- yes, sir. But my argument is  
9 that, instead of doing what they should have done and could  
10 have done and are required to do, in my opinion.

11 THE COURT: Now, is there a -- I'm not sure about --  
12 you say there's a requirement that the State go through  
13 some---

14 MR. WHELCHEL: Your Honor?

15 THE COURT: ---formal identification process?

16 MR. WHELCHEL: Well, there's a requirement that they,  
17 that they produce the evidence for them to go forward with  
18 and---

19 THE COURT: Well, it may be identification. It may not  
20 be. I don't know what they're gonna present.

21 MR. WHELCHEL: Yes, sir. But my, my -- what I'm  
22 arguing to the Court is that the facts in this case are  
23 different from the facts in Tisdale. If you read Tisdale  
24 and---

25 THE COURT: I'm reading it right now.



1 MR. WHELCHEL: Yes, sir.

2 THE COURT: I've got it in front of me.

3 MR. WHELCHEL: It will also show you, tell you that  
4 they were in the process, at that time that they received  
5 the call, of developing a photo lineup or a show-up. I  
6 forget which, Your Honor. But I think it was a photo  
7 lineup. There was no effort to do one of those in this  
8 case. They just waited until the people saw it on the news.

9 THE COURT: All right. I'll hear from the State on  
10 that argument.

11 SOLICITOR JORDAN: Your Honor, we believe that both of  
12 this -- that this issue, as far as identification in the  
13 media, has been thoroughly covered by our courts in Tisdale  
14 and in Drayton. The press has the First Amendment right for  
15 freedom of the press, freedom of speech, all of that.

16 They -- you know, what they publish is what they  
17 publish. One of the, one of the reasons or we don't want  
18 suggestive lineups. Investigator Bryant did his job by  
19 asking have you seen any media coverage on this before he  
20 gives him a lineup that would be thrown out probably in this  
21 Court because, you know, he had already seen one picture at  
22 that point.

23 Even if you look at, I believe it's Drayton, it talks  
24 or Drayton or Tisdale has not only media identification, but  
25 also has the defendant arriving or being, being identified

1 by the witness at a preliminary hearing in this case. I  
2 just -- I don't understand the argument as to attacking  
3 probable cause at this point. We're way past that, and I  
4 believe that Drayton and Tisdale completely cover the issue  
5 in this case as to the identification by Justin Harrison of  
6 the defendant. It's, it's---

7 THE COURT: All right.

8 SOLICITOR JORDAN: Just hitting the probable cause  
9 issue, it was a -- I've listened to this Court many times  
10 talk to juries about direct and circumstantial evidence.  
11 Circumstantial evidence was presented to the judge who  
12 issued a warrant based on probable cause. Circumstantial  
13 evidence was presented to yet another judge who issued  
14 probable cause.

15 One indictment initially went to the Grand Jury  
16 charging him with a, with a, the armed robbery of the Waffle  
17 House with the and/or language. I, after reading another  
18 case that came down in May, decided that, because of the  
19 duplicitous indictment issue, to send them back to the Grand  
20 Jury to fix that so that if, if the State prevails at trial  
21 we don't have to re-litigate that based on, this based on  
22 that issue. I don't, I don't understand where he's -- I  
23 don't understand his arguments, and I don't think that  
24 they're correct and proper.

25 THE COURT: All right. Mr. Welchel, going back again,

1 the basis upon which you're attacking the warrant is the  
2 lack of information presented to the magistrate?

3 MR. WHELCHER: Yes, sir, Your Honor.

4 THE COURT: And that did not, was not sufficient to  
5 establish probable cause and that's what you want me---

6 MR. WHELCHER: Yes, sir.

7 THE COURT: That's what you want me to decide?

8 MR. WHELCHER: Exactly, Your Honor.

9 THE COURT: All right. I've decided that that was  
10 sufficient and probable cause did exist.

11 MR. WHELCHER: I understand that. I want the Court to  
12 know I'm not doing this to belabor a point. But there are  
13 issues that have to be brought up after this trial.

14 THE COURT: Oh, I understand.

15 MR. WHELCHER: Yes, sir.

16 THE COURT: I'm not telling you not to bring them up.  
17 I want to be sure I'm deciding what you want me to decide.

18 MR. WHELCHER: Yes, sir.

19 THE COURT: Okay. And, so, I'm trying to be sure that  
20 I'm addressing the issues you've asked me to address.

21 MR. WHELCHER: Yes, sir.

22 THE COURT: And my understanding is that you're  
23 challenging the warrant that was originally issued for his  
24 arrest, arrest based on a failure of probable cause that was  
25 presented to a magistrate?

1 MR. WHELCHER: Exactly, Your Honor.

2 THE COURT: And that's it?

3 MR. WHELCHER: Yes, sir.

4 THE COURT: And I've decided there was sufficient  
5 evidence---

6 MR. WHELCHER: Yes, sir.

7 THE COURT: ---to justify a warrant to be -- probable  
8 cause did exist.

9 MR. WHELCHER: Okay.

10 THE COURT: All right. Now, the next issue that I  
11 think you want me to decide then is whether or not the  
12 identification by Mr. Harrison, in particular, should be  
13 excluded based on the fact that police, through their  
14 inaction---

15 MR. WHELCHER: Exactly.

16 THE COURT: ---provided a suggestive identification?

17 MR. WHELCHER: Exactly.

18 THE COURT: And now we haven't gotten to the  
19 reliability of his investigation because we didn't get that  
20 far. So, I'm not ruling on that yet.

21 okay?

22 MR. WHELCHER: Yes, sir.

23 THE COURT: But I, I am going to rule that, based on  
24 Drayton and Tisdale, that the identification should not be  
25 excluded for the reasons that you asked me to exclude it.

1 MR. WHELCHEL: I understand, Your Honor.

2 THE COURT: Okay. So, I will allow the identification  
3 to go forward should it be determined that the  
4 identification was reliable.

5 MR. WHELCHEL: Yes, sir.

6 THE COURT: Now, does the State wish to put  
7 Mr. Harrison back on the stand and let's deal with  
8 reliability before we bring the jury back in?

9 SOLICITOR JORDAN: Your Honor, we still, we still  
10 object just based upon State versus Lewis where we don't  
11 believe that there's a need for an out-of-court hearing to  
12 determine the reliability because Neal versus Biggers is to  
13 be used when there's police lineups, show-ups, whatever it  
14 may be, in there.

15 THE COURT: Well, but Mr. -- you have to understand  
16 that, that Mr. Whelchel's making the argument that somehow  
17 there was some conspiracy on the part of the State to not  
18 conduct an identification process and allow that process to  
19 occur in the press although he presented no evidence to  
20 indicate that the State somehow sponsored that activity.

21 SOLICITOR JORDAN: And, therefore, there should be no  
22 probable cause on that argument because there, there has  
23 been no evidence to that.

24 THE COURT: So -- no, I'll let you put him on the  
25 stand. If he makes the objection, we'll deal with it at the

1 time. I got a feeling he'll make the objection.

2 SOLICITOR JORDAN: Yes, sir.

3 THE COURT: All right. We're in recess until two  
4 o'clock.

5 Thank you very much.

6 SOLICITOR JORDAN: Your Honor, if I can just remind Mr.  
7 Harrison that he can not talk to anybody.

8 THE COURT: Mr. Harrison has been reminded --

9 SOLICITOR JORDAN: Yes, sir.

10 THE COURT: -- until he retakes the stand or till he  
11 finishes his testimony he should not discuss that testimony  
12 with anyone.

13 WITNESS: Yes, sir.

14 THE COURT: Thank you.

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

16 THE COURT: State ready to proceed?

17 SOLICITOR JORDAN: Yes, sir.

18 THE COURT: Defense ready?

19 MR. WHELCHEL: Yes, sir.

20 THE COURT: All right. Mr. Harrison, you need to  
21 resume the stand.

22 Bring the jury in.

23 (WHEREUPON, the following takes place within the  
24 presence of the jury.)

25 THE COURT: All right. The record will reflect the

1 jury has returned to the courtroom.

2 If anyone had any difficulty in complying with my  
3 instructions during your absence, please stand.

4 (No response.)

5 THE COURT: It appears that everyone's been able to  
6 comply with my instructions.

7 During your absence I have denied two motions made by  
8 the defense.

9 You may proceed at this time, Ms. Jordan.

10 SOLICITOR JORDAN: Thank you, Your Honor.

11 If I may have one moment?

12 Found it. I was just looking for something I was gonna  
13 seek to introduce.

14 THE COURT: Okay. All right. You may proceed.

15 SOLICITOR JORDAN: Thank you.

16 THE COURT: Yes, ma'am.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR JORDAN:

19 Q Justin, I believe we were at the point where we were  
20 talking about your view of the second robber.

21 A How long it lasted, yes, ma'am.

22 Q Okay. Could you tell the jury how long you had an  
23 opportunity to view the second robber without his mask on?

24 A In that situation it seems like an eternity, but I  
25 believe the video shows it was probably around 30 to 45

Justin Harrison - Direct examination  
by Solicitor Jordan

1 seconds approximately.

2 Q Okay. And how close in contact were you with the  
3 defendant, with the second robber?

4 A I would say a couple of feet.

5 Q Okay. Justin, have you had an occasion to watch a  
6 video of this armed robbery up in my office?

7 A Yes.

8 Q Okay. Was that a fair and accurate depiction of the,  
9 of what the events that happened at Waffle House that day?

10 A Yes, besides the part that it didn't show him in the  
11 corner.

12 SOLICITOR JORDAN: Okay. Your Honor, at this point the  
13 State moves to -- I'm sorry.

14 (WHEREUPON, a DVD was marked as State's Exhibit No. 8  
15 for identification purposes only at this time.)

16 SOLICITOR JORDAN: Your Honor, at this point the  
17 State's moves to admit State's Exhibit No. 8 and publish to  
18 the jury.

19 THE COURT: Any objection?

20 MR. WHELCHER: I don't know why she didn't so earlier,  
21 Your Honor, but, no, I have no objection.

22 THE COURT: All right. It will be admitted as marked.

23 (WHEREUPON, State's Exhibit No. 8 was received into  
24 evidence at this time.)

25 THE COURT: You may publish it.



Justin Harrison - Direct examination  
by Solicitor Jordan

1       When you hear publish it, that means they can show it  
2 to you. That's what she's saying.

3       You may publish the, the video.

4       SOLICITOR JORDAN: Thank you.

5       (WHEREUPON, State's Exhibit No. 8 was published for the  
6 jury at this time.)

7 Q     Justin, did you speak with law enforcement in the, I  
8 guess at this point we'd call it early morning hours of the  
9 21<sup>st</sup>?

10 A    I did.

11 Q    Did you provide a written statement to law enforcement?

12 A    I did.

13 Q    Justin, I'm gonna take you to two or three days ahead  
14 at this point and ask you if, at any point, you, you saw any  
15 information regarding the arrest of this defendant?

16 A    I did.

17 Q    Where did you see that?

18 A    On the news.

19 Q    Okay.

20 A    I was at my grandma's house.

21 Q    Is that -- that's where you live?

22 A    Yes.

23 Q    Okay. What did you see on the news?

24 A    I saw his picture and that they had caught the second  
25 suspect.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 Q Okay. Justin, when you saw the picture on the screen,  
2 what was your immediate thought?

3 A That's him.

4 Q Okay. How sure were you of that?

5 A A hundred percent. No doubt.

6 Q Justin, did you also attend a bond hearing or a hearing  
7 in this case at a, at, on February the 3<sup>rd</sup> of 2012?

8 A I don't know of the date, but I did go to a bond  
9 hearing.

10 Q Okay. Was that in -- where was that located?

11 A I believe it was this room.

12 Q Did you have a chance, at that point, to view the  
13 defendant?

14 A Yes.

15 Q Okay. What was your reaction at the point that you saw  
16 the defendant that day?

17 A That's still him. His hair was a little longer.

18 Q Okay. Justin, can you point out to the Court and to  
19 the jury the---

20 MR. WHELCHER: Objection, Your Honor. Lack of  
21 foundation at this point. The only thing that's been  
22 testified to is 30 to 45 seconds. There's been no testimony  
23 by this defendant of type or weight or anything of that  
24 nature involving my client or whoever it was at this  
25 particular time, Your Honor.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 THE COURT: I'd ask you lay a little better foundation.

2 SOLICITOR JORDAN: Thank you, Your Honor.

3 Q Justin, could you tell the jury what you recall from  
4 seeing the defendant that night in Waffle House, the second  
5 robber?

6 A He was short, small build, and the only way to describe  
7 his eyes was like a sad puppy.

8 Q Okay. What was his complexion?

9 A Very dark.

10 Q Okay.

11 A Had a very thick mustache.

12 Q Did he have any other facial hair?

13 A I didn't look.

14 SOLICITOR JORDAN: Okay. Your Honor, at this point I'd  
15 move to have the witness identify the defendant.

16 MR. WHELCHEL: May I be allowed to cross at this time  
17 on that, Your Honor, or---

18 THE COURT: Yes, sir, I'll allow you to cross at this  
19 time on that.

20 MR. WHELCHEL: Thank you, sir.

21 CROSS-EXAMINATION

22 BY MR. WHELCHEL:

23 Q Sir, is this -- do you have a copy of your statement  
24 that the solicitor made reference to?

25 A I do not.

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 Q I want you to look at that, sir. Take your time.

2 A (Witness complies.)

3 Q Okay. Now, when you gave that statement to the police,  
4 it was on the 21<sup>st</sup> shortly after the robbery occurred, is  
5 that correct?

6 A Yes, sir.

7 Q Okay. And presumably your memory would of been fresher  
8 then than it is now---

9 A Yes, sir.

10 Q ---is that right?

11 Okay. You did not tell the police, at that time, that  
12 you had 30 to 45 seconds to view the second robber's face,  
13 is that correct?

14 A I can't recall.

15 Q Well, is it in the statement?

16 A No.

17 Q Okay. There is no height or weight in that statement  
18 either, is there?

19 A No, sir.

20 Q Okay. There are no sad eyes -- is that what you said,  
21 sir?

22 A Sad puppy dog eyes.

23 Q Oh, there's no reference to sad puppy dogs eyes in that  
24 statement, is there?

25 A No.

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 Q Okay. You don't make any reference to the lighting  
2 conditions in the Waffle House at the time, do you?

3 You can review the statement.

4 A No point.

5 Q Okay. Am I correct in, and I want you to correct me if  
6 I'm wrong, did you say earlier in your testimony that they  
7 were, the robbers dressed in all black?

8 A Yes.

9 Q Okay. Now, correct me if I'm wrong, when these two  
10 individuals come into the Waffle House, one of them has a  
11 gun and one of them does not?

12 A Yes.

13 Q Okay. The one who had the gun is the one that ended up  
14 getting shot---

15 A Yes.

16 Q ---very soon thereafter, is that right?

17 A Yes, sir.

18 Q And at no time during---

19 SOLICITOR JORDAN: Your Honor, I object at this point.

20 Is he going to the identification or is he crossing the  
21 witness?

22 MR. WHELCHER: Still going to the identification, Your  
23 Honor.

24 THE COURT: well, let's, let's get to it.

25 Q The one that did not get shot, did not have a gun, and

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 that's the one you say that you saw for 30 to 45 seconds---

2 A Yes.

3 Q ---is that right?

4 Okay. Did the individual -- both of them had masks on?

5 A I assume. But at the time I saw the second suspect I  
6 assume he removed it.

7 Q Excuse me?

8 A By the time I seen the second suspect I assumed he had  
9 removed it. By the time I initiated contact he has nothing  
10 to block his face.

11 Q Okay. For all of the time that they're in -- I want to  
12 make sure I'm not confused.

13 Okay. For all of the time that these two individuals  
14 are in the Waffle House, the fellow with the gun did have a  
15 mask on?

16 A Yes.

17 Q You don't recall if the fellow without the gun had a  
18 mask on or not, is that correct?

19 A Correct.

20 Q Okay. But you didn't shift your focus to him until  
21 after you had shot the fellow with the mask and with the  
22 gun?

23 A Correct.

24 Q Okay. And on that video that we just saw, the fellow  
25 that you say did not have a mask and did not have a gun was

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 back in the corner of the waffle House?

2 A Yes, sir.

3 Q Showing you State's Exhibit No. 7.

4 A That's it.

5 Q And this would be the corner that you say the second  
6 fellow was in?

7 A Yes, sir.

8 Q And this is State's Exhibit No. 4. Let me get it on  
9 the record what it is, sir. This is the State's Exhibit No.  
10 4, and you were seated right here where it says Justin  
11 Harrison with that arrow pointing to it?

12 A Yes, sir.

13 Q And over here -- could you step down please, sir?

14 A (Witness comes down from the stand.)

15 Q What I want you to do is get in the middle so that this  
16 is, so the jury can see, all the jury can see this. I'll  
17 hold it up.

18 A That's the corner.

19 Q Right here's the corner --

20 A Yes, sir.

21 Q -- where you say the second suspect was?

22 A Yes, sir.

23 Q But your attention was focused on the fellow who was  
24 standing right here approximately at the end and had the  
25 gun, is that right?

Justin Harrison - Cross-examination  
by Mr. Wheelchel

- 1 A It depends on what time frame.
- 2 Q Well, until you shot him, your attention was on the  
3 fellow with the gun, is that right?
- 4 A Yes.
- 5 Q And not until then did you shift what attention you  
6 had?
- 7 A Yes, sir.
- 8 Q Okay. Go ahead and have a seat.
- 9 A (Witness returns to the stand.)
- 10 Q And you've already said that this is a fair and  
11 accurate representation of how they looked that night?
- 12 A Yes, sir.
- 13 Q You're 5'10"?
- 14 A Yes, sir.
- 15 Q Okay. Now, when you saw this photograph or when you  
16 saw the news -- was it newspaper---
- 17 A It was a---
- 18 Q ---or---
- 19 A News broadcast.
- 20 Q Excuse me?
- 21 A It was on TV.
- 22 Q TV. That's, that's what I needed to know.  
23 So, you saw this broadcast on TV?
- 24 A Yes, sir.
- 25 Q Okay. And when you saw the broadcast on TV, that



Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 person didn't have a mask on?

2 A No, sir.

3 Q And that person was only one person?

4 A Yes, sir.

5 Q There weren't other people like---

6 A No, sir.

7 Q ---an array of photographs or anything like that?

8 A No, sir.

9 Q Okay.

10 SOLICITOR JORDAN: Objection, Your Honor. It's not a  
11 police lineup he saw. It's in the news.

12 MR. WHELCHER: I believe I'm on cross, Your Honor.

13 THE COURT: You are on cross and I didn't take that as  
14 an objection.

15 You may proceed.

16 MR. WHELCHER: Thank you, Your Honor.

17 Q So, what you saw three days after the accident was a TV  
18 report that this is the fellow that's been arrested, am I  
19 correct?

20 A I'm not sure it was three days.

21 Q Well, when the officer called you, do you recall that?

22 A Yes, and I plainly told him that -- he asked me if I  
23 could---

24 Q Wait a minute. Let me ask you, let me ask you a  
25 question.

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 Do you recall---

2 THE COURT: I'm gonna let him finish any answer that he  
3 has for your questions.

4 You may complete your answer.

5 THE WITNESS: Thank you.

6 The police called me and asked me if I could identify  
7 the second suspect from a police lineup and I said there was  
8 no use, that's the guy, y'all caught him.

9 Q They called you and asked you if you could identify the  
10 second suspect from a police lineup?

11 A On a police lineup.

12 Q When did they do that?

13 A It was a couple days.

14 Q A couple of days?

15 A Yeah.

16 Q Do you know exactly when it was?

17 A No.

18 Q Okay. Okay. When you saw this on the news, as I was  
19 asking earlier, there was not a collection of six  
20 photographs?

21 A No.

22 Q There was just my client?

23 A Yes.

24 Q Okay. And the news report was that this is the person  
25 that was arrested, is that correct?

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 A Yes.

2 Q Okay. And prior to the two or three days later that  
3 you were contacted by the Sheriff's Department -- who did  
4 contact you?

5 Do you remember?

6 A I don't know if it was Rusty or if it was Jason. I  
7 can't remember.

8 Q Rusty or Jason.

9 Mr. Bryant you mean?

10 That's Jason, right?

11 A Yes.

12 Q Okay. This person, the second one where you say tried  
13 to grab your gun or did grab your gun?

14 A He did. Both hands.

15 Q Okay. And I think you testified that you shot this,  
16 this second person?

17 A No.

18 Q Okay.

19 A I may have. I shot around at him.

20 Q You fired your weapon is what I'm getting at?

21 A Yes.

22 Q Okay. And you don't know if it struck him or not?

23 A It didn't. It hit the ceiling.

24 Q Excuse me?

25 A It didn't hit him. It hit the ceiling.

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 Q Okay. And is that what is shown right at the door or  
2 is that outside the door?

3 A Yes, that's between the two doors.

4 Q The outer door leading to the very outside?

5 A And the inner door.

6 Q Showing you State's Exhibit No. 5 and No. 6 --

7 A Yes, sir.

8 Q -- can you identify those?

9 A That's between those two doors inside there.

10 Q This is the very outer door, State's Exhibit No. 5, is  
11 that right?

12 A Yes, sir.

13 Q And this is the inner door --

14 A Yes, sir.

15 Q -- State's Exhibit No. 6?

16 And in-between those two doors is where you say that  
17 shooting took place?

18 A Yes, sir.

19 MR. WHELCHEL: Okay. Beg the Court's indulgence, Your  
20 Honor?

21 THE COURT: Yes, sir.

22 (Pause.)

23 MR. WHELCHEL: That's all I'd have at this point, Your  
24 Honor.

25 THE COURT: All right.

Justin Harrison - Cross-examination  
by Mr. Whelchel

1 MR. WHELCHER: And this is subject, this is subject to  
2 my earlier objections, Your Honor.

3 THE COURT: Oh, I understand that.

4 Do you have any objections, at this time, to his  
5 continuing to testify in this matter?

6 MR. WHELCHER: Yes, sir, Your Honor. I don't think  
7 there's sufficient foundation has been laid. The only thing  
8 that's been testified to is he didn't give height, weight,  
9 or anything of that nature. All he says is maybe 30 to 45  
10 seconds. There's no testimony about the lighting conditions  
11 either.

12 THE COURT: I'll hear from the State.

13 SOLICITOR JORDAN: Your Honor, I believe there's ample  
14 evidence in here to allow for the admissions of the, of  
15 Justin's in-court identification. The weight and  
16 reliability is for the jury to determine.

17 But as far as, as far as the admission of that, Your  
18 Honor, he testified to how long he had a view, the defendant  
19 was not wearing a mask. I believe that there's a sufficient  
20 foundation for this.

21 He was not shown a lineup when he was contacted by  
22 police. He stated I told them there was no use, I'm  
23 positive you got the guy. I believe that we have a proper  
24 foundation for the admission of the evidence.

25 THE COURT: Mr. Whelchel, anything further?

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 MR. WHELCHEL: Positive he got the guy after he sees it  
2 in the newspaper after the fact, Your Honor.

3 THE COURT: Is that---

4 MR. WHELCHEL: That's all I'd have, Your Honor.

5 THE COURT: Does that continue to argue his  
6 reliability?

7 SOLICITOR JORDAN: No, sir.

8 MR. WHELCHEL: Yes, sir, Your Honor.

9 THE COURT: Okay. Overruled. I'll allow him to  
10 testify.

11 MR. WHELCHEL: Thank you, Your Honor.

12 THE COURT: You may proceed with your examination, Ms.  
13 Jordan.

14 SOLICITOR JORDAN: Thank you.

15 CONTINUED DIRECT EXAMINATION

16 BY SOLICITOR JORDAN:

17 Q Justin, could you please point out to the Court and the  
18 jury who the second robber was that night at the Waffle  
19 House?

20 A (Witness points.)

21 Kenneth Craig.

22 SOLICITOR JORDAN: Your Honor, let the record reflect  
23 the defendant, as he just stated, pointed to the defendant.

24 THE COURT: The record shall so reflect.

25 You may proceed, Ms. Jordan.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 Q Justin, after, after this happened earlier, earlier  
2 before all of the testimony before lunch, you were talking  
3 to say, talking about what happened once you came back into  
4 the Waffle House.

5 Could you explain to the jury again what you did once  
6 you came back in?

7 A I walked in and I dropped the magazine and cleared the  
8 breach. There was a shell casing still left in the gun from  
9 where he had both hands-on it and it jammed the casing. It  
10 didn't cycle forward.

11 Q Okay. Where did you place the gun?

12 A I believe it was on the far right of the bar.

13 Q Okay. Once you did that, what did you do?

14 A I called my grandma.

15 Q Okay. When the first officer arrived on scene, what  
16 did you do?

17 A He basically took my phone and hung it up and he went  
18 to go check the bathrooms, and I sat down and pulled out my  
19 CWP and handed it to him.

20 Q Okay. So, Justin, when you saw the defendant's picture  
21 on the news, how certain were you that that was the person  
22 who was the second robber?

23 A One hundred percent.

24 Q And standing here in Court today, how certain are you?

25 A A hundred percent.

Justin Harrison - Direct examination  
by Solicitor Jordan

1 SOLICITOR JORDAN: Your Honor, may I have -- if I may  
2 have a moment?

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 Q Please answer any further questions Mr. Wheelchel may  
6 have.

7 THE COURT: Mr. Wheelchel, your witness.

8 MR. WHEELCHEL: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WHEELCHEL:

12 Q Prior to today you've seen my client at a bond hearing,  
13 is that correct?

14 A Yes, sir.

15 Q Okay. Did you go to the preliminary hearing if you  
16 know?

17 A I don't know.

18 Q Okay.

19 A I don't know what that is.

20 Q I understand.

21 You were there at the bond hearing when they called his  
22 name and you were going, having a hearing to set his bond  
23 and he was the guy that walked into the courtroom when they  
24 called his or came over from the box when they called his  
25 name?



Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 A Yes, he stood up.

2 Q Okay. And you were here yesterday when his name was  
3 called and he stood up and identified himself to the jury  
4 panel and everybody else, is that right?

5 A Yes.

6 Q Okay. And other than my investigator, he's the only  
7 black gentleman sitting on this side at this table, is that  
8 correct?

9 A Yes.

10 Q Okay. You were scared that night, sir?

11 A You can say that.

12 Q I thought you said that earlier, is that right, you  
13 feared for your life?

14 A Yes.

15 Q Okay. And is your recollection that both of the  
16 robbers came in and they were in black, is that correct?

17 A Yes, sir.

18 Q All black?

19 A And the first guy with the gun, he had blue jeans on.

20 Q Okay. Where was your gun when you fired this shot at  
21 the person you say is my client?

22 A It was probably around my chest area and between his.

23 Q Can you show me?

24 A (Witness comes down from the stand.)

25 Just say you were---

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 Q Wait a minute. You're gonna have to turn so they can  
2 see it.

3 A It happened on that side.

4 Q Tell me -- just tell me where to go, where to stand I  
5 should say.

6 SOLICITOR JORDAN: Your Honor, I---

7 A Stand over here.

8 SOLICITOR JORDAN: I object to this demonstration.  
9 It's, it's on the video as to the movements and everything  
10 that are here, which is the best evidence in this instance.

11 MR. WHELCHEL: Well, the best evidence is this alleged  
12 witness who is the one who was there that night.

13 THE COURT: I'm not gonna comment on which is best or  
14 which is not best, but I'm not sure where you're setting him  
15 up.

16 MR. WHELCHEL: Well, actually---

17 THE COURT: He's having difficulty in doing what you're  
18 asking him to do.

19 MR. WHELCHEL: That's what I'm trying to get---

20 THE COURT: So, it doesn't match the scene. So,  
21 whatever, whatever you decide to do with him, it needs to  
22 match the scene.

23 MR. WHELCHEL: I understand, Your Honor.

24 THE COURT: All right.

25 Q When you two, you and the fellow you say is the guy --

Justin Harrison - Cross-examination  
by Mr. Wheelchel

- 1 A Yes, sir.
- 2 Q -- that was leaving that night --
- 3 A Yes, sir.
- 4 Q -- my client, when y'all were at the doors---
- 5 A Uh-huh. (Affirmative).
- 6 Q ---and leaving, put me in the position that you say he
- 7 was in.
- 8 A Stand over to my left.
- 9 Q Okay. Now, wait a minute. You got to -- what we got
- 10 to do first is tell the jury where the outer door is.
- 11 A This is the inner door. The outer door would of been
- 12 somewhere over there.
- 13 Q Okay. All right. That's what I'm looking for and
- 14 you're there?
- 15 A Yes.
- 16 Q Where is the other person?
- 17 A If here's the inner door, he would of been right beside
- 18 me.
- 19 Q Okay.
- 20 A We're wrestling through the door.
- 21 Q Facing the same way?
- 22 A Yes, facing the same way.
- 23 Q Okay.
- 24 A We're going through the door. Then when he goes --
- 25 we're in -- now we're entered this middle area.

Justin Harrison - Cross-examination  
by Mr. Welchel

1 Q The area between the doors?

2 A Yes.

3 Q Okay.

4 A And he's going toward that door. And that's when I'm  
5 like this trying to block his path. And he puts both his  
6 hands on my pistol and he's---

7 Q Uh-huh. (Affirmative).

8 A ---kind of leaning over me I assumed. Like over here's  
9 the gun, and he's this close, and I do like that and pull  
10 the trigger.

11 Q The gun fired?

12 A Yes, it fired.

13 Q Okay. And this close?

14 A Yes.

15 Q Okay. Thank you, sir.

16 A (Witness returns to the stand.)

17 Q The person, after that happened, did they stay there  
18 with you, run out the door, what?

19 A They ran out the door.

20 Q Do you know which direction or did you come back in the  
21 store, I mean the Waffle House?

22 A I came back in, but he headed back out toward the back  
23 of the Waffle House.

24 (Witness comes down from the stand.)

25 Q Showing you again State's Exhibit No. 4, and I'll hold

Justin Harrison - Cross-examination  
by Mr. Welchel

- 1 it up so the jury can see, and you say the person---
- 2 A Would of ran out that way.
- 3 Q Hang on a second.
- 4 And this is the outer door, is that right?
- 5 A Yes, sir.
- 6 Q And this is the area you just described for the jury
- 7 where that feud took place?
- 8 A Yes, sir.
- 9 Q Okay. And you say he ran out this door?
- 10 A Yes, sir.
- 11 Q And you went back in or turned to go back in or what
- 12 happened?
- 13 A I went to go back in and a waitress ran up to me, what
- 14 kind of car is he driving, which way did he head, I went
- 15 back out, and he was gone.
- 16 Q Okay. When you went back out, did you see him?
- 17 A No.
- 18 Q Okay. But when he ran out or this person ran out,
- 19 which way did he run?
- 20 A He went that way.
- 21 Q You see him round the corner?
- 22 A I'm not a hundred percent sure, sure.
- 23 Q But, but---
- 24 A But he ran that way.
- 25 Q Okay. So, when he came out the door, whoever it was

Justin Harrison - Cross-examination  
by Mr. Wheelchel

1 ran to here?

2 A Yes.

3 (Pause.)

4 Q Okay. All right, sir. Thank you.

5 THE COURT: Redirect?

6 SOLICITOR JORDAN: Nothing further, Your Honor.

7 THE COURT: Sir, you may step down. Thank you very  
8 much.

9 State may call its next witness.

10 SOLICITOR JORDAN: State calls Bryan Rogers.

11 THE COURT: Come forward, sir, to be sworn up here to  
12 my left.

13 BRYAN ROGERS, being first duly  
14 sworn, testified as follows:

15 THE COURT: You may be seated, sir. And once you're  
16 seated, state your name for me please.

17 WITNESS: Bryan Rogers.

18 THE COURT: Thank you.

19 Ms. Jordan, your witness.

20 SOLICITOR JORDAN: Thank you.

21 DIRECT EXAMINATION

22 BY SOLICITOR JORDAN:

23 Q Mr. Rogers, how old are you?

24 A Forty-five.

25 Q And, Mr. Rogers, were you at the Waffle House on

Bryan Rogers - Direct examination  
by Solicitor Jordan

1 January the 21<sup>st</sup>, 2012?

2 A Yes, ma'am.

3 Q Okay. Is that the Waffle House located at 221?

4 A Yes, it is.

5 Q Okay. I'm gonna show you what's previously -- let you  
6 ask you this.

7 who were you at the Waffle House with?

8 A My girlfriend, Linda Greene.

9 Q Okay. I'm gonna show you what's previously marked  
10 State's Exhibit No. 4 or actually I'm gonna place it up here  
11 on the screen. Mr. Rogers, I'm gonna hand you this laser  
12 pointer. There's a button here, and you push this.

13 Could you show the jury where you were seated that,  
14 that day?

15 A (Witness points.)

16 Q Okay. Where was your girlfriend, Linda, seated?

17 A (Witness points.)

18 Q Okay. Thank you.

19 Mr. Rogers, could you tell me what you were doing when  
20 the, the two individuals came into the Waffle House?

21 A I just got my food and was starting to eat.

22 Q Okay. What was, what, what -- what was the first  
23 thought you had?

24 A When I, I seen them come in with the masks on, their  
25 hoods are -- I can't remember exactly, but---

Bryan Rogers - Direct examination  
by Solicitor Jordan

1 Q Yes, sir.

2 A ---I thought to myself they know they can't come in  
3 here like that, and then I heard them say you know what time  
4 it is and get down on the floor.

5 Q Okay. What---

6 A I thought it was a joke kind of. Then I figured it  
7 wasn't after I seen the gun.

8 Q Okay. What -- you were talking about their out, what  
9 they were wearing.

10 Can you describe to the jury what the two individuals  
11 had on?

12 A Yeah, it was dark clothes with a mask and gloves and I  
13 think one of them had a hood on over the mask I think. I'm  
14 not---

15 Q Okay.

16 A I'm pretty sure though.

17 Q Okay. When, when they came in, what did you do?

18 A I stalled for a minute, but then when I seen the gun I  
19 just got on the floor.

20 Q Okay. What did your girlfriend, Linda, do?

21 A She got on the floor too.

22 Q Okay. Did -- how -- did you remain -- how long did you  
23 remain on the floor?

24 A I don't, I don't know.

25 Q Okay. What, what -- at any point in time, can you tell



Bryan Rogers - Direct examination  
by Solicitor Jordan

1 the jury what happened next?

2 A Well, the one with the gun kept walking back and forth.

3 They was both -- I remember them both talking --

4 Q Okay.

5 A -- and hollering you know. But---

6 Q what were they hollering?

7 A Y'all know what time it is. We fixing to rob this M.F.

8 Q Okay.

9 A I mean all kinds of stuff. Down on the floor, and I  
10 looked up a couple times, and the one with the gun pointed  
11 the gun at me and said I said down on the floor and I looked  
12 down and I'd look up, look down, and look up.

13 Q Okay.

14 A I mean I don't recall ever moving, you know.

15 Q Yes, sir.

16 what -- do you recall what happened in regards to  
17 Justin Harrison?

18 A Yeah, pretty -- some of it.

19 Q Yes, sir.

20 A I -- he was still sitting at the booth. I was on the  
21 floor right behind his stool, and I seen him ease his hand  
22 over, which I thought he was reaching for a cell phone. But  
23 then I seen he slid his denim shirt back. I seen the  
24 holster. Then I, I thank God he's got a gun, you know. I  
25 mean, that's all I could think.

Bryan Rogers - Direct examination  
by Solicitor Jordan

1       well, then -- the one ran the ladies in the back of the  
2 kitchen out. I remember looking up a couple times, and  
3 he -- the one with the gun ran them out from the kitchen,  
4 and then I think he, is when Justin jumped up and told him  
5 to put the gun down, and I think he went to raise the gun  
6 and that's when he fired.

7   Q     okay.

8   A     And then he ran around the corner to the other one to  
9 try to keep him over there.

10   Q     Do you, do you recall how many shots Justin fired?

11       Let me ask you this.

12   A     Two.

13   Q     Was it, was it one or more?

14   A     More than one. I think it was two.

15   Q     Okay. Once that happened, did you remain on the floor?

16   A     Yeah, for a few minutes---

17   Q     Okay.

18   A     ---until he came around the corner crawling, and I was,  
19 thought about getting in the tussle, but then I kind of  
20 thought no, there's a gun, and I just backed back off.

21   Q     Okay.

22   A     That's when they went toward the door.

23   Q     Okay.

24   A     I seen him eyeballing the door. He was fixing to run.

25   Q     Okay.

Bryan Rogers - Direct examination  
by Solicitor Jordan

1 A I'm pretty sure that's what he was gonna do.

2 SOLICITOR JORDAN: Okay. Your Honor, may I have a  
3 moment?

4 THE COURT: Yes, ma'am.

5 (Pause.)

6 Q Mr. Rogers, were you able to get a good enough look at  
7 the second robber to make an identification?

8 A I, I got a good look at him.

9 Q Uh-huh. (Affirmative).

10 A It's been a long time. I couldn't say one  
11 hundred percent sure.

12 Q Okay.

13 A But I'm pretty sure.

14 Q Okay. Please answer any questions Mr. Wheelchel may  
15 have.

16 THE COURT: Mr. Wheelchel, your witness.

17 MR. WHELCHER: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. WHELCHER:

21 Q You told the, you told the solicitor yesterday that you  
22 couldn't ID anybody, and you didn't get a look at them, is  
23 that right?

24 A No, I didn't say I didn't get a look at him.

25 Q You couldn't ID him and you didn't get a look at him,

Bryan Rogers - Cross-examination  
by Mr. Welch

1 is that correct?

2 A I don't remember saying I didn't get a look at him.

3 Q You talked to the solicitor yesterday?

4 A But I couldn't say for a hundred percent.

5 Q I understand that, sir, and you talked to the  
6 solicitors yesterday, correct?

7 A Yeah.

8 Q And you told them, according to information given to  
9 me, that you can't ID anybody, you didn't get a look at  
10 them, is that correct?

11 A I didn't remember saying I didn't get a look at him,  
12 but I did say I couldn't identify him for sure a hundred  
13 percent.

14 Q Okay. Thank you, sir.

15 THE COURT: Redirect?

16 SOLICITOR JORDAN: No, sir.

17 THE COURT: Sir, you may step down. Thank you very  
18 much.

19 You may call your next witness.

20 SOLICITOR JORDAN: State call Nikki Scruggs.

21 THE COURT: Come forward please to be sworn.

22 NIKKI SCRUGGS, being first duly  
23 sworn, testified as follows:

24 THE COURT: Have a seat please. State your name  
25 please, ma'am.

Nikki Scruggs - Direct examination  
by Solicitor Jordan

1 THE WITNESS: Nikki Scruggs.

2 THE COURT: Thank you.

3 Your witness, Ms. Jordan.

4 DIRECT EXAMINATION

5 BY SOLICITOR JORDAN:

6 Q Ms. Scruggs, how old are you?

7 A Twenty-two.

8 Q Okay. Did you have an occasion to be at the Waffle  
9 House on January 21<sup>st</sup>, 2012?

10 A Did I have an occasion?

11 Q Were you there?

12 A Yes, ma'am, I was there.

13 Q Could you use the pointer that's in front of you as  
14 a -- and show the jury where you were seated that day.

15 A Right there.

16 Q Okay. Who were you there with?

17 A Jamie Mattox.

18 Q Okay. How do you know her?

19 A She's my friend. We been friends for a really long  
20 time.

21 Q Okay. When you guys were there that night, what was  
22 the first thing that drew your attention to something was  
23 off or something was going on?

24 A When they came in and started yelling you know what  
25 time it is, get on the floor, get on the floor, if you move

Nikki Scruggs - Direct examination  
by Solicitor Jordan

1 we'll kill you, get on the floor.

2 Q Okay. How many people came in?

3 A Two.

4 Q What were they wearing?

5 A Really dark clothes. One had on a hoodie and a mask  
6 and some dark jeans, and the other was in all black.

7 Q Okay. Did the, did the other -- which -- do you recall  
8 which one had the gun?

9 A I don't recall which one had the gun. I just saw the  
10 gun. I believe it was the one with the mask on that had the  
11 gun.

12 Q Okay. And what did you do when they came in?

13 A I put the money that I had with me, I sat it on the  
14 seat, but it fell in-between the thing, and I laid my phone  
15 on the table and got on the floor.

16 Q Okay. How much money did you have on you?

17 A It was just a twenty dollar bill.

18 Q Okay. Did you -- when you were on the floor, did you  
19 get up at any point while the two robbers were in there?

20 A Not while, not while they were in there, no, ma'am.

21 Q Okay. We've seen the video.

22 Were you one of the two who was down where Dante  
23 Williams came to, to lay?

24 A Yes, ma'am.

25 Q Okay. Please answer any questions Mr. Welchel may

Nikki Scruggs - Direct examination  
by Solicitor Jordan

1 have.

2 THE COURT: Mr. Wheelchel, your witness.

3 MR. WHELCHEL: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. WHELCHEL:

6 Q The fellow with the mask on, what was he wearing?

7 A He was wearing dark jeans, a hoodie.

8 Q Excuse me?

9 A He was wearing dark jeans and a hoodie, like a black  
10 hoodie, and he had the hood over his head and a mask on.

11 Q And a gun?

12 A Yes, sir.

13 Q And the other individual?

14 A He just had on dark clothes. That was all I seen was  
15 dark clothes.

16 Q Just like we've seen?

17 A (Witness nods affirmatively.)

18 Q Thank you, ma'am.

19 SOLICITOR JORDAN: May this witness step down and be  
20 excused?

21 THE COURT: Yes, you may step down, ma'am.

22 All right. We're gonna take a short break.

23 Ladies and gentlemen of the jury, I'd ask that you,  
24 when you're out in the jury room, please don't discuss the  
25 case, even among yourselves, until I've asked you to do so.

1 You may retire to the jury room.

2 Thank you very much.

3 (WHEREUPON, the following takes place outside the  
4 presence of the jury.)

5 THE COURT: Court will be in recess for a short period  
6 of time.

7 Thank you.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: State ready to proceed?

10 SOLICITOR JORDAN: Yes, sir.

11 THE COURT: Defense ready?

12 MR. WHELCHER: Yes, sir.

13 THE COURT: Bring the jury in.

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

16 THE COURT: The record will reflect the jury has  
17 returned to the courtroom.

18 At this time the State may call its next witness.

19 SOLICITOR JORDAN: Thank you, Your Honor.

20 The State calls Joseph McCullough.

21 THE COURT: Come forward, Mr. McCullough. Step up and  
22 be sworn please.

23 JOSEPH MCCULLOUGH, being first  
24 duly sworn, testified as follows:

25 THE COURT: Sir, once you're seated, state your name



Joseph McCullough - Direct examination  
by Solicitor Jordan

1 please.

2 WITNESS: Joseph McCullough.

3 THE COURT: Thank you, sir.

4 Ms. Jordan, your witness.

5 SOLICITOR JORDAN: Thank you.

6 Your Honor, if I may have one moment to grab something  
7 out of the box?

8 THE COURT: Yes, ma'am.

9 (Pause.)

10 DIRECT EXAMINATION

11 BY SOLICITOR JORDAN:

12 Q Please state your name for the record.

13 A Joseph McCullough.

14 Q Joseph, were you at the Waffle House on January the  
15 21<sup>st</sup> of 2012?

16 A Yes, ma'am, I was.

17 Q Where is that Waffle House located?

18 A It's on 221 right past I-85.

19 Q Who were you there with?

20 A I was with Amanda Kiwitz.

21 Q Okay. How do you guys know each other?

22 A We dated for a while and then we've been friends since  
23 we stopped dating each other.

24 Q About -- can you give a range of years or a number of  
25 years roughly that you've known her?

Joseph McCullough - Direct examination  
by Solicitor Jordan

1 A Since 2007. So that would be about six years.

2 Q Okay. What were y'all doing that day leading up to  
3 going to the Waffle House?

4 A I just moved into a new apartment, and we were hanging  
5 out a little bit talking, and I suggested we get some  
6 coffee. And, so, we went to the waffle House and, you know,  
7 we was just sitting there having coffee talking.

8 Q Okay. Can you use the pointer that's just in front of  
9 you and show the jury where you were seated that day?

10 A Right there.

11 Q Okay. Where was Amanda seated?

12 A Across from me right there.

13 Q Okay. Can you just tell the jury what, what happened  
14 that night at the Waffle House?

15 A We were sitting there having coffee and we had been  
16 there a few minutes, I don't know exactly how long, and two  
17 individuals rushed in the front door, and yelled you know  
18 what time it is, you know, nobody move, get on the floor,  
19 you know, we want your money, things like that.

20 Q Okay.

21 A Then -- my memory's a little bit hazy. It's been a  
22 long time ago and I wasn't -- it was a pretty shocking  
23 instance. So --.

24 Q Yes, sir.

25 A I remember, I remember thinking to myself well, you

Joseph McCullough - Direct examination  
by Solicitor Jordan

1 know, how am I suppose to give you my money if I can't move.  
2 So, kind of keep an eye a little bit, pulled my wallet out,  
3 and lay it up on the table, you know, put my hands, you  
4 know, a little bit, and then I remember the guy with the gun  
5 walked to our table, took my wallet, and he took my wallet  
6 and my phone. He stacked one on top of the other, and then  
7 he walked away. I don't remember if he backed away, walked  
8 away, or what. But he walked away in the opposite  
9 direction.

10 Q And while he was there, did he take anything from  
11 Amanda?

12 A I believe he took her wallet and maybe her phone.

13 Q Okay.

14 A I'm sure it was the wallet. I'm sure of the wallet. I  
15 don't know about the phone.

16 (WHEREUPON, three photographs were marked as State's  
17 Exhibit Nos. 9 through 11 for identification purposes only  
18 at this time.)

19 Q Okay. I'm gonna show you what's previously been marked  
20 as State's Exhibit No. 10, and ask you if you can identify  
21 this. I've already shown it to -- ask you if you can  
22 identify this photograph.

23 A Yes.

24 Q Okay. Could you tell the jury what that is?

25 A This is a photograph of my wallet, the contents of my

Joseph McCullough - Direct examination  
by Solicitor Jordan

1 wallet, and my driver's license.

2 Q Okay. Is that the wallet that the robber with the gun  
3 took?

4 A It is.

5 Q Okay. Can you step back for a minute and just tell me,  
6 if you remember, what the robber with the gun was dressed  
7 in.

8 A All black.

9 Q Okay.

10 A Black mask, maybe a hoodie, black shirt, black pants.

11 Q Okay. Could -- do you have a description of what the  
12 second robber was dressed up as, dressed in?

13 A He had a mask on and all black.

14 Q Okay. Justin, I'm gonna show you what's been  
15 previously marked as State's Exhibit No. 11, and ask you if  
16 you can identify what's -- if you can identify the bottom  
17 two photographs.

18 A That's Amanda's wallet.

19 Q Okay. Up in the top of the top photograph, can you  
20 identify what that is?

21 A That looks to be the contents of Amanda's wallet.

22 Q Okay. And by wallet, can you explain to the jury what  
23 it is?

24 A Well, it's actually not a wallet per se. It's like a  
25 small metal case with a, with a picture of a rose on the

Joseph McCullough - Direct examination  
by Solicitor Jordan

1 front of it. It closes.

2 Q Okay. And she used it as --?

3 A A, a purse, a wallet.

4 Q Okay.

5 A I think she still uses it.

6 SOLICITOR JORDAN: Your Honor, at this point in time we  
7 move to admit State's Exhibit No. 11.

8 THE COURT: Any objections?

9 MR. WHELCHER: No, Your Honor.

10 THE COURT: Without objection, it will be admitted.

11 (WHEREUPON, State's Exhibit No. 11 was received into  
12 evidence at this time.)

13 THE COURT: You may proceed.

14 SOLICITOR JORDAN: Your Honor, and I'd -- I do not  
15 recall if I moved to admit State's Exhibit No. 10, but I'd  
16 do that at this time if I did not.

17 THE COURT: Any objection to No. 10?

18 MR. WHELCHER: Oh, no, sir.

19 THE COURT: All right. Without objection it will be  
20 admitted as marked.

21 (WHEREUPON, State's Exhibit No. 10 was received into  
22 evidence at this time.)

23 THE COURT: You may proceed.

24 Q What happened after your items were taken and Amanda's  
25 wallet was taken?

Joseph McCullough - Direct examination  
by Solicitor Jordan

1 A I was kind of in a state of shock at the time because,  
2 you know, I've never been robbed before, never been in that  
3 situation. So, it's a little bit hazy, but I remember him  
4 taking -- I remember my wallet and then my phone, him taking  
5 it and stacking the two on top of each other and then kind  
6 of walking away.

7 Q Okay.

8 A And, like I said, it's kind of hazy, and then I heard  
9 three gunshots.

10 Q Okay.

11 A And then that -- you know, I woke up just like that,  
12 just -- and then after that I remember seeing the other  
13 suspect come around from behind the counter as Justin was  
14 coming around, and he started cowering in the corner like  
15 right over here.

16 Q Okay.

17 A And Justin had a gun, you know, and he pointed it at  
18 him, and there's a little bit of, not necessarily  
19 confrontation, just words between the two of them, and then  
20 he started crawling back this way towards the door. He said  
21 I need to check on my buddy or check on my homey, one of the  
22 two, whatever it was he said. And I remember there was  
23 still a little bit of a scuffle maybe, and Justin kind of  
24 backing away and keeping the gun on him and the guy  
25 crawling.

Joseph McCullough - Direct examination  
by Solicitor Jordan

1       He'd reach down and then it looked like he just, like  
2 maybe just touched the other guy that was laying dead on the  
3 ground. And then there's a little scuffle at the door and  
4 then I heard another gunshot, you know, when they were, you  
5 know, when he was scuffling for his weapon, and then the guy  
6 took off and Justin come back in.

7 Q     Okay. Did, did you, at any point in time that evening,  
8 recover your, receive any items from law enforcement?

9 A     Receive any items?

10 Q    Did you your -- did you get anything back that was  
11 taken from you?

12 A    I did. I got the contents of my wallet. They wouldn't  
13 let me have my wallet back cause it was laying under the  
14 body. It still had blood on it. But they gave me the  
15 contents of my wallet back and gave me my phone.

16 Q    Okay. And the contents of your wallet, would that be  
17 what's identified in State's No. 10?

18 A    That is correct, ma'am.

19 Q    Okay. And I'm gonna show you -- well, I'm gonna show  
20 you what's been marked previously as State's Exhibit No. 9.  
21 I'm gonna show you State's Exhibit No. 9 and ask if you can  
22 identify two of the items in that photograph.

23 A    That is my phone and my wallet.

24       (WHEREUPON, a wallet was marked as State's Exhibit No.  
25 12 for identification purposes only at this time.)

Joseph McCullough - Direct examination  
by Solicitor Jordan

1 Q Okay. Now I'm gonna hand you what's previously been  
2 marked and shared with the defense attorney as State's  
3 Exhibit No. 12, and ask you if you can identify what's in  
4 the ziploc bag?

5 A That's my old wallet.

6 Q Okay.

7 THE COURT: Do you wish to introduce those?

8 SOLICITOR JORDAN: Not at this point in time, Your  
9 Honor.

10 THE COURT: That's okay. I just wanted to check and see  
11 if you did.

12 SOLICITOR JORDAN: Thank you though.

13 THE COURT: You may proceed.

14 SOLICITOR JORDAN: If I may have a moment?

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 Q Joseph, just a quick question.

18 When you mentioned the defendant cowering in the corner  
19 beside you, was he wearing a mask or not or do you know?

20 A He was not.

21 Q Okay. Please answer any questions Mr. Wheelchel may  
22 have.

23 THE COURT: Your witness, Mr. Wheelchel.

24 MR. WHEELCHEL: Thank you, Your Honor.

25 THE COURT: Yes, sir.



Joseph McCullough - Direct examination  
by Solicitor Jordan

1 MR. WHELCHEL: Please the Court?

2 Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. WHELCHEL: I don't believe I have any questions for  
6 Mr. McCullough, Your Honor.

7 THE COURT: All right, sir. You may step down. Thank  
8 you very much.

9 WITNESS: Thank you, sir.

10 THE COURT: State may call its next witness.

11 SOLICITOR JORDAN: State calls Julie Tesnar Black.

12 THE COURT: Come forward please, ma'am, and be sworn.

13 JULIE TESNAR BLACK, being first  
14 duly sworn, testified as follows:

15 THE COURT: Once you're seated, ma'am, state your name  
16 please.

17 WITNESS: My name is Julie Tesnar Black.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY SOLICITOR JORDAN:

21 Q Hi, Ms. Black.

22 Would you state -- how old are you?

23 A I'm 29.

24 Q In January 2012, where did you work?

25 A Waffle House, 221.

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 Q Okay. So, you were working with -- you were working at  
2 the time of the events in the video that we've seen?

3 A Yes, ma'am.

4 Q Could you say who you were working with?

5 A It was me, Kesha Jolly, Kim Henderson, Tori Felton,  
6 Brent Atkins, and Wesley Long.

7 Q Okay. When -- had y'all had an uneventful night?

8 A It had been pretty slow for a Friday. We had a little  
9 rush and we had just gone back to the back room to finally  
10 get a cigarette before our bar crowd came in.

11 Q Okay. Did you -- where were you when you realized  
12 something was wrong?

13 A I was in the back room. I could see it through the  
14 swinging door.

15 Q Okay.

16 A There was a small window.

17 Q So, in the video, you were in the very back?

18 A Yes, ma'am.

19 Q Which -- who were you in the back with?

20 A It was me, Kim, Tori, and Brent.

21 Q Okay. And if you could use the pointer to show on the  
22 chart or diagram where you guys were.

23 A We were right in there.

24 Q Okay. What did -- tell the jury what happened.

25 A Like I said, we had just gone back to the back to

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 finally chill out for a moment and just relax before our bar  
2 crowd came in. I heard something out in the main area that  
3 caught my attention. So, I stood up and whenever I looked I  
4 saw the two assailants coming in the door. They were  
5 already starting to holler get down, get down.

6 I turned to my girls, Amber, and I told them, I said,  
7 we're getting hit, it's a robbery, y'all get down at which  
8 point in time I was getting down by the door myself.

9 Q Okay. Did you have a chance to see one of the robbers?

10 A I saw both of them as they entered.

11 Q Okay.

12 A One of them came to the back and ushered all of us out.

13 Q Okay. The one who came to the back, did he have  
14 anything in his hands?

15 A I don't recall.

16 Q Okay. How was he dressed?

17 A All in black, mask, gloves.

18 Q Okay. What did you do once he came into the back room?

19 A I walked out with the rest of the crew. At that point  
20 in time they started hollering for the head waitress. I had  
21 keys on me. So, I assumed that role. I went to the  
22 register. They kept hollering the head waitress, if I  
23 didn't open up our cash drawer, as well as our drop box,  
24 then I would be shot and killed.

25 Q Okay.

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 A From there I proceeded to open the drawer and about the  
2 same time I opened the drawer, it makes a ding, and that's  
3 whenever Justin had started to fire.

4 Q At this point in time were you -- where -- how were you  
5 positioned behind the counter?

6 A I was directly behind the cash drawer at our register.

7 Q Okay.

8 A I was looking at -- I could see Dante right in front of  
9 me. I watched him as he fell.

10 Q Okay. So, you were standing?

11 A Uh-huh. (Affirmative).

12 Q Okay. I'm gonna try to quickly hopefully just pull up  
13 a snap, pull up a frame of the video that's already been in  
14 evidence.

15 In this, in this frame, one o'clock, eleven minutes and  
16 thirty-two seconds, can you see where you are?

17 Can you point to the jury and tell them where you are?

18 A I'm trying to see my buttons I might have. I believe  
19 I'm the second one in line right there.

20 Q Okay. So, you were, you were standing?

21 A Yes, ma'am.

22 Q I'm gonna play it for a moment and see if --.

23 A Okay. I take that back. I was right there at the  
24 register.

25 Q And where were you?

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 A That is currently me right there. Once the shots were  
2 fired I dropped to stay out of the way.

3 Q Okay.

4 A I reached for the phone. It was not usable. They had  
5 pulled the card.

6 Q Had the phone been working earlier in the day?

7 A Yes.

8 Q What did you see after the or what did you see or hear  
9 after the shots were fired?

10 A It was silent for a moment and I heard Kesha with the  
11 most ungodly scream. She thought I had been shot at the  
12 time. I kind of reached out and showed her I was okay.

13 Q Can you point to the jury---

14 MR. WHELCHEL: Excuse me, Your Honor. Thank you.

15 Could I ask her to give her that answer again?

16 I didn't hear it.

17 THE WITNESS: Okay. I said that it was silent for a  
18 moment.

19 THE COURT: Mr. Whelchel, why don't you move up here  
20 where you can hear better.

21 MR. WHELCHEL: Well, if I move up here I get blinded,  
22 Your Honor.

23 THE COURT: Well, over here by the box then maybe.

24 MR. WHELCHEL: That will be fine.

25 A It was silent for just a moment and then Kesha had

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 started to scream. She thought I was the one who had been  
2 shot. I reached out to show her that I was okay. Once I  
3 realized that the phone was not gonna work, I hollered out  
4 somebody call 9-1-1. At that point in time Justin was  
5 coming around the bar, and I'm jumping up at that point.

6 Q Okay. Can you, can you point Kesha out on this video  
7 for the jury?

8 A Kesha is right there.

9 Q Okay. What happened then?

10 A One of the other waitresses, in the heat of the moment,  
11 had actually grabbed a knife. I grabbed her arm and I was  
12 right there at the edge of the bar with her. We were both  
13 point blank range to see everything.

14 Q Okay. Where was -- where was the second robber?

15 A At that point he was cringing in the corner.

16 Q Okay. Did, did you get a look at him as he was down in  
17 the corner?

18 A Yes, ma'am, very plainly cause we were -- I was one of  
19 the ones that was screaming at him to stay put, wait until  
20 the cops get here, just stay put, and he kept saying I want  
21 to check on my buddy, and at that point in time I yelled at  
22 him, I said he's dead, there's no point, just stay put.

23 Q Okay. Did you -- at this point in time did the person  
24 in the, crouching in the floor have anything on his face?

25 A No, ma'am.

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 Q Okay. So --.

2 A He had pulled it off.

3 Q Okay. What --.

4 THE COURT: Do you need the lights down any longer?

5 SOLICITOR JORDAN: No, sir.

6 THE COURT: Bring the lights up please.

7 I'm sorry I interrupted you. You may proceed.

8 Q How long do you believe that you are or you feel that  
9 you were able to see this person without their mask on?

10 A A good 30 to 40 seconds.

11 Q Okay. What did, what did this person look like?

12 A Small framed, black male. He did have the facial  
13 mustache.

14 Q Okay. What about hair?

15 A It was short, but it's longer than what it is today.  
16 It was just like poofier.

17 Q What happened while the robber was in the corner?

18 A He kept, kept talking, saying that he wanted to check  
19 on his friend, his buddy. Over and over he said it. He  
20 would crawl forward a few paces. Justin would stop him.  
21 He'd try it again. Justin would stop him again. They were  
22 all, at that point, still yelling just stay put till the  
23 cops got there.

24 Q How, how -- when you say Justin would try to stop him,  
25 how, how -- what do you mean?

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 A He kept yelling at him stay down, just stay down. He  
2 had his gun still pointed at him.

3 Q Okay. Continue to tell the jury what happened next.

4 A From there he did finally make it around to the  
5 deceased. He barely touched him and you could tell at that  
6 point he was gonna make a run for the door.

7 Q Okay. What happened?

8 A As Justin prior said, they tussled at the door. The  
9 gun went off again. I saw both of them go out the door. At  
10 that point in time I jumped around, actually jumped over the  
11 deceased and ran out the door to see where he was going.

12 Q Okay.

13 A I knew the police would need to know.

14 Q Which way did, which way did you see the second robber  
15 go?

16 A Back behind the Waffle House.

17 Q Okay. Let me talk to you a little bit about the Waffle  
18 House for a few minutes.

19 How long have you worked at the Waffle House on 221?

20 A At that point in time it was two years.

21 Q Okay. Where were the cameras that we have seen video  
22 from?

23 Where were they positioned?

24 A We have two in the main alley.

25 Q What do you mean -- can you explain what you mean by



Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 main alley?

2 A Like once you come in the door there's the long way  
3 before it makes that shape.

4 Q Yes, ma'am.

5 A There's two right there above the juke box.

6 Q Okay.

7 A Now, on the one other side, there's one over, once the  
8 L-shape starts, it's over in that corner and there's one in  
9 the back room.

10 Q Okay. Where are these cameras mounted?

11 A In the ceiling.

12 Q Okay. So, they're, they're -- all four are mounted up  
13 in the ceiling?

14 A Yes, ma'am, it's a dome shaped cover that goes over  
15 them.

16 Q Okay. And can you explain to me how, and I can put  
17 State's Exhibit No. 3 -- I'm gonna give you a second to look  
18 at it before I put it on the screen.

19 A Okay.

20 Q Can you see that from where you're seated?

21 A Yes, ma'am.

22 Q Okay. How many entrances and exits are there to this  
23 waffle House?

24 A To the actual building or to the parking lot?

25 Q To the parking lot.

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 A There's two. You have your main and then it opens up  
2 back where the Ingle's is.

3 Q Okay. Can you show the jury with your pointer?

4 A This is your main entrance right here.

5 Q Okay.

6 A And then this is the back lot where the Ingle's parking  
7 lot is.

8 Q Okay. So, is there -- can you show -- by back lot, can  
9 you show where the exit is?

10 A The physical exit that they --.

11 Q I'm sorry. The exit for a vehicle.

12 A Right here.

13 Q Okay.

14 A It's one smooth line.

15 Q And what is that located between the waffle House and  
16 the other building, which I believe is McDonald's?

17 A There's a small little road that goes back towards the  
18 Ingle's, the old Ingle's building.

19 Q Okay. And does that open to Highway 221 or Chesnee  
20 Highway?

21 A Yes, ma'am.

22 Q Okay. Is there also -- is -- what is located in this  
23 building in the very back?

24 what is that or what was that?

25 A That was the old Ingle's. There's a Dollar General.

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

- 1 The Ingle's part of it is still empty.
- 2 Q Okay. So, there is a store back there?
- 3 A Yes, ma'am.
- 4 Q Okay. And which way did you say you saw them run?
- 5 A He ran towards the back area.
- 6 Q Okay. Could you, could you just show us with the
- 7 light?
- 8 A Right back this way.
- 9 Q What did you do after he ran?
- 10 A I ran back inside once I had an idea where he was
- 11 headed and finished my call with 9-1-1.
- 12 Q Okay.
- 13 A At that point in time everybody's starting to kind of
- 14 come to their senses and everybody was very much in shock.
- 15 Q Okay. Did you see -- well, let me take that back.
- 16 After this happened, did you give a statement to law
- 17 enforcement?
- 18 A Yes, ma'am.
- 19 Q Okay. Did you have an occasion to see any type of
- 20 media coverage about this case?
- 21 A Yes, ma'am.
- 22 Q What did you see and when?
- 23 A Newsprint the day after and news coverage, TV, the
- 24 night of -- the day after.
- 25 Q Okay. Did you see a photograph of the defendant on

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 either of those -- the newscasts---

2 A Both.

3 Q ---or the newspaper?

4 A Both of them.

5 Q Okay. What did you initially think when you saw either  
6 a photograph or the newspaper?

7 Don't answer that.

8 MR. WHELCHEL: I renew my earlier objection, Your  
9 Honor.

10 THE COURT: Your earlier objections are noted. The  
11 Court will make the same ruling.

12 You may proceed.

13 SOLICITOR JORDAN: Thank you.

14 Q What did you see back -- what did you think back then  
15 when you saw the defendant's photograph?

16 A Thank God they got him.

17 Q Okay. How sure were you back then?

18 A A hundred percent.

19 Q Were there -- did you have any questions back then as  
20 far as---

21 A No.

22 Q ---being him or not?

23 A No, ma'am.

24 Q Did you see -- when was the next time you saw or did  
25 you see the defendant in Court earlier this week?

Julie Tesnar Black - Direct examination  
by Solicitor Jordan

1 A Yesterday.

2 Q Okay. What did -- did you also have a chance to hear  
3 the defendant?

4 A Yes, ma'am.

5 Q Did you -- is -- when you were at the Waffle House that  
6 night, did you hear one or two of those robbers speak?

7 A They were both speaking.

8 Q Okay. Did you recognize anything about this  
9 defendant's voice?

10 A Once he spoke chills ran through me. I knew beyond a  
11 shadow it was him.

12 SOLICITOR JORDAN: Okay. Your Honor, may I have a  
13 moment?

14 THE COURT: You may.

15 (Pause.)

16 Q Please answer any questions Mr. Welchel may have.

17 THE COURT: Mr. Welchel, your witness.

18 MR. WELCHEL: Thank you, Your Honor.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. WELCHEL:

22 Q Ma'am, I believe your earlier testimony was that the  
23 fellow with the gun asked for the head waitress, is that  
24 correct?

25 A Yes, sir.

Julie Tesnar Black - Cross-examination  
by Mr. Wheelchel

1 Q And that was you because whoever -- that was you, is  
2 that right?

3 A I assumed that role because I had the keys on me---

4 Q Okay.

5 A ---for that store.

6 Q And that same person asked for the cash drawer and the  
7 drop box?

8 A They were both yelling to have the cash draw and the  
9 drop box. I was told if I did not open the drop box that I  
10 would be shot and killed.

11 Q You weren't in the back room?

12 You were behind the counter the entire time, is that  
13 correct?

14 A I was initially in the back room and I was brought out  
15 to behind the counter.

16 Q Okay. Can you show us which one is you when you're  
17 coming out of the back room if I can get -- oh.

18 (Pause.)

19 SOLICITOR JORDAN: Do you want the back room?

20 MR. WHELCHEL: Yeah.

21 (Pause.)

22 MR. WHELCHEL: Thank you.

23 Q Which one of those people -- is that you beside the, in  
24 front of the door or --?

25 A No, that's Tori. I was right there.

Julie Tesnar Black - Cross-examination  
by Mr. Wheelchel

- 1 Q Yeah, that's you seated on the right side?
- 2 A Yes, sir.
- 3 Q Okay, ma'am.
- 4 Go ahead and yeah. I don't know how to run the video.
- 5 SOLICITOR JORDAN: Okay.
- 6 MR. WHELCHER: I'm sorry. That's what I meant when I
- 7 said go ahead.
- 8 SOLICITOR JORDAN: I apologize, Your Honor. I thought
- 9 he was---
- 10 THE COURT: Lower the lights again. They're gonna run
- 11 the video. Thank you.
- 12 A The second one in line.
- 13 MR. WHELCHER: Okay. Would you stop it right there?
- 14 The second person out the door?
- 15 A Yes, sir. Brent was the first. Brent was the first.
- 16 Q Okay.
- 17 A I was the second.
- 18 Q And that's the cook?
- 19 A Yes.
- 20 Q Okay. And you're the second person out the door, is
- 21 that right, ma'am?
- 22 A Yes, sir.
- 23 Q You gave a statement on the 12<sup>th</sup> -- excuse me.
- 24 You gave a statement the day this happened?
- 25 A Yes, sir.

Julie Tesnar Black - Cross-examination  
by Mr. Welchel

1 Q Okay. And I'm gonna hand you a copy of what I have  
2 been given and see if -- let me let you look at that and see  
3 if it's your statement while I get mine.

4 That's the, that's the statement you gave them?

5 A Yes, sir.

6 Q Okay. And you told them that at about 1:15 and your  
7 statement said that about 1:15 two black males came in the  
8 Waffle House brandishing a pistol?

9 A Yes, sir.

10 Q Only one had a pistol?

11 A Yes, sir.

12 Q Okay. Both had masks?

13 A Yes, sir.

14 Q Okay. How many had gloves?

15 A Both as far as I remember.

16 Q But is there anything about both of them having gloves  
17 in your statement?

18 You can go ahead and look at it.

19 A No, there isn't.

20 Q Okay. Is there anything in your statement about you  
21 having 30 to 45 seconds to view---

22 A No, sir, as I was writing the statement you're not  
23 exactly thinking about every little detail.

24 Q Did anybody ask you any questions or did they just hand  
25 you a piece of paper and tell you to write a statement?



Julie Tesnar Black - Cross-examination  
by Mr. Wheelchel

- 1 A No, I was asked several questions.
- 2 Q Okay. By who?
- 3 A Different officers at the time.
- 4 Q But not anybody that's involved in taking this
- 5 statement?
- 6 Do you know who that is who signed as a witness?
- 7 A No.
- 8 Q Okay.
- 9 A I don't remember who signed it. There was so much
- 10 going on.
- 11 Q Oh, I understand that.
- 12 But you didn't actually see these two individuals come
- 13 in the Waffle House, is that right?
- 14 A About the same time they were entering the door is
- 15 whenever they yelled and that's whenever I looked and saw
- 16 them.
- 17 Q Okay. Through that elongated --?
- 18 A Yes, sir.
- 19 Q Okay. And you can see from there to the front door?
- 20 A It's a direct line.
- 21 Q Okay. When you go through that door, ma'am, that leads
- 22 out into the main dining area of the Waffle House, correct?
- 23 A Correct..
- 24 Q And it leads to the area that you guys cook and prepare
- 25 the meals in behind the counter, is that right?

Julie Tesnar Black - Cross-examination  
by Mr. Welchel

1 A Correct.

2 Q Okay. States -- I'm showing you State's Exhibit No. 7.

3 I want you to correct me if I'm wrong, ma'am.

4 This is the far end of the, the dining area, is that  
5 right?

6 A Yes, that's where it makes the L-shape.

7 Q Yeah.

8 And here in the back this way would be the dining area?

9 A Come this way and then it goes this way.

10 Q Yeah.

11 And the bar --

12 A Uh-huh. (Affirmative).

13 Q -- where the patrons sit at the higher bar?

14 A Yes, sir.

15 Q Okay. And behind that bar going back this way, which  
16 would be behind you, would be that door, is that right, in  
17 this, using this picture of---

18 A If I'm standing at the cash register?

19 Q Yes, ma'am.

20 A If I'm standing at the cash register it's over to my  
21 left.

22 Q So, if you and I are standing at the cash register,  
23 that door is actually this way?

24 A Yes.

25 Q Okay. And this wall is actually that way?

Julie Tesnar Black - Cross-examination  
by Mr. Wheelchel

- 1 A Correct.
- 2 Q And these doors are opposite from this wall?
- 3 A No.
- 4 Q Around the corner from each other?
- 5 A They're further, much further down the corner.
- 6 Q Yeah.
- 7 But, but it comes -- waffle House comes this way and
- 8 then back that way?
- 9 A Uh-huh. (Affirmative).
- 10 Q Okay.
- 11 A Go over there.
- 12 Q I'm just trying to make sure I understood where, where
- 13 you were and where everybody else was.
- 14 How tall are you, ma'am?
- 15 A I'm 5'9" to 5'10".
- 16 Q Okay. And the fellow that came to the back and got
- 17 y'all out---
- 18 A Smaller than me.
- 19 Q Excuse me?
- 20 A Smaller than me.
- 21 Q Smaller than you.
- 22 A Slightly.
- 23 Q You sure about that?
- 24 A Yes.
- 25 Q Okay. Are you aware of the fact that the deceased

Julie Tesnar Black - Cross-examination  
by Mr. Wheelchel

1 fellow is 5'11"?

2 A Yes.

3 Q Okay. And it's the smaller of the two men that came  
4 back there?

5 You sure about that?

6 A Yes, the gun was held in the dining room.

7 Q I, I didn't hear that.

8 A The gun was held in the dining room.

9 Q Okay. And both of these men were dressed in all black?

10 A Yes, sir.

11 MR. WHELCHER: Okay. Thank you, Your Honor.

12 THE COURT: Redirect.

13 SOLICITOR JORDAN: Just quickly, Your Honor.

14 THE COURT: Yes, ma'am.

15 REDIRECT EXAMINATION

16 BY SOLICITOR JORDAN:

17 Q Julie, when you say you saw them coming in, did you see  
18 them coming in through the exterior door or the interior?

19 A The interior.

20 SOLICITOR JORDAN: Okay. No further questions.

21 RECROSS EXAMINATION

22 BY MR. WHELCHER:

23 Q That door or this door?

24 A The door coming from the vestibule, yes.

25 Q State's Exhibit No. 6?

Julie Tesnar Black - Recross examination  
by Mr. Whelchel

1 A (Witness nods affirmatively.)

2 Q Okay.

3 THE COURT: Anything further from the witness?

4 Mr. Whelchel, anything further?

5 MR. WHELCHER: Oh, no, sir.

6 THE COURT: All right, ma'am. You may step down.

7 State may call its next witness.

8 SOLICITOR JORDAN: State calls Victoria Felton.

9 THE COURT: Ma'am, come forward to my left and be sworn  
10 please.

11 VICTORIA FELTON, being first duly sworn,  
12 testified as follows:

13 THE COURT: Have a seat please. Once seated, state  
14 your name.

15 WITNESS: Victoria Felton.

16 THE COURT: Ms. Jordan, your witness.

17 SOLICITOR JORDAN: Thank you.

18 DIRECT EXAMINATION

19 BY SOLICITOR JORDAN:

20 Q Victoria, where did you work in January of 2012?

21 A Waffle House on 221.

22 Q Okay. And what county is that in?

23 A Spartanburg.

24 Q Who were you working with that night?

25 A Brent Atkins, Wesley Long, Kesha Jolly, Kim Henderson,

Victoria Felton - Direct examination  
by Solicitor Jordan

1 and Julie Tesnar.

2 Q When you realized something was going wrong, going,  
3 something was different that night, where were you?

4 A In the back room.

5 Q Okay. And who were you in the back room with?

6 A Julie, Kim, and Brent.

7 Q Okay. Can you tell the jury what happened?

8 A Julie, I remember Julie saying that we was getting hit.  
9 I didn't really catch what she was saying. I said what do  
10 you mean. She said we were getting robbed. By that time I  
11 glanced at the door. They was already there. It's too  
12 late. By the time I seen them I tried to take off and  
13 honestly I was trying to go out the back-door.

14 Q Okay.

15 A He came back there and told us all to follow them down  
16 and we got down on the ground.

17 Q When you say he came back there, what was he wearing?

18 A All black.

19 Q Okay. Did he have anything covering his face?

20 A Yes.

21 Q Okay. Did you see the other individual at any point?

22 A At that moment, no. But as we were coming out there.

23 Q Okay. What was he wearing?

24 A A mask, black clothes, dark blue jeans.

25 Q Okay. Did he have anything in his hand that you saw?

Victoria Felton - Direct examination  
by Solicitor Jordan

1 A A gun.

2 Q Okay. What happened once everyone was out in the main  
3 area of the restaurant?

4 A He told -- they told us all to get down, and then I  
5 heard him tell Julie to open the drawer and the cash box.  
6 And as soon as she hit the register guns started going off.

7 Q Okay. What happened then?

8 A I remember I was already on the ground, but I was kind  
9 of getting up when the gun started going off, and we all  
10 thought Julie got shot. And Kesha, Kesha screamed. I  
11 just -- I told her, I said, Kesha, stop screaming, you know,  
12 before they shoot us. You know, before somebody else got  
13 shot.

14 Q Okay. If I show you the video -- did you -- after the  
15 first robber went down -- after the first robber went down,  
16 what happened?

17 A Justin went over there to the other dude who was in the  
18 corner---

19 Q Okay.

20 A ---and kept telling him no, just stay still, just stay  
21 put. The dude was begging him just to let him see his  
22 friend, just let him check on him, just let him check on  
23 him, and he was like no, you got to stay put. The dude kept  
24 trying to crawl towards the door.

25 Q Did -- at any point in time did the second robber take

Victoria Felton - Direct examination  
by Solicitor Jordan

1 off his mask?

2 A Yeah, he pulled it off like as soon as the other dude  
3 got shot I guess to show, you know, who he was so he  
4 wouldn't get shot too. I'm really not sure.

5 Q Were you able to see his face without the mask on?

6 A Yes, ma'am.

7 Q What did the person look like?

8 A (Witness points.)

9 Him.

10 Q How long did you, were you able to see him without his  
11 mask on?

12 A It wasn't long, but it was long enough to burn it in my  
13 memory.

14 MR. WHELCHEL: I would object to the identification,  
15 Your Honor, and ask that -- it's just been shown there's  
16 been no foundation laid. After she makes the identification  
17 then we go to the foundation, Your Honor. I would object to  
18 it and ask that it be stricken from the record. It looks  
19 like it went him before---

20 THE COURT: Before I will strike it from the record I  
21 will give her an opportunity to set a foundation for it.

22 MR. WHELCHEL: That will be fine, Your Honor.

23 THE COURT: You may proceed.

24 Q How, how long was it that you, you think you were able  
25 to see the defendant without the mask on?



Victoria Felton - Direct examination  
by Solicitor Jordan

1 A It seemed like forever, but it wasn't long at all. It  
2 was maybe 20, 30 seconds.

3 Q Did you get a clear look at his face?

4 A Yeah.

5 Q Prior to today had you seen his face on anything?

6 A Not that I recall. I didn't follow the news. I  
7 didn't -- I just put it all, you know, away.

8 SOLICITOR JORDAN: Okay. And, Your Honor, if I may  
9 have a minute?

10 (Pause.)

11 Q Were you able -- were you here in the courtroom  
12 yesterday?

13 A Yes, ma'am.

14 Q Did you see the defendant yesterday?

15 A Yes, ma'am.

16 Q Did you also hear the defendant?

17 A Yes, ma'am.

18 Q When you heard and saw the defendant, what did you  
19 think?

20 A It was him. Just the way he was answering his  
21 questions, the picture of his voice, that, that was him.

22 Q Okay. Please answer any questions Mr. Welchel may  
23 have.

24 THE COURT: Mr. Welchel.

25 CROSS-EXAMINATION

Victoria Felton - Cross-examination  
by Mr. Wheelchel

1 BY MR. WHELCHER:

2 Q Excuse me.

3 You also made a statement that night, Mrs. Felton, did  
4 you not?

5 A Yes, sir.

6 Q Okay. Let me make sure I understand where you were  
7 when the two men came in.

8 A Uh-huh. (Affirmative).

9 Q Where were you?

10 A In the back room.

11 Q With Ms. Tesnar?

12 A Yes.

13 Q Is it Tesnar or Tesnar?

14 A Tesnar.

15 Q Tesnar.

16 Okay. You were in the back room with Ms. Tesnar and---

17 A Kim and Brent.

18 Q Okay. Which one of these is you, ma'am?

19 A The one standing at the door.

20 Q That's you standing at the door in front of the window  
21 part?

22 A Uh-huh. (Affirmative).

23 MR. WHELCHER: Okay. Run it please.

24 Oh, okay.

25 Q I assume that's where y'all take your smoke breaks?

Victoria Felton - Cross-examination  
by Mr. Welchel

- 1 A Yes, sir.
- 2 Q You're one of three women that are back there.
- 3 When you were leaving, which one of those were you?
- 4 I missed it.
- 5 A In the back.
- 6 Q The very last one to go out?
- 7 A Uh-huh. (Affirmative).
- 8 Q Okay, ma'am. And when you go out to the main dining
- 9 area, you stay behind the counter, is that correct?
- 10 A Correct.
- 11 Q Use that little pointer thing, ma'am.
- 12 After you come in from that back room, up there at the
- 13 top where it says Julie Tesnar and Tori Felton and Kim
- 14 Henderson and Brent Atkins, that's the room y'all were in---
- 15 A Yes, sir.
- 16 Q ---is that right?
- 17 Okay. And where is that door on that drawing with the
- 18 little window in it?
- 19 Can you point that out?
- 20 A (Witness points.)
- 21 It's right there.
- 22 Q Okay. When you came -- and when you came with the
- 23 others from the back room to this front area -- let me
- 24 borrow that.
- 25 When you came from back here to out here---

Victoria Felton - Cross-examination  
by Mr. Welchel

- 1 A Uh-huh. (Affirmative).
- 2 Q ---show us where you went, ma'am.
- 3 A (Witness points.)
- 4 There.
- 5 Q Right beside -- between Jamie Mattox and Bryan Rogers?
- 6 A (Witness nods affirmatively.)
- 7 Q Okay. And between you and the very end of the aisle
- 8 there, you're here, is that right, ma'am?
- 9 A Yes, sir.
- 10 Q Jamie Mattox is here?
- 11 A Uh-huh. (Affirmative).
- 12 Q Nikki Scruggs is here?
- 13 A Yes, sir.
- 14 Q Okay. And the second individual --?
- 15 A Uh-huh. (Affirmative).
- 16 Q The fellow that came back and took you out from back in
- 17 the back---
- 18 A Uh-huh. (Affirmative).
- 19 Q ---he had the gun, is that right?
- 20 A No.
- 21 Q He didn't have a gun?
- 22 A No.
- 23 Q Okay. How was he dressed?
- 24 A All black.
- 25 Q All black.

Victoria Felton - Cross-examination  
by Mr. Welchel

1        They came -- he came and got you from back here and the  
2 others and took you out to here, correct?

3    A    Yes, sir.

4    Q    Where did he go then?

5    A    Went on out.

6    Q    I'm sorry. You show us.

7    A    He went on out the little exit from the back room and  
8 he was over here.

9    Q    Okay. At the very end of that little aisle there?

10   A    Uh-huh. (Affirmative).

11   Q    On the other side of Jamie Mattox and Nikki Scruggs?  
12 Right here?

13   A    Yes.

14   Q    Okay. And correct me if I'm wrong, that's the outer  
15 entrance, the inner entrance, and the main aisleway for  
16 the---

17   A    Uh-huh. (Affirmative).

18   Q    ---for the Waffle House?

19        And this is the L-shaped at the very end of the Waffle  
20 House building?

21   A    Yes.

22   Q    Correct?

23        221 is out this way?

24   A    Uh-huh. (Affirmative).

25   Q    Okay. And Mt. Pleasant Road, do you know where that

Victoria Felton - Cross-examination  
by Mr. Welchel

1 is?

2 A It's the one that goes to McDonald's.

3 Q The road that goes back on the other side of  
4 McDonald's?

5 A Yes.

6 Q Runs that way, is that right, ma'am?

7 A Uh-huh. (Affirmative).

8 Q And the McDonald's is up that way, correct?

9 A Correct.

10 Q Okay. And the old -- there's an -- Ingle's is the old  
11 grocery store that's no longer opened there---

12 A Uh-huh. (Affirmative).

13 Q ---is that right?

14 And that would be when you come out this door in this  
15 direction, is that right?

16 A Yes.

17 Q There's a Dollar Store there now?

18 A There is.

19 Q Okay. Thank you, ma'am.

20 Is that your statement, ma'am?

21 A (Witness nods affirmatively.)

22 Q And that was what you told them that night happened?

23 A I didn't really talk to anybody. They just gave me a  
24 piece of paper and told me to---

25 Q Gave you a piece of paper and said write your

Victoria Felton - Cross-examination  
by Mr. Wheelchel

1 statement?

2 A Pretty much.

3 Q Okay. And do you need to read it?

4 A No, I---

5 Q Okay.

6 A It's very short. I can read it.

7 Q You were -- it says you were standing in the back room  
8 and two masked men came running in?

9 A Uh-huh. (Affirmative).

10 Q One came in the back---

11 SOLICITOR JORDAN: Your Honor, I object---

12 Q ---puts the guns to us---

13 SOLICITOR JORDAN: ---at this point.

14 THE COURT: Just one second.

15 Yes, ma'am.

16 THE COURT: She hasn't denied making the statement. At  
17 this point in time he's just reading it into evidence.

18 Q Okay. Can you read the statement, ma'am?

19 THE COURT: Mr. Wheelchel?

20 SOLICITOR JORDAN: Your Honor, well, I still object.

21 THE COURT: She's objecting to the statement being read  
22 and I'll sustain the objection.

23 MR. WHEELCHEL: Oh, okay.

24 THE COURT: If there's been some inconsistent statement  
25 made in Court, you have the right to explore that, but just

Victoria Felton - Cross-examination  
by Mr. Whelchel

1 to publish the whole statement is not proper under the  
2 rules.

3 Q Okay. No where in this statement did you talk about  
4 how long you had to view anybody?

5 A In the statement I don't talk about too much to be  
6 honest.

7 Q Okay. Thank you, ma'am.

8 A Uh-huh. (Affirmative).

9 THE COURT: Redirect?

10 SOLICITOR JORDAN: No, sir.

11 THE COURT: You may step down. Thank you very much.  
12 You may call your next witness.

13 SOLICITOR JORDAN: State calls Brian Outlaw.

14 THE COURT: Come forward and be sworn please, sir.

15 BRIAN OUTLAW, being first duly sworn,  
16 testified as follows:

17 THE COURT: Have a seat please, and once you're seated  
18 state your name.

19 WITNESS: Brian Outlaw, Spartanburg County Sheriff's  
20 office.

21 THE COURT: Thank you.

22 Ms. Jordan, your witness.

23 SOLICITOR JORDAN: Thank you, Your Honor.

24 May I have just one moment to locate something?

25 THE COURT: Yes, ma'am.



Brian Outlaw - Direct examination  
by Solicitor Jordan

1 (Pause.)

2 DIRECT EXAMINATION

3 BY SOLICITOR JORDAN:

4 Q Where do you work?

5 A Spartanburg County Sheriff's office.

6 Q Okay. Were you employed by the Sheriff's Office in  
7 January of 2012?

8 A Yes, ma'am.

9 Q Are you still employed with the Sheriff's Office?

10 A Yes, ma'am, I am.

11 Q Okay. And how long have you been there?

12 A About three years ten months. Just shy of four years.

13 Q Okay. What is your title?

14 A Currently I'm assigned to the traffic safety division.

15 Q Okay.

16 A I'm just a deputy.

17 Q In addition to the Sheriff's Office, do you ever work  
18 extra duty?

19 A Yes, ma'am, I -- quite frequently.

20 Q Okay. Can you explain to the jury what extra duty is?

21 A Basically it's secondary employment as a security  
22 position that is performed while we're off-duty, not with  
23 the Sheriff's Office. It's basically a secondary job  
24 working security wherever the client that hires us out needs  
25 us.

Brian Outlaw - Direct examination  
by Solicitor Jordan

1 Q Okay. Were you working security on the night of or the  
2 early early morning hours of January 21<sup>st</sup>, 2012?

3 A Yes, ma'am, I was.

4 Q Where were you working?

5 A I was working at 105 Jones Road, which is the Motel 6  
6 which is right there at the 85/221 interchange.

7 Q Okay. I'm gonna give you a moment to look at what's  
8 been previously admitted as State's Exhibit No. 2. Give you  
9 a moment to look at that before I place it on the overhead.

10 A Yes, ma'am.

11 Q Okay. I'm gonna ask you, once I get it placed up  
12 there, if you can point out where the Motel 6 is.

13 A Motel 6 will be right here.

14 Q Okay. What is across the street from the Motel 6?

15 A Across on -- right here?

16 Q Yes.

17 A It's a Citgo, some type of convenience store or gas  
18 store and an abandoned old fruit stand or something. It's  
19 right there.

20 Q Okay. And just to, to help the jury out, could you  
21 point out where waffle House is?

22 I know we've seen it a few times.

23 A It's gonna be right in this area.

24 Q Okay. If you need to see it up close.

25 A I can't see it. I mean it's---

Brian Outlaw - Direct examination  
by Solicitor Jordan

1 Q Okay. It's, it's blurred out.

2 A Yeah. Okay. Right.

3 Q Can you show the -- just, just show, show the jury  
4 where the Waffle House is.

5 A It's gonna be right here. It's hard to see from that  
6 small area up there.

7 Q Can you show them again with the lights on?

8 A It's right here.

9 Q Okay. And where is the Motel 6?

10 A It's right here.

11 Q Okay. While you're working extra duty, do you keep  
12 your---

13 MR. WHELCHER: Your Honor, would you ask them to put  
14 that on the overhead so that my client can see it too cause  
15 him saying it's right here doesn't do him any good?

16 THE COURT: Ms. Jordan, if you'd like to do that.

17 Q Deputy Outlaw, can you just come down?

18 A (Witness comes down from the stand.)

19 Q That way there's no question with the glare.

20 THE COURT: Lower the lights so we sure where we're --  
21 we want to be sure where these things are.

22 Q Okay. With your finger, can you just point to where  
23 the Motel 6 was that you were working?

24 A The Motel 6 is right here.

25 Q Okay. Can you point out the Waffle House?

Brian Outlaw - Direct examination  
by Solicitor Jordan

1 A The Waffle House is gonna be right here.

2 Q Okay. Thank you.

3 If -- you can have -- take your seat again.

4 A Okay.

5 (Witness returns to the stand.)

6 Q Okay. When you're working extra duty, do you also  
7 carry your Sheriff's radio?

8 A Yes, ma'am, it's, it's our policy to, to have the  
9 Sheriff's radio with us on at all times so we can monitor  
10 the channels.

11 Q Okay. What type of vehicle did you drive or do you  
12 still drive for the Sheriff's Office back in January of  
13 2012?

14 A At that time I was assigned to the uniform patrol  
15 division. I was in a fully marked black and white Crown  
16 Victoria.

17 Q Okay. Did you have that with you on your extra duty?

18 A Yes, ma'am, sure do.

19 Q Okay. Did you have an opportunity to respond to a call  
20 at the Waffle House on 221?

21 A Yes, ma'am, I did.

22 Q Okay. Can you tell me -- can you tell me what you did  
23 when you received the notification of the issue at Waffle  
24 House?

25 A Being that I was in close proximity to the call,

Brian Outlaw - Direct examination  
by Solicitor Jordan

1 anytime a severe call like this comes out, it is our duty to  
2 protect the citizens of Spartanburg County. Being that I  
3 was in close proximity I decided to respond to see that I  
4 could prevent any further injury or anything like that.

5 The call come across the radio as a shots fired call at  
6 the Waffle House. So, I initiated my emergency lights and  
7 siren and responded as fast as I could in a safe manner.

8 Q Okay. When you arrived at the Waffle House, how many  
9 other officers were there?

10 A None. I was the only one on scene.

11 Q Okay. How long do you -- how long were you there  
12 before anyone else arrived?

13 A It seemed like a long time. I can't, I can't quite  
14 remember. It seemed like maybe a minute or two before the  
15 next unit showed up.

16 Q Okay. But you -- and you -- where did you leave from  
17 to get to the Waffle House?

18 A The 105 Jones Road, Motel 6.

19 Q Okay. When you walked into the Waffle House, can you  
20 just tell the jury what you, what you saw?

21 A It was somewhat chaos. You had all kind of mixed  
22 emotions being bombarded with you. People trying to tell  
23 you all kind of information. It was my main objective to  
24 make sure nobody else got hurt or any other injury was done.  
25 So, I attempted, as best, to secure the scene as best as

Brian Outlaw - Cross-examination  
by Mr. Wheelchel

1 possible I could until other units could arrive.

2 Q Please answer any questions Mr. Wheelchel may have.

3 THE COURT: Mr. Wheelchel, your witness.

4 CROSS-EXAMINATION

5 BY MR. WHEELCHEL:

6 Q Correct me if I'm wrong, Mr. Outlaw, that's the Motel  
7 6?

8 A No, sir.

9 If, if I may, if I could see the drawing up close  
10 again?

11 Q Sure.

12 SOLICITOR JORDAN: Your Honor, could we -- could Mr. --  
13 could Deputy Outlaw come to the, to the overhead?

14 THE COURT: Yes, he certainly may.

15 You can step down there if you need to.

16 A (Witness comes down from the stand.)

17 Q This is the Motel 6 right here. This that you pointed  
18 to first is, is like a, an abandoned Cigarettes-For-Less  
19 store or something like that.

20 Q Yeah, you're right. I forgot about that.

21 So, the Motel 6 is -- here, use my pen and point it  
22 out.

23 A It's right here.

24 Q Okay. And when you were at the Motel 6, you were in  
25 uniform?

Brian Outlaw - Cross-examination  
by Mr. Welchel

- 1 A Fully in uniform, yes, sir.
- 2 Q Okay. And in the black and white as you've already
- 3 told me?
- 4 A Yes, sir.
- 5 Q Okay. Were you patrolling that parking lot for the
- 6 Motel 6 or were you just stationary?
- 7 A For the majority of the night we're usually stationary,
- 8 but we make rounds. We get out and walk on foot and all
- 9 kind of stuff, yes, sir---
- 10 Q Okay.
- 11 A ---just ensuring that the patrons of the Motel 6 are
- 12 safe.
- 13 Q Okay. And when the call came in, you were already in
- 14 the car at the time?
- 15 A I was in my vehicle, yes, sir.
- 16 Q Okay. And -- let me borrow that.
- 17 A Yes, sir.
- 18 Q When you leave, left the Motel 6, you come out the
- 19 entrance.
- 20 Is that the entrance right there?
- 21 A It was the first entrance, yes, sir. It was right
- 22 there at the office is where I was sitting at.
- 23 Q Okay. You were just outside the office?
- 24 A Yes, sir.
- 25 Q So, you went -- this is Jones Road here?

Brian Outlaw - Cross-examination  
by Mr. Welchel

1 A Yes, it is Jones Road.

2 Q Okay. So, you went up to the intersection here, and  
3 then up 221 to the Waffle House, is that right?

4 A Yes, sir, that's correct.

5 Q Okay. When did you initiate the blue lights, sir?  
6 There or as soon as you got the call?

7 A To my best of my knowledge I believe it was when I got  
8 to 105 Jones Road and 221 at to or to the intersection of  
9 Jones Road and 221. I believe that's where I---

10 Q Right there?

11 A ---initiated it, yes, sir.

12 Q Okay. And then when you get to the Waffle House up  
13 here, where did you park, sir?

14 A Right out front, yes, sir. When I -- I pulled into  
15 the, the first entrance that I came to.

16 Q Here. Use this.

17 A Yes, sir, I'm sorry.

18 Q That's okay.

19 A I come in the first entrance right here and pulled  
20 straight in. I believe I left my blue lights on. This is  
21 the Waffle House right here.

22 Q Yeah.

23 A The first entrance you come to off of 221, pulled  
24 straight in, and then I pulled right in front of the --  
25 actually just behind the front glass doors. Pulled in. I



Brian Outlaw - Cross-examination  
by Mr. Wheelchel

1 believe I left my blue lights on. I think I turned my siren  
2 off.

3 Q Okay. All right. You, you can go back up there. I'm  
4 finished with that.

5 A Yes, sir.

6 (Witness returns to the stand.)

7 MR. WHEELCHEL: We can turn the lights back up, Your  
8 Honor.

9 THE COURT: All right. Thank you.

10 Q And correct me if I'm wrong again, sir, you secured the  
11 Waffle House until the other units arrived shortly  
12 thereafter?

13 A I made an attempt. I'm not saying that I totally  
14 secured the area, but basically tried to get everybody in a  
15 general area to where I could watch them until I could get  
16 other units to arrive, yes, sir.

17 Q Okay. And while they're, you were there, there wasn't  
18 anybody dressed in all black leaving, is that right?

19 A The only person that I saw in all black was the person  
20 that was laying on the floor unresponsive. I was told by  
21 other patrons and employees of the Waffle House that another  
22 suspect had left the scene prior to when I arrived, and I  
23 tried to relay that information to other units responding.

24 Q Did you check the fellow on the floor?

25 A To be honest with you, I diverted my attention to

Brian Outlaw - Cross-examination  
by Mr. Welchel

1 everybody that was up walking around trying to get them in  
2 one area. I was trying to watch him out of the corner of my  
3 eye and watch everybody else because the only information  
4 that I had been given was that there was a shooting at the  
5 waffle House. It didn't tell me who did it or who, who or  
6 anything else.

7 I just remember that there was one male dressed in  
8 black, dark clothing lying on the floor. He appeared  
9 unresponsive, and I devoted all my attention trying to  
10 gather everybody in one area just trying to keep them to  
11 where I could watch everybody until I got other units on  
12 scene.

13 Q Okay. Thank you, sir.

14 A Yes, sir.

15 THE COURT: Redirect.

16 SOLICITOR JORDAN: Just briefly, Your Honor.

17 THE COURT: Yes, ma'am.

18 REDIRECT EXAMINATION

19 BY SOLICITOR JORDAN:

20 Q Deputy Outlaw, in reference to this map, can you give  
21 the distance from the waffle House to the, either Jones Road  
22 or the Motel 6?

23 A Just an estimate?

24 Q Yes, sir.

25 A I would say maybe three-tenths of a mile as far as the

Brian Outlaw - Redirect examination  
by Solicitor Jordan

1 crow flies. Maybe it's -- maybe change. But three-tenths  
2 or less of a mile I would say or less.

3 Q And what is that main road in red?

4 A That is gonna be Interstate 85.

5 Q Okay. Thank you. Please answer any questions -- I'm  
6 sorry.

7 THE COURT: Any other questions?

8 MR. WHELCHER: Yes, sir.

9 THE COURT: Yes, sir.

10 RECROSS EXAMINATION

11 BY MR. WHELCHER:

12 Q That's 85 this way north up south?

13 A Correct.

14 Q Okay. Do you recall what time it was when you received  
15 the call?

16 A I don't have the exact time. I think it was somewhere  
17 right around maybe 1:15AM, somewhere around there. I don't  
18 have the exact time with me, no, sir.

19 Q Okay. And what time you arrived, you don't know that  
20 either?

21 A I want to assume less than a minute. I don't have the  
22 exact time, no, sir.

23 Q Okay.

24 THE COURT: All right, sir. You may step down. Thank  
25 you very much.

Brian Outlaw - Recross examination  
by Mr. Welchel

1 State may call its next witness.

2 SOLICITOR JORDAN: Thank you, Your Honor.

3 State calls Rob Shaffer.

4 Your Honor, while he's coming forward, may I have a few  
5 minutes --

6 THE COURT: All right.

7 SOLICITOR JORDAN: -- or a few moments. Not minutes.

8 ROB SHAFFER, being first duly  
9 sworn, testified as follows:

10 THE COURT: Have a seat please, sir.

11 SOLICITOR JORDAN: May Deputy Outlaw be excused---

12 THE COURT: Any objection to him being excused?

13 SOLICITOR JORDAN: ---if he wants to?

14 MR. WELCHEL: No, sir.

15 THE COURT: Sir, you're free to go if you'd like.  
16 Thank you very much.

17 SOLICITOR JORDAN: Thank you.

18 DIRECT EXAMINATION

19 BY SOLICITOR JORDAN:

20 Q where do you work?

21 A I work for the Spartanburg County Sheriff's Office.

22 Q what is your title there?

23 A I'm investigator with the crime, crime scene  
24 department.

25 Q okay. Did you have that same job in January of 2012?

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 A Yes, I did.

2 Q Okay. On January 21<sup>st</sup>, 2012, were you called out to an  
3 investigation of an armed robbery at the Waffle House?

4 A Yes, I was.

5 Q Okay. When you arrived, what did you do?

6 A I met up with Investigator Nix, who is my team leader.  
7 He advised me what happened, the situation, and we started  
8 to process the scene under his guidance.

9 Q Okay. Did you, did you take any -- well, I'm gonna  
10 show you some photographs.

11 Did you take any photographs that night of the Waffle  
12 House?

13 A Yes, I did. Took photographs of the interior, spent  
14 casings, firearms, a plastic bag, the individual who was  
15 shot on the scene, and a wallet, and a Droid cell phone.

16 Q Okay. I'm gonna show you what is not been marked.

17 (WHEREUPON, three photographs were marked as State's  
18 Exhibit Nos. 13 through 15. A black bag was marked as  
19 State's Exhibit No. 16. The exhibits were marked for  
20 identification purposes only at this time.)

21 Q Okay. I'm gonna show you several photographs, State's  
22 13, 14, and 15, and ask if you recognize those photographs.

23 A Yes, I do.

24 Q Starting with this one, which is State's No. 13 --  
25 well, let me ask you this.

Rob Shaffer - Direct examination  
by Solicitor Jordan

1           Do those pictures fairly and accurately depict the  
2 waffle House as you entered it that night?

3       A     Yes. Yes, they do.

4           SOLICITOR JORDAN: Your Honor, at this time we move to  
5 admit 13, 14, and 15.

6           MR. WHELCHER: No objection.

7           THE COURT: Without objection, they'll be admitted as  
8 marked.

9           (WHEREUPON, State's Exhibit Nos. 13 through 15 were  
10 received into evidence at this time.)

11       Q     Okay. Starting with 13, I'm gonna place it up on the  
12 screen so everyone can see, and ask if you can explain to  
13 the jury what's depicted in this photograph.

14       A     It is Item 9. It's a black plastic bag like a trash  
15 bag collected on scene. It was on the counter by the cash  
16 register.

17       Q     I'm gonna show you what's been marked as State's No. 16  
18 and ask if you can identify that.

19       A     It's Number 9, the black plastic bag I collected.

20       Q     Okay. Is that the same item that's depicted in State's  
21 No. 13?

22       A     Yes, it is.

23           SOLICITOR JORDAN: Your Honor, at this time we move to  
24 admit State's No. 16 in evidence.

25           THE COURT: Any objection?

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 MR. WHELCHEL: No, sir.

2 THE COURT: Without, objection it will be admitted as  
3 marked.

4 (WHEREUPON, State's Exhibit No. 16 was received into  
5 evidence at this time.)

6 Q I'm just gonna place State's No. 15 on the overhead.  
7 Can you explain to the jury what those pictures depict?

8 A That's the interior of the Waffle House.

9 Q Okay. Starting in the upper left-hand corner, what  
10 angle is that?

11 You can step down if you need a better look.

12 (Witness comes down from the stand.)

13 A I believe it's when you come in the door, the front  
14 door here. The juke box is like this little L-section right  
15 here where the counter is this way.

16 Q Okay.

17 A I think it shows it easier on the, on the sketch.

18 Q Okay.

19 A But I believe it's that angle where the individuals,  
20 suspect number two was.

21 Q Okay.

22 A If you push it down, I think that's the view this way  
23 where he was down---

24 Q Okay.

25 A ---where everybody was talking about.

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 Q What about the other photographs?

2 A That appears like to be the same way but going towards  
3 the front door. That's where the juke box is, and that's  
4 the door where people -- the main entrance to the Waffle  
5 House.

6 Q Okay. Is this just another angle also down here in the  
7 corner?

8 A Yes, it's another showing the different, slightly  
9 different prospective of it.

10 Q Okay. And finally the picture in the bottom corner,  
11 bottom right corner?

12 A That's kind of the same area maybe over a little bit  
13 kind of going -- here's like where the oven, refrigerator,  
14 another counter or cash register. It's shooting down that  
15 way going into the back double doors where the individuals  
16 were in the back before --

17 Q Okay.

18 A -- showing that view.

19 Q And lastly, State's No. 14.

20 A Like in the first photo I showed you going in here.  
21 That's kind of in the corner, the front corner of the --  
22 showing the view like the entrance into the back room where  
23 somebody would of walked back towards the door behind the  
24 counter.

25 Q Okay. You can have a seat.



Rob Shaffer - Direct examination  
by Solicitor Jordan

1 A (Witness returns to the stand.)

2 Q while on scene at the Waffle House, did you, did you  
3 have a chance to observe any weapons on scene?

4 A Yes, I did.

5 Q I'm gonna show you what's going to be marked.

6 (WHEREUPON, a gun was marked as State's Exhibit No. 17  
7 for identification purposes only at this time.)

8 Q Ask if you can identify what's marked as State's  
9 Exhibit 17 and Sheriff's Office inventory number eight.

10 A It's a Highpoint firearm, 9-millimeter.

11 Q Okay. Where was that Highpoint firearm recovered from?

12 A That was on, on, sitting on the counter when you first  
13 come in by the stools. It was sitting on the counter with  
14 the action opened. I believe the magazine was out.

15 SOLICITOR JORDAN: Okay. Your Honor, at this point in  
16 time we would move to admit State's Exhibit No. 17.

17 THE COURT: Objections?

18 MR. WHELCHEL: No, sir.

19 Q Would you---

20 THE COURT: Without objection it will be admitted into  
21 evidence.

22 SOLICITOR JORDAN: Thank you.

23 (WHEREUPON, State's Exhibit No. 17 was received into  
24 evidence at this time.)

25 Q Could you show the firearm to the jury?

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 THE WITNESS: Can I stand, Your Honor?

2 THE COURT: Is it secured?

3 THE WITNESS: Yes, it is secured.

4 THE COURT: Okay. You may proceed.

5 A (Witness complies.)

6 Q You can place it back in there.

7 A (Witness complies.)

8 Q While on scene, was there another firearm that you had  
9 the opportunity to look at?

10 A Yes, it was.

11 Q Did you -- through your investigation, did you find out  
12 who that firearm belonged to?

13 A I was advised it belonged to the individual that had to  
14 use defense for himself.

15 Q Okay.

16 A I can't remember his name. I know---

17 Q Okay. Throughout your investigation did you, did you  
18 determine who this one belonged, this State's No. 17  
19 belonged to?

20 A I didn't investigate. I was advised it was one that  
21 the, one of the suspects brought in, but they didn't---

22 Q Okay. When -- I'm gonna show you now what's previously  
23 been marked and, as State's Exhibit No. 9. I'm gonna show  
24 you State's No. 9 along with State's No. 12, and ask if you  
25 can take a look at those two items.

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 Can you tell me what -- and I'll place this up on  
2 the -- do you recognize both of those items?

3 A Yes, I do.

4 Q Are they fair and accurate depictions or the actual  
5 items that you came across at the Waffle House---

6 A Yes, they were.

7 Q ---that night?

8 Your Honor, at this time we move to admit State's No. 9  
9 and 12 into evidence.

10 THE COURT: Any objection?

11 MR. WHELCHER: I don't think so, Your Honor. No, sir.

12 THE COURT: All right. Without objections, they'll be  
13 admitted as marked.

14 (WHEREUPON, State's Exhibit Nos. 9 and 12 were received  
15 into evidence at this time.)

16 Q Can you tell the jury what is in State's No. 9?

17 A No. 9 is a cell phone, like a Droid cell phone that I  
18 got listed as Number 11 from my item, and Item No. 12 is the  
19 wallet that was laying on the floor next to the --  
20 Mr. Williams.

21 Q Okay.

22 A But kind of like --.

23 Q And just, just for the jury's knowledge, what is the  
24 black stuff that's -- what is this right here?

25 A That's the individual's clothing.

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 Q And by individual---

2 A Mr. Williams.

3 Q ---do you mean the deceased?

4 A Yeah, the deceased, Mr. Williams.

5 Q Okay. And, so, where were these items found?

6 A On his left side between him and like the juke box  
7 wall. Like the front wall area.

8 Q Okay. Do you recall -- now that you've seen State's or  
9 that since you've seen Item Number 12 from the State, what  
10 did you do with the contents of this item?

11 A Yes, I collected the item, lay them out and  
12 photographed them, and, upon detective's request, go ahead  
13 and return the items except for the wallet.

14 Q Okay. Why did you keep the wallet?

15 A Because I believe it was due to the fact it was a  
16 biohazard and he requested that I keep it.

17 Q Okay. Using the pointer, can you just show the jury  
18 where State's No. 12 is located at in the photograph?

19 A Right. The wallet's right here.

20 Q Okay. And I'm just going to show you what's previously  
21 been entered as State's No. 10, and just ask you if you  
22 could just briefly tell the jury what that is.

23 A That's the contents of the wallet. That's a South  
24 Carolina driver's license, some, some business cards. He  
25 had a library card, bank debit cards, you know, that

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 belonged to Mr. McCullough --

2 Q Okay.

3 A -- if I said his name right.

4 Q And once you photographed those items, what did you do  
5 with them?

6 A I turned back over, at the request of the detective,  
7 back to the victim.

8 Q Okay. In reference to State's No. 16, the black  
9 plastic bag, did you collect this item?

10 A Yes, I did.

11 Q Once you collected it, what did you do with it?

12 A Back at the Sheriff's Office I started processing it,  
13 put it in a fuming tank, fumed it with Super Glue, and  
14 processed it for latent prints---

15 Q Okay.

16 A ---and I developed a print.

17 Q What type of print did you develop?

18 A A partial print.

19 Q Okay. What did you do once you developed the partial  
20 print?

21 A I lifted it and forwarded it to the A.F.I.S.  
22 Department.

23 SOLICITOR JORDAN: Your Honor, if I may, may I have a  
24 moment to look for the, the lift in the box?

25 THE COURT: That will be fine.

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 (Pause.)

2 Q Once you do the lift, what do you do with the lift?

3 A I lift, you know, take like a little piece of tape,  
4 lift it up, put it on the back of the lift card, do a little  
5 sketch, put the case number, and what we lifted from, and  
6 what I numbered usually.

7 Q Okay. Then what happens to that's, that lift?

8 A It gets put into like a little plastic like little  
9 paper bag, envelope, and it's forward to A.F.I.S. and  
10 A.F.I.S. keeps control of it.

11 Q Okay.

12 A The examiner does.

13 Q All right. And you took care -- you did all of that  
14 that day?

15 A Yes, I did.

16 Q Which is the reason we do not have the print right now?

17 A Yeah, it should be in A.F.I.S. as far as I'm concerned.

18 Q Okay.

19 A Best of my knowledge.

20 Q Did you collect any -- what other items did you collect  
21 on scene that day?

22 A I collected some spent casings, a projectile, a Glock  
23 pistol from the other individual, and --.

24 Q By other individual, you're referring, referring to---

25 A The individual who used self-defense.

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 Q Okay. The customer?

2 A Yeah, customer, a U.S. twenty dollar bill underneath  
3 the projectile and then surveillance CD, copy of it.

4 Q Okay. Looking at State's Exhibit No. 4, can you point  
5 out where you recovered the twenty dollar bill?

6 A (Witness points.)

7 Q Okay.

8 A Let me get my sketch. It should be underneath this  
9 table right here in this area.

10 Q Okay. And while you have your sketch out with the  
11 evidence location, can you show us where you recovered the  
12 gun that's in front of you?

13 A Right about here.

14 Q Is -- as far as state, Sheriff's Office Number 8, where  
15 did you recover it?

16 A Yeah, right here on that counter.

17 SOLICITOR JORDAN: And if I may have one moment?

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 Q Once you left the waffle house that, that, those  
21 earlier morning hours, what times -- what did you do -- did  
22 you continue to work on this case?

23 A Yeah, I went back to the Sheriff's Office. I processed  
24 the evidence, packaging, securing evidence, and getting it  
25 logged into the computer, and entered photographs into the

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 computer program we have.

2 Q Okay. Did you also attend the autopsy of Dante  
3 Williams?

4 A Yes, I did.

5 Q At that autopsy, did you recovery any items there?

6 A Yes, I did. I collected some clothing, some  
7 projectiles, and fingerprints from the postop prints.

8 Q What type of items did you collect?

9 A I collected a pair of black Nike socks, a pair of gray  
10 Hanes boxer shorts or boxers, a NBA blue and gray shorts, a  
11 Ralph Lauren jeans with a brownish belt, a pair of Nike Airs  
12 back and white, a black and blue knit hat, a bluish sparkle  
13 City Thunder t-shirt, a, a XX black shirt, a black cloth  
14 mask, a sporter large black jacket, a, and projectiles that  
15 Doctor Wren recovered, and the lift prints from -- palm  
16 prints and fingerprints.

17 Q I'm gonna show you -- I'm gonna have two items marked.  
18 I'm gonna show you what's going to be marked --

19 (WHEREUPON, the clothing was marked as State's Exhibit  
20 No. 18 and a black mask was marked as State's Exhibit No.  
21 19. Both of the exhibits were for identification purposes  
22 only at this time.)

23 Q -- State's Exhibit No. 18 and 19, and just, in the  
24 event you need them, there's some gloves.

25 Can you look at those two items and tell me if you



Rob Shaffer - Direct examination  
by Solicitor Jordan

1 recognize those items?

2 A This is Item Number 23, the blue and white knit hat I  
3 collected.

4 Q Okay. Where did you collect that from?

5 A The morgue.

6 Q Okay. And where did -- and off whose body did that  
7 come from?

8 A Mr. Williams.

9 SOLICITOR JORDAN: Okay. Your Honor, at this time we'd  
10 move to admit State's Exhibit No. 18 into evidence.

11 THE COURT: Any objection?

12 MR. WHELCHER: No, sir, Your Honor.

13 THE COURT: Without objection, it will be admitted as  
14 marked.

15 (WHEREUPON, State's Exhibit No. 18 was received into  
16 evidence at this time.)

17 A This Item Number 26, a black, the black cloth mask.

18 Q Okay. From whom was that item recovered?

19 A From Mr. Williams at the morgue.

20 SOLICITOR JORDAN: Okay. Your Honor, at this time we'd  
21 move to admit State's Exhibit No. 19.

22 THE COURT: Any objection?

23 MR. WHELCHER: None, Your Honor.

24 THE COURT: Without objection it will be admitted as  
25 marked.

Rob Shaffer - Direct examination  
by Solicitor Jordan

1 (WHEREUPON, State's Exhibit No. 19 was received into  
2 evidence at this time.)

3 Q And you stated you also recovered multiple clothing  
4 items?

5 A Yes, I did.

6 Q Okay. That included a black shirt?

7 A Yes.

8 Q Black jacket?

9 A Yes.

10 Q A pair of Nike black and white tennis shoes?

11 A Yes.

12 Q Along with miscellaneous items?

13 A Yeah, blue jeans.

14 Q Please answer any questions that Mr. Wheelchel may have.

15 THE COURT: Mr. Wheelchel, your witness.

16 CROSS-EXAMINATION

17 BY MR. WHEELCHEL:

18 A Can I take these off?

19 Q Sure.

20 A They can break me out. Thank you.

21 Q No problem.

22 Mr. Shaffer, detective, investigator, or---

23 A Detective. Deputy.

24 Q Deputy.

25 Okay. Deputy, and this is what's been introduced as

Rob Shaffer - Cross-examination  
by Mr. Welchel

- 1 State's Exhibit No. 16 I believe?
- 2 A Yes.
- 3 Q It's your Inventory Number 9. It's a black plastic bag
- 4 you've testified about?
- 5 A Yes, sir.
- 6 Q And you, you did something with glue?
- 7 A Yes, Super Glue.
- 8 Q And if there's a print, fingerprint --
- 9 A Yes, sir.
- 10 Q -- you'll be able to lift the fingerprint?
- 11 A Yes, sir.
- 12 Q And you've sent that print -- you lifted a print and
- 13 sent it off to A.F.I.S.?
- 14 A Correct.
- 15 Q And A.F.I.S. is what, sir?
- 16 A It's an individual, but it stands for the individual
- 17 that reads it. It's a big -- it's the biggest acronym. I
- 18 can't---
- 19 Q It's where you send all your---
- 20 A Yeah.
- 21 Q ---fingerprints?
- 22 A Yeah, it's an individual who enters it in the computer
- 23 and identifies it.
- 24 Q Okay. And as a result of sending that fingerprint into
- 25 A.F.I.S., you didn't get a match, is that right?

Rob Shaffer - Cross-examination  
by Mr. Whelchel

1 A Yeah, I got a report saying no match.

2 Q Thank you, sir.

3 THE COURT: Anything further from this witness?

4 SOLICITOR JORDAN: No, sir.

5 THE COURT: All right. You may step down, sir.

6 Do you wish to excuse the witness?

7 SOLICITOR JORDAN: I do, Your Honor.

8 THE COURT: Any objection?

9 MR. WHELCHER: No, sir.

10 THE COURT: Free to go, sir. Be sure to leave the  
11 exhibits. Thank you.

12 All right. Ladies and gentlemen, we're within a few  
13 minutes of five o'clock. So, we're gonna stop for the  
14 afternoon. I'm going to give you the same instructions I've  
15 given you each time you've left the courthouse.

16 Don't try to gather any information on your own. Don't  
17 listen to, watch, or read media reports. Don't discuss the  
18 case with anyone. Don't allow anyone to discuss it with  
19 you. And should anyone try to contact you about your  
20 service in this matter, please let me know upon your return.

21 We'll begin again in the morning at nine o'clock. Be  
22 in the jury room at that point in time. We should be  
23 starting promptly thereafter. Hope you have a great evening  
24 and we'll see you in the morning.

25 Thank you.

1       Remain seated while the jury retires please.

2       (WHEREUPON, the following takes place outside the  
3 presence of the jury.)

4       THE Court: Court is in recess until nine o'clock in  
5 the morning.

6       Thank you very much.

7  
8       (WHEREUPON, Court was in recess for the evening.)

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1                               wednesday, July 24<sup>th</sup>, 2013

2

3               SOLICITOR JORDAN: Your Honor, may Mr. Wheelchel and I  
4 approach?

5               THE COURT: Please do.

6               SOLICITOR JORDAN: Just on scheduling.

7               THE COURT: You can come up.

8               SOLICITOR JORDAN: Or I guess I can place this -- I can  
9 state this from here. I incorrectly counted my witnesses  
10 yesterday. I forgot two of my chain witnesses. So, there's  
11 a possibility it would be closer to seven.

12              THE COURT: I wasn't gonna hold you to that. I was  
13 just trying---

14              SOLICITOR JORDAN: Okay.

15              THE COURT: ---to get some idea so I could inform the  
16 jury what to do and I've taken care of that.

17              SOLICITOR JORDAN: Okay. Thank you.

18              THE COURT: All right. The remainder of the jury. Not  
19 this one.

20              All right. Are you ready to proceed, Ms. Jordan?

21              SOLICITOR JORDAN: Yes, sir.

22              THE COURT: Mr. Wheelchel, are you ready to proceed?

23              MR. WHELCHEL: Yes, sir.

24              THE COURT: Bring the jury in.

25              (WHEREUPON, the following takes place within the

1 presence of the jury.)

2 THE COURT: Thank you.

3 The record, the record will reflect the jury has  
4 returned to the courtroom.

5 I hope everyone had a good evening and, as always, I'll  
6 inquire if anyone had any difficulty in complying with my  
7 instructions concerning your behavior while you're away from  
8 the courthouse, please stand.

9 (No response.)

10 THE COURT: It appears that all jurors have been able  
11 to comply with the Court's instructions.

12 When we stopped yesterday the State was in the process  
13 of calling its witnesses.

14 Ms. Jordan, you may call the next State witness.

15 SOLICITOR JORDAN: Ms. Reese is going to take the next  
16 one.

17 THE COURT: Okay. Ms. Reese then.

18 SOLICITOR REESE: Officer Ted Saar.

19 THE COURT: Come forward, sir, to my left and be sworn.

20 TED SAAR, being first duly sworn,  
21 testified as follows:

22 THE COURT: Sir, once you're seated I ask that you  
23 state your name.

24 WITNESS: My name is Theo Demund Saar, III.

25 THE COURT: Thank you.

Ted Saar - Direct examination  
by Solicitor Reese

1 Mr. Reese, your witness.

2 SOLICITOR REESE: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY SOLICITOR REESE:

5 Q Where are you employed?

6 A Spartanburg County Sheriff's office.

7 Q And how long have you been employed there?

8 A Since 2004.

9 Q And what are your duties currently with the Sheriff's  
10 Department?

11 A I am the senior latent fingerprint examiner.

12 Q And what is your training or experience that led you to  
13 the position that you now hold?

14 A I've been through six classes in regards to fingerprint  
15 identification, Henry Classification and Comparison, Basic  
16 Latent Fingerprints, Latent Palm Print Comparison, Advanced  
17 Latent Fingerprint Comparisons, Advanced Ace-V Application  
18 for Fingerprint Examiners, and Examination of Simultaneous  
19 Impressions starting in 2008 through this year.

20 Q Is there a certification process for this?

21 A There is.

22 Q And are you certified?

23 A I am.

24 Q And how many prints would you say you've analyzed since  
25 you began analyzing prints?



Ted Saar - Direct examination  
by Solicitor Reese

1 A I, I -- I've made over 3,000 identifications since I  
2 started. I stopped counting at about 3,000.

3 SOLICITOR REESE: Okay. Your Honor, at this time I  
4 would move to recognize him as an expert in the field of  
5 fingerprint identification and analysis.

6 THE COURT: Any objection to that designation?

7 MR. WHELCHER: No, sir.

8 THE COURT: Ladies and gentlemen of the jury, let me  
9 explain to you as to what we're doing at this time and the  
10 purpose for this exercise. Under the rules of evidence that  
11 govern testimony of witnesses in a trial, generally a  
12 witness is not allowed, that's a lay witness, is not allowed  
13 to offer opinions on subjects or to state reasons why they  
14 have opinions about things. They're required to testify  
15 about facts within their knowledge.

16 A general exception or exception to that general rule  
17 is made for witnesses who are declared by the Court or found  
18 by the Court to be an expert within some science or field or  
19 profession, things of that nature, and as to witnesses that  
20 are designated or found by the Court to be experts, that  
21 rule doesn't apply. In other words, those experts will be  
22 allowed to state their opinions within their area of  
23 expertise and also give the reasons why they hold those  
24 opinions.

25 This gentleman's been offered as an expert within the

Ted Saar - Direct examination  
by Solicitor Reese

1 field of fingerprint analysis I believe, is that right, Ms.  
2 Reese?

3 SOLICITOR REESE: Yes, Your Honor.

4 THE COURT: And I will find, without objection, that he  
5 is an expert within that field. That will allow him to  
6 state his opinions and the reasons for them.

7 Now, later on when I charge you concerning the law in  
8 the case I will give you some additional information and  
9 instructions concerning how you can consider or treat  
10 testimony by an expert. But at any rate, this witness now  
11 is been declared to be an expert.

12 Ms. Reese, you may proceed with your examination.

13 SOLICITOR REESE: Thank you, Your Honor.

14 Q What is an inked print?

15 A An inked print is a fingerprint that is, is rolled on  
16 paper. If, for example, if you're a teacher and you have to  
17 get a teacher certification, you have to go submit a set of  
18 fingerprints. So, put ink on the finger, the finger and  
19 roll across the paper and record a whole, both hands, all  
20 fingerprints that way.

21 Q What is a latent print?

22 A A latent print is a fingerprint that's left behind that  
23 you can't see with your naked eye. It has to be developed  
24 by some sort of medium.

25 Q And how would you develop that?

Ted Saar - Direct examination  
by Solicitor Reese

1           For example, on a plastic bag, how would you develop a  
2 latent print?

3   A    You could do it in several different ways. Generally,  
4 for something like a plastic bag, you would use what we call  
5 Super Glue fuming. You could also just use regular  
6 fingerprint powder.

7   Q    And are there different distinguishing characteristics  
8 of fingerprints?

9   A    There are.

10   Q   And does the same person have -- I mean do two  
11 different people have the same set of fingerprints?

12   A    No, no two people have ever been found to have the same  
13 fingerprints.

14   Q    So, is it fair to say that fingerprints are specific to  
15 a particular person?

16   A    Correct.

17   Q    And on what kind of surfaces do we leave prints?

18   A    Fingerprints can be left on, on just about any kind of  
19 surface other than, other than water. It's possible to, to  
20 leave fingerprints on just about anything.

21   Q    And what is the -- how does that happen?

22           What is the mechanisms that makes us leave a  
23 fingerprint on something?

24   A    Fingerprints, what you see and what you leave behind  
25 whenever you touch something, is a mixture of sweat and

Ted Saar - Direct examination  
by Solicitor Reese

1 oils, body oils. So, you know, throughout the day you, you  
2 sweat and have oils on your skin, you're naturally touching,  
3 you know, your, your body and mixing all this together. And  
4 whenever you touch something, you leave a little bit of that  
5 behind. That's what leaves the fingerprint.

6 Q Now, are fingerprints normally found on just any  
7 surface or are there some surfaces that are more susceptible  
8 to the leaving of prints?

9 A Well, some surfaces are definitely more conducive to,  
10 to leaving good quality fingerprints behind. But it's  
11 possible to leave it on just about anything.

12 Q So, when you have a latent print and you're attempting  
13 to analyze that, is it common or uncommon to have what we  
14 call a partial print?

15 A Very common.

16 Q And why is that?

17 A When you -- when we're talking about the rolled  
18 fingerprints, you know, that's kind of a perfect scenario  
19 using the proper amount of pressure and ink and it's in a  
20 controlled environment. If you're just touching things  
21 throughout your house and, and things throughout your day,  
22 you're not touching it in that manner, you may pick up  
23 something with just the tip of your finger or touch  
24 something with just the side of your finger.

25 So, when we develop it, that's what we find is, is a

Ted Saar - Direct examination  
by Solicitor Reese

1 partial aside or a top of a tip or, you know, just, just  
2 pieces of fingerprints and that's what's normally happening  
3 throughout the day whenever you're touching whatever you're  
4 touching.

5 Q When you get a latent print in your office, how do  
6 you -- can you take the jury through the process of how you  
7 analyze that latent print to determine whether or not you  
8 can match it to anyone?

9 A The, the crime scene investigators go out and they  
10 process a crime scene. They find, they find fingerprints.  
11 They'll turn it in. They'll put it on a fingerprint card,  
12 turn it into my office through, through an envelope. I'll  
13 get that fingerprint card.

14 I use a -- the very first thing I do is I visually  
15 analyze it. A lot of times I can see what I'm, you know,  
16 good enough, what I'm looking at to determine what pattern  
17 it might be, and if there's enough detail there. I also use  
18 a magnifier to look at them visually to see, in greater  
19 detail, how clear it is, looking for clarity and quantity of  
20 information that I use. And if I determine that there's  
21 enough clarity and quantity of information, then I'll, you  
22 know, determine that it is of value and I'll do further  
23 analysis.

24 Q And are these -- once you have found this latent print,  
25 is there some place or database that you place this print to

Ted Saar - Direct examination  
by Solicitor Reese

1 try to compare it once you determine that it's of value?

2 A There is.

3 Q And can you tell the jury a little bit about that  
4 database?

5 A We have a computer system and a, a database called  
6 A.F.I.S. It stands for Automated Fingerprint Identification  
7 System. It's basically just a big search engine, and in the  
8 past you would have filing cabinets full of rolled  
9 fingerprints cards that you would have to go through and  
10 look and compare manually. The computer database now  
11 just -- the computer does that searching for us.

12 So, I'll take that fingerprint, the latent print, the  
13 partial print, and I put it in the computer system by taking  
14 a picture of it through the, through the computer. I then  
15 go through and mark points on the fingerprint points of  
16 comparison, things that I'm looking for, and I'll submit it  
17 to this, to this search engine.

18 The search engine just does all the work of what we use  
19 to do in looking through file cabinets. It looks at those  
20 points that I've marked and it decides -- it gives me  
21 possible matches back. The computer doesn't actually match  
22 the print. It just gives me possible matches based on what  
23 I tell it to look for.

24 Then when I get the possible matches back, I take the  
25 latent fingerprint and I compare it one-to-one to every

Ted Saar - Direct examination  
by Solicitor Reese

1 possible match that it gives me, and then determine whether  
2 or not it does match to anything.

3 Q And this database includes all fingerprints from any  
4 source, right?

5 From jobs, from any kinds of things, is that correct?

6 A Correct. And, you know, doctors, lawyers, teachers,  
7 you know, any people with weapons permits. Any, any reason  
8 anybody would ever have to have fingerprints taken goes into  
9 the State database.

10 (WHEREUPON, a fingerprint card was marked as State's  
11 Exhibit No. 20 for identification purposes only at this  
12 time.)

13 Q I'm gonna show you what's been marked as State's  
14 Exhibit 20 for identification only.

15 Can you tell the jury what that is?

16 A This is the latent fingerprint that was turned into my  
17 office in reference to this case.

18 Q And did you, in fact, use the process that you talked  
19 to the jury about in an effort to try to identify that  
20 print?

21 A I did.

22 Q And did you get a match for that print?

23 A I did not.

24 Q Now, in a situation where you have an item like a  
25 plastic bag, what are the possible -- in your opinion, is it

Ted Saar - Direct examination  
by Solicitor Reese

1 necessary, if you see a partial print or a latent print on  
2 that bag, is it, in your experience, is it necessary that  
3 that print was generated by a person who may of committed a  
4 crime?

5 A No, ma'am.

6 Q And what are the other sources say for a plastic bag  
7 that a fingerprint could be from?

8 A Well, depending on, you know, where it came from, not,  
9 not knowing what circumstances happened, you know, anybody  
10 can leave a fingerprint anywhere at anytime. It -- you  
11 know, could it, depending on the correct circumstances, it  
12 could of even been generated by somebody at the factory  
13 that, that made the plastic bag or packaged it before,  
14 before sale. You know, it could of been left behind  
15 somewhere and picked up by somebody else to, to use for a  
16 different reason.

17 Q And in your analysis in this particular case, prints  
18 that were placed in the system, were those of Kenneth Craig  
19 --

20 A Yes, ma'am.

21 Q -- the defendant?

22 The, the deceased, Dante Williams?

23 A Yes, sir.

24 Q And a man by the name of Gerald Davis, is that correct?

25 A Yes, ma'am.



Ted Saar - Direct examination  
by Solicitor Reese

1 Q And the prints did not match any, in either of those  
2 three individuals?

3 A No, ma'am.

4 Q Okay. Nothing further.

5 THE COURT: Mr. Wheelchel.

6 MR. WHELCHER: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. WHELCHER:

10 Q This A.F.I.S. database can include people who, like me,  
11 worked at the Post Office?

12 A Yes, sir, if it was just a federal job though it  
13 wouldn't necessarily be in A.F.I.S. It could be --  
14 definitely be in the federal system. It's two different,  
15 two different databases.

16 Q If I tell you they rolled me when I worked at the Post  
17 office, it would be in there, right?

18 A Yes, sir.

19 Q In the Army?

20 A The Army has a separate database not, not that I would  
21 have access to.

22 Q And the South Carolina Bar?

23 A Yes, sir.

24 Q So, I'm in there probably three times --

25 A Yes, sir.

Ted Saar - Cross-examination  
by Mr. Welchel

1 Q -- at least?

2 whether or not you leave a print depends on the amount  
3 of oils and things that you might have on your finger, and  
4 individual might have on the, on their fingers, is that  
5 correct?

6 A (Witness nods affirmatively.)

7 Q Some people leave prints better than others, isn't that  
8 right?

9 A Correct.

10 Q Okay. And the bag that was taken from the Waffle House  
11 and given to you after -- are you the one that put the glue  
12 on it?

13 A No.

14 Q That's the other officer who testified?

15 A Yes, sir.

16 Q You just developed --.

17 A I just examined the, the print after it was developed  
18 and turned in to me.

19 Q I understand.

20 And when you examine it, you -- this is what you called  
21 the lift, is that right?

22 A Yes, sir.

23 Q Okay. Now, once you examined that lift and that print,  
24 the print did not match Kenneth Craig?

25 A Correct.

Ted Saar - Redirect examination  
by Solicitor Reese

1 Q Thank you, sir.

2 SOLICITOR REESE: Just one follow-up.

3 THE COURT: Yes, ma'am.

4 REDIRECT EXAMINATION

5 BY SOLICITOR REESE:

6 Q In the -- in an instance, this may sound like a silly  
7 question, but if, if someone who's handling an object were  
8 wearing gloves, would they leave fingerprints?

9 A No.

10 Q Nothing further.

11 THE COURT: Anything further, Mr. Wheelchel?

12 MR. WHELCHER: (Witness nods negatively.)

13 THE COURT: Sir, you may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You wish to excuse the witness?

16 SOLICITOR JORDAN: Yes, sir, I do.

17 THE COURT: Any objections?

18 MR. WHELCHER: No, sir.

19 THE COURT: You're free to go. Thank you, sir.

20 THE WITNESS: Thank you, Your Honor.

21 The State call its next witness.

22 SOLICITOR JORDAN: The State calls Terry Carter.

23 THE COURT: Come forward please to be sworn.

24 TERRY CARTER, being first duly  
25 sworn, testified as follows:

Terry Carter - Direct examination  
by Solicitor Jordan

1 THE COURT: Have a seat please. Once you're seated,  
2 state your name please.

3 WITNESS: Terry Carter.

4 THE COURT: Thank you.

5 Your witness, Ms. Jordan.

6 SOLICITOR JORDAN: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY SOLICITOR JORDAN:

9 Q Mrs. Carter, where are you employed?

10 A Spartanburg County Coroner's Office.

11 Q How long have you been employed there?

12 A Since 2009.

13 Q And what is your title there?

14 A Deputy Coroner or Coroner's Investigator.

15 Q Okay. Did you have any previous law enforcement  
16 experience before going to work at the Coroner's Office?

17 A No physical. I have a four year degree in criminal  
18 justice with forensics.

19 Q Okay. Did you have an occasion to work a death at the  
20 Waffle House on 221 in January of 2012?

21 A Yes, ma'am.

22 Q Okay. Could you tell -- well, when you arrived on  
23 scene, was there a deceased individual there?

24 A Yes.

25 Q Were you or was the Coroner's Office able to make

Terry Carter - Direct examination  
by Solicitor Jordan

1 identification on that individual?

2 A Yes, we were.

3 Q Okay. What did, what -- who, who did you identify him  
4 as?

5 A Dante Lamont Williams.

6 Q Okay. As part of your job, did you, did you document  
7 any wounds that Mr. Williams had?

8 A Yes.

9 Q Okay. How many wounds did he have?

10 A Give me just a minute.

11 Q Yes, ma'am.

12 A Three.

13 Q Okay. Also as part of your job did you collect any  
14 items that Mr. Williams had on his, on his body?

15 A Yes, ma'am.

16 Q Okay. Could you -- I'm gonna show you what's been  
17 previously marked and admitted as State's Exhibit No. 11 and  
18 ask if you can identify those.

19 A Yes, ma'am.

20 Q Okay. Could you tell the jury where you found those  
21 items or how you know what those items are?

22 A That was located in the pocket of Mr. Williams. It is  
23 a metal wallet with a rose on it. There's also a key chain  
24 that has a key with the letter F, a twenty dollar bill, a  
25 one dollar bill, a red Blistex Chap Stick, a bank card with

Terry Carter - Direct examination  
by Solicitor Jordan

1 several other cards, and a voided check.

2 Q Okay. And at which pocket did you find those items in?

3 A I'm sorry. I don't have that picture with me. I have  
4 pictures of all of that, but it's not in here. I believe it  
5 was in the left front pocket---

6 Q Okay.

7 A ---of the jacket.

8 Q But it was the jacket that or it was, it was on Dante  
9 Williams body?

10 A Yes.

11 Q Okay. What did you do once you retrieved those items?

12 A What do we do with them?

13 Q Yes, ma'am.

14 A Any personal items that belonged to the decedent, and  
15 it technically belongs to the decedent if it's on the  
16 decedent's body, we take it into evidence, it's sealed, and  
17 it is photographed separately, and we have a evidence drop  
18 box that it's put in, and then it's logged into evidence and  
19 it goes into our big evidence room that's in the back of our  
20 office.

21 Q Okay. Did you do that with these items?

22 A Yes.

23 Q Okay. At any point in time did you give any of the  
24 items in those pictures to any, to another individual?

25 A Actually what happened in this case was the items that

Terry Carter - Direct examination  
by Solicitor Jordan

1 were taken did not belong to Dante. They belonged to a  
2 female. Her name was Amanda Kiwitz if I'm saying that  
3 correctly, and we received a phone call at the Coroner's  
4 Office from Amanda requesting her things back.

5 And due to EPA, Evidence Protection Act, that is a law,  
6 it states that no evidence as part of a trial can ever be  
7 returned to the decedent's family or to a person that it  
8 belongs to until the case is gone to trial and been  
9 completed. And if there is someone found guilty of any  
10 crime, they have to, they have to complete the entire term  
11 before they're, before that evidence can be returned.  
12 However, we did receive a call from Solicitor Barnette  
13 saying that---

14 Q Well, I'll just ask you, did you return the items to  
15 Ms. Kiwitz?

16 A Part of them, yes.

17 Q Okay. Which items did you return to her?

18 A We returned the, the silver metal wallet, the money,  
19 the debit card, and I believe the voided check.

20 Q Okay. On Mr. Williams body, did you also -- did you  
21 find anything on his hands?

22 A Yes, gloves.

23 Q Please answer any questions Mr. Wheelchel may have.

24 THE COURT: Mr. Wheelchel, your witness.

25 MR. WHELCHEL: Thank you, Your Honor.

Terry Carter - Cross-examination  
by Mr. Wheelchel

1 CROSS-EXAMINATION

2 BY MR. WHELCHER:

3 Q Is this the whole report you have with you, ma'am?

4 A I have my stuff, yes.

5 Q Okay. And when -- you were there when the autopsy was  
6 performed, is that right?

7 A I was.

8 Q Okay. Do you have that report?

9 A I do.

10 Q Okay. Now, may I see it please?

11 A (Witness complies.)

12 Q The decedent, ma'am -- I call your attention to the  
13 report so we can speed things up.

14 The report, the autopsy report says the decedent in  
15 this case, Dante Lamont Williams, was -- could you read that  
16 starting right there, measured?

17 SOLICITOR JORDAN: Your Honor, is he asking her a  
18 question or he is -- I'm just lost as to where he---

19 MR. WHELCHER: I'm just trying to show her where it is  
20 so we can speed this up.

21 How tall does it say the decedent was, ma'am?

22 SOLICITOR JORDAN: Okay.

23 A Seventy-one inches.

24 Q Okay. And the weight?

25 A 185 pounds.



Terry Carter - Cross-examination  
by Mr. Whelchel

1 Q Okay. Seventy-one inches will be 5'11"?

2 A Uh-huh. (Affirmative).

3 Yes, sir.

4 Q Thank you, ma'am.

5 THE COURT: Any redirect?

6 SOLICITOR JORDAN: No, sir, Your Honor.

7 May this witness be excused?

8 THE COURT: Any objection?

9 MR. WHELCHER: No, sir.

10 THE COURT: Ma'am, you may step down. You're free to  
11 go. Thank you for coming today.

12 WITNESS: Yes, sir.

13 THE COURT: You may call your next witness.

14 SOLICITOR JORDAN: State calls Anthony Knighton.

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

16 ANTHONY KNIGHTON, being first duly  
17 sworn, testified as follows:

18 THE COURT: Sir, once you're seated, state your name  
19 please.

20 WITNESS: Anthony Knighton.

21 THE COURT: Thank you.

22 Ms. Jordan, your witness.

23 DIRECT EXAMINATION

24 BY SOLICITOR JORDAN:

25 Q Mr. Knighton, where are you employed?

Anthony Knighton - Direct examination  
by Solicitor Jordan

1 A Spartanburg County Sheriff's Office.

2 Q How long have you been employed there?

3 A Since 2007.

4 Q Okay. What are your duties currently at the Sheriff's  
5 office?

6 A Crime scene investigator.

7 Q Okay. Were those your duties back in January of 2012?

8 A Yes, ma'am.

9 Q Okay. Did you have an occasion to help with the  
10 investigation of an armed robbery at the waffle House at  
11 2230 Chesnee Highway?

12 A Yes, ma'am.

13 Q Okay. Where is that located?

14 In which county?

15 A Spartanburg County.

16 Q Okay. When you arrived, what did you do?

17 A I took over all exterior or interior photographs, I'm  
18 sorry, preliminary photographs until the responding homicide  
19 team showed up.

20 Q Okay.

21 (WHEREUPON, two photographs were marked as State's  
22 Exhibit Nos. 21 and 22 for identification purposes only at  
23 this time.)

24 Q I'm gonna show you what's been marked and already shown  
25 to defense counsel as State's 22 and 21 and ask if you

Anthony Knighton - Direct examination  
by Solicitor Jordan

1 recognize those photographs?

2 A Yes, ma'am.

3 Q Are those a fair and accurate depiction of the Waffle  
4 House as it was in January of 2012?

5 A It is.

6 SOLICITOR JORDAN: Okay. Your Honor, at this time we  
7 move to admit State's Exhibits 21 and 22.

8 THE COURT: Any objection?

9 MR. WHELCHER: No, sir, no objection.

10 THE COURT: Without objections they'll be admitted as  
11 marked.

12 (WHEREUPON, State's Exhibit Nos. 21 and 22 were  
13 received into evidence at this time.)

14 THE COURT: You may proceed.

15 Q Okay. Could you just tell the jury what those are  
16 photographs of?

17 A The exterior and parking lot of the Waffle House.

18 SOLICITOR JORDAN: Okay. Your Honor, I'd like to have  
19 him show, just explain them to the jury, but I'm gonna warm  
20 this up first so that everyone can see.

21 THE COURT: All right. You want him to step down?

22 SOLICITOR JORDAN: Yes, sir.

23 THE COURT: Okay, sir. If you would, step down please.  
24 (Witness steps down from the stand.)

25 THE COURT: Thank you.

Anthony Knighton - Direct examination  
by Solicitor Jordan

1 Q You can bring the pictures.

2 Officer Knighton, can you explain what is in State's

3 No. 22?

4 what is that a depiction of?

5 A That's the front door for the Waffle House.

6 Q Okay. And I'm gonna show you State's 21, and ask, ask  
7 you to start in the upper left-hand corner.

8 A It's gonna be the Waffle House facing 221. This will  
9 be towards 85 here. This is the front facing 85 and the  
10 rear of the Waffle House here and this is the parking lot.

11 Q Okay. And which -- can you tell from the photograph on  
12 the bottom which direction that's facing?

13 A I can not from that photograph, no.

14 Q Okay. You can return to your seat.

15 A (Witness returns to the stand.)

16 Q As part of your job, did you tell the number of shell  
17 casing that were on scene?

18 A Yes, ma'am.

19 Q How many shell casing did you find?

20 A I found five.

21 Q Okay. As part of your work in crime scene there, did  
22 you speak with Justin Harrison?

23 A Yes, ma'am.

24 Q Okay. Did you -- what did you speak or for what  
25 purpose did you interact with Justin Harrison that night?

Anthony Knighton - Direct examination  
by Solicitor Jordan

- 1 A I found that he was the one that shot the decedent.
- 2 Q Okay.
- 3 A So, I needed to perform a gunshot residue test on him.
- 4 Q Okay.
- 5 A I spoke with him on that.
- 6 Q Can you just briefly explain to the jury what a gunshot  
7 residue test is?
- 8 A It's a test -- you know, whenever a gun is fired, it  
9 leaves residue usually on the hands, sometimes on the  
10 clothing, and we collect that anytime there's a shooting --
- 11 Q Okay.
- 12 A -- if at all possible.
- 13 (WHEREUPON, a gunshot residue kit was marked as State's  
14 Exhibit No. 23 for identification purposes only at this  
15 time.)
- 16 Q I'm gonna show you what's previously been marked as  
17 State's Exhibit No. 23 and ask you if you recognize that  
18 item.
- 19 A Yes, ma'am.
- 20 Q Okay. And what, what is that item?
- 21 A That's the gunshot residue test that I performed on Mr.  
22 Harrison.
- 23 Q Okay. Can you explain to the jury, when you talk about  
24 performing this test, what actually are you doing?
- 25 A I'm swabbing the front and back of his hands. At the

Anthony Knighton - Direct examination  
by Solicitor Jordan

1 time we used a two, a swab on the front and back and an  
2 individual Q-tip swabs on each finger. Now we just do the  
3 front and back swabs. We do that and seal it---

4 Q Okay.

5 A ---and send it to SLED.

6 Q Do you do that for both hands?

7 A Yes, ma'am.

8 Q Okay. On there, did you document on the evidence  
9 envelope the time and date of the collection?

10 A Yes, ma'am.

11 Q What was the time and date of collection on this?

12 A 2:05AM.

13 Q What was the date?

14 A 1/21/12.

15 Q Can you explain to the jury why it's important to  
16 document the time and date?

17 A Gunshot residue tests need to be performed within a six  
18 hour time frame.

19 Q Is that as to a person?

20 A Yes.

21 Q Okay. Once you collected those items, what did you do  
22 with the kit?

23 A I sealed it and put it, entered it into our database  
24 and dropped it into our evidence collection.

25 Q Did you alter or tamper with that kit in anyway during

Anthony Knighton - Direct examination  
by Solicitor Jordan

1 it's collection?

2 A No, ma'am.

3 Q After the early morning hours of January 21<sup>st</sup>, did  
4 you get called back to work on the case again?

5 A Yes, ma'am.

6 Q Okay. What was the next thing that you did in  
7 reference to this case?

8 A Later that evening I was called to the jail to collect  
9 the clothing, clothing from Mr. Craig.

10 Q Okay. And by later that evening, we know that you were  
11 on scene at the Waffle House at 2:05 to participate in the  
12 collection of GSR.

13 What do you, what do you mean by later that evening?

14 A It's later that night. This is 2:05 in the morning.

15 Q Yes, sir.

16 A Later that evening at around 23:30.

17 Q Okay. What -- where did you respond?

18 A Approximately 20 hours later.

19 Q Okay. Where did you respond?

20 A To the 950 California Avenue, Spartanburg County Jail.

21 Q Okay. Once there, what did you do?

22 A I collected clothing from Mr. Craig.

23 (WHEREUPON, a bag of clothing was marked as State's  
24 Exhibit No. 24 for identification purposes only at this  
25 time.)

Anthony Knighton - Direct examination  
by Solicitor Jordan

1 Q Okay. I'm gonna show you what the court reporter just  
2 marked as State's Exhibit No. 24, and ask if you can  
3 identify what is in this package. And if it would help for  
4 now you're welcome to take the brown bag out of the plastic  
5 bag.

6 A Yes, ma'am, it's clothing I collected from Mr. Craig.

7 Q Okay. What items did you collect from him?

8 A Two black sneakers, two gray socks, one pair of blue  
9 jeans, one black thermal long sleeve shirt, one black  
10 t-shirt, one blue belt, and one brown and white jacket.

11 SOLICITOR JORDAN: Your Honor, at this time we move to  
12 admit State's Exhibit No. 24 into evidence.

13 THE COURT: Objections from defense?

14 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 MR. WHELCHER: No, sir.

18 THE COURT: Without objection it will be admitted as  
19 it's been marked.

20 (WHEREUPON, State's Exhibit No. 24 was received into  
21 evidence at this time.)

22 THE COURT: You may proceed.

23 Q And just, just for clarification, who did you receive  
24 those items from?

25 A From Mr. Craig.



Anthony Knighton - Direct examination  
by Solicitor Jordan

1 Q Okay. And they were directly from him?

2 A Yes, ma'am.

3 Q Okay. At the time you went to collect those, was he  
4 wearing them?

5 A Yes, ma'am.

6 Q Could you explain to the jury why you did not do a GSR  
7 kit on the hands of Kenneth Craig?

8 A It was outside of the six hour window.

9 Q Okay. Were you made aware of any, any allegations that  
10 he fired a weapon?

11 A Not at the time.

12 Q Please---

13 A So, I believe the suspect---

14 Q I'm sorry. Please answer any questions Mr. Wheelchel  
15 may have.

16 THE COURT: Mr. Wheelchel, your witness.

17 MR. WHELCHER: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. WHELCHER:

20 Q Just so I'm sure, officer, you were summoned to the  
21 county jail and you took these items of clothing from  
22 Mr. Craig, is that correct?

23 A Yes, sir.

24 Q Then you took all of these items of clothing and  
25 deposited them together into this bag?

Anthony Knighton - Cross-examination  
by Mr. Welchel

- 1 A Yes, sir.
- 2 Q And this brown bag I should say?
- 3 A Yes, sir.
- 4 Q And then after you deposited them, all of them into the
- 5 brown bag, you sealed the brown bag?
- 6 Is that what this tape is for?
- 7 A No, sir, I transported it.
- 8 Q Okay. Well, what is this for, this evidence tape here
- 9 that's on the brown bag?
- 10 A I sealed the bag after I photographed all the clothing.
- 11 Q Oh, I understand that.
- 12 A Yes, sir.
- 13 Q But what I'm saying is after you put the items in the
- 14 bag and you, you photographed it then?
- 15 A Yes, sir.
- 16 Q Did you photograph it there or photograph it when you
- 17 got back to the Sheriff's Office?
- 18 A Back to the Sheriff's Office.
- 19 Q Okay. So, you put these items in this brown bag?
- 20 A Yes, sir.
- 21 Q You take them back to the Sheriff's Office, take them
- 22 out of the bag?
- 23 A Yes, sir.
- 24 Q Photograph them?
- 25 A Yes, sir.

Anthony Knighton - Cross-examination  
by Mr. Welchel

1 Q And then put them all back in the same bag, is that  
2 right?

3 A Yes, sir.

4 Q Okay. And they're all in this one bag together?

5 A Yes, sir.

6 Q Okay. And then where did this bag come from?

7 A I'm not sure, sir.

8 Q Okay. So, this bag was added at sometime later?

9 A Yes, sir.

10 THE COURT: Mr. Welchel, that has the evidence  
11 identification mark on it. That has to stay up here. Thank  
12 you, sir.

13 Q But you didn't have those items in this bag?

14 A No, sir.

15 Q Okay. This bag got added sometime later?

16 A Yes, sir.

17 Q Okay. But not by -- you didn't transport anything in  
18 this bag?

19 A No, sir.

20 Q Okay. But you did do this?

21 A Yes, sir.

22 Q They're all in here together?

23 A Yes, sir.

24 Q Okay. Thank you, sir.

25 A Yes, sir.

Anthony Knighton - Redirect examination  
by Solicitor Jordan

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION

3 BY SOLICITOR JORDAN:

4 Q Just for clarification, when you finished prepping the  
5 items, what did you do with them?

6 A I sealed the brown bag and entered it into evidence.

7 SOLICITOR JORDAN: Okay. Nothing further, Your Honor.

8 THE COURT: Mr. Wheelchel, anything you'd like to ask  
9 about that?

10 MR. WHELCHER: No, sir.

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

12 You wish to excuse the witness?

13 SOLICITOR JORDAN: Yes, sir, I do.

14 THE COURT: Any objection?

15 MR. WHELCHER: No, sir.

16 THE COURT: Sir, you're free to go.

17 THE WITNESS: Thank you.

18 THE COURT: Thank you very much.

19 THE WITNESS: Thank you, sir.

20 THE COURT: Ms. Jordan, you may call your next witness.

21 SOLICITOR JORDAN: Your Honor, State calls Robert  
22 Rosenberg.

23 THE COURT: Come forward, Officer Rosenberg, to my left  
24 and be sworn please.

25 ROBERT ROSENBERG, being first duly

Robert Rosenberg - Direct examination  
by Solicitor Jordan

1 sworn, testified as follows:

2 THE COURT: Once you're seated, sir, state your name  
3 please.

4 THE WITNESS: Robert Rosenberg.

5 THE COURT: Thank you.

6 Ms. Jordan, your witness.

7 SOLICITOR JORDAN: Thank you.

8 DIRECT EXAMINATION

9 BY SOLICITOR JORDAN:

10 Q Could you tell the jury where you're employed?

11 A Currently I'm employed at the Spartanburg County  
12 Sheriff's Office.

13 Q How long have you been there?

14 A October would be completing my thirtieth year.

15 Q Okay. What have you -- what various departments have  
16 you worked in at the, at the Sheriff's Office?

17 A I've worked on uniform patrol for numerous, numerous  
18 years, and I've worked in the warrant division and Court  
19 detail, and I've worked in the civil division, and currently  
20 I'm assigned to the property and evidence room.

21 Q How long have you been in that assignment with property  
22 and evidence?

23 A Approximately 12 years.

24 Q Okay. What are your duties as in, in the property and  
25 evidence area?

Robert Rosenberg - Direct examination  
by Solicitor Jordan

1 A When items are collected on the scene, they are brought  
2 to our area and we have a lockup area or they can bring them  
3 directly to us if we're open. We take the items in, catalog  
4 them, enter them in the computer, and we store them in a  
5 secure place until they're needed.

6 Q Okay. As part of your job, did you, did you have an  
7 occasion to come into contact with what's been previously  
8 marked and admitted as State's Exhibit No. 23, which is a  
9 GSR kit on Justin Harrison?

10 I believe it's Sheriff's Office Number 17.

11 A Yes, I did.

12 Q Okay. Could you tell the jury what you did with that  
13 item?

14 A When it came in, I entered it in the computer. I added  
15 the computer label on it and put it with the other items  
16 that we're storing for this case.

17 Q Okay. At any point in time, while that was in your  
18 possession, did you alter or tamper with it?

19 A Other than putting this sticker on here, that's all  
20 I've done is just put the sticker on there.

21 Q Okay. Did you have another occasion, at some point, to  
22 come back into contact with that package?

23 A Yes.

24 Q Okay. Could you just tell the jury what you did?

25 A On, on March 14<sup>th</sup>, 2013, I brought it back from SLED.

Robert Rosenberg - Direct examination  
by Solicitor Jordan

1 Q I'm sorry.

2 Can I -- could I direct your attention to the GSR kit  
3 that's Number 17?

4 A Yes.

5 Q Did you have occasion to bring it back from SLED in  
6 July of 2012?

7 A I don't show -- no.

8 SOLICITOR JORDAN: Your Honor, may I approach?

9 THE COURT: You may.

10 A The blood swabs came back and one, and two came back  
11 on---

12 Q Oh, okay.

13 A ---2012---

14 Q I apologize.

15 A ---at a later time.

16 Q I apologize. I didn't have the completed report.

17 Can you explain to the jury what my confusion was just  
18 now as to the, as to the items?

19 I apologize or---

20 MR. WHELCHEL: Your Honor, I don't know how he can  
21 explain to the jury what her confusion is.

22 Q Could you explain to the jury---

23 THE COURT: He perhaps understands what the confusion  
24 is. So, I'll allow him to answer that question.

25 Q Could you explain to the jury what you brought back

Robert Rosenberg - Direct examination  
by Solicitor Jordan

1 from SLED on, in July of 2012?

2 A Three items had previously been taken down to SLED. On  
3 July 12<sup>th</sup> I brought two of the items back. The third item  
4 was still at SLED, and then on March 14<sup>th</sup>, 2013, I brought  
5 the third item back, which was the GSR kit.

6 Q Thank you.

7 Now, I'm gonna turn your attention to the bag that's  
8 State's Exhibit No. 24 that's beside you --

9 A Yes.

10 Q -- and ask you if you recognize that object.

11 A Yes, I do.

12 Q Okay. I believe that is listed as Sheriff's Office 32?

13 A I believe so.

14 Q Okay. What did you do in reference to those items?

15 A Give me one second. I took them into evidence on  
16 January 25<sup>th</sup>, 2012, and then I brought them back on---

17 Q When you say you brought them back, where did you bring  
18 them back from?

19 A From SLED to the Sheriff's Office.

20 Q Okay. And when did that occur?

21 A April 17<sup>th</sup>, 2013.

22 Q Okay.

23 A And I believe I took them back to SLED -- no, I'm --  
24 excuse me. Let me get this correct. I brought them back  
25 from SLED March 14<sup>th</sup>, 2013, and they were returned back to



Robert Rosenberg - Direct examination  
by Solicitor Jordan

1 SLED on April 17<sup>th</sup>, 2013, and then I returned them from  
2 SLED again on May 9<sup>th</sup>, 2013.

3 Q So, would these items -- anytime that you had items in  
4 your possession, did you alter or tamper with them in  
5 anyway?

6 A No, I did not.

7 Q And can you explain -- you stated that you -- actually  
8 I have nothing further at this time. Nothing further from  
9 this witness.

10 THE COURT: Okay. Mr. Whelchel, you may cross-examine.

11 MR. WHELCHER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. WHELCHER:

14 Q I want to make sure I understand, Mr. Rosenberg.

15 Okay?

16 A Okay.

17 Q You testified you've been doing this for -- I think you  
18 testified that currently you're working at the Sheriff's  
19 office?

20 A Yes, sir.

21 Q You've been working at the Sheriff's Office the whole  
22 time I've known you?

23 A Yes, sir.

24 Q You took this bag, which contains these clothes, from  
25 whom, sir?

Robert Rosenberg - Cross-examination  
by Mr. Welchel

1 A It came in -- it appears to come in in our -- we have a  
2 lock-up, a secure locker that people can put evidence into  
3 and what we do is we go and remove it. It's not opened to  
4 the public. It's only opened to law enforcement. It's a  
5 secure locker. It's locked.

6 Q That's what we call the evidence room that we come up  
7 to see us?

8 A Yes.

9 Q Is that what you're talking about?

10 A Yes, sir.

11 Q All right. You took this in -- who did you take it  
12 from is what I'm asking.

13 A I took it out of the locker. It came in in off hours.

14 Q Okay. So, it's placed in a locker---

15 A Yes, sir.

16 Q ---and you have access to a locker?

17 A Yes, sir.

18 Q All right, sir. After you took it in on the 25<sup>th</sup>, is  
19 that correct --

20 A Yes, sir.

21 Q -- you took it where?

22 what happened to it then?

23 A I catalog it in the computer and we just put it on,  
24 put -- I believe that probably went in a box and we set the  
25 box on the shelf.

Robert Rosenberg - Cross-examination  
by Mr. Wheelchel

- 1 Q All of this goes in the box?
- 2 A No, I only had the brown bag.
- 3 Q Okay. The plastic bag came some time later from
- 4 somewhere?
- 5 A Yes.
- 6 Q Okay. So, you put the brown bag in the box?
- 7 A Yes, sir.
- 8 Q And do you take the clothes out of the brown bag or
- 9 anything like that or you just put it---
- 10 A No, sir, I leave it sealed.
- 11 Q All right. And then you put it in the box?
- 12 A Yes, sir.
- 13 Q And then what happened to it after that?
- 14 A It was another officer transported it to SLED.
- 15 Q When was that?
- 16 A February I believe 8<sup>th</sup> of 2012.
- 17 Q Okay. And do you know how long it stayed at SLED?
- 18 A I brought it back on March 14<sup>th</sup>, 2013.
- 19 Q Okay. And then it went back to SLED?
- 20 A Yes, sir.
- 21 Q When did that happen?
- 22 A April the 17<sup>th</sup>, 2013.
- 23 Q About a month after it came back?
- 24 A Yes, sir.
- 25 Q Okay. And how long did it stay at SLED that time?

Robert Rosenberg - Cross-examination  
by Mr. Welchel

1 A I brought it back on May 9<sup>th</sup> of 2013.

2 Q Did it go anywhere else after that?

3 A From what I can tell, no, sir.

4 Q Okay. So, all of the times you transported this item,  
5 State's Exhibit No. 24, these clothes were in this bag and  
6 this bag and sealed?

7 A The first time I -- when it -- I did not do this. The  
8 next officer that testified apparently did it. I mean she  
9 took it down to SLED, and when I brought it back SLED had  
10 put it in a plastic bag and sealed it.

11 Q In this plastic bag?

12 A Yes, sir.

13 Q Okay. That's fine.

14 A Okay.

15 Q Well, what I was asking you is every time that you  
16 transported this item either to or from SLED, all of these  
17 clothes were in this plastic bag?

18 Excuse me.

19 A As far as I could tell.

20 Q In the brown bag?

21 A It was sealed.

22 Q Yeah, I understand that. Let me finish my question.

23 A Yes, sir.

24 Q I'm just trying to make sure I understand.

25 All these clothes were in this brown bag?

Robert Rosenberg - Cross-examination  
by Mr. Wheelchel

1 A Yes, sir.

2 Q And at some point the brown bag that came put into by  
3 SLED this plastic bag?

4 A Yes, sir.

5 Q Okay. And you never took the clothes out?

6 A No, sir.

7 Q Other than when I came and looked at the clothes?

8 A Yes, sir, that's --.

9 Q All right. Or when the solicitor came and looked at  
10 the clothes?

11 A Yeah, I believe y'all were together.

12 Q Okay.

13 REDIRECT EXAMINATION

14 BY SOLICITOR JORDAN:

15 Q And you're present when anyone looks at clothing at the  
16 evidence room, you or another evidence officer is always  
17 present?

18 A Someone will be present, yes. An evidence officer will  
19 be present.

20 Q When you, when you took this item on the second trip  
21 down to SLED, what -- can you explain to the jury -- I know  
22 you didn't did the first trip.

23 Can you explain to the jury, on the second trip, how  
24 items are processed into SLED?

25 A We take items down to SLED. They seal them in a,

Robert Rosenberg - Redirect examination  
by Solicitor Jordan

1 either a container or a sealed container we already have  
2 brought in, and they enter it in their system and we turn it  
3 over to them at that point.

4 Q Okay. Is it sealed in front of you?

5 A Yes, it is.

6 SOLICITOR JORDAN: Nothing further, Your Honor.

7 THE COURT: Mr. Wheelchel.

8 RECROSS EXAMINATION

9 BY MR. WHELCHER:

10 Q None of that tells you why they were taken to SLED so  
11 many times?

12 A No, I do not know.

13 Q Okay.

14 THE COURT: Anything further?

15 SOLICITOR JORDAN: No, sir, Your Honor.

16 May this witness be excused?

17 THE COURT: Any objection?

18 MR. WHELCHER: No, sir.

19 THE COURT: Sir, you can step down. You're free to go.

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 You may call your next witness, Ms. Jordan.

23 SOLICITOR JORDAN: Angela Faulkner Nelson.

24 THE COURT: Come forward please.

25 ANGELA FAULKNER NELSON, being first

Angela Faulkner Nelson - Direct examination  
by Solicitor Jordan

1 duly sworn, testified as follows:

2 THE COURT: Have a seat, and once you're seated, state  
3 your name please.

4 WITNESS: It's Angela Faulkner Nelson.

5 THE COURT: Thank you.

6 Your witness, Ms. Jordan.

7 SOLICITOR JORDAN: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY SOLICITOR JORDAN:

10 Q Where are you currently employed?

11 A Spartanburg County Sheriff's Office.

12 Q How long have you been employed there?

13 A This October will be five years.

14 Q Okay. What various departments have you worked in  
15 during your time at the Sheriff's Office?

16 A I have been on road uniform, patrol, and I'm currently  
17 back in evidence and property.

18 Q Okay. How long have you been in evidence and property?

19 A A little over two years.

20 Q Okay. So, that means you were working there back in  
21 January of 2013?

22 A Yes, ma'am.

23 Q Okay. Did you have an occasion to come into contact  
24 with the item that is directly in front of you, State's  
25 Exhibit No. 23, which is a GSR kit on Justin Harrison?

Angela Faulkner Nelson - Direct examination  
by Solicitor Jordan

1 A I did.

2 Q Okay. Could you just tell the jury what you did with  
3 that or where you first came into contact with it and what  
4 you did with it?

5 A Typically in these situations the investigator assigned  
6 to the case will send us a form called iLAD. It's a  
7 submission. It's pre-logged for SLED. When they submit  
8 that, whatever officer is back in evidence happens to come  
9 across it, will look at the items. They'll pull them to the  
10 side and they will put them in a box that we have ready for  
11 SLED.

12 Once we have a substantial amount or an immediate need  
13 for the items to, to go, whomever is up next to go, and in  
14 this situation it was me, what I did at that time is I took  
15 the iLAB. I marked every item, checked it off on the  
16 property and evidence sheet, I signed it, transported it,  
17 and took it to SLED.

18 Q Okay. Did you, in anyway -- and what date did you take  
19 the GSR kit to SLED?

20 A That time was taken on February 8<sup>th</sup> of 2012.

21 Q Okay. While that item was in your possession, did you,  
22 in anyway, alter or tamper with it?

23 A No, ma'am.

24 Q What was the condition when you gave it to SLED?

25 A It was in this envelope. This was sealed. The red



Angela Faulkner Nelson - Direct examination  
by Solicitor Jordan

1 tape, which is our evidence tape, was on it. When I gave it  
2 to SLED they put the yellow tape over it, my initials over  
3 here, and it is dated and the time that they received it.

4 Q Okay. And I may have already asked you this, but did  
5 you alter or tamper with that in anyway?

6 A I did not.

7 Q Okay. I'm gonna move on now to State's No. 24, the bag  
8 in front of you.

9 A Okay.

10 Q Could you tell the jury how you first came into contact  
11 with that bag?

12 A It's the same as with this one. The ILAB where I go  
13 through the process. I find the items they're wanting to  
14 go. I check to make sure it's sealed. I check it off on  
15 iLAB, and put it in the box or whatever container I'm taking  
16 and it goes down to SLED with me.

17 Q Okay. When did you take that item?

18 A I also took that item on February 8<sup>th</sup>, 2012.

19 Q Okay. When you took that item to SLED, could you again  
20 just explain, for purposes of this item, the process that  
21 SLED goes through when you take an item to them?

22 A In this particular case this bag would have been sealed  
23 down to where the white tape matches with the white tape.  
24 It goes in tact just like that. When SLED receives it,  
25 they'll put their yellow tape across it. I initialed and

Angela Faulkner Nelson - Direct examination  
by Solicitor Jordan

1 dated at the time they receive it. Depending on what  
2 department it's going to in the SLED facility depends on  
3 what kind of packaging they'll put on the exterior of our  
4 evidence, and they submit it to wherever it needs to go to.

5 Q Okay. So, that was -- it was sealed, it was sealed  
6 when it was sealed when it was given to SLED?

7 A It was.

8 Q And they added their marking?

9 A Yes, ma'am.

10 Q Okay. Did you have one more occasion to come into  
11 contact with -- nothing further. If you'll please answer  
12 any questions that Mr. Wheelchel may have for you.

13 THE COURT: Mr. Wheelchel, your witness.

14 CROSS-EXAMINATION

15 BY MR. WHEELCHEL:

16 Q When you transported this bag it was sealed?

17 A Yes, sir.

18 Q And it was already sealed when you got it, is that  
19 right?

20 A Yes, sir.

21 Q So, you didn't open it for any reason?

22 A I did not.

23 Q And all the clothes that are in there had already been  
24 placed in there by somebody else?

25 A That would be correct.

Angela Faulkner Nelson - Cross-examination  
by Mr. Wheelchel

1 Q And you took it to SLED?

2 A I did.

3 Q And at some point somebody at SLED added this bag?

4 A Yes.

5 Q Okay. And when you -- you and Mr. Rosenberg, whoever  
6 brings this back, bring back everything that's connected  
7 with it to include the plastic bag?

8 A Correct.

9 Q Thank you, ma'am.

10 THE COURT: Redirect?

11 SOLICITOR JORDAN: No, sir.

12 May this witness be excused?

13 THE COURT: Any objections?

14 MR. WHELCHER: No, sir.

15 THE COURT: Ma'am, you may step down and you're free to  
16 go. Thank you for coming today.

17 WITNESS: Thank you.

18 THE COURT: You may call your next witness.

19 SOLICITOR JORDAN: The State calls Ila Simmons.

20 THE COURT: Come forward, Ms. Simmons. Come to my left  
21 and be sworn please.

22 Ila Simmons, being first duly sworn,  
23 testified as follows:

24 THE COURT: Once you've been seated, ma'am, state your  
25 name please.

Ila Simmons - Direct examination  
by Solicitor Jordan

1 WITNESS: Yes, sir. My name is Ila Simmons.

2 THE COURT: Thank you.

3 Ms. Jordan, your witness.

4 SOLICITOR JORDAN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR JORDAN:

7 Q Ms. Simmons, could you tell the jury where you're  
8 currently employed?

9 A I'm employed at the South Carolina Law Enforcement  
10 Division also known as SLED in the forensic services trace  
11 evidence department.

12 Q How long have you been there?

13 A Thirteen years.

14 Q Could you give the jury a little bit or just tell the  
15 jury about your educational background?

16 A I have a Bachelor's of Science in Chemistry. After  
17 completing that, I came to work at SLED where, during my  
18 first three years at SLED I worked with a Court qualified  
19 evidence examiner in the trace department who taught me to  
20 collect and analyze trace evidence. During that time I had  
21 to take written and practical examinations and pass them  
22 all. Each year I take a proficiency test in all the  
23 disciplines at trace to remain proficient in every area in  
24 trace analysis.

25 I'm a member of the Southern Association of Forensic

Ila Simmons - Direct examination  
by Solicitor Jordan

1 Science, American Academy of Forensic Science, and the  
2 Gunshot Residue Association. I also participated in that in  
3 2005.

4 Q How many -- throughout your time, how many GSR kits  
5 would you estimate that you have processed?

6 A I've probably processed 50,000 gunshot residue samples.

7 Q Okay. Have you testified before in a Court, in any  
8 Courts as an expert?

9 A Yes, ma'am, I have.

10 Q How many times---

11 A Approximately.

12 Q ---roughly?

13 I'm sorry.

14 A Over 200 times.

15 Q Okay. Which states or which courts, counties have you,  
16 have you testified in?

17 A In all counties except six in the State of South  
18 Carolina.

19 Q Okay.

20 A So, 40 counties.

21 SOLICITOR JORDAN: Your Honor, at this time we move to  
22 admit Ms. Simmons as an expert in the area of gunshot  
23 residue.

24 THE COURT: Any objections?

25 MR. WHELCHEL: No, sir.

Ila Simmons - Direct examination  
by Solicitor Jordan

1 THE COURT: Without objection she'll be qualified as an  
2 expert within that field. I've explained to the jury what  
3 that designation means.

4 So, you can proceed.

5 SOLICITOR JORDAN: Thank you, Your Honor.

6 Q Turning our attention to State's No. 23.

7 Could you explain to the jury how you came into  
8 possession of that item and what you did with it?

9 A Yes, ma'am. When items are brought into SLED, they're  
10 logged into your central log-in area on the first floor of  
11 our laboratory. At that time the evidence person bringing  
12 the evidence from Spartanburg would have placed the evidence  
13 that was sealed into this envelope. Our evidence technician  
14 would put, would put a piece of evidence tape on it, and  
15 then the initials and date of the initials of the person  
16 bringing it from Spartanburg would of been on here as well  
17 as the date.

18 I would of gone down to the central log-in area when  
19 it's time to pick up the evidence. All of the evidence  
20 would of been stored in a room that only the evidence  
21 technicians and our laboratory director have access to.  
22 It's under a key and magnetic lock. You have to have a pass  
23 card and key to get in there. So, no one can get in there  
24 except the evidence technicians.

25 The evidence technician would of gone to the back,

Ila Simmons - Direct examination  
by Solicitor Jordan

1 gotten the evidence that I requested under specific lab  
2 number. Every case that comes into our lab is given a lab  
3 number, which is unique, as well as each piece of evidence  
4 is given an item number. They would of gone in, collected  
5 all the evidence from that specific case number, and given  
6 them to me, and I would of received them from -- this  
7 particular item would of been in this outer envelope. It  
8 would of been sealed with the initials and date of the  
9 person bringing it from Spartanburg.

10 The evidence technicians in our laboratory would never  
11 have opened the evidence, and would never have touched the  
12 evidence. I would of taken it into my custody, taken it up  
13 to our laboratory, opened it, and began processing it for  
14 analysis.

15 Q Okay. Can you explain to the jury how your process or  
16 the beginning of the process for your analysis---

17 A Yes, ma'am.

18 Q ---what that is?

19 A Yes, ma'am.

20 Q And it may be beneficial just to hear a little bit  
21 about the GSR kit and what comes to you.

22 A Okay. In a gunshot residue kit, they're a standardized  
23 kit. They're made -- this particular kit was made by  
24 TriTech Forensics. In this kit is a set of swabs and a set  
25 of particle lifts. The particle lifts are double sided

Ila Simmons - Direct examination  
by Solicitor Jordan

1 sticky tape that have a handle, and each one is dabbed  
2 across a specific area of the hands. A sample's taken from  
3 the palm of the right hand, a sample's taken from the back  
4 of the right-hand, a sample from the palm of the left-hand,  
5 and a sample from the back of the left-hand. Each vile is  
6 labeled so that -- and they're handled so that the person  
7 collecting the kit will never touch the area that we are  
8 analyzing. It would only be the area of the hand from the  
9 person who's suspected to have been in the presence of  
10 gunshot residue.

11 And they're also swabs submitted in the kit. And the  
12 officer taking the kit would put a few drops of dilute acid,  
13 taken the same areas from, from the different areas of the  
14 hands and place them in vials that were labeled. They'll be  
15 put back in the envelope. They would of been sealed at that  
16 time after the kit was collected with a piece of red  
17 evidence tape, and it is also initialed by the officer  
18 collecting the kit, and they also put the date on here so  
19 that this evidence tape would of always been in tact from  
20 the time that the GSR kit was collected until the time I  
21 broke the seal and began analysis.

22 The GSR kit has a form inside that lists very pertinent  
23 information. It lists from whom the kit was collected, and  
24 it also has the time of the incident and the time that the  
25 GSR kit was collected. That's important because gunshot



Ila Simmons - Direct examination  
by Solicitor Jordan

1 residue kits that are collected beyond six hours will not be  
2 analyzed by our laboratory, and this particular kit was  
3 collected from Justin Michael Harrison and it was collected  
4 within about 45 minutes from the shooting incident.

5 Q Okay. And could you explain to the jury what the six  
6 hour window applies to?

7 A Yes, ma'am, on a living individual, gunshot residue has  
8 the consistency of flour. So, it's very easily removed.  
9 It's also absorbed through the skin and can be wiped off.  
10 So, on a living individual, gunshot residue will not  
11 remain on the hands beyond a six hour time. So, if I were  
12 to shoot a gun at noon, by six o'clock in the afternoon  
13 they're be no gunshot residue left on my hands simply  
14 because I'm absorbing things through my skin, I'm sweating,  
15 I'm making contact with things, and this can all destroy and  
16 remove gunshot residue.

17 Q What does SLED do if they receive a kit on an  
18 individual that's beyond the six hour window?

19 A On a living individual we will not analyze the kit if  
20 it's collected beyond six hours.

21 Q Okay. And could you just tell the jury what you did  
22 with this kit?

23 A Yes, ma'am, I would of opened it. I would of removed  
24 the information sheet that was in it, documented all of the  
25 pertinent information, and then processed the swabs portion

Ila Simmons - Direct examination  
by Solicitor Jordan

1 of the kit for analysis.

2 Q Okay. And did you actually do the analysis in this  
3 case on this kit?

4 A No, ma'am, the total analysis would of been done by  
5 another analyst. I've just been doing the processing at  
6 this time.

7 Q Okay. Please answer any questions that Mr. Whelchel  
8 may have.

9 THE COURT: Mr. Whelchel, your witness.

10 MR. WHELCHER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. WHELCHER:

13 Q I'm confused, ma'am.

14 You did the initial prep work?

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q But Mr. Moskal -- am I saying that right?

19 A Yes, sir.

20 Q Did the actual analysis?

21 A Yes, he would of analyzed the particle lifts on the GSR  
22 kit as well as collecting any samples from SLED.

23 Q Okay. You said that the person who's taking the  
24 sample---

25 A Yes, sir.

Ila Simmons - Cross-examination  
by mr. whelchel

1 Q -- would do, get -- is it special tape or what is it  
2 that's put on the hands?

3 A Yes, sir, it's a double sided carbon tape --

4 Q Uh-huh. (Affirmative).

5 A -- that is -- has a handle attached to it, and it is  
6 dabbed over the hands, and it would collect any particular  
7 matter that was on that area of the hands.

8 Q Okay. So, you dab -- correct me if I'm wrong, ma'am,  
9 left-hand top and left-hand palm, those are two separate  
10 dabbings, is that right?

11 A That's correct.

12 Q Right-hand top and right-hand palm, two separate of the  
13 dabbings?

14 A That's correct.

15 Q And all of those are kept separate from each other?

16 A Yes, sir.

17 Q Why are they kept separate from each other, ma'am?

18 A We do that so that we will know from which area the  
19 samples were collected and where the gunshot residue was  
20 collected from on that specific sample.

21 Q Okay. Now, is there a chance that you can contaminate  
22 if you don't keep them separate from palm to top of the  
23 hand?

24 A If they're not sealed in a vile, then something could  
25 get on them, but they're sealed in a vile---

Ila Simmons - Cross-examination  
by mr. whelchel

1 Q Okay.

2 A ---separately.

3 Q I understand or I think I do.

4 THE COURT: Any other questions, Mr. whelchel?

5 MR. WHELCHER: Oh, I'm sorry, Your Honor. No, sir.

6 THE COURT: You may redirect?

7 SOLICITOR JORDAN: No, sir.

8 May this witness be excused?

9 THE COURT: Any objection?

10 MR. WHELCHER: No, sir.

11 THE COURT: Ma'am, you may step down and you're free to  
12 go. Thank you for coming today.

13 You may call your next witness.

14 SOLICITOR JORDAN: Your Honor, may we just approach for  
15 scheduling matters?

16 THE COURT: Yeah, please do.

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

19 THE COURT: All right. Before we begin the next  
20 witness we'll take a short break, ladies and gentlemen.

21 As always, when you leave the courtroom, I'll instruct  
22 you not to begin any discussions until I've asked you to do  
23 so. At this time you may retire to the jury room.

24 Thank you very much.

25 Remain seated while the jury retires please.

1 (WHEREUPON, the following takes place outside the  
2 presence of the jury.)

3 THE COURT: All right. Court will be in recess for  
4 about ten minutes. Thank you.

5 SOLICITOR JORDAN: Thank you.

6 (WHEREUPON, a short recess was taken at this time.)

7 THE COURT: Is the State ready to proceed?

8 SOLICITOR JORDAN: Yes, sir.

9 THE COURT: All right. You ready?

10 MR. WHELCHER: Yes, sir.

11 THE COURT: All right. Call the jury in.

12 (WHEREUPON, the following takes place within the  
13 presence of the jury.)

14 THE COURT: Thank you.

15 All right. The record will reflect the jury has  
16 returned to the courtroom.

17 At this time the State may call its next witness.

18 SOLICITOR JORDAN: Thank you, Your Honor.

19 The State calls Mike Moskal.

20 THE COURT: Come forward please to be sworn. Sir, if  
21 you'll step over here to my left please.

22 MIKE MOSKAL, being first duly  
23 sworn, testified as follows:

24 THE COURT: Once you're seated, sir, please state your  
25 name.

Mike Moskal - Direct examination  
by Solicitor Jordan

1 WITNESS: Yes, sir, Michael Moskal.

2 THE COURT: Thank you.

3 Your witness, Ms. Jordan.

4 SOLICITOR JORDAN: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR JORDAN:

7 Q Can you tell the jury where you're employed?

8 A Yes, ma'am, I'm currently employed by the South  
9 Carolina Law Enforcement Division that's commonly known as  
10 SLED and am assigned to their trace evidence department.

11 Q How long have you been employed with SLED?

12 A Since 2007.

13 Q Could you give the jury the information about your  
14 educational background?

15 A Yes, ma'am, I have a Bachelors of Science in Chemistry  
16 from College of Charleston. I taught chemistry at  
17 Summerville High School for about seven years after that,  
18 and then was employed by SLED.

19 Once I was employed by SLED I began a fairly intensive  
20 in-house training for all analysis we perform in the trace  
21 lab. Specifically gunshot residue. That was about a six or  
22 seven month period where I worked with a Court qualified  
23 analyst in gunshot residue. I worked cases with them from  
24 receiving evidence to writing up a report. It included  
25 learning how to run the instrumentation, how to analyze

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by Solicitor Jordan

1 gunshot residue, how to collect it.

2 At the end of that period I was given a model case  
3 where I performed the analysis on it, and then wrote a  
4 report and defended it against a group of people just like  
5 it would be in a trial. At the end of that, upon successful  
6 completion, they deemed me qualified to analyze gunshot  
7 residue.

8 Q Okay. Have you testified before in any Courts in the  
9 State of South Carolina?

10 A Yes, ma'am, 20 times in State and Federal Court.

11 Q Okay. Were you qualified as an expert in gunshot  
12 residue in all those instances?

13 A Seventeen of them were gunshot residue.

14 SOLICITOR JORDAN: Okay. Your Honor, at this time we  
15 move to admit this witness as an expert in GSR---

16 THE COURT: Is there an objection?

17 SOLICITOR JORDAN: ---gunshot residue.

18 MR. WHELCHEL: No, sir.

19 THE COURT: Without objection then I'll qualify the  
20 witness as an expert in that field.

21 Q I'm gonna direct your attention to State's No. -- I  
22 believe it's 23, but let me double-check. Yes, State's No.  
23 23, and ask you if you can identify that for the jury.

24 A Yes, ma'am. State's Exhibit, Exhibit No. 23 would of  
25 been my SLED Lab Number L12-00895, Item Number 12. I

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by Solicitor Jordan

1 recognize this because it bears our SLED sticker as well as  
2 my initials.

3 Q Okay. Before we get started, could you talk to the  
4 jury and tell them about gunshot residue and what that is?

5 A Yes, ma'am, in a broad sense, gunshot residue is  
6 everything that comes out of a weapon when it's fired. It's  
7 going to include dirt and grease that may be in the barrel  
8 of the gun from prior shootings. It may include some oil  
9 from cleaning. It's also gonna include particles of burnt  
10 and unburnt gun powder.

11 But specifically what we look for are particles that  
12 come out of the primer. The primer's made up of components  
13 that contain lead, barium, and antimony. And, so, in a very  
14 narrow sense, gunshot residue is gonna be a particle that  
15 contains those three elements and specifically in a round or  
16 spheroidal shape.

17 Q Okay. Could you tell the jury just how gunshot residue  
18 comes from a weapon?

19 A Yes, ma'am. When the weapon is fired, those gases are  
20 produced inside the weapon, and it comes out of any opening  
21 in that weapon. So, when we're looking at a semiautomatic  
22 weapon or a semiautomatic pistol, that's going to be the  
23 muzzle end and the ejector port. So, that's the areas of  
24 the weapon that the gunshot residue is gonna eject from.

25 Q Okay. And by or I'm gonna now -- and can you also talk



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by Solicitor Jordan

1 about gunshot residue and what happens to it when it ejects  
2 from a weapon?

3 A Yes, ma'am. When the weapon is fired it produces a  
4 cloud that comes out of that weapon, and then that cloud  
5 deposits on anything around it. Specifically the hands on  
6 the clothing of -- potentially on the clothing, potentially  
7 on the hands, and anything around that particular object up  
8 to a distance of, depending on the weapon and the caliber  
9 and the type of ammunition, it's kind of generally stated  
10 that it goes for about five to ten feet away from the  
11 weapon.

12 Q Okay. Now I'm gonna focus your attention back to  
13 State's 23 and the gunshot residue kit.

14 Could you explain to the jury what you did with that  
15 kit from Justin Harrison?

16 A Yes, ma'am, when a GSR kit is collected there are two  
17 pieces of evidence that are collected from, when we're  
18 talking about a person, a gunshot residue is collected from  
19 the hands. They're gonna take a pair of cotton swabs with a  
20 little bit of dilute acid on it, and they're gonna swab the  
21 palm and the back of both hands so you would wind up with  
22 four samples, and then they would do a control from an area  
23 that's not exposed to gunshot residue when the weapon is  
24 fired. That's the first type of analysis or first type of  
25 sample that would be collected.

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1       The second type is a, called a particle lift and the  
2 particle lift is an aluminum disk with a, with a little hand  
3 held piece on the back, and the top of it is coated with a  
4 double sided sticky tape. So, they take that sticky tape  
5 and they collect from the same four areas, the right palm,  
6 the right back, the left palm, and the left back. Each one  
7 being a separate sample and they dab it across the hand  
8 until it's no longer sticky.

9       what I did with this is analyzed those particle lifts,  
10 the double sided sticky tape. We use an instrument called a  
11 scanning electronic microscope or an SEM for short, and it's  
12 set up so that it will run across that entire sticky tape  
13 and look for particles and look specifically for particles  
14 that contain one or more of those three elements, lead,  
15 barium, and antimony.

16       And, so, that was the analysis that I performed on the  
17 GSR kit of Justin Michael Harrison.

18 Q     What was the results of that analysis?

19 A     On each of the four areas, on the right palm, the right  
20 back, the left palm and the left back, from Justin Michael  
21 Harrison, my Item Number 12, I found particles of gunshot  
22 residue.

23 Q     Okay. And was that found on all four items?

24 A     Yes, ma'am.

25 Q     Okay.

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1 A On all four areas of Justin Michael Harrison's kit, the  
2 right palm, the right back, the left palm, and the left  
3 back.

4 Q Okay. And is that consistent with someone having fired  
5 a weapon?

6 A Yes, ma'am.

7 Q Okay. I'm now gonna shift your focus to what's  
8 previously been marked as State's No. 24 as down on the  
9 floor beside you and ask if you recognize that item.

10 A Yes, ma'am, I do. I recognized this is the bag  
11 contains my initials on the seal and for a plastic bag that  
12 contains my initials on the seal as well as the paper bag  
13 inside.

14 Q Okay. Can you explain to the jury that, how that  
15 plastic bag came to be with those items?

16 A Yes, ma'am. When, when evidence is logged in with our  
17 evidence custodians, the submitting agency brings it in. It  
18 may be in a box. It may be in a plastic bag. It varies as  
19 far as what they actually bring it into the office in, and  
20 when the evidence custodians package it, they make certain  
21 it's in a, in an appropriate package for us so often times  
22 they would take -- they would put, place it into a plastic  
23 bag like this.

24 Q Okay. Do the -- does the clothing itself, while stored  
25 at SLED, remain in, inside the original bag it's brought

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1 from the law enforcement agency?

2 MR. WHELCHEL: Your Honor, I lost part of the question  
3 about halfway through it. I'm sorry.

4 SOLICITOR JORDAN: I apologize.

5 MR. WHELCHEL: Thank you, Your Honor.

6 SOLICITOR JORDAN: I'll talk a little louder.

7 THE COURT: All right. Thank you.

8 Q while in storage, do the items inside the brown bag  
9 that was provided by law enforcement remain in that brown  
10 bag?

11 A Yes, ma'am, when a, when a submitting agency submits  
12 the evidence, their container is sealed. They put it -- if  
13 they put it in an outer container, that outer container will  
14 be sealed as well, and then when we receive it from evidence  
15 custodians, it's sealed as well. When they store it, it  
16 goes into an area that only they have access to and lab  
17 management has access to. We receive it from them in a  
18 sealed state just like they receive it in and then it  
19 remains sealed until we actually begin analysis on it.

20 Q Okay. And did you do the analysis on the contents of  
21 State's 24?

22 A Yes, ma'am, I did.

23 Q Okay. I'm going to ask if you could -- we'll go  
24 item-by-item and pull out -- starting with inside of State's  
25 24, SLED's Item 16.2.

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by Solicitor Jordan

1 MR. WHELCHEL: Your Honor, at this time I'd have a  
2 matter I'd like to take up with the Court.

3 THE COURT: All right. Ladies and gentlemen of the  
4 jury, I'm gonna ask you to step back to the jury room while  
5 I discuss this with the attorneys. As always, I'll ask you  
6 not to begin any discussions until I've asked you to begin  
7 your deliberations.

8 You may retire.

9 (WHEREUPON, the following takes place outside the  
10 presence of the jury.)

11 THE COURT: Yes, Mr. Wheelchel.

12 MR. WHELCHEL: Your Honor, at this time I would object  
13 to this witness' testimony concerning any testing of  
14 clothing of my client, and I thought we needed to get this  
15 settled before it's testified in front of the jury, Your  
16 Honor.

17 THE COURT: Certainly.

18 MR. WHELCHEL: Your Honor, it's my position that this  
19 clothing, the way it was collected and stored, is  
20 contaminated and, as such, can not be tested by the, this  
21 individual or anyone, anyone else. The other testimony or  
22 the previous testimony was that there were separate tests  
23 made for the left palm, right palm, left back, and right  
24 back of the hand, and that the reasons that they were done  
25 that way, I think between with the last lady that testified,

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1 is so that they don't contaminate each other.

2 All the testimony that's been provided for up until now  
3 is that all of these clothes have been housed, Your Honor,  
4 in this bag. If you like, I can hand it up to Your Honor.

5 THE COURT: No, I'm---

6 MR. WHELCHER: They've all been housed in this bag.  
7 All been housed together. They've not been separated from  
8 each other in anyway. And I don't know -- I don't believe  
9 he's gonna be able to testify that whatever he found came  
10 from this piece of clothing and didn't come, didn't get  
11 contaminated by another piece of clothing all during the  
12 storage and/or the multiple transits there were---

13 THE COURT: All right.

14 MR. WHELCHER: ---from---

15 THE COURT: Refresh my memory now, I believe that all  
16 the items in that bag were collected from the defendant at  
17 the jail---

18 MR. WHELCHER: Yes, sir.

19 THE COURT: ---when he was booked?

20 MR. WHELCHER: Yes, sir.

21 THE COURT: So, there's no clothing item that I've  
22 heard testified to in the bag that did not come from his  
23 person, is that correct?

24 MR. WHELCHER: Yes, they were taken from him at the  
25 jail.

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1 THE COURT: Okay. I'm trying to determine whether  
2 there was anyone else's items stored in the same bag.

3 MR. WHELCHEL: No, I'm not saying there was anybody  
4 else's items stored, Your Honor.

5 THE COURT: Oh, okay. I just wanted to be sure I'm --  
6 be sure I understood it because---

7 MR. WHELCHEL: Yes, sir.

8 THE COURT: I mean I'm not familiar with these items as  
9 you are. I just wanted to be sure I was right.

10 MR. WHELCHEL: My objection is these.

11 THE COURT: Well, I don't know whether he's gonna  
12 testify as to---

13 MR. WHELCHEL: Well---

14 THE COURT: ---that the, that the gunshot residue came  
15 from any particular item other than -- maybe the State can  
16 help me.

17 Is his testimony going to be that he, that when he  
18 tested the, each item some items had gunshot residue?

19 I don't know what he's gonna say. I just---

20 SOLICITOR JORDAN: Your Honor, the items he tested,  
21 there will be testimony as to the jeans having gunshot  
22 residue on them. There will be -- and I'll just quote the  
23 reports so I don't get it wrong.

24 THE COURT: All right.

25 SOLICITOR JORDAN: There will be testimony that as to

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by Solicitor Jordan

1 the one pair of black Nike tennis shoes, round particles  
2 contained lead were found, round particles containing lead  
3 may be associated with residue produced from the discharge  
4 of a firearm, but may originate from additional sources.

5 There is a short sleeve black shirt in there that he  
6 will testify that non-round particles containing lead,  
7 barium, and antimony, antimony, which are the three elements  
8 that he's already stated are in gunshot residue, were found.

9 THE COURT: Yeah.

10 SOLICITOR JORDAN: Non-round particles containing those  
11 three are characteristic of gunshot residue.

12 He'll testify that there was one black long sleeve  
13 cotton knit shirt in there that contained, with one particle  
14 of gunshot residue and one non-round particle containing  
15 lead, barium, and antimony were found. Non-round particles,  
16 as stated earlier, containing those three items are  
17 consistent with, characteristic with gunshot residue.

18 He will also testify, and I don't know that -- I  
19 believe I've already mentioned the one pair of jeans  
20 contained gunshot residue, and, and that there's also in  
21 there a brown and white Celebrity jacket that he will  
22 testify that round lead particles were found, round lead  
23 particles are one of the components of gunshot residue.

24 He also will state, as to that item, non-round  
25 particles contained lead, barium, and antimony were found,



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by Solicitor Jordan

1 were also found. These particles may be associated with  
2 gunshot residue.

3 THE COURT: All right. Now, I'm sorry, Mr. Whelchel, I  
4 interrupted you, but I kind of needed to know what the  
5 testimony was going to be.

6 MR. WHELCHER: I think that's gonna be it, Your Honor.  
7 But I think he needs to accurately proffer that testimony  
8 before the Court then determine --.

9 SOLICITOR JORDAN: Your Honor, could I just argue  
10 briefly?

11 THE COURT: Yeah, please do.

12 SOLICITOR JORDAN: Taking off from where the Court was  
13 going, in reference to the fact that all these items came  
14 from Kenneth Craig. They all came from him. No other items  
15 were in that bag that Anthony Knighton testified that he  
16 received from any other source. Warn by him. On his body.

17 Also, I believe that any evidence or any, any issue  
18 with the packaging of these items and the testing goes to  
19 the weight of the items, not to the admissibility of the  
20 items. That's something that he can argue to the jury that  
21 he can bring out on cross-examination. I don't think it has  
22 anything to do with its admissibility. That's cross and  
23 that's argument.

24 THE COURT: Mr. Whelchel.

25 MR. WHELCHER: The Court might be surprised to find I

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1 disagree with that. I think the Court has to determine  
2 whether or not this evidence is going to be admissible first  
3 before it can be---

4 THE COURT: Well, let me ask you this, Mr. Wheelchel.

5 MR. WHELCHER: ---brought out before the jury.

6 THE COURT: Do you intend to offer expert testimony to  
7 the effect that the testing methods used in this case do not  
8 meet the standards of this type of testing or these types of  
9 labs?

10 Is there some---

11 MR. WHELCHER: No.

12 THE COURT: ---expert testimony that would indicate  
13 that this is somehow unreliable evidence?

14 MR. WHELCHER: I wanted to cross-examine him outside  
15 the presence of the jury, Your Honor.

16 SOLICITOR JORDAN: So, he wants I -- oh, I apologize.

17 MR. WHELCHER: So that you can make the decision as to  
18 whether or not this is going to be admissible, and I thought  
19 that was the proper way to do it or this time was the proper  
20 time to do it.

21 SOLICITOR JORDAN: I guess it just seems to me that he  
22 wants a bite at the apple to see how it's gonna go with an  
23 empty box.

24 THE COURT: Well, again, Mr. Wheelchel, is there any  
25 indication of any expert that you have employed or you have

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1 consulted that you intend to present evidence to indicate  
2 that this particular method of testing, this particular  
3 method of storing items to be tested, somehow fails to meet  
4 the standards that are -- these labs have standards that  
5 they're suppose to meet.

6 MR. WHELCHER: And that's what I wanted to  
7 cross-examine him on.

8 THE COURT: Well, I understand that, but I'm asking you  
9 do you know of anything---

10 MR. WHELCHER: I don't have an expert.

11 THE COURT: Cause I'll allow you to proffer that  
12 evidence.

13 MR. WHELCHER: Yes, sir, but I don't have an expert.

14 THE COURT: Oh, I'm gonna, I'm gonna limit your, your  
15 proffer --

16 MR. WHELCHER: Yes, sir.

17 THE COURT: -- to, to whether or not this gentleman  
18 feels that his testing was, met the standards.

19 MR. WHELCHER: Okay.

20 THE COURT: Okay. I'll allow you to make that proffer.  
21 We're gonna -- we're not gonna go on a fishing expedition  
22 here now.

23 MR. WHELCHER: I don't want to fish, Your Honor.

24 THE COURT: I don't want you to either.

25 SOLICITOR JORDAN: Your Honor, may I just, may I just

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by Solicitor Jordan

1 consult with Mr. Wheelchel real quick?

2 THE COURT: Certainly.

3 (Pause.)

4 SOLICITOR JORDAN: Your Honor, I'd just like to put  
5 something on the record just in case it's ever needed. That  
6 Mr. Wheelchel did, at some point in time, consult with an  
7 expert in GSR, that that has apparently occurred.

8 THE COURT: Well, I understand that. I was just asking  
9 if he had independent evidence as part of his proffer or  
10 that he was gonna call some other witness to indicate that  
11 this particular method of testing somehow fails to meet the  
12 standard or somehow creates evidence that's unreliable and  
13 shouldn't be introduced into the Court of law. But he  
14 apparently would like to cross-examine him. I'll allow him  
15 to do that as a proffer.

16 You may proceed, Mr. Wheelchel.

17 MR. WHELCHEL: Thank you, Your Honor.

18 All right.

19 SOLICITOR JORDAN: Your Honor, I would assume, at this  
20 point, we're just going to go with the contention that  
21 everything that I just read from the SLED reports on those  
22 two items are proper or do I -- can I lay that foundation  
23 real quick before he crosses?

24 THE COURT: Well---

25 SOLICITOR JORDAN: Or I take that back.

Mike Moskal - Direct examination  
by Solicitor Jordan

1 THE COURT: I think we're going to his methods---

2 SOLICITOR JORDAN: Yes, sir.

3 THE COURT: ---that he used and whether or methods --  
4 that's what I'm gonna give you an opportunity to proffer is  
5 somehow that the methods were not properly done, that the --  
6 that it did not meet lab standards of some kind, that  
7 they're established in some fashion. You said you wanted to  
8 challenge the reliability of it. That's what I'm gonna give  
9 you a chance to do.

10 MR. WHELCHER: Oh, I understand.

11 THE COURT: Okay.

12 MR. WHELCHER: I, I just didn't know if you were gonna  
13 actually have him testify or just use what the solicitor---

14 THE COURT: Well, will, will you stipulate, for  
15 purposes of this hearing, that this report---

16 MR. WHELCHER: That's correct.

17 THE COURT: ---that she's read is correct?

18 MR. WHELCHER: Yes, sir.

19 THE COURT: And that would be his testimony as far as  
20 we know?

21 MR. WHELCHER: Yes, sir.

22 THE COURT: Okay. Now you may proceed, Mr. Whelchel.

23 MR. WHELCHER: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. WHELCHER:

Ila Simmons - Cross-examination  
by Mr. Welchel

1 Q Just tell me how you pronounce your last name.

2 A Moskal.

3 Q Moskal?

4 A Yes, sir.

5 Q Like it sounds.

6 Okay. All right. When you received this clothing to  
7 be tested for gunshot residue, it was all together in that  
8 bag, is that correct?

9 A Yes, sir.

10 Q Okay. The tennis shoe -- everything -- all the items  
11 that you tested or did not test came out of the bag?

12 A Except for the GSR kit, correct.

13 Q Yeah, I understand that.

14 But initially the items that were in that bag were in  
15 the bag together, they were not separated from each other?

16 A They were not separated, that's correct.

17 Q They were not separated from each other like the other  
18 GSR kit that you tested that you've already testified about?

19 A Correct.

20 Q Okay. And the reason, correct me if I'm wrong, that  
21 the other GSR kits are separated, the palm, excuse me, the  
22 two palms, the two tops of the hands, is so that they won't  
23 contaminate each other?

24 A That's correct, cause we like to be able to say that it  
25 was found in a particular location.

Ila Simmons - Cross-examination  
by Mr. Welchel

1 Q Okay. Can you testify that these clothes did not  
2 contaminate each other while, when they were collected in  
3 the method they were collected?

4 A No, sir, I can not.

5 Q Okay. So, the GSR that you found on it, on the  
6 shirt---

7 A Well, let me back-up.

8 Q Let me finish my question.

9 A Okay.

10 Q The, the GSR that you found on the shirt may have  
11 initially been on another piece of clothing in that bag, is  
12 that correct?

13 A That is correct.

14 Q Okay. And you have no way of knowing where it was  
15 initially?

16 A No, sir, just that when I, when I collected the sample  
17 I know where I collected from.

18 Q Yeah, I understand that.

19 A And at that point that's where it was. But prior to  
20 that I do not know.

21 Q Okay. So, every item in that bag is potentially  
22 contaminated, potentially contaminated, is that correct,  
23 sir?

24 A They can potentially transfer from one item to that bag  
25 to another item in that bag, correct.

Ila Simmons - Cross-examination  
by Mr. Wheelchel

1 Q And there's no way for you to know if and when or how  
2 that has happened?

3 A No, sir.

4 MR. WHELCHER: Okay. That would be my showing, Your  
5 Honor.

6 THE COURT: Well, let me, let me just then -- is there,  
7 is there a motion?

8 MR. WHELCHER: My motion is to suppress this, any  
9 testimony about GSR now that he's testified that he can't  
10 testify---

11 THE COURT: Well, I did not hear any testimony that it  
12 was contaminated by outside agents. All of the --  
13 whatever -- if you want to use the word contamination. I  
14 don't know. I think the word perhaps is mixed in the bag.

15 MR. WHELCHER: I use contaminated, Your Honor.

16 THE COURT: All of the items, all of the items that  
17 came, that are in the bag came from one individual. I  
18 have -- I would not allow him to testify and I don't think  
19 he's going to, based on what he just said, that the gunshot  
20 residue came from any particular item that was on his  
21 person, but that it came from items that were on his person.

22 MR. WHELCHER: The testimony -- what's going to---

23 THE COURT: Let me, let me finish my thought.

24 MR. WHELCHER: I'm sorry, Your Honor.

25 THE COURT: And I did -- you still have not presented



Ila Simmons - Cross-examination  
by Mr. Wheelchel

1 to me any information that indicates that this method of  
2 storing evidence and/or testing evidence, based -- given the  
3 opinions he's going to give, somehow fails to meet any type  
4 of industry or lab standards for producing that type of  
5 evidence.

6 MR. WHELCHER: Well---

7 THE COURT: Is there such information?

8 MR. WHELCHER: I don't believe it meets the standard,  
9 Your Honor, and that's what---

10 THE COURT: I'm asking you if you can give me some---

11 MR. WHELCHER: No, sir.

12 THE COURT: Other than your belief.

13 MR. WHELCHER: All -- only what my expert told me to  
14 cross-examine him on.

15 THE COURT: Well, is he here to testify?

16 MR. WHELCHER: No, sir.

17 THE COURT: Okay. Yes, ma'am, I'll hear from you.

18 SOLICITOR JORDAN: Your Honor, I, I agree with the  
19 Court as far as the contamination issue and I do object to  
20 that word because it's not contamination. It is just a  
21 basic mix of the clothing there that all came off of his  
22 body, and I think contamination makes it seem like that  
23 something was intentionally done wrong on behalf of the  
24 State and that's not what happened here.

25 All the items were taken off of him. All of the items

Ila Simmons - Cross-examination  
by Mr. Welchel

1 were placed in that bag. There's been no contamination by  
2 any other source that any testimony has come out from -- if  
3 anything, we've heard multiple times though on how these  
4 items were packaged, sealed, transported. We all know that  
5 now.

6 I do feel that Mr. Moskal should be able to testify as  
7 to where he lifted on the different items and what the  
8 results were, and that it just goes, not to the  
9 admissibility, but to the weight and the reliability, as I  
10 stated earlier, which is subject to cross and argument.

11 THE COURT: All right. Mr. Welchel, last bite at the  
12 apple.

13 Anything you'd like to tell me?

14 MR. WELCHEL: Your Honor, that was the entire point  
15 that all of my prior questioning was to show that the entire  
16 time that these clothes had been in that bag together and  
17 transported together they were not separated from each  
18 other.

19 THE COURT: Well, you've shown that and you certainly  
20 have the right to argue that to the jury. That may go to  
21 its weight that they may choose to give it. I have not  
22 heard any evidence that there was any outside contamination.  
23 I did not hear any evidence that there was any break in the  
24 chain of custody or that somehow the clothing was somehow  
25 outside of the chain of custody that's been testified to.

Ila Simmons - Cross-examination  
by Mr. Wheelchel

1 MR. WHELCHEL: No, sir.

2 THE COURT: All of the clothing came from one person.  
3 It has been tested and I'm not, you know -- I've listened to  
4 his testimony. You certainly have the right to object if,  
5 if there's some type of testimony now that would be contrary  
6 to what I just heard that perhaps, if he tries to attribute  
7 the gunshot residue, residue to one particular item of  
8 clothing, that would be inconsistent with his prior  
9 testimony in the case.

10 MR. WHELCHEL: Well, it's all gonna be attributed to---

11 THE COURT: It's gonna be -- he's gonna -- I think he's  
12 gonna testify to the sites that he tested and what he found  
13 at those sites.

14 MR. WHELCHEL: Yeah, and those tests relate back to a  
15 specific piece of clothing, Your Honor.

16 THE COURT: Overruled.

17 MR. WHELCHEL: Yes, sir.

18 THE COURT: All right. So, I've made a ruling.

19 SOLICITOR JORDAN: Thank you, Your Honor.

20 THE COURT: Anything further before we bring the jury  
21 back from the State?

22 SOLICITOR JORDAN: No, sir.

23 THE COURT: Anything from the defense?

24 MR. WHELCHEL: No, sir.

25 THE COURT: Thank you.

Ila Simmons - Cross-examination  
by Mr. Welch

1 Let's bring the jury in.

2 (WHEREUPON, the following takes place within the  
3 presence of the jury.)

4 THE COURT: All right. The jury has returned to the  
5 courtroom. I've overruled an objection by the defense.

6 You may proceed.

7 SOLICITOR JORDAN: Thank you, Your Honor.

8 THE COURT: Ms. Jordan.

9 SOLICITOR JORDAN: Your Honor, at this point I would go  
10 back to asking Mr. Moskal if he could talk to us about the,  
11 some of the items that are inside of the bag beginning  
12 with---

13 THE COURT: You may pick up with your examination where  
14 we left off.

15 CONTINUED DIRECT EXAMINATION

16 BY SOLICITOR JORDAN:

17 Q Beginning with the -- we'll start with the SLED's  
18 Number 16.1, one pair of Mecca blue jeans.

19 Could you show those to the jury and let the jury know  
20 what you did with those jeans?

21 A Yes, ma'am. These pair of jeans are the jeans I  
22 analyzed. I'm looking on the inside of them. They have the  
23 lab number and item number and my initials from when I  
24 analyzed these things.

25 This is a pair of blue Mecca jeans. What I would have

Michael Moskal - Direct examination  
by Solicitor Jordan

1 done on these is taken one of the particle lifts, the  
2 aluminum tab with the double sided sticky tape on it, and I  
3 would of taken one -- and let me double-check my notes on  
4 this. I would of taken one of those double sided sticky  
5 tapes and dabbed from the waist to just below the pocket on  
6 the left side front, and then one from the same area on the  
7 right side front is what I would of done on this pair of  
8 jeans.

9 (WHEREUPON, a gunshot residue kit was marked as State's  
10 Exhibit No. 25 for identification purposes only at this  
11 time.)

12 Q Okay. And I'm gonna show you what's previously been  
13 marked as State's 25. I'm gonna hand you State's No. 25.

14 Can you identify that?

15 A Yes, ma'am.

16 Q Okay. Could you tell -- could you state what those  
17 are?

18 A Contained in here -- again, I recognize it because it  
19 has our SLED lab number and it has my initials where I  
20 sealed those. Inside of here are three containers. Each of  
21 these containers contain each of these blue, plastic on one  
22 side and clear on the other side, contained the aluminum  
23 sticky tabs or the aluminum particle lifts where I would of  
24 collected the areas or collected from the areas of the  
25 clothing. This bag contains Item Number 16.1.1, which was

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by Solicitor Jordan

1 from a jacket, as well as 16.2.1, which were the particle  
2 lifts from the Mecca jeans.

3 SOLICITOR JORDAN: Okay. Your Honor, at this time we  
4 move to admit State's No. 25 into evidence.

5 THE COURT: Any objections?

6 MR. WHELCHER: Subject to my earlier objections, Your  
7 Honor.

8 THE COURT: Subject to those objections, it will be  
9 admitted.

10 (WHEREUPON, State's Exhibit No. 25 was received into  
11 evidence at this time.)

12 THE COURT: You may proceed.

13 Q In your expert opinion, can you tell the jury what you  
14 found on the particle lifts from the Mecca jeans that were  
15 collected from the defendant?

16 A On the particle lifts collected from the Mecca blue  
17 jeans, again SLED Item Number 16.2, gunshot residue was  
18 found.

19 Q Okay. Moving to the next item -- and when -- let me  
20 ask you this.

21 When did you conduct that test or issue your report as  
22 to that item?

23 A My report for that item was issued on March 4, 2013.

24 Q Okay. I'm gonna move your attention now to SLED's 16,  
25 one -- which is one brown and white Celebrity jacket.

Michael Moskal - Direct examination  
by Solicitor Jordan

1 A Again, I recognize this item because it has the lab  
2 number, item number, and my initials from the date that I  
3 analyzed this. And, so, this is the one brown and white  
4 Celebrity jacket.

5 Q Okay. And in your expert opinion, what was the result  
6 of the test on that jacket?

7 A May I read the report?

8 Q Yes, sir.

9 A Okay.

10 Q Yes, sir.

11 A Item 16.1.1 are the particle lifts collected from a  
12 brown and white Celebrity jacket. Round lead particles were  
13 found. Round lead particles are one of the components of  
14 gunshot residue, and non-round particles containing lead,  
15 barium, and antimony were also found. These particles may  
16 be associated with gunshot residue.

17 Q Thank you.

18 When did you test the jacket?

19 A The report was issued on March 4, 2013.

20 Q And just for clarification, is that the same date that  
21 you did the blue jeans?

22 A That's the same report, yes, ma'am.

23 Q Okay. At that point in time did you perform an  
24 analysis on any of the other items?

25 A The only other item reported at that time was the

Michael Moskal - Direct examination  
by Solicitor Jordan

1 gunshot residue kit from Justin Michael Harrison, which  
2 we've already discussed.

3 Q Okay. At my request, did you later receive the items  
4 again?

5 A Yes, ma'am, I did.

6 Q And at that point in time what items did you test?

7 A At that time I additionally tested a pair of Nike  
8 tennis shoes, a short sleeve United USA t-shirt and a long  
9 sleeve cotton knit shirt.

10 (WHEREUPON, a gunshot residue kit was marked as State's  
11 Exhibit No. 26 for identification purposes only at this  
12 time.)

13 Q Okay. Turning our attention now to our -- let me go  
14 back and show or come back to State's Exhibit No. 26, and  
15 ask you if you recognize State's 26.

16 A Yes, ma'am, I do. Again, this bears my initials from  
17 where I sealed this container as well as the SLED lab number  
18 on the outer side of it.

19 Q Turning your attention first or actually -- at this  
20 time, Your Honor, the State would move to admit No. 26 into  
21 evidence.

22 THE COURT: Subject to your prior objections?

23 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

24 THE COURT: Sure. Take a look at it.

25 (Pause.)



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by Solicitor Jordan

1 MR. WHELCHER: Do you have a report for these that  
2 you've testified from?

3 THE WITNESS: Yes, sir, I do. 16.31, 16.71, and 16.72,  
4 that's right there.

5 MR. WHELCHER: The May 1<sup>st</sup> report?

6 THE WITNESS: May 1<sup>st</sup>, yes, sir.

7 MR. WHELCHER: Begging the Court's indulgence, Your  
8 Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. WHELCHER: Your Honor, I apologize. I am not sure  
12 which items are actually trying to be placed into evidence  
13 at this time. I'd like to ask her to ask the question again  
14 just so that I can make sure---

15 SOLICITOR JORDAN: Well, Your Honor, as, as to---

16 MR. WHELCHER: ---following along with what---

17 THE COURT: I think she did ask which item.

18 SOLICITOR JORDAN: I was, I was starting out with the  
19 shoes. I believe everything's already been placed into  
20 evidence. I am just now seeking to go item-by-item, the  
21 ones that were tested, starting with the shoes, going to  
22 one, the black long sleeve shirt and the black short sleeve  
23 shirt.

24 MR. WHELCHER: Okay. And we're talking about the May  
25 the 1<sup>st</sup> testing now?

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by Solicitor Jordan

1 SOLICITOR JORDAN: Yes.

2 MR. WHELCHER: I would object to the introduction of  
3 Items 6.6, Your Honor.

4 THE COURT: On what basis?

5 MR. WHELCHER: Well, I have an analysis here that says  
6 that they didn't perform any analysis. I have a sheet given  
7 to me by the State that says they didn't analyze that.

8 SOLICITOR JORDAN: Your Honor, I believe we've already  
9 discussed initially only two items in the package were  
10 analyzed. At my request, other items were sent back down  
11 there, and I believe that the report that he has in front of  
12 him with this date -- Your Honor, could we, could we address  
13 this outside the presence of the jury just to explain?

14 THE COURT: Sure.

15 Ladies and gentlemen of the jury, again, I'll ask you  
16 to step back to the jury room, and again I'll ask you not to  
17 begin discussions about this case until I've asked you to do  
18 so.

19 You may retire.

20 (WHEREUPON, the following takes place outside the  
21 presence of the jury.)

22 THE COURT: Yes, ma'am.

23 SOLICITOR JORDAN: Your Honor, if I just may, by way of  
24 explanation, when the items were sent back down to SLED,  
25 Agent Moskal realized that he had incorrectly identified

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by Solicitor Jordan

1 both shirts as long sleeve. He realized when he received  
2 them back that there was a long sleeve and a short sleeve.  
3 He initially, and he can correct me if I am wrong, he or I  
4 can ask him the testimony, he initially---

5 MR. WHELCHER: Excuse me, Your Honor.

6 THE COURT: Let her finish.

7 SOLICITOR JORDAN: He initially -- he, he did an  
8 amended report dated May 1<sup>st</sup>, 2013, as to 16.6, the one  
9 black short sleeve United US, USA t-shirt and placed no  
10 analysis found -- no analysis, no analysis performed. At  
11 that point time, is my understanding, he was just correcting  
12 the labeling description. He then performed the analysis  
13 and issued the report on this, the supplemental report. He  
14 amended his initial report and then issued a supplemental  
15 report.

16 THE COURT: Yes, sir.

17 MR. WHELCHER: Well, I don't know that, Your Honor.  
18 All I have is what they've given to me, and it says amended  
19 report that says Item 16.16, one black short United States,  
20 excuse me, one black short sleeve United USA t-shirt,  
21 results, no analysis performed, and that's dated May the  
22 1<sup>st</sup>, 2013, and then I'm also given another report that says  
23 supplemental. And on that report it says that there was an  
24 analysis done. I'm just trying to clear up my confusion  
25 with or anybody's confusion for that matter with this.

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by Solicitor Jordan

1 There's two reports dated the same date.

2 THE COURT: The question is the admissibility of the  
3 test kit?

4 Is that what you're trying to get in, test kit?

5 SOLICITOR JORDAN: I'm was -- I'm trying to get in the  
6 test kit, yes, sir. Yes, Your Honor, and also his analysis  
7 of both of the shirts inside there. I believe the  
8 testimony---

9 THE COURT: Well, I'll ask you, I'll ask you to, to go  
10 over that with him or lay a foundation to explain---

11 SOLICITOR JORDAN: Yes, sir, I'll do that.

12 THE COURT: ---what he's done.

13 Is that what you want her to do?

14 MR. WHELCHER: Yes, sir.

15 THE COURT: All right.

16 SOLICITOR JORDAN: Yes, sir.

17 CONTINUED DIRECT EXAMINATION

18 BY SOLICITOR JORDAN:

19 Q Agent Moskal, did you---

20 THE COURT: Well, now we're not making a proffer. You  
21 can do that on the record.

22 SOLICITOR JORDAN: Oh.

23 THE COURT: It's not a question of the admissibility of  
24 the questions you're gonna ask. You have a right to ask it.  
25 She's on examination.

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1 SOLICITOR JORDAN: And, Your Honor, it's my  
2 understanding my explanation was the correct explanation of  
3 what occurred.

4 MR. WHELCHER: Well, I don't get to cross-examine her,  
5 Your Honor.

6 THE COURT: I am---

7 SOLICITOR JORDAN: Well, that's -- I---

8 THE COURT: I'm gonna get you -- I'm gonna ask you to  
9 lay a foundation as to that particular test kit, when it was  
10 performed, and let him explain whatever questions or  
11 confusions there are about -- are the reports gonna be  
12 introduced?

13 SOLICITOR JORDAN: I'm not seeking to introduce the  
14 reports. I've -- you know, I've -- he's testified as to  
15 what they say. I don't think I need the reports placed in.  
16 It's into evidence now as to two of the items and I --  
17 hopefully it will be into evidence as to the other three.

18 MR. WHELCHER: Possibly.

19 THE COURT: well, I'll let him testify to what tests he  
20 performed, when he performed them, and which items of  
21 evidence that she's attempting to put in were involved in  
22 those tests. If he identifies them, there's a foundation  
23 been laid for their admissibility I suppose. We'll see.

24 All right. Bring the jury in.

25 MR. WHELCHER: Excuse me?

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by Solicitor Jordan

1 THE COURT: I said bring the jury in.

2 SOLICITOR JORDAN: And, Your Honor, just for---

3 THE COURT: Just one second.

4 SOLICITOR JORDAN: Just for reflection, I believe I was  
5 at the point of moving to admit State's No.---

6 THE COURT: Yes, but he's objecting to it---

7 SOLICITOR JORDAN: ---26.

8 THE COURT: ---and I have not heard this witness  
9 testify about the confusion or when that may of been done,  
10 and -- but now she hasn't attempted to introduce those  
11 reports. So, they're not in the record.

12 MR. WHELCHER: Well, I understand that, Your Honor.

13 THE COURT: They don't have to match those reports for  
14 them to be admissible.

15 MR. WHELCHER: Okay.

16 THE COURT: Unless there's some surprise or some effort  
17 to, to hide something from you.

18 Is that what you're making a motion concerning?

19 MR. WHELCHER: No, sir, I was just trying to find out  
20 why they're two different reports, and trying to do it  
21 outside the presence of the jury.

22 THE COURT: Well, she's not introducing the reports.

23 MR. WHELCHER: Well, she's introducing his analysis and  
24 the analysis is -- the end result of his analysis is the  
25 report that's---

Michael Moskal - Direct examination  
by Solicitor Jordan

1 THE COURT: I understand that. But this witness  
2 testified that that item was used by him in a test and the  
3 test results were thus and so and that's the item.

4 What makes it not admissible?

5 I'll ask you.

6 MR. WHELCHER: Your Honor, it's not admissible if it's  
7 not reliable, and it's not reliable if there's two tests --  
8 if there's a test done and then there's a report that says  
9 there wasn't a test done.

10 THE COURT: Well, maybe, maybe not. You can  
11 cross-examine him on his reports.

12 MR. WHELCHER: I understand. That's what I thought I  
13 was gonna---

14 THE COURT: Now's not the time -- now's not the time to  
15 do that.

16 MR. WHELCHER: Okay.

17 THE COURT: I mean I'm gonna let you explore it if  
18 you'd like to explore it.

19 MR. WHELCHER: Yes, sir.

20 THE COURT: I'm not limiting you in that fashion.

21 MR. WHELCHER: I understand, Your Honor.

22 THE COURT: The question is the admissibility of this  
23 item. And if he testifies that he used it in a test, and  
24 when he used it, and he identifies that as the item, I have  
25 yet to hear why it's not admissible. Now, the fact it may

Michael Moskal - Direct examination  
by Solicitor Jordan

1 of been mislabeled in a report that he gave, that may create  
2 some issue as far as discovery is concerned.

3 MR. WHELCHER: Your Honor, there's no---

4 THE COURT: But it doesn't make it not admissible. I  
5 haven't heard why it's not admissible. Give me a rule.  
6 There's Rules of Evidence.

7 MR. WHELCHER: Your Honor, the rule is that can cause  
8 confusion with the jury, I can't cite the specific rule, but  
9 the jury can possibly be confused about this item.

10 THE COURT: Well, she's not introduced what you're  
11 confused by. The jury hasn't seen it.

12 MR. WHELCHER: Well, I was just cross-examining him. I  
13 didn't ask the jury to be confused.

14 THE COURT: Well, I'm gonna give you a chance to  
15 cross-examine, but she's on direct still.

16 MR. WHELCHER: Okay.

17 THE COURT: Okay. Bring the jury in.

18 (WHEREUPON, the following takes place within the  
19 presence of the jury.)

20 THE COURT: All right. The jury's returned to the  
21 courtroom. I'm asking the State to lay a further foundation  
22 for the admissibility of the item in question.

23 SOLICITOR JORDAN: Thank you, Your Honor.

24 THE COURT: You may proceed.

25 CONTINUED DIRECT EXAMINATION



Michael Moskal - Direct examination  
by Solicitor Jordan

1 BY SOLICITOR JORDAN:

2 Q As to item, State's No. 26, did you initially issue a  
3 report when you looked at the first set of, when you looked  
4 at the blue jeans with GSR and the jacket with particles?

5 Did you initially issue a report?

6 A Yes, ma'am, I did.

7 Q Okay. And what was the date of that report?

8 A On March 4<sup>th</sup>, 2013, I issued a report for the GSR kit  
9 from Michael or from Justin Michael Harrison, and all the  
10 clothing belonging to Kenneth Jowan Craig, which included  
11 the Celebrity jacket, the Mecca blue jeans, the pair of  
12 tennis shoes, the pair of gray socks, a belt, and two  
13 shirts.

14 Q Okay. When the items were resubmitted for further  
15 testing on additional items, did you notice a, a typo in  
16 your report from May 4<sup>th</sup>?

17 A Yes, ma'am, I did.

18 Q What was that typo?

19 A The, the typo in the report and the mistake in the  
20 report was that I had labeled both t-shirts originally as  
21 long sleeve t-shirts when, in fact, one t-shirt was a short  
22 sleeve t-shirt and the other was a long sleeve t-shirt.

23 Q Did you get further descriptions, other than just the  
24 length of the sleeve, on these two shirts?

25 A Yes, ma'am, I did.

Michael Moskal - Direct examination  
by Solicitor Jordan

1 Q What were those further descriptions in the first  
2 report, the full description?

3 A The full description -- my Item 16.6 was described as  
4 one black long sleeve United USA t-shirt, and the second  
5 one, Item 16.7, was described as one black long sleeve  
6 cotton knit t-shirt or cotton knit shirt.

7 Q Did you issue a report where you corrected the  
8 typographical error?

9 A Yes, ma'am, I did.

10 Q What did you list on that report as the item, SLED  
11 number, and name?

12 A On May 1<sup>st</sup> I issued an amended report for Item 16.6  
13 where it was corrected and described as one black short  
14 sleeve United USA t-shirt.

15 Q So, am I correct to understand that you issued a report  
16 and changed the sleeve length description?

17 A Yes, ma'am.

18 Q Okay. Did you, at that point in time, did you  
19 further -- did you complete testing on several of those  
20 items?

21 A Yes, ma'am.

22 Q Is State's 26 the lifts from the items that you tested  
23 that day---

24 A Yes, ma'am.

25 Q ---or tested in this report?

Michael Moskal - Direct examination  
by Solicitor Jordan

1 A Tested in that report, correct.

2 SOLICITOR JORDAN: Your Honor, at this point we move to  
3 admit State's No. 26.

4 THE COURT: Any objection?

5 MR. WHELCHEL: Subject to my earlier objection, yes,  
6 sir.

7 THE COURT: Subject to the earlier objection it will be  
8 admitted into evidence.

9 (WHEREUPON, State's Exhibit No. 26 was received into  
10 evidence at this time.)

11 THE COURT: You may proceed.

12 SOLICITOR JORDAN: Thank you, Your Honor.

13 Q Let me focus your attention on the black Nike shoes,  
14 State's No. 16.3.

15 A Yes, ma'am.

16 Q Could you state to the jury how you tested those shoes?

17 A Yes, ma'am, these shoes were tested -- again, I  
18 recognized these because they have the SLED lab number, the  
19 item number, and my initials from where I, I initially  
20 numbered them when the analysis was first performed on them.

21 Each one of these shoes was tested separately, and  
22 while I took one -- again, one of those aluminum double  
23 sided sticky tape for a particle lifts and dabbed it across  
24 the entirety of this shoe from the toe to the heel and  
25 including the bottom of it. One was done for each one of

Michael Moskal - Direct examination  
by Solicitor Jordan

1 these shoes.

2 Q Okay. What was the result of the testing on the black  
3 pair of Nike shoes?

4 A On, on the black Nike tennis shoes, round particles  
5 containing lead were found.

6 Q Okay. Can you tell the jury what that is consistent  
7 with?

8 A Yes, ma'am. Round particles containing or round  
9 particles that are contained with lead or containing lead  
10 are associated with gunshot residue, and what that means is  
11 I described gunshot residue as being a round particle that  
12 contains lead, barium, and antimony or any combination of  
13 those pieces. If it has those three, and it's round, that  
14 is absolutely unique to gunshot residue. There are no other  
15 known sources for that material.

16 However, as you back down to two of those particles or  
17 one of those particles, they begin to, they begin to have  
18 other outside sources where you can come up with those.  
19 And, so, that's why it's reported as being associated with  
20 gunshot residue.

21 Q Thank you.

22 A Yes, ma'am.

23 Q Now we're gonna move to the Item 16.16, the one black  
24 short sleeve United USA t-shirt.

25 A Yes, ma'am.

Michael Moskal - Direct examination  
by Solicitor Jordan

1 Q Could you state to the jury what analysis you performed  
2 on that item?

3 A Yes, ma'am. Again, I recognized this because it has  
4 the lab numbers, the item numbers, and my initials from when  
5 I perform analysis on it. And, again, with the t-shirt, I  
6 would of taken the aluminum sticky tabs -- excuse me for  
7 just one second.

8 (Pause.)

9 A On 16.6 -- my Item 16.6, I would have taken one  
10 particle lift and collected from the front of the right  
11 sleeve. I would have taken a second particle lift and  
12 collect from the right chest area, a third particle lift  
13 from the left chest area, and a fourth particle lift from  
14 the left sleeve.

15 Q What was the result of the examination on the short  
16 sleeve t-shirt?

17 A On Item -- my Item 16.16.1, the short sleeve United USA  
18 t-shirt, I found round or I found non-round particles  
19 containing lead, barium, and antimony.

20 Q And what is, what is -- what can the jury derive from  
21 that?

22 A The non-round particles of non -- the non-round  
23 particles containing lead, barium, and antimony are  
24 characteristic with gunshot residue.

25 Q Thank you.

Michael Moskal - Direct examination  
by Solicitor Jordan

1 Moving to 16.7.

2 Could you describe that item and show it to the jury?

3 A Again, I recognize this because it has the lab number,  
4 the item number, and my initials from where I performed  
5 analysis on this, and this is the long black sleeve cotton  
6 knit t-shirt.

7 On this particular item I would have collected one  
8 particle lift from the right cuff, a second particle lift  
9 from the right forearm from where the cuff ends to  
10 approximately where the elbow would of been. A third sample  
11 would of come from the right chest. And -- no, I'm sorry.  
12 I apologize.

13 One would of been from the front of the cuff. One  
14 would of been from the back of the cuff, and a third from  
15 the, from the forearm. The chest would not have been  
16 collected on this one because, when we analyzed, when we  
17 test samples of clothing, we're looking for the area that  
18 would be closest to the weapon when it's fired, and the  
19 areas closest to the weapon with the long sleeve t-shirt are  
20 typically gonna be the forearm of that, of that shirt.

21 So, with a long sleeve garment we test the front and  
22 the back of the cuff and then the forearm. So, one would of  
23 been the right front cuff, second the right back cuff, and  
24 third the right forearm, and then three samples on the left  
25 arm from the same areas.

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by Solicitor Jordan

1 Q Could you tell the jury what the result of your  
2 examination of the black long sleeve shirt was?

3 A Yes, ma'am, on the long sleeve cotton knit shirt, Item  
4 16.7, one particle of gunshot residue was found and one  
5 non-round particle containing lead, barium, and antimony was  
6 found.

7 Q Thank you.

8 Agent Moskal, I'm just gonna take a, take some time now  
9 just to go back and talk about GSR on clothing.

10 A Yes, ma'am.

11 Q It's my understanding as to or could you just remind  
12 the jury what the GSR policy is as to a human and testing?

13 A Yes, ma'am, gunshot residue is a very fragile type of  
14 evidence. It's a lot like if you're in the kitchen and you  
15 have baking flour on your hand. As you get it on your  
16 hands, as time progresses, it begins to disappear. Whether  
17 it's because you're wiping your hands on your pants,  
18 scratching your face, rubbing your hands through your hair,  
19 as well as actually being absorbed through the skin in your  
20 hand.

21 So, what we have found is that gunshot residue does not  
22 survive on a person's hands for a period of more than six  
23 hours after shooting. So, SLED policy is, if we receive a  
24 GSR kit, and it has been collected beyond a six hour period,  
25 we do not analyze it because it can not be associated with

Michael Moskal - Direct examination  
by Solicitor Jordan

1 that particular incident.

2 Q Okay. Thank you.

3 Moving to clothing, is there any sort of policy in  
4 reference to clothing and time?

5 A On clothing, the clothing is not sweating, it's not  
6 rubbing it's hands on other things. So, as far as materials  
7 being deposited on clothing, it's gonna stay there until its  
8 removed from an outside source. So, as long as items of  
9 clothing have been sealed and collected properly, we will  
10 analyze clothing for an indefinite amount of period, an  
11 indefinite time period.

12 Q You mentioned unless the, and I may get your words  
13 mixed up here, how -- what are some potential ways that it  
14 could leave clothing?

15 A If the -- it can be removed by an outside source. So,  
16 if an article of clothing is washed, it could be, it could  
17 definitely be removed from that, that sample.

18 Q Is there any way to tell the length of time that  
19 gunshot residue has been on an article of clothing?

20 A No, ma'am, if, if I were to go shoot today with this  
21 coat on or these pants on, any GSR that deposited on the, on  
22 my clothing would stay there until these were washed or it  
23 was worn away.

24 Q Is there -- when you find GSR on clothing, what, in  
25 your expert opinion, is the source of or can you get GSR



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by Solicitor Jordan

1 from anything other than gunshot?

2 A When we look and we actually see the round three  
3 component particles, they're not produced other, in anything  
4 other than the primer of the cartridge case being fired.

5 Q So, in -- is it true then that when you have gunshot  
6 residue on clothing, then that clothing has come into  
7 contact with a gun or is there any other explanation for it?

8 A When we find gunshot residue or its components on  
9 clothing, that indicates to us that it was near a weapon  
10 when it was fired or somebody had touched it who had gunshot  
11 residue on him.

12 Q Okay. I just want to just talk to you about the  
13 placement of someone's hands on a weapon.

14 If someone has their hands on a weapon, in your expert  
15 opinion on, near the ejection port area, would that -- could  
16 that potentially change the -- I've, I've lost my word.

17 Could that, could that change how the GSR or I take  
18 this back.

19 Can you tell the jury where GSR comes from in weapons?

20 A Yes, ma'am. GSR is going to come out of the weapon in  
21 any of the openings. So, if you're looking at a revolver,  
22 that's gonna be the muzzle end. That's gonna be the  
23 cylinder gap where the, where you -- when you think about a  
24 revolver, you see the muzzle coming out at you and you see  
25 the three or six round holes around the sides. All of those

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1 are openings from where gunshot residue can come out of the  
2 gun.

3 when you look at a semiautomatic pistol, it kind of  
4 limits it a little bit more. You're simply looking at the  
5 muzzle end and the ejector port and research shows that the  
6 majority of that gunshot residue coming out comes out of the  
7 muzzle end and a small fraction of it comes out of the  
8 ejector port.

9 Q Okay. If someone were to have their hands over the  
10 ejector port, could that limit or change the amount of  
11 gunshot residue that comes out of that point?

12 MR. WHELCHER: It calls for conjecture on his part,  
13 Your Honor.

14 SOLICITOR JORDAN: Your Honor, he's an expert.

15 MR. WHELCHER: He may be an expert, but he's still  
16 gonna have to conjecture about this. He doesn't know.

17 THE COURT: Overruled.

18 A If something were blocking that ejector port, it would  
19 definitely alter how the GSR smoke cloud comes out of that  
20 gun.

21 SOLICITOR JORDAN: Your Honor, may I have one moment?

22 THE COURT: Yes, ma'am.

23 (Pause.)

24 Q I want to step back and talk to you about the packaging  
25 of these items.

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by Solicitor Jordan

1           When you received these items, where were they?

2           were they, were they all in that one bag?

3   A     Yes, ma'am, when I received this, this bag was sealed.  
4   The bag, the brown paper bag was sealed as well as the  
5   plastic outer container. Both were sealed and all of the  
6   items, the two shirts, the coat, the belt, the pants, the  
7   socks, the tennis shoes, were all sealed inside this paper  
8   bag.

9   Q     Okay. Based upon the fact that those item were sealed  
10   in there, is there -- could there be the potential for  
11   mixture of the items or mixture of any residue on the items?

12   A     Yes, ma'am, if one item has gunshot residue on it and  
13   it rubs up against a second item, it is possible to transfer  
14   that material to the second item. So, with all of these  
15   being packaged together, those materials could have  
16   transferred from one item to another.

17   Q     But isn't, isn't it true that the, the gunshot residue  
18   or the particles, round or non-round, would of had to of  
19   been on an item inside the bag --

20   A     Yes, ma'am.

21   Q     -- for the mix?

22   A     Any particles that I found here would of been inside  
23   this bag at the time of packaging it.

24   Q     And what did you find again on the blue jeans?

25   A     Gunshot residue was found on the blue jeans.

Michael Moskal - Direct examination  
by Solicitor Jordan

1 SOLICITOR JORDAN: And, Your Honor, before I sit down,  
2 I would ask, I don't believe I've already covered this, but  
3 I would ask to admit State's No. 23, which is the GSR kit.

4 MR. WHELCHER: Yes, sir.

5 THE COURT: No objection?

6 MR. WHELCHER: No, sir, Your Honor.

7 THE COURT: All right. It will be admitted as marked.

8 (WHEREUPON, State's Exhibit No. 23 was received into  
9 evidence at this time.)

10 SOLICITOR JORDAN: One moment again.

11 THE COURT: Certainly.

12 (Pause.)

13 Q Please answer any questions Mr. Whelcher may have.

14 A Yes, ma'am.

15 THE COURT: Mr. Whelcher, your witness.

16 CROSS-EXAMINATION

17 BY MR. WHELCHER:

18 Q I want to make sure that I heard you correctly a moment  
19 ago.

20 A Yes, sir.

21 Q You said that this GSR can be transferred from one  
22 piece of clothing in that bag to another?

23 A Yes, sir, that is possible.

24 Q The GSR can also be transferred from one individual to  
25 another if they made contact with each other, is that

Michael Moskal - Cross-examination  
by Mr. Wheeler

1 correct?

2 A That is possible, yes, sir.

3 Q Okay. And at the conclusion of each of your tests,  
4 sir, there's the statement -- you can refer to any one of  
5 the SLED lab sheets that you've provided.

6 Is it correct that you can not provide any information  
7 as to the time frame or manner in which the particles that  
8 you found were deposited on the items you found among them?

9 A On the items of clothing, we can not say anything about  
10 a time frame or the manner that they were deposited.

11 Q Okay. So, you know they're there, but you can't tell  
12 us how they got there?

13 A We can tell you that if it's gunshot residue it  
14 originated from a weapon being fired.

15 Q Or somebody coming in contact---

16 A Or somebody coming into contact.

17 Q ---who came in contact with a weapon that's been fired,  
18 is that right?

19 A Correct.

20 Q Okay. When you, when you tested all of the clothing,  
21 did you test every piece of clothing in this bag?

22 A The socks were never tested.

23 Q Okay. But everything else was?

24 A Yes, sir.

25 Q Okay. And you can't tell us---

Michael Moskal - Cross-examination  
by Mr. Wheelchel

1 A Well---

2 Q ---because of the way this is packaged, whether what's  
3 on one shirt came from the shoes or what's on another shirt  
4 came from the shoes or what's on the shoes came from the  
5 shirt or what's on the brown and white jacket came from a  
6 shirt or shoes or other shirt, is that correct?

7 A That's correct.

8 MR. WHEELCHEL: Beg the Court's indulgence, Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q The gunshot residue particles are round, is that right?

12 A Yes, sir.

13 Q Okay. And the things associated with it are not round?

14 A You can have a characteristic particle, which is a  
15 non-round three component. But then the other particles, if  
16 we're looking simply for lead or lead combined with barium  
17 or antimony, those have to be round as, as well, and that  
18 has to do with the heat and the pressure that happens or  
19 during the explosion and the cooling process.

20 Q Well, that's why you call it it's associated with  
21 gunshot residue?

22 A And not---

23 Q You can't say it's gunshot residue?

24 A Correct.

25 Q Okay. I just want to make sure I understood.

Michael Moskal - Cross-examination  
by Mr. Wheelchel

1           Excuse me. The gunshot residue test and kits and  
2 everything that you, that were obtained from Justin Harrison  
3 are all separated, is that correct?

4 A    Yes, sir, I have a demo GSR kit here if you'd like to  
5 see it.

6 Q    That's okay.

7 A    Okay.

8 Q    I think you can explain it to us.

9 A    But the individual areas, the right palm, the right  
10 back, the left palm and the left back, are each in a  
11 separate container.

12 Q    Everything that was taken from Mr. Harrison is  
13 separated so that there's no cross-contamination of those  
14 items, is that right?

15 A    Between those items, yes, sir.

16 Q    Everything that's taken from my client is dumped in a  
17 bag together, is that right?

18 A    Everything that came from your client and no one else  
19 is dumped in that bag.

20 Q    Well, everything that was removed from him when he was  
21 arrested and dumped into this bag was put in here together  
22 and stayed together---

23 A    Yes, sir.

24 Q    ---correct?

25           And I believe it's your previous testimony that,

Michael Moskal - Cross-examination  
by Mr. Welchel

1 whatever's in there, you can't tell us when it got there or  
2 how it got there?

3 A Correct.

4 Q Okay. And you can't tell us, after it was all thrown  
5 in there together, what came from where?

6 A The possibility for it to transfer from one item to  
7 another is there, yes, sir.

8 Q The possibility?

9 A Possibility. Not a---

10 Q That's been in there for 18 months.

11 How many times have you tested this stuff?

12 A The items I test were tested one time each.

13 Q You've been asked how many times to test these items?

14 A Twice.

15 Q Okay. And this stuff has been opened and  
16 transported -- when you test this GSR, for this GSR --

17 A Yes, sir.

18 Q -- you do that in a GSR lab---

19 A We do---

20 Q ---or---

21 A ---it in a trace lab, yes, sir.

22 Q Oh, trace lab. Excuse me.

23 And that's the same place that other GSR tests are  
24 made, right?

25 A When we, when we pull these out, we routinely clean our



Michael Moskal - Cross-examination  
by Mr. Wheelchel

1 lab very very thoroughly. It gets cleaned probably on a,  
2 from head to toe, on about a two to three month period.  
3 Additionally to that, every time we open up an item of  
4 evidence, the table where we're gonna be working gets  
5 scrubbed down. A clean piece of butcher paper gets placed  
6 underneath it.

7 MR. WHEELCHEL: Your Honor, I asked him if he was, if it  
8 was done in the same place. I would ask that he be  
9 instructed to answer the question. If he wants to explain  
10 it that's fine.

11 THE COURT: I'm gonna allow him to explain his answer  
12 and he's doing so.

13 MR. WHEELCHEL: Well, I haven't heard an answer yet.

14 THE COURT: I will allow him to explain his answer, Mr.  
15 wheelchel.

16 MR. WHEELCHEL: Yes, sir.

17 THE COURT: You may proceed.

18 A So, underneath each item that we collect samples from,  
19 a clean piece of butcher paper gets placed on there because  
20 we do open up different items of evidence. We may open up a  
21 sample today and collect GSR from it and open up a sample  
22 tomorrow and collect GSR from it. So, it is done in an area  
23 where we take multiple samples. But it has a thorough  
24 cleaning process done between one item and another.

25 Q So, that means the answer to my question originally is

Michael Moskal - Cross-examination  
by Mr. Wheelchel

1 yes, all of the GSR tests are done in the trace lab that you  
2 do?

3 SOLICITOR JORDAN: Your Honor, I object. He's answered  
4 his question.

5 THE COURT: He's on cross-examination. I'll let him  
6 ask the question.

7 MR. WHELCHEL: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 Q That's all I want to know, yes or no---

10 A Yes, sir.

11 Q ---they're all---

12 Q Let me finish.

13 A Okay.

14 Q This one, this one was done in the trace lab---

15 A Yes, sir.

16 Q ---correct?

17 Okay. And the next one you had to do was done in that  
18 same trace lab, correct?

19 A Correct.

20 Q Okay. These are microscopic molecules or whatever you  
21 want -- items, is that correct?

22 A That's correct.

23 Q You can not see them with the naked eye?

24 A No, sir, you can not.

25 Q They float around and, and you can not see them?

Michael Moskal - Cross-examination  
by Mr. Wheeler

1 A There is the possibility for them to float around.  
2 When we run these though, additionally we also run negative  
3 quality controls so that hopefully we can eliminate and see  
4 if some form of contamination which he is describing here  
5 takes place.

6 Q So, you strive to -- you strive not to have  
7 contamination in the trace lab?

8 A Correct.

9 Q Okay. But not in the bag?

10 A This bag was sealed from the crime scene, from the  
11 agency that brought it in and everything that was originally  
12 on those clothes stayed on that clothes because the  
13 integrity of that bag and that container was in tact when I  
14 opened it up.

15 Q Oh, I understand that.

16 But you've already testified that what's in the bag can  
17 cross-contaminate each other, is that right?

18 A That possibility is there, yes, sir.

19 Q Yes, sir.

20 A It can transfer from one item to another.

21 Q Thank you, sir.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY SOLICITOR JORDAN:

25 Q Mr. Moskal, you do have policies in place to avoid

Michael Moskal - Redirect examination  
by Solicitor Jordan

1 cross-examination from other sources?

2 A Yes, ma'am, we do.

3 Q And those policies have been followed?

4 A Yes, ma'am.

5 Q And you also have what I believe you referred to as  
6 test situations to make sure there's no contamination?

7 A Yes, ma'am.

8 Q Okay. Mr. Welchel asked you about transferring  
9 gunshot residue from a, from contact with a person.

10 what type of contact would you have to have with  
11 someone to transfer gunshot residue?

12 A If you're looking to transfer from one person to  
13 another, an area that has been exposed to gunshot residue or  
14 its components would have to come into physical contact with  
15 another area. If you're talking garment to garment, the two  
16 garments would need to come in contact and rub against each  
17 other. If you're talking about a person to another person  
18 or another garment, you would need this. The two of us  
19 sitting here across from each other like this, particles  
20 that would be on me are not gonna transfer to one of you.

21 Q Okay. So, once the particles are deposited on  
22 clothing, there's no particles just flying around out there  
23 willy nilly to land on stuff?

24 A Outside of the area where it was, a shooting took  
25 place, no, ma'am.

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by Solicitor Jordan

1 Q Okay. Let me ask you too. You've talked about round,  
2 unround, and then GSR.

3 A Yes, ma'am.

4 Q Okay. Round and unround are characteristics of GSR?

5 A If I have a non-round particle that has the three  
6 elements, lead, barium, and antimony, that is characteristic  
7 of gunshot residue. As we get to round particles that just  
8 have one or two of those, those, those become associated  
9 with gunshot residue.

10 Q Okay. And just for clarification, on the blue jeans,  
11 you found gunshot residue?

12 A That's correct.

13 Q Okay. Nothing further.

14 THE COURT: Recross.

15 RE CROSS EXAMINATION

16 BY MR. WHELCHER:

17 Q So, if I have come in contact with a fired weapon and  
18 have gunshot residue, presumably I'm having gunshot residue  
19 on my hand, am I correct?

20 A Yes, sir, it's a possibility.

21 Q Cause there's a bunch of stuff that comes out of that  
22 barrel?

23 A Absolutely.

24 Q When they teach you this, do they show you -- do they  
25 do that process that, that I've seen where they do a slow

Michael Moskal - Recross examination  
by Mr. Welchel

1 motion picture of a round actually coming out of a, out of a  
2 weapon so that you can see the gases and the, everything  
3 that comes out at the time?

4 You -- have you seen something like that?

5 A I have seen those pictures, yes, sir.

6 Q Okay. And this gunshot residue is part of all of that?

7 A Correct.

8 Q Okay. I'm just trying to make sure I understand it.

9 A Yes, sir.

10 Q This gunshot residue is part of all of that. And if  
11 you say somebody has to be within proximity in the room of  
12 somebody that a gunshot is done or its trigger's been  
13 pulled, the gun's been fired, is that right?

14 A That's correct.

15 Q Okay.

16 A Or it can deposit on them directly.

17 Q Or, or directly.

18 But if it's fired here, it can theoretically land on  
19 all of us because they're microscopic particles, is that  
20 right?

21 A I don't believe it would land on everybody in this  
22 room.

23 Q Well, not at the very back of the courtroom. I  
24 understand that.

25 But all of us within this area right here could be

Michael Moskal - Recross examination  
by Mr. Wheeler

1 susceptible to having gunshot residue on them, is that  
2 right?

3 A The general trend, and, again, it depends on the  
4 caliber and the type of weapon and those types of things,  
5 but the general trend is about a five to ten foot radius,  
6 radius.

7 Q Okay. And once the person has gunshot residue on their  
8 hand that, that's come in contact with a gun, they can  
9 transfer that to another person, is that correct?

10 A That is correct.

11 Q They can transfer that to another person's clothing, is  
12 that correct?

13 A If they come in contact, yes, sir.

14 Q With the clothing?

15 A Yes, sir.

16 Q Once that clothing has had, has had gunshot residue  
17 transferred to it, then that clothing can transfer to other  
18 items of clothing on the same person?

19 A Can you repeat that?

20 Q These items are microscopic, correct?

21 A Correct.

22 Q So, once it's on a, one piece of clothing with touch  
23 from one person, transferred from one person to another, it  
24 can also be transferred again with a later touch or it can  
25 be transferred by that person touching his pants, is that

Michael Moskal - Recross examination  
by Mr. Wheelchel

1 correct?

2 A As long as the contact occurs, yes, sir.

3 Q Okay. So, if it's been transferred from one person to  
4 another, it can be transferred, transferred from that  
5 person, the second person, to other clothing that he has on,  
6 is that right?

7 A That is possible. But the more transfer---

8 Q Okay.

9 A ---you get though, it diminishes the amount of  
10 particles that you're looking at to begin with.

11 Q Well, these are diminutive amounts of particles to  
12 begin with, are they not?

13 A They're what?

14 Q They're diminutive particles to begin with, are they  
15 not?

16 A We're not dealing with an infinite number of particles.  
17 We're dealing with---

18 Q You can't see them, is that right?

19 A We can not see them, that's correct. But that has  
20 nothing to do with how much particles are there.

21 THE COURT: Any other questions?

22 MR. WHEELCHEL: Beg the Court's indulgence, Your Honor.

23 (Pause.)

24 MR. WHEELCHEL: Thank you, Your Honor.

25 THE COURT: Anything further from the witness?



1 SOLICITOR JORDAN: No, sir, Your Honor.

2 May this witness be excused?

3 THE COURT: Any objection?

4 MR. WHELCHER: No, sir.

5 THE COURT: Sir, you may step down and you're free to  
6 go at this time.

7 WITNESS: Thank you.

8 THE COURT: Ask the attorneys to approach briefly.

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

11 THE COURT: All right. Ladies and gentlemen of the  
12 jury, at this point in time I'm going to allow you to take  
13 your lunch break. Again, you're leaving the courthouse,  
14 and, again, the same instructions will be given to you, and  
15 that is not to try to gather any information on your own.  
16 Don't listen to, watch, or read media reports concerning the  
17 case. Don't discuss the case with anyone, and don't allow  
18 anyone to discuss it with you.

19 Please report any contact you might have from anyone  
20 concerning your participation in this case. I'll ask that  
21 you be back in the jury room. It's gonna be a little bit  
22 longer cause I've got some things I've got to go over with  
23 the attorneys. I'll ask you to be there by 1:30, 1:30 this  
24 afternoon in the jury room.

25 At this time you're free to go. Thank you very much.

1           (WHEREUPON, the following takes place outside the  
2 presence of the jury.)

3           THE COURT: All right. At the bench conference I was  
4 informed by the State that you intend to rest, is that  
5 correct?

6           SOLICITOR JORDAN: It is, Your Honor.

7           THE COURT: All right. I'll hear from the defense.

8           SOLICITOR JORDAN: Your Honor, just -- I assume I'll  
9 put on the jury, on the record before the jury when they  
10 come back from lunch.

11          THE COURT: Yes, I'll allow you to do that at that  
12 time.

13          SOLICITOR JORDAN: Okay.

14          MR. WHELCHER: May I confer with my client over the  
15 lunch before I make the motions that are required to be made  
16 at this time, Your Honor?

17          THE COURT: Yes, sir, I will inquire of your client  
18 concerning his Constitutional right to remain silent though  
19 before we break.

20          MR. WHELCHER: Before we break?

21          THE COURT: Yes, sir, so he can also have that  
22 opportunity to confer with you if he needs to do that---

23          MR. WHELCHER: Yes, sir.

24          THE COURT: ---during that time. Please stand and  
25 please swear the defendant for me.

1 (WHEREUPON, the defendant was placed under oath at this  
2 time.)

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

4 Mr. Craig, we've reached the stage of this trial where  
5 the, you have the right to present your defense, and, in  
6 doing so, there's certain of your Constitutional rights that  
7 I need to make you aware of.

8 I'm going to go over these matters with you, and when I  
9 finish I'll give you an opportunity to ask any questions  
10 about this that you might wish to ask the Court.

11 You understand what I'm doing---

12 DEFENDANT: Yes, sir.

13 THE COURT: ---at this time?

14 DEFENDANT: Yes, sir.

15 THE COURT: All right, sir. As, as part of your  
16 defense, you have the right to testify in this case. But  
17 I -- also you have the right not to testify. Under the  
18 Fifth Amendment to the United States Constitution, that  
19 particular amendment reads in part that no person shall, can  
20 be compelled, in a criminal case, to be a witness against  
21 himself. That means that you can not be required to testify  
22 even though you have the right to do so if you choose.

23 I will tell you that if you decide to testify, your  
24 testimony would be governed by the same rules that govern  
25 any other witness' testimony. That means that you would be

1 examined by your lawyer and you'd be cross-examined by the,  
2 the State's attorneys.

3 In addition to the cross-examination by the State, if  
4 you have criminal convictions on your record that the Court  
5 finds that the probative value of those convictions  
6 concerning your credibility outweighs the prejudicial effect  
7 of those convictions, those convictions could possibly be  
8 introduced to attack your, your credibility.

9 Now, I will tell you that if you decide not to testify  
10 in this matter, I will instruct the jury that the fact that  
11 you did not testify will, can not discussed by them in their  
12 deliberations. In other words, it should -- it's a factor  
13 that should not, in anyway, prejudice your case. Again, I  
14 would instruct them that they could not even discuss the  
15 fact that you did not testify during their deliberations in  
16 this matter.

17 Now, the decision as to whether or not to testify is a  
18 personal decision. That decision belongs to you and only  
19 you. You have the right to discuss this decision with your  
20 attorney, with family, friends, or anyone else you'd like to  
21 discuss it with. But in the final analysis, the decision is  
22 yours and yours alone.

23 Now, sir, do you understand the rights, the rights that  
24 I've explained to you?

25 DEFENDANT: Yes, sir.

1 THE COURT: And do you have any questions about that  
2 right?

3 DEFENDANT: No, sir.

4 THE COURT: All right. I will tell you that, over our  
5 break, break, you have, should be given or you will be given  
6 the opportunity to discuss this decision with anybody you'd  
7 like to discuss it with, and, in particular, your attorney.  
8 And when we return to the courtroom, I will be inquiring of  
9 you concerning whether or not you wish to testify in this  
10 case.

11 DEFENDANT: Yes, sir.

12 THE COURT: Do you understand that?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. Well, we're in recess then  
15 until -- let's see. We're gonna start back about 1:15.  
16 That should give us an opportunity to take up some matters  
17 before the jury comes in.

18 So, we're in recess until 1:15.

19 Ma'am?

20 SOLICITOR JORDAN: Just for clarification---

21 THE COURT: Order please. Be seated. I have not  
22 dismissed you.

23 SOLICITOR JORDAN: Your Honor, just for clarification,  
24 and purposes of my planning, and I know I can't get an  
25 answer to this, but I just -- I guess I'm at a loss as to

1 whether or not we're coming back at 1:30 for a defense case  
2 or for closing.

3 THE COURT: Well, what's gonna happen is I'll give you  
4 an opportunity, go on the record, and once I've considered  
5 any motions the defense may have. Assuming that the case  
6 survives those motions, then, in that case, they'll have an  
7 opportunity to present any witnesses they choose to present.

8 SOLICITOR JORDAN: Your Honor, if they choose not to  
9 present any evidence, I know that's their call, and we'll  
10 find out later, could I then have a break---

11 THE COURT: Oh, we'll take a short break and you can  
12 give or whatever break you need in order to prepare for  
13 closing arguments. I know that would be somewhat of a  
14 surprise to you---

15 SOLICITOR JORDAN: Yes, sir.

16 THE COURT: ---if that occurs. So, we'll, we'll see to  
17 it that everyone has an opportunity to fully prepare for  
18 their closing arguments.

19 SOLICITOR JORDAN: Thank you.

20 THE COURT: Okay. Court's in recess until 1:15.

21 Thank you.

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

23 THE COURT: All right. We're on the record in the case  
24 of State versus Craig.

25 Before we go any, go into the question of testimony,

1 are there any motions from the defense?

2 MR. WHELCHER: Yes, sir, Your Honor, there are.

3 Your Honor, with regard to Indictment 13-2849 for  
4 attempted armed robbery where the alleged victim is Kimberly  
5 Henderson, 13-2853, excuse me, Indictment 13-2853 where the  
6 alleged victim is Kesha Jolly, 13-2844 where the alleged  
7 victim is Brent Atkins, 13-2848 where the alleged victim is  
8 James Long, 13-2851 where the alleged victim is Jamie  
9 Mattox, and 13-2852 where the alleged victim is Linda  
10 Greene, on those particular six indictments, Your Honor, I  
11 would move for a directed verdict on the insufficiency of  
12 the evidence as presented by the State.

13 As a matter of fact, there's been no evidence submitted  
14 by the State and these persons have not testified concerning  
15 an armed robbery at all. Although I believe there's  
16 testimony that they were there, I would liken this situation  
17 to a mere presence situation on behalf of a defendant. Mere  
18 presence does not equate to someone's guilt. It also does  
19 not, in my opinion, equate to the necessary legal element in  
20 order for the State to prove an attempted armed robbery in  
21 these situations.

22 I know the statute reads a person who commits an  
23 attempted robbery armed with a pistol, and I'll delete the  
24 dirk and the slingshot and all that other language, or  
25 while, or other deadly weapon while alleging, either by

1 actions or words, he was armed while using a representation  
2 of a deadly weapon, or any object which a person present  
3 during the commission of the robbery reasonably believed to  
4 be a deadly weapon is guilty of a felony, and, upon  
5 conviction, must be imprisoned not more than 20 years.

6 There's been no evidence, as I've said, Your Honor,  
7 presented by the State concerning these particular  
8 indictments and those particular individuals, and based on  
9 that, I would make a motion on these, at this time, for a  
10 directed verdict.

11 THE COURT: I'll hear from the State.

12 SOLICITOR JORDAN: Your Honor, first of all, I don't  
13 think his mere presence argument has any bearing on this  
14 case as far as the victim. There's nothing in the, nothing  
15 in the rules or the statutes or anything that require me to  
16 put up every victim of a crime.

17 If that were the case, where would we be with homicide  
18 cases?

19 Where would we be in CDV cases where victims refuse to  
20 testify and to cooperate with us?

21 It's my, it's my decision, on behalf of the State, as  
22 to who I called and who I did not call, and I did make a  
23 decision only to call certain people. But there was  
24 ample -- there is evidence, taking the evidence in the light  
25 most favorable to the non-moving party, which is the State,



1 there's evidence out there as to who was inside that store.

2 There's also the video that shows what happened.

3 As far as the -- I don't know if he's going with his  
4 client isn't alleged to have a gun in his hand. I just --  
5 as I've requested from the very beginning of the trial when  
6 I passed up my two requested charges so far, the hand of one  
7 is the hand of all in our state, and I would just rest on  
8 those, those two issues as or rest on what I've argued as to  
9 requesting the Court deny his motions in reference to any  
10 and all the indictments that he mentioned.

11 THE COURT: I think there was -- there was testimony  
12 that those individuals were present. I think it was a  
13 diagram that located everybody within that, in the store  
14 where they were when this began.

15 SOLICITOR JORDAN: Yes, sir, and I have had witnesses  
16 identify every individual who was in there. Even the ones  
17 who did not testify.

18 THE COURT: And the video itself indicates that there  
19 were two persons in the store, they were ordering people  
20 into various locations around the store, and into various  
21 positions.

22 Anything else you want to tell me, Mr. Wheelchel?

23 MR. WHELCHER: Yes, sir, just briefly.

24 THE COURT: Okay. I'm sorry. Go ahead. I didn't mean  
25 to cut you off.

1 MR. WHELCHER: Oh, no, you didn't, Your Honor.

2 Following up on the State's argument, Your Honor, in  
3 that case if there were a robbery where a defendant walked  
4 in and robbed the people right at the cash register, and the  
5 people in the same room who, with their back turned, had no  
6 idea that the robbery was being, was taking place, they  
7 could be victims of robbery too by their theory, and I don't  
8 think that's the case. That's not the case.

9 THE COURT: Well, again, there was -- as I was stating,  
10 the video is in evidence.

11 MR. WHELCHER: Yes, sir.

12 THE COURT: It does indicate that those, those  
13 individuals that you mentioned were being ordered to move  
14 around. The person carrying the bag had moved to another  
15 part of the store, I assume, to begin to take items from  
16 those individuals.

17 There was evidence that evidence, that items were taken  
18 from individuals and in the possession of the, of the  
19 perpetrators and they're charged, they're charged with  
20 attempted armed robbery I believe.

21 Isn't that what that indictment is for?

22 SOLICITOR JORDAN: There's, there's two armed robberies  
23 to the two individuals whose items were taken. One was  
24 Joseph McCullough who testified and---

25 THE COURT: Yeah, he testified.

1 SOLICITOR JORDAN: ---and the other was Amanda Kiwitz.  
2 She did not testify, but he testified as to what was taken  
3 from her.

4 THE COURT: Right.

5 MR. WHELCHER: And that's right. The remainder are  
6 attempted, Your Honor.

7 THE COURT: Are attempted armed robberies. And in the  
8 case of attempted armed robberies, by its definition, armed  
9 robbery doesn't occur. It's attempting. And in looking at  
10 the case law I've looked at on that particular issue, the  
11 issue is the intent of the parties involved.

12 I think there's adequate evidence on the attempted  
13 armed robberies to call into question the intent of the  
14 individuals and sufficient evidence for a jury to, to infer  
15 that the crime was, was intended to be committed. I think  
16 there is sufficient evidence on all cases to send it to the  
17 jury. I'll deny the motion.

18 MR. WHELCHER: On all of those, Your Honor?

19 THE COURT: On all of those.

20 MR. WHELCHER: Yes, sir.

21 In addition, Your Honor, I would make the same motion  
22 for a directed verdict on Indictments 13-2845, 2854, 2846,  
23 2847, 2855, and 2850, and 2199, Your Honor, based on the  
24 insufficiency of the evidence as presented by the State.

25 THE COURT: I'll deny the motions. I find that there

1 was sufficient evidence.

2 SOLICITOR JORDAN: Thank you, Your Honor.

3 MR. WHELCHEL: Thank you, Your Honor.

4 THE COURT: All right. Any other motions from the  
5 defense at this time?

6 MR. WHELCHEL: No, sir.

7 THE COURT: All right. Mr. Craig, I told you, when we  
8 broke earlier, that I will give you an opportunity to  
9 consult with anyone that you would like to consult with  
10 during the lunch break. I remind you that you're still  
11 under oath concerning our discussion at this time.

12 Mr. Craig, had you had an opportunity to discuss your  
13 decision as to whether or not to testify with anyone you  
14 wish to discuss it with?

15 DEFENDANT: Yes, sir.

16 THE COURT: Do you need any additional time to discuss  
17 your decision with anyone?

18 DEFENDANT: No, sir.

19 THE COURT: All right. Do you intend to testify in  
20 this case?

21 DEFENDANT: Yes, sir.

22 THE COURT: Okay, sir. Now, I believe there was one  
23 other issue that was raised in chambers.

24 Do you want to discuss that now or do you want to wait  
25 until---

1 SOLICITOR JORDAN: Well, Your Honor?

2 THE COURT: ---that comes up?

3 SOLICITOR JORDAN: If I could, we just address what his  
4 record is and what may come in under 609 for impeach  
5 purposes.

6 THE COURT: Certainly, if you'd like to make a showing.

7 SOLICITOR JORDAN: And as I state that, I left my  
8 notebook upstairs and Ms. Reese is going to run get it, but  
9 I can pull up---

10 THE COURT: I think it's here.

11 SOLICITOR JORDAN: That's my book.

12 THE COURT: I'm sorry.

13 SOLICITOR JORDAN: It's my notebook that I left.

14 THE COURT: Okay.

15 SOLICITOR JORDAN: I can pull up his record. But I do  
16 recall that he has from, I believe it's 2010/2011, he has a  
17 conviction for possession of a sawed-off shotgun -- oh,  
18 wait. I have copies of them. He has a disturbing schools  
19 conviction from 2001. That does not fit 609. He has a  
20 possession of stolen vehicle 1,000 to 5,000 from 2001. I, I  
21 could argue that it's a crime of dishonesty, but I will not.

22 MR. WHELCHER: I think it's, I think it's too remote,  
23 Your Honor.

24 SOLICITOR JORDAN: I will not.

25 THE COURT: I understand.

1           SOLICITOR JORDAN: He has a resisting arrest charge  
2 from '01, which is out. He has, from 2011, he pled guilty  
3 to possession of crack cocaine or methamphetamines. It  
4 appears that on the sentencing sheet I put possession of  
5 crack cocaine. That plea occurred on September the  
6 14<sup>th</sup> of 2011. I would argue that that one could  
7 potentially -- should come, should come in.

8           THE COURT: All right.

9           SOLICITOR JORDAN: He has, from 2000, and, an  
10 indictment from 2007 where he pled guilty in 2000, December  
11 of 2009 to possession of a sawed-off shotgun. I believe  
12 that also comes in.

13          THE COURT: All right.

14          SOLICITOR JORDAN: The last charge he has, Your Honor,  
15 is unlawful, unlawful carrying of a weapon from 2011 and it  
16 doesn't fit the one year.

17          THE COURT: All right. All right. So, the ones  
18 you're, you're intending to present -- let's be sure we're  
19 clear on it.

20          SOLICITOR JORDAN: And, Your Honor, if I, if I could  
21 also, once my file comes down here, just check everything.  
22 There is a false information that's from 2001 that I would  
23 argue comes in under 609(a)(2) evidence that any witness has  
24 been convicted of a crime shall be admitted if it involves  
25 dishonesty or false statement regardless of the punishment.

1 I just need to verify that date when it comes down.

2 THE COURT: Okay. Well, let's wait till your, till  
3 that information comes in.

4 SOLICITOR JORDAN: And I just---

5 THE COURT: I want to be sure that we're clear with Mr.  
6 Wheelchel the items you intend to introduce so he can object  
7 to them.

8 MR. WHELCHER: Thank you, Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 SOLICITOR JORDAN: He also has a 2003 conviction from  
12 the State of California, but I want to pull up the rap to  
13 make sure I read the charge correctly. Your Honor, his  
14 false information conviction is from 2000. False  
15 information convicted on 9/21 of 2000.

16 MR. WHELCHER: I would be opposed to that if we're  
17 going over it at this time, Your Honor, cause I don't have  
18 any prior knowledge of that. They're -- all my rap sheet  
19 that was provided to me show, showed was an arrest and no  
20 conviction, Your Honor, and now, at this time, I think it's  
21 too late for the State wanting to use that particular crime  
22 to impeach my client---

23 SOLICITOR JORDAN: Your Honor, I---

24 MR. WHELCHER: ---on the eleventh -- let me finish. At  
25 the eleventh hour, Your Honor.

1           SOLICITOR JORDAN: I disagree with that statement. As  
2 soon as my file comes down I will show the Court the rap  
3 sheet that I have that printed off that date because I have  
4 no notes in there from his bond hearing, and my notes from  
5 his bond hearing include the 2000 false information.

6           THE COURT: Well, let's wait till your notebook gets  
7 here, and then we'll deal with these things.

8           (Pause.)

9           SOLICITOR JORDAN: Your Honor, according to our  
10 computer system, the rap that my paralegal ran on  
11 January 27<sup>th</sup>, 2012, shows a conviction for false  
12 information on September 21<sup>st</sup>, 2000.

13          THE COURT: Was that provided to the defense?

14          SOLICITOR JORDAN: Yes, sir, Your Honor.

15          May I step over and---

16          MR. WHELCHER: That's the one I have. It is there,  
17 Your Honor. I was looking at the wrong place.

18          THE COURT: So, it is in the documents you were given?

19          MR. WHELCHER: Yes, sir, it's there.

20          THE COURT: All right. Take a second and, Ms. Jordan,  
21 and let's go over the ones specifically that you do wish to  
22 use for impeachment purposes.

23          SOLICITOR JORDAN: Your Honor, I ask to be able to  
24 impeach him as to the 2000 false information, the 2009  
25 possession of a sawed-off shotgun, 2011 possession of crack.



1 He also has a conviction out of the State of California, and  
2 I want to read it directly from his rap. His conviction  
3 from October the 24<sup>th</sup> of 2003 from what appears to be  
4 Bakersfield, California for assault with a firearm on a  
5 person with great bodily injury, firearm used or used  
6 firearm, for which the, his NCIC states that he was  
7 convicted, committed to prison, felony, four years prison  
8 and fine, and there appears to be restitution is R-E-S-T-N.

9 THE COURT: All right. Mr. whelchel, I'll hear from  
10 you.

11 MR. WHELCHER: Your Honor, I would liken this charge to  
12 the armed robbery incident in the Broadnax case that we were  
13 recently talking about. This case, and the armed robbery,  
14 they -- neither one of them have anything to do with the  
15 basic facts, the basic charge has -- neither has nothing to  
16 do with dishonesty, Your Honor.

17 SOLICITOR JORDAN: Your Honor, I would ask to admit  
18 that one under 609(a)(1) and I do, I do understand that by  
19 asking for it under 609(a)(1) that the Court would have to  
20 do a balance test, probative versus prejudicial.

21 THE COURT: Well, do you have any of the underlying  
22 facts available from that---

23 SOLICITOR JORDAN: No, sir.

24 THE COURT: ---conviction---

25 SOLICITOR JORDAN: No, sir, I do not.

1 THE COURT: ---as to what occurred or how it occurred?

2 SOLICITOR JORDAN: No, sir.

3 THE COURT: All right.

4 MR. WHELCHER: I think either way it's---

5 THE COURT: So, you're challenging -- which ones are  
6 you challenging?

7 Which one are you challenging so I know what I need to  
8 rule on?

9 MR. WHELCHER: Okay. I'm challenging the California  
10 conviction, Your Honor.

11 THE COURT: All right. That's, that's the assault with  
12 a weapon or something of that nature?

13 MR. WHELCHER: Yes, sir.

14 THE COURT: All right.

15 MR. WHELCHER: I'm challenging the possession of a  
16 sawed-off shotgun, Your Honor. I believe it is more  
17 prejudicial than probative in this instance.

18 THE COURT: Are there any underlying facts from that  
19 case that are available?

20 SOLICITOR JORDAN: Your Honor, I could pull them up. I  
21 was---

22 THE COURT: I understand.

23 SOLICITOR JORDAN: I was the prosecutor on that case.

24 THE COURT: Okay. Anything that would bear on his  
25 credibility from that case.

1 SOLICITOR JORDAN: Actually, Your Honor, there's not an  
2 incident report in our computer system on that one.

3 THE COURT: Okay. All right. The California case, the  
4 sawed-off shotgun, those are the ones you're challenging?

5 MR. WHELCHER: Yes, sir, the California case, the  
6 sawed-off shotgun, the false information, and I'm not  
7 challenging the, the drug possession, Your Honor.

8 THE COURT: All right. Then -- now, the false  
9 information, I am going to allow it. It bears directly on  
10 the question of credibility. I do find that the probative  
11 value would outweigh the prejudicial effect in that case.

12 As to the other two charges, the sawed-off shotgun and  
13 the California charge, I'm going to exclude those.

14 SOLICITOR JORDAN: Yes, sir. So, at this---

15 THE COURT: So, I'll grant the defense's motion to  
16 exclude those.

17 MR. WHELCHER: Thank you, Your Honor.

18 SOLICITOR JORDAN: So, I have the possession of crack  
19 and false information?

20 THE COURT: Yes.

21 SOLICITOR JORDAN: Yes, sir.

22 THE COURT: All right. Any other matters we need to  
23 take up before we bring the jury in?

24 SOLICITOR JORDAN: Yes, sir.

25 MR. WHELCHER: May we approach, Your Honor?

1 THE COURT: Please do.

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

4 THE COURT: All right. My understanding is that the  
5 defense has one matter that you'd like to put on the record  
6 before we begin the defense's case?

7 MR. WHELCHER: Yes, sir, Your Honor. At the beginning  
8 of this case on Monday evening before the jury was sworn.

9 THE COURT: The jury was sworn on Tuesday morning.

10 MR. WHELCHER: Yes, sir, I received an offer in this  
11 case from the State for my client to -- they would allow --  
12 well, the offer was simply this, Your Honor. We could plead  
13 to everything that he was indicted for and a negotiated 20  
14 year sentence, is that correct?

15 SOLICITOR JORDAN: Yes, sir.

16 THE COURT: And my client refused that offer, Your  
17 Honor.

18 THE COURT: I think, at that time, you asked for  
19 overnight to consider it, and we did not seat the jury until  
20 Tuesday morning.

21 MR. WHELCHER: Yes, sir, and I went up to the jail or  
22 the detention facility. I'm sorry. I went up to the  
23 detention facility and discussed that with him and asked him  
24 to think about it overnight, and he told me Tuesday morning,  
25 before we started, that he was turning down that offer.

1 THE COURT: All right. Mr. Craig, is that an accurate  
2 statement of what occurred?

3 DEFENDANT: Yes, sir.

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

5 All right. Now, are we ready for the jury?

6 MR. WHELCHER: Yes, sir.

7 SOLICITOR JORDAN: Yes, sir.

8 THE COURT: And as far as the jury's concerning, you  
9 have not yet rested. I will call on you for additional  
10 witnesses. You can rest then in front of the jury and I'll  
11 immediately call on you for any witnesses you wish to call.

12 MR. WHELCHER: Thank you, Your Honor.

13 SOLICITOR JORDAN: Thank you.

14 THE COURT: All right. Bring the jury in.

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

17 THE COURT: The record will reflect the jury has  
18 returned to the courtroom.

19 I want to thank you for your patience this afternoon.

20 I'll, again, inquire if anyone had any difficulty in  
21 following my instructions during your absence from the  
22 courthouse, please stand.

23 (No response.)

24 THE COURT: It appears that everyone has been able to  
25 comply with my instructions thus far.

1        Now, when we broke earlier the State was in the process  
2 of calling its witnesses.

3        The State may call its next witness.

4        SOLICITOR JORDAN: Your Honor, at this point in time  
5 the State rests.

6        THE COURT: All right. So the State now has rested its  
7 case. That means the -- at this point in time the defense  
8 has the right to call witnesses if they so choose.

9        Defense may call its first witness.

10       MR. WHELCHER: Beg the Court's indulgence for one  
11 moment.

12       THE COURT: Yes, sir.

13       (Pause.)

14       MR. WHELCHER: Defense call Brent Atkins, Your Honor.

15       THE COURT: Come forward please.

16                        BRENT ATKINS, being first duly  
17 sworn, testified as follows:

18       THE COURT: Have a seat please, sir. Once you're  
19 seated, state your name.

20       WITNESS: Brett Atkins.

21       THE COURT: Thank you.

22       Mr. Whelcher, your witness.

23       MR. WHELCHER: Thank you, Your Honor.

24       THE COURT: Yes, sir.

25       DIRECT EXAMINATION

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 BY MR. WHELCHEL:

2 Q Your name is Brent Atkins, sir?

3 A Yes, sir.

4 Q And you're employed at the Waffle House, correct?

5 A Yes, sir.

6 Q You're employed at the Waffle House on 221 where this  
7 event took place, is that correct, sir?

8 A Yes, sir.

9 Q Still employed there?

10 A Yep.

11 Q Okay.

12 (Pause.)

13 Q Now -- thank you.

14 On the early morning hours of the 21<sup>st</sup> of January of  
15 2012 you were employed at the Waffle House as a cook?

16 A Yes, sir.

17 Q You were there when two men came in and robbed the  
18 Waffle House, is that right, sir?

19 A That's right.

20 Q And you were in the back room, is that correct?

21 A Yeah, by the back-door.

22 Q Is, is that the room we're seeing on the video---

23 A Yeah.

24 Q ---on the screen now?

25 A I'm just out of the camera footage.

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 Q I'm sorry. I didn't---

2 A Toward the bottom right outside the camera footage.

3 Q Thank you, ma'am.

4 Okay. I need you to use this and show us where you are  
5 or where you were sitting that night.

6 A Can you play the tape?

7 Q Yes, sir.

8 (WHEREUPON, a portion of the videotape was played for  
9 the jury at this time.)

10 All right. That's you, sir?

11 A Yep.

12 Q Okay.

13 (WHEREUPON, another portion of the videotape was played  
14 for the jury at this time.)

15 MR. WHELCHEL: I'm in charge of the computer, Your  
16 Honor. That may be a dicey matter.

17 Q All right, sir. How tall are you, Mr. Atkins?

18 A Around 6'1", 6'2".

19 Q Okay. And the fellow that just walked out of the back  
20 room with you---

21 A Yeah.

22 Q ---that had the gun -- he had a gun, is that right?

23 A I can't remember and I can't really tell from the  
24 video.

25 Q Okay.



Brent Atkins - Direct examination  
by Mr. Whelchel

1 A I think he did, but I'm not sure.

2 Q Either way, that fellow that came in the back room---

3 A Yes.

4 Q ---and asked you and the ladies to step out to -- the  
5 fellow that came out into the back room and told y'all to  
6 step outside or to step out into the main dining area, how  
7 tall was he, sir?

8 A I can't say exactly. He was shorter than me.

9 Q Okay.

10 A I can't say exactly how tall.

11 Q But he was almost as tall as you or was he five feet  
12 tall or how tall was he?

13 SOLICITOR JORDAN: Your Honor, I object. He's answered  
14 that he's shorter than him.

15 THE COURT: I'll sustain, I'll sustain the objection.  
16 You're on direct.

17 MR. WHELCHER: All right, sir.

18 Q The fellow that came in the back, how tall was he  
19 compared to the other robber?

20 A I'm gonna say close to the same height, maybe a little  
21 taller.

22 Q Excuse me?

23 A Maybe a little taller. They were close in height.

24 Q Okay. Both of the fellows that came in and robbed the  
25 Waffle House, according to you, were close in height?

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 A Yeah, after this, once I get out past that door, I'm on  
2 the ground the whole time. So --.

3 Q Okay. Do you know if they were taller than me?

4 SOLICITOR JORDAN: Objection, Your Honor. He doesn't  
5 know how tall Mr. Wheelchel is.

6 THE COURT: I'm gonna overrule that objection. He can  
7 answer whether or may -- he not may -- he may have an  
8 answer. He may not.

9 A Well, I don't know. Maybe around the same height.

10 Q Okay.

11 A Maybe a little taller. I'm not sure exactly.

12 Q Okay. Well, I understand.

13 A Just shorter than me.

14 Q Shorter than you?

15 A Yeah.

16 Q But not a lot shorter than you---

17 A No, not a lot.

18 Q ---is that right?

19 You know Mr. Wilkens, James Wilkens?

20 A Yes, sir.

21 Q And Mr. Wilkens told you about meeting my client, did  
22 he not?

23 A He did, but he said---

24 SOLICITOR JORDAN: Your Honor, I object at this point.  
25 This is hearsay.

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 THE COURT: I'm gonna sustain the objection as to what  
2 Mr. Wilkens may have told him if you're asking him what he  
3 told him.

4 MR. WHELCHER: No, sir.

5 THE COURT: Well, what are you asking him?

6 MR. WHELCHER: I'm asking him if he told him about  
7 meeting the client. Not anything specific about it.

8 THE COURT: I'll allow the question.

9 A He told me about meeting him.

10 Q Okay.

11 SOLICITOR JORDAN: Your Honor, I object. That's  
12 hearsay.

13 MR. WHELCHER: I think he's already ruled.

14 SOLICITOR JORDAN: But is he, is he stating that---

15 THE COURT: He's not asking for a quotation. He said  
16 what he talked about.

17 SOLICITOR JORDAN: Okay.

18 MR. WHELCHER: Okay.

19 Q Subsequent to that, did he describe my client to you --  
20 I'm not asking you to tell us what he said.

21 SOLICITOR JORDAN: Your Honor, this is just  
22 circumventing hearsay.

23 THE COURT: I'm gonna ask the jury to step back to the  
24 jury room. Again, I'll ask you not to begin any discussions  
25 at this time.

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 (WHEREUPON, the following takes place outside the  
2 presence of the jury.)

3 THE COURT: Where are you going, Mr. Wheelchel?

4 MR. WHELCHEL: Just there, Your Honor. I was -- he --.

5 THE COURT: Well, the last, the last question calls for  
6 hearsay. So, I'll sustain the objection. Any other  
7 questions along this line so we can deal with it outside of  
8 the hearing of the jury?

9 MR. WHELCHEL: Yes, sir, Your Honor. I'll just go  
10 ahead and ask him and she can object---

11 THE COURT: That will be fine.

12 MR. WHELCHEL: ---whenever she wants to.

13 Q He was described to you, is that correct?

14 A He was.

15 Q Okay. And were you surprised to find out that he was,  
16 my client was as short as he was?

17 A A little, but James described him to be like really  
18 really short.

19 Q Okay. And you've seen him now since you're here?

20 A Yeah, I expected him to be a little shorter, but---

21 Q Okay. Now, you were there that night at the robbery?

22 A Yeah.

23 Q You see my client all these two, two and a half days in  
24 Court?

25 A Yes, sir.

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 Q Is that one of the fellows that robbed the Waffle  
2 House?

3 SOLICITOR JORDAN: Your Honor, I object at this point.  
4 He hasn't laid a foundation as far as the reliability of  
5 this eye witness. I think he and I, at this point, just  
6 flipped---

7 THE COURT: I think you have changed positions now.

8 SOLICITOR JORDAN: ---flipped our positions now.

9 MR. WHELCHER: I believe we have.

10 THE COURT: You're gonna have to lay a better  
11 foundation.

12 Q Were you at the Waffle House?

13 THE COURT: Cause it's mine -- his testimony thus far  
14 is that once he went through that door, after that he was on  
15 that floor. He didn't see anything.

16 MR. WHELCHER: He---

17 THE COURT: And, and my -- from what I've seen from him  
18 going out the door, there was one person there, I don't know  
19 that he ever saw the other guy really and evaluated him.  
20 So, there's got to be a better foundation cause, so far,  
21 he's only told me he saw one of them.

22 MR. WHELCHER: I'm getting there, Your Honor.

23 THE COURT: Well, that's what I'm suggesting that you  
24 do.

25 Q Did you have an opportunity, while at the Waffle House

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 that night after you came through that door, to see both of  
2 the individuals?

3 A At one time, no.

4 Q Okay. I don't mean together.

5 A Right.

6 Q But did you see both of the individuals that were at  
7 the Waffle House that committed the robbery?

8 A Briefly.

9 Q Okay. And how is the lighting at the Waffle House?

10 A About like it is in here sort of.

11 Q You have any trouble seeing me?

12 A No.

13 Q How close were you to these two individuals who robbed  
14 the waffle House?

15 A Well, one of them I was fairly close to at one point  
16 cause we walked through the back-door, but the other one I  
17 was not close to at all.

18 Q Do you recall if the fellow who came in the back, do  
19 you remember if he had a gun or not?

20 A I don't remember.

21 Q Okay.

22 A It's been too long.

23 Q All right. Were -- how long did you have an  
24 opportunity to see both of these men who robbed the Waffle  
25 House?

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 A Seconds. I can't say exactly.

2 Q And in, in the time that you had to observe these men,  
3 is my client one of them?

4 A Well, I can't say for sure.

5 Q Okay. You can't say he is one of them?

6 A Yeah, I can't say he is or I can't say he's not.

7 Q Okay.

8 A I'm not sure.

9 Q All right.

10 THE COURT: State's position?

11 SOLICITOR JORDAN: Well---

12 THE COURT: You raised the objection. I'm -- I'll hear  
13 you out.

14 SOLICITOR JORDAN: I did raise the objection. At that  
15 point in time there was no identification and there appears  
16 to be no identification now.

17 MR. WHELCHER: It's the same identification that there  
18 was when the State's witness said they couldn't be sure  
19 either, Your Honor. So, if it works one way, it works both  
20 ways.

21 THE COURT: Well, he didn't say he couldn't be sure.  
22 He said he couldn't identify him at all is what he just said  
23 I think is the way I heard him say it. He couldn't make an  
24 identification.

25 MR. WHELCHER: No, sir, I understand that.

Brent Atkins - Direct examination  
by Mr. Wheelchel

1 THE COURT: So, there's not been an identification.

2 MR. WHELCHEL: Of my client, yes, sir.

3 THE COURT: Of anyone.

4 MR. WHELCHEL: Exactly.

5 THE COURT: So, I'll sustain the State's objection. It  
6 would call for speculation to ask him to make that  
7 identification.

8 SOLICITOR JORDAN: Your Honor, I -- Your Honor, I  
9 withdraw my objection to his response.

10 THE COURT: Well then I don't know what we're talking  
11 about then.

12 Objection's been withdrawn.

13 All right. Bring the jury in.

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

16 THE COURT: All right. The jury has returned to the  
17 courtroom. The objection has been withdrawn.

18 You may proceed, Mr. Wheelchel.

19 MR. WHELCHEL: Thank you, Your Honor.

20 (Pause.)

21 MR. WHELCHEL: That's all I have, Your Honor.

22 THE COURT: Any cross-examination?

23 SOLICITOR JORDAN: Thank you.

24 THE COURT: Yes, ma'am, Ms. Jordan, your witness.

25 CROSS-EXAMINATION



Brent Atkins - Cross-examination  
by Solicitor Jordan

1 BY SOLICITOR JORDAN:

2 Q Brent, did you have an occasion, once you went through  
3 that door, to see the, the first robber, Dante, and the  
4 second robber side-by-side?

5 A No, ma'am.

6 Q Okay. When you went through that door, where did you  
7 go?

8 A I went to the grill. They told us to get down and I  
9 laid in the floor.

10 Q Okay. Which way were you facing if you recall?

11 A I think I was facing toward the sink.

12 Q Okay.

13 A I think.

14 Q And let me ask you a quick question about this camera  
15 angle over here.

16 Where is this camera in this back room?

17 A It's by the back-door.

18 Q Okay. Where is it located by the back-door?

19 A In the ceiling.

20 Q Okay. So, it's up?

21 A It's up facing that way.

22 Q Okay. So, your testimony is that once you went through  
23 you went to the ground?

24 A I went through, walked a few feet, they said to get  
25 down, and I got down.

Brent Atkins - Cross-examination  
by Solicitor Jordan

1 Q Okay. Do you recall if the robber who came through  
2 this door was wearing a mask at the time he came in?

3 A He was wearing a mask.

4 SOLICITOR JORDAN: Nothing further, Your Honor.

5 THE COURT: Anything on redirect?

6 REDIRECT EXAMINATION

7 BY MR. WHELCHER:

8 Q Ms. Jordan asked you if the first fellow, excuse me,  
9 Ms. Jordan asked you if the fellow who came into that room  
10 and then went out with you was the first robber, Dante?

11 SOLICITOR JORDAN: Your Honor, I object. I don't think  
12 that was my question.

13 THE COURT: I'm gonna allow, I'm gonna allow him to ask  
14 the question cause you did ask if it was---

15 MR. WHELCHER: Thank you, Your Honor.

16 THE COURT: ---the person---

17 Q You don't know which one was which, do you?

18 A I don't know which one was which.

19 Q Okay. You just know that the fellow came in there and  
20 out of there with you was almost as tall as you?

21 A Yeah.

22 Q And---

23 A He had a mask on.

24 Q ---you're 6'1"?

25 A Yeah.

Brent Atkins - Recross examination  
by Solicitor Jordan

1 THE COURT: Any other questions, Mr. Wheelchel?

2 MR. WHELCHER: No, sir, I'm sorry.

3 RECROSS EXAMINATION

4 BY SOLICITOR JORDAN:

5 Q Wasn't it your testimony that he was shorter than you?

6 A He was shorter than me, yeah.

7 Q Thank you.

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

9 Defense may call its next witness.

10 MR. WHELCHER: Thank you, Your Honor.

11 Defense calls Kesha Jolly.

12 THE COURT: Come forward please, ma'am, to my left and  
13 be sworn.

14 KESHA JOLLY, being first duly  
15 sworn, testified as follows:

16 THE COURT: Have a seat. Once you're seated, state  
17 your name please.

18 WITNESS: Kesha Jolly.

19 THE COURT: Thank you.

20 Mr. Wheelchel, your witness.

21 MR. WHELCHER: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. WHELCHER:

24 Q Kesha, you were working at the Waffle House when the  
25 robbery took place back in January of 2012, is that right?

Kesha Jolly - Direct examination  
by Mr. Wheelchel

1 A Yes, sir.

2 Q But you don't work there now?

3 A I do not.

4 Q Okay. Where were you when the two fellows came in?

5 A I was on the floor standing up waiting on two of the  
6 ladies to decide what they wanted to eat to take their order  
7 facing the window and the door was to my left.

8 Q All right. Are you in that photograph at all?

9 A Yes, sir.

10 Q Okay. Where are you, ma'am?

11 A Right there.

12 Q That's you?

13 A Yes, sir.

14 Q Okay. Go ahead and let it play.

15 (WHEREUPON, a portion of the videotape was played for  
16 the jury at this time.)

17 Q How long had you worked at the Waffle House before this  
18 happened?

19 A Two years.

20 Q Okay. And how long did you work there after this  
21 happened?

22 A About six months.

23 Q Okay. Did -- you've moved out of frame now.

24 Were you still behind the counter there when the two  
25 men came in?

Kesha Jolly - Direct examination  
by Mr. Wheelchel

- 1 A I was.
- 2 Q Okay. And did you see them come in?
- 3 A I did.
- 4 Q Did you see them come in together?
- 5 A I did.
- 6 Q Okay. And did you see how tall they were when they
- 7 came in together?
- 8 A They were around the same height.
- 9 Q Okay.
- 10 A The one with the bag was a little taller than the one
- 11 with the gun as far as I can remember.
- 12 Q I understand.
- 13 Right here, which one had the bag?
- 14 A Not that guy.
- 15 Q And you---
- 16 A That guy.
- 17 Q Excuse me?
- 18 A That one.
- 19 Q All right. Ma'am, you don't know either of these
- 20 individuals, is that correct?
- 21 A No.
- 22 Q And all you can identify is one with the gun and one
- 23 with a bag?
- 24 A Uh-huh. (Affirmative).
- 25 Q Okay. And the one with the gun is the one that got

Kesha Jolly - Direct examination  
by Mr. Wheelchel

1 shot?

2 A Yes.

3 Q Okay. And you said earlier in your testimony that the  
4 one with the bag was taller than him?

5 A It was around the same height. The one had a hoodie on  
6 so you couldn't really tell.

7 Q Okay. And where are you now, ma'am?

8 A I am over here.

9 Q Okay. So, ma'am, after the robber with the gun was  
10 shot -- take this and show us where you were in the Waffle  
11 House please.

12 A Right here beside Tori.

13 Q Okay. You're just out of that frame?

14 A Yes.

15 Q Okay. And when the second person came from back in the  
16 corner and went out past the robber who's on the floor, were  
17 you able to see him, ma'am?

18 A For a brief second, yes.

19 Q Okay. And did you see his face?

20 A More like a side profile of the face.

21 Q Okay. And how close were you to him when he came by,  
22 ma'am?

23 A Maybe two feet, three feet.

24 Q Stop me when I get as close as you were to him that  
25 day.

Kesha Jolly - Direct examination  
by Mr. Wheelchel

1           Okay?

2   A     Probably about right there.

3   Q     Right here.

4   A     Uh-huh. (Affirmative).

5   Q     Okay. This is two---

6   A     And he was in the floor.

7   Q     Okay. But you were looking across those counters, is  
8   that right?

9   A     Yes.

10   Q     And those table settings and things?

11   A     Yes.

12   Q     All right. And there was nothing in there that  
13   obstructed your view of him then, was there?

14   A     Other than Tori's legs, no.

15   Q     Okay. And you saw his face and the side of his face,  
16   is that right?

17   A     Just mainly like the side where he was crawling and  
18   trying to get away.

19   Q     Okay. And there was nothing obstructing your view,  
20   right?

21           SOLICITOR JORDAN: I'd object and ask---

22   A     No.

23   Q     He didn't have on a mask at that point?

24           SOLICITOR JORDAN: I'd object as far as the,  
25   obstructing her view. She's already stated and Tori's

Kesha Jolly - Direct examination  
by Mr. Wheelchel

1 legs---

2 MR. WHELCHEL: I was asking about the mask.

3 THE COURT: I'll allow him to continue. You have a  
4 chance to cross-examine.

5 SOLICITOR JORDAN: Yes, sir.

6 Q He didn't have a mask on that saw you from seeing his  
7 face or his neck or anything like that, ma'am?

8 A No.

9 Q Okay. And when you saw him, there was nothing in  
10 particular that you saw that stood out in your memory?

11 He didn't have a big---

12 A No.

13 Q ---mole on his nose?

14 A No, I mean his, his nose kind of stuck out a little  
15 further than normal, but everybody's sticks out when you're  
16 looking from the side. But there was nothing, no tattoos,  
17 nothing I seen, nothing like this.

18 Q All right. Thank you, ma'am. Answer any questions the  
19 prosecutor might have.

20 THE COURT: All right. Ms. Jordan, your witness.

21 SOLICITOR JORDAN: Thank you, judge.

22 CROSS-EXAMINATION

23 BY SOLICITOR JORDAN:

24 Q When the two robbers were coming through the door, how  
25 long did it take them to come through the door?



Kesha Jolly - Cross-examination  
by Solicitor Jordan

- 1 A Seconds.
- 2 Q Okay. And was your attention diverted directly on the  
3 door the entire time they were coming through it?
- 4 A Yes.
- 5 Q And you -- were they in motion the entire time?
- 6 A Yes.
- 7 Q Kesha, once they came in and told you to get down, what  
8 did you do?
- 9 A I froze.
- 10 Q Okay.
- 11 A I kind of took a couple of steps back from my counter  
12 and just kind of stood there.
- 13 Q Okay.
- 14 A I didn't move.
- 15 Q Did -- what did you -- did you eventually get down?
- 16 A Eventually when they brought everybody else out of the  
17 back I started to get down.
- 18 Q At the point in time where this person walks past you  
19 right there, is he wearing a mask?
- 20 A He is.
- 21 Q What is, color is the mask?
- 22 A It's black.
- 23 Q What color are the clothes that he's wearing?
- 24 A All dark.
- 25 Q Okay. What about the other robber who eventually is

Kesha Jolly - Cross-examination  
by Solicitor Jordan

1 shot?

2 A The same thing.

3 Q Okay. All dark?

4 was he also wearing---

5 A Gloves, black, mask.

6 Q Keisha, other than those few brief seconds when they  
7 walk through the door, did you have any other opportunity to  
8 see the two of them standing together?

9 A No, ma'am.

10 Q Okay. So, just a -- I believe your testimony was that  
11 it was brief seconds?

12 A Yes.

13 Q Okay.

14 A It felt like an eternity, but it was just for a moment.

15 Q Okay. How did you feel when you were laying there on  
16 the ground?

17 A Really really scared.

18 Q Okay. Did you scream?

19 A Yes.

20 Q When you screamed, what did you think happened?

21 A I thought Julie was shot.

22 Q Okay. So, at that point in time you thought one of  
23 your friends and co-workers had been shot?

24 A Yes, ma'am.

25 Q Okay. And you remained on the floor?

Kesha Jolly - Cross-examination  
by Solicitor Jordan

1 A Pretty much.

2 SOLICITOR JORDAN: Okay. No further questions, Your  
3 Honor.

4 THE COURT: All right. Redirect?

5 REDIRECT EXAMINATION

6 BY MR. WELCHEL:

7 (WHEREUPON, a portion of the videotape was played for  
8 the jury at this time.)

9 Q Where are you in this picture, ma'am?

10 A Standing right there.

11 Q Okay. Is that you that's walking back and forth?

12 A Yes, sir.

13 Q Okay. And that's you that one of the robbers just  
14 walked by, is that right?

15 A Right there, yes, sir.

16 Q Okay. And that's you watching and walking into the  
17 back, is that right?

18 A Yes, sir.

19 Q And that's you getting down now?

20 A Yes.

21 Q Okay. And these two robbers, were they as tall as  
22 Brent?

23 A No.

24 Q Were they close to as tall as Brent?

25 A A little -- they were a little shorter. Not as tall.

Kesha Jolly - Redirect examination  
by Mr. Wheelchel

1 Maybe a head difference.

2 Q Okay.

3 A It was almost like looking up at him, but not as far.

4 Q When you say almost like looking up at him, you mean  
5 Brent?

6 A Uh-huh. (Affirmative).

7 When I look up cause I have to look up at him. But I'm  
8 barely five foot tall.

9 Q Yes, ma'am.

10 A So, when he walked by me, it was kind of, you know, I  
11 had to raise my eyes to look at him.

12 Q The one that walked by you?

13 A Uh-huh. (Affirmative).

14 Q Was almost as tall as Brent. That's what I'm trying to  
15 understand.

16 A Maybe up to like his ear lobe I would say. Like a half  
17 a head, a head taller, shorter.

18 Q Okay.

19 A Not by much.

20 Q All right.

21 THE COURT: Any more questions, Mr. Wheelchel?

22 MR. WHELCHEL: No, sir.

23 THE COURT: Your witness, Ms. Jordan.

24 SOLICITOR JORDAN: No questions, Your Honor.

25 May she be excused?

1 THE COURT: You may step down.

2 You wish to excuse the witness?

3 SOLICITOR JORDAN: I do, Your Honor.

4 THE COURT: You have any objection to her being  
5 excused?

6 MR. WHELCHER: Well, since she's my witness, Your  
7 Honor, I think I'm the one that's suppose to ask, but---

8 THE COURT: Well, do you have an objection to her being  
9 excused?

10 MR. WHELCHER: No, sir.

11 THE COURT: All right. You may step down. You're free  
12 to go, ma'am.

13 WITNESS: Thank you.

14 SOLICITOR JORDAN: Thank you.

15 THE COURT: You may call your next witness.

16 MR. WHELCHER: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. WHELCHER: Can we take a slight break at this time,  
20 Your Honor?

21 THE COURT: All right. Ladies and gentlemen, I'll ask  
22 you to step back to the jury room. As always, don't begin  
23 any discussions about the case until I've asked you to do  
24 so.

25 You may retire.

1 (WHEREUPON, the following takes place outside the  
2 presence of the jury.)

3 THE COURT: Court will be in recess for about ten  
4 minutes.

5 (WHEREUPON, a short recess was taken at this time.)

6 THE COURT: State ready to go forward, Ms. Jordan?

7 SOLICITOR JORDAN: Yes, sir.

8 THE COURT: Defense ready?

9 MR. WHELCHER: Yes, sir.

10 THE COURT: Bring the jury in.

11 SOLICITOR JORDAN: Your Honor, just, just briefly, may  
12 I ask who he's calling next so we don't have to deal with  
13 that one issue?

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

16 THE COURT: All right. The record will reflect that  
17 the jury has returned to the courtroom.

18 The defense may call its next witness.

19 MR. WHELCHER: Thank you, Your Honor.

20 The defense calls Kenneth Craig.

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

22 KENNETH CRAIG, having been first  
23 duly sworn, testified as follows:

24 THE COURT: Have a seat, sir, and state your name once  
25 you're seated.

Kenneth Craig - Direct examination  
by Mr. Wheelchel

1 WITNESS: Kenneth Craig.

2 THE COURT: Thank you.

3 Mr. Wheelchel, your witness.

4 MR. WHEELCHEL: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. WHEELCHEL:

7 Q Kenneth, I'm gonna need you to speak up and speak slow.

8 All right?

9 A Yes, sir.

10 Q That ain't gonna cut it.

11 A Yes, sir.

12 Q That's much better. Get into that microphone so I can  
13 hear you.

14 How old are you?

15 A Thirty.

16 Q Okay. Dante Williams, how did you know him?

17 A I had just met him about, about two or three days  
18 before this happened.

19 Q Two or three days before this happened?

20 A Almost a week. Say a week.

21 Q Okay. And this fellow here -- Slack, would you stand  
22 up?

23 How long have you known Slack?

24 A About the same.

25 Q Okay. Thank you, sir.

Kenneth Craig - Direct examination  
by Mr. Wheelchel

1           How did you meet Dante?

2   A     Well, one day I was down at two female's house named  
3   Dessie and Sin, and I also talked to Sin. He was at a  
4   store. Got to talking, took down to roll with me to the,  
5   the female's houses, and it was like this since then.

6   Q     So, it was women that brought you together, is that  
7   what you're telling me?

8   A     Yeah.

9   Q     Okay. On January -- this weekend in January that you  
10  were at Dante's house, is that correct?

11  A     It's Patricia McSwain's house.

12  Q     Well, he was there too?

13  A     Yes, sir.

14  Q     And he's related to them, correct?

15  A     Yes, sir.

16  Q     Okay. And how did you -- did you know any of those  
17  people there other than Dante?

18  A     Not prior to that, no.

19  Q     Okay. So, how was it that you came to be at Patricia  
20  McSwain's house where Dante was staying?

21  A     Through Dante.

22  Q     Did he invite you there?

23           what happened -- that's---

24  A     Yes, sir.

25  Q     Okay. And when did you get to Dante's house?



Kenneth Craig - Direct examination  
by Mr. Wheelchel

- 1       What time?
- 2   A   Probably after lunch.
- 3   Q   What day?
- 4   A   Friday.
- 5   Q   Friday?
- 6   A   Yes, sir.
- 7   Q   Okay. Friday on the day before his birthday Saturday,
- 8   is that right?
- 9   A   I'm assuming so, yes, sir.
- 10   Q   Speak up.
- 11   A   I'm assuming so, yes, sir.
- 12   Q   Okay. Well, when did you find out that Saturday was
- 13   Dante's birthday?
- 14   A   Friday night.
- 15   Q   Okay. Did he tell you or did somebody else tell you?
- 16   A   He told me.
- 17   Q   Okay.
- 18   A   Matter of fact, him and his cousin Russell.
- 19   Q   Excuse me?
- 20   A   Him and his cousin Russell.
- 21   Q   I still don't understand you.
- 22   A   Him and his cousin Russell.
- 23   Q   Okay. Roderick Drummond?
- 24   A   Russell.
- 25   Q   Okay.

Kenneth Craig - Direct examination  
by Mr. Welchel

1 A Russell.

2 Q Okay. I'm sorry. That's why I'm telling you to speak  
3 slow and speak up.

4 When you met Dante and were invited over to his house,  
5 what did y'all do on Friday, if anything?

6 A Well, for one, I chopped wood for Ms. Patricia to put  
7 in her fireplace.

8 Q You chopped wood?

9 A Yes, sir.

10 Q Okay. Did Dante, did Dante chop wood too?

11 A He helped me.

12 Q Okay.

13 A We sat on the back porch. He was telling me about how  
14 he didn't want to go home cause he was---

15 SOLICITOR JORDAN: Your Honor, I object at this point.  
16 This is hearsay.

17 THE COURT: Sustain the objection.

18 Q You can't tell us what somebody else said.

19 A Okay. Okay.

20 Q All right. You chopped wood for Ms. Patricia?

21 A Yes, sir.

22 Q Is that right?

23 A Yes, sir.

24 Q And that's who Dante was staying with?

25 A Yes, sir.

Kenneth Craig - Direct examination  
by Mr. Wheelchel

1 Q All right. Did you spend the night there, sir?

2 A Yes, sir.

3 Q Is that the first time you'd ever spent the night  
4 there?

5 A No. No, sir.

6 Q Okay. Well, you just met.

7 How, how long or how close to that was it that you had  
8 just met him?

9 A I'd say about three days to a week.

10 Q Okay. But then that wasn't the first night you stayed  
11 there?

12 A No.

13 Q Okay. All right. Who else was there on Friday night  
14 when you spent the night?

15 A Me, Ms. Pat, which is Patricia McSwain, Brittany,  
16 Adisa, Little Rod, I think Josh.

17 Q Excuse me?

18 A Josh.

19 Q Fielder?

20 A Yeah.

21 Q Okay.

22 A Oh, and Ms. Pat's sister too. Ms. Pat's sister.

23 Q Ms. Pat's what?

24 A Sister.

25 Q Okay. Cousin?

Kenneth Craig - Direct examination  
by Mr. Whelchel

- 1 A No, her sister. Ms. Patricia McSwain---
- 2 Q Okay. Who is that?
- 3 A I forgot her name. It's been 18 months, man.
- 4 Q All right. I understand.
- 5 So, what did you do on Saturday?
- 6 This would be Dante's birthday, correct?
- 7 A Yes, sir.
- 8 Q Okay. Did y'all chop wood more?
- 9 A Excuse me. Excuse me. I really can't recall about
- 10 chopping no wood.
- 11 Q Okay. Well, tell us what you can recall that happened
- 12 on that Saturday.
- 13 A Well, me, him, and Brittany, which was Ms. Patricia's
- 14 daughter, were on the back porch talking.
- 15 Q Okay. That was in the morning or the afternoon, sir?
- 16 A Both. Went both in the morning and the afternoon.
- 17 Q Okay. So, would it be fair for me to say y'all were
- 18 just hanging out there all day?
- 19 A Yes, sir.
- 20 Q Okay. Do you see Brittany in the courtroom?
- 21 A May I stand up?
- 22 Q Sure.
- 23 A No, sir.
- 24 Q Okay. Or Adisa?
- 25 A No, sir.

Kenneth Craig - Direct examination  
by Mr. Welchel

- 1 Q Okay. So, when exactly was it during that Saturday  
2 that you asked Dante do you want to go hit a lick for your  
3 birthday?
- 4 A Never.
- 5 Q Never?
- 6 A Never.
- 7 Q Okay. Did you leave with Dante that evening?
- 8 A After he came back.
- 9 Q Okay. After he came back from where, sir?
- 10 A I could not tell you. I wasn't -- back.
- 11 Q When Dante left that night, who did he leave with?
- 12 A You mean prior to this or --?
- 13 Q The Saturday night --
- 14 A Uh-huh. (Affirmative).
- 15 Q -- that Dante left --
- 16 A Uh-huh. (Affirmative).
- 17 Q -- before you left with him he went out with someone  
18 else, is that right?
- 19 A Yes, sir.
- 20 Q That's what I'm asking you about.
- 21 A Oh.
- 22 Q Who did he leave with that night?
- 23 A It was him, Slack, and -- him, Slack, and Hoops.
- 24 Q Who is Hoops?
- 25 A Slack's baby's mother.

Kenneth Craig - Direct examination  
by Mr. Welchel

- 1 Q Slack's baby's mother?
- 2 A Yes, sir.
- 3 Q Is Hoops here?
- 4 A Yes, she is.
- 5 Q Okay. I'm assuming that's her that raised her hand?
- 6 A Yes, it is.
- 7 Q Okay. So, Slack and Dante and Hoops leave.
- 8 Do you know how long they're gone?
- 9 Do you wear a watch?
- 10 A No, sir.
- 11 Q Okay. Did they leave in an automobile?
- 12 A Yes, sir.
- 13 Q Was it your automobile?
- 14 A No, sir.
- 15 Q Was it Dante's automobile?
- 16 A No, sir.
- 17 Q Was it Roderick Drummond, Senior's automobile?
- 18 A Yes, sir.
- 19 Q Okay. Did you meet Roderick that week, that time too?
- 20 A Yes, sir.
- 21 Q I mean -- excuse me.
- 22 Roderick Drummond, Senior, would you stand up, sir?
- 23 (WHEREUPON, a person in the audience stands at this
- 24 time.)
- 25 Q Did you meet him about that same time, sir?

Kenneth Craig - Direct examination  
by Mr. Wheelchel

- 1 A Yes, sir.
- 2 Q Okay. Thank you, sir.
- 3 When Dante came back from this meeting with Slack and
- 4 Hoops, what did he tell you if he told you anything?
- 5 SOLICITOR JORDAN: Your Honor, I object. Hearsay.
- 6 Q Did he tell you---
- 7 THE COURT: It calls for hearsay. I sustain the
- 8 objection.
- 9 MR. WHELCHER: I'll rephrase, Your Honor.
- 10 THE COURT: Thank you.
- 11 Q Did you talk to Dante when he came back?
- 12 A Yes, I did.
- 13 Q Okay. And after he came back, the two of you left
- 14 Alexander Avenue that night, is that correct?
- 15 A Yes, sir.
- 16 Q Okay. When you left Alexander Avenue with Dante, did
- 17 you have keys to an automobile?
- 18 A No, sir.
- 19 Q Did Dante have keys to an automobile?
- 20 A No, sir.
- 21 Q Okay. When you left his house that night -- and when I
- 22 say his house we're still talking about Ms. Patricia
- 23 McSwain's house where he was staying on Alexander Avenue, is
- 24 that right?
- 25 A Yes, sir.

Kenneth Craig - Direct examination  
by Mr. Welchel

1 Q Okay. You need to answer my questions so they can take  
2 it down.

3 where did -- when you left the house, were you walking  
4 at that time?

5 A Yes, sir.

6 Q What time was it?

7 A It was late.

8 Q After dark?

9 A Yeah.

10 Q Okay. And how was Dante dressed?

11 A In all black.

12 Q Okay. And how were you dressed?

13 A I had on blue jeans, a black thermal, a black t-shirt,  
14 black socks, and a blue belt.

15 Q Okay. Did you have on this coat that's been introduced  
16 into evidence?

17 A No, sir.

18 Q Okay. Did you have the coat on later in the day after  
19 you came back to her house?

20 A When Detective Bryant came and got me from the house I  
21 put it on.

22 Q Okay. So, you had on t-shirts?

23 A One t-shirt, one thermal.

24 Q Okay. And that's all other than the blue jeans and the  
25 shoes and the belt?



Kenneth Craig - Direct examination  
by Mr. Wheelchel

- 1 A Yes, sir.
- 2 Q Okay. Now, where did you and Dante go when you left
- 3 the house that night?
- 4 A Ridgewood.
- 5 Q Excuse me?
- 6 A Ridgewood.
- 7 Q Ridgewood?
- 8 A Uh-huh. (Affirmative).
- 9 Q What's at Ridgewood?
- 10 A A street. That's where Slack stay at.
- 11 Q Okay. You went to Slack's house?
- 12 A Yeah.
- 13 Q Ridgewood Avenue, is that where you're talking about?
- 14 A I don't know what -- if it was a street or avenue. I
- 15 just know it's called Ridgewood.
- 16 Q Okay. Where is Ridgewood in relation to Alexander
- 17 Avenue where you were staying with---
- 18 A Next street over.
- 19 Q The next street over?
- 20 A (Witness nods affirmatively.)
- 21 Q How did you get there?
- 22 Both of these streets run off of Union Street, is that
- 23 right.
- 24 A Yes, sir.
- 25 Q And Patricia McSwain, is she the one everybody calls

Kenneth Craig - Direct examination  
by Mr. Wheelchel

1 Ms. Pat?

2 A Yes, sir.

3 Q She actually runs that little store that's on the  
4 corner of Alexander and Union Street, is that right?

5 A Yes, sir.

6 Q Ms. Pat's Store?

7 A She works there.

8 Q Okay. She works there?

9 A Yes, sir.

10 Q And her house is like two lots down from the store?

11 A Yes, sir.

12 MR. WHELCHEL: Okay. Pardon me, Your Honor.

13 (Pause.)

14 Q If we're standing on Patricia's front porch and  
15 Alexander Avenue is running that way in front of us --

16 A Yes, sir.

17 Q -- which way is her store?

18 A To the right.

19 Q Okay. That way?

20 A Yes, sir.

21 Q Okay. And Ridgewood Avenue, which way is Ridgewood?

22 A Next street over.

23 Q The next street over?

24 A Yes, sir.

25 Q Okay. And there's a path that goes from Alexander to

Kenneth Craig - Direct examination  
by Mr. Welchel

- 1 Slack's house in Ridgewood, is that right?
- 2 A Yes, sir.
- 3 Q Okay. And how long does it take to walk from Alexander
- 4 Avenue to Ridgewood Avenue from Ms. Pat's house to Slack's
- 5 house?
- 6 A A minute 30 seconds, two minutes at the most.
- 7 Q So, when you and Dante left that night, you went to
- 8 Ridgewood?
- 9 A Yes, sir.
- 10 Q Okay. And what, what or who did you meet at Ridgewood?
- 11 A Slack.
- 12 Q Okay. What did you do then?
- 13 A Sat in the car, drunk a couple beers, smoked a couple
- 14 blunts.
- 15 Q You're going -- one, you're talking too fast and you're
- 16 talking too low. I got these in here for a reason.
- 17 A Sat in the car, drunk a couple beers, smoked a couple
- 18 blunts.
- 19 Q Okay. Who did that, all three of you?
- 20 A Yes, sir.
- 21 Q Okay. How was Slack dressed?
- 22 A He had a black leather coat on. First he had on some
- 23 brown boots. Then he put some black boots on. He had on
- 24 some black pants.
- 25 Q Okay. Now, how tall is Dante compared to Slack?

Kenneth Craig - Direct examination  
by Mr. Welchel

1 A About the same height.

2 (WHEREUPON, a portion of the video was played for the  
3 jury at this time.)

4 Q Okay. The fellow that just went down that aisle and  
5 around the corner, do you know who that is?

6 A Yeah.

7 Q Who is it?

8 A Slack.

9 Q Now, the fellow right there with the white looking  
10 tennis shoes on, who is that?

11 A Dante.

12 Q Were you driving the car that night --

13 A Yes, sir.

14 Q -- when y'all went to the waffle house?

15 A Yes, I was.

16 Q Okay. And that's Dante that's got shot.

17 You know that?

18 A Yes.

19 Q You've seen this video before, is that correct, sir?

20 A Yes, sir.

21 (WHEREUPON, another portion of the video was played for  
22 the jury at this time.)

23 Q Who is that right here?

24 A Slack.

25 Q Dressed in all black?

Kenneth Craig - Direct examination  
by Mr. Wheelchel

- 1 A Yes, sir.
- 2 Q Except for this white t-shirt?
- 3 A Yes, sir.
- 4 Q Is that how Slack was dressed when y'all left that  
5 night?
- 6 A Yes, sir.
- 7 MR. WHELCHEL: Bring the lights back up.
- 8 Q After you and Slack and Dante -- you ready?
- 9 A Yes, sir.
- 10 Q After you and Slack and Dante sat outside Slack's  
11 house, is that right, on Ridgewood?
- 12 A Yes, sir.
- 13 Q Where did y'all go first after you left that location?
- 14 A Pineview.
- 15 Q Pineview?
- 16 A Yes, sir.
- 17 Q Where is Pineview?
- 18 A Pineview Hills, yes, sir.
- 19 Q Pineview Hills?
- 20 A Yes, sir.
- 21 Q Where is that?
- 22 A On the -- like on the west side behind -- if you're  
23 from Spartanburg, you know where L.C. Watson is. It's L.C.  
24 Watson.
- 25 Q Okay. Is that close to Spartanburg Methodist College?

Kenneth Craig - Direct examination  
by Mr. Welchel

- 1 A Yeah.
- 2 Q Okay. Did you go see somebody specific there?
- 3 A Somebody in a white car.
- 4 Q Okay. How was it that you ended up going to Pineview  
5 Hills?
- 6 A Taking Slack.
- 7 Q They told you where to drive to?
- 8 A Yeah.
- 9 Q You were driving that night, is that right?
- 10 A Yes, sir.
- 11 Q Okay. And it wasn't your car?
- 12 A No, sir.
- 13 Q And we've already -- you've already said it wasn't  
14 Dante's car?
- 15 A No, sir.
- 16 Q So, when you walk over to Slack's, did he have the car?
- 17 A Yeah.
- 18 Q Okay. Did you later find out who the car belonged to?
- 19 A Yes, sir.
- 20 Q Mr. Drummond?
- 21 A Yes, sir.
- 22 Q Okay. How long do you stay at Pineview Hills or do you  
23 stay at Pineview Hills?
- 24 A About no more than five minutes.
- 25 Q Okay. The -- Slack and Dante get out of the car, do

Kenneth Craig - Direct examination  
by Mr. Wheelchel

- 1 they go in, or what happens there?
- 2 A Actually Tae just got out the car.
- 3 Q Excuse me?
- 4 A Just Tae got out the car.
- 5 Q When you say Tae you mean --?
- 6 A Dante.
- 7 Q Dante.
- 8 Okay. Let me back up a minute. You've heard people
- 9 refer to you earlier in this trial as Midget.
- 10 A Yes, sir.
- 11 Q And you've been called Midget all your life pretty
- 12 much?
- 13 A Yes, sir.
- 14 Q Okay. And how tall are you?
- 15 A About 5'5", 5'6".
- 16 Q Okay. So, where did you go when you left Pineview
- 17 Hills?
- 18 A Back to, back to Slack house.
- 19 Q Back to Alexander---
- 20 A No, sir.
- 21 Q ---or back to Ridgewood?
- 22 A Ridgewood.
- 23 Q Okay. And what happened when you were back at
- 24 Ridgewood, sir?
- 25 A I really can't recollect.

Kenneth Craig - Direct examination  
by Mr. Welch

1 Q Was anything special or anything that you remember that  
2 happened?

3 A The same thing happened before we left. Smoking.

4 Q Okay. Do you know how long you stayed at Ridgewood?

5 A About an hour.

6 Q Okay. Are you still---

7 A Close to an hour.

8 Q Are you still out in front of Slack's house?

9 A Yeah.

10 Q All right. whose idea was it to leave Ridgewood  
11 Avenue?

12 A Slack's.

13 Q Okay. Were you driving still?

14 A Yes, sir.

15 Q Slack is seated where?

16 A (Witness points.)

17 Q No, no, no. In the car.

18 A Back seat passenger side. Back seat passenger side.

19 Q Okay. And Dante is seated where in the automobile?

20 A Front seat passenger side.

21 Q And you're driving?

22 A Yes, sir.

23 Q Okay. Where did you go when you left Ridgewood Avenue  
24 this time?

25 A I don't catch on, understand what you mean.



Kenneth Craig - Direct examination  
by Mr. Welchel

- 1 Q Y'all left Ridgewood Avenue, is that right?
- 2 A Yeah.
- 3 Q Where did you go to?
- 4 A First went riding around.
- 5 Q Excuse me?
- 6 A First went riding around.
- 7 Q Okay.
- 8 A And then Slack was like I got to go to Cowpens.
- 9 Q Cowpens?
- 10 A Yeah, Cowpens.
- 11 Q Okay.
- 12 A So, I went to where I know how to go, 221. Before we
- 13 got -- before we got to Motel 6, he was like what's the, how
- 14 the gas looking. We straight, right. Excuse me for
- 15 cussing. We straight, Breck, and you know --.
- 16 Q Who was like we're out of gas?
- 17 A No, he asked me how the gas was looking.
- 18 Q You were looking for gas?
- 19 A He asked me how the gas was looking.
- 20 Q Okay. That's what I'm trying to get.
- 21 All right. Bear with me. You're gonna have to slow
- 22 down.
- 23 Go ahead.
- 24 A I was like we straight, right. He was like no, just go
- 25 ahead and just get it now. So, I pulled over, went in the

Kenneth Craig - Direct examination  
by Mr. Whelchel

1 store, and I think I got five or seven dollars. It was an  
2 odd number of gas that we got. Excuse me. I went in the  
3 store, go outside and pump the gas. I come outside and get  
4 back in the car. He on the phone. So --.

5 Q He who?

6 A Slack.

7 Q Okay.

8 A He on the phone. Close the gas hole, close that, put  
9 the gas up, get in the car, take off going back out 221. Go  
10 to my left going towards Cowpens.

11 Well, he got off the phone. We get by Burger King.  
12 Between Burger King and Subway he tell me never mind, Breck,  
13 drop us off at the Waffle House. That's what I did. I drop  
14 them off at the front door.

15 Q Okay. You dropped who at the front door of Waffle  
16 House?

17 A Slack and Dante.

18 Q Okay. And that was Slack and Dante we saw in that film  
19 earlier---

20 A Yes.

21 Q ---during your testimony?

22 A Yes, sir.

23 Q And that's how they were both dressed?

24 A Yes, sir.

25 Q Okay. This -- the gas station you stopped at, was that